



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Memorandum

To: City Officials and Staff
From: City Attorney's Office
Date: July 10, 2020
Re: Legal Restrictions on Campaign Activities

This memorandum provides an overview of some of the legal restrictions applicable to activities associated with campaigning for election. This memorandum does not cover every circumstance or scenario that you may encounter while involved in the election process. If you have specific issues or questions not covered in this memorandum, please feel free to contact the City Attorney's Office.

As a general guiding principle, State law prohibits the use of “**public resources**” for campaign-related purposes. “**Public resources**” are broadly defined to include any property or asset owned by the City including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and City compensated time. An official¹ is making “use” of public resources, including staff time, if it is substantial enough to result in a gain or advantage to the user or a loss to the City for which a monetary value may be estimated.²

City employees are prohibited from engaging in political activities or services of any nature during City work hours. Likewise, public officials are prohibited from utilizing any City funds, supplies, property or equipment in performing any activity related to political campaigning. The rules may be summarized as follows:

1) **Political Activities During City Work Hours**

Public employees may not engage in political activities during work hours.³

For purposes of this rule, “during work hours” includes any standard or overtime hours that are part of a shift that a public employee is required to work. However, a public employee is

¹ This memorandum uses the terms “officer” and “official” interchangeably to mean an individual who may or may not be an employee (appointed or elected) with authority to take specified actions on behalf of a city or agency.

² Government Code § 8314.

³ Government Code § 3207.

considered “off-duty” for purposes of this rule when he or she is on a permitted lunch break, vacation, an administrative leave day, or during a public holiday when not working.⁴

Implementing this rule:

- A. Distribute Materials. A public employee may not distribute political pamphlets, flyers, or other materials, or post political signs while on duty.
- B. Campaign Events. A public employee may not attend campaign meetings, rallies or other campaign-related functions while on duty.
- C. Telephone Calls. A public employee may not make campaign telephone calls while on duty.
- D. Campaign Activities. Public employees may not perform any other campaign-related tasks while on duty. This would include making copies, stuffing envelopes, writing campaign statements or advocating or informing fellow City employees about campaign issues. Wearing of campaign buttons, hats, shirts or other clothing, or signs is also prohibited while on duty or while on City property.

2) Use of Public Funds or Resources to Advocate.

A public officer or employee may not use City funds or resources to advocate a partisan position or otherwise use public agency funds or resources to support his or her personal political activities.⁵

Implementing this rule:

- A. Office Equipment. A public officer or employee may not use City copy machines, faxes, computers, printers or other office equipment to design, make, or distribute political pamphlets, flyers, signs, or other materials in support of his or her own political activity. To do so would be a misuse of public resources.
- B. Telephones/E-Mail. A public officer or employee may not use City phones in support of his or her personal political activities. Prohibited activities include: making political cold calls, calling any campaign organizations with which they may be involved, or otherwise using a City-issued phone or equipment (e.g., iPhone or iPad) to communicate personal views about candidates or ballot measures. This would include use of City-provided email addresses to send and receive messages related to personal political activities.

⁴ Many public employees work on public holidays (e.g., fire, police, public works). To the extent that a public official or employee is actually working for the agency on a public holiday, that person is “on duty”.

⁵ Government Code § 54964; *Vargas v. Salinas* (2009) 46 Cal.4th 1, 24-25; *Stanson v. Mott* (1976) 17 Cal.3d 206, 209-10).

- C. Office Space. A public officer or employee may not use a City office or workspace to engage in his or her personal political activities. Prohibited activities include: holding political meetings, organizing political events, preparing arguments, ballot statements, advertisements, and other such political activities.
- D. City Facilities. A public officer or employee may not use City facilities to engage in his or her personal political activities, if doing so would result in a gain or advantage to the officer/employee or a loss to the City for which a monetary value may be estimated. Therefore, a public officer or employee may only use a City facility for personal political activities if (i) City policy makes such facility available to all residents or to the general public, (ii) City policy does not prohibit the use of the facility for personal political activities, and (iii) the public officer or employee (or their campaign committee) pays the same rent/fee for use of the City facility as any other applicant (no free or discounted prices for use).⁶
- E. Office Supplies. A public officer or employee may not use or take City office supplies in support of personal political activities. For example, a public officer or employee may not print off flyers on City printer paper, take pens and paper clips for use at a campaign office, or use City copiers to make copies.
- F. Statements by Officials about Measures at Public Meetings. Individual officials may urge citizens at public meetings to generally get informed and to vote, without making any reference to a specific City/Town candidate or measure. They may also provide impartial non-advocacy information to the public about a City/Town measure. However, officials should refrain from extended comments or statements in favor or against a measure as that would certainly be viewed as prohibited government funded advocacy.
- G. Taking an Official Position at a Public Meeting. Before a City/Town measure is officially placed on the ballot, the City Council, as a body, may state on the record, the City's position regarding the measure at a regularly scheduled public meeting, where the meeting affords an opportunity for others to speak out in opposition.⁷ However, once a measure is placed on the ballot, the expenditure of staff time and City resources to agendize such an item would constitute prohibited government funded "communications that expressly advocates" for or against a measure.⁸
- H. Statements by Officials about Candidates at Public Meetings. There is no legal authority for the City Council, as a body, or for any individual Councilmember or official to advocate for or against an identified

⁶ Government Code § 3207.

⁷ *League of Women Voters of California v. Countywide Criminal Justice Coordination Committee* (1988) 203 Cal.App.3d 529, 560.

⁸ Government Code § 54964.
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candidate during a public meeting. Officials should refrain from making such statements as they are also deemed to be prohibited government funded “communications that expressly advocate” for or against a candidate.⁹

3) Appearance in Uniform or with City Vehicles/Equipment.

Employees who wear a City provided uniform required by their employment may not participate in any political activity while in uniform.¹⁰

Implementing this rule:

A. If a public employee wears a uniform that has become associated with a specific position at the City, he or she may not appear at any political function in that uniform **even when off duty**. Examples of uniformed employees would include, fire, police, code enforcement, animal control, and public works crews.

B. The City may not authorize a public officer, employee or candidate for elected office to appear in, on, next to, or otherwise appear to drive, use or otherwise operate City vehicles or equipment for personal political activities, as this would suggest a City endorsement of a particular candidate as well as being a misuse of public resources.

C. Candidates for office shall not be allowed to pose with City employees in uniform and shall not be allowed to pose with City equipment where there is an argument the picture will be used in future campaign materials.

4) Making Promises for Political Favors.

A public officer or employee may not promise to provide any person with a gift, money, promotion, job, or other form of compensation in return for a contribution or vote.¹¹

Implementing this rule:

A. Hiring. A public officer or employee may not promise to hire or appoint any person for a City position in return for a contribution or vote for or against any candidate or ballot measure.

B. Salaries. A public officer or employee may not promise to increase the pay rate, salary, or fringe benefits of any officer or employee in return for a contribution or vote for or against any candidate or ballot measure.

C. Gifts. A public officer or employee may not promise to provide any person with money, a loan, or a gift in return for a contribution or vote for or against any candidate or ballot measure.

⁹ *Id.*

¹⁰ Government Code § 3206.

¹¹ Government Code § 3204.

5) **Officers/Candidates Soliciting Contributions or Political Support from City Officers/Employees.**

An officer or employee of a local agency, or a candidate for elective office of a local agency, may not, directly or indirectly, solicit a political contribution from an officer or employee of that agency. The only exception is if an officer/candidate solicits contributions from “a significant segment of the public which may include officers or employees of that local agency.”¹²

Implementing this rule:

A. No Specific Solicitation of City Officers/Employees - Anywhere. Requests made to City officers/employees (either verbal or written) for contributions, or political support, are prohibited. This rule applies to both direct (by the officer/candidate) and indirect (through a third party) solicitations.

B. Broad Campaign Efforts are Allowed to Include City Officers/Employees. The one exception is that an officer/candidate may include City officers/employees if they are part of a broader campaign effort. For example, if a candidate were to send out 1,000 campaign mailers and 20 of them were sent to City employees as part of the larger group, that would not violate this rule. The key is that City officers/employees cannot be specifically approached for contributions/political support.

C. Solicitation of Relatives of a City Officer/Employee. Soliciting contributions or political support from the spouse or relative of a City officer/employee is permissible, so long as it is not a subterfuge for soliciting the City officer/employee.

D. Violation a Misdemeanor. Violation of this rule is a crime, punishable as a misdemeanor.

6) **What Public Officers and Employees May Do**

Off Duty Activities. Acting in his or her off-duty individual capacity, a public employee may engage in any political activities (like campaigning and fundraisers).

A. Hourly Employees. For purposes of this guideline, public employees are considered to be “off-duty” before the commencement of, or at the end of, any standard or overtime hours in their shift or that they are otherwise required to work. Public employees are considered to be “off-duty” for purposes of this guideline when they are on their approved lunch break or when they are on vacation, have taken an administrative leave day, or during a public holiday when not working.

B. Salaried Employees. Public employees who are salaried employees and do not have a regular shift or hours are generally considered to be “off-duty”

¹² Government Code § 3205.
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before the commencement of, or at the end of, the City's normal business hours. However, some salaried employees perform part of their official duties outside of the City's normal business hours (e.g. appearance at after-hours Council, committee and commission meetings). Salaried employees should be particularly careful to observe when they are and are not "off duty" for purposes of this guideline. A public employee is considered to be "off-duty" for purposes of this guideline when they are on approved lunch breaks or when they are on vacation, have taken an administrative leave day, or during a public holiday when not working.

C. Political Activities. Political activities include such things as attending a political rally, participating in a campaign committee, sitting on a phone bank, doing campaign-related work, posting campaign signs, registering voters, or advocating that persons contribute or vote for or against a candidate or ballot measure.

POLITICAL ACTIVITY

Laws governing the political activity of City officials have been established to: (1) safeguard public resources; (2) ensure the government remains nonpartisan and neutral in election matters; and (3) protect City employees from pressure to support or oppose candidates or ballot measures.

What Is Prohibited Political Activity?

You may not:

- use or authorize the use of City offices, stationery, telephones, vehicles, equipment or any other City property for any campaign activity;
- engage in fundraising or other campaign activities during hours for which you are paid to conduct City business;
- knowingly solicit contributions for or against a political candidate or ballot measure from any City official or employee. Soliciting a contribution from the spouse of a City officer or employee is permissible so long as it is not a subterfuge for soliciting the City employee;
- permit yourself to be solicited for a campaign contribution by another City official or employee;
- receive, deliver, or attempt to deliver a political contribution in City offices or in any office for which the City pays the majority of the rent.



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POLITICAL ACTIVITY

**What
Is
Permissible
Political
Activity?**

You may:

- perform volunteer work, endorse* candidates, and take a position on ballot measures, as long as these activities do not involve the use of City time, property, facilities or equipment;
- use your own funds to make political contributions, subject to applicable laws;
- solicit political contributions from persons *other* than City officials and employees on behalf of candidates or ballot measures, on personal time and not City time.
- use City resources to provide unbiased, balanced, and factual information about the purposes, provisions and estimated impact of City ballot measures. (Remember, however, that City funds may not be spent to urge the passage or defeat of any ballot measure.)

*City officials should make clear that they are acting as individuals and take *all* steps to avoid giving the impression that the City, as an organization, supports the candidate.