

LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Amending Campaign Disclaimer and Disclosure Requirements]

Ordinance amending the Campaign and Governmental Conduct Code to simplify and consolidate campaign finance disclaimer and disclosure requirements.

Existing Law

1. Contribution Limits

a. Aggregate limit

Section 1.114(a)(2) imposes an aggregate limit on contributions to City candidates in a given City election. Under this aggregate limit, no person may contribute more than \$500 multiplied by the number of City elective offices to be voted on at that election. In *McCutcheon v. Federal Election Commission*, 134 S.Ct. 1434 (2014), the United States Supreme Court struck down as unconstitutional a similar federal law limiting how much an individual could contribute to federal candidates, parties and PACs in a two-year election cycle. At its meeting on May 28, 2014, the Ethics Commission adopted a resolution stating that it will not enforce the aggregate limit in Section 1.114(a)(2) against contributors in City elections given the *McCutcheon* decision.

b. Contributions to independent committees

Section 1.114(c) imposes limits on contributions to independent committees not controlled by a City candidate or officeholder. On September 20, 2007, Judge Jeffrey White of the United States District Court for the Northern District of California enjoined enforcement of this section and, in accordance with the District Court's order, the City has not enforced this contribution limits since that date.

2. Third-Party Disclosure Reports

Local law currently requires third-parties to file disclosure reports with the Ethics Commission to (1) allow the Ethics Commission to track spending for the purposes of the City's public financing system, and (2) provide the public with information about who is spending money to affect local elections. To fulfill these purposes, local law requires disclosure reports – typically consisting of a copy of the communication and information about its funding – regarding the following types of communications:

a. Mass mailings – over 200 pieces of mail advocating for or against a candidate

(Section 1.161(b));

- b. Electioneering communications – communications that clearly identify a candidate within 90 days of a City election and are distributed to 500 or more people (Section 1.161.5(b));
- c. Persuasion polls – telephone surveys referencing a candidate which are made through at least 1,000 calls, of which at least one is within 60 days of a City election, and which meet certain other criteria (Section 1.160.5); and
- d. “\$5,000 reports” – independent expenditures, electioneering communications, and member communications for or against candidates in races where there is at least one publicly financed candidate or where at least one candidate has accepted a voluntary expenditure ceiling (Sections 1.134, 1.152).

In addition to these local law requirements, within 90 days of an election, state law imposes a 24-hour reporting requirement for persons making independent expenditures of \$1,000 or more which support or oppose a City candidate. To comply with this separate state law requirement, persons making such independent expenditures must file a state disclosure form (FPPC Form 496) with the Ethics Commission.

Under current law, it is possible that a third-party – pursuant to all of these distinct thresholds – would be required to file more than one report for a single communication.

3. Disclaimers on Election-Related Communications (e.g., “Paid for by ...”)

Local law currently requires any person distributing an election-related communication to include – on the communication itself – basic information about its funding so that voters will be able to know immediately who is paying for it. Currently, local law requires the following disclaimers:

- a. mass mailings, television ads, radio ads, newspaper ads, posters, door hangers, yard signs billboards, and robo-calls must include a “Paid for by” disclaimer (followed by sender information) in 14-point type or, if spoken, at the same volume and speed as the rest of the communication (Sections 1.161, 1.161.5, 1.162 & 1.163);
- b. mass mailings sent by third-parties (*i.e.*, non-candidates) must include a different disclaimer appearing in 14-point type that states it “is not authorized or approved by any candidate for City and County office or by any election official” and provides information about the communication’s funder (Section 1.161); and

- c. persuasion polls must include a disclaimer stating that the call is, in fact, a paid political advertisement and identifying both the funder and the person making the call (Section 1.160.5).

In addition to these local law requirements, state law imposes different – and potentially conflicting – disclaimer requirements. For example, state law generally requires disclaimers to appear 10-point font and specifies different phrasing than what is set forth in local law. State law also requires disclaimers for ballot measure committees and primarily formed independent expenditure committees to include the names of the committee's top two donors of \$50,000 or more.

Amendments to Current Law

1. Contribution Limits

The proposed amendments delete sections 1.114(a)(2) and 1.114(c) in their entirety.

2. Third-Party Disclosure

The proposal amends sections 1.134, 1.135, 1.143, 1.152, 1.160.5, 1.161, 1.161.5, 1.162, and 1.163 to make the following changes to locally-mandated disclosure reporting:

- remove the mass mailing, persuasion poll and \$5,000 disclosure reporting requirements;
- lower the reporting threshold for member communications (*i.e.*, communications by an organization to its members made within 90 days of an election and which advocate for or against a City candidate);
- standardize the reporting threshold for independent expenditures, electioneering communications, and member communications at \$1,000 per candidate;
- require the filing of copies of all reported independent expenditures, electioneering communications, and member communications; and
- consistent with state law, require 24-hour reporting within 90 days of an election.

3. Disclaimers on Campaign Communications

The proposal amends sections 1.161, 1.162, and 1.163 so that state law would generally apply, with the following modifications:

- require 12-point type for all disclaimers on mass mailers, door hangers, flyers, posters, oversized buttons and bumper stickers, and print ads;
- require independent expenditure and ballot measure committees to report their two top funders who have contributed at least \$20,000; and

- require a reference to the Ethics Commission's website for more information about campaign activity and spending.

Background Information

Under Campaign and Governmental Conduct Code section 1.103, the Board of Supervisors may amend the campaign finance provisions of the Code if:

- (a) The amendment furthers the purposes of this Chapter;
- (b) The Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members;
- (c) The proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors; and
- (d) The Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.

At its January 26 and February 23, 2015 meetings, the Ethics Commission considered and unanimously approved the proposed amendments.

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