

SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S
Election Campaign Control Ordinance
(Legal Defense Funds)

PROPOSED AMENDMENTS

Rev. August 29, 2008

STRIKEOUT VERSION

Chapter 2: Government
Article 7: Elections, Campaign Finance and Lobbying
Division 29: San Diego Municipal Election Campaign Control Ordinance

§27.2903 Definitions

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions of the Political Reform Act of 1974 (Government Code sections 81000 *et seq.*) and the definitions contained in the regulations adopted by the Fair Political Practices Commission shall govern the interpretation of this division.

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newly defined term

Legal defense committee means a committee created and controlled by an elected City Official or candidate for the purpose of soliciting, accepting, and spending funds to defray the professional fees and costs incurred in the City Official's or candidate's response to an audit or the legal defense of one or more civil, criminal, or administrative proceedings.

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Change in terminology

Professional fees and costs means expenses related to the retention of an attorney, treasurer, fundraiser, or any other *person* retained to perform services reasonably related to the purpose for which a ~~legal defense fund~~ legal defense committee is created.

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§27.2965 Legal Defense ~~Fund~~ Funds

Separate committee instead of a fund w/in existing campaign committee.

(a) Every elected *City Official* and every *candidate* for *elective City office* shall be permitted to establish and maintain one ~~legal defense fund~~ legal defense committee and one legal defense checking account for the purpose of soliciting, accepting, and spending legal defense funds.

(b) In addition to *contributions* received in connection with seeking an elective *City* office, any elected *City Official* or *candidate* for *elective City office* may receive legal defense fund contributions from individuals ~~for a legal defense fund~~, and may use such *contributions* solely for the following purposes:

FTB performs audits of campaign committees

(1) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* response to an audit of his or her campaign activity conducted by the City of San Diego Ethics Commission, ~~or the California Fair Political Practices Commission,~~ or the California Franchise Tax Board; or

(2) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* legal defense to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the *City Official's* governmental activities and duties.

(c) It is unlawful for any individual to make, or ~~for any elected~~ *City Official* or *candidate* to solicit or accept from any individual, legal defense fund contributions totaling more than \$250 ~~the dollar amount established by sections 27.2935(a) and 27.2937~~ during a single calendar year ~~to a legal defense fund~~ in connection with an audit or a civil, criminal, or administrative proceeding identified in a ~~Statement of Purpose~~ filed with the *City Clerk* pursuant to section 27.2966 the Statement of Organization required by section 27.2966(b).

Annual limit based on the dollar amount of campaign contribution limit

(d) An individual's *contributions* to a ~~legal defense fund~~ are not subject to legal defense committee do not count toward the campaign *contribution* limits set forth in ~~sections~~ section 27.2935, and are not subject to the time limits set forth in section 27.2938.

(e) It is unlawful for any individual to make a *contribution* to a ~~legal defense fund~~ legal defense committee without accompanying the *contribution* with a disclosure form identifying the particulars of all matters, if any, that such individual has pending before the board, commission, department, or agency of which the *City Official* or *candidate* maintaining the ~~legal defense fund~~ legal defense committee is a member or employee. When filing the ~~quarterly~~ campaign statements required by section 29.2967, the ~~City Official or candidate~~ maintaining the ~~legal defense fund~~ legal defense committee shall attach to such statement a copy of each disclosure form received pursuant to this subsection.

(f) ~~Any legal defense fund established in accordance with sections 27.2965–27.2969 must be maintained through a controlled committee~~ the *City Official* or *candidate* has organized to seek the office held or sought that is the subject of the civil, ~~criminal, or administrative proceeding.~~

separate committee makes provisions unnecessary

(1) It is unlawful for a *controlled committee* to accept a *contribution* for a legal defense fund unless it is accompanied by a written designation from the

contributor indicating that the ~~contribution is a contribution~~ for the legal defense fund.

Designation no longer needed; contributions go to separate committee

(2) ~~Contributions~~ collected for a legal defense fund must be deposited in the ~~controlled committee's~~ campaign contribution checking account.

(3) ~~Expenditures~~ from a legal defense fund must be made from the ~~controlled committee's~~ campaign contribution checking account.

Clarifies that only individuals can make LDF contribution

(f) It is unlawful for a person other than an individual to make a contribution to a legal defense committee. It is unlawful for a City Official or candidate to solicit or accept a contribution for a legal defense committee from any person other than an individual.

May accept campaign funds for legal defense

(g) Except as set forth in subsection 27.2924(e)(6), sections 27.2965-27.2969 shall constitute the sole authority for soliciting or accepting ~~contributions~~ for the costs of responding to an audit or for the defense of an action relating to an election campaign, electoral process, or a *City Official's* conduct in office.

§27.2966 Establishment of a Legal Defense Fund Committee and Checking Account; Recordkeeping

Statement of Purpose replaced with FPPC Form 410 (Statement of Organization)

(a) Prior to soliciting or accepting any ~~contributions~~ for a legal defense fund, the *City Official or candidate* shall file with the *City Clerk* a "Statement of Purpose" identifying the specific audit or civil, criminal, or administrative proceeding for which the use of a legal defense fund is sought. A *City Official or candidate* seeking to establish or maintain a legal defense fund shall file a separate "Statement of Purpose" for each audit and each civil, criminal, or administrative proceeding for which the use of the legal defense fund is sought.

(b) The legal defense fund shall be named: "The (name of the *City Official or candidate*) Legal Defense Fund."

(c) Any ~~controlled committee~~ accepting ~~contributions~~ for a legal defense fund shall keep a ledger for each audit and for each civil, criminal, or administrative proceeding identified in a Statement of Purpose, detailing all of the legal defense fund's ~~contributions and expenditures~~ for each proceeding. Such ledgers shall be maintained separately from the ~~controlled committee's~~ accounting of ~~contribution and expenditure~~ activity unrelated to the legal defense fund.

Follows new state law with regard to establishment of, and record-keeping for, an LDF committee.

(a) A *City Official or candidate* who raises legal defense funds shall deposit the funds in, and expend the funds from, a legal defense checking account that is separate from any other bank account held by the *City Official or candidate*. The checking account shall be established at an office of a bank or other financial institution providing checking account services located in the City of San Diego.

(b) The *City Official or candidate* shall establish a *legal defense committee* for the legal defense checking account by filing a Statement of Organization with the Secretary of State and the *City Clerk* pursuant to California Government Code section 84101.

The Statement of Organization shall contain a description of the specific audit or civil, criminal, or administrative proceeding or proceedings for which the legal defense committee is established, and shall be amended pursuant to Government Code section 84103 as audits or proceedings are either resolved or initiated. The words "Legal Defense Fund" and the City Official's or candidate's name shall be included in the name of the legal defense committee.

- (c) The City Official or candidate, and the treasurer of the legal defense committee, are subject to the recordkeeping requirements set forth in title 2, section 18401 of the California Code of Regulations, and shall keep separate detailed accounts, records, bills, and receipts for each audit and legal proceeding specified in the Statement of Organization filed pursuant to subsection (a), including documentation substantiating the basis for each expenditure made with legal defense funds.
- (d) The records required by section 27.2966(c) shall be kept by the City Official, candidate, or treasurer for a period of four years following the date that the campaign statement to which they relate is filed.

§27.2967 ~~Disclosure of Legal Defense Fund Activity~~ Disclosures by Legal Defense Committee

- (a) The ~~controlled committee~~ legal defense committee of any City Official or candidate who is a candidate in an upcoming City election shall disclose its legal defense fund activity on campaign statements filed in accordance with the schedule prescribed by the Political Reform Act for other candidate controlled committees in the City.
- (b) The ~~controlled committee~~ legal defense committee of any City Official or candidate who is not a candidate in an upcoming City election shall disclose its legal defense fund activity on campaign statements filed quarterly, as follows:

Maintain current reporting schedule (which is stricter than state law).

- (1) No later than April 30 for the period of January 1 through March 31.
- (2) No later than July 31 for the period of April 1 through June 30.
- (3) No later than October 31 for the period of July 1 through September 30.
- (4) No later than January 31 for the period of October 1 through December 31.

No longer needed because committee is separate

- (e) ~~The City Official's or candidate's controlled committee shall file separate summary pages and disclosure schedules for all contributions and expenditures made in connection with the legal defense fund, and shall clearly identify the name of the legal defense fund on all such summary pages and disclosure schedules.~~

§27.2968 ~~Impermissible Use of Legal Defense Fund Funds~~

Maintain current prohibitions

- (a) It is unlawful for a City Official or candidate to use any ~~portion of a legal defense fund~~ funds in a legal defense checking account to pay a fine, sanction, or other type of penalty.

- (b) It is unlawful for a *City Official* or *candidate* to transfer any ~~portion of a legal defense fund~~ funds in a legal defense checking account to any other *committee*.

§27.2969 Conclusion of Audit or Proceeding; Termination of Legal Defense Fund Committee

- (a) ~~Within six months after the conclusion of the audit or of any lawsuits or proceedings for which the legal defense fund was established or maintained, the *City Official* or *candidate* may dispose of any remaining funds in the legal defense fund as follows:~~

- (1) ~~by paying outstanding *professional fees and costs* incurred in the defense of any proceeding identified in the Statement of Purpose; or,~~
- (2) ~~by repaying the contributors on a “last in, first out” or “first in, first out” accounting basis; or,~~
- (3) ~~by making the funds payable to the City Treasurer for deposit in the General Fund of the *City*.~~

Giving money to General Fund not allowed under new state law.

- (b) ~~Within six months after the conclusion of all proceedings for which the legal defense fund was established, the *City Official* or *candidate* shall file with the *City Clerk* a “Legal Defense Fund Termination” statement declaring that the legal defense fund is no longer soliciting or accepting *contributions* for the legal defense fund, will not make further *expenditures* from the legal defense fund, and has properly disclosed all legal defense fund *contributions* and *expenditures*.~~

- (a) At the conclusion of an audit or legal proceeding identified in a *legal defense committee’s* Statement of Organization, and after the payment of all *professional fees and costs* incurred in connection with that audit or proceeding, the *City Official* or *candidate* may use any remaining *contributions* collected for that audit or proceeding to pay outstanding *professional fees and costs* incurred in connection with any other audit or proceeding identified in the *legal defense committee’s* Statement of Organization, so long as such *contributions*, when aggregated with all other *contributions* from the same contributor for the same audit or proceeding, do not exceed the *contribution* limits set forth in section 27.2965(c).

Leftover funds may be used for other LDF matters, but are subject to attribution & contribution limits.

- (b) Within six months after the conclusion of all audits and proceedings for which the *legal defense committee* was established, the *City Official* or *candidate* shall refund any remaining funds to contributors on a “last in, first out” or “first in, first out” accounting basis, close the legal defense checking account, and terminate the *legal defense committee* pursuant to title 2, section 18404(b) and (c) of the California Code of Regulations. The Ethics Commission’s Executive Director may for good cause extend the termination date. An application to extend the termination date shall be in writing and shall include copies of all supporting documents including copies of any relevant billing statements. The Executive Director shall report to the Ethics Commission at its next regularly scheduled meeting, or as soon thereafter as practicable, any extensions granted pursuant to this section.

Leftover funds get returned to contributors; Executive Director may extend deadline for good cause, and must thereafter notify the Commission.