

LEGISLATION, AND INTERGOVERNMENTAL
RELATIONS

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January 10, 1992

REPORT TO THE COMMITTEE ON RULES, LEGISLATION,
AND INTERGOVERNMENTAL RELATIONS

PROPOSED AMENDMENTS TO THE SAN DIEGO
MUNICIPAL ELECTION CAMPAIGN CONTROL ORDINANCE

The San Diego Municipal Election Campaign Control Ordinance (Chapter II, Article 7, Division 29 of the San Diego Municipal Code) (the "Ordinance", copy attached as Exhibit A)) was first adopted in April 1973 by Ordinance No. 0-11034 N.S. The County of San Diego adopted virtually an identical ordinance in the same time period. With minor exceptions, both the City's and County's ordinances have remained substantially the same throughout the years to the present. The City Attorney and District Attorney have shared jurisdiction over the enforcement of the City's Ordinance. The District Attorney has retained jurisdiction over enforcement of the County's ordinance.

Throughout the years it has become apparent to the enforcement authorities that clarification of the Ordinance, in particular the sections pertaining to "extensions of credit" (existing SDMC section 27.2941(b)) and contributions from organizations (existing SDMC section 27.2942), would facilitate enforcement of the Ordinance. Recently, it has also become apparent that the Ordinance would benefit from clarifying that the prohibition against organizations making contributions applies to contributions made to committees that make independent expenditures and that recall elections are considered candidate elections.

In response to these needs, the City Attorney formed a Task Force in the fall of 1991 to review the City's existing Ordinance and to make recommendations for amendments to facilitate enforcement, particularly with respect to those areas described above. The Task Force was comprised of representatives of the Criminal and Civil Advisory Divisions of the City Attorney's office, the District Attorney's office, the County Counsel's office and the City Clerk and City Auditor's offices.

The Task Force has been meeting since last fall. After extensive review and analysis, the Task Force has prepared a proposed ordinance amending the San Diego Municipal Code pertaining to campaign financing. The proposed ordinance is attached as Exhibit B to this Report.

Specifically, the proposed ordinance:

1. Repeals sections 27.2941 ("Campaign Contributions-Limitations") and 27.2942 ("Organizational Contributions").
2. Reenacts sections 27.2941 and 27.2942 as eight new sections:

27.2941, 27.2942, 27.2943, 27.2944, 27.2945, 27.2946, 27.2947, and 27.2948. These new provisions are intended to restate existing law, but to state it more clearly. The key provisions are more particularly described as follows:

- a. The basic contribution limit of \$250 per election currently set forth in existing section 27.2941(a) is reenacted in proposed section 27.2941.
- b. The proposed ordinance replaces the first two sentences of existing Section 27.2941(b) prohibiting extensions of credit past 30 days with two new sections: 27.2944 ("Payment for Goods and Services") and 27.2945 ("Extensions of Vendor Credit"). The terms "Vendor" and "Political purpose" are defined in amended section 27.2903(p) and (n).
- c. Proposed new section 27.2942 ("Limits on Loans to Candidates and Committees") is intended to clarify existing law embodied in the third sentence of current section 27.2941(b).
- d. New section 27.2943 ("Disclosure, Evidence and Terms of Loans") is intended to further clarify the third sentence of section 27.2941(b) pertaining to documentation required for loans.
- e. Proposed new section 27.2945 is intended to clarify the enforcement authority's interpretation that failure to pay campaign debts is a continuing violation. This principle is implied in existing section 27.2941(b).
- f. Proposed new section 27.2947 ("Prohibition and Limits on Contributions from Organizations") is intended to clarify existing section 27.2942(a) ("Organizational Contributions").
- g. The prohibition against "aiding and abetting" violations of the Campaign Control Ordinance has been rewritten and placed in new section 27.2971 on "Penalties".
- h. The scienter ("knowledge") requirement of existing section 27.2942(c) has been eliminated to facilitate enforcement of the Ordinance.
- i. The obligation to return contributions accepted in violation of the Ordinance currently embodied in sections 27.2941(d) and 27.2942(d) has been rewritten in clearer language and placed in proposed new section 27.2948 ("Obligation to Return Contributions").
- j. All penalties have been placed in a single new section (No. 27.2971) and the two existing penalty sections (Nos. 27.2971 and 27.2972) are proposed for repeal.

k. The new penalties section also clarifies that the court is required to make persons found guilty of the contribution limits forfeit those monies and pay them over to the City Treasurer. This language clarifies law in existing sections 27.2941(d) and 27.2942(d).

In addition to the above-described amendments, the Task Force also proposes several other changes to other portions of the Ordinance to facilitate enforcement. Specifically, the Task Force proposes:

1. To amend section 27.2925 to clarify the types of records candidates and committees must keep to ensure that they are complying with the City's Ordinance.

2. To amend Section 27.2931 to require all committees that spend money on City elections to file disclosure statements with the City Clerk even though many of those same committees would not have to do so under state law.F

Under state law, committees have to file a disclosure form with the County or with the State, but not the City, if the Committees participate in elections outside the City.

Under the proposed amendment, statewide Political Action Committees would have to file disclosure forms with the City Clerk if they participate in the City's elections. Currently they do not have to do so. See new section 27.2931(b) for the proposed language.

3. Several changes have been proposed for amending the definitions section (No. 27.2903). In addition to adding the terms "Vendor" and "Political purposes" discussed above at page 2, the Task Force proposes to add the terms "Treasurer" and "Committee Treasurer" (see new section 27.2903(o)).

Also, with certain minor exceptions which the Task Force found were necessary to facilitate enforcement of the City Ordinance's unique terms, the Task Force recommends many amendments to section 27.2903 (the definition section) to have the terms correspond more to state law than they do currently (see, for example, the terms "contribution," "controlled committee," "expenditure," and "payment"). Note, however, that the term "committee" retains existing City law that receiving contributions or making expenditures of \$500 or more per calendar year triggers existence of a committee. This stands in contrast with state law which sets the limit at \$1000 to trigger existence of a committee.

Note, too, that the Task Force does not find it desirable to adopt all state law definitions without change. The proposed definitions have been written to reflect the unique provisions of the City's Ordinance and to facilitate its enforcement.

4. Two new sections (Nos. 27.2911 and 27.2912) have been proposed to create a duty to have a Committee Treasurer and to prescribe the duties and authority of the Treasurer. These sections closely parrot state law (Gov't Code section 84100), but are modified to suit the City's Ordinance.

5. New section 27.2905 ("Recall Elections") is proposed to be added to the City's Ordinance to make explicit the enforcement authority's interpretation of the current City Ordinance that recall elections begin for purposes of this Ordinance when the Notice of Intent to circulate a recall petition is published. This section is also intended to clarify that a recall election takes place for purposes of this Ordinance even though voters never cast ballots on the recall. As a related amendment, the term "measure" is redefined to clarify that it does not include a recall election (see section 27.2903(k)).

6. The proposed amendments also add new section 27.2904 ("Candidate and Committee Status; Duration") to clarify how long a candidate or committee retains its status for purposes of this Ordinance. The new section closely tracks state law (Gov't Code section 84214), but was necessarily modified to reflect current City law regarding loss of City office and candidacy as a penalty for violating the Ordinance (see existing section 27.2972) and the necessity to pay campaign debts before losing one's status as a candidate or committee.

In summary, the City Attorney's Task Force proposes amendments to the San Diego Municipal Election Campaign Control Ordinance primarily to clarify existing law on "extension of credit" and organizational contributions to committees that make independent expenditures. The Task Force also proposes several other amendments to facilitate enforcement of the ordinance. I recommend your adoption of the proposed amendments.

Respectfully submitted,
JOHN W. WITT
City Attorney

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Attachments
RC-92-1