

Definitions.

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“Behested” means made at the request of, at the suggestion of, with the cooperation of, in concert with, in consultation with, in coordination with, under the direction of, or under any arrangement with a candidate or candidate’s City controlled committee.

1. There is a rebuttable presumption that a communication is behested in any of the following circumstances: a. The communicator and the candidate retain the same individual or entity to provide non-ministerial, campaign-related professional services, including but not limited to polling, campaign research, media consultation or production, direct mail consultation, and fundraising, in the same election cycle. b. The communication reproduces or redistributes, in whole or substantial part, a campaign, officeholder, or legal defense communication. c. The communication includes information about a candidate’s campaign plans, projects, or needs that is not generally available to the public or is provided directly or indirectly by the candidate. d. The communicator discusses or negotiates the communication with the candidate. e. The communicator is serving or has served in a formal advisory or policy-making position with the candidate or has participated in strategic or policy-making discussions with the candidate regarding the pursuit of nomination or election to office and, in the same election cycle, the candidate is pursuing the office that the campaign communication is intended to influence. f. The communication is made in connection with fundraising events or campaign activities cosponsored by the candidate and the communicator.

2. None of the following circumstances is sufficient in and of itself to constitute a behested campaign, officeholder, or legal defense communication: a. The communicator interviews the candidate regarding legislative or policy issues that affect the spender or discusses campaign related issues with the candidate but does not communicate with the candidate regarding the communication. b. The communicator solicits or obtains a photograph, biography, position paper, press release, or similar material from the candidate and, without the candidate’s prior knowledge, uses that material in the communication. c. The communicator made a contribution to the candidate or the candidate’s City controlled committee. d. The communicator communicates to the candidate the intent to make a communication but does not discuss or negotiate the communication with the candidate. e. A member of a communicator organization provides volunteer services to or works for the affected candidate’s campaign. This exception does not apply if the member was also involved in the activities of the communicator’s political action committee, makes payments on behalf of the communicator, is serving or has served the candidate in a formal advisory or policy-making position, or is making or has engaged in strategic or policy-making discussions with the candidate. f. The communication was made in response to an unsolicited request from a political party leader or an agent of the leader. g. The communicator employs or is

under contract with a political consultant or pollster who previously rendered services to the candidate.

3. “Communicator” means a person who makes or incurs an expenditure for a communication or causes a communication to be distributed or displayed. Reference to a communicator includes the communicator’s agent. Reference to a candidate includes the candidate’s agent and City controlled committees.

“Independent expenditure” means a communication that expressly advocates the election or defeat of a clearly identified City candidate or ballot measure or, taken as a whole and in context, unambiguously urges a particular result in a City election and is not authorized, distributed, paid for, or behested by the affected candidate or committee. The term includes member communications, as defined in the Political Reform Act, if any of the following applies: 1. The communication is not a type that is routinely distributed by the member organization; 2. The communication is not directed solely to and intended only for the member organization’s own members; or 3. The cost of the communication exceeds the amount that the member organization routinely spends for that type of communication.

DISCLOSURE OF INDEPENDENT EXPENDITURES. A. A person shall notify the City Clerk of an independent expenditure when either of the following occurs: 1. The person makes or incurs expenditures with an actual or fair market value of \$1,000 or more for one or more communications; or 2. The person makes or incurs expenditures with an actual or fair market value of \$100 or more for one or more communications and distributes the communications to the following number of persons: a. 100 or more persons, if the distributor is a person who qualifies as a committee under the Political Reform Act. b. 200 or more persons, if the distributor is not a person who qualifies as a committee under the Political Reform Act. Once a notification threshold is met, every subsequent \$100 in expenditures made or incurred regarding that measure or candidate shall also be disclosed as required by Subsections B and C.

B. The notification shall be submitted to the City Clerk within the following time frames: 1. From the first date an individual may file a Declaration of Intention to Become a Candidate with the City Clerk through the date of the associated general election, or during the 90 days prior to an election if no City candidates will be on the ballot, within 24 hours after making or incurring the expenditures. 2. At all other times, within five business days after making or incurring the expenditures provided, however, in no event later than the first date an individual may file a Declaration of Intention to Become a Candidate.

C. The notification shall include the following: 1. A declaration under penalty of perjury signed by the person and, if applicable, the committee treasurer, specifying the following:

a. Each candidate or measure supported or opposed by the communication; b. The dates and amounts of the expenditure and the amount spent to support or oppose each candidate or measure; c. For disclosure under Subsection A(2), the number of distributions; d. Whether each candidate or measure was supported or opposed; e. That the communication was not behested by any of the candidates who benefited from it; f. The dates the communication was distributed or displayed, if applicable; g. A description of the type of communication; h. The name and address of the person making or incurring the expenditures or causing the communication to be distributed or displayed; i. The name and address of the payee, if applicable, and any vendor or subvendor that provided service for the communication; j. For committees, contributions of \$100 or more received by the committee since the later of the day after the close of the filing period for the last campaign or independent expenditure statement filed by the committee or the first day of the current calendar year. This disclosure requirement does not apply to contributions that are earmarked for a non-City candidate or ballot measure; and k. Contributions of \$100 or more that the person made in the current calendar year to City candidates, City controlled committees, City ballot measure committees, City recall committees, committees primarily formed to support or oppose City candidates or measures, and City general purpose recipient committees. 2. A copy of the communication. a. If the communication is a telephone call or similar communication, a copy of the script and, if the communication is recorded, the recording shall be provided. b. If the communication is audio or video, a copy of the script and an audio or video file shall be provided.

D. If an independent expenditure supports or opposes a City candidate, the City Clerk staff will notify all candidates in the affected race within one business day after receiving the required notice. The notification will indicate the candidates supported or opposed by the independent expenditure, as indicated on the signed declaration, and will include a copy of the independent expenditure communication that has been filed with the City Clerk.

E. The City Clerk shall post on its website, without alteration, all copies of independent expenditure communications, including poll questions, filed with the City Clerk. The City Clerk may not judge, comment upon, or edit the contents of an independent expenditure communication.

F. This Section shall not apply to a news story, commentary, or editorial by a newspaper, radio station, television station, or other recognized news medium.

POLLS CONTAINING INDEPENDENT EXPENDITURES. If a poll, commonly known as a “push” poll, contains one or more questions or statements that constitute independent expenditures, the person who conducted the poll shall file a copy of those questions or statements with the City Clerk within 48 hours of the poll being first conducted. This requirement shall not apply to polls that contact fewer than 200 people in the same calendar month.

SOCIAL MEDIA ACCOUNTS. A. If a candidate for elected City office, a City controlled committee, a City recall committee, a City ballot measure committee, a City general purpose committee, a committee primarily formed to support or oppose City candidates or ballot measures, or a person who makes independent expenditures in City elections and qualifies as a committee under the Political Reform Act that elects to use social media accounts to communicate regarding a City election, the candidate or committee shall include the following statement on each account’s home page: “This account is being used for campaign purposes by [name of candidate or committee].” 1. The statement shall be prominent, in a typeface that is easily legible to an average reader and in a color that contrasts with the background on which it appears. 2. The statement shall be displayed from the time the candidate or committee first begins to use the account for campaign purposes until the election for which it is used is over.

B. An elected City officer may not use a social media account or Web site for campaign purposes if the account or site is paid for, sponsored by, or hosted by the City. If an elected City officer communicates about campaign activity or City business using a social media account or Web site that is not City sponsored, the home page for the account or site shall include the following statement: “This [account or site] is not paid for, sponsored by, or hosted by the City.” This statement shall be prominent, in a typeface that is easily legible to an average reader and in a color that contrasts with the background on which it appears.

TEXT MESSAGE CONTRIBUTIONS. A. A contribution may be made via short message service (SMS), multimedia messaging service (MMS), or other similar text messaging technology. B. The following apply to a contribution made via SMS, MMS, or text messaging: 1. The contribution shall be subject to the same disclosure and recordkeeping requirements and, for participating candidates, the same matching funds requirements that apply to contributions made by other means. 2. The contribution may not exceed the applicable limitation on cash contributions. 3. The contribution is treated as a pledge and is deemed received when a candidate for elected City office or the candidate’s controlled committee obtains control of the contribution. C. City equipment may not be used to make a contribution via SMS, MMS, or text messaging.

COMMITTEES TO OPPOSE RECALL PETITIONS. An elected City officer who is the subject of a recall petition may create a City ballot measure committee to oppose the recall petition. That committee is subject to the same contribution limitations and other requirements as a committee supporting the recall petition.

LEGAL DEFENSE COMMITTEES. A. A current or former elected City officer or candidate for elected City office may control one or more legal defense committees. 1. A

legal defense committee may be used solely to defray attorney's fees and other legal costs incurred in the legal defense of the current or former elected City officer or candidate for elected City office in a civil or criminal court case or an administrative proceeding arising directly out of the conduct of a City election campaign, the City's electoral process, or the performance of City duties. 2. The current or former elected City officer or candidate for elected City office shall file with the City Clerk a Statement of Purpose identifying the specific case, proceeding, or matter for which the legal defense committee is established. 3. The legal defense committee shall be named "The [name of the current or former elected City officer or candidate for elected City office] Legal Defense Committee for [number of the case, proceeding, or matter or, if a number does not exist, a brief description of the case, proceeding, or matter]."

B. Contributions to legal defense committees are subject to the following: 1. A current or former elected City officer or candidate for elected City office may not solicit or accept a contribution or cause a contribution to be solicited or accepted before the committee is established and the Statement of Purpose has been filed. 2. The committee shall establish a separate checking account at an office of a financial institution located in the City. All contributions received by the legal defense committee shall be deposited into that account. 3. A person may not make and the committee or the person who controls the committee may not solicit or accept or cause to be solicited or accepted contributions from another person that, during a fiscal year, cumulatively exceed the per-person campaign contribution limit that applies to candidates for City Council.

C. Expenditures by a legal defense committee are subject to the following: 1. An expenditure must be related to the case, proceeding, or matter identified in the Statement of Purpose. 2. All expenditures by the committee must be made from the committee's checking account. 3. Within 180 days after the final conclusion of the case, proceeding, or matter and the payment of all debts incurred in connection with that case, proceeding, or matter, funds remaining in the committee's checking account shall be disposed of by repayment of contributions to contributors, by transfer to another legal defense committee, or by payment to the City's General Fund. D. This Section is the sole authority for soliciting or accepting contributions for the defense of a current or former elected City officer or candidate for elected City office in a case, proceeding, or matter arising out of a City election campaign, the City's electoral process, or the performance of City duties.

INJUNCTION. The City Attorney on behalf of the people of the City of Benicia or any person residing in the City of Benicia may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this section. The Court may award a plaintiff or defendant who prevails his or her costs of litigation, including reasonable attorney's fees; provided, however, that no such award may be granted against the City of Benicia.