

1 [Regulation of False Political Telemarketing Through Persuasion Polls.]

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3 **Ordinance amending the Campaign and Governmental Conduct Code by adding**
4 **section 1.160.5 to require that persons conducting or paying for telephonic persuasion**
5 **polls must disclose information to call recipients during the telephone calls and must**
6 **file disclosures with the San Francisco Ethics Commission.**

7 Note: Additions are *single-underline italics Times New Roman*;
8 deletions are *strikethrough italics Times New Roman*.
9 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby
12 amended by adding Section 1.160.5, to read as follows:

13 **SEC. 1.160.5. DISCLOSURE AND FILING FOR PERSUASION POLLS**

14 *(a) Definitions.*

15 *Whenever in this Section the following words or phrases are used, they shall mean:*

16 *(1) "Persuasion poll" shall mean any telephone survey, or series of telephone surveys that are*
17 *substantially similar or identical, that*

18 *(A) refers to a clearly identified candidate for City elective office or a City elective officer, other*
19 *than in a basic preference question;*

20 *(B) includes at least one call made within 60 days prior to an election for the City elective office*
21 *sought by the candidate named in the survey or a recall election regarding the City elective officer*
22 *named in the survey;*

23 *(C) includes at least 1,000 completed calls, such as person-to-person discussions following the*
24 *survey script; and*

25 *(D) for which at least two of the following are true:*

1 (i) Each phone conversation in the survey takes less than four minutes on average to complete,
2 excluding any sponsorship identification;

3 (ii) The survey includes fewer than three demographic inquiries regarding factors such as age,
4 educational level, or marital status, sufficient to allow for the tabulation of results based on relevant
5 subset(s) of the population consistent with standard polling industry practices;

6 (iii) The persons conducting the survey do not collect or tabulate survey results for all the
7 phone conversations;

8 (iv) The survey includes an untrue statement about the candidate or officer described in section
9 (a)(1)(A); or

10 (v) The survey is designed or intentionally conducted in a manner calculated to influence the
11 vote of the respondent in the election described in subsection (a)(1)(B).

12 (2) "Basic preference question" shall mean:

13 (A) a question which provides a respondent with a list of names of candidates for City elective
14 office without providing or implying any information regarding any candidate and asks which
15 candidate the respondent supports in a particular race, or

16 (B) a question which names a City elective officer without providing or implying any
17 information regarding the officer and asks whether the respondent supports or opposes the recall of
18 that officer.

19 (3) "Payment" shall be defined as set forth in Government Code of the State of California
20 (commencing at Section 81000); provided, however, that "payment" shall also include any enforceable
21 promise to make a payment.

22 (4) "Refers to a clearly identified candidate for City elective office or a City elective officer"
23 shall mean any communication that contains the candidate's or officer's name or nickname or makes
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1 any other unambiguous reference to the candidate or officer such as "your Supervisor" or "the
2 incumbent."

3 (5) "Disclosure Date" shall mean:

4 (A) The date that a written formal agreement regarding the persuasion poll is made between
5 the person making the calls and the poll sponsor(s) or the sponsor(s) agent;

6 (B) The date of the 1,000th call in the poll; and

7 (C) After a person has met the threshold under Subsection (B), the date of each 1,000th
8 additional call in the poll.

9 (b) Telephonic disclosure. No person shall authorize, administer or make payment for a
10 persuasion poll unless, at the beginning of each call, the person making the call identifies the person(s)
11 making payments for or authorizing the call by stating "This is a paid political advertisement by [Name
12 of person(s)]," and, identifies the person making the call, if different from the sponsor, by stating "This
13 call is conducted by [Name of person]." These disclosures shall be spoken at the same volume and
14 speed as the rest of the communication so as to be clearly audible and understood by the call recipient
15 and otherwise appropriately conveyed for the hearing impaired. These disclosures shall be repeated
16 upon request of the call recipient.

17 (c) Filing.

18 (1) Any person who authorizes, administers or makes payment for a persuasion poll shall,
19 within 48 hours of each disclosure date, file an itemized statement with the San Francisco Ethics
20 Commission. A person authorizing, administering or making payment for a persuasion poll is not
21 required to file an itemized statement under this Section if the person is aware that another person
22 authorizing, administering or making payment for the same persuasion poll has filed an authorized
23 statement for the persuasion poll as required by this Section.

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1 (2) Each itemized statement required to be filed under this Section shall be filed on a form
2 promulgated by the San Francisco Ethics Commission and shall contain the following information:

3 (A) the full name, street address, city, state and zip code of each person who authorizes,
4 administers or makes payment for the persuasion poll;

5 (B) the full name, street address, city, state and zip code of each person sharing or exercising
6 direction and control over the person authorizing, administering or making payments for the survey;

7 (C) the dates during which the persuasion poll was conducted;

8 (D) for each day, the number of calls attempted to households in the City and County of San
9 Francisco if the election described in subsection (a)(1)(B) is a City-wide election, or the number of
10 calls to households in the district if the election described in subsection (a)(1)(B) is a district election;

11 (E) for each day, the number of individuals contacted and the number of messages left in
12 households in the City and County of San Francisco if the election described in subsection (a)(1)(B) is
13 a City-wide election, or the number of individuals contacted and the number of messages left in
14 households in the district if the election described in subsection (a)(1)(B) is a district election;

15 (F) a detailed accounting of any payments of \$100.00 or more that the person has received
16 from another person, which were used for conducting or administering the persuasion poll; such
17 detailed accounting shall include the dollar amount or value of each payment; the date of the payment's
18 receipt; the name, street address, city, state, and zip code of the person who made such payment; the
19 occupation and employer of the person who made such payment, if any, or, if the person is self-
20 employed, the name of the person's business; and the cumulative amount of payments received for the
21 purpose of conducting or administering persuasion polls from that person during the calendar year;

22 (G) a copy of the script used in conducting the persuasion poll, if any, and a copy of every
23 question asked in the survey and every statement made to respondents in the survey; and

1 (H) any other information required by the Ethics Commission consistent with the purposes of
2 this Section.

3 (3) The filer shall verify, under penalty of perjury, the accuracy and completeness of the
4 information provided in the itemized statement, and shall retain for a period of five years all books,
5 papers and documents necessary to substantiate the itemized statements required by this Section.

6 (4) The Ethics Commission may require any itemized statement to be filed electronically and
7 may permit any required statement to be filed by facsimile. The Ethics Commission shall promulgate
8 regulations to implement this subsection before any person shall be required to file an itemized
9 statement electronically or permitted to file a statement by facsimile.

10 (6) If any person files an itemized statement after any deadline imposed by this Section, the
11 Ethics Commission shall, in addition to any other penalties or remedies established in this Chapter,
12 fine the person \$10.00 per day after the deadline until the statement is received by the Ethics
13 Commission. The Ethics Commission may reduce or waive a fine if the Commission determines that the
14 late filing was not willful and that enforcement will not further the purposes of this Chapter. The Ethics
15 Commission shall deposit funds collected under this Section in the General Fund of the City and
16 County of San Francisco.

17 (d) The Ethics Commission may adopt regulations exempting additional types of polls from the
18 provisions of this Section to effectuate the purpose of this Section.

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21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 JONATHAN GIVNER
25 Deputy City Attorney