

April 22, 1994

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PROPOSED AMENDMENTS TO THE SAN DIEGO
MUNICIPAL ELECTION CAMPAIGN CONTROL ORDINANCE

At its March 22, 1994, meeting, the City Council asked the City Attorney to prepare an ordinance amending the San Diego Municipal Election Campaign Control Ordinance. The City Council asked that the ordinance be based on the ordinance the City Attorney had originally proposed for adoption on February 23, 1992, with one exception; namely, to include in the draft three (3) options for repaying campaign debt following elections - 30, 60 and 90 days. At the same March 22 meeting, the City Council also asked the City Attorney to prepare an ordinance repealing those San Diego Municipal Code ("SDMC") sections that had created the San Diego Elections, Campaign and Governmental Ethics Advisory Board. Both ordinances have been prepared and are on the City Council docket of May 10, 1994. This report accompanies these ordinances.

Proposed Ordinance Regarding Ethics Advisory Board
(City Attorney Ordinance No. O-94-98)

Proposed Ordinance No. O-94-98 repeals SDMC Chapter II, Article 6, Division 12, Sections 26.1201 through 26.1203. These sections had created the San Diego Elections, Campaign and Governmental Ethics Advisory Board. The ordinance, if adopted, will abolish that board.

Proposed Ordinance Regarding City Campaign Finance Law
(City Attorney Ordinance No. O-92-89 REV. 2)

This report summarizes and supplants two (2) previous reports of the City Attorney: (1) Report to Rules Committee dated January 10, 1992, and (2) Report to Mayor and Council dated February 3, 1992.

Proposed Ordinance No. O-92-89 REV. 2, enhances the San Diego Municipal Election Campaign Control Ordinance by:

1. Repealing Section 27.2941 ("Campaign Contributions-Limitations") and Section 27.2942 ("Organizational

Contributions").

2. Reenacting 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"). In accordance with Council direction of March 22, 1994, proposed Section 27.2945(d) contains three options for campaign repayment of vendor's debt: 30, 60 or 90 days, as follows:

(d) A candidate or committee that accepts goods or services for political purposes on credit under Section 27.2945(a), shall pay for those goods or services in full no later than thirty (30) sixty (60) ninety (90) calendar days after receipt of a bill or invoice and in no event later than thirty (30) sixty (60) ninety (90) calendar days after the last day of the month in which the goods were delivered or the services were rendered.

The Council must choose only one of these options if the City Council adopts this ordinance.

c. Proposed new Section 27.2942 ("Limits on Loans to Candidates and Committees") is intended to clarify existing law pertaining to loans 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) pertaining to "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. New Section 27.2971(f) has been added to clarify that the statute of limitations begins to run only from the date of discovery of the violation.

k. The new penalties section also clarifies that a 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).

l. Amended Section 27.2925 clarifies the types of records candidates and committees must keep to ensure that they are complying with the City's ordinance.

m. Amended Section 27.2903 adds some definitions, including the terms "Vendor," "Political purposes," "Treasurer" and "Committee Treasurer."

n. Amended Section 27.2903 also changes some definitions to 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.

o. Sections 27.2911 and 27.2912 have been added 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 (Government Code

section 84100), but are modified to suit the City's ordinance.

p. New Section 27.2905 ("Recall Elections") is proposed to make explicit the enforcement authority's interpretation of the current City ordinance that recall elections begin, for purposes of this campaign finance law, 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)).

q. New Section 27.2904 is added ("Candidate and Committee Status; Duration") to clarify how long a candidate or committee retains its status for purposes of this campaign finance law. The new section closely tracks State law (Government 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.

Respectfully submitted,
JOHN W. WITT
City Attorney

CCM:pev;jrl:011(043.1)

RC-94-20

TOP

TOP