

**City of Long Beach***Working Together to Serve***Memorandum****Office of the City Attorney**

**DATE:** October 12, 2022

**To:** Ethics Commission

**FROM:** Taylor Anderson, Deputy City Attorney

**SUBJECT:** Notice of Violations of the City's Ethics Policy

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Pursuant to your request to be informed of violations related to ethics in the City, please find a memorandum from outside counsel (Best, Best, and Krieger) regarding alleged campaign violations against Councilmember Al Austin and Vice Mayor Rex Richardson enclosed as Attachment 1.

The City Attorney's Office received a complaint that Vice Mayor Richardson was featured in public service announcement (PSA) style advertisements with a fire fighter on the Long Beach Fire Fighter IAFF Local 372 (LBFFA) Instagram page which "tag" the Councilmember's campaign social media accounts. Subsequently, the City Attorney's Office discovered that Councilmember Austin was also featured in similar PSA-style advertisements on the LBFFA Instagram page. Each video discusses a fire safety related issue and includes a statement from the Councilmembers thanking the community on behalf of the City Council and the Fire Department.

On page 4 of the enclosed memorandum, outside counsel outlines that statements made by the Councilmembers in these social media posts in which they purport to speak on behalf of the City Council, and where their campaign accounts are tagged, are likely a violation of City ethics rules since neither Councilmember has been authorized to speak on these issues on behalf of the City Council, and because such communications create the impression that the City supports their respective candidacies. Relevant sections of the "City's Ethics Guide for Long Beach City Officials & Employees" and City's Code of Conduct and Ethics cited in the memorandum are enclosed as Attachment 2.

A letter has been sent to the Fair Political Practices Commission (FPPC) seeking advice as to whether PSA-style advertisements qualify as advertisements under the California Political Reform Act and, if yes, whether any disclosure requirements are required. The letter to the FPPC is enclosed as Attachment 3.

While the Ethics Commission (Commission) does not have investigatory authority under the City Charter, the Commission does have the authority to make recommendations to the Mayor and City Council regarding changes to local law or policy related to

governmental ethics. If the Commission so desires, it could take any of the following actions:

- Recommend to the City Council that Vice Mayor Richardson and Councilmember Austin are censured for violating the City's Ethics Policies in speaking on behalf of the City Council without authorization and because such communications create the impression that the City supports the Councilmember's respective candidacies.
- Review, discuss, and make recommendations to amend Long Beach Municipal Code (LBMC) Ch. 1.26. Chapter 1.26 was adopted in 1992 and has not been amended since that time.
  - LBMC Ch. 1.26 contains a "black out period" prohibiting mass mailings and television and radio programs from being prepared, produced, printed, sent, broadcast, transmitted, delivered or distributed at public expense by or on behalf of anyone holding the office of Mayor or City Council after nomination document have been filed for any local, State, or federal office.
  - A similar "black out period" for mass mailings is required by FPPC regulations for certain exempted mass mailings within 60 days of an election (see. Gov. Code section 89000 – 89003).
  - Neither the FPPC regulations nor the LBMC address the use of PSA-style videos by candidates during election season at issue in the complaint. The Commission could explore whether this type of regulation and additional enforcement provisions, such as administrative citations, should be added.
- Review, discuss and make recommendations to the Mayor and City Council concerning any other campaign finance reform, lobbying, governmental ethics and conflicts of interest and report to the Council the effectiveness of these laws.

Relevant laws and the FPPC guidance on mass mailings mentioned in this memorandum are enclosed as Attachment 4.

Please do not hesitate to reach out to our office if you have any questions.

# **ATTACHMENT 1**



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**Memorandum**

**To:** J. Charles Parkin, City Attorney  
**From:** Ruben Duran, Special Counsel  
**Date:** September 30, 2022  
**Re:** *Complaint Against Vice Mayor Richardson and Councilmember Austin*

**I.**  
**BACKGROUND**

The City of Long Beach (“City”) received a complaint regarding social media posts on the Long Beach Fire Fighters, IAFF Local 372 (“LBFF”) Instagram account (@longbeachfirefighters) featuring Vice Mayor Rex Richardson, a candidate for Mayor, and Councilmember Al Austin, a candidate for California State Assembly. The posts include public service announcement-type videos featuring both officials with fire fighter personnel. The videos show the firefighters dressed in generic gear (i.e., not distinctive City uniforms) and in front of general apparatus and backdrops. Some of these posts tag the officials’ campaign and/or City Council accounts. The videos also feature Vice Mayor Richardson stating “your Long Beach City Firefighters and Long Beach City Council thank you for doing your part to keep our community safe.” Videos featuring Councilmember Austin include similar statements by the Councilmember. Additionally, these videos have been posted over the last several months—ahead of the upcoming November Election—but are otherwise not regularly posted content on the LBFF Instagram account. The City seeks an opinion as to whether the Councilmembers violated any state election and campaign laws or regulations by appearing in these videos and making statements on behalf of the City Council.

**II.**  
**BRIEF ANSWERS**

1. State law precludes the use of public resources, including the use of a city-managed website or social media account, for campaign activity. Nonetheless, to the extent that the subject social media account is not controlled by the City, then the linking of that account to the Councilmembers’ own campaign accounts would not constitute a use of public resources. However, because the Councilmembers are conducting City-related activities when being featured on the subject account, any posts appearing to support their candidacies could be construed as an endorsement by the City and may create the impression that City resources are being used for campaign-related purposes in violation of state law. Additionally, statements made by the



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Councilmembers in these social media posts in which they purport to speak on behalf of the City Council, and where their campaign accounts are tagged, are likely a violation of City ethics rules, as described in the City’s Ethics Guide for Long Beach City Officials & Employees<sup>1</sup> and the City’s Code of Conduct and Ethics,<sup>2</sup> since neither Councilmember has been authorized to speak on these issues on behalf of the City Council.

2. Under state law and regulations, campaign-related communications qualifying as advertisements must include an advertisement disclosure (i.e., the portion of a political message that identifies the committee that paid for or authorized the communication). To the extent that the public service announcements featuring the Councilmembers qualify as advertisements, then the required disclosures would apply. Based on the facts provided, these communications appear to qualify as campaign-related advertisements, particularly since they have been posted ahead of the election (as opposed to being regularly posted content on the LBFF Instagram account) and indicate support of the Councilmembers’ respective campaigns through the tagging of the officials’ campaign accounts. Further, other factors, such as the general appearance of the firefighters featured in them, suggest that whomever produced the video was aware of the general restrictions prohibiting public employees from appearing in campaign advertising in agency-issued uniforms or with agency-owned equipment and vehicles. Thus the videos otherwise look and sound like a campaign advertisement, notwithstanding the lack of any direct appeal for votes. Our office therefore recommends that the City Attorney’s Office seek an opinion from the Fair Political Practices Commission (FPPC) to determine whether these communications are subject to FPPC campaign advertisement disclosure and reporting requirements and whether violations occurred.

**III.**  
**ANALYSIS**

**A. Restrictions on the Use of Public Resources for Campaign Activities**

Government Code Section 54964

There are both common law and statutory prohibitions against the expenditure of public funds for candidate advocacy. The common law prohibition, discussed in *Stanson v. Mott* (1976) 17 Cal. 206, generally prohibits expenditures evidencing a “genuine effort” to persuade the electorate on either a ballot measure or candidate. (See also *League of Women Voters v. Countywide Criminal Justice Coordinating Commission* (1988) 203 Cal.App.3d 529.)

The statutory prohibitions limit the bar to expenditures for “express advocacy” of the approval or rejection of a clearly identified candidate. Government Code Section 54964<sup>3</sup> restricts

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<sup>1</sup> <https://www.longbeach.gov/globalassets/city-attorney/media-library/documents/ethics-guide-2020>.

<sup>2</sup> <https://www.longbeach.gov/globalassets/city-clerk/media-library/documents/ethics-commission/resources/code-of-conduct-and-ethics-04-19-21-final>.

<sup>3</sup> All statutory references are to the Government Code.



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the use of public funds for campaign-related communications, stating: “An officer, employee, or consultant of a local agency may not expend or authorize the expenditure of any of the funds of the local agency to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters.” (§ 54964(a).) The term “expenditure” is defined in Section 54964 as “a payment of local agency funds that is used for communications that expressly advocate the approval or rejection of a clearly identified ballot measure or the election or defeat of a candidate, by the voters.” (§ 54964(b)(3).) Similarly, the Political Reform Act (the “Act”), Section 82031, defines the term “independent expenditure” as a payment made “in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate[.]” In *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, the California Supreme Court held that the expenditure of public funds on “campaign activities,” regardless of the context, is prohibited.

Government Code Section 8314

Section 8314 makes it unlawful for elected officials to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law. (§ 8314(a).) Under its statutory definitions, Section 8314 prohibits any “use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to ... any local agency for which a monetary value may be estimated.” (§ 8314(b)(4).)

“Campaign activity” includes “an expenditure as defined in Section 82025.” (§ 8314(b)(2).) That excludes any expenditure where “it is clear from the surrounding circumstances that it is not made for political purposes.” (§ 82025.) Campaign activity does not include the “incidental and minimal use” of public resources, such as equipment or office space, for campaign purposes, such as “the referral of unsolicited political mail, telephone calls, and visitors to private political entities.” (§ 8314(b)(2).) “Public resources” means “any property or asset owned by the state or any local agency, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and state-compensated time.” (§ 8314(b)(3).)

Campaign Activity on LBFF Social Media Account

A City-run website or social media account likely qualifies as a “public resource” for purposes of Section 8314. The League of California Cities has recommended that city officials not add a link from their city’s website to their campaign websites, as doing so may result in an impermissible use of public resources.<sup>4</sup> The Fair Political Practices Commission has also opined that directly linking to a campaign website may result in a reportable political contribution. (*Footnote* Advice Letter No. A-98-114.) As such, the linking of a campaign website or social media account to a City-managed social media account would likely constitute an unauthorized use of public

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<sup>4</sup> See generally <https://www.cacities.org/UploadedFiles/LeagueInternet/58/58b2f2a3-69d6-4be3-9462-59e158b90878.pdf>.



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resources for a campaign activity under Section 8314, as opposed to a minimal or incidental use of those resources, since the posting of the link would arguably result in a substantial gain or advantage to the user for which a monetary value may be estimated. (*Cf. DiQuisto v. Cty. of Santa Clara* (2010) 181 Cal.App.4th 236, 275 [finding that the use of county e-mail system and staff time to draft email concerning ballot initiative qualified as a minimal use of public resources where staff member “created the text of the e-mail in about 10 minutes during her lunch period and that she distributed the e-mail once, with the push of a button.”].)

Here, to the extent that the LBFF’s Instagram or other social media accounts are not controlled by the City, then linking the officials’ campaign accounts to those social media accounts would not alone be considered a use of City resources. Still, although City officials have the constitutional right to free speech, the right is not absolute when involving matters of official City business, issues or concerns. Because the Councilmembers are conducting City-related activities when appearing on the LBFF Instagram account, any posts appearing to support their candidacies could be construed as an endorsement by the City absent some sort of disclaimer indicating otherwise. Additionally, statements made by the Councilmembers in these social media posts in which they purport to speak on behalf of the City Council, and where their campaign accounts are tagged, are likely a violation of City ethics rules since neither Councilmember has been authorized to speak on these issues on behalf of the City Council, and because such communications create the impression that the City supports their respective candidacies. Specifically, the City’s Ethics Guide for Long Beach City Officials & Employees provides: “City officials should make clear that they are acting as individuals and take *all* steps to avoid giving the impression that the City supports the candidate or ballot measure.” (Ethics Guide, at 26.) The City’s Code of Conduct and Ethics further directs all City representatives to “comply with all federal, State, and City laws and regulations as well as applicable policies and procedures.” (Code of Conduct and Ethics, at 2.) City officials are therefore advised to avoid conducting City-related business or speaking on behalf of the City when engaging in campaign activity on these social media accounts so as to ensure that City resources are not being used for campaign-related purposes in violation of Sections 54964 and 8314 and City policies and guidelines.

**B. Political Advertisements**

Electronic Media Advertisements

Under the Act, an “advertisement” is any general or public communication that is authorized and paid for by a committee, as defined in the Act,<sup>5</sup> for the purpose of supporting or

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<sup>5</sup> “Committee” means any person or combination of persons who directly or indirectly does any of the following:  
(a) Receives contributions totaling two thousand dollars (\$2,000) or more in a calendar year.  
(b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or  
(c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.



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opposing a candidate or candidates for elective office or a ballot measure or ballot measures. (§ 84501(a)(1).) Advertisements include mass mailings (including emails), paid telephone calls, newspaper, radio and television ads, billboards, yard signs, and electronic media ads. The Act requires communications qualifying as “advertisements” to include on ad disclosure. The content and formatting of these disclosures vary depending on the nature and source of the advertisement.

Section 84504.3 provides the general rule for displaying on ad disclosures required by Sections 84502, 84503, and 84506.5 on an electronic media advertisement:

(b) An electronic media advertisement that is a graphic, image, animated graphic, or animated image that the online platform hosting the advertisement allows to link to an internet website paid for by a committee shall comply with both of the following:

(1) Include the text “Who funded this ad?,” “Paid for by,” or “Ad Paid for by” in a contrasting color and a font size that is easily readable by the average viewer for the duration of the advertisement.

(2) The text shall be included or displayed as a hyperlink, icon, button, or tab to an internet website containing the disclosures required by Sections 84502, 84503, and 84506.5 in a contrasting color and in no less than 8-point font. (§ 84504.3.)

Section 84504.3(h)(1) further provides that electronic media advertisements distributed on social media are exempt from the general rule above:

An advertisement made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media, shall only be required to include the disclosures required by Sections 84502, 84503, and 84506.5 in a contrasting color that is easily readable by the average viewer and in no less than 10-point font on the cover or header photo of the committee’s profile, landing page, or similar location and shall not be required to include the disclosure required by subdivision (b) on each individual post, comment, or other similar communication.

FPPC Regulation 18450.9 also states, in relevant part:

(b) Electronic Media Advertisements on Social Media by Paid Third Parties: An advertisement subject to Section 84504.3(h)(1) that is made via a form of electronic media that allows users to engage in discourse and post content for which a committee pays a third party to post from a social media account that is the not committee’s account must

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A person or combination of persons that becomes a committee shall retain its status as a committee until such time as that status is terminated pursuant to Section 84214. (§ 82013.)





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include a tag, or otherwise include a link to, the social media profile or social media landing page of the committee that paid for the advertisement. (FPPC Regulation 18450.9(b).)

Public Service Announcements Featuring City Councilmembers

In this case, the public service announcements featuring the Councilmembers could be construed as advocacy of the Councilmembers' respective candidacies through the tagging of the officials' campaign accounts, which clearly identify their candidacies for elective office. Moreover, the subject videos are not regularly posted content on the LBFF Instagram account, but have only appeared in the months leading up to the November Election. As such, these communications are arguably being used for the purpose of supporting the Councilmembers' candidacies for their respective elective offices.

Notwithstanding these considerations, it is unclear from the facts provided whether these videos meet the statutory and regulatory requirements necessary to qualify as advertisements for purposes of the Act. For instance, the firefighters featured in these videos are dressed in generic gear and in front of general apparatus or backdrops, as opposed to being shown in distinctive uniforms or backgrounds attributable to the City. It is also unknown whether these communications have been authorized or paid for by a committee, as specified in FPPC Regulation 18450.2. To the extent these or other requirements do not apply to the present situation, then the subject videos would not meet the definition of advertisement for purposes of the Act, and it would be unlikely that a violation occurred under these provisions. If, on the other hand, the videos were to qualify as advertisements, then they would be subject to the disclosures required under the Act.

It should be noted that any person who knowingly or willfully violates the Act's campaign advertisement disclosure and reporting provisions is guilty of a misdemeanor. (§ 84510(a); § 91000.) In addition, any person who intentionally violates these provisions for the purpose of avoiding disclosure is liable in a civil or administrative action brought by the FPPC or any person for a fine up to three times the cost of the advertisement, including placement costs. (§ 84510(a)(2).) These remedies also apply to any person who purposely causes any other person to violate any provision of this article or who aids and abets any other person in a violation. (§ 84510(b).)

**IV.**  
**CONCLUSION**

Based on the foregoing, the tagging of the Councilmembers' campaign accounts to the public service announcements posted on the LBFF Instagram account would not be considered a use of City resources to the extent the account is not managed or controlled by the City. Nevertheless, the Councilmembers likely violated the City's ethics rules by speaking on these issues on behalf of the City Council without authorization to do so, and by being featured in



communications suggesting that the City supports the Councilmembers' candidacies for their respective elective offices.

Moreover, these communications arguably meet the definition of advertisement under applicable state law and regulations for the following reasons: the communications are not regularly posted content on the LBFF Instagram account, but are instead being posted in the months ahead of the November Election. The communications also include tags of the officials' campaign accounts, which indicate the endorsement of the Councilmembers' candidacies for their respective elective offices. Additionally, other factors, including the generic nature of the communications and the general appearance of the firefighters featured in them, suggests that these communications might have been produced with the campaign regulations prohibiting city-issued and identifiable uniforms and equipment in mind. Our office therefore recommends that the City Attorney's Office seek an opinion from the FPPC to determine whether these communications are campaign-related advertisements under FPPC standards and whether violations occurred.

Please feel free to contact our office with any questions or concerns.

RUBEN DURAN

# **ATTACHMENT 2**



**BEST BEST & KRIEGER**  
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**Ruben Duran**  
(213) 787-2569  
ruben.duran@bbklaw.com

October 10, 2022

**VIA EMAIL (ADVICE@FPPC.CA.GOV)**

Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95811  
[advice@fppc.ca.gov](mailto:advice@fppc.ca.gov)

Re: Request for Advice: City of Long Beach

To Whom It May Concern:

Best Best & Krieger LLP serves as special counsel to the City of Long Beach (“City”). The City has asked that we request the advice of the Commission with regard to the following factual scenario and the implications for the application of the campaign advertising provisions of the Political Reform Act (the “Act”) (Gov. Code, §§ 81000 - 91014).<sup>1</sup>

### **I. Factual Background**

Rex Richardson and Al Austin are elected members of the Long Beach City Council. Councilmember Richardson is running for election for Mayor of the City of Long Beach and Councilmember Austin is running for election to the California State Assembly. The elections for both offices will be held in November 2022.

Over the last several months, Councilmembers Richardson and Austin have appeared in public service announcements (“PSAs”) posted on the Long Beach Fire Fighters, IAFF Local 372 (“LBFF”) Instagram page. The PSAs feature Councilmembers Richardson and Austin with firefighter personnel speaking on public safety-related issues. The Councilmembers identify themselves in the PSAs by their official titles and indicate that they are speaking on behalf of the City Council. The firefighters featured in the PSAs are dressed in generic gear (i.e., not distinctive City uniforms) and appear in front of general apparatus and backdrops. Although neither the Councilmembers nor firefighters make any statements regarding the Councilmembers’ respective campaigns for public office, the posts include tags of the Councilmembers’ campaign social media accounts, which directly advocate for their election. It is unknown who produced or paid for these

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<sup>1</sup> All statutory references are to the Government Code, unless otherwise indicated. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.  
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PSAs, as the PSAs do not include any information (stated orally or in writing). Additionally, the PSAs are not regularly posted content on the LBFF Instagram page, but have only appeared in the months leading up to the November 2022 election.

## II. Questions Presented

In light of the foregoing facts, we seek the Commission's advice as to the following questions:

- (1) Do the PSAs qualify as advertisements under the Act?
- (2) If the PSAs do qualify as advertisements, then what advertising disclosure requirements of the Act apply?

## III. City's Analysis

### *Political Advertisements*

The Act defines "advertisement" as any general or public communication that is authorized and paid for by a committee, as defined in the Act,<sup>2</sup> for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or ballot measures. (§ 84501(a)(1).) An advertisement includes the following:

- (1) A communication broadcast by television or radio, or disseminated by print media;
- (2) An electronic media communication including a logo, icon, writing, image, recording, video, or other data posted, broadcast, or displayed electronically. This includes, but is not limited to advertisements in electronic messages, electronic message attachments, text messages, or advertisements that appear on Internet websites or webpages, social media, blogs, other generally accessible electronic communication systems. (Regulation 18450.1.)

Based on the facts provided, we believe that the PSAs meet the Act's definition of advertisement for the following reasons:

- The PSAs are in the form of electronic media communications as specified in Regulation 18450.1.

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<sup>2</sup> § 82013.

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- The PSAs have been posted on the LBFF’s Instagram page ahead of the election (as opposed to being regularly posted content on the LBFF Instagram account).
- Notwithstanding the lack of any direct appeal for votes, the PSAs feature Councilmembers representing the City and indicate support of the Councilmembers’ respective campaigns through the tagging of their campaign social media accounts, which directly advocate for their election.

Moreover, while the general appearance of the firefighters featured in the PSAs seems to evade restrictions prohibiting public employees from appearing in campaign advertising in agency-issued uniforms or with agency equipment,<sup>3</sup> the facts nonetheless suggest that these communications have been disseminated for the purpose of supporting these Councilmembers for elective office rather than educating the general public on public safety-related issues. We note that the Commission has previously concluded that public service announcements featuring elected officers are not considered contributions or expenditures under the Act so long as the communications do not contain express advocacy, refer to elective office, or solicit contributions. (*Clesceri* Advice Letter, No. A-04-131 [local television program with elected officers and public service announcements from city’s police and fire departments]; *Jay* Advice Letter, No. A-10-088 [public service announcements with photographs or other identification of elected officers].)

#### *Advertising Disclosure Requirements*

The Act requires communications qualifying as “advertisements” to include on ad disclosures. The content and formatting of these disclosures vary depending on the nature and source of the advertisement.

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(b) An electronic media advertisement that is a graphic, image, animated graphic, or animated image that the online platform hosting the advertisement allows to link to an internet website paid for by a committee shall comply with both of the following:

(1) Include the text “Who funded this ad?,” “Paid for by,” or “Ad Paid for by” in a contrasting color and a font size that is easily readable by the average viewer for the duration of the advertisement.

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<sup>3</sup> See §§ 3206, 8314.  
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(2) The text shall be included or displayed as a hyperlink, icon, button, or tab to an internet website containing the disclosures required by Sections 84502, 84503, and 84506.5 in a contrasting color and in no less than 8-point font. (§ 84504.3.)

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Regulation 18450.9 also states, in relevant part:

(b) Electronic Media Advertisements on Social Media by Paid Third Parties: An advertisement subject to Section 84504.3(h)(1) that is made via a form of electronic media that allows users to engage in discourse and post content for which a committee pays a third party to post from a social media account that is not the committee's account must include a tag, or otherwise include a link to, the social media profile or social media landing page of the committee that paid for the advertisement. (Regulation 18450.9(b).)

Thus, we believe that the aforementioned advertising disclosure requirements apply to the subject PSAs posted on the LBFF Instagram page.

We look forward to the Commission's response and are happy to answer any questions the Commission may have in formulating this advice to the City.

Very truly yours,



Ruben Duran  
for BEST BEST & KRIEGER LLP

Cc: Charles Parkin, City Attorney, City of Long Beach

# **ATTACHMENT 3**



## 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.
- use City resources to provide unbiased, balanced, and factual information about the purposes, provisions and estimated impact of City, state and school district bond issues and ballot measures, as long as all views on the subject are equally presented. (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 supports the candidate or ballot measure.

CHAPTER 2.07 - CODE OF ETHICS

2.07.010 - Written pledge.

Prior to assuming office or employment, every City employee, elected City official, City commission or committee member and redevelopment board or committee member shall pledge, in writing, to follow these principles while acting in their official capacity:

- A. To place the best interests of the City above all other interests.
- B. To uphold all laws, regulations, and policies.
- C. To take no action for the purpose of benefiting the official or employee personally.
- D. To make every effort to avoid a conflict of interest.
- E. To avoid disclosure of confidential information obtained in the performance of their duties or in their official capacity.
- F. To exercise prudence and good judgment at all times.
- G. To be fair, impartial, and unbiased in the decision making process.
- H. To treat each other and the public with respect.

(Ord. C-7839 § 1, 2003)

2.07.020 - Required ethics training.

In the event that a member of any City Charter Commission or advisory body fails to complete the ethics training required by California Government Section 53234 et seq., within the time period specified therein, that person shall automatically be removed from membership from the commission or advisory body.

(ORD-06-0050 § 1, 2006)

# **ATTACHMENT 4**

## CHAPTER 1.26 - MASS MAILINGS

## 1.26.010 - Mass mailings by candidates at public expense prohibited.

- A. No mass mailing and no television or radio program shall be prepared, produced, printed, sent, broadcast, transmitted, delivered or distributed at public expense by or on behalf of any person holding the office of Mayor or City Council member to any person residing within the jurisdiction from which the officer was elected or to which he or she seeks election after any such officer has filed the nomination documents as defined in Section 1.25.010 of the Long Beach Municipal Code or Section 6489 of the California Elections Code, whichever is applicable, for any local, State or federal office.
- B. "Mass mailing" as used in this Section means two hundred (200) or more substantially similar documents, including, but not limited to, any newsletter, report, survey or questionnaire, except: (1) mail which is sent in response to an unsolicited letter or other inquiry; or (2) any announcement, notice or invitation to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer and which the elected officer intends to attend; or (3) any announcement, notice or invitation to any official agency event or events for which the City is providing its facilities, its staff or other financial support.
- C. Any such notice or announcement may be printed on the elected officer's stationery and shall only include information which is pertinent to the purpose of the public meeting or event, such as, the date, time and place, description of the subject matter, identification of speakers or participants, an explanation of the problems or issues, directions to the location of the meeting, and a telephone number to call for additional information. The notice or announcement may include the name of the elected officer set forth in the letterhead, and on the return address portion of the envelope or post card, as well as a single mention of the elected officer's name in the body of the notice or announcement. Any said notice or announcement may not include the elected officer's signature or photograph.
- D. Any violation of this Section shall be deemed to constitute an infraction as provided in Section 17 of the California Penal Code, and penalties for such infraction shall be as set forth in Subsection 19.8 of the Penal Code.

(Ord. C-7010 § 1, 1992)



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## Prohibited Mass Mailings

The following information provides guidance on restrictions contained within the Act related to mass mailings sent at public expense under [Sections 89001 - 89003](#). While it is not possible to address all types of mailings here, public agencies and elected officers are encouraged to request advice for specific guidance. When requesting advice on a specific item, a sample of the mailing must be provided. There are laws outside of the Act that may apply to certain mailings, such as the misuse of public funds, so it is important to also contact your agency's legal counsel.

### Which Mailings are Prohibited?

A mailing is prohibited under the Act if each of the following criteria is met, unless the item meets one or more exceptions.

- 1. Delivery.** A tangible item, such as a newsletter or brochure, is delivered, by any means, including by transmission of a fax, to a person's residence, place of employment or business, or post office box. Note: Emails, website postings, text messages, and recorded telephone messages/robocalls are not considered tangible items and therefore, not subject to the Act's mass mailing at public expense restrictions.
- 2. Item Features an Elected Officer.** The item sent either features an elected officer affiliated with the agency (by including the officer's photo or signature, or singling out the officer by the manner his or her name or office is displayed), or the item includes a reference to an elected officer affiliated with the agency and the item is prepared or sent in cooperation with the elected officer.
- 3. Public Moneys.** Any of the costs of distribution are paid for with public moneys, or if public funds are not used for the actual distribution, in excess of \$50 in public moneys is used to design, produce, or print the item and the design, production, or printing is done with the intent of

sending the item other than as permitted by the Act.

4. **Mass Mailing.** More than 200 substantially similar items are sent in a calendar month, excluding any item sent in response to an unsolicited request.

## Permissible Mailings Except when Sent within 60 Days of the Officer's Election

Generally, mass mailings of types listed below are not prohibited by Section 89001. However, such mailings may not be sent within 60 days of an election by or on behalf of a candidate whose name will appear on the ballot at that election.

- **Letterhead/Roster Listing.** A mailing in which an elected officer's name appears only in the letterhead or logotype of the stationery, forms, and envelopes of the agency, or in a roster listing containing the names of all elected officers of the agency. The names of all elected officers must appear in the same size, font type, color, and location. The item may not contain an elected officer's photo, signature, or any other reference to the officer.
- **Meeting Announcement.** A public meeting announcement sent to an elected officer's constituents so long as the meeting is directly related to the elected officer's governmental duties and he or she intends to attend. The item may not contain the elected officer's photo or signature and may include only a single mention of the elected officer.
- **Event Announcement.** An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff, or other financial support. The item may not contain the elected officer's photo or signature and may include only a single mention of the elected officer.
- **Business Cards.** Business cards that do not contain an elected officer's photo or more than one mention of the elected officer's name.

## Normal Agency Business Practices

The following items are not restricted by the Act's mass mailing prohibition.

- Press releases sent to members of the media

- Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer
- Any intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff
- Tax bills, checks, and similar documents, in any instance where use of the elected officer's name, office, title, or signature is necessary to the payment or collection of the funds
- A telephone directory, organization chart, or similar listing or roster that includes the names of elected officers as well as other individuals in the agency sending the mailing

## Constituent Requests

Responses to unsolicited requests are not subject to the Act's mass mailing restrictions. "Unsolicited request" means a written or oral communication that specifically requests a response and that is not requested or induced by the elected officer or any third person acting at the officer's behest. If a person requests continuing information, an elected officer may send multiple responses directly related to that subject for up to 24 months.

### ***Example:***

A city councilmember received calls from 50 constituents with questions related to a nearby retail shopping center project. The councilmember may send a response (e.g., flyer), which directly addresses their questions, to those 50 people. The 50 flyers would not be subject to the Act's mass mailing restrictions and therefore, could contain the councilmember's photo and/or signature. In addition, the 50 flyers would not count toward the 200 item per calendar month limit, so the councilmember could send the flyer (or a substantially similar item) to up to 200 other constituents who did not request the information.

## Frequently Asked Questions

**Q.** A city would like to send a newsletter by email, which contains pictures of the mayor and city council members at a groundbreaking ceremony. Is this permissible?

**A.** Yes. Emails are not considered "tangible" and therefore, not subject to the Act's mass mailing prohibitions even when sent within 60 days of an official's

election. However, there may be laws outside of the Political Reform Act that apply, such as the misuse of public funds.

**Q.** A State Senator plans to send a town hall meeting announcement by mail. One side of the item will include the meeting details and include one use of the Senator's name. The reverse side will be prepared with the Senator's name only in the return address of the mailer. Is the mailing permissible?

**A.** Yes, so long as the mailing is not sent within 60 days of an election for which the Senator is on the ballot. Each mention of the Senator's name falls within applicable exceptions (meeting announcement and letterhead/envelope).

**Q.** A school district publishes a newsletter mentioning the activities of its elected board members, which is funded in part by district funds and in part through advertising revenues. Each month the newsletter is mailed to all employees of the school district, homes of the students, and various other community members. Is it permissible to include information related to various events at school sites throughout the district and note the school board members who were in attendance?

**A.** No. Assuming that more than 200 newsletters are mailed, this item meets the four criteria of a prohibited mass mailing.

**Q.** A City Chamber of Commerce sends a bi-monthly newsletter mentioning the names of city council members to its 500 members and certain other business contacts and city officials. The Chamber receives money directly from the city as part of the city's budget for economic enhancement projects, and indirectly, through a lease subsidy. Would it be permissible for the Chamber to include photos of city council members in the newsletter?

**A.** Yes. Since the city does not expressly provide funding for the production, publishing, or distribution of the newsletter, the "public moneys" criteria is not met so the mailing is permissible.

**Q.** The State Treasurer wishes to advertise a college savings bond program by placing ads in newspapers of general circulation. Is this permissible?

**A.** Yes. A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications; therefore, the Act's mass mailing restrictions do not apply provided the newspaper is not delivered to nonsubscribers.

**Q.** A county supervisor would like to send an announcement to each of her constituents' homes with information about an upcoming special event sponsored by the county. One side of the mailer will be in English, the reverse



side will be in Spanish, and the county supervisor's name will be included on both sides. Is this mailing permissible?

**A.** Yes, so long as the mailing is not sent within 60 days of an election for which the supervisor is on the ballot. Identical items in two different languages would be considered two different mailings; therefore, the officer's name may be mentioned once on each side.

**Q.** A city councilmember plans to send a mailer inviting constituents to a neighborhood meeting. The councilmember's name is only mentioned once but the mailer also references the councilmember's district. Is this mailing permissible?

**A.** No. The mention of the councilmember's district is considered a second reference to the councilmember; therefore, the mailing is prohibited.

**Q.** A city councilmember would like to send a flyer on his letterhead to constituents who surround a particular retail shopping center. The councilmember's name is included only in the letterhead, but the flyer includes other references to the councilmember such as "I" and "we." Is this mailing permissible?

**A.** No. Although generally a mailing sent on an elected officer's letterhead falls under the "letterhead" exception, this exception does not apply if the item makes any other reference to the elected officer. The Commission has determined that using pronouns such as "I" and "we" are considered additional references to the elected officer.

## Prohibited Mass Mailings

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### How to Request Advice

If you have questions about your obligations under the Act you can request advice directly from FPPC staff

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### GOVERNMENT CODE - GOV

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

### CHAPTER 9. Incumbency [89000 - 89003]

( Chapter 9 added June 4, 1974, by initiative Proposition 9. )

**89000.** Any provision of law to the contrary notwithstanding, the order of names of candidates on the ballot in every election shall be determined without regard to whether the candidate is an incumbent.

(Added June 4, 1974, by initiative Proposition 9.)

**89001.** No newsletter or other mass mailing shall be sent at public expense.

(Amended June 7, 1988, by initiative Proposition 73, Sec. 3. Note: This section was added on June 4, 1974, by initiative Prop. 9.)

**89002.** (a) Except as provided in subdivision (b), a mailing is prohibited by Section 89001 if all of the following criteria are met:

(1) An item sent is delivered, by any means, to the recipient at the recipient's residence, place of employment or business, or post office box. The item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

(2) The item sent either:

(A) Features an elected officer affiliated with the agency that produces or sends the mailing.

(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency that produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

(3) Any of the costs of distribution are paid for with public money or the costs of design, production, and printing exceeding fifty dollars (\$50) are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this section.

(4) More than 200 substantially similar items are sent in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).

(b) Notwithstanding subdivision (a), a mass mailing of the following items is not prohibited by Section 89001:

(1) An item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms, including "For Your Information" or "Compliments of" cards or stamps, and envelopes of the agency sending the mailing, or of a committee of the agency, or of the elected officer, or in a roster listing containing the names of all elected officers of the agency. For purposes of this section, the return address portion of a self-mailer is considered the envelope. In any such item, the names of all elected officers must appear in the same type size, typeface, type color, and location. The item shall not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted by this section. The item may, however, include the elected officer's office or district number and the elected officer's name or district number in the elected officer's internet website address or electronic mail address.

(2) A press release sent to members of the media.

(3) An item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer, including all local, state, and federal officers or entities.

(4) An intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff.

(5) An item sent in connection with the payment or collection of funds by the agency sending the mailing, including tax bills, checks, and similar documents, in any instance in which use of the elected officer's name, office, title, or signature is necessary to the payment or collection of the funds. The item shall not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted by this section.

(6) Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance in which the mailing of the item is essential to the functioning of the program, the item does not include the elected officer's photograph, and use of the elected officer's name, office, title, or signature is necessary to the functioning of the program.

(7) Any legal notice or other item sent as required by law, court order, or order adopted by an administrative agency pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2), and in which use of the elected officer's name, office, title, or signature is necessary in the notice or other mailing. For purposes of this paragraph, inclusion of an elected officer's name on a ballot as a candidate for elective office, and inclusion of an elected officer's name and signature on a ballot argument, shall be considered necessary to that notice or other item.

(8) A telephone directory, organization chart, or similar listing or roster which includes the names of elected officers as well as other individuals in the agency sending the mailing, in which the name of each elected officer and individual listed appears in the same type size, typeface, and type color. The item shall not include an elected officer's photograph, name, signature, or any other reference to an elected officer, except as specifically permitted by this section.

(9) (A) An announcement of any meeting or event of either of the following:

(i) An announcement sent to an elected officer's constituents concerning a public meeting that is directly related to the elected officer's incumbent governmental duties, is to be held by the elected officer, and that the elected officer intends to attend.

(ii) An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.

(B) Any announcement provided for in this paragraph shall not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name except as permitted elsewhere in this section.

(10) An agenda or other writing that is required to be made available pursuant to Sections 11125.1 and 54957.5, or a bill, file, history, journal, committee analysis, floor analysis, agenda of an interim or special hearing of a committee of the Legislature, or index of legislation, published by the Legislature.

(11) A business card that does not contain the elected officer's photograph or more than one mention of the elected officer's name.

(c) For purposes of this section, the following definitions apply:

(1) "Elected officer affiliated with the agency" means an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency or appoints one or more members of the agency.

(2) "Features an elected officer" means that the item mailed includes the elected officer's photograph or signature or singles out the elected officer by the manner of display of the elected officer's name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.

(3) "Substantially similar" is defined as follows:

(A) Two items are "substantially similar" if any of the following applies:

(i) The items are identical, except for changes necessary to identify the recipient and the recipient's address.

(ii) The items are intended to honor, commend, congratulate, or recognize an individual or group, or individuals or groups, for the same event or occasion, are intended to celebrate or recognize the same holiday, or are intended to congratulate an individual or group, or individuals or groups, on the same type of event, such as birthdays or anniversaries.

(iii) Both of the following apply to the items mailed:

(I) Most of the bills, legislation, governmental action, activities, events, or issues of public concern mentioned in one item are mentioned in the other.

(II) Most of the information contained in one item is contained in the other.

(B) Enclosure of the same informational materials in two items mailed, such as copies of the same bill, public document, or report, shall not, by itself, mean that the two items are "substantially similar." The informational materials shall not include the elected officer's name, photograph, signature, or any other reference to the elected officer except as permitted elsewhere in this section.

(C) An item is only considered substantially similar to other items sent by the same official, not to items sent by other officials in the same agency.

(4) "Unsolicited request" is defined as follows:

(A) A written or oral communication, including a petition, that specifically requests a response and is not requested or induced by the recipient elected officer or by any third person acting at the recipient elected officer's behest. However, an unsolicited oral or written communication, including a petition, that does not contain a specific request for a response shall be deemed to constitute an unsolicited request for a single written response.

(B) An unsolicited request for continuing information on a subject shall be deemed an unsolicited request for multiple responses directly related to that subject for a period of time not to exceed 24 months. An unsolicited request to receive a regularly published agency newsletter shall be deemed an unsolicited request for each issue of that newsletter.

(C) A previously unsolicited request to receive an agency newsletter or mass mailing on an ongoing basis shall not be deemed to have become solicited by the sole fact that the requestor responds to an agency notice indicating that, in the absence of a response, the requestor's name will be purged from the mailing list for that newsletter or mass mailing. A notice in the following language shall be deemed to meet this standard:

"The law does not permit this office to use public funds to keep you updated on items of interest unless you specifically request that it do so."

Inclusion of a similar notice in other items does not constitute a solicitation under this section.

(D) A communication sent in response to an elected officer's participation at a public forum or press conference, or to an elected officer's issuance of a press release, shall be deemed an unsolicited request.

(E) A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications.

*(Amended by Stats. 2021, Ch. 50, Sec. 222. (AB 378) Effective January 1, 2022.)*

**89003.** Notwithstanding subdivision (b) of Section 89002, a mass mailing, as defined in Section 82041.5, that meets the criteria of subdivision (a) of Section 89002 shall not be sent within the 60 days preceding an election by or on behalf of a candidate whose name will appear on the ballot at that election, except as provided in paragraphs (2) to (8), inclusive, and paragraph (10) of subdivision (b) of Section 89002.

*(Added by Stats. 2017, Ch. 827, Sec. 2. (SB 45) Effective January 1, 2018.)*