



Ethics Commission

MEMORANDUM

DATE: October 10, 2017

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Recent State Law Amendments to Campaign Advertising Disclosure Laws Docketed for Ethics Commission Consideration on October 12, 2017

On Saturday, October 7, 2017; Governor Brown signed Assembly Bill 249. This legislation makes significant changes to state campaign disclosure laws that will go into effect on January 1, 2018. Because local jurisdictions are not permitted to be less restrictive than state law, the City's campaign laws must be amended to be in harmony with the newly-enacted state laws. Such amendments will involve the following with respect to procedure:

- The Ethics Commission will receive public input at its meetings, make policy decisions regarding proposed updates, and review Municipal Code amendments drafted by staff.
- The Commission will submit its proposed amendments to the City Council Rules Committee, which in turn will forward the proposals to the full City Council.
- The City Council will consider the proposed amendments on two occasions (referred to as a "first reading" and "second reading") which must take place at least two weeks apart.
- After the second reading by the City Council, there will be a 30 day waiting period before the new laws take effect.

In light of the time it will take to follow these procedures, it does not seem practical or appropriate for the City to impose any new campaign advertising laws until after the June 2018 primary election. Even if the Commission made final decisions regarding proposed amendments at its November 9 meeting, the next meeting of the Council Rules Committee is not until December 6, 2017. Considering that the Council is in recess from mid-December through the first week of January, the earliest the Council could consider the proposals would be the week of January 8, 2018. After a second reading the week of January 22, the new City laws would go

into effect in late February, only three months before the June 2018 primary election. This short timeframe would be problematic for candidates and committees that have created campaign advertising materials before the City's new rules are finalized (a major reason the Commission has historically recommended that new campaign laws go into effect on January 1 of odd-numbered years).

Staff therefore recommends that the Commission undertake a review of the recently-adopted state laws rules over the next few months with a view toward finalizing its recommendations by April (assuming that the state has clarified certain aspects of AB 249, as discussed in the bullets below). This would allow time for Rules Committee and City Council consideration in April and May, an effective date in early June, and new laws in place for the 2018 general election in November.

Because the new state laws are fairly complicated and convoluted (see attached chart, which illustrates the new rules that apply to, for example, video Internet advertisements), the Commission may want to consider maintaining ECCO's current advertising framework, which generally applies the same rules to all types of committees participating in City elections for purposes of consistency and simplicity. For example, where the state imposes one set of rules on candidate-controlled committees and another set of rules on primarily formed recipient committees, ECCO has traditionally applied the same rules across the board to all committees.

During the course of the Commission's deliberations over the next few months, the following activities will likely transpire at the state level, which will help inform the Commission's decision-making process:

- The Fair Political Practices Commission [FPPC] will prepare educational materials and amend existing Regulations to conform to the new advertising rules, processes that will likely provide clarity and refinements of the new statutes.
- The FPPC will reconcile legal issues surrounding AB 249 that are still outstanding, including constitutional concerns regarding the imposition of top contributor disclosure requirements on general purpose committees.
- The FPPC will work with the authors of AB 249 on "cleanup legislation" which will be introduced during the 2018 legislative session.

For candidates and committees active in the June 2018 primary election, staff will explain and offer guidance regarding local laws, provide any available FPPC materials regarding new state laws, and direct any remaining questions to FPPC staff.

Attachment

AB 249 – Effective January 1, 2018
Internet Advertisements - Video

Committee Type	Disclosure Requirement	State Law	Formatting Requirements	State Law
Candidate (for own campaign)	none	n/a	n/a	n/a
Candidate (on IEs or ballot measures)	“paid for by” disclosure	84502(a)(2)	disclosure at beginning or end of ad, lasting at least 4 seconds, in any typeface large enough to be readily legible; spoken disclosure as well if written disclosure appears for less than 5 seconds of 30 second broadcast or for less than 10 seconds of 60 second broadcast.	84504.5(b)
Political Party Committee (IEs)	“paid for by” disclosure	84502(a)(2)(A)	disclosure at beginning or end of ad, lasting at least 4 seconds, in any typeface large enough to be readily legible; spoken disclosure as well if written disclosure appears for less than 5 seconds of 30 second broadcast or for less than 10 seconds of 60 second broadcast.	84504.5(b)
Primarily Formed Committee & General Purpose Committee	“paid for by” disclosure + top contributors	84502(a)(1); 84503	disclosure at beginning or end of ad for 5 or 10 seconds (depending on length of ad), against solid black background on bottom 1/3 (or ¼ if no top donors) of screen in Arial font size at least 4% of screen height, with top donors on separate lines; cannot be in all caps	84504.1; 84505(b)
Independent Expenditure Committee	“paid for by” disclosure	84502(b)	disclosure at beginning or end of ad for 5 or 10 seconds (depending on length of ad), against solid black background on bottom 1/3 (or ¼ if no top donors) of screen in Arial font size at least 4% of screen height, with top donors on separate lines	84504.1