



City of Long Beach

Working Together to Serve

Office of the City Attorney

DATE: July 23, 2019

TO: Patrick H. West, City Manager

FROM: Charles Parkin, City Attorney
Amy R. Webber, Deputy City Attorney *ARW*

SUBJECT: Permitted Activities - City Ballot Measure

In anticipation of the upcoming election for the proposed measure extending the City's transactions and use tax ("Measure A"), this memorandum addresses the legal limitations on the participation of City employees and officials in such a campaign.

The general rule is that a city may not use public funds, including but not limited to city staff, equipment or supplies, to support or oppose any ballot measure. Specific examples of this rule are more particularly set forth below.

Permissible Activities

Specific examples of permitted activities include:

- Activities related to the preparation of an initiative (*League of Women Voters of California v. Countrywide* (1988) 203 Cal.App.3d 529.);
- Identifying programs/services to be cut if measure passes and posting reports and minutes on website if this is City's standard practice (FPPC Reg. 18420.1(e)(1), (e)(2); *Vargas v. Salinas* (2009) 46 Cal.4th 1);
- Preparing informational handout and making it available (but not mailing it) at public buildings (City Clerk's office & libraries);
- Including informational, non-partisan articles in regularly-published newsletter;
- City may author ballot argument for or against measure (Elec. Code § 9282; FPPC Reg. 18420.1(e)(3));
- State on record City's position regarding the measure at a regularly scheduled public meeting, where the meeting affords an opportunity to

Speak out in opposition. (*League of Women Voters of California, supra*, 203 Cal.App.3d at pp. 555-56.);

- Factually inform the public, media and others that local agency supports the measure, but local agency must do so in a way that is informational and not in a way that urges others to vote yes or no on the measure (*Stanson v. Mott*); and
- A departmental view presented by an agency employee upon request by a public or private organization, at a meeting of the organization (FPPC Reg. 18420.1(e)(4)).
- A voter registration program, as part of a continuing “education and outreach program,” which was deemed permissible in *Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174.

Additionally, local agency officials, employees, and staff may, on their own time, advocate a position on the ballot measure if it is made clear that they are acting in a personal capacity and not at the local agency’s expense.

Impermissible Activities

Examples of impermissible activities include the following:

- Purchase items such as bumper stickers, posters, advertising “floats,” or television and radio “spots” promoting the measure. (*Stanson v. Mott*);
- Disseminate campaign literature prepared by private proponents of the measure;
- Produce and distribute materials that advocate a yes or no vote on the measure;
- Contribute to campaigns supporting or opposing the measure;
- Expend funds for printing, office supplies or staff time to generate promotional materials on behalf of the measure;
- Use local agency staff or employees to campaign for approval of the tax during working hours.

Penalties for Violations

An individual who knowingly uses public resources to support or oppose a ballot measure will be required to reimburse the City for the value of those resources. In addition, the official or staff member may face criminal sanctions for theft, misuse of public funds and fraud.

This memorandum cannot cover every situation which may arise in connection with a ballot measure campaign. Accordingly, the City Council and City staff are encouraged to contact this office in the event that questions arise as to the propriety of any public action in connection with the campaign.

City staff has provided regular updates to the Measure A Advisory Committee, elected officials and the public on the use of Measure A funds since the measure was approved in 2016. Following the City Council's action on July 16, 2019 to place a measure extending the tax on the March 2020 ballot, we recommend that these activities be addressed in a manner consistent with these restrictions. If you have questions about particular issues, please do not hesitate to contact us.

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cc: Laura Doud, City Auditor
John Gross, Director of Financial Management
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Tom Modica, Assistant City Manager