



MEMORANDUM

DATE: July 6, 2018

TO: Commission Chair Cochran, Vice Chair Voorakkara, and Commissioners Kreit, Leventhal, and Potter

FROM: Commissioners Baber and Kosmo
Members of Ad Hoc Subcommittee

SUBJECT: Recommended Changes to City's Campaign Laws (ECCO)
Docketed for Discussion at Ethics Commission Meeting on July 12, 2018

As you know, the Commission Chair formed an ad hoc subcommittee to consider issues raised by John Nienstedt, principal of Competitive Edge Research & Communication, concerning the application of the City's rules governing "electioneering communications" to telephone polls/surveys. An "electioneering communication" is any form of communication that mentions a City candidate, but does not advocate for or against the election of the candidate, and is disseminated within 90 days of an election. It is commonly referred to as an "issue ad" because it does not mention the election despite referring to a candidate in the election (e.g., a mailer sent two weeks before an election that reads: "Call Councilmember Smith and ask her to stop cutting funding for homeless services").

The rules governing electioneering communications require the inclusion of a "paid for by" disclosure if disseminated in certain quantities. With respect to telephone communications, the law requires a disclosure on 500 or more live or recorded calls.

Mr. Nienstedt explained to the subcommittee that the current City laws require professional polling firms like his to include a "paid for by" disclosure on a tracking poll conducted within the 90-day period preceding an election. (A tracking poll involves polling at regular intervals to show a trend or level of support a candidate has over a period of time.) Consequently, if the individuals conducting the poll are aware of the identity of the person or entity paying for the survey, they could be unconsciously influenced in their gathering of responsive information, and potentially taint the poll results.

The subcommittee met twice with Commission staff, General Counsel, and Mr. Nienstedt to discuss various options, and ultimately decided to recommend an amendment that would exempt

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live telephone calls of less than 500 per day during the 90-day pre-election period from the “paid for by” disclosure requirements. We believe this proposal strikes the right balance between addressing Mr. Nienstedt’s concerns while also ensuring that the majority of “issue ads” continue to include a “paid for by” disclosure to inform prospective voters. Notably, the proposal would maintain the existing requirement to include a “paid for by” disclosure on pre-recorded “issue ad” calls (including polls) where the potential to taint polling results is not a factor. We also considered the fact that live telephone calls are typically more expensive to conduct than recorded calls and are therefore less likely to be used when disseminating an “issue ad.”

A draft strike-out reflecting this approach is attached.

Attachment