

ORDINANCE NUMBER O- 0795 (NEW SERIES)DATE OF FINAL PASSAGE OCT 27 2008

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 29 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 27.2903, 27.2911, 27.2912, 27.2916, 27.2917, 27.2924, 27.2925, 27.2930, 27.2935, 27.2936, 27.2937, 27.2938, 27.2939, 27.2945, AND 27.2960; RETITLING AND AMENDING SECTIONS 27.2965, 27.2966, 27.2967, 27.2968, AND 27.2969; AND AMENDING SECTION 27.2971, RELATING TO THE CITY OF SAN DIEGO ELECTION CAMPAIGN CONTROL ORDINANCE; AND AMENDING CHAPTER 2, ARTICLE 7, DIVISION 40 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 27.4002, RELATING TO CAMPAIGN FUNDRAISING DISCLOSURES UNDER THE CITY'S MUNICIPAL LOBBYING ORDINANCE.

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 Election Campaign Control Ordinance [ECCO], and proposing updates to those laws to the City Council for its approval; and

WHEREAS, ECCO limits the amount of contributions that an individual may give to a campaign committee to support or oppose a candidate in a City of San Diego election; and

WHEREAS, ECCO's contribution limits are intended to balance the City's interest in reducing the potentially corrupting effect of giving money to a candidate against the candidate's interest in amassing the resources necessary for effective campaign advocacy; and

WHEREAS, ECCO's contribution limits have been increased only nominally since 1973, and have not kept pace with the costs associated with effective campaign advocacy; and

WHEREAS, increasing contribution limits will benefit the electoral process, including helping challengers mount more effective campaigns against incumbent officeholders, and reducing the dependency of candidates on special interest groups that make independent expenditures and member communications, while still serving to combat corruption and the appearance of corruption in City elections; and

WHEREAS, ECCO's rules regarding a candidate's or elected officeholder's acceptance of funds to offset the costs associated with audits and the defense of civil, criminal, and administrative proceedings must be amended to come into compliance with recently adopted state laws, which now allow the creation of a separate committee and separate bank account for such funds; and

WHEREAS, ECCO's rules regarding the identification of committees making telephone communications to support or oppose a candidate or ballot measure must be amended to come into compliance with recently adopted state laws; and

WHEREAS, ECCO's rules regarding telephone communications will be strengthened by requiring candidates and committees to identify themselves when making calls for polling purposes, even when those calls do not expressly advocate for or against a candidate or ballot measure; and

WHEREAS, the information available to the public regarding a candidate's pre-election financial activities will be enhanced by a requirement that the candidate file an additional pre-election campaign statement covering the weeks immediately prior to an election; and

WHEREAS, other areas of ECCO may be clarified, streamlined, or otherwise improved by amendment; and

WHEREAS, the Ethics Commission has proposed amending ECCO to increase contribution limits, to strengthen the provisions that pertain to professional expense funds and telephone communications, to increase pre-election campaign disclosures, and to otherwise clarify, streamline, and improve ECCO; and,

WHEREAS, the Ethics Commission believes that an increase in ECCO's contribution limits should be accompanied by a corresponding increase in the reporting threshold for fundraising activities in the City's Municipal Lobbying Ordinance, and has proposed amending the Municipal Lobbying Ordinance to provide such an increase; and

WHEREAS, the City Council concurs with the proposal 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 amending sections 27.27.2903, 27.2911, 27.2912, 27.2916, 27.2917, 27.2924, 27.2925, 27.2930, 27.2935, 27.2936, 27.2937, 27.2938, 27.2939, 27.2945, and 27.2960 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 Clearly identified measure [no change in text]

Committee means any *person* acting, or any combination of two or more *persons* acting jointly, who raise \$1,000 or more, or make *independent expenditures* of \$1,000 or more, within a single calendar year on behalf of or in opposition to a candidate or for the qualification to the ballot or adoption or rejection of one or more ballot *measures*.

Committees include *controlled committees, independent expenditure committees, primarily formed recipient committees, and-general purpose recipient committees.*

Contribution to Independent expenditure [no change in text]

Independent expenditure committee means any *person* who makes *independent expenditures* totaling \$1,000 or more within a single calendar year.

Mass campaign literature [no change in text]

Mass telephone communications means live or recorded telephone calls to 500 or more individuals or households in connection with the same *election* for the purpose of (a)

supporting or opposing a *clearly identified candidate* or a *clearly identified measure*; or (b) conducting a poll that mentions or refers to a *clearly identified candidate* or a *clearly identified measure*.

Measure to Primarily formed recipient committee [no change in text]

Professional expense committee means a committee created and controlled by an elected *City Official* or *candidate* for the purpose of receiving and spending funds to defray the *professional fees and costs* incurred in the *City Official's* or *candidate's* response to an audit or the legal defense of one or more civil, criminal, or administrative proceedings.

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 *professional expense committee* is created.

§27.2911 Duty to Have Campaign Treasurer

Every *candidate* and every recipient *committee* shall have a *treasurer*. A *candidate* may designate himself or herself as *treasurer*. A committee may designate an *assistant treasurer* to perform the duties and responsibilities of the *treasurer* in the event of a temporary vacancy in the office of the *treasurer* or in the event the *treasurer* is unavailable. Only an individual may be designated as a *treasurer* or *assistant treasurer*.

§27.2912 Authority of Treasurer

It is unlawful for any *expenditure* to be made by or on behalf of a recipient *committee* without the express authorization of the *treasurer*. It is unlawful for any *contribution* to be accepted by a recipient *committee* or any *expenditure* to be made on behalf of a recipient *committee* at a time when the office of *treasurer* is vacant.

§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 title 2, section 18401 of the California Code of Regulations.
- (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*.

§27.2917 Lawful Use of Campaign Funds by a Committee

Uses of campaign funds held by any *committee* formed in accordance with this division shall be governed by title 9 of the California Government Code and title 2, division 6 of the California Code of Regulations. It is unlawful to use campaign funds in any manner that would violate these provisions of California law.

§27.2924 Surplus Campaign Funds

- (a) Upon leaving any elected office, or at the end of the post-election reporting period following the defeat of a *candidate* for elective office, whichever occurs last,

campaign funds under the control of a *candidate* shall be considered surplus campaign funds.

- (b) After the failure of a recall petition or after the recall election, all remaining *controlled committee* campaign funds shall be considered surplus campaign funds.
- (c) Surplus campaign funds shall be used only for the following purposes:
 - (1) To pay outstanding campaign debts, as long as any *vendor* debts are paid within the 180-day period set forth in section 27.2960;
 - (2) To repay *contributions*;
 - (3) To make a donation to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the *candidate*, any member of his or her immediate family, or his or her campaign *treasurer*.
 - (4) To make a *contribution* to a political party *committee*, provided the campaign funds are not used to support or oppose candidates for *elective City office*.
However, the campaign funds may be used by a political party *committee* to conduct partisan voter registration, partisan get-out-the-vote activities, and slate mailers.
 - (5) To make a *contribution* to support or oppose any candidate for federal office, any candidate for elective office in a state other than California, or any ballot *measure*.
 - (6) To pay for professional services reasonably required by the *candidate* or *committee* to assist in the performance of its administrative functions, including *payment* for attorney's fees for litigation that arises directly out of a *candidate's* activities or his or her status as a *candidate*, including, but not limited to, an action to enjoin defamation, defense of an action brought for a violation of state

or local campaign, disclosure, or election laws, and an action from an election contest or recount.

§27.2925 Accounting

- (a) In addition to any other requirements of this division, every *candidate* or *committee* that accepts *contributions* for a *City election* shall maintain records in accordance with the requirements of title 2, section 18401 of the California Code of Regulations.
- (b) The records required by section 27.2925(a) shall be kept by the *candidate* or *committee treasurer* for a period of four years following the date that the campaign statement to which they relate is filed.
- (c) Each *candidate* and *committee* shall deliver, on demand, to any public officer having authority to enforce this division, a written authorization permitting the officer to have access to all records pertaining to the campaign *contribution* checking account.
- (d) Each *candidate* and *committee* shall, on demand, make available to any public officer having authority to enforce this division all records required by this division to be maintained by the *candidate* or *committee*.

§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) In addition to any other campaign statement required to be filed pursuant to the California Political Reform Act, every *candidate*, *controlled committee*, and *committee* primarily formed to support or oppose a *candidate*, shall file a pre-election statement on the Friday before any *election* in which the *candidate* is listed on the ballot. This statement shall have a closing date of the Thursday before the *election* and shall cover activity and payments occurring through that day.
- (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) In conjunction with making the notations required by subsections (f) and (g), *candidates* and *committees* shall disclose the cumulative amount of *contributions* received from the contributor for each *election*.
- (i) *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.
- (j) 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.

§27.2935 Contribution Limitations

- (a) It is unlawful for an individual to make to any *candidate* or *committee* supporting or opposing a *candidate*, or for any *candidate* or *committee* supporting or opposing a *candidate* to solicit or accept, a *contribution* that would cause the total amount contributed by that individual to support or oppose the *candidate* to exceed \$500 for any single *election*.
- (b) For purposes of this section, an officeholder who is the subject of a recall *election* is deemed to be a *candidate* seeking elective office, and the *contribution* limits set forth in subsection (a) shall apply to any *payment* made to any *committee* for purposes of supporting or opposing the recall of that officeholder, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.
- (c) Nothing in this section is intended to limit the amount of his or her own money or property that a *candidate* may contribute to, or expend on behalf of, the *candidate's* own campaign.
- (d) The *contribution* limits imposed by this section do not apply to *general purpose recipient committees*, which are discussed in section 27.2936.
- (e) The *contribution* limits imposed by this section do not apply to *contributions* made to a *professional expense committee*, as discussed in sections 27.2965-27.2969.
- (f) The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.

§27.2936 Contribution Limitations for General Purpose Recipient Committees

- (a) *General purpose recipient committees* may participate in *City candidate elections* by using *contributions* from individuals, subject to the *contribution* limits established by this section.

- (b) It is unlawful for any *general purpose recipient committee* to use a *contribution* for the purpose of supporting or opposing a *candidate* unless the *contribution* is attributable to an individual in an amount that does not exceed \$500 per *candidate* per *election*.
- (c) It is unlawful for two or more *general purpose recipient committees* with *shared management* to attribute *contributions* to the same individual for the purpose of supporting or opposing one or more *candidates* seeking *elective City office* if it causes the total amount those *committees* attribute to that individual to exceed the contribution limits set forth in subsection (b).
- (d) A *general purpose recipient committee* that attributes a *contribution* to an individual for the purpose of supporting or opposing one or more *candidates* seeking *elective City office* shall comply with the reporting requirements set forth in section 27.2930(b) and (c).
- (e) For purposes of this section, an officeholder who is the subject of a recall *election* is deemed to be a *candidate* seeking elective office, and the *contribution* limits set forth in subsections (b) and (c) shall apply to any *payment* made to a *general purpose recipient committee* for purposes of supporting or opposing the recall of that officeholder, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.
- (f) This section shall not be construed to limit the amount of money that an individual or any other *person* may give to a *general purpose recipient committee* in the form of *contributions*, dues, donations, fees, or other forms of monetary transactions, but shall be construed to limit the source and amount of *contributions* a *general purpose recipient committee* may use to participate in *City candidate elections*.

- (g) The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.

§27.2937 Indexing of Campaign Contribution Limits

- (a) On a biennial basis commencing in 2011, the *contribution* limits set forth in sections 27.2935 and 27.2936 shall be subject to adjustment.
- (b) The *City Clerk* shall adjust the *contribution* limits to reflect any changes in the Consumer Price Index for the San Diego area for the two-year period ending December 31 of the previous year. Adjustments shall be rounded to the nearest fifty dollars.
- (c) The *City Clerk* shall publish a public notice of any adjustments by March 1, or as soon as practicable, following the Bureau of Labor Statistics's release of the applicable Consumer Price Index data.
- (d) *Contribution* limits adjusted in accordance with this section shall go into effect immediately upon the release of the *City Clerk's* public notice of the adjustment.
- (e) Notwithstanding subsection (d), adjustments to *contribution* limits shall be effective only with regard to *elections* held in subsequent calendar years, and shall not be construed to raise the *contribution* limits applicable to past *elections* or to *special elections* or *special run-off elections* held in the same calendar year that the limits are adjusted.

§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 *professional expense committee*, 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*.
- (f) The restrictions on accepting *contributions* imposed by subsection (b) do not apply to *contributions* made by a *candidate* to his or her *controlled committee*.

§27.2939 Pre-Primary Contributions for General Election

- (a) A *candidate* for *elective City office* may raise contributions for a general election prior to a primary election for the same *elective City office* if the *candidate* sets aside these *contributions* and uses them only for the general election.
- (b) If the *candidate* wins outright in the primary election, is defeated in the primary election, or otherwise withdraws from the general election, the *contributions* raised for the general election shall be refunded to the *contributors* on a pro rata basis less any expenses associated with the raising and administration of general election *contributions*. *Candidates* who are obligated to refund *contributions* raised for the general election shall be subject to the same provisions applicable to candidates for

elective state office under title 2, section 18531.2 of the California Code of Regulations.

- (c) For purposes of this section, a “primary election” includes a *district primary election*, a *citywide primary election*, and a *special election*, and a “general election” includes a *district general election*, a *citywide general election*, and a *special run-off election*.
- (d) The particular *election* for which *contributions* are received shall be reported in accordance with section 27.2930(e) and (f).

§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 before the date of the *election* for which the solicitation was made, and no later than fourteen calendar days after the discovery of the violation.

§27.2960 Extensions of Vendor Credit

- (a) *Vendors* may extend credit to *candidates* and their *controlled committees* in the ordinary course of business in the same manner they extend it to *persons* for other than *political purposes*.
- (b) A *candidate* or *controlled committee* that accepts goods or services for *political purposes* on credit under subsection (a), shall pay for those goods or services in full no later than 180 calendar days after receipt of a bill or invoice and in no event later than 180 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute. For purposes of this subsection, a good faith dispute shall be presumed if the *candidate* or *controlled committee* produces the following:
 - (1) evidence that the *candidate* or *controlled 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.
- (c) The provisions of subsection (b) do not apply to debt owed to a financial institution for an outstanding credit card balance.

Section 2. That Chapter 2, Article 7, Division 29 of the San Diego Municipal Code is hereby amended by retitling and amending sections 27. 27.2965, 27.2966, 27.2967, 27.2968, and 27.2969 to read as follows:

§27.2965 Professional Expense Funds

- (a) Every elected *City Official* and every *candidate* for *elective City office* shall be permitted to establish and maintain one *professional expense committee* and one

professional expense checking account for the purpose of soliciting, accepting, and spending professional expense funds.

- (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 professional expense fund *contributions* from individuals, 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, the California Fair Political Practices Commission, or the California Franchise Tax Board; 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 for any elected *City Official* or *candidate* to solicit or accept from any individual, professional expense fund *contributions* totaling more than the dollar amount established by sections 27.2935(a) and 27.2937 during a single calendar year in connection with an audit or a civil, criminal, or administrative proceeding identified in the Statement of Organization required by section 27.2966(b).
- (d) An individual's *contributions* to a *professional expense committee* do not count toward the campaign *contribution* limits set forth in section 27.2935, and are not subject to the time limits set forth in section 27.2938.

- (e) It is unlawful for any individual to make a *contribution* to a *professional expense committee* 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 *professional expense committee* is a member or employee. When filing the campaign statements required by section 29.2967, the *professional expense committee* shall attach to such statement a copy of each disclosure form received pursuant to this subsection.
- (f) It is unlawful for a *person* other than an individual to make a *contribution* to a *professional expense committee*. It is unlawful for a *City Official* or *candidate* to solicit or accept a *contribution* for a *professional expense committee* from any *person* other than an individual.

§27.2966 Establishment of a Professional Expense Committee and Checking Account; Recordkeeping

- (a) A *City Official* or *candidate* who raises professional expense funds shall deposit the funds in, and expend the funds from, a professional expense checking account that is separate from any other bank account held by the *City Official* or *candidate*. The checking account shall be established at an office of a bank or other financial institution providing checking account services located in the City of San Diego.
- (b) The *City Official* or *candidate* shall establish a *professional expense committee* for the professional expense checking account by filing a Statement of Organization with the Secretary of State and the *City Clerk* pursuant to California Government Code section 84101. The Statement of Organization shall contain a description of the specific audit or civil, criminal, or administrative proceeding or proceedings for which the *professional expense committee* is established, and shall be amended pursuant to

Government Code section 84103 as audits or proceedings are either resolved or initiated. The words "Legal Defense Fund" and the *City Official's* or *candidate's* name shall be included in the name of the *professional expense committee*.

- (c) The *City Official* or *candidate*, and the *treasurer* of the *professional expense committee*, are subject to the recordkeeping requirements set forth in title 2, section 18401 of the California Code of Regulations, and shall keep separate detailed accounts, records, bills, and receipts for each audit and legal proceeding specified in the Statement of Organization filed pursuant to subsection (a), including documentation substantiating the basis for each expenditure made with professional expense funds.
- (d) The records required by section 27.2966(c) shall be kept by the *City Official*, *candidate*, or *treasurer* for a period of four years following the date that the campaign statement to which they relate is filed.

§27.2967 Disclosures by Professional Expense Committee

- (a) The *professional expense committee* of any *City Official* or *candidate* who is a *candidate* in an upcoming *City election* shall disclose its professional expense fund activity on campaign statements filed in accordance with the schedule prescribed by the Political Reform Act for other *candidate controlled committees* in the *City*.
- (b) The *professional expense committee* of any *City Official* or *candidate* who is not a *candidate* in an upcoming *City election* shall disclose its professional expense fund activity on campaign statements filed quarterly, as follows:
 - (1) No later than April 30 for the period of January 1 through March 31.
 - (2) No later than July 31 for the period of April 1 through June 30.
 - (3) No later than October 31 for the period of July 1 through September 30.
 - (4) No later than January 31 for the period of October 1 through December 31.

§27.2968 Impermissible Use of Professional Expense Funds

- (a) It is unlawful for a *City Official* or *candidate* to use any funds in a professional expense checking account to pay a judgment, settlement, fine, sanction, or other type of penalty.
- (b) It is unlawful for a *City Official* or *candidate* to transfer any funds in a professional expense checking account to any other *committee*.

§27.2969 Conclusion of Audit or Proceeding; Termination of Professional Expense Committee

- (a) At the conclusion of an audit or legal proceeding identified in a *professional expense committee's* Statement of Organization, and after the payment of all *professional fees and costs* incurred in connection with that audit or proceeding, the *City Official* or *candidate* may use any remaining *contributions* collected for that audit or proceeding to pay outstanding *professional fees and costs* incurred in connection with any other audit or proceeding identified in the *professional expense committee's* Statement of Organization, so long as such *contributions*, when aggregated with all other *contributions* from the same contributor for the same audit or proceeding, do not exceed the *contribution* limits set forth in section 27.2965(c).
- (b) Within six months after the conclusion of all audits and proceedings for which the *professional expense committee* was established, the *City Official* or *candidate* shall refund any remaining funds to contributors on a "last in, first out" or "first in, first out" accounting basis, close the professional expense checking account, and terminate the *professional expense committee* pursuant to title 2, section 18404(b) and (c) of the California Code of Regulations. The Ethics Commission's Executive Director may for good cause extend the termination date. An application to extend the termination date shall be in writing and shall include copies of all supporting documents including copies of any relevant billing statements. The Executive Director shall report to the

Ethics Commission at its next regularly scheduled meeting, or as soon thereafter as practicable, any extensions granted pursuant to this section.

Section 3. That Chapter 2, Article 7, Division 29 of the San Diego Municipal Code is hereby amended by amending section 27.2971 to read as follows:

§27.2971 Telephone Communications

- (a) It is unlawful for any *candidate* or *committee* to engage or hire others to engage in *mass telephone communications* unless the communications include a statement that the communications 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 any of the resources used for the communications or that is otherwise authorizing the communication. For purposes of this subsection, “resources” include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges. The type of disclosure required by this section shall be determined as follows:
- (1) 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.
 - (2) 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*.
 - (3) Notwithstanding subsections (a)(1) and (a)(2), 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*.
- (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 for four years a transcript of the message being communicated, a copy of any recorded messages, and a record of the number of calls for each message.
- (f) The disclosure requirements set forth in this section shall not apply to a *candidate* personally engaging in a live telephone communication.

Section 4. That Chapter 2, Article 7, Division 40 of the San Diego Municipal Code is hereby amended by amending section 27.4002 to read as follows:

§27.4002 Definitions

All defined terms in this division appear in italics. Unless the context otherwise indicates, the defined terms have the meanings set forth below.

Activity expense to *Expenditure lobbyist* [no change in text]

Fundraising activity means soliciting, or directing others to solicit, campaign contributions from one or more contributors, either personally or by hosting or sponsoring a fundraising event, and either (a) personally delivering \$2,000 or more in contributions to a *candidate* or to a *candidate's* controlled committee, or (b) identifying oneself to a *candidate* or a *candidate's* controlled committee as having any degree of responsibility for \$2,000 or more in contributions received as a result of that solicitation.


Gift to Travel expenses [no change in text]

Section 5. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 6. This ordinance shall take effect and be in force on January 1, 2009, except that the amendments to section 27.2925 (recordkeeping), sections 27.2935 and 27.2936 (contribution limits for candidate elections) shall be applicable only to elections occurring after January 1, 2009, and the amendments to section 27.4002 (fundraising disclosure threshold for lobbyists) shall be applicable only to fundraising that takes place on or after January 1, 2009.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Catherine M. Bradley
Chief Deputy City Attorney

CMB:als
09/30/2008
10/06/2008REV.
Or.Dept:Ethics
O-2009-42

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of OCT 21 2008.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 10-27-08
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor