

March 11, 2016

Sent via email only

Re: San Jose Campaign Guidance – Campaign Signs

Dear Ms. Belisle:

You have asked the following question:

Whether the wording in San Jose Municipal Code Section 12.06.1010 Disclosure of Electioneering Communication concerning who paid for the communication references five percent of the font size of the largest font or five percent of the height of the sign?

The answer:

San Jose Municipal Code Section 12.06.1010 Disclosure of Electioneering Communication was amended in October 2015 and became effective on December 18, 2015. The text that you referred to in your question quoted an outdated version of that Municipal Code section.

The current Municipal Code Section 12.06.1010 A. does not require a specific disclaimer on printed communications when they are paid for by a candidate or candidate controlled committee in support of the candidate's own campaign. For communication by a candidate or candidate controlled committee, political advertising disclaimers on printed form is recommended but not legally required and therefore, there is no requirement as to the font size.

San Jose Municipal Code Section 12.06.1010 B. regulates disclosure requirements made by an independent committee and disclosure requirement requires that the font is no smaller than five percent of the printable height of the sign. Since you are not an independent committee, this would not apply to you.

San Jose Municipal Code Section 12.06.1000 et seq. regulates communications, including signage, which are published within ninety (90) days prior to an election. The

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following is a link to the section:

https://www.municode.com/library/ca/san_jose/codes/code_of_ordinances?nodeId=TIT12ETOPGOPR_CH12.06MUCAOFCO_PT10ELCO_12.06.1000ELCO

Communication by a Candidate and Candidate Controlled Committees are governed by Section 12.06.1010 A of the Municipal Code while Section 12.06.1010 B governs communications by Independent Committees.

Section 12.06.1010 A provides that except as otherwise provided in this section, disclaimers of electioneering communication shall be made pursuant to the Political Reform Act, California Government Code Section 83100 et seq., as amended. The City, pursuant to changes made in October of 2015, defers to the Fair Political Practices Commission (FPPC) who administers the Political Reform Act for the requirements on campaign signs by Candidate and Candidate Controlled Committees.

Your question asked specifics of electioneering sign size, font and disclosure requirements. The FPPC recommends but does not legally require “Paid for by *committee name*” and committee ID number to be included in these type of communications.

For your convenience, I have attached the FPPC Matrix entitled Political Advertising Disclaimers for Communication by Candidate Committees for their own Election.

While this letter is intended to interpret only the City’s Municipal Code, according to the matrix, none of the following information is required to be included on campaign signs: the name, street address, city of the candidate controlled committee paying for the communication or the FPPC ID number.

Finally, while the City defers to the FPPC for the requirements of disclaimers in electioneering communication, please be advised that electioneering communication which meets the definition of a “sign” as defined in Section 23.02.500 of the San Jose Municipal Code is subject to the provisions of Title 23 of the Municipal Code. Section 23.02.500 defines a “sign” as follows:

23.02.500 - Sign.

“Sign” means any structure, display, device, balloon or graphic on or attached to any land, building or structure, which is used to communicate any message, or which advertises or promotes any business, product, activity, person or interest. Signs include, but are not limited to, letters, numbers, words, illustrations, decorations, decals, emblems, trademarks, logos and lights. Signs do not include noncommercial murals otherwise allowed under this Code.

(Ord. 24201.)

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Please note that this letter is intended to interpret only the City's Municipal Code. The California Fair Political Practices Commission is charged with interpretation and enforcement of the Political Reform Act and its implementing FPPC regulations. Court decisions have held that reliance on the advice of a city attorney is not a defense in the event of an inquiry as to whether the state regulations have been violated.

We hope that this addresses your question concerning the City's Campaign Ordinance. Please feel free to call if you have further questions or need clarification with regard to this letter.

Very truly yours,

RICHARD DOYLE, City Attorney

By: 
ARLENE SILVA
Deputy City Attorney

CC: Toni J. Taber, CMC, City Clerk

Attachment: Political Advertising Disclaimers

Political Advertising Disclaimers



1. Communications by Candidate Committees for their own Election

The disclaimer must include, unless otherwise noted: "Paid for by *committee name*."

Examples: "Paid for by Jones for Assembly 20XX"

"Paid for by Friends of Smith for Mayor 20XX"

Communication	Manner of Display
<p>All mass mailings – more than 200 sent within a calendar month (including emails and faxes)</p>	<ul style="list-style-type: none"> • Candidate's committee name/address (on file with Form 410) on outside of mailing (if no Form 410 on file, use candidate name/address) • Only committee name (no address) required on emails • "Paid for by" must be in the same color and font as the committee name/address and immediately in front of or above the name/address • If sent by more than one candidate/committee: <ul style="list-style-type: none"> ○ Also on at least one insert in the mailing • No less than 6-point type/contrasting print color • Return envelopes (if included in solicitation) – committee's name, address and ID number are recommended but not required
<p>Telephone calls advocating candidate's own election (500 or more) - made by:</p> <ul style="list-style-type: none"> • Vendors ("robo" calls) or • Paid individuals other than the candidate, campaign manager or volunteers 	<ul style="list-style-type: none"> • Any time during the message • Must identify the candidate that paid for the call or an organization authorizing the call that files campaign reports • Must state that the call is "paid for by" or "authorized by" the identified candidate or organization <ul style="list-style-type: none"> ○ <i>Examples: This call was paid for by Senator Jones; This call was authorized by (name of committee)</i> • No ID required on telephone calls personally dialed by candidate, campaign manager or volunteers

Candidate Committee Communications

Communication	Manner of Display
<p>The Political Reform Act (Act) does not require a specific disclaimer on the following communications paid for by a candidate's committee in support of his or her own campaign, although the FPPC recommends placing "paid for by committee name" and the committee ID number on all public campaign materials.</p>	
<p>Newspaper, radio and television ads</p>	<ul style="list-style-type: none"> • Radio and television advertisements require "paid for by" or sponsor identification under Federal Communications Commission (FCC) rules • Check the Elections Code for newspaper ad requirements
<p>Electronic Media (Websites, blogs, Twitter feeds, faxes, social media pages – e.g., Facebook)</p>	<ul style="list-style-type: none"> • "Paid for by <i>committee name</i>" and committee ID number are recommended but not legally required
<p>Billboards, yard signs, business cards, door hangers, flyers, and posters</p>	<ul style="list-style-type: none"> • "Paid for by <i>committee name</i>" and committee ID number are recommended but not legally required

The information on this chart does not carry the force of law. If there are any discrepancies between the chart and the Act or its corresponding regulations and opinions, the Act and its regulations and opinions will control. Communications made by a candidate to support or oppose a ballot measure or other candidates are not addressed in this chart.

References: Government Code Sections: 84305, 84310.
Title 2 Regulations: 18435, 18440.