

January 10, 2019

Sent Via E-mail only

Re: San Jose Campaign Guidance - SJ Notice to Voters Requirement

Dear Mr. Alvarez:

This letter is in response to our telephone discussion on or about December 5, 2019 and December 30, 2019 regarding whether the "Notice to Voters" disclaimer required under San Jose Municipal Code Section 12.06.1010 is only required on mailings. Thank you for also sharing the memorandum of the discussion Jim Sutton had in 2010 with then City Clerk Lee Price regarding how the "Notice to Voters" disclaimer should apply.

Since 2010, however, Section 12.06.1010 was amended. Subsection A now incorporates the disclaimer requirements of the Political Reform Act, as may be amended, except as otherwise provided in Section 12.06.1010. Subsection B, regulating "electioneering communications" of independent committees, also changed. Section 12.06.1010.B previously provided (***emphasis added***, below):

Every electioneering communication in printed form paid for by an independent committee must place the following statement on the mailing in typeface no smaller than twelve (12) points:

Notice to Voters

(Required by the City of San Jose)

This ***mailing*** is not authorized or approved by any candidate for City office or by any election official. It is paid for by (name and committee identification number).

(Address, city, state).

Total cost of this mailing is (amount).

It now states:

Every electioneering communication in printed form paid for by an independent committee must place the following statement on the ***communication*** in

typeface that is easily legible, contrasts with the background, and is no smaller than twelve-point font for **communication** no larger than eleven inches by seventeen inches (or equivalent area for non-rectangular dimensions) or is no smaller than five percent of the printable height for **communication** larger than eleven inches by seventeen inches (or equivalent area for non-rectangular dimensions):

Notice to Voters
(Required by the City of San José)

This **electioneering communication** is not authorized or approved by any candidate for city office or by any election official. It is paid for by (committee name and committee identification number).
(Address, city, state).
Total cost of this mailing is (amount).

Further, the California Legislature, in 2017 through the DISCLOSE Act, passed a comprehensive scheme mandating disclaimers on just about every campaign advertisement including those disseminated by independent committees.

Mr. Sutton's understanding from 2010 is still applicable in that the "Notice to Voters" disclaimer required in Municipal Code Section 12.06.1010.B must appear on all mailed communications to disclose the total cost to produce the mailing. Advice from the FPPC and this Office have clarified how to reconcile the differences between the disclaimers for campaign mailings required under the Political Reform Act and the Municipal Code (See April 18, 2018 –Merged Disclaimers for Independent Expenditure Committees, Electioneering Communications: <https://www.sanjoseca.gov/home/showdocument?id=1578>).

For all other printed materials that are not mailed, like flyers, door hangers, and posters, the definition of "electioneering communication" covers these materials as well. But, since these items are not mailed and the text of the disclaimers required under State law is substantially similar to the text of the disclaimer required under the Municipal Code, independent committees may comply with Section 12.06.1010.B by using the disclaimers mandated under State law for printed materials that are not mailed. For reference, the relevant disclaimer requirements under State law may be found on the FPPC's website by following the links below:

- Independent Expenditure Ads on Candidates (except ads by candidates and political party committees): http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Documents/CampaignAdvertisementDisclosure/Disclaimers_2.pdf

- Independent Expenditure Ads on Candidates by Candidates and Political Party Committees: http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Documents/CampaignAdvertisementDisclosure/Disclaimers_5.pdf

However, the Municipal Code is stricter than State law in the size of the font and other formatting requirements. State law requires disclaimers on print ads intended for individual distribution to be at least 10-point font whereas the Municipal Code requires disclaimers to be at least 12-point font for communications no larger than eleven inches by seventeen inches (or equivalent area for non-rectangular dimensions) or no smaller than five percent of the printable height for **communication** larger than eleven inches by seventeen inches (or equivalent area for non-rectangular dimensions). To the extent the formatting and font requirements in the Municipal Code are stricter than State law, and are not otherwise contrary to State law, independent committees must comply with these stricter formatting requirements to comply with the Municipal Code.

Very truly yours,

RICHARD DOYLE, City Attorney

By: 
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Deputy City Attorney

MJV/cem