

ORDINANCE NUMBER O- 21026 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 10 2018

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 29 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 27.2980, RELATING TO THE SAN DIEGO MUNICIPAL ELECTION CAMPAIGN CONTROL ORDINANCE.

WHEREAS, pursuant to San Diego Municipal Code (Municipal Code) section 26.0414, the City of San Diego Ethics Commission (Ethics Commission) has the responsibility of regularly reviewing the San Diego Municipal Election Campaign Control Ordinance (ECCO), and proposing any ECCO updates to the City Council for its approval; and

WHEREAS, Division 29 of ECCO includes provisions related to electioneering communications; and

WHEREAS, an electioneering communication is defined in ECCO as any form of communication that mentions or refers to a clearly identified City 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; and

WHEREAS, such an electioneering communication is commonly referred to as an "issue ad" because it does not mention the election, despite referring to the candidate; and

WHEREAS, ECCO includes provisions requiring "paid for by" disclosures for certain electioneering communications; and

WHEREAS, the City's electioneering communication laws may not be less restrictive than those imposed at the state level, but are allowed to be more restrictive; and

WHEREAS, the Ethics Commission has identified an issue with ECCO's requirement of a "paid for by" disclosure on certain live telephone calls made within the 90-day period preceding an election, when the caller is seeking to conduct a tracking poll; and

WHEREAS, tracking polls are conducted to show trends or levels of support that a candidate has over a period of time; and

WHEREAS, the Ethics Commission has been informed that "paid for by" disclosures in such telephone communications could unconsciously influence the responses being gathered through the tracking poll and could taint the results; and

WHEREAS, the Ethics Commission voted at its July 12, 2018 meeting to recommend amending ECCO to address this issue, by exempting live telephone calls of fewer than 500 per day, made during the 90-day pre-election period, from the "paid for by" disclosure requirements; and

WHEREAS, the Ethics Commission believes this amendment would still ensure that the majority of "issue ads" continue to include a "paid for by" disclosure to inform prospective voters of who financed the communication; and

WHEREAS, the amendment maintains the existing requirement to include a "paid for by" disclosure on pre-recorded "issue ad" calls where the potential to taint polling results is not a factor; and

WHEREAS, the Ethics Commission now seeks the City Council's approval of this Ordinance, which would amend ECCO to exempt live telephone calls of fewer than 500 per day, made during the 90-day pre-election period, from the "paid for by" disclosure requirements; and

WHEREAS, the amendments also include clean-up language; NOW, THEREFORE,

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

Section 1. Chapter 2, Article 7, Division 29 of the San Diego Municipal Code is amended by amending section 27.2980, relating to the San Diego Municipal Election Campaign Control Ordinance, to read as follows:

§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 bold, sans serif typeface that is easily legible, contrasts with the background, and is no less than 14 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 an enforceable promise to make a 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.

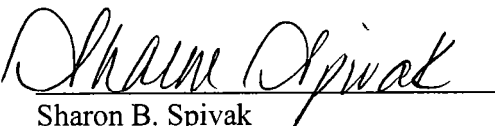
- (d) Except as provided in subsection (e), if any *person* has received a payment or an enforceable promise to make a payment from another *person* totaling \$100 or more for the purpose of making an *electioneering communication*, the *person* receiving the payments shall disclose on the report the 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 this section do not include:
- (1) news stories and editorials by broadcast outlets or regularly published newspapers, periodicals, or magazines of general circulation;
 - (2) *member communications*, except those made by a political party;
 - (3) communications made in the form of a slate mailer;
 - (4) communications paid for by a governmental entity;
 - (5) communications that occur during a *candidate* debate or forum;
 - (6) 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*;

- (7) 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;
 - (8) printed materials in quantities of 200 or less distributed within a single calendar month;
 - (9) live telephone calls made to less than 500 individuals or households per day; or,
 - (10) pre-recorded telephone calls made to less than 500 individuals or households per election.
- (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 and 27.2950.
- (h) The obligation to file an "Electioneering Communication Disclosure Report" under subsection (c) shall not apply to any entity that is a *committee*.

Section 2. A full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Sharon B. Spivak
Senior Deputy City Attorney

SBS:MW:jvg
9/07/18
Or.Dept: Ethics Commission
Doc. No.: 1793144_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of DEC 04 2018.

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 12/10/18
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Double Underline

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SBS:MW:jvg
9/07/18
Or.Dept: Ethics Commission
Doc. No.: 1793211_3

Passed by the Council of The City of San Diego on DEC 04 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 10 2018

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

NOV 15 2018

DEC 10 2018

, and on

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21026