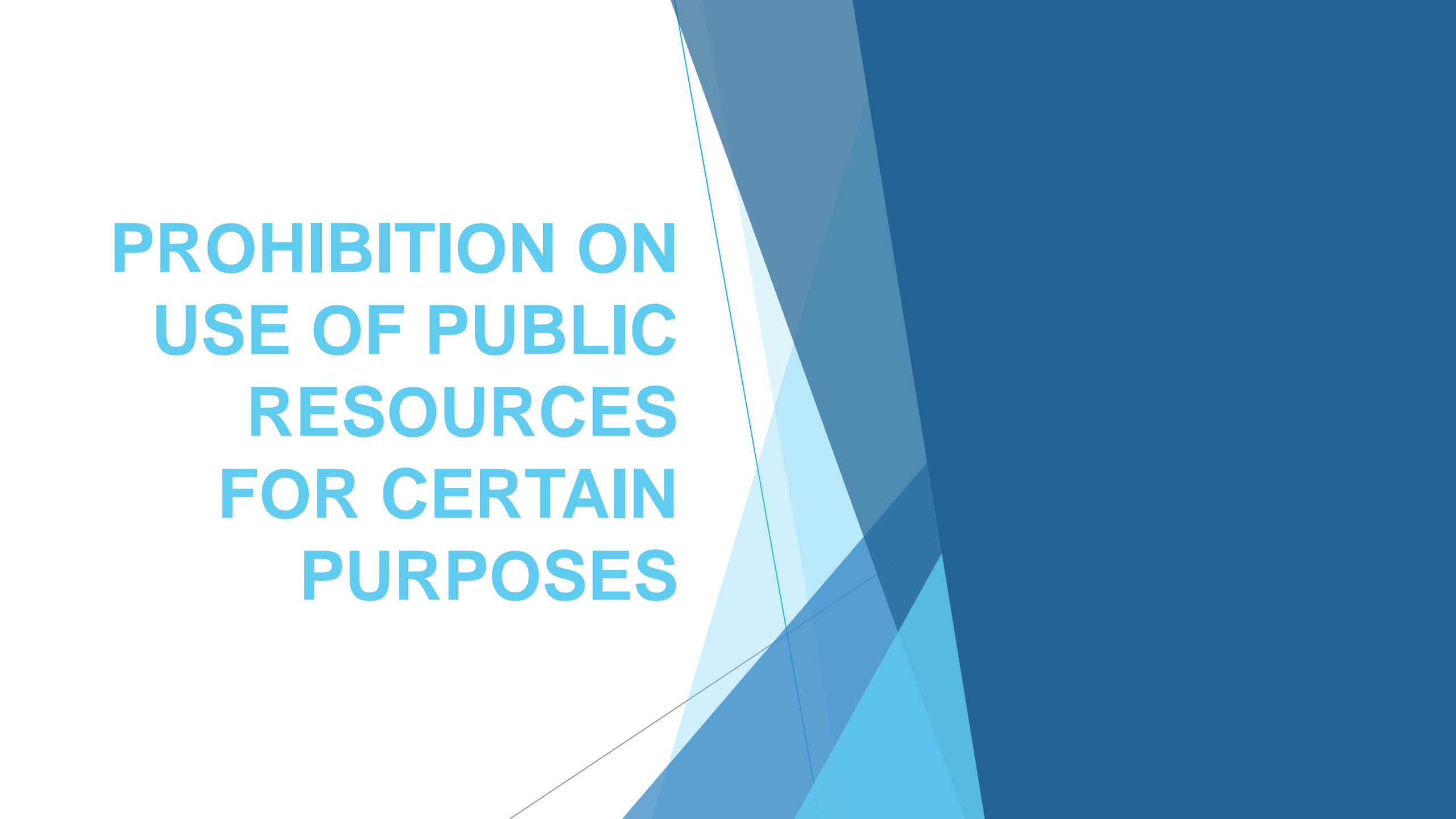


Mass Mailings and Political Advertisements

Ethics Commission

December 14, 2022



**PROHIBITION ON
USE OF PUBLIC
RESOURCES
FOR CERTAIN
PURPOSES**

PROHIBITION ON USE OF PUBLIC RESOURCES FOR CERTAIN PURPOSES

“It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.
(Gov. Code § 8314(a))

PROHIBITION ON USE OF PUBLIC RESOURCES FOR CERTAIN 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
 - City compensated time (e.g. staff)
- ▶ An official is considered making “use” of public resources, including staff time, if the use 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.
- ▶ **This law applies all the time.** However, violations related to use of public resources for campaign activity are more likely to occur during election season.

PROHIBITION ON USE OF PUBLIC RESOURCES FOR CERTAIN PURPOSES

A public officer/employee may not use City funds or resources to support personal purposes.

- “Personal purpose” means those activities the purpose of which is for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business.
- It does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.

EXAMPLES OF PROHIBITED ACTIVITIES

- **NO** using City resources and funds to run an eBay store
- **NO** taking personal vacations to Hawaii paid for with City funds
- **NO** using the PW team to remodel your house
- **NO** using City vehicles for personal home improvement projects because you don't have a truck to haul materials
- **NO** using LBTV resources to run a true crime podcast or YouTube Cooking Channel

PROHIBITION ON USE OF PUBLIC RESOURCES FOR CERTAIN PURPOSES

A public officer/employee may not use City funds or resources to support personal political activities.

- “Campaign activity” means an activity constituting a contribution or an expenditure under the Political Reform Act.
- It does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.

EXAMPLES OF PROHIBITED ACTIVITIES

- **Office Equipment** including City copy machines, faxes, computers, printers or other office equipment to design, make, or distribute political pamphlets, flyers, signs, or other materials.
- **Telephones/E-Mail/Social Media** - City phones for political cold calls, calls to any campaign organizations; City phones or equipment (e.g., smart phone); City provided email addresses; and City social media sites.
- **Office Space** - City office or workspace to hold political meetings, organize political events, prepare arguments, ballot statements, advertisements, etc.
- **City Vehicles** – Use of City vehicles driven by City staff, including at parades, to campaign
- **LBTV Equipment** – City-owned speakers, mics, electronic equipment, staff

PROHIBITION ON USE OF PUBLIC RESOURCES FOR CERTAIN PURPOSES

- ▶ Public officers and employees may not engage in political activities during work hours
- ▶ EXAMPLES OF PROHIBITED ACTIVITIES
 - **NO** distributing political pamphlets, flyers, or other materials, or post political signs.
 - **NO** attending campaign meetings, rallies or other campaign-related functions.
 - **NO** making campaign telephone calls.
 - **NO** wearing of campaign buttons or signs while on duty or while on City property.
 - **NO** making copies, stuffing envelopes, or writing campaign statements.
 - **NO** advocating or informing fellow City employees about campaign issues.
 - **NO** performing any other campaign-related tasks while on duty.

NO POLITICAL ACTIVITIES IN UNIFORM

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



PROHIBITION ON USE OF PUBLIC RESOURCES FOR CERTAIN PURPOSES

- ▶ Any person who intentionally or negligently violates this section is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day on which a violation occurs, **plus three times the value of the unlawful use of public resources.**
- ▶ If two or more persons are responsible for any violation, they shall be jointly and severally liable for the penalty.

MASS MAILINGS

MASS MAILINGS

Two types of mass mailing regulations: (1) mass mailings sent at public expense and (2) mass mailings sent using private expense to support or oppose a candidate or ballot measure.

The Political Reform Act (Act) governs both types of mass mailings.

LBMC Ch. 1.26 governs mass mailings sent at public expense in the City.

Regulations for mass mailing sent at public expense apply all the time. Issues concerning mass mailings sent to support or oppose a candidate or ballot measure are more likely to occur during election season.

There are also two “blackout periods” prohibiting massing mailings and other expenditures during certain periods within campaign season.

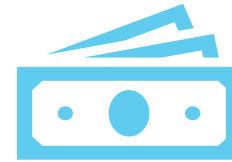
A mailing is prohibited if each of the following criteria is met, unless the item meets one or more exceptions:



Delivery of a tangible item



Item features an elected officer



Use of public funds

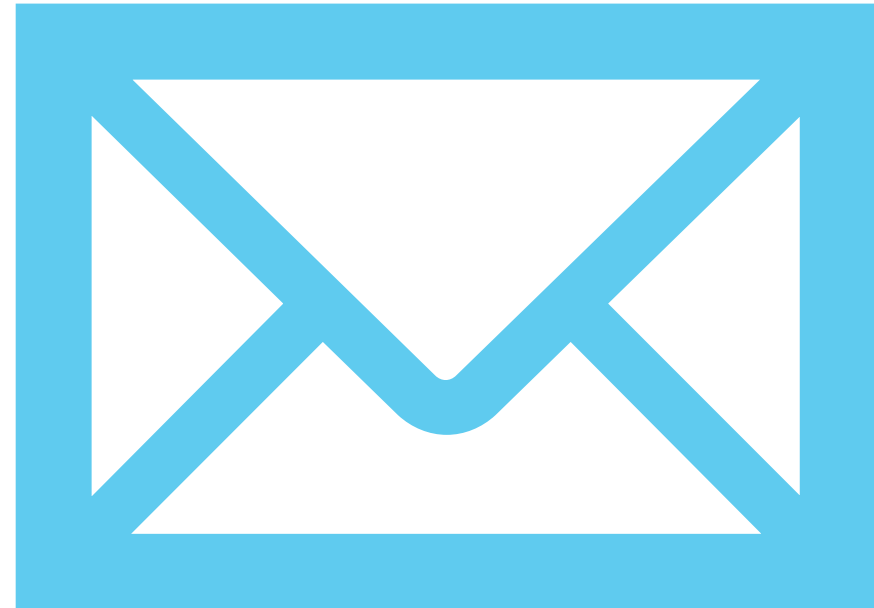


200 or more substantially similar documents

**ELEMENTS FOR MASS MAILINGS
SENT AT PUBLIC EXPENSE**

DELIVERY

- ▶ A tangible item must be delivered, by any means, including by transmission of a fax, to a person's residence, place of employment or business, or post office box.
- ▶ “Tangible items”
 - Include newsletters, brochures, fliers
 - Emails, website postings, text messages, and recorded telephone messages/robocalls are not considered tangible items and therefore, not subject to the Act's restrictions for mass mailing sent at public expense.



FEATURES AN ELECTED OFFICIAL

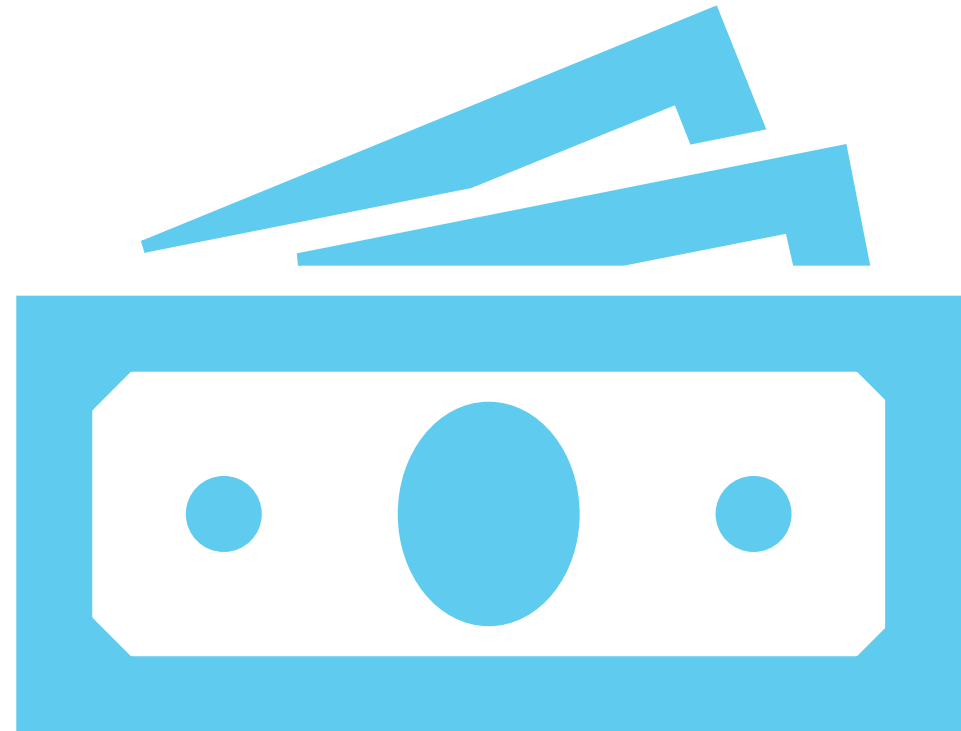
The item sent features either:

- ▶ An elected officer affiliated with the agency (*by including the officer's photo or signature or singling out the officer by the manner their 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.



PUBLIC FUNDS

- ▶ Any of the costs of distribution are paid for with public moneys OR
- ▶ If public funds are not used for the actual distribution, \$50 or more 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.



MASS MAILING

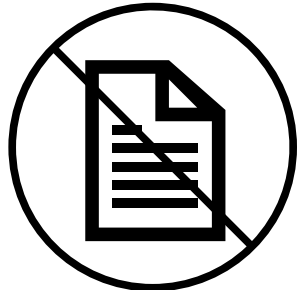
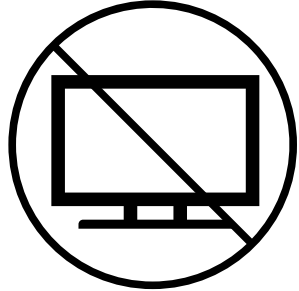
More than 200 substantially similar items are sent in a calendar month, excluding any item sent in response to an unsolicited request



EXCEPTIONS TO MASS MAILINGS SENT AT PUBLIC EXPENSE

- ▶ Responses to Unsolicited Letter or Inquiry - Mail which is sent in response to an unsolicited letter or other inquiry
- ▶ Letterhead/Roster Listing - The 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.
- ▶ 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.
- ▶ 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.
- ▶ Business Cards - Business cards that do not contain an elected officer's photo or more than one mention of the elected officer's name.

MASS MAILINGS PROHIBITED AFTER NOMINATION PAPERS FILED



Under LBMC section 1.26.010, once Mayor or a Councilmember files nomination papers for re-election or another office (local, county, State, Federal), the following **shall not** be prepared, produced, printed, sent, broadcast, transmitted, delivered or distributed at public expense by or on behalf of said Mayor or Councilmember:

- ❖ **200 or more substantially similar documents**, including, but not limited to, any newsletter, report, survey or questionnaire
- ❖ **Television programs (LBTV)**
 - Includes Social Media (e.g. Facebook Live, Instagram Live, YouTube) appearances
 - Exception - Council meetings and events where the public is present
- ❖ **Radio programs**
 - ❖ Includes podcasts

NO MASS MAILINGS WITHIN 60 DAYS OF ELECTION

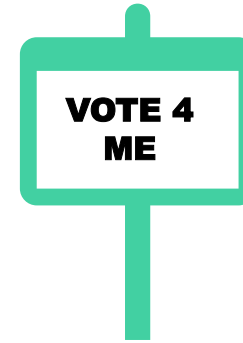
- ▶ Mass mailing exempt under the Act **MAY NOT** be sent **within 60 days of an election** by or on behalf of a candidate whose name will appear on the ballot at that election.
- ▶ This means the following mailings (that are usually allowed) **MAY NOT** be sent within 60 days of an election:
 - Responses to Unsolicited Letter or Inquiry
 - Letterhead/Roster Listing
 - Meeting Announcement
 - Event Announcement
 - Business Cards
- ▶ This FPPC rule is more restrictive than LBMC Ch. 1.26, it applies in the City to incumbent candidates

FPPC REGULATIONS ON ADVERTISEMENTS

DEFINITIONS



An advertisement is a communication that is made for the purpose of supporting or opposing a candidate or ballot measure.

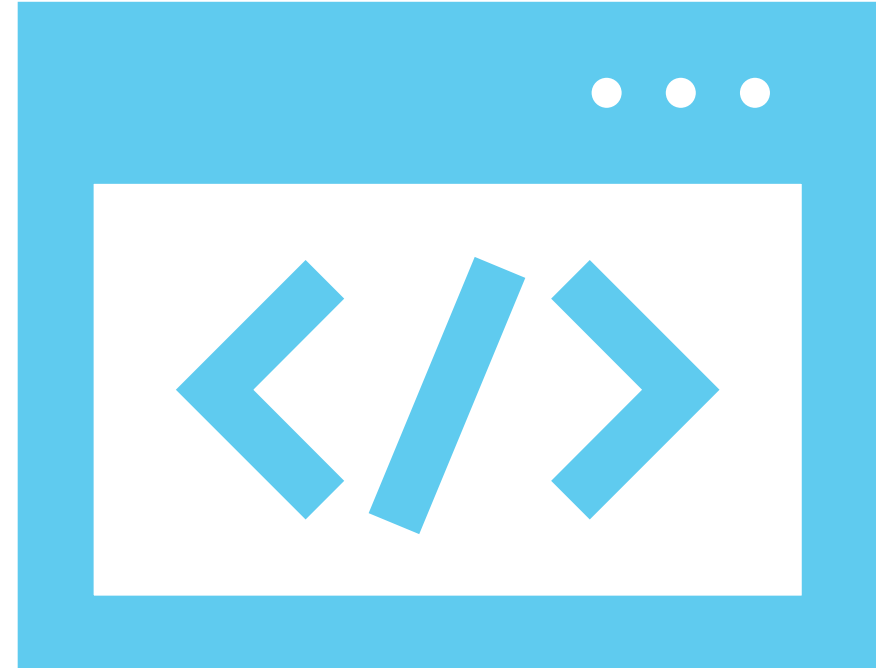


Includes mass mailings (including emails), paid phone calls, radio ads, television/video ads, electronic media ads, newspaper and magazine ads, billboards, yard signs, door hangers, flyers, posters, social media ads, websites, listening applications (e.g. Pandora, Spotify, Apple Podcasts, etc.)

ADVERTISEMENTS

ELECTRONIC MEDIA ADVERTISEMENT

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



The portion of a political message that identifies the person or entity who paid for or authorized the communication.

“Ad paid for by committee name” is generally the basic disclosure required by the Act on most campaign communications sent by a committee.

ADVERTISEMENT DISCLOSURE

A payment that is made at the request, suggestion, or solicitation of, or made in cooperation, consultation, coordination or concert with the public official or committee; and for a legislative, governmental or charitable purpose.

BEHEST PAYMENT

A person or entity qualifies as a committee under the Act if they:

- Receive contributions for political purposes of \$2,000 or more per year; or
- Make independent expenditures on California candidates or ballot measures of \$1,000 or more per year; or
- Make contributions to California candidates or ballot measures of \$10,000 or more per year.

EXAMPLES OF COMMITTEES

- Candidate's campaign committee
- Ballot measure committee
- General purpose committee
- Political party committee
- Slate mailer organization
- Major donor
- Any person or entity making independent expenditures on candidates or ballot

COMMITTEE

A contribution is any payment made for political purposes for which a donor does not receive full and adequate consideration.

A payment is made for political purposes if it is:

- ▶ For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or
- ▶ Received by or made at the behest of the following or any agent thereof:
 - A candidate;
 - A controlled committee;
 - An official committee of a political party, including a state central committee, county central committee, assembly district committee, or any subcommittee of such committee; or
 - An organization formed or existing primarily for political purposes, including, but not limited to, a political action committee established by any membership organization, labor union, or corporation

CONTRIBUTION

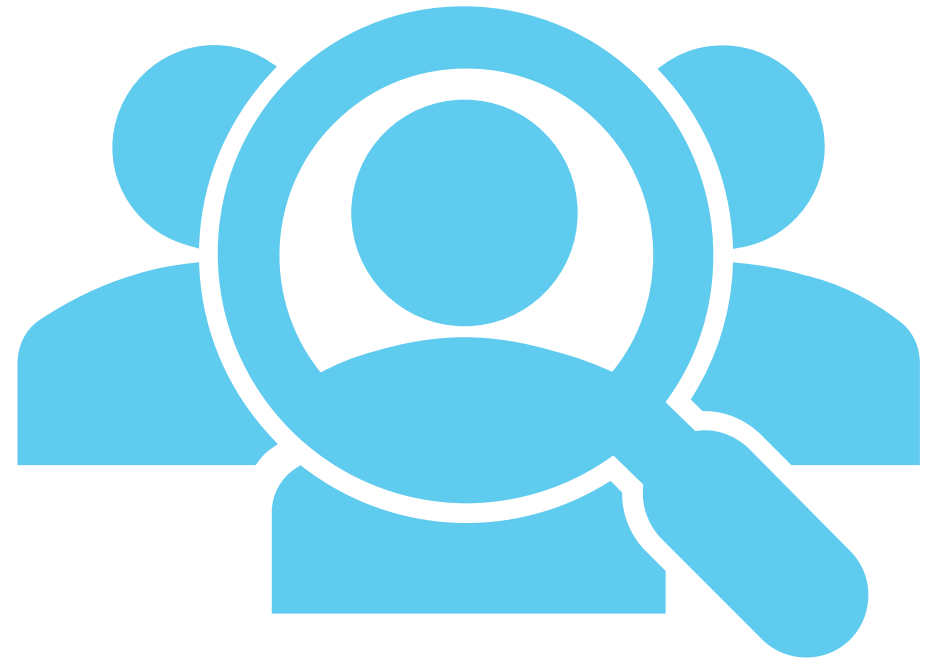
Any monetary or nonmonetary payment made by any person, other than the persons or organizations that is used for communications that expressly advocate the nomination, election, or defeat of a clearly identified candidate or candidates, or the qualification, passage, or defeat of a clearly identified ballot measure.

EXPENDITURE

CLEARLY IDENTIFIED

A single candidate is considered “clearly identified” if the communication:

- ▶ States the candidate’s name;
- ▶ Makes unambiguous reference to the candidate’s office or status as a candidate; or
- ▶ Unambiguously describes the candidate in any manner



A communication is considered to “expressly advocate” the nomination, election, or defeat of a candidate or the qualification, passage, or defeat of a measure if:

- ▶ It contains express words of advocacy such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for,” OR
- ▶ Within 60 days before an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.

EXPRESSLY ADVOCATE

An expenditure made by any person, including a payment of public moneys by a state or local governmental agency, in connection with a communication which expressly advocates:

- ▶ The election or defeat of a clearly identified candidate or the qualification,
- ▶ The passage or defeat of a clearly identified measure, or
- ▶ Taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

INDEPENDENT EXPENDITURE

ADVERTISING DISCLOSURE REQUIREMENTS

ADVERTISING DISCLOSURE REQUIREMENTS GENERALLY

Generally, the Act requires advertising disclosures on communications qualifying as “advertisements” (see *Gov. Code Sections 84502, 84503, and 84506.5*)

Basic disclosure rules apply to campaign materials disseminated by a candidate for their own election campaign because it is generally clear to the public that the candidate is sending the communication.

Stricter disclosure rules apply to ballot measure advertisements and independent expenditure advertisements on candidates and ballot measures, because it is less clear to the public who is responsible for these ads.

Requirements on the content and formatting of disclosures required differ depending on the type of the advertisement and the source

ADVERTISING DISCLOSURE REQUIREMENTS GENERALLY

- ▶ Generally, the basic disclosure must state: “Ad Paid for by [Committee Name].”
- ▶ In most cases, any recipient committee (except a candidate committee or a political party committee) must also list top three contributors of \$50,000 or more.
- ▶ An advertisement supporting or opposing a candidate that is paid for by an independent expenditure must include a statement that it was not authorized by a candidate or a committee controlled by a candidate.
- ▶ If the advertisement was authorized or paid for by a candidate for another office, the expenditure shall instead include a statement that “This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.”

ADVERTISING DISCLOSURE REQUIREMENTS GENERALLY

- ▶ Written disclosures must be printed clearly and legibly.
- ▶ Spoken disclosures must be spoken clearly.
- ▶ Disclosures must also be written or spoken in the same language used in the advertisement.
- ▶ Specific requirements for color contrast, font, print size and time appearing on screen or read during a telephone or radio advertisement are listed in FPPC's website.
- ▶ Political signs (e.g. yard signs, banners) are not covered by the FPPC's regulations. CA Department of Transportation and City Ordinances regulate the placement of those signs. Rules are included in the City's Candidate Handbook.

ELECTRONIC MEDIA ADVERTISEMENTS ONLINE GENERALLY

Generally, any 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 must comply with the following:

- 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.
- The text shall be included or displayed as a hyperlink, icon, button, or tab to an internet website containing the disclosures required by Gov. Code Sections 84502, 84503, and 84506.5 in a contrasting color and in no less than 8-point font.
- Example – Pop up ad on a website without a video

ELECTRONIC MEDIA ADVERTISEMENTS ON SOCIAL MEDIA

- ▶ Social media electronic ads are exempt from the requirements on the previous page.
- ▶ Required to include “Ad paid for by” and the name of the committee:
 - In a contrasting color that is easily readable by the average viewer
 - In no less than 10-point font on the cover or header photo of the committee’s profile, landing page, or similar location
- ▶ Not required to include advertising disclosures required by the Act on each individual post, comment, or other similar communication.
- ▶ If an electronic media advertisement made on social media and a committee pays a third party to post from a social media account (that is not the committee’s account), a tag or link to the social media profile or social media landing page of a committee that paid for the advertising must be included.