

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

M E M O R A N D U M

DATE: October 28, 2005

TO: The Committee on Rules, Finance and Intergovernmental Relations

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Proposed Amendments to Election Campaign Control Ordinance

As you know, the City's campaign laws recently underwent a complete overhaul, with the majority of amendments effective on January 5, 2005. The new provisions of ECCO were put into practice by candidates in the recent special mayoral election on July 26, 2005. As a result, the Commission became aware of several housekeeping changes that need to be made to ECCO to bring various provisions in line with the original intent of the Commission and the City Council. In addition to these housekeeping issues, the Commission recently recognized the need for a new provision concerning electioneering communications that would impose disclosure requirements for advertisements that mention a candidate's name within a specified time period before a scheduled election even if that advertisement didn't expressly support or oppose the election of that candidate.

The Commission considered the proposed amendments at its meetings on September 8, 2005, and October 13, 2005, and ultimately directed staff to forward the following recommendations to the Rules Committee:

Electioneering Communications – proposed SDMC § 27.2980

Currently, ECCO regulates communications that expressly advocate the election or defeat of candidates, but does not contain any language pertaining to so-called "issue ads" that appear shortly before election day, clearly identify a particular candidate, and while not expressly advocating that candidate's election or defeat, appear to have no reasonable purpose other than to paint that candidate in a favorable or unfavorable light. Thus, because these types of communications are not "independent expenditures" subject to disclosure requirements under ECCO, they are able to influence elections without the public being aware of the identity of those behind the communication. The Commission has recognized that these forms of communication present opportunities for abuse, and accordingly has expressed an interest in the

City adopting an “electioneering” provision similar to the ones that exist in other cities, in the state, and at the federal level.

The language proposed would require any person who pays \$1,000 or more for an “electioneering communication” as defined in the proposed amendments to section 27.2903, to make a “paid for by” disclosure on the communication, and to file a report with the City Clerk disclosing their name, address, occupation, employer, and the amount of the payment within 24 hours of making the payment. The report would be accompanied by a copy of the electioneering communication. Additionally, the proposed section would require the person filing the report to disclose the identity of any person who contributed \$100 or more toward the payment. The proposed section also contains exemptions for other types of communications, such as editorials and news stories that identify a candidate, statements made by a candidate during a debate, and communications paid for by a governmental entity.

Campaign Contribution Checking Account – existing SDMC §§ 27.2915 and 27.2916

The January 2005 ECCO amendments inadvertently omitted primarily formed recipient committees formed to support a City candidate from certain requirements, including the obligation to establish a checking account in the City of San Diego and rules regarding the acceptance of contributions. The revisions being proposed broaden the scope of section 27.2916 to include all primarily formed recipient committees. By definition, primarily formed recipient committees are committees formed to support or oppose a single candidate or ballot measure, and are *not* controlled by a candidate.

Time Periods for Contributions – existing SDMC § 27.2938

This proposed amendment excludes recall elections from the limitations of the twelve month pre-election period in which contributions can be solicited and accepted. If adopted, a candidate facing the prospect of a recall election may begin soliciting and accepting contributions as soon as a notice of intention to circulate a recall petition is published or as soon as a statement of organization for a committee to recall the officeholder is filed with the City Clerk or the Secretary of State, notwithstanding the twelve month time period applicable to other types of elections. Because a recall proponent may spend more than one year on a recall effort, the Commission does not believe the twelve month pre-election fundraising time limit should apply to the subject of the recall effort.

Obligation to Return Contributions – existing SDMC § 27.2955 and proposed § 27.2956

When ECCO was amended effective January 2005, one of the changes affected the time period in which improper contributions must be returned to the contributor. Prior to the amendment, the receipt of an improper contribution would not have been considered a violation of ECCO if the contribution was not deposited into the campaign checking account and was returned to the contributor within 20 days. The intent of the 2005 amendment was to address situations where a committee inadvertently accepted contributions in excess of the contribution limits because variations in the spelling of the contributor’s name (e.g., Kate Jones, Katherine Jones) could reasonably create confusion with regard to that person’s identity. Thus, ECCO was revised to

allow such contributions to be returned at the end of the filing period when campaign statements are printed and these kinds of irregularities are easier to spot. The 2005 amendment, however, also had the unintended effect of giving committees the opportunity to wait until the end of the filing deadline to return other types of improper contributions (e.g., checks from organizations, checks without sufficient accompanying information).

This proposal essentially reverses the previous amendment, and requires improper contributions to be returned within 30 days (the January 2005 amendments changed the time period for returning contributions from 20 to 30 business days). The proposal also adds new section 27.2956 to create an exception solely for situations involving identity issues resulting from variations in the spelling of a contributor's name. In such situations, the committee would have until the end of the filing period to return these improper contributions.

Legal Defense Funds – existing SDMC §§ 27.2965 – 27.2969

The proposed changes would clarify that contributions accepted for a legal defense fund may be used to pay for fundraisers, treasurers, and other professional costs associated with the legal defense fund. In addition, in response to concerns in the regulated community with regard to the difficulty of returning remaining funds to contributors on a pro-rata basis, this section would allow contributors to be repaid on a “last in, first out” or “first in, first out” accounting basis, similar to the mechanism that state law and ECCO require for inter-committee transfers.

Campaign Advertising – existing SDMC §§ 27.2970 – 27.2974

The current provisions in ECCO require that parties making independent expenditures comply with separate and slightly different disclosure requirements than those of candidates. The proposed change would clarify that both candidates and committees paying for campaign advertising must adhere to the same rules and, in particular, must include the requisite “paid for by” disclosures on campaign advertising, whether in the form of a piece of “mass campaign literature” or advertising in a newspaper, magazine, or other form of mass media. The term “mass campaign literature” has been added to clarify that the regulations are not limited to items sent through the mail, but also apply to yard signs, door hangers, and other types of mass distributed communications.

In addition, the amendments proposed by the Commission include two changes to the section concerning telephone communications. The first change adds language stating that the “paid for by” disclosure requirement is applicable to a committee paying for any of the resources used (e.g., purchasing a contact list, overhead) even if the call is ultimately placed by a volunteer. The second change exempts the “paid for disclosure” when a candidate is personally making live telephone calls.

Miscellaneous Provisions

The following housekeeping amendments are necessary to clarify the original legislative intent:

- Modify the prohibition on organizational contributions to clarify that it does not include contributions to a ballot measure committee controlled by a candidate. SDMC § 27.2950.
- Replace the term “internal communications” with the term “member communications” to achieve consistency with state law terminology. SDMC §§ 27.2903, 27.2930, 27.2975.
- Currently ECCO requires the reporting of contributions with accompanying codes of “P” for the primary election and “G” for the general election. Add codes “S” for special election and “R” for runoff election. SDMC § 27.2930.
- Clarify that the provision regarding the carryover of contributions from one election to a subsequent election does not permit candidates to use contributions collected for a general election on campaign expenses associated with an earlier primary election. SDMC § 27.2921.
- Exempt general purpose committees from having to disclose on their ballot measure advertisements the identities of individuals who make large contributions to the committee. This amendment is required in light of a recent court decision, litigation involving the FPPC, and related changes in state law. SDMC §§ 27.2975, 27.2976.

Thank you for considering the Ethics Commission’s proposed changes to ECCO. The Commission and its staff look forward to discussing these proposals with you in greater detail at the Rules Committee meeting on November 2, 2005. We are hopeful that the Committee will forward the recommended amendments to the full City Council as soon as possible so that the changes may be adopted well in advance of the June 2006 primary election.

Sincerely,

Stacey Fulhorst
Executive Director

Attachment: Proposed Revisions to the Election Campaign Control Ordinance (strike-out version)