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ORDINANCE NUMBER O- 19448 (NEW SERIES)

ADOPTED ON DEC 05 2005

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 29 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 27.2915 AND 27.2974, AND BY AMENDING SECTIONS 27.2903, 27.2916, 27.2921, 27.2930, 27.2938, 27.2945, 27.2950, 27.2955, 27.2956, 27.2965, 27.2969, 27.2970, 27.2971, 27.2972, 27.2975, AND 27.2976, AND BY ADDING NEW SECTIONS 27.2974 AND 27.2980, AND AMENDING CHAPTER 2, ARTICLE 6, DIVISION 4 BY AMENDING SECTION 26.0422, AND BY AMENDING CHAPTER 2, ARTICLE 7, DIVISION 35 BY AMENDING SECTION 27.3503, ALL RELATING TO THE CITY OF SAN DIEGO ELECTION CAMPAIGN CONTROL ORDINANCE

WHEREAS, the San Diego Municipal Election Campaign Control Ordinance [ECCO], codified at Chapter 2, Article 7, Division 29 of the San Diego Municipal Code, was first adopted in April of 1973 by Ordinance No. O-11034 N.S.; and

WHEREAS, the City Council has amended ECCO from time to time to clarify certain issues, and in January of 2005, by adopting Ordinance No. O-19317 N.S., made a substantial update to ECCO to address the increasingly complex nature of campaign finance laws throughout the state and country; and

WHEREAS, pursuant to San Diego Municipal Code section 26.0414, the City of San Diego Ethics Commission has the responsibility of regularly reviewing the City's existing governmental ethics laws, and proposing updates to those laws to the City Council for its approval; and

WHEREAS, the Ethics Commission has monitored the effects and impacts of the January 2005 amendments to ECCO, and has listened to concerns made by the public with regard to those amendments; and

WHEREAS, the Ethics Commission has identified certain areas in ECCO that would benefit from clarification; and

WHEREAS, the Ethics Commission has also recognized that ECCO currently does not provide any means of regulating persons who disseminate so-called "issue ads" that portray candidates in a favorable or unfavorable light without expressly advocating the election or defeat of that candidate; and

WHEREAS, the apparent purpose of these so-called "issue ads," particularly when disseminated in close proximity to an election, is to influence voters to vote for or against the candidate identified in the communication; and

WHEREAS, the public has a compelling interest in the enforcement of laws relating to the disclosure of payments made for the purpose of influencing voters to vote for or against a City candidate; and

WHEREAS, an electioneering communications law requiring that persons who spend \$1,000 or more to disseminate so-called "issue ads" within ninety days of an election disclose their identity, the amount of the payment for the communication, and the source of funds used to make the communication would constitute a narrowly tailored and minimally restrictive means of furthering the public's interest in disclosure; and

WHEREAS, the Ethics Commission has proposed changes designed to clarify existing provisions, increase consistency within ECCO, increase consistency with similar provisions of state law, give the Ethics Commission enforcement authority over electioneering

communications made within ninety days of an election, and further the City's interest in preventing corruption and the appearance of corruption in campaign finance matters in order to re-enforce public confidence in the integrity of local campaign activities; and

WHEREAS, the City Council concurs with the proposals recommended by the Ethics Commission; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 7, Division 29 of the San Diego Municipal Code is hereby amended by repealing sections 27.2915 and 27.2974, and by amending sections 27.2903, 27.2916, 27.2921, 27.2930, 27.2938, 27.2945, 27.2950, 27.2955, 27.2956, 27.2965, 27.2969, 27.2970, 27.2971, 27.2972, 27.2975, and 27.2976, and by adding new sections 27.2974 and 27.2980, to read as follows:

§27.2903 Definitions

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions of the Political Reform Act of 1974 (Government Code sections 81000 *et seq.*) and the definitions contained in the regulations adopted by the Fair Political Practices Commission shall govern the interpretation of this division.

Agent to City Official [No change in text.]

Clearly identified candidate means a *candidate* who is identified in a communication by name, by an unambiguous reference to the *candidate's* office or status as a *candidate*, or by any other unambiguous description. A *candidate* is also clearly identified if a communication contains the voice or a visual depiction of the *candidate*.

Clearly identified measure means a *measure* that has qualified to be placed on the ballot and that is identified in a communication by a proposition number, official title, or popular name associated with the *measure*. A *measure* is also clearly identified if a communication refers to the subject matter of the *measure* and either states that the *measure* is before the people for a vote or, taken as a whole and in context, unambiguously refers to the *measure*. A *measure* that has not qualified to be placed on the ballot is clearly identified if a communication refers to the subject matter of the measure and to the qualification drive.

Committee [No change in text.]

Contribution has the same meaning as that term is defined in California Government Code section 82015 and is subject to the inclusions and exceptions contained in title 2, section 18215 of the California Code of Regulations, except as modified by the following provisions. In the event of any conflict between the state law definition and the following provisions, the following provisions shall control:

- (a) *contribution* includes any forgiveness of a debt or other obligation to pay for goods or services rendered, or reduction of the amount of a debt or other obligation to pay for goods or services rendered, unless it is clear from the circumstances that the amount of the reduction was reasonably based on a good faith dispute. A good faith dispute shall be presumed if the *candidate* or *committee* produces:
 - (1) evidence that the *candidate* or *committee* protested the *payment* of a bill no later than 30 calendar days after the last calendar day of the

month in which the goods were delivered or the services were rendered; and

(2) evidence that the protest was based on the quality or quantity of goods delivered or services rendered.

(b) *contribution* does not include an *independent expenditure*.

(c) *contribution* does not include a *payment* made for *member communications*.

Controlled committee to Election [no change in text]

Electioneering communication means any form of communication that mentions or refers to a *clearly identified candidate*, but does not expressly advocate the nomination, election, defeat, or recall of the *candidate*, and that is disseminated, broadcast, or otherwise published within 90 calendar days of an *election* for which the *candidate* is on the ballot.

Elective City office to Enforcement Authority [no change in text]

Expenditure means a *payment*, a forgiveness of a loan, a *payment* of a loan by a third party, or an enforceable promise to make a *payment*, unless it is clear from the circumstances that it is not made for *political purposes*. An *expenditure* is made on the date the *payment* is made or on the date consideration, if any, is received, whichever is earlier. An *expenditure* does not include a *payment* for *member communications*, nor does it include costs incurred for communications advocating the nomination, election, or defeat of a *candidate* or the qualification, passage, or defeat of a *measure* by a federally regulated broadcast outlet or by a regularly

published newspaper, magazine, or periodical of general circulation that routinely carries news, articles, or commentary of general interest.

General purpose recipient committee [No change in text.]

Independent expenditure means any *expenditure* made by any *person* in connection with a communication that:

- (a) expressly advocates the nomination, election, defeat, or recall of a *clearly identified candidate*; or
- (b) expressly advocates the qualification, passage, or defeat of a *clearly identified measure*; or
- (c) taken as a whole and in context, unambiguously urges a particular result in a *City election*.

An *expenditure* that is made to or at the behest of a *candidate* or a *controlled committee* is not an *independent expenditure*.

Mass campaign literature means more than 200 substantially similar pieces of campaign literature, including, but not limited to, mailers, flyers, pamphlets, door hangers, walking cards, posters, yard signs, business cards, campaign buttons 10 inches in diameter or larger, or bumper stickers 60 square inches or larger, which are distributed within a single calendar month, regardless of whether distributed through the mail, by campaign workers, or any other means. *Mass campaign literature* does not include pens, pencils, or other similarly small promotional items on which the disclosures required by this division cannot reasonably be printed or displayed in an easily legible typeface; wearing apparel; skywriting; communication from an

organization to its members, other than a communication from a political party to its members; or any web-based or Internet-based communication.

Measure [No change in text.]

Member communication means a communication directed solely to members, employees, or shareholders of an organization, including a communication to members of any political party, for the purpose of supporting or opposing one or more *City measures* or *candidates for elective City office*. *Member communications* do not include communications made by an organization for general public advertising such as broadcasting, billboards, and newspaper advertisements, or for communications to persons who are not members, employees, or shareholders, or families of members, employees, or shareholders of the organization. The meaning of *member communication* is intended to be consistent with the definitions contained in California Government Code section 85312 and title 2, section 18531.7 of the California Code of Regulations. Any amendments made to these authorities shall be deemed to be an amendment to the language of this definition.

Payment to primarily formed recipient committee [No change in text.]

Professional fees and costs means expenses related to the retention of an attorney, treasurer, fundraiser, or any other *person* retained to perform services reasonably related to the purpose for which a legal defense fund is created.

Shared management to vendor [No change in text.]

§27.2916 Campaign Contribution Checking Account

- (a) Every *controlled committee* that accepts *contributions* and every *primarily formed recipient committee* shall establish one campaign checking account at an office of a bank or other financial institution providing checking account services located in the *City* of San Diego.
- (b) Upon opening of an account, the name of the bank or other financial institution and account number thereof shall be filed with the *City Clerk* on the same forms and in the time and manner required by California Government Code sections 81000 *et seq.*
- (c) All *contributions* of money or checks, or anything of value converted by such *committee* to money or a check, shall be placed in the *committee's* checking account within thirty business days, except that no *contribution* shall be deposited to a campaign *contribution* checking account without the receipt by the *committee* of all information required by California Government Code section 84211. Any information that has not been provided shall be requested, in writing, by the campaign *treasurer* within ten business days of receipt of the money or check.
- (d) Any *contribution* not deposited within thirty business days shall be returned to the contributor as soon as possible after the thirtieth business day, but no later than thirty-five business days after receipt of the *contribution*.

§27.2921 Carryover of Contributions

- (a) Notwithstanding subdivision (a) of section 27.2920, a *candidate for elective City office* may carry over *contributions* raised in connection with one *election*

for *elective City office* to pay campaign *expenditures* incurred in connection with a subsequent *election* for the *same elective City office*.

- (b) It is the intent of this section that the carrying over of a *candidate's* campaign funds be generally consistent with the provisions of law set forth in title 2, section 18537.1 of the California Code of Regulations.
- (c) Nothing in this section shall be interpreted to permit a *candidate* for *elective City office* to use *contributions* collected for a *district* or *citywide general election* to pay campaign expenditures incurred in connection with an earlier *district* or *citywide primary election*, or for *contributions* collected for a *special run-off election* to pay campaign expenditures incurred in connection with an earlier *special election*.

§27.2930 Base Level of Campaign Statements and Disclosures

Each *candidate* and *committee* shall file campaign statements in the time and manner required by California Government Code sections 81000 *et seq.* and title 2 of the California Code of Regulations with the following additional requirements:

- (a) All *candidate* and *committee* campaign disclosure statements that are generated from the output of a computer software program shall be generated with the names of all contributors listed in alphabetical order by last name. *Treasurers* for any *committee* that files handwritten campaign disclosure statements shall make reasonable good faith efforts to list the names of all contributors in alphabetical order by last name.
- (b) A *general purpose recipient committee* attributing *contributions* pursuant to section 27.2936 totaling \$100 or more to the same individual for purposes of

supporting or opposing a *candidate* in an *election* shall, within six months of the attribution, separately disclose such *contributions* on a campaign statement filed with the *City Clerk* by supplying all identifying information regarding the contributor, reporting the date of the attribution as the "date received," showing the amount attributed to the individual at that time, identifying the applicable *candidate* and *election* for which the attribution was made, and indicating that the *contribution* is being re-reported per San Diego Municipal Code section 27.2930.

- (c) A *general purpose recipient committee* that submits all of the information required by subsection (b) in a supplemental document attached to a campaign statement filed with the *City Clerk* will be deemed to have complied with the provisions of subsection (b).
- (d) Any payment made by a political party for *member communications* to its members who are registered with that party and that would otherwise qualify as a *contribution* or *expenditure* shall be reported on that political party's campaign disclosure statement in a manner that identifies the payment as a "member communication."
- (e) *Contributions* shall be reported in a manner consistent with the provisions of title 2, section 18421.1 of the California Code of Regulations, except that a monetary *contribution* is deemed to have been made or received only after a *candidate* or *committee* obtains:

(Corrected 9/28/06 - section 27.2930(b) and (c))

- (1) possession or control of the check or other negotiable instrument by which the contribution is made, and
 - (2) possession of all of the information required by California Government Code section 84211.
- (f) When reporting *contributions* for regularly scheduled *City candidate elections*, *candidates* and *committees* shall include the notation "(P)" for all *contributions* that the contributor has designated for a primary *election*, and shall include the notation "(G)" for all *contributions* that the contributor has designated for a general *election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation "(P)" for all *contributions* the *candidate* or *committee* has allocated for the primary *election*, and shall include the notation "(G)" for all *contributions* the *candidate* or *committee* has allocated for the general *election*.
- (g) When reporting *contributions* for specially scheduled *City candidate elections*, *candidates* and *committees* shall include the notation "(S)" for all *contributions* that the contributor has designated for a *special election*, and shall include the notation "(R)" for all *contributions* that the contributor has designated for a *special run-off election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation "(S)" for all *contributions* the *candidate* or *committee* has allocated for the *special election*, and shall include the notation "(R)" for all *contributions* the *candidate* or *committee* has allocated for the *special run-off election*.

- (h) *Sponsors and sponsored committees* participating in *City elections* are subject to the reporting obligations set forth in title 2, section 18419 of the California Code of Regulations.
- (i) It is unlawful to fail to comply with the disclosure requirements of California Government Code sections 81000 *et seq.*, the disclosure requirements of title 2 of the California Code of Regulations, and the additional requirements of this section.

§27.2938 Restrictions on Time Period of Contributions

- (a) It is unlawful for any *candidate or controlled committee* seeking elective *City* office to solicit or accept *contributions* prior to the twelve months preceding the primary *election* for the office sought.
- (b) It is unlawful for any *candidate or controlled committee* for *City* office to accept *contributions* more than 180 days after the withdrawal, defeat, or election to office. *Contributions* immediately following such a withdrawal, defeat, or election and up to 180 days after that date, may be accepted only by a *candidate or controlled committee* with outstanding debts or loans, and shall be used only to pay the outstanding debts or loans owed by the *candidate or controlled committee*.
- (c) *Contributions* pursuant to subsections (a) and (b) of this provision shall be considered *contributions* raised for the *election* in which the bills and debts were incurred and shall be subject to the *contribution* limits of that *election*.

- (d) The restrictions on accepting *contributions* imposed by this section do not apply to *contributions* made to a legal defense fund, as discussed in sections 27.2965-27.2969.
- (e) The restrictions on accepting *contributions* imposed by subsection (a) do not apply to *contributions* for recall *elections*, or for *elections* occurring in 2006.

§27.2945 Notification Regarding Reimbursement Prohibition

- (a) It is unlawful for any *candidate*, or any *committee* supporting or opposing a *candidate*, to solicit *contributions* from potential contributors by distributing printed materials or using an Internet web site unless such materials or site contain at least one instance of the following statement in a prominent place printed in typeface that is easily legible, contrasts with the background, and is not smaller than the typeface used in a majority of the text in the materials or on the site: "It is unlawful for a contributor to be reimbursed by any organization, business, or similar entity for a contribution supporting or opposing a City candidate."
- (b) Upon the discovery by the *candidate* or *committee* that a violation of subsection (a) has occurred, such violation may be remedied by the *candidate* or *committee* submitting written notice reciting the statement required by subsection (a) to all individuals who were sent the materials constituting the violation and to all individuals who made a *contribution* through the web site during the period of violation, and thereafter reporting in writing the nature of the violation and remedial action to the *Enforcement Authority*, provided that the remedial action

takes place no later than fourteen calendar days after the discovery of the violation.

§27.2950 Prohibitions and Limits on Contributions from Organizations

- (a) It is unlawful for a *candidate* or *controlled committee*, or any *treasurer* thereof, or any other *person* acting on behalf of any *candidate* or *controlled committee*, to solicit or accept a *contribution* from any *person* other than an individual for the purpose of supporting or opposing a *candidate* for *elective City office*.
- (b) It is unlawful for a *person* other than an individual to make a *contribution* to a *candidate* or *controlled committee* for the purpose of supporting or opposing a *candidate* for *elective City office*.
- (c) It is unlawful for any *primarily formed recipient committee* to solicit or accept from any *person* other than an individual, or for any *person* other than an individual to make, a *contribution* supporting or opposing a *candidate* for *elective City office*.
- (d) The prohibitions in subsections (a) through (c) shall not be construed to prevent a *person* other than an individual from making a *contribution* to a *committee* that is organized solely for the purpose of supporting or opposing the qualification of a *City measure* for the ballot, or the adoption or defeat of a *City measure*, and the *committee* pursues no other purpose.
- (e) For purposes of section 27.2950(d), a recall *election* is not an *election* on a *City measure*.
- (f) For purposes of this section, a *contribution* made from a personal or family trust account is considered a *contribution* made by an individual.

- (g) It is unlawful for a *general purpose recipient committee* to attribute a *contribution* to a *person* other than an individual for the purpose of supporting or opposing one or more *candidates* for *elective City office*.
- (h) This section shall not be construed to prevent a *general purpose recipient committee* from accepting a *contribution* from any *person* for any purpose, but shall be construed to limit the source of *contributions* a *general purpose recipient committee* may use to participate in *City candidate elections*.

§27.2955 Obligation to Return Contributions

- (a) If a *candidate, committee, or committee treasurer* is offered a *contribution*, the acceptance of which would constitute a violation of this division, the *candidate, committee, or committee treasurer* shall refuse the offer.
- (b) Except as set forth in sections 27.2943 and 27.2956, if a *candidate, committee, or committee treasurer* receives a monetary *contribution*, the acceptance of which would constitute a violation of this division, neither the *candidate, committee, nor committee treasurer* shall be subject to any penalty for receipt of that *contribution* if the *candidate, committee, or committee treasurer* either:
 - (1) does not deposit the *contribution* into the campaign *contribution* checking account and returns the *contribution* to the contributor within thirty business days of the calendar day the *contribution* was received; or
 - (2) deposits the *contribution* into the campaign *contribution* checking account, but returns the *contribution* to the contributor within ten calendar days of the deposit or before the filing deadline for the reporting period in which the *contribution* was received, whichever occurs first.

- (c) Except as set forth in subsection (b) above and in sections 27.2943 and 27.2956, if a *candidate, committee, or committee treasurer* deposits into the campaign *contribution* checking account a monetary *contribution*, the acceptance of which constitutes a violation of this division, the *candidate, committee, or committee treasurer* shall within ten calendar days of the date of the *candidate's, committee's, or committee treasurer's* discovery of the violation provide in writing to the *City Clerk* all facts pertaining to the *contribution*, including but not limited to: (1) a copy of any check(s), draft(s), or other instrument(s) by which the *contribution* was made; and (2) if made in cash, a report of the amount and denominations of currency tendered and a legible photocopy of the bank deposit slip; and (3) if by wire or other electronic fund transfer, a legible printout or photocopy of the transaction; and (4) a report of the means of tender, delivery, or confirmation of the *contribution* (e.g. U.S. Postal Service or private mail, courier service, in person); and (5) a report of the full name and street address of the contributor.
- (d) The *candidate or committee treasurer* shall promptly deliver from available funds, if any, an amount equal to any monetary *contribution* constituting a violation of this division that has been deposited into the campaign *contribution* checking account. Such amount shall be made payable to the *City Treasurer* and delivered to the *City Clerk*. The *City Treasurer* shall deposit into the *City's* General Fund any amount he or she receives under this section.

§27.2956 Return of Contributions - Mistaken Identity

If a *candidate, committee, or committee treasurer* receives a *contribution* that exceeds the contribution limits set forth in this division, neither the *candidate, committee, nor committee treasurer* shall be subject to any penalty or obligation under section 27.2955 for receipt of that *contribution* if all of the following circumstances are present:

- (a) the *candidate, committee, or committee treasurer* received more than one *contribution* from the same contributor for the same *election*; and
- (b) variations in the spelling of the contributor's name reasonably resulted in confusion regarding the contributor's identity; and
- (c) the *candidate, committee, or committee treasurer* returned the *contribution* to the contributor before the end of the filing deadline for the reporting period in which the *contribution* was received.

§27.2965 Legal Defense Fund

- (a) Every elected *City Official* and every *candidate for elective City office* shall be permitted to establish and maintain one legal defense fund.
- (b) In addition to *contributions* received in connection with seeking an elective *City office*, any elected *City Official* or *candidate for elective City office* may receive *contributions* from individuals for a legal defense fund, and may use such *contributions* solely for the following purposes:
 - (1) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* response to an audit of his or her campaign activity conducted

by the City of San Diego Ethics Commission or the California Fair Political Practices Commission; or

- (2) to defray *professional fees and costs* incurred in the City Official's or candidate's legal defense to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the City Official's governmental activities and duties.
- (c) It is unlawful for any individual to make, or any *City Official* or *candidate* to solicit or accept from any individual, *contributions* totaling more than \$250 during a single calendar year to a legal defense fund in connection with an audit or a civil, criminal, or administrative proceeding identified in a Statement of Purpose filed with the *City Clerk* pursuant to section 27.2966.
- (d) An individual's *contributions* to a legal defense fund are not subject to the campaign *contribution* limits set forth in sections 27.2935 and 27.2938.
- (e) It is unlawful for any individual to make a *contribution* to a legal defense fund without accompanying the *contribution* with a disclosure form identifying the particulars of all matters, if any, that such individual has pending before the board, commission, department, or agency of which the *City Official* or *candidate* maintaining the legal defense fund is a member or employee. When filing the quarterly campaign statements required by section 29.2967, the *City Official* or *candidate* maintaining the legal defense fund shall attach to such statement a copy of each disclosure form received pursuant to this subsection.

- (f) Any legal defense fund established in accordance with sections 27.2965-27.2969 must be maintained through a *controlled committee* the *City Official* or *candidate* has organized to seek the office held or sought that is the subject of the civil, criminal, or administrative proceeding.
- (1) It is unlawful for a *controlled committee* to accept a *contribution* for a legal defense fund unless it is accompanied by a written designation from the contributor indicating that the *contribution* is a *contribution* for the legal defense fund.
 - (2) *Contributions* collected for a legal defense fund must be deposited in the *controlled committee's* campaign contribution checking account.
 - (3) *Expenditures* from a legal defense fund must be made from the *controlled committee's* campaign contribution checking account.
- (g) Except as set forth in subsection 27.2924(c)(6), sections 27.2965-27.2969 shall constitute the sole authority for soliciting or accepting *contributions* for the costs of responding to an audit or for the defense of an action relating to an election campaign, electoral process, or a *City Official's* conduct in office.

§27.2969 Termination of Legal Defense Fund

- (a) Within six months after the conclusion of the audit or of any lawsuits or proceedings for which the legal defense fund was established or maintained, the *City Official* or *candidate* may dispose of any remaining funds in the legal defense fund as follows:
- (1) by paying outstanding *professional fees and costs* incurred in the defense of any proceeding identified in the Statement of Purpose; or,

- (2) by repaying the contributors on a “last in, first out” or “first in, first out” accounting basis; or,
 - (3) by making the funds payable to the City Treasurer for deposit in the General Fund of the *City*.
- (b) Within six months after the conclusion of all proceedings for which the legal defense fund was established, the *City Official* or *candidate* shall file with the *City Clerk* a “Legal Defense Fund Termination” statement declaring that the legal defense fund is no longer soliciting or accepting *contributions* for the legal defense fund, will not make further *expenditures* from the legal defense fund, and has properly disclosed all legal defense fund *contributions* and *expenditures*.

§27.2970 Mass Campaign Literature

- (a) It is unlawful for any *candidate* or *committee* to pay for *mass campaign literature* for the purpose of supporting or opposing a *City candidate* or *City measure* unless each item of *mass campaign literature* includes the words “paid for by” immediately followed by the name, street address, and city of that *candidate* or *committee* in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.
- (b) In addition to the requirements set forth in subsection (a) it is unlawful for any *candidate* or *committee* to send *mass campaign literature* through the mail for the purpose of supporting or opposing a *City candidate* or *City measure* unless the name, street address, and city of the *candidate* or *committee* are shown on the outside of each item of *mass campaign literature*, and on at least one of the

inserts included within each piece of mail, in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.

- (1) If the sender of the *mass campaign literature* is a single *candidate* or *committee*, the name, street address, and city of the *candidate* or *committee* need only be shown on the outside of each item being mailed.
- (2) If more than one *committee* pays to mail the *mass campaign literature*, only the name, address, and city of the *committee* paying the largest portion of the costs of designing, printing, and mailing the mailer need be shown on the outside of the mailer, and the names of all of the *committees* paying for the mailer shall be shown on at least one of the inserts included within the mailer.
- (c) For purposes of this section, an organization's post office box may be stated in lieu of a street address if that organization's address is a matter of public record with the Secretary of State.
- (d) If a *controlled committee* pays for *mass campaign literature*, the name of the *candidate* controlling the *committee* shall be included in addition to the information required by this section.
- (e) The requirements set forth in this section do not apply to *member communications* distributed by an organization that is not a political party, e-mail communications, Internet web pages, or slate mailers.

§27.2971 Telephone Communications

- (a) It is unlawful for any *candidate* or *committee* to engage or hire others to engage in live or recorded telephone communications with 500 or more individuals or

households for the purpose of supporting or opposing a *City candidate* or *City measure* unless the communications include a statement that the communications are being made “on behalf of” immediately followed by the name of each *candidate* or *committee* paying for any of the resources used for the communications. For purposes of this subsection, “resources” include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges.

- (b) The statement required pursuant to subsection (a) shall be clearly audible and at the same general volume as the rest of the telephone message.
- (c) If the telephone communication is a recording, the statement required pursuant to subsection (a) shall be played at the same speed as the rest of the message.
- (d) If the telephone communication is paid for by a *controlled committee*, the name of the *candidate* controlling the *committee* shall be included in addition to the information required by subsection (a).
- (e) Any *candidate* or *committee* paying for a live or recorded telephone communication subject to this section shall maintain a transcript of the message being communicated and a record of the number of calls for each message.
- (f) The disclosure requirements set forth in this section shall not apply to:
 - (1) a *candidate* personally engaging in a live telephone communication, or
 - (2) *member communications* made by an organization that is not a political party.

§27.2972 Billboard Advertising

- (a) It is unlawful for any *candidate* or *committee* to place any advertising on a billboard for the purpose of supporting or opposing one or more *City measures* or *candidates* for *elective City office* unless the communication includes the words “paid for by” followed by the name of that *candidate* or *committee*.
- (b) The disclosure statement required by subsection (a) shall constitute at least five percent of the height of the advertisement and be printed in a contrasting color.

27.2974 Disclosure on Advertisements in Mass Media

- (a) It is unlawful for any *candidate* or *committee* to pay for advertising in a regularly published newspaper, periodical, or magazine of general circulation, or on any Internet web page, for the purpose of supporting or opposing one or more *City measures* or *candidates* for *elective City office* unless the advertisement includes the words “paid for by” followed by the name of that *candidate* or *committee*.
- (b) The disclosure statement required by subsection (a) shall be in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.

§27.2975 Expenditures Supporting Ballot Measures

- (a) In addition to all other applicable disclosure requirements set forth in this Division, it is unlawful for any *candidate* or *committee* to place an advertisement supporting or opposing a ballot *measure* unless the advertisement includes a disclosure statement identifying any *person* whose cumulative contributions are \$50,000 or more.

- (1) If there are more than two donors of \$50,000 or more, the *committee* is only required to disclose the highest and second highest in that order.
 - (2) In the event that more than two donors meet this disclosure threshold at identical contribution levels, the highest and second highest shall be selected according to the order in which the contributions were made.
- (b) The provisions of this section do not apply to advertisements that are *member communications*, made by a *general purpose recipient committee*, made through an e-mail communication, or by placement on a slate mailer.

§27.2976 Identification of Entities Supporting Ballot Measures

- (a) Any *committee* that supports or opposes one or more ballot *measures* shall name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of \$50,000 or more in any reference to the *committee* required by law, including, but not limited, to its statement of organization filed pursuant to California Government Code section 84101.
- (b) If the major donors of \$50,000 or more share a common employer, the identity of the employer shall also be disclosed.
- (c) Any *committee*, other than a *general purpose recipient committee*, that supports or opposes a ballot *measure*, shall print or broadcast its name as provided in this section as part of any advertisement or other paid public statement.
- (d) If *candidates* or their *controlled committees*, as a group or individually, meet the *contribution* thresholds for a *person*, they shall be identified by the controlling *candidate's* name.

- (e) Within 30 days of the designation of the alphabetical order of propositions appearing on the ballot, any *committee* that is primarily formed to support or oppose a ballot *measure*, shall, if supporting the *measure*, include the statement, “a committee for Proposition _____,” or, if opposing the *measure*, include the statement, “a committee against Proposition _____,” in any reference to the *committee* required by law.

§27.2980 Disclosure of Electioneering Communications

- (a) Every *electioneering communication* in printed form shall include the words “paid for by” immediately followed by the name, street address, and city of the *person* who paid for the communication in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.
- (b) Every *electioneering communication* in spoken form shall include the words “paid for by” immediately followed by the name of the *person* who paid for the communication in a manner that is clearly audible and at the same general volume and speed as the rest of the communication.
- (c) Any *person* who makes a payment or a promise of payment totaling \$1,000 or more for an *electioneering communication* shall file with the *City Clerk* an “Electioneering Communication Disclosure Report” disclosing the *person’s* name, address, occupation, and employer, and the amount of the payment. The report shall be filed within 24 hours of making the payment or the promise to make the payment, and shall be accompanied by a legible copy of the *electioneering communication* if in printed form or a transcript of the *electioneering communication* if in spoken form.

- (d) Except as provided in subsection (e), if any *person* has received a payment or a promise of a payment from another *person* totaling \$100 or more for the purpose of making an *electioneering communication*, the *person* receiving the payments shall disclose on the report the other *person's* name, address, occupation, and employer; the amount received; and the date of the payment.
- (e) A *person* who receives or is promised a payment that is otherwise reportable under subsection (d) is not required to report the payment if the *person* provides goods or services in the normal course of business and receives or is promised the payment in exchange for providing goods or services.
- (f) The communications subject to the provisions of this section do not include:
- (1) news stories and editorials by broadcast outlets or regularly published newspapers, periodicals, or magazines of general circulation;
 - (2) communications that are considered *expenditures* or *independent expenditures* under this Division;
 - (3) *member communications*, except those made by a political party;
 - (4) communications made in the form of a slate mailer;
 - (5) communications paid for by a governmental entity;
 - (6) communications that occur during a *candidate* debate or forum;
 - (7) communications made solely to promote a *candidate* debate or forum made by or on behalf of the *person* sponsoring the debate or forum, provided that such communications do not otherwise discuss the positions or experience of a *candidate*; or

- (8) communications in which a *candidate's* name is required by law to appear and the *candidate* is not singled out in the manner of display.
- (g) Any communication, other than a *member communication*, made at the behest of a *candidate* is a *contribution* to that *candidate* and is subject to the limits and prohibitions specified in sections 27.2935, 27.2936, and 27.2950.
- (h) The obligation to file an "Electioneering Communication Disclosure Report" under subsection (c) shall not apply to any *committee* whose primary filing officer is not the *City Clerk*.

Section 2. That Chapter 2, Article 6, Division 4 of the San Diego Municipal Code is hereby amended by amending section 26.0422 to read as follows:

§26.0422 Preliminary Review

- (a) through (c) [No change in text.]
- (d) Notwithstanding subsections (b) and (c) of this section, if the complaint alleges a violation of the Election Campaign Control Ordinance (Chapter 2, Article 7, Division 29 of the San Diego Municipal Code) and the *Respondent* is the subject of a pending *Commission* audit, the deadline for completing *Preliminary Review* may, at the discretion of the *Executive Director*, be suspended until thirty calendar days following the submittal of the applicable final audit report to the *Commission*.
- (e) through (g) [No change in text.]

(Corrected Page 11/21/2005)

Section 3. That Chapter 2, Article 7, Division 35 of the San Diego Municipal Code is hereby amended by amending section 27.3503 to read as follows:

§27.3503 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. Except as otherwise provided herein, the terms and provisions of this Division shall have the meanings and shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (California Government Code sections 81000 through 91014) and the regulations of the California Fair Political Practices Commission, as amended. For purposes of this Division, the following definitions shall apply:

Benefit [No change in text.]

Campaign Control Ordinance means the San Diego Municipal Election Campaign Control Ordinance, codified at Chapter 2, Article 7, Chapter 29 of the San Diego Municipal Code.

City through travel expenses [No change in text.]

Section 4. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 5. That this ordinance shall take effect and be in force on January 11, 2006, and except as specifically stated herein shall apply to any City election held after this effective date.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Catherine M. Bradley
Catherine M. Bradley
Deputy City Attorney

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