

**CITY OF SAN DIEGO
ETHICS COMMISSION**

M E M O R A N D U M

DATE: May 29, 2015

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Proposed Amendments to Campaign Laws Related to the Referendum Process
Docketed for Discussion at Ethics Commission Meeting on June 11, 2015

The Ethics Commission has been asked by the City Council Charter Review Committee [CRC] to consider proposing amendments to the City's campaign laws to require additional disclosures of funding sources during the referendum process. As you know, a referendum is the process by which citizens may gather signatures to challenge a legislative action by the City Council. (If the petition drive is successful, the City Council must either rescind its prior action or place the matter on the ballot for voters to decide.) In response to a request from Councilmember Gloria, the CRC has asked the Commission to consider amendments that would require the inclusion of an identification disclosure on referendum petitions circulated for voter signatures and the filing of additional campaign statements with the City Clerk during the signature gathering period.

The public policy considerations behind increasing referendum disclosures are also relevant to initiative petitions, which are used by citizens to create new laws through the gathering of sufficient signatures to require the City Council to either adopt the law or put the matter to a public vote. In this regard, the discussion below concerns adding new disclosure requirements to both referendum and initiative petitions.

Identification Disclosure on Petitions

ECCO currently requires the inclusion of a "paid for by" disclosure on various types of campaign advertisements. With respect to campaign literature, the disclosure must be printed in a 12 point legible typeface in a color that contrasts with the background. SDMC § 27.2970. In addition, committees formed for the purpose of supporting or opposing a City candidate or measure must include the identity of their top two donors of \$10,000 or more. SDMC § 27.2975. The CRC would like the Commission to consider amendments to both sections to require the "paid for by" and major donor disclosures on referendum petitions.

The circulation of a petition can involve a host of scenarios that should be taken into consideration when contemplating a "paid for by" disclosure, including the following:

- a single committee that pays to prepare and print petitions, and pays signature gatherers to circulate them;
- a committee that pays to prepare and print petitions, and then distributes the petitions to other committees that in turn pay signature gatherers;
- a committee that pays to prepare and print petitions, and then distributes them to volunteers to gather signatures;
- a committee that pays to prepare a petition and posts it online, for other committees and volunteers to download, print and circulate for signatures (with paid signature gatherers or volunteers).

As you know, the “paid for by” disclosure requirements in ECCO apply only to individuals and entities that qualify as a “committee” under local and state law; i.e., they receive contributions or make independent expenditures totaling \$1,000 or more. It therefore follows that any similar disclosures required on petitions would apply only to “committees,” and not to grassroots organizations and other entities that haven’t reached the \$1,000 financial threshold.

In Chapter 2, Article 7 of the San Diego Municipal Code, Divisions 10 and 11 identify specific language and formatting that must be used in referendum and initiative petitions. Because this content is strictly regulated, the Commission should consider the precise placement of any additional language required on these petitions. In this regard, templates for both types of petitions are attached. Moreover, if the Commission is inclined to recommend amendments to ECCO (Division 29 of the Municipal Code), corresponding amendments to Divisions 10 and 11 should be considered as well for purposes of consistency.

Additional Campaign Statements

As you know, ECCO requires committees to file campaign statements in accordance with the schedules outlined in state law, and also imposes additional filing requirements on City committees formed for the purpose of supporting or opposing City candidates or measures. ECCO does not contain any supplemental filing requirements for the time period in which referendum or initiative petitions are circulated. State law requires that committees formed to support or oppose such petitions file comprehensive campaign statements (Forms 460) no later than 30 days after the end of every calendar quarter, as well as on a pre-election schedule during the months leading up to the relevant election

The laws governing referendum petitions require that signatures be gathered within a 30-day window following the final legislative act that is the subject of the referendum. During this 30-day window, the public typically has little access to meaningful information regarding the individuals or entities that are spending money to support or oppose the petition; even if a quarterly filing deadline happens to fall on a date within the 30-day window, the campaign statement will only disclose contributions and expenditures made prior to the final legislative act.

For initiatives, the petition must be circulated within 180 days. Although one or more quarterly reports would be required during this 180-day period, it is possible that significant contributions and/or expenditures could be made after the end of a calendar quarter that would not be disclosed before the end of the signature drive.

In order to provide the public with more timely information concerning campaign contributions and expenditures, the CRC has asked the Commission to consider recommending the following additional filing requirements for City committees:

- (1) the filing of an additional Form 460 within 10 calendar days after the petition begins circulating, covering the period from January 1 or the most recently-filed Form 460 through the date that petition circulation commences;
- (2) the filing of Late Independent Expenditure Reports [Forms 496] during the signature gathering period to disclose expenditures of \$1,000 or more made to support or oppose the petition, as well as contributions received since the period covered by the most recently-filed Form 460; and,
- (3) the filing of Late Contribution Reports [Forms 497] during the signature gathering period to disclose contributions of \$1,000 or more received since the period covered by the most recently-filed Form 460.

In addition to the policy considerations associated with the proposed additional filing requirements, there are practical considerations for the City Clerk's Office in terms of workload as well as technical enhancements to the electronic filing system that will have a bearing on the implementation of any proposed amendments.

It is also relevant to note that, pursuant to state law, local jurisdictions are permitted to impose additional filing requirements only on local committees. Therefore, any additional filing requirements associated with referendum and initiative petitions would apply only to City of San Diego committees, but not to any county or state (or other city) committees that decide to participate in a City petition drive. Accordingly, staff plans to work with Councilmember Gloria's office, as well as the Fair Political Practices Commission, to pursue corresponding amendments to state law to ensure that all committees supporting or opposing a City petition drive would be subject to the same filing obligations.

[Redacted]

Stacey Fulhorst
Executive Director

Attachments: Templates for Referendum and Initiative Petitions

REFERENDARY PETITION

REFERENDUM AGAINST A LEGISLATIVE ACT ADOPTED BY THE CITY COUNCIL OF THE CITY OF SAN DIEGO.

To the Honorable City Council of The City of San Diego:

We, the undersigned registered voters of The City of San Diego, California, hereby present this petition to the City Council of The City of San Diego, California, and ask that the City Council repeal, or submit to the registered voters of the City for their approval or rejection, that legislative act adopted by the City Council on the _____ day of _____ of which the following is a full and correct copy:

(Here insert full title and text of the measure to be referred, the statement of reasons, the voter signature sheet(s) and the circulator's affidavit of authenticity.)

(Form of Voter Signature Sheets for Petition)

NOTICE TO THE PUBLIC
THIS PETITION MAY BE CIRCULATED BY A PAID
SIGNATURE GATHERER OR BY A VOLUNTEER.
YOU HAVE THE RIGHT TO ASK.

	Name	Residence	Date	Clerk's Use Only
1	<u>Sign</u> Print			
2	<u>Sign</u> Print			
3	<u>Sign</u> Print			

(The Notice to the Public shall appear in clear, readable type no smaller than 12-point in size.)

(A space at least one (1) inch wide shall be left blank along the right-hand side of the voter signature sheet, for the City Clerk's use once the petition is filed.)

Each section shall have attached to it the affidavit of authenticity of the person soliciting the signatures (the "circulator"). The affidavit of the circulator shall be in the following form:

AFFIDAVIT OF AUTHENTICITY

COUNTY OF SAN DIEGO)

) SS.

STATE OF CALIFORNIA)

Under penalty of perjury, I, _____, declare:

(Printed name of circulator)

That all of the signatures on the voter signature sheets of this petition section were made in my presence and were observed by me; that all of the sheets constituting this petition section were fastened together at the time such signatures were made; that, to the best of my knowledge and belief, such signatures are the genuine signatures of the individuals who signed the petition; and, that the signatures were obtained between:

(Beginning date of circulation)

and

(Final date of circulation)

(Circulator's Printed Name)

(Circulator's Signature)

(Circulator's Residence)

(Date Signed by Circulator)

INITIATIVE PETITION

To the Honorable City Council of The City of San Diego:

We, the undersigned registered voters of The City of San Diego, California, by this petition hereby respectfully propose the following legislative act be adopted by the City Council or submitted to the registered voters of The City of San Diego for their adoption or rejection:

(NOTE: Here insert a copy of the published notice of intention containing the proposed legislative act in full, the statement of reasons, the voter signature sheet(s) and the circulator's affidavit of authenticity.)

(Format of Signature Solicitation Portion of Petition)
NOTICE TO THE PUBLIC

THIS PETITION MAY BE CIRCULATED BY A PAID
SIGNATURE GATHERER OR BY A VOLUNTEER.
YOU HAVE THE RIGHT TO ASK.

Name	Residence	Date	Clerk's Use Only
Sign 1----- Print			
Sign 2----- Print			
Sign 3----- Print			
Sign 4----- Print			

The Notice to the Public must appear in clear, readable type no smaller than 12-point in size.

A space at least one (1) inch wide shall be left blank along the right-hand side of the voter signature portion of the petition for the City Clerk's use in verifying the petition.

Each section shall have attached thereto the affidavit of authenticity of the person soliciting the signatures (*the circulator*). The affidavit of the circulator shall be in the following form:

AFFIDAVIT OF AUTHENTICITY

COUNTY OF SAN DIEGO)

) SS.

STATE OF CALIFORNIA)

Under penalty of perjury I, _____, declare:
(Printed name of circulator)

That all of the signatures on the voter signature sheets of this petition section were made in my presence and were observed by me; that all of the sheets constituting this petition section were fastened together at the time such signatures were made; that, to the best of my knowledge and belief, such signatures are the genuine signatures of the individuals who signed the petition; and that the signatures were obtained between

_____ *and* _____.
(Beginning date of circulation) (Final date of circulation)

_____ (Circulator's Printed Name) _____ (Circulator's Signature)

_____ (Circulator's Residence) _____ (Date Signed by Circulator)