



## FACT SHEET ON TELEPHONE COMMUNICATIONS

**NOTE:** The State of California has adopted many new and significantly different campaign advertising laws, effective January 1, 2018. The City of San Diego is in the process of updating its advertising laws to correspond with the new state laws. In the meantime, please keep in mind that campaign committees will be expected to follow state law instead of local law whenever the state law is more restrictive. For information regarding the state's new advertising laws, please refer to the California Fair Political Practices Commission's website:  
<http://www.fppc.ca.gov/learn/campaign-rules/campaign-advertising-requirements-restrictions.html>

The City's Election Campaign Control Ordinance [ECCO] includes laws regarding mass telephone communications (e.g., "phone banks") used to support or oppose City candidates and ballot measures. This fact sheet is designed to help candidates and committees gain a better understanding of the applicable laws, but should not be considered a substitute for the actual language contained in San Diego Municipal Code section 27.2971.

### Basic Rule

- ❖ The City's campaign laws require candidates and committees to include a disclosure statement when making substantially similar live or recorded campaign-related telephone calls to 500 or more individuals or households in connection with the same election.
- ❖ In order to count toward the 500-call threshold, a telephone call must:
  - ✓ be made to support or oppose a City candidate or City ballot measure, or
  - ✓ be part of a poll that mentions a City candidate or ballot measure.
- ❖ The disclosure requirement is triggered as soon as the committee arranges for the placement of calls that will take it to or past the 500-call threshold for a single election. Once a committee knows that it will reach that threshold, it must begin making the disclosure; it may not wait until the 500th call.
- ❖ Such telephone calls must include a statement that the calls are "paid for by," "authorized by," or are otherwise being made "on behalf of" immediately followed by the name of each candidate or committee that is paying for the resources used for the calls (e.g., the purchase of a contact list, the development of a script, overhead expenses, and telephone charges).
- ❖ The applicable disclosure is determined by the following criteria:
  - ✓ a call is "**paid for by**" a candidate or committee when the candidate or committee pays directly for the call or pays another person to make the call on its behalf.
  - ✓ a call is "**authorized by**" a candidate or committee if a person pays for the call at the behest of the candidate or committee and that payment is a contribution to the candidate or committee.

- ✓ a call is made **“on behalf of”** a candidate or committee when it is made by a volunteer at the direction of the candidate or committee (even if a candidate or committee has paid for a contact list, telephone charges, etc.).

### **Disclosure Requirements**

- ❖ If the communication is paid for by a candidate-controlled committee, then the name of the candidate must be included in the disclosure.
- ❖ If the telephone communication is a recording, the disclosure statement must be played at the same speed as the rest of the message.
- ❖ The disclosure statement must be clearly audible and at the same volume as the rest of the call.
- ❖ The disclosure may be made any time during the telephone call. If a person receiving a telephone call asks who paid for the call, the caller may tell the person that the disclosure will be made at the end of the call.
- ❖ Before any calls are made, the candidate or committee should review the script or listen to the recording to ensure that the disclosure fully complies with the letter and spirit of the law such that a reasonable person can easily determine who paid for the call. Any candidate or committee that conceals or obscures the identity of the entity paying for call by omitting required information, inserting extraneous information or lengthy pauses, or engaging in any other action that prevents a full, accurate, and clear disclosure risks being the subject of an Ethics Commission enforcement action.

### **Reaching the 500 Call Threshold**

- ❖ A call is subject to one of the above disclosure requirements if a reasonable person would conclude that the call was intended to support or oppose a City candidate or ballot measure, or if the call is made for the purpose of conducting a poll (even if it is not a “push poll”).
- ❖ Calls must be substantially similar in nature to count toward the 500-call threshold. A committee that makes 300 calls on one topic and 400 calls on a different topic has not reached the 500-call threshold.
- ❖ A call made to support or oppose a candidate or ballot measure counts toward the 500-call threshold even if it is answered by a machine or if the person answering the call hangs up the telephone before the entire message is communicated. A call that concludes without any connection (busy signal or no answer) to the party being called does not count toward the 500-call threshold.
- ❖ The 500-call threshold applies to each election. In other words, calls made to support a candidate in a primary election are not aggregated with calls made to support the candidate in a general election.

### **Exceptions**

- ❖ Only candidates and political committees (i.e., candidate-controlled committees, general purpose recipient committees, primarily formed recipient committees, and independent expenditure committees) are subject to the disclosure requirement. A polling company not retained by a candidate or committee is not subject to the rules contained in this fact sheet. For example, if a

newspaper retains a company to conduct polling in connection with a news story, the polling calls do not need to include a disclosure statement.

- ❖ A candidate who personally engages in a live telephone communication is not subject to these disclosure requirements.
- ❖ Routine calls between campaign staffers, calls to vendors, and similar type calls that are not advocacy calls or polling calls do not count toward the 500-call threshold.

### **Additional Information**

- ❖ Each candidate or committee making mass telephone communications must maintain for four years records that identify the date(s) the telephone calls were made and the number of calls made, as well as a transcript of the messages communicated and a copy of any recorded messages.
- ❖ These disclosure rules do not apply to committees communicating with their own members for the purpose of supporting or opposing City candidates or measures.
- ❖ A committee may not pay for telephone communications at the behest of, or in coordination with, a candidate or candidate-controlled committee. (Doing so would make the expenditure an unlawful in-kind contribution instead of an independent expenditure; non-individuals may not make contributions to support or oppose candidates.) Note that the prohibition on coordination with candidates does not apply to situations in which an organization is communicating with the members of its organization.
- ❖ If two committees jointly pay for telephone communications supporting or opposing a City ballot measure, then both committees must be identified in the “paid for by,” “authorized by,” or “on behalf of” disclosure. Please see the Ethics Commission’s Fact Sheet on Campaign Advertising for additional information regarding two committees coordinating independent expenditures.
- ❖ State law contains prohibitions regarding “robocalls” (calls placed by machines using automatic dialing features). These prohibitions do not fall within the scope of the City’s Ethics Ordinance; see California Public Utilities Code sections 2871 through 2876 for more information.
- ❖ Note that the Ethics Commission does not regulate the truth or accuracy of the content of telephone communications (i.e., it has no control over the dissemination of false or misleading information).

For additional information, please contact the Ethics Commission at (619) 533-3476 or [ethicscommission@sandiego.gov](mailto:ethicscommission@sandiego.gov).

Rev. 1/2/18