

FILED
OFFICE OF THE CITY CLERK
OAKLAND

14 FEB -6 PM 4: 13

CITY OF OAKLAND



ONE FRANK OGAWA PLAZA • 2ND FLOOR • OAKLAND, CALIFORNIA 94612

Noel Gallo

(510) 238-7005

City Council Member, District 5

FAX (510) 238-6129

TTY/TDD (510) 839-6451

TO: Oakland City Council

FROM: Councilmember Noel Gallo

DATE: February 6, 2014

RE: Timeline for Discussion and Debate and Transparency Process for the Development
of the 2014 Public Safety Measure

Colleagues –

Included in this supplemental packet are four sets of documents that I believe will help further frame our discussion at the public safety committee meeting of February 11th

- 1 A report from the City Clerk which outlines the deadlines for the City Council and/or citizens to place a measure on the ballot for the November 4, 2014 election (*Supplement A*)
- 2 A set of documents that were presented by the office of the City Attorney to the Measure Y Oversight Committee meeting of January 27, 2013. The documents clearly define the legal rules with regards to campaigning for or against ballot measures in our capacity as Councilmembers (*Supplement B*)
- 3 Full Text of the original Measure Y legislation, Resolution No 78734 (*Supplement C*)
- 4 The By-Laws of the Violence Prevention and Public Safety Oversight Committee (*Supplement D*)

Sincerely,

Councilmember Noel Gallo

Public Safety Committee
February 11, 2014
ITEM 5

SUPPLEMENT A



AGENDA REPORT

TO: THE HONORABLE MEMBERS
OF THE RULES AND LEGISLATION
COMMITTEE AND DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: LATONDA SIMMONS
CITY CLERK

SUBJECT: Ballot Measure Deadlines
For the November 4, 2014 Election

DATE: January 23, 2014

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

This is an Informational Report. Staff requests the Rules and Legislation Committee receive and file this report.

EXECUTIVE SUMMARY

At the request of the January 23, 2014 Rules and Legislation Committee, the Office of the City Clerk was requested to provide information regarding the deadlines for the City Council and/or citizens to place a measure on the ballot for the November 4, 2014 election.

OUTCOME

This informational report responds to the request to present information on deadlines for placing City Council and citizen based initiatives on the ballot of the November 4, 2014 election.

BACKGROUND/LEGISLATIVE HISTORY

Initiatives in the City of Oakland are governed by section 3.08 of the Oakland municipal code and in great part Division 9 of the California elections code. The relevant governing codes provide that initiatives may be put forward by the governing body or by a citizen based signature gathering effort. The relevant codes provide significantly different procedures and timelines for each approach. Nonetheless, under each approach, the citizens, governing body, City Attorney, City Auditor and City Clerk, respectively, must complete many additional statutory requirements by the 88th day before the election, to deliver ballot information to the county elections official.

Item _____
Rules and Legislation Committee
February 6, 2014

Initiatives by the Governing Body

Measures may be placed on ballot by the governing body in accordance with section 9222 of the California elections code and must also comply with the noticing requirements of the City of Oakland's Sunshine Ordinance. While section 9222 permits the approval of measures up to the 88th day before the election by the governing body, consideration must also be given to the full requirements of the 88th day pre-elections deadline including the additional steps listed below (See "Additional Steps on page 3")

In accordance with the relevant provisions of the California State elections code, Oakland municipal code, and also utilizing the approved schedule of Council meetings for calendar year 2014, the final date for the City Council to approve a measure to be placed on ballot would be Tuesday, July 29, 2014. Please refer to "**Attachment A – Deadline for Council Approval of Ballot Measures**".

initiatives by a Citizen Based Signature Gathering Effort

Measures placed on ballot as a result of a citizen based signature gathering effort requires completion of many steps outlined in the California elections code and the Oakland municipal code. In general, to successfully meet all requirements, citizens should commence activities many months in advance of the 88th day elections deadline to allow completion of the proponent's obligations and allow City officials time to process and produce materials required by law. Please refer to "**Attachment B - Quick Guide to Ballot Initiatives**".

In summary, the citizen based initiative process is elongated to allow for the following key tasks associated with a petition effort

- 1) File a Notice of intent to Circulate an Initiative
- 2) Receive the Title and Summary to be used to circulate the petition
- 3) Publish the full Notice of Intent (NOI) and the Title and Summary
- 4) File proof of publication of NOI, Title and Summary with the City Clerk prior to gathering any signatures
- 5) Commence signature gathering
- 6) Return the signed petitions by the deadline provided by the City Clerk
- 7) Allow the City Clerk to verify the number of signatures are sufficient
- 8) Allow the County to verify the signatures are sufficient
- 9) Allow the City Council to place on agenda and certify the sufficiency of the signatures and call for an election
- 10) Allow the City Attorney, Auditor, and Clerk to prepare documents and complete processing of remaining elections documents

Additional Steps

While the 88th day is the permitted final day of action for the governing body the 88th day also is the deadline the City must deliver all necessary materials to the county elections official for printing of the sample ballot book. Accordingly, the City must allot sufficient time for the development of legally required ballot materials prepared by the City Attorney, City Auditor, and elections processing by the City Clerk. These additional steps prescribed by the governing codes must be completed whether the initiative is citizen based or put forward by the governing body. The additional steps include:

- 1) Resolution calling for an election
- 2) Resolution approving the placing a measure on the elections ballot, to include the question to go before voters
- 3) Ordinance approving the consolidation of a City's municipal election with the scheduled Statewide election (when applicable)
- 4) Full text of the measure prepared by the City Attorney
- 5) Title and Summary prepared by the City Attorney
- 6) Impartial Legal Analysis prepared by the City Attorney
- 7) Impartial Financial Analysis prepared by the City Auditor

Accordingly, Council actions should occur as early as possible to afford proper development and review of all ballot materials prior to the 88th day submission deadline.

For questions regarding this report, you may contact LaTonda Simmons or Tamika Thomas in the Office of the City Clerk at (510) 238-3122.

Respectfully submitted,



LATONDA SIMMONS

City Clerk, Office of the City Clerk

Attachments

Attachment A – Deadline for Council Approval of Ballot Measures

Attachment B - Quick Guide to Ballot Initiatives

SUGGESTED TIMELINE FOR COUNCIL APPROVAL OF MEASURES

The City Council may submit a measure to the voters on its own motion by the adoption of a Resolution placing the item on the ballot

Elections Code §10403 requires that all material for the ballot be submitted to the Board of Supervisors and the County Elections Official not later than the 88th day before the election. All materials includes, the resolution calling for the election, the resolution approving the measure, the independent legal and financial analysis, the question to go before the voters, and the full text of the measure

The 88th day deadline for the upcoming November 4, 2014 election is **Friday, August 8, 2014**. The City Council is in recess the month of August. Therefore, the following would apply

Action Council adopts Resolutions calling the election and placing measures on the ballot at a Council meeting between now and **July 31, 2014**.

July 29, 2014 is the last Tuesday before the summer recess and therefore, the last scheduled meeting held before the August 8th deadline. Please note that after City Council approves any measure, the City Attorney and City Auditor must have sufficient time to prepare the legal and financial analyses, and the full text of the proposed measure to submit to by the August 8th deadline

Additionally, based upon approval of measures on **July 29, 2014**, the following suggested dates would apply

August 12, 2014* Suggested last day for submission of direct arguments to the City Clerk (EC 9286)

August 19, 2014 Suggested last day for submission of rebuttal arguments to City Clerk

Please note deadlines for arguments and rebuttals must be advertised according to the State Elections code and may be adjusted, however, the 88th day deadline is not adjustable and is **Friday, August 8, 2014**

* The August 12 deadline assumes the Council's approval of measures on **July 29, 2014**. If the Council approves measures on different dates then this date will change

Quick Guide to Ballot Initiatives

Elections Code 9200-9226

The initiative is the power of the people to propose statutes or amendments to the Charter of the City of Oakland and/or the Oakland Municipal Code. An initiative may be placed on the ballot after the proponents successfully meet a series of requirements mandated by the California Elections Code.

General Initiative Process:

Proponents must file a Notice of Intent along with a \$200.00 filing fee. The Notice of Intent must include the written text of the initiative and a request that a title and summary be prepared by the City Attorney. The Notice of Intent must be signed by at least one of the proponents.

The City Attorney has fifteen days from the date of the filing of the Notice of Intent to prepare the Title and Summary.

Upon receipt of the Title and Summary from the City Attorney, proponents must publish the Notice of Intent and the Title and Summary prior to circulating the petition.

Proponents have 180 days from the date they received the Title and Summary to file the petition with the Office of the City Clerk. The filing must be done during normal business hours as posted.

After the petition has been filed, the law allows 30 business days for the raw count and signature verification process.

Signature requirement for a Regular Election and Proposed Ordinances:

10% of the registered voters of the city according to the last report of registration by the county elections official to the Secretary of State, effective at the time the Notice of Intent was published.

Signature requirement for a Special Election and Charter Amendments:

15% of the registered voters of the city according to the last report of registration by the county elections official to the Secretary of State, effective at the time the Notice of Intent was published.¹

¹ Please refer to the Elections Code § 9214 for specific guidelines on calling a Special Election.

Timeline Snapshot for Initiative Petitions

It is suggested that petitions be submitted a minimum of 134 days before the election to provide for processing require by State Law All requisite processing of the initiative petitions must occur no later than the 88th day before the election to appear on the ballot This includes verification of signatures, Council action, additional publication, etc

Step 1	Proponents Meet With The Office Of The City Clerk Discuss Initiative Process, Identify An Election Date, Discuss Timeline And Deadlines For Filings
Step 2	Develop The Written Text Of The Proposed Initiative Proponents Are Encouraged To Meet With The City Attorney To Discuss The Proposed Measure
Step 3	File Notice Of Intent To Circulate Initiative With The Clerk's Office Schedule And Appointment With The Clerk's Office To File <u>Notice Of Intent</u> To Circulate A Petition And Pay \$200.00 Fee Proponents Will Also Receive Report Of Registered Voters And Minimum Number/Percentage Of Registered Voters Needed To Qualify For A Ballot, And Deadline To File Petitions With The City Clerk
Step 4	City Attorney Drafts Language Of The Proposed Ordinance (15 Days) The City Attorney Will Draft The Full Text Of The Proposed Ordinance As Well As The <u>Title And Summary</u> To Be Used For Circulating The Petitions And To Go On The Ballot The Law Allows 15 Days For This Process
Step 5	Proponents Publish Notice Of Intent & Title and Summary and files with City Clerk (5-10 Days) Proponents Must Publish Both The <u>Notice Of Intent</u> To Circulate A Petition And <u>Title And Summary</u> Prior To Gathering Signatures Proponents Must Also File Proof Of Publication With The City Clerk During Regular Business Hours Within 10 Days Of Publication Date
Step 6	Circulation Of Petitions – Gathering Of Signatures (180 Days) Proponents Have 180 Days To Gather The Necessary Signatures To Qualify The Measure's Placement On Ballot
Step 7	Submission Of Petitions To The City Clerk – Prima Facie Count Proponents Must File Signatures With The City Clerk No Later Than 180 Days from the date petitioner is in receipt of <u>Title and Summary</u>
Step 8	County Verification (30 days) The County Of Alameda Verifies Each Signature
Step 9	City Council Certification (14 Days) Clerk Schedules Certification Through The Rules Committee
Step 10	Coordination Of Other Required Elections Activities Call Of Election Legal And Financial Analyses Post Notice Of The Election & Deadlines For Arguments And Rebuttals Receipt And Selection Of Arguments Receipt Of Rebuttals
Step 11	Submission of Required Elections Documents to Alameda County Registrar of Voters (88 Days)

6
RULES & LEGISLATION CMTTE

FEB 06 2014

*Please note that this fact sheet is intended to be advisory only. The Elections Division strongly recommends that proponents consult with an attorney on the initiative process including technical requirements for the format of initiative petitions. The Division's receipt of an initiative petition is not an indication that the petition meets all legal requirements.

SUPPLEMENT B

CITY OF OAKLAND



ONE FRANK H OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A Russo
City Attorney
Mark T Morodomi

January 13, 2010

(510) 238-3601
FAX (510) 238-6500
TTY/TDD (510) 238-3254
(510) 238-6101

Oakland City Council

Re Advisory on Case on Ballot Measure Campaigning, Vargas v City of Salinas

Dear President Brunner and the Members of the City Council

Since there has been recent discussion of possible City proposed ballot measures either in June or November, this is an opportune time to inform the City Council of a recent California Supreme Court decision that discussed City campaigning on ballot measures

In the spring of 2009, the California Supreme Court unanimously held that public agency expenditures in connection with a ballot measure may be unlawful even if they do not "expressly advocate" a position on the measure. The court went on to find certain City efforts valid and others invalid. Vargas v City of Salinas, 46 Cal 4th 1 (2009). The holding in Vargas is consistent with the advice the Oakland City Attorney's Office has given in the past.

Prior to the issuance of Vargas, it was well established that public funds cannot be used to conduct campaigns for or against ballot measures.

Facts

In September 2001, residents of the City of Salinas ("Salinas") obtained the necessary signatures to qualify a tax-reduction measure for the ballot ("Measure O"). If passed by the voters, Measure O would have repealed the Salinas's Utility Users Tax ("UTT"), thereby eliminating 13 percent of general fund revenue.

One month before the election two supporters of Measure O filed suit against the City of Salinas and various Salinas officials, claiming that they had unlawfully spent public funds for campaign activities by preparing and disseminating website materials, pamphlets, and newsletters.

Activities that the Court Found to Be Valid

The Supreme Court found the following activities generally valid

- Four months before election, identifying programs/services to be cut if measure passes
- Posting complete, objective minutes and reports to City website four months before election
- Producing and making available informational "flyer" through City Clerk and libraries four months before election
- Including informational, non-partisan articles in regularly-published newsletter 30 days before election

The Supreme Court considered the "style, tenor, and timing" to conclude that the actions did not constitute "campaigning" because

- (1) information generally provided past and present facts, e.g. how original tax enacted, proportion of budget produced by tax, and how Council had voted to modify if measure passed,
- (2) communications avoided argument/ inflammatory rhetoric, did not urge vote in particular manner or support or oppose measure, and
- (3) information provided and manner in which information was presented was consistent with established practice regarding use of Web site and regular circulation of newsletter

Activities the Court Found to Be Invalid

The Supreme Court found the following generally invalid

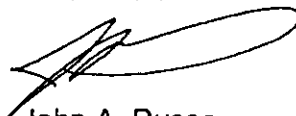
- Posting large billboards prior to election saying "IF MEASURE IS APPROVED, SIX RECREATIONAL CENTERS, THE MUNICIPAL POOL, AND TWO LIBRARIES WILL CLOSE
- Distributing privately-produced campaign literature (51 Ops Cal Atty Gen 190 (1968))
- Mailings shortly before election "unquestionably" can constitute campaign activity that may not be paid for by public funds

January 13, 2010
Page Three

Conclusion

We are happy to discuss and advise you on activities related to any future ballot measures to assure compliance with the Vargas decision

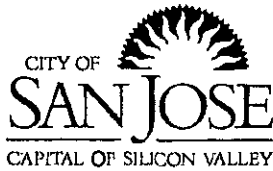
Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Russo", written over a horizontal line.

John A. Russo
City Attorney

Attorney Assigned
Mark Mordomi

Cc. Mayor Dellums
City Administrator Lindheim



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: RICHARD DOYLE
City Attorney

SUBJECT: Campaign Activities Update

DATE: May 29, 2009

SUMMARY

We want to advise you about a recent case involving the age-old question of the use of public funds for ballot measures. On April 20, 2009 California Supreme Court ruled in *Vargas v City of Salinas*, and re-stated the legal guidelines for the use of public funds for ballot measures or election campaigns as well as restrictions on political activities of public employees.

The Supreme Court held in *Vargas v City of Salinas* that the "style, tenor and timing" guidance set forth in its 1976 case, *Stanson v Mott*, provides the correct standard for determining whether a publicly funded ballot measure communication is a permissible "informational" communication or a prohibited "campaign" communication. *Vargas v City of Salinas*, No. S140911 (Calif. Supr. Ct., April 20, 2009). The Court explained that the "express advocacy" rule set forth in Government Code Section 54964 creates a clear prohibition on certain activities, but that the rule is not adequate to cover all impermissible campaign communications.

The Court also held that, although permissible informational materials must contain a "fair and impartial presentation of facts," a governmental agency is not precluded from expressing a public opinion with regard to the merits of a proposed ballot measure, so long as the agency does not expend public funds to mount a campaign on the measure.

The Court found that City of Salinas' activities did not constitute campaign communications under the "style, tenor and timing" standard. As will be described below, the *Vargas* decision provides useful instruction by describing the factors the Court considered in making its decision and offering examples of activities that, although not "express advocacy" under Section 54964, would nonetheless constitute prohibited campaign activities under the "style, tenor and timing" analysis.

BACKGROUND

In February 2006, this Office distributed a memo that discussed the Sixth District Court of Appeal decision in *Vargas*, the first appellate court case to interpret Government Code Section 54964. Section 54964 prohibits the use of public funds on political

campaigns for both ballot measures and individual candidates. In particular, the Section prohibits publicly funded communications that "expressly advocate" for or against a ballot measure or candidate. The appellate court had determined that the previous guidelines in this area, set forth in the Supreme Court case of *Stanson v Mott*, had, to some extent, been superseded by the provisions of Government Code Section 54964.

However, as explained in our January 2008 memo, the Supreme Court accepted review of *Vargas*, and as such, vacated the holding of the appellate court. Therefore, the "style, tenor and timing" standard under *Stanson v Mott* remained in effect regarding the expenditure of public funds until the Supreme Court issued its opinion in *Vargas*.

On April 20, 2009, as explained above, the Supreme Court issued that opinion and upheld the "style, tenor and timing" standard.

ANALYSIS

I. Use of Public Funds for Ballot Measures or Election Campaigns

A. The General Rule

Although, in general, the City has broad discretion to make public expenditures, as a governmental agency, the City is prohibited from spending public funds for communications that promote a partisan position in an election campaign unless the expenditure is explicitly provided by law. A public agency may not make expenditures that mount a campaign on behalf of the passage or defeat of a ballot measure or election of a particular candidate, and communications that expressly advocate for or against a ballot measure or candidate are explicitly prohibited. This applies even when the Council has placed a measure on the ballot or the measure directly relates to a City program.

Government Code Section 54964 provides that "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." Subdivision (a) "Expenditure" is defined as the use of local agency funds for "communications that expressly advocate the approval or rejection of a clearly identified ballot measure, or the election or defeat of a clearly identified candidate, by the voters." Subdivision (b)

B Permissible Activities

1 Ballot Measures

The City may utilize publicly funded communications to provide impartial information about the subject matter of a ballot measure, but only if the communication provides a "fair presentation of facts" and is informational rather than promotional. A fair presentation must make full disclosure of the advantages, disadvantages and consequences so that voters can make an informed choice. As explained above, any such communication will be judged in terms of its "style, tenor, and timing."

According to the Court in *Vargas*, a "fair presentation of facts" does not require that the public entity include a forum in its communications for alternative viewpoints if it does not already do so. However, if a communication is argumentative in tone, if it advocates a position or if it is likely to offend those on the opposite side of the issue, it may be prohibited.

The Court noted in *Vargas* that a public entity is not precluded from expressing an opinion about the merits of a measure so long as public funds are not expended to mount a campaign. The Court explained that the potential danger to the democratic process is not presented when a public entity simply informs the public of its opinion on the merits of a pending ballot measure or the impact on the entity that passage or defeat of the measure is likely to have. Rather, the threat to the fairness of the electoral process arises when public funds are devoted to campaign activities favoring or opposing such a measure.

A review of the facts in *Vargas* is instructive. The Salinas city council responded to a ballot measure that aimed to eliminate the city's utility use tax, the source of 13% of the city's revenues, by issuing the following communications, all of which related to the reduction and elimination of city services, programs and facilities that the city council voted to implement should the measure be approved in the election.

- 1) Material posted on the city's official website, including minutes from council meetings, a report by the city manager setting forth the finance department's analysis of the financial impact of the measure and recommended program reductions, city department slide presentations, and a report by city staff responding to alternative implementation plans advanced by proponents of the measure,
- 2) A one-page document, made available to the public at the city clerk's office and in public libraries, which described the measure and listed services that the city council identified for elimination or reduction if the measure were to pass, and

- 3) Articles in the regular quarterly municipal newsletter, mailed to all city residents, which contained information similar to that in the one-page document, as well as frequently asked questions about the utility use tax and further information about proposed service cuts

The Court found the above communications to be informational rather than campaign communications, and the court set forth the following factors for consideration

- 1) The information conveyed generally involved past and present facts (such as how the utility use tax was enacted, what proportion of the budget was produced by the tax and how the city council had voted to modify the budget in the event that the measure were to pass),
- 2) The communications avoided argumentative or inflammatory rhetoric and did not urge voters to vote in a particular manner or to take other actions in support of or in opposition to the measure, and
- 3) The information provided and the manner in which it was disseminated were consistent with established practice regarding use of the city's website and regular circulation of the city's official newsletter

Other examples of activities that have been deemed to be permissible with regard to ballot measures include

- Participation by City employees and officials in radio and television debates where both sides are heard,
- Responses to questions about the City or a Councilmember's position by members of the public or the press,
- City officials and City employees campaigning for or against a ballot measure on their own time and away from City premises,

2 Candidates

As stated above, Government Code Section 54964 prohibits the use of public funds "to support or oppose the election or defeat of a candidate" The law does not specify any permissible activities with regard to the use of public funds on campaigns for political office, as it does with ballot measures As such, City expenditures, including the free use of City facilities for political events, should be carefully scrutinized to be sure that the expenditure cannot be construed in any way to be partisan

For example, a candidate's forum, where all of the candidates running for a local seat are invited, would probably be a permissible event if all of the City funded communications were completely objective and access to the event were open to all. Since assuming unbiased communication and open access necessarily means controlling political speech, the only way to assure that an event does not run afoul of the prohibition on public funding and the First Amendment, is for the City to hold the event itself.

On the other hand, if another organization rents a City facility on the same terms and conditions as any member of the public, and no City funds are spent on noticing or staffing the event, then the City cannot control the content of the event and the event can be overtly partisan.

Furthermore, in any City meeting subject to the Brown Act, the public must be allowed to speak on any item under the "Open Forum" or "Public Comment" section of the agenda. The City cannot prevent these public comments even if they constitute express advocacy of a particular candidate.

C Prohibited Activities

As stated above, under Government Code Section 54964, the use of public funds for communications that expressly advocate support or opposition to a ballot measure or election contest is prohibited. Communication that advocates a position, is argumentative in tone, or is likely to offend those on the opposite side of the issue may be considered express advocacy.

Furthermore, in *Vargas* the Court stressed that merely avoiding express words of advocacy is not sufficient to demonstrate that a public entity did not use public funds to "unambiguously urge a particular result." Therefore, when evaluating whether a communication is a prohibited campaign communication or merely informational, a public entity should apply the "style, tenor and timing" test, including the factors set forth in *Vargas*, before expending public funds for that purpose.

For example, the public entity could overwhelm the voters by using public funds to finance bumper stickers, posters, television and radio advertisements and other campaign material containing messages that, while eschewing the use of express advocacy, effectively promote one side of an election. The Court explained that, if the City of Salinas had posted large billboards around the city prior to the election stating in capital letters, "If measure O is approved, six recreation centers, the municipal pool and two libraries will close," it would defy common sense to suggest that the city had not engaged in campaign activity.

Specific prohibited activities include

- Having an employee do campaign work on City time. For example, employees should not advocate or urge a position on a bond measure or a candidate to a citizen during work time,
- Using public funds for printing or distributing a publication or pamphlet that expressly advocates a position on a ballot measure or candidate,
- Using City publications as a means of disseminating information in a manner that expressly advocates a position on a ballot measure or candidate,
- Making written materials available on City premises, including libraries and community centers, in a manner that expressly advocates a position on a ballot measure or candidate,
- Use of City staff to write campaign speeches for ballot measures or candidates,
- Using City telephones, computers, copiers or fax machines for communications that expressly advocate a position on a ballot measure or candidate,
- Use of City mail routing to distribute materials that expressly advocate a position on a ballot measure or candidate even though the materials are prepared outside of the City,
- Preparing or sending out press releases in a manner that expressly advocates a position on a ballot measure or candidate,
- Use of City stationary in a manner that expressly advocates a position on a ballot measure or candidate
- Using public funds to produce bumper stickers, billboards, posters, television and radio advertisements and other campaign material, regardless of whether such media expressly advocate a position

D Penalties

City officials can be held personally liable for authorizing the improper expenditure of public funds for campaign purposes. City officials are held to a "standard of due care" which means that an official who fails to exercise "reasonable diligence" in authorizing

the expenditure of public funds is subject to liability. Reasonable diligence will be evaluated by taking such factors as the following into account:

- Whether the impropriety was obvious or not,
- Whether the official had notice of the improper nature of the expenditure,
- Whether the official relied on legal advice.

The unauthorized expenditure of public funds can also result in criminal sanctions under Penal Code Section 424. A conviction under this section is a felony and results in disqualification from holding public office in the future. A member of the Board of Supervisors of Orange County was convicted under this section for authorizing county payments of salary to his office staff for work performed on his campaign for Lieutenant Governor. People v. Battin, 77 Cal App 3d 635 (1978).

Additionally, under new FPPC Regulation 18420.1, which went into effect on February 7, 2009, expenditures by local agencies of \$1,000 or more for communications that expressly advocate for or against a ballot measure also trigger campaign finance reporting requirements which may, in turn, subject the agency to administrative fines or other penalties under the Political Reform Act.

II. Prohibition on Political Activities of City Commissioners

In addition to the state law prohibition on use of public funds for political activity, City Council Policy prohibits City Boards, Commissions and Committees from endorsing any candidate and taking any independent position on any ballot measure. An individual Commissioner may not use his or her Commission title in making personal political endorsements. Additionally, Boards, Commissions and Committees cannot be involved in gathering or disseminating information on candidates or campaigns (e.g. surveys, public debates, mailings, etc.) (City Council Policy 0-36.)

III. Prohibition on Political Activities of Public Employees

The following state law prohibitions apply specifically to activities of City and Agency employees:

- A public employee may not participate in political activities while in uniform. Government Code § 3206.
- An employee of a public agency may not, directly or indirectly, solicit a political contribution from an officer or employee of that agency with knowledge that the person is employed with the agency unless the

HONORABLE MAYOR AND CITY COUNCIL
Re Campaign Activities Update
May 29, 2009
Page 8

solicitation is also made to a significant segment of the public which may include employees of the agency. Violation of this prohibition is a misdemeanor. Government Code § 3205

CONCLUSION

Neither the City nor Agency may expend any funds in support or opposition to any ballot measure or for any campaign for public office. Because the penalties are severe, it is important to exercise extreme care in providing information or engaging in activities which may be construed as promoting a partisan position in an election campaign.

Please feel free to call this Office with any questions you may have about these requirements and to distribute this memo to all employees.

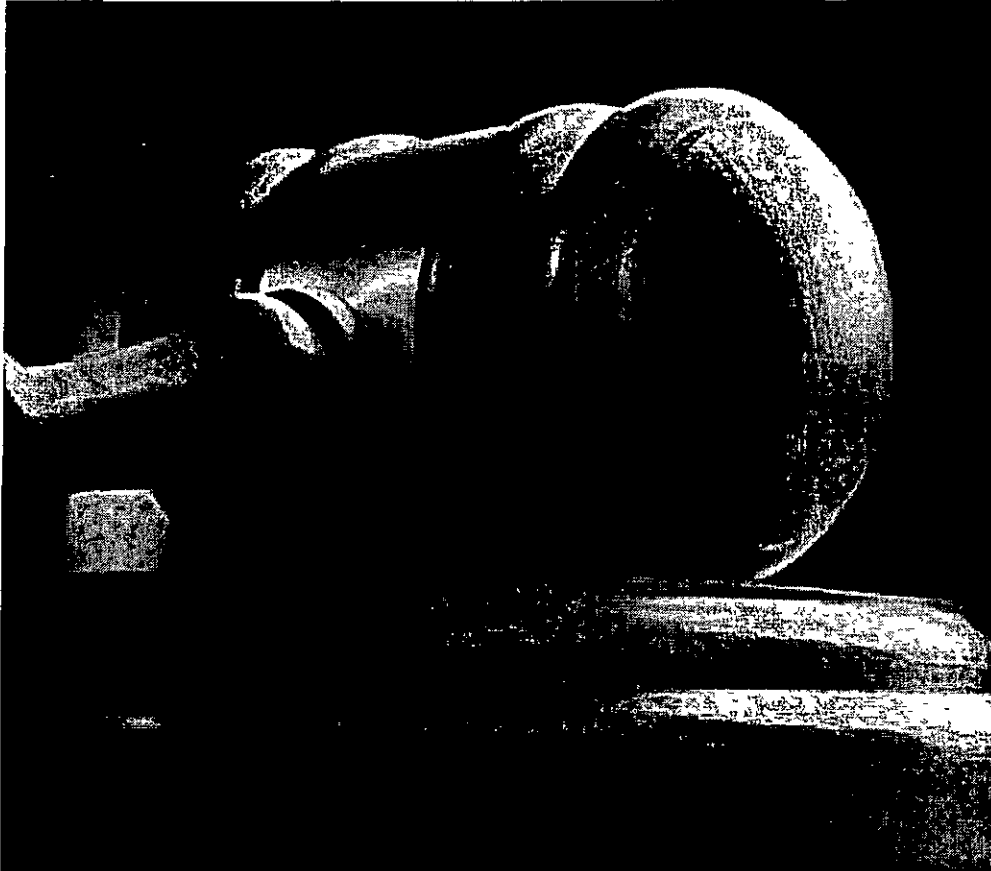
RICHARD DOYLE
City Attorney

cc Debra Figone
Harry Mavrogenes
Senior Staff

ATTACHMENT 7

Send to printer Close window

Public Agencies and Ballot Measure Campaigns



This column is a service of the Institute for Local Government's Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ig.org/trust. The Institute for Local Government thanks Karen Getman and Tom Willis of the Remcho, Johansen and Purcell law firm for their contributions to this article.

Question

In the AB 1234 ethics training that local officials must take, we learned about permissible and impermissible uses of public resources, including using public resources for political purposes. I understand that the California Supreme Court recently issued a decision on what public agencies may and may not do with respect to ballot measure campaigns. Did that case change the law? And are there new Fair Political Practices Commission (FPPC) regulations on this issue as well?

Answer

The California Supreme Court decision, *Vargas v. City of Salinas*, was issued in late April 2009.¹ The case made existing law more specific. And yes, the FPPC is also considering regulations on this issue.

Lawsuit Background

The case involved the City of Salinas' activities related to a ballot measure that would have repealed the city's utility user's tax. In anticipation of the nearly 13 percent revenue loss, the city held a series of

104

workshops (during city council meetings) that described the cuts to services and programs that would occur if the ballot measure passed. The city council also adopted a provisional budget detailing where cuts would occur if the ballot measure passed. Minutes of the meetings were posted on the city's website (in keeping with the city's normal practice, the minutes included a summary of the statements made by each speaker, including those supporting the ballot measure). The city also prepared a one-page summary of the cuts in programs and services and included this information in its regular city newsletter.

The Supreme Court's Decision In *Vargas*

Proponents of the ballot measure argued that these activities violated the prohibition against using public resources for campaign purposes. The state Supreme Court disagreed. The court took into account a number of factors in reaching this conclusion, including that the city emphasized facts concerning the effect of the measure's passage, used non-inflammatory language and distributed the information only through regular city information channels.²

The court also reaffirmed that public entities are entitled to the protection of the Anti-Strategic Litigation Against Public Participation (Anti-SLAPP) law, which allows these cases to be decided on a more expedited basis.³

The Big Picture: The Values at Stake

The California Supreme Court was clear that public agencies may use public resources to analytically evaluate the merits of a proposed ballot measure and inform the public about its findings.⁴ What public agencies may not do is mount a campaign on the measure.⁵

It's important to keep in mind the philosophical context of this debate about how far local agencies may go in using public resources with respect to ballot measure activities.

The restriction is based on the court's concern that allowing public agencies to use public resources for ballot measure advocacy raises the specter of distorting the democratic electoral process⁶ and undermining its fairness.⁷ The court warned that this could occur if a public agency overwhelmed voters (and presumably the voices of those with differing views) by using taxpayer dollars to engage in a wide range of activities to communicate the agency's views.⁸ As the concurring opinion suggested, preserving the integrity of the electoral process involves making sure that public agency communications do not "drown out private communication."⁹

What's OK and What's Not

In *Vargas*, the state Supreme Court reverted to the more fact-based, analytical approach of its earlier decisions on public agency electoral activities. This approach emphasizes considering such things as the "style, tenor and timing" of communications to determine when public agency ballot measure materials and activities step over the line (known as the *Stanson v. Mott* standard).¹⁰

The court tried to clarify the standard by creating, in essence, three categories of activities:

1. Those that are usually *impermissible* campaign activities,
2. Those that are usually *permissible* informational activities, and
3. Those that may *require further analysis* under the "style, tenor and timing" test.

These categories were an apparent effort to address local agency concerns by defining a standard as clearly as possible.¹¹ Impermissible activities include bumper stickers, posters, advertising "floats," television and radio spots and billboards.¹² Another improper activity is using public resources to disseminate advocacy materials prepared by others.¹³ "Promotional campaign brochures" and similar materials are also not allowed, even when those documents contain some useful factual information for the public.¹⁴

Permissible activities include

105

- Taking a position on a ballot measure in an open and public meeting where all perspectives may be shared,¹⁶
- Preparing staff reports and other analyses to help decision-makers determine the measure's impact and what position to take,¹⁶
- Responding to inquiries about ballot measures in ways that provide a fair presentation of the facts about the measure and the agency's view of a ballot measure's merits,¹⁷
- Accepting invitations to present the agency's views to organizations interested in the ballot measure's effects,¹⁸ and
- Sharing the agency's views on and analyses of a measure's impacts and merits¹⁹

The safest approach is to share information in a simple, measured and informative way. The information should be delivered through regular agency communications channels (for example, the agency's existing website and newsletter) in a way that emphasizes facts and does not use inflammatory language or argumentative rhetoric.²⁰ The communication should not encourage the public to adopt the agency's views, vote one way or another, or take any other actions supporting or opposing the measure.²¹ Because the City of Salinas kept its activities within these bounds, the court found that it had not violated the law.

Even though the ballot measure in Vargas would have reduced agency revenues, the court said the above principles apply no matter what kind of ballot measure is pending — regardless of whether the measure increases or cuts revenues or involves more substantive policy issues (for example, land use).²²

Any activity or expenditure that doesn't fall into the first two categories created by the court must then be evaluated by the *Stanson* "style, tenor and timing" standard against a backdrop of overarching concern for fairness and nondistortion in the electoral process.²³ As the concurring opinion in Vargas suggested, time will tell where lines ultimately are drawn.²⁴

Political Reform Act Issues

Local agencies engaged in activities related to ballot measures should also be mindful of campaign expenditure reporting requirements when producing materials that either expressly advocate or unambiguously urge a particular result in a ballot measure election.²⁵ These reporting requirements apply to activities advocating the qualification (as well as the passage or defeat) of a ballot measure.²⁶ This means campaign activities may be reportable if they occur after an agency votes to put a matter on a ballot or the measure starts circulating for signatures.

In this regard, it's important to distinguish between transparency requirements and prohibitions. The Vargas case related to the *prohibition* against using public resources for campaign purposes. The Political Reform Act's campaign disclosure requirements, however, are *transparency* requirements, the message is that the public has a right to know who is spending money — and how much — to influence elections.

For state and local agencies, the Fair Political Practices Commission's existing regulations say that expenditures on ballot measure-related communications are reportable unless the communications constitute a fair and impartial presentation of facts relating to the measure.²⁷ Also not reportable are the costs of making staff reports on ballot measures available at the request of a member of the public, discussing the measure and taking a position at an agency meeting (and reporting that action in the minutes) and preparing ballot arguments.²⁸

The Fair Political Practices Commission will re-examine its regulations in light of the Vargas decision — including the scope of its mass mailing regulations — at its September 2009 meeting. A future column will update *Western City* readers on what happened and what it means for local agency ballot measure activities. In the meantime, for updates on the status of these regulations, visit www.fppc.ca.gov/index.html?id=52 for current and pending regulation text.

Stay Tuned

106

Regardless of how these issues are resolved, the Vargas opinion appears to be an argument for public agencies to continue striving for robust, regular, diverse and frequent lines of informational communication with their communities on all issues — not just ballot measure issues. For more information on ways to do this, the Institute for Local Government invites local officials to take advantage of the resources available from its Collaborative Governance Initiative, online at www.ca-ilg.org/cgi

What About Activities Before a Measure Is Placed on the Ballot?

Vargas did not change current law, which allows a local agency to also use public resources to put a measure on the ballot.²⁹ The theory is that prior to and through the drafting stage of a proposed ballot measure, the activities do not involve attempting to either persuade the voters or otherwise influence the vote.³⁰ The question is: To what extent may local agencies use public resources to fund activities related to placing a measure on the ballot?

The Vargas opinion seems to set up the prospect of a two-part analysis in evaluating public agency activities with respect to ballot measures before they are placed on the ballot. The first part relates to the issue of whether a particular public agency has the authority to spend money on ballot measure activities. The other part concerns whether that authority oversteps what the courts may perceive as constitutional restrictions on what may be done with public resources.³¹

For example, earlier cases involving challenges to putting a measure on the ballot seemed to emphasize a scope-of-authority issue. In other words, did the agencies have authority to use public resources for the activities that occurred prior to a measure being placed on the ballot? Cities and counties have such authority to place measures on the ballot,³² the question is: What kinds of activities can they engage in as part of the effort to put a measure on the ballot?

In a case involving a local transportation agency, a court of appeal found the agency had authority under state law³³ to find additional sources of funding for transportation and the agency was following the prescribed steps for putting a measure before the voters (which included such activities as preparing a transportation plan).³⁴ The court noted that the agency's activities occurred before the transportation expenditure plan was approved or the ordinance placing a measure on the ballot was finalized.³⁵

The fact that the agency's challenged activities occurred well before the measure was put on the ballot was enough for the court. In this regard, the court drew a distinction between activities involving the expenditure of public funds for governing and the expenditure of funds for election campaigning.³⁶

The court in the transportation agency case relied heavily on the analysis of an earlier court of appeal decision. In that case, which involved a county, the court

107

suggested that putting a measure on the ballot was OK, but other activities may be a closer call.³⁷

On balance, we conclude the power to draft the proposed initiative necessarily implies the power to seek out a willing proponent. We do not perceive the activities of identifying and securing such a proponent for a draft initiative as entailing any degree of public advocacy or promotion, directed at the electorate, of the single viewpoint embodied in the measure.³⁸

In *Vargas*, the state Supreme Court said that it agreed with this case to the extent that it interpreted *Stanson* as allowing public agencies to express opinions on the merits of a proposed ballot measure, so long as agencies do not spend public funds to mount a campaign about it.³⁹ The majority *Vargas* opinion did not specifically address the issue of activities occurring prior to a matter being placed on the ballot.

Until there is more judicial guidance on this issue, taken together these statements suggest that the safest approach is to limit expenditures and activities to those that focus as directly as possible on developing a measure for the ballot — not on the campaign effort necessary to get the measure to pass.

Institute Releases Updated Plain-Language Guides On California's Ethics Laws

The Institute for Local Government has updated its popular publication, *A Local Official's Reference on Ethics Laws*. The new guide is presented in five "sub-guides" to make the materials easier for busy public officials to navigate. To see the new offerings, visit www.ca-ilg.org/ethicslaws

Footnotes

¹ *Vargas v. City of Salinas*, 46 Cal. 4th 1 (April 20, 2009)

² *Vargas*, 46 Cal. 4th at 40 (Slip Op. at 41)

³ See 46 Cal. 4th at 16-19 (Slip Op. at 13-19). See generally Cal. Civ. Proc. Code § 425.16 (anti-SLAPP statute)

⁴ 46 Cal. 4th at 36 (Slip Op. at 43)

⁵ *Id.*

⁶ 46 Cal. 4th at 31-32 (Slip Op. at 36-37)

⁷ 46 Cal. 4th at 36-37 (Slip Op. at 44)

⁸ See 46 Cal. 4th at 32 (Slip Op. at 37)

⁹ 46 Cal. 4th at 46 (Concurring Opinion, Slip Op. at 8 (quoting Lawrence Tribe))

108

¹⁰ *Stanson v Mott*, 17 Cal 3d 206 (1976) See also *Keller v State Bar*, 47 Cal 3d 1152, 1170-72 (1989)

¹¹ See 46 Cal 4th at 33-34, 40 (Slip Op at 39-40, 49-50)

¹² 46 Cal 4th at 24, 32, 42 (Slip Op at 26, 37 (including the billboard example), 39 and 42)

¹³ 46 Cal 4th at 24, 35 (Slip Op at 26, 42)

¹⁴ 46 Cal 4th at 39 n 20 (Slip Op at 47-8)

¹⁵ 46 Cal 4th at 35-37 (Slip Op at 44-45)

¹⁶ 46 Cal 4th at 36-37 (Slip Op at 44-45)

¹⁷ 46 Cal 4th at 24-25, 33 (Slip Op at 26 and 40, see also concurring opinion at 3)

¹⁸ 46 Cal 4th at 25, 36 (Slip Op at 26 and 43), citing *Stanson*, 17 Cal 3d at p 221

¹⁹ 46 Cal 4th at 36 (Slip Op at 44)

²⁰ 46 Cal 4th at 34, 40 (Slip Op at 41, 49), (compare with the tone of the newsletter described in footnote 20)

²¹ 46 Cal 4th at 40 (Slip Op at 49) See also Cal Gov't Code § 54964(a), (b)(3) (prohibiting local public agency expenditures for activities that expressly advocate the approval or rejection of a clearly identified ballot measure)

²² 46 Cal 4th at 40 (Slip Op at 49)

²³ 46 Cal 4th at 40 (Slip Op at 50)

²⁴ 46 Cal 4th at 43 (Slip Op at 4)

²⁵ Cal Gov's Code § 82013(b), 84200 2 Cal Code Regs , § 18225(b)(2) See also *Yes on Measure A v City of Lake Forest*, 60 Cal App 4th at 625-626

²⁶ See 2 Cal Code of Regs § 18225(b) (defining an expenditure as monetary and non-monetary payments used for communications which expressly advocate the qualification, passage or defeat of a clearly identified ballot measure)

²⁷ 2 Cal Code of Regs § 18420 1(a)

²⁸ 2 Cal Code of Regs § 18420 1(c)

²⁹ *Vargas*, 46 Cal 4th at 36 (Slip Op at 43-44), *League of Women Voters of California v Countywide Criminal Justice Coordination Committee*, 203 Cal App 3d 529 (1988), *Santa Barbara County Coalition Against Automobile Subsidies v Santa Barbara County Association of Governments*, 167 Cal App 4th 1229 (2008) See also Cal Elect Code § 9140 [county board of supervisors] & § 9222 [legislative body of municipality], FPPC Advice Letter to Hicks, No I-98-007 (02/20/98), FPPC Advice Letter to Roberts, No A-98-125(06/01/98)

³⁰ *League of Women Voters*, 203 Cal App 3d at 550 ("The audience at which these activities are directed is not the electorate per se, but only potentially interested private citizens, there is no attempt to persuade or influence any vote"), citing *Miller v Miller* (1978) 87 Cal App 3d 762, 768 (1978)

³¹ See *Vargas*, 46 Cal 4th at 29 (Slip Op at 33)

As we have seen, in *Stanson*, supra, 17 Cal 3d 206, this court, after explaining that a "serious constitutional question would be posed by an explicit legislative authorization of the use of public funds for partisan campaigning" (id at p 219, italics added), reaffirmed our earlier holding in *Mines*, supra, 201 Cal 273, that the use of public funds for campaign activities or materials unquestionably

109

is impermissible in the absence of " 'clear and unmistakable language' " authorizing such expenditures (Stanson, at pp 219-220) Section 54964 does not clearly and unmistakably authorize local agencies to use public funds for campaign materials or activities so long as those materials or activities avoid using language that expressly advocates approval or rejection of a ballot measure. Instead, the provision prohibits the expenditure of public funds for communications that contain such express advocacy, even if such expenditures have been affirmatively authorized, clearly and unmistakably, by a local agency itself. Although section 54964, subdivision (c) creates an exception to the statutory prohibition for communications that satisfy the two conditions set forth in that subdivision, subdivision (c) (like the other provisions of section 54964) does not purport affirmatively to grant authority to local entities to expend funds for communications that fall within its purview.

³² See Cal Elect Code § 9140 (authorizing boards of supervisors to place measures on the ballot), § 9222 (authorizing city councils to place measures on the ballot)

³³ The Local Transportation Authority and Improvement Act (Act), which the court described as "a comprehensive statutory scheme to 'raise additional local revenues to provide highway capital improvements and maintenance and to meet local transportation needs in a timely manner'" citing Cal Pub Util Code, § 180001 *et seq*. See *Santa Barbara County Coalition Against Automobile Subsidies v Santa Barbara County Association of Governments*, 167 Cal App 4th at 1239-40

³⁴ *Id* The agency had retained a private consultant to survey voter support for an extension of the sales tax. The consultant determined the arguments in favor of extension that were received most favorably by the voters polled, potential arguments in opposition, and the best strategy to maximize voter support. In addition, agency staff and committee members attended public meetings with civic groups during which staff presented information regarding the transportation expenditure plan, and the importance of extending an earlier sales tax to satisfying the county's transportation needs. See *id* at 1234

³⁵ *Id* at 1240

³⁶ *Id* at 1241

³⁷ *League of Women Voters*, 203 Cal App 3d at 553 ("Whether CCJCC legitimately could direct the task force to identify and secure a willing sponsor is somewhat more problematical ")

³³ *Id* at 554

³⁹ *Vargas*, 46 Cal 4th at 36 (Slip Op at 43)

110



**BALLOT MEASURE ADVOCACY AND THE LAW:
LEGAL ISSUES ASSOCIATED WITH
CITY PARTICIPATION IN BALLOT MEASURE CAMPAIGNS**

September 2003

This paper was prepared with the assistance of

*Steven S Lucas
Nielsen, Merksamer Parrinello, Mueller & Naylor, LLP
slucas@NMGovLaw.com*

and

*Betsy Strauss
Special Counsel, League of California Cities
City Attorney, City of Rohnert Park
Munilaw@aol.com*

111

INTRODUCTION

The electorate through the initiative and referendum process is increasingly making important policy decisions affecting California cities¹ Whereas cities have specific statutory authority to participate in the legislative process at the state and federal levels,² their authority to take part in the initiative and referendum process is more limited

What role may cities and city officials play in the initiative and referendum process? The following series of questions and answers provide some general guidelines

USE OF PUBLIC RESOURCES TO SUPPORT A BALLOT MEASURE

May cities contribute public funds to a ballot measure campaign that has qualified for the ballot?

No, the courts have made it clear that government cannot use public funds to "take sides" in a campaign³ Doing so gives one side an unfair advantage that may distort the electoral process But this does not mean that cities cannot prepare and disseminate a fair and impartial analysis of the measure

Is there a difference between using public resources to develop a measure for the ballot and to support the measure once it has qualified?

Yes, public resources may be used to develop a measure for the ballot.⁴ And local agencies have prepared ballot measures for years⁵

May cities form a nonprofit corporation and use public funds to finance its operation for the purpose of qualifying a statewide initiative measure that relates to the day-to-day functions of every city in the state?

No, the money for such an effort may not come from public funds Because a city cannot directly fund such an operation, it cannot do so indirectly⁶

Is there a difference between the generally accepted practice of using public funds for legislative lobbying efforts and using such funds to promote a ballot measure?

Yes, courts have drawn a clear distinction between the two activities⁷ Various statutes specifically authorize the use of public funds for lobbying activities, such as traveling to Sacramento to testify at a legislative hearing⁸ There are no similar provisions permitting the use of public funds in election campaigns⁸

CONTENTS

Introduction
Use Of Public Resources To Support A Ballot Measure
Taking A Position On A Ballot Measure
Campaign Activities In Support Of A Ballot Measure
Fundraising Activities In Support Of A Ballot Measure
Civil And Criminal Penalties For Misuse Of Public Resources
Conclusion

The legislative process contemplates public involvement to assist in explaining the potential benefits or detriments of proposed legislation. Courts do not see public agency lobbying as undermining or distorting this process.

However, the use of public funds to directly influence the electorate is seen as a potential threat to the integrity of the electoral process. According to California courts, penning a public agency to "take sides" in an election campaign may give one side an unfair advantage.¹⁰ The importance of governmental impartiality in electoral matters cannot be overstated.¹¹

What is the difference between "informational" and "express advocacy" materials?

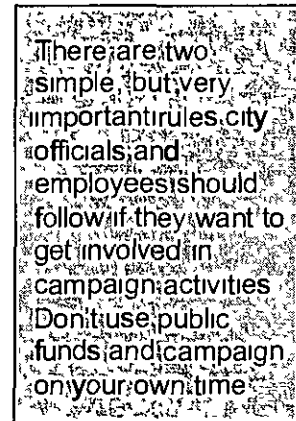
Purely informational materials present a fair and balanced presentation of the relevant facts.¹² Materials of express advocacy are those that explicitly and by their own terms urge the election or defeat of an identified candidate or the passage or defeat of an identified measure.¹³ Express terms of advocacy include "vote for," "cast your ballot," and "defeat."¹⁴

May individual city officials use public resources to support a ballot measure?

No, a city official may not use public resources to support or oppose a ballot measure or engage in campaign activity.¹⁵ "Public resources" include any property owned by the local agency, including buildings, facilities, funds, equipment, telephones, supplies, computers, vehicles, and travel.¹⁶ The misuse of public resources for campaign purposes may result in civil and criminal penalties.¹⁷

May cities use city staff, equipment, and supplies to generate promotional materials on behalf of ballot measures that have already qualified for the ballot?

No, just like public funds, cities may not use public resources to support a ballot measure. To do so raises the possibility that the electoral process may be distorted by giving one side an unfair advantage in the campaign.



TAKING A POSITION ON A BALLOT MEASURE

May a city council officially endorse or oppose a ballot measure?

Yes, the decision by a city council to go on record in support of or in opposition to a ballot measure has been held to be a permissible use of public resources. The council's decision should be made during a regular meeting that is open to the public and to the expression of the public's views.¹⁸ If the City Council adopts a resolution endorsing or opposing a ballot measure, the resolution should include a statement that no public funds shall be used in the campaign for or against the measure.

May an elected official take a position on a ballot measure?

Yes, a public official has a first amendment right to speak out on governmental matters upon being elected to office ¹⁹ However, a public official should not use public resources to campaign for or against a ballot measure City officials should not take part in ballot measure campaigns while on "city time" and should be careful to separate their official work from their political and campaign work

May a public employee support or oppose ballot measures?

Yes, a public employee does not give up his or her constitutional rights upon joining a public agency ²⁰ With certain exceptions, no restrictions may be placed on the political activities of public employees ²¹

However, public employees must be careful not to use public resources to advocate a position on a ballot measure ²² As a precautionary measure, many cities prohibit or restrict their employees from engaging in political activities during work hours or while on city property ²³

May cities analyze the effect of ballot measures on cities and publicize this information?

Yes, cities may use public resources to objectively evaluate a ballot measure's impact on the city ²⁴ The results of a fair and impartial analysis may then be made available to the newspapers, advocacy groups, and others who may make use of the information if they choose ²⁵

Public funds must be used only for materials that are strictly informational and not for those that expressly advocate a position

Public resources may not be used for campaign materials that expressly advocate a position on a ballot measure. Terms of express advocacy include:

- Vote for
- Elect
- Cast your ballot
- Defeat
- Vote against

CAMPAIGN ACTIVITIES IN SUPPORT OF A BALLOT MEASURE

May city officials respond to telephone calls, letters, and e-mails about a ballot measure while on city time?

Yes, but only as long as their response is limited to (1) stating that the city has either endorsed or opposed the measure and (2) presenting fair and impartial information about the measure ²⁶ An official must be careful not use public resources to "take sides" on the measure Incidental and minimal use of public resources by a local officer is not subject to criminal prosecution ²⁷

May a public employee respond to a request for information on a public agency's analysis of or position on a ballot measure?

Yes, as long as the employee provides a fair and impartial representation of the facts ²⁸ The response may include speaking to public or private organizations interested in the city's position ²⁹

114

May city officials add a link from the city's website to a ballot campaign website?

No, this would be an inappropriate expenditure of public resources

May city officials hold a campaign rally in support of or in opposition to a ballot measure on the steps of city hall or elsewhere on city property?

Yes, as long as city officials do not take part in the rally while on city time and the public facility is open and available for the expression of all viewpoints on the measure or for any other political activity ³⁰ It is a good practice for a city official to inform the audience that he or she is appearing as a private party and not as an official of the city

May a public employee wear his or her uniform when engaged in political activities after work hours?

No, a public employee is specifically prohibited from participating in any sort of political activity while in uniform ³¹

May a public employee make a presentation on a public agency's position on a ballot measure at local organizations, such as the Chamber of Commerce?

Yes, as long as the employee presents fair and impartial information on the ballot measure It is good practice to use a prepared script that may be used each time the presentation is made

FUNDRAISING ACTIVITIES IN SUPPORT OF A BALLOT MEASURE

May city officials use city funds to attend a fundraiser in support of a ballot measure?

No, it is a crime to use city funds to attend a political fundraiser ³²

May elected officials solicit ballot measure campaign contributions from city vendors?

Yes, because it is not a conflict of interest for an elected city official to solicit or receive a campaign contribution from a vendor ³³ However, public resources must not be used in making these solicitations Elected officials should not engage in such fundraising activities while on city time Any solicitation should admonish and advise vendors that they may not charge back the amount contributed to the city either directly or indirectly

City officials and employees may NOT:

Distribute campaign materials through the city's internal mail system

Place campaign literature on employee bulletin boards

Make public appearances speaking in favor of the ballot measure during compensated work hours

Walk precincts, draft campaign ads, or perform other campaign tasks during compensated work hours

Use city copy machines, telephones, fax machines, computers, stationery, etc. for campaign purposes

Urge other city employees to vote for the measure during compensated work hours

Send or receive campaign-related e-mails on city computers

May a city official obtain a list of city vendors for fundraising activities?

Yes, if such a list exists, it is a public record and therefore is available to anyone asking for it. If no vendor list exists, it is not a misuse of public resources if the city would create a list for anyone who asked for such a list. If the city creates the list for the purpose of allowing fundraising from the list, this would be a misuse of public resources.

May city officials solicit financial support from their colleagues for a ballot measure?

No, city officials may not directly or indirectly solicit campaign contributions from other local officials or employees. The only exception is if the solicitation is part of a general effort that incidentally includes local officials and employees.³⁴

May a public employee ask his or her fellow public employees for contributions to a ballot measure campaign?

No, local public employees may not solicit contributions from fellow employees unless

- The solicitation is made to a significant segment of the public in which the fellow employees are included,³⁵ or
- The funds are solicited to promote or defeat a ballot measure affecting the rate of pay, working hours, retirement, civil service, or other working conditions.³⁶

Such solicitations should not take place during city time or make use of public resources.

In addition, an employee or officer of one city may solicit contributions from officials and employees of a different city.

May an elected official contribute his or her own campaign political action committee funds to qualify, support, or oppose a measure for the ballot?

Yes, as long as the contribution is reasonably related to a political, legislative, or governmental purpose of the committee.³⁷ However, there may be federal income tax implications for doing so. Candidate campaign funds are tax-exempt under Internal Revenue Code section 527 only when used primarily for "exempt functions."³⁸ Such purposes are generally limited to expenditures for a candidate to get elected or for officeholder purposes once a candidate is elected.³⁹

How should such contributions from campaign funds be reported?

**City officials
and
employees
MAY:**

Work on the campaign during their personal time, including lunch hours, coffee breaks, vacations, etc.

Make a campaign contribution to a ballot measure campaign committee using personal funds and/or attend a campaign fundraiser during personal time.

Make public appearances during personal time advocating the ballot measure.

Have the city council adopt a resolution at a public meeting that officially endorses the ballot measure and confirms the prohibition on using government's funds for political purposes.

The Fair Political Practices Commission says the recipient of the funds should report the receipt of funds as contributions received, the local official's campaign committee should report the contribution as an expenditure made and as a contribution made ⁴⁰

Are there any other restrictions in the Political Reform Act that might restrict a local elected official's participation in ballot measure campaigns?

The Fair Political Practices Commission notes that a local elected official who also serves as an appointed, voting member of another agency (e.g., a Local Agency Formation Commission, special district board, joint powers authority or regional planning agency) may, under certain circumstances, be prohibited from accepting, soliciting, or directing contributions on behalf of a ballot measure committee ⁴¹

CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF PUBLIC RESOURCES

Are there potential criminal consequences for misusing public resources?

Yes, improper use of public resources can be a criminal offense ⁴² Local officials should be careful to separate their official city work from their political and campaign work One potential consequence of a criminal conviction for misappropriation of public resources is disqualification from holding any office in the state ⁴³

Are there potential civil consequences for misusing public resources?

Yes, the individual involved may be required to reimburse the agency for the value of the resources used ⁴⁴ The person may also be responsible for the attorney fees of the party challenging the use of resources ⁴⁵ In addition, engaging in such activities gives rise to reporting obligations for public agencies under the Political Reform Act ⁴⁶ Failure to comply with the requirements may subject an agency to additional penalties ⁴⁷

CONCLUSION

Public officials and employees have many ways to exercise their right to promote or oppose ballot measures The key is not to use **the public's time, money, or other resources** to do so Public resources may be used, however, to provide objective analysis and information about a ballot measure

Charges that a city official or employee has misused and misappropriated public resources are extremely serious When the propriety of any activity is in doubt, it is the League's view to err on the side of caution

A city official should always first consult with the city's attorney concerning the propriety of any given course of conduct.

ENDNOTES

¹ Through the initiative process, groups originate and seek to pass laws and constitutional amendments without resort to the Legislature. No subject is exempt from the process and the only constitutional restrictions are that an initiative proposal must deal with only one main subject and must not constitute a "revision" (as opposed to a mere "amendment") of the state Constitution. See Cal Const art II, § 8.

Up through the 1998 election, over 560 initiatives have appeared on California ballots, with about one-fourth of them being approved. The average cost to qualify an initiative for the ballot was approximately \$700,000. (It is believed that average cost to qualify an initiative for the ballot in 2003 would be over \$1 million.)

Bernard L. Hyink & David H. Provost, *Politics and Government in California* 98-103 (15th ed 2001).

² Government Code section 50023 provides:

The legislative body of a local agency, directly or through a representative, may attend the Legislature and Congress, and any committees thereof, and present information to aid the passage of legislation that the legislative body deems beneficial to the local agency or to prevent the passage of legislation that the legislative body deems detrimental to the local agency. The legislative body of a local agency, either directly or through a representative, may meet with representatives of executive or administrative agencies of the state, federal, or local government to present information requesting action that the legislative body deems beneficial to, or opposing action deemed detrimental to, such local agency. The cost and expense incident thereto are proper charges against the local agency.

Cal Gov't Code § 50023

³ See *Stanson*, 17 Cal 3d at 217. See also *Schroeder v Irvine City Council*, 97 Cal App 4th 174, 118 Cal Rptr 2d 330 (4th Dist 2002) (governmental agency cannot spend public funds for a partisan campaign advocating the passage or defeat of a ballot measure).

⁴ See *League of Women Voters v Countrywide Criminal Justice Coordination Committee*, 203 Cal App 3d 529, 250 Cal Rptr 161 (2nd Dist 1988).

⁵ See Cal Elec Code § 9222.

⁶ See California Legislative Counsel Op. No. 154 (September 18, 1980).

⁷ See *Stanson v Mott*, 17 Cal 3d 206, 130 Cal Rptr 697 (1976) (holding that California Department of Parks and Recreation could not spend public money to prepare promotional material and pay for speakers expenses to support a 1974 park bond measure).

⁸ See Cal Govt Code §§ 50023, 53060.5, 82039, and 86300.

⁹ See *Stanson*, 17 Cal 3d at 218.

¹⁰ See *id.* at 217.

¹¹ See *id.* at 218-219.

¹² See *Stanson*, 17 Cal 3d at 220 (discussing with approval *Citizens to Protect Public Funds v Board of Education*, 13 N.J. 172, 179-180, 98 A.2d 673, 676 (1953), which recognized the broad legislative and fiscal authority possessed by locally autonomous schools boards to make reasonable expenditures to give voters relevant facts to aid them in making an informed judgment when voting).

¹³ See *Governor Gray Davis Committee v American Taxpayers Alliance*, 102 Cal App 4th 449, 125 Cal Rptr 2 534 (1st Dist 2002).

¹⁴ See Cal Code Regs, tit 2, § 18225(b)(2)

¹⁵ California Government Code section 8314 provides

It shall be 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 that are not authorized by law

Cal Gov't Code § 8314(a) See also Cal Gov't Code § 54964

¹⁶ See Cal Gov't Code 8314(b)(3)

¹⁷ California Government Code section 8314 provides for civil penalties including fines of up to one thousand dollars for each day a violation occurs, plus three times the value of the unlawful use of public resources California Penal Code section 424 provides for criminal penalties of up to four years in state prison Furthermore, a conviction disqualifies the party from holding any office in the state See also *People v Battin*, 77 Cal App 3d 635 (1978) (county supervisor prosecuted for misusing public funds for improper political purposes), *People v Sperl*, 54 Cal App 3d 640, 126 Cal Rptr 970 (2nd Dist 1976) (county marshal convicted of Penal Code section 424 for having deputies make telephone calls in connection with testimonial dinner for political candidate)

¹⁸ See *League of Women Voters*, 203 Cal App 3d at 560 See also *Choice-in-Education League v Los Angeles Unified School District*, 17 Cal App 4th 415, 21 Cal Rptr 2d 303 (2nd Dist 1993) (schools district's expenditure of funds to broadcast a public meeting where the school board adopted a resolution opposing an initiative was permissible and serves purposes unrelated to advocating a partisan position on an initiative)

¹⁹ See *City of Fairfield v Superior Court of Solano County*, 14 Cal 3d 768, 780-82, 122 Cal Rptr 543, 550-51 (1975) (city councilman has not only a right but an obligation to discuss issues of vital concern with his constituents)

²⁰ See *Bagley v Washington Township Hospital District*, 65 Cal 2d 499, 55 Cal Rptr 401 (1966) (hospital district's prohibition of employees from participating in any ballot measures pertaining to the district was unconstitutionally overbroad), *Rosenfield v Malcolm*, 65 Cal 2d 559, 55 Cal Rptr 505 (1967) (holding that county cannot dismiss a county employee on the grounds that it disagrees with the employee's activities)

²¹ See Cal Gov't Code § 3207

²² California Government Code section 54964(a) provides

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

Cal Gov't Code § 54964

²³ See *Fair Political Practices Commission v Sutti*, 90 Cal App 3d 125, 153 Cal Rptr 311 (3rd Dist 1979) (state employees may not participate in campaign activities during work hours or use public resources for campaign activities)

²⁴ See *Stanson*, 17 Cal 3d at 221 See also Cal Elec Code § 9212 (permitting local agency to prepare a report analyzing the effects a proposed local initiative measure may have on the city)

²⁵ See *id* at fn 6 (The need for the dissemination of a fair and impartial analysis of a ballot measure by a local agency is somewhat diminished by the preparation of pro and con ballot arguments and an impartial analysis of the ballot measure by the Legislative Analysis But nothing "suggests that other public agencies are foreclosed from providing objective information on a proposed ballot measure")

²⁶ California Government Code section 8314(d) provides

Nothing in this section shall prohibit the use of public resources for providing information to the public about the possible effects of any bond issue or other ballot measure on state activities, operations, or policies, provided that (1) the information activities are otherwise authorized by the constitution or laws of this state, and (2) the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure

Cal Gov't Code § 8314(d)

²⁷ California Government Code section 8314(e) provides

The incidental and minimal use of public resources by an elected state or local officer, including any state or local appointee, employee, or consultant, pursuant to this section shall not be subject to prosecution under Section 424 of the Penal Code

Cal Gov't Code § 8314(e)

²⁸ See *Stanson*, 17 Cal 3d at 221, 130 Cal Rptr at 707-08

²⁹ *Id*

³⁰ See Cal Gov't Code § 3207 (allowing local agencies to prohibit or restrict officers and employees from engaging in prohibited activity during work hours and on the local agency's premises)

³¹ See Cal Gov't Code § 3206

³² California Penal Code section 72 5(b) provides

Every person who, knowing a claim seeks public funds for reimbursement of costs incurred to gain admittance to a political function expressly organized to support or oppose any ballot measure, presents such a claim for allowance or for payment to any state board or officer, or to any county, city, or district board or officer authorized to allow or pay such claims is punishable either by imprisonment in the county jail for a period of not more than one year, by a fine of not exceeding one thousand dollars (\$1,000), or by both such imprisonment and fine, or by imprisonment in the state prison, by a fine of not exceeding ten thousand dollars (\$10,000), or by both such imprisonment and fine

Cal Penal Code § 72 5

³³ See Cal Gov't Code § 82030 See also *Breakzone Billiards v City of Torrance*, 81 Cal App 4th 1205 (2000) (an elected official does not have a financial interest in a contract between a vendor and the city)

³⁴ California Government Code section 3205(a) provides

An officer or employee of a local agency shall not, directly or indirectly, solicit a political contribution from an officer or employee of that agency, or from a person on an employment list of that agency, with knowledge that the person from whom the contribution is solicited is an officer or employee of that agency

Cal Gov't Code § 3205(a)

³⁵ See Cal Gov't Code § 3205

³⁶ California Government Code section 3209 provides

Nothing in this chapter prevents an officer or employee of a state or local agency from soliciting or receiving political funds or contributions to promote the passage or defeat of a ballot measure which would

affect the rate of pay, hours of work, retirement, civil service, or other working condition of officers or employees of such state or local agency, except that a state or local agency may prohibit or limit such activities by its employees during working hours and may prohibit or limit entry into governmental offices for such purposes during working hours

Cal Gov't Code § 3209

³⁷ See Cal Gov't Code § 89512.5

³⁸ See 26 U.S.C. § 527(c)

³⁹ See 26 U.S.C. § 527(e)(2) (definition of "exempt function")

⁴⁰ See California Fair Political Practices Commission, Response to League of California Cities' Request for Informal Assistance No. 1-92-567, September 11, 1992, at 2-4

⁴¹ See California Fair Political Practices Commission, Response to League of California Cities' Request for Informal Assistance No. 1-89-669, February 7, 1990, at 5-6. See also Cal Gov't Code § 84302

⁴² See Cal Penal Code §§ 72.5(b) (use of public funds to attend a political function to support or oppose a ballot measure), 424 (misappropriation of public funds), 484-87 (theft)

⁴³ See Cal Penal Code § 424(a)(7)

⁴⁴ See Cal Gov't Code § 8314

⁴⁵ See generally *Tenwolde v. County of San Diego*, 14 Cal App 4th 1083, 17 Cal Rptr 2d 789 (4th Dist. 1993), *reversed* June 10, 1993

⁴⁶ See Cal Gov't Code § 84203.5

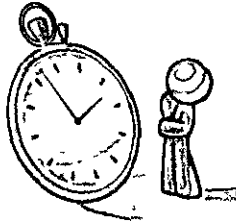
⁴⁷ See Cal Gov't Code § 83116 (sanctions include cease and desist orders, the filing of required reports, statements, or other documents, and monetary penalties of up to five thousand dollars for each violation)

3

When Do These Restrictions Kick In?

The rules against the use of public resources for campaign activities are triggered once a measure has qualified for the ballot

There may be more latitude before a measure has qualified, but consult with agency counsel regarding the permissibility of specific activities



Disclosure Requirements

Ballot measure advocacy activities are also subject to disclosure (transparency) requirements under California's Political Reform Act

For More Information

Visit www.ca-ilg.org/ballotmeasure



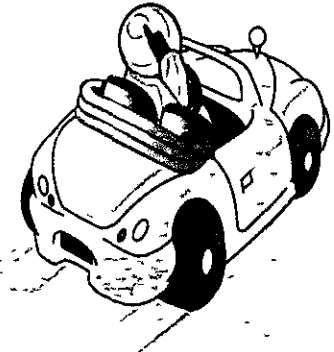
Institute for Local Government

*Promoting good government
at the local level*

www.ca-ilg.org

1400 K Street Suite 205
Sacramento, CA 95814
Tel 916 658 8208
Fax 916 444 7535

Ballot Measure Activities & Public Resources: Rules of the Road



**Institute for
Local Government**

*Promoting Good Government at the
Local Level*

Ballot Measure Activities & Public Resources: Rules of the Road

As important as ballot measures are to policymaking in California, public agencies and officials face important restrictions and requirements relating to ballot measure activities

The basic rule is that public resources may not be used for ballot measure campaign activities. Public resources may be used, however, for informational activities

This pamphlet summarizes some of the key applications of these principles. The law, however, is not always clear. Check with agency counsel for guidance on how these rules apply in any specific situation

The stakes are high. Missteps in this area are punishable as both criminal and civil offenses



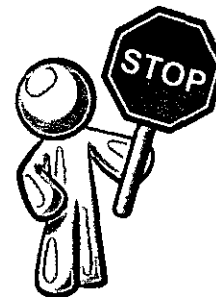
Public agency resources may be used to

- Place a measure on the ballot
- Prepare an objective and fact-based analysis on the effect of a ballot measure on the agency and those the agency serves
- Distribute that analysis through regular agency communications channels (for example, through the agency's website and in regularly scheduled agency newsletters)
- Adopt a position on the measure, as long as that position is taken at an open meeting where all voices have the opportunity to be heard
- Respond to inquiries about the ballot measure and the agency's views on the measure

Any agency communications about ballot measures should not contain inflammatory language or argumentative rhetoric

In addition, public employees and elected officials may engage in the following activities on their own time using their own resources

- Work on ballot measure campaigns or attend campaign-related events on personal time (for example, evenings, weekends and lunch hours)
- Make campaign contributions to ballot measures, using one's own money or campaign funds (while observing campaign reporting rules)
- Send and receive campaign related emails using one's personal (non-agency) computer and email address



Public officials should not

- Engage in campaign activities on while on agency time or using agency resources
- Use agency resources (including office equipment, supplies, staff time, vehicles or public funds) to engage in advocacy-related activities, including producing campaign-type materials or performing campaign tasks
- Use public funds to pay for campaign-related expenses (for example, television or radio advertising, bumper stickers, and signs) or make campaign contributions
- Use agency computers or email addresses for campaign communication activities
- Use agency communication channels to distribute campaign materials (for example, internal mail systems, agency bulletin boards, or the agency's email or intranet systems)
- Post links to campaign websites on the agency's website
- Give preference to campaign-related requests to use agency facilities

Best Practices:

- Make sure everyone in the agency who might be in a position to engage in the above activities is aware of these legal restrictions
- Use a tag that makes clear that restrictions against using public resources for campaign materials have been observed (for example "Not produced or distributed with public resources")

DO'S AND DON'TS

FOR CITY OFFICIALS AND CITY EMPLOYEES

THE DON'TS: City officials and city employees may NOT:

DON'T • Distribute campaign literature through the city's internal mail system

DON'T • Place campaign literature on employee bulletin boards, on the city's web page, or elsewhere on city government premises

DON'T • Make public appearances speaking in favor of the ballot measure during compensated work hours

DON'T • Make telephone calls about the campaign during compensated work hours

DON'T • Walk precincts, draft campaign ads, or perform other campaign tasks during compensated work hours, or assign subordinates to do the same

DON'T • Add a link from the city website to a campaign website

DON'T • Send or receive campaign-related emails on city computers

DON'T • Urge other city employees to vote for the measure during compensated work hours

DON'T • Use city copy machines, telephones, fax machines, computers, stationery, etc., for campaign purposes

THE DO'S: City officials and city employees MAY:

• Work on the campaign during their personal time, including lunch hours, coffee breaks, vacations, etc

• Make a campaign contribution to a ballot measure campaign committee using personal funds, and/or attend a campaign fundraiser during personal time

• Make public appearances during personal time advocating the ballot measure

• Have the city council adopt a resolution that officially endorses the ballot measure and confirms the prohibition on using government funds for political purposes at a public meeting

“City officials interested in working for the League ballot measure, including participating in CITIPAC fundraising, should start by contacting their League Regional Representative ”

There are two simple, but very important rules city officials and employees should follow if they want to get involved in campaign activities in support of the League's ballot measure to strengthen constitutional protections for local revenues

DON'T USE PUBLIC FUNDS

All contributions to the ballot measure of your time and resources must be made with non-public funds. This means no public facilities or equipment (phones, computers, email accounts, vehicles, copy machines or any other equipment) may be used to plan or promote ballot measure activities, including fundraising. No public funds may be used in support of your campaign activities

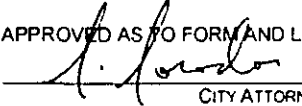
CAMPAIGN ON YOUR OWN TIME

Keep good records. Track your time and your use of private equipment used in ballot measure activities, so you are able to document that no public funds were used

City officials interested in working for the League ballot measure, including participating in CITIPAC fundraising, should start by contacting their League Regional Representative

SUPPLEMENT C

REVISED
7-20-04

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL
78734
RESOLUTION NO _____ C M S

Resolution Submitting, On The City Council's Own Motion, To The Electors At The November 2, 2004 General Election, A Proposed Ordinance (1) Creating A Special Parcel Tax And (2) Increasing The Parking Tax In Order To Fund Violence And Crime Prevention Programs; Consolidating The Election With The Statewide Presidential Election; And Directing The City Clerk To Fix The Date For Submission Of Arguments And Provide For Notice And Publication In Accordance With The November 2, 2004, Statewide Presidential Election

WHEREAS, the citizens of the City of Oakland (the "City") are committed to a community-oriented approach to violence prevention in Oakland, and

WHEREAS, preventing violence and ensuring public safety requires an integrated system of social-services intervention, long-term crime-prevention programs, police services and fire-safety and paramedic support, and

WHEREAS, Oakland funds basic police and fire services at levels below those of similar-sized cities throughout the country, and

WHEREAS, the unemployment rate as of May, 2004 was 8.6% ,and Oakland has a population of over 3,000 people on parole, many of whom have difficulty finding work, and

WHEREAS, in an effort to prevent violence and crime, the City has partnered with the State of California to work with parolees, to make sure they have an opportunity for successful reentry into society, including job opportunities, instead of resorting to crime, and

WHEREAS, in an effort to prevent violence and crime, Oakland currently funds or administers programs for youth recreation and counseling, recreation, job training, domestic violence intervention, and parole counseling,

WHEREAS, currently these programs are limited in scope or have been cut due to funding constraints, and

WHEREAS, at the general election of November 2, 1996, the voters of the State of California amended the state constitution, adding Article XIII C, which requires that all new or increased special taxes be submitted to the voters prior to becoming effective,

NOW, THEREFORE BE IT RESOLVED

That the City Council of the City of Oakland does hereby submit to the voters at the November 2, 2004 general election, an ordinance, which reads as follows

PART 1 GENERAL

Section 1 TITLE AND PURPOSE

(A) Title This ordinance may be cited as the "Violence Prevention and Public Safety Act of 2004 "

(B) Purpose The taxes imposed or increased under this ordinance are solely for the purpose of raising revenue necessary to retain and enhance services and programs to prevent violence and crime and enhance fire safety in the City of Oakland

The parcel tax imposed in Part 2 is not an ad valorem tax on real property, nor a transaction tax or sales tax on the sale of real property. It is an excise tax on the privilege of using and use of municipal services. Such municipal services increase and provide a greater benefit to Owners of Parcels when programs aimed at preventing violence and crime in the City are enhanced. Because the proceeds of the tax will be deposited in a special fund restricted for the services and programs specified herein, the tax is a special tax.

Section 2 FINDINGS

1 Investing in an coordinated system of early intervention, community policing and violence-prevention efforts before injury occurs will reduce economic and emotional costs and be a cost-effective use of taxpayer dollars

2 Violence and crime occurs at workplaces, on school grounds, and in residential neighborhoods within the Oakland community

3 Due to budget constraints, the City's police department is staffed at a level significantly lower than cities of similar size in the United States

4 Due to budget shortfalls, Oakland's fire department is currently operating with limited fire trucks and crews that rotate among several stations, thereby leaving certain fire stations under staffed

5 Fully staffing and equipping fire stations throughout the City will provide the necessary fire and medical response in case of critical emergencies or natural disasters

6 This special tax is based on a community assessment of innovative prevention strategies and is intended to be proportional to and based on estimates of typical use and benefit from these municipal services

7 Crime in Oakland disrupts local commercial activity, reduces business and industrial productivity, deters tourism and outside financial investments, and depreciates the value of real estate

8 The apportionment of the parcel tax to various types of properties is based, in part, on the intensity of policing, violence prevention and fire protection services needed for different kinds of land uses and on the average number of occupants of a parcel of each type of property. Users of residential property typically generate more calls for service to the police and fire departments, and the intensity of use of police and fire protection services increases as the number of residential units on a parcel increases. On the other hand, because of the typically large size of commercial and industrial parcels, and because the employees who work for businesses located on such parcels and the customers who visit such businesses generally outnumber the residents of even a similarly sized parcel of residential property (partly because non-residentially developed real property often has more than one business operating on it), the tax on commercial/industrial properties is calculated based on single family equivalent units

9 As the density of residential development increases, the cost of providing policing and violence and crime prevention services also increases. The differing tax rates accurately reflect the differing costs of providing services to the different densities of residential development

10 Some services, such as fire protection services and an additional neighborhood police officer in each community policing beat, are not based on density of population

11 The parcel tax rates established in this ordinance are intended to be proportional to and based on estimates of typical use of and benefit to occupants of different residential parcels of policing and violence prevention services. The rates are not tailored to individual use both because such tailoring is not administratively feasible and because the City must make police and fire protection services available to all parcels and owners of parcels equally

12 Each occupant of a parcel derives value from the availability of policing and violence and crime prevention and fire protection services. The value of such services is in their availability and benefit to all residents, and it would be unfair to charge their costs only to those persons who actually use the services. Even if such services are not presently used by an occupant, they may be used in the future and, in any event, their availability benefits each occupant. The City's policing, violence prevention and fire protection services enhance the health, safety and welfare of all occupants of property in the City and improve their quality of life both directly and indirectly. Reducing violence and crime is vitally important to the health, safety, and welfare of the occupants

13 Nothing in this ordinance is intended to preclude owners from recovering the tax from the occupant. Whether the occupant is charged depends on the occupancy agreement and the requirements of the Residential Rent Adjustment

Program Moreover, non-payment will not be a lien on the property but a personal obligation of the occupant or owner

14 It is not feasible for the City to collect the tax from the non-owner occupants on whom it is imposed because the records available to the City do not include the names of non-owner occupants Therefore, the only practical way to collect a tax imposed on occupants is to collect it from the owners of the occupied properties

15 There are existing general taxes in the form of parking and business license, the proceeds of which are deposited in the general fund. Additional revenues received as a result of this ordinance will be used for the purposes set for in Section 3 and thus are special taxes

16 This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq , as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment

Section 3 USE OF PROCEEDS

The tax proceeds raised by this ordinance may only be used as part of the following integrated program of violence prevention and public safety intervention, in accordance with the following specific purposes

- 1 Community and Neighborhood Policing Hire and maintain at least a total of 63 police officers assigned to the following specific community-policing objectives
 - a *Neighborhood beat officers* each community policing beat shall have at least one neighborhood officer assigned solely to serve the residents of that beat to provide consistent contact and familiarity between residents and officers, continuity in problem solving and basic availability of police response in each neighborhood,
 - b *School safety* supplement police services available to respond to school safety and truancy,
 - c *Crime reduction team* at least 6 of the total additional officers to investigate and respond to illegal narcotic transactions and commission of violent crimes in identified violence hot spots,
 - d *Domestic violence and child abuse intervention* additional officers to team with social service providers to intervene in situations of domestic violence and child abuse, including child prostitution,
 - e *Officer training and equipment* training in community-policing techniques, establishing police-social services referrals and equipping

officers provided in this paragraph, the total costs of which shall not exceed \$500,000 in any fiscal year that this ordinance is in effect

- 2 Violence Prevention Services With an Emphasis on Youth and Children Expand preventive social services provided by the City of Oakland, or by adding capacity to community-based nonprofit programs with demonstrated past success for the following objectives
 - a Youth outreach counse/ors hire and train personnel who will reach out, counsel and mentor at-risk adolescents and young adults by providing services and presenting employment opportunities,
 - b After and in school/ program for youth and children expand existing City programs and City supported programs that provide recreational, academic tutoring and mentoring opportunities for at-risk adolescents and children during after school hours, expand truancy enforcement programs to keep kids in school
 - c Domestic violence and child abuse counse/ors make available counselors who will team with police and the criminal justice system to assist victims of domestic violence or child prostitution and to find services that help to avoid repeat abuse situations, expand early childhood intervention programs for children exposed to violence in the home at an early age
 - d Offender/parolee employment training provide parolee pre-release employment skills training and provide employers with wage incentives to hire and train young offenders or parolees,
- 3 Fire Services Maintain staffing and equipment to operate 25 (twenty-five) fire engine companies and 7 (seven) truck companies, expand paramedic services, and establish a mentorship program at each station with an amount not to exceed \$4,000,000 annually from funds collected under this Ordinance
- 4 Evaluation Not less than 1% or more than 3% of funds appropriated to each police service or social service program shall be set aside for the purpose of independent evaluation of the program, including the number of people served and the rate of crime or violence reduction achieved
- 5 Mandated Apportionment to Social Service Programs Of the total proceeds spent on programs enumerated in this Section 3, Paragraphs 1 and 2, not less than 40% of such proceeds must be allocated to programs enumerated in this Section 3, Paragraph 2 each year this Ordinance is in effect

PART 2 OVERSIGHT, MINIMUM STAFFING AND TERM OF TAX IMPOSITION

Section 1 ANNUAL AUDIT

An independent audit shall be performed to assure accountability and the proper disbursement of the proceeds of this tax in accordance with the objectives stated herein in

accordance with Government Code sections 50075.1 and 50075.3 Tax proceeds may be used to pay for the audit

Section 2 SPECIAL FUND

All funds collected by the City from the taxes imposed by this ordinance shall be deposited into a special fund in the City treasury and appropriated and expended only for the purposes authorized by this Ordinance

Only the incremental taxes and surcharges approved by Parts 3, 4, 5, and 6 of this ordinance shall be dedicated to the purposes specified by this ordinance Any portion of the parking and business license tax rate that were general taxes prior to the enactment of this ordinance shall remain general taxes

Section 3 OVERSIGHT

To ensure proper administration of the revenue collection and spending, and the implementation of the programs mandated by this ordinance, the Mayor shall appoint three members of a "Violence Prevention and Public Safety Oversight Committee" and each councilmember shall appoint one member The committee shall review the annual audit, evaluate, inquire and review the administration, coordination and evaluations of the programs and make recommendations to the Mayor and the City Council for any new regulations, resolutions or ordinances for the administration of the programs to comply with the requirements and intent of this Ordinance

Section 4 MINIMUM POLICE STAFFING PREREQUISITE AT FISCAL YEAR 03-04 LEVEL

No tax authorized by this Ordinance may be collected in any year that the appropriation for staffing of sworn uniformed police officers is at a level lower than the amount necessary to maintain the number of uniformed officers employed by the City of Oakland for the fiscal year 2003-2004 (739)

Section 5 TERM OF TAX IMPOSITION

The taxes imposed by this Ordinance shall become effective on January 1, 2006 and shall continue in effect for 10 years

Section 6 SAVINGS CLAUSE

If any provision, sentence, clause, section or part of this ordinance is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such provision, sentence, clause, section or part of this ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance It is hereby declared to be the intention of the City, that the City would have adopted this ordinance had such unconstitutional, illegal or invalid provision, sentence, clause, section or part thereof not been included herein

If any tax or surcharge imposed by this ordinance is found to be unconstitutional, illegal or invalid, the amounts, services, programs and personnel (as set forth in Part 3) required to be funded from such taxes and surcharges shall be reduced proportionately by any revenues lost due to such unconstitutionality, illegality or invalidity

Section 7 REGULATIONS

The City Council is hereby authorized to promulgate such regulations or ordinances as it shall deem necessary in order to implement the provisions of this ordinance

Section 8 NO AMENDMENT

The tax rates may not be amended by action of the City Council without the applicable voter approval

Section 9 CHALLENGE TO TAX

Any action to challenge the taxes imposed by this ordinance shall be brought pursuant to Government Code section 50077.5 and Code of Civil Procedure section 860 et seq

PART 3 PARCEL TAX

Section 1 DEFINITIONS

For purposes of this part only, the following terms shall be defined as set forth below

(A) "Building" shall mean any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "Building" includes the word "structure."

(B) "Family" shall mean one or more persons related by blood, marriage, domestic partnership, or adoption, who are living together in a single residential unit and maintaining a common household. Family shall also mean all unrelated persons who live together in a single Residential Unit and maintain a common household.

(C) "Hotel" shall mean as defined by Oakland Municipal Code section 4 24 020

(D) "Multiple Residential Unit Parcel" shall mean a parcel zoned for a building, or those portions thereof, that accommodates or is intended to contain two or more residential units.

(E) "Non-Residential" shall mean all parcels that are not classified by this ordinance as Residential Parcels, and shall include, but not be limited to, industrial, commercial and institutional improvements, whether or not currently developed.

(F) "Occupancy" shall be as defined by Oakland Municipal Code section 4 24 020

(G) "Operator" shall be as defined by Oakland Municipal Code section 4 24 020

(H) "Owner" shall mean the Person having title to real estate as shown on the most current official assessment role of the Alameda County Assessor

(I) "Parcel" shall mean a unit of real estate in the City of Oakland as shown on the most current official assessment role of the Alameda County Assessor

(J) "Person" shall mean an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit

(K) "Possessory Interest" as it applies to property owned by any agency of the government of the United States, the State of California, or any political subdivision thereof, shall mean possession of, claim to, or right to the possession of, land or Improvements and shall include any exclusive right to the use of such land or Improvements

(L) "Residential Unit" shall mean a Building or portion of a Building designed for or occupied exclusively by one Family

(M) "Single Family Residential Parcel" shall mean a parcel zoned for single-family residences, whether or not developed

(N) "Transient" shall mean any individual who exercises Occupancy of a hotel or is entitled to Occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days Any individual so occupying space in a Hotel shall be deemed to be a Transient until the period of thirty (30) consecutive days as elapsed.

Section 2 IMPOSITION OF PARCEL TAX

There is hereby imposed a special tax on all Owners of parcels in the City of Oakland for the privilege of using municipal services and the availability of such services. The tax imposed by this Section shall be assessed on the Owner unless the Owner is by law exempt from taxation, in which case, the tax imposed shall be assessed to the holder of any Possessory Interest in such parcel, unless such holder is also by law exempt from taxation. The tax is imposed as of July 1 of each year on the person who owned the parcel on that date.

The tax hereby imposed shall be at the following rates, subject to annual adjustment as provided in Section 6

(A) For owners of all Single Family Residential Parcels, the tax shall be at the annual rate of \$88 00 per Parcel

(B) For owners of all Multiple Residential Unit Parcels, the tax shall be at the annual rate of \$60 12 per occupied Residential Unit. Owners of units that are vacant for six months or more per year, may apply to the Director of Finance to have the rate reduced by 50% to \$30 06 per vacant Residential Unit located on the Parcel

(C) The tax for a Non-Residential Parcels is calculated using both frontage and square footage measurements to determine total Single Family Residential Unit Equivalents. A frontage of 80 feet for a commercial/industrial parcel, for example, is equal to one (1) single family residential unit equivalent. (See matrix) An area of 6,400 square feet for the commercial industrial parcel is equal to one (1) single family residential unit equivalent. The tax is the annual rate (\$45 07) multiplied by the total number of Single Family Equivalents (determined by the frontage and square footage)

LAND USE CATEGORY	FRONTAGE	AREA (SF)
Commercial Institutional	80	6,400
Industrial	100	10,000
Public Utility	1,000	100,000
Golf Course	500	100,000
Quarry	1,000	250,000

Example assessment calculation for an owner of a commercial parcel with a frontage of 160 feet and an area of 12,800 square feet

<u>Frontage</u>	<u>Area</u>
160 feet	12,800 sf
80 ft /SFE = 2 SFE	6,400 SF/SFE = 2 SFE
2 SFE + 2 SFE = 4 SFE	4 SFE x \$45 07 = \$180 28

(D) An Owner of An Undeveloped Parcel is exempt from this parcel tax if the owner can prove that the parcel was undeveloped for at least six months of the year in question

Section 3 HOTELS

The tax imposed by this Ordinance shall be imposed on each Hotel within the City in accordance with the following

1 Residential Hotels If rooms in a Hotel were occupied by individuals who were not Transients for 80% or more of the previous fiscal year, such Hotel shall be deemed a Residential Hotel, and such rooms shall be deemed Residential Units and shall be subject to the Parcel tax imposed on Multiple Residential Units. The remainder of the Building

shall be subject to the applicable Square Footage tax computed in accordance with the Single Family Residential Unit Equivalent calculations

2 Transient Hotels Notwithstanding the previous sub-section, if 80% or more of the Operator's gross receipts for the previous fiscal year were reported as rent received from Transients on a return filed by the Operator in compliance with section 4 24 010 of the Oakland Municipal Code (commonly known as the Uniform Transient Occupancy Tax of the City of Oakland), such Hotel shall be deemed a Transient Hotel. The entire Building shall be deemed a Non-Residential Parcel, categorized as Commercial, Institutional, and shall be subject to the Square Footage and Single Family Residential Unit Equivalent calculations set forth in Section 4(C), and the parcel tax imposed on Residential Units shall not apply

Section 4 EXEMPTIONS

Low income household exemption Exempt from this tax are owners of single family residential units in which they reside whose combined family income, from all sources for the previous calendar year, is at or below the income level qualifying as "very low income" for a Family of such size under Section 8 of the United States Housing Act of 1937 (42 U S C A Sections 1437 et seq ,) for such year. Owners must apply for the exemption provided for in this section annually by petition to the Director of the Finance and Management Agency of the City of Oakland ("Director of Finance") in the manner and time set forth in procedures established by the Director of Finance. Such petitions shall be on forms provided by the Director of Finance and shall provide such information as the Director of Finance shall require, including, but not limited to, federal income tax returns and W-2 forms of owner-occupants eligible for this exemption

Section 5 REDUCTION IN TAX, RATE ADJUSTMENT

(A) Subject to paragraph (B) of this section, the tax rates imposed by this ordinance are maximum rates and may not be increased by the City Council above such maximum rates. The tax imposed by the ordinance may be suspended, reduced or eliminated by the City Council for a subsequent fiscal year upon a vote of the City Council on or before June 30th in any year in which the City Council determines that after such suspension, reduction or elimination there will be sufficient revenues available to balance the City Council's Adopted Policy Budget and provide the services and programs described in Section 3 above. Such suspension, reduction or elimination shall be effective for the fiscal year following such vote

(B) Beginning in Fiscal Year 2004-2005, and each year thereafter, the City Council may increase the tax imposed hereby only upon a finding that the cost of living in the immediate San Francisco Bay Area, as shown on the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the U S Department of Labor Statistics, has increased. The percentage increase of the tax imposed hereby shall not exceed such increase, using Fiscal Year 2003-2004 as the index year and in no event shall any annual adjustment exceed 5% (five percent)

Section 6 DUTIES OF THE DIRECTOR OF FINANCE, NOTICE OF DECISIONS

It shall be the duty of the Director of the Finance and Management Agency ("Director of Finance") to collect and receive all taxes imposed by this ordinance, and to keep an accurate record thereof

The Director of Finance is charged with the enforcement of this ordinance, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this ordinance, including provisions for the re-examination and correction of returns and payments. The Director of Finance may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect

Upon disallowing any claims submitted pursuant to this ordinance, the Director of Finance shall mail written notice thereof to the claimant at his/her address as shown on the Alameda County Assessor's property tax rolls

Section 7 EXAMINATION OF BOOKS, RECORDS, WITNESSES, PENALTIES

The Director of Finance or his/her designee is hereby authorized to examine assessment rolls, property tax records, records of the Alameda County Recorder and any other records of the County of Alameda deemed necessary in order to determine ownership of Parcels and computation of the tax imposed by this ordinance

The Director of Finance or his/her designee is hereby authorized to examine the books, papers and records of any person subject to the tax imposed by this ordinance for the purpose of verifying the accuracy of any petition, claim or return filed and to ascertain the tax due. The Director of Finance, or his/her designee is hereby authorized to examine any person, under oath, for the purpose of verifying the accuracy of any petition, claim or return filed or to ascertain the tax due under this ordinance and for this purpose may compel the production of books, papers and records before him/her, whether as parties or witnesses, whenever s/he believes such persons have knowledge of such matters. The refusal of such examination by any person subject to the tax shall be deemed a violation of this ordinance

Section 8 COLLECTION OF TAX, INTEREST AND PENALTIES

The tax levied and imposed by this ordinance shall be due and payable on July 1 of each year, but it may be paid in two installments due no later than December 10 and April 10. The tax shall be delinquent if not received on or before the delinquency date set forth in the notice mailed to the Owner's address as shown on the most current assessment roll of the Alameda County Tax Collector and shall be collected in such a manner as the City Council may decide.

A one-time penalty at a rate set by the City Council, which in no event shall exceed 25% of the tax due per year, is hereby imposed by this ordinance on all taxpayers who fail to timely pay the tax provided by this ordinance, in addition, interest shall be assessed at the rate of 1% per month on the unpaid tax and the penalty thereon.

Every penalty imposed and such interest as accrues under the provisions of this ordinance shall become a part of the tax herein required to be paid.

The City may authorize to have the taxes imposed by this ordinance collected by the County of Alameda in conjunction with and at the same time and in the same manner as the County's collection of property taxes for the City. If the City elects to so collect the tax, penalties and interest shall be those applicable to the nonpayment of property taxes.

In no event shall anything herein be construed to impose a tax lien on the Parcel to secure payment of the tax.

Section 9 COLLECTION OF UNPAID TAXES

The amount of any tax, penalty, and interest imposed under the provisions of this ordinance shall be deemed a debt to the City. Any person owing money under the provisions of this ordinance shall be liable to an action brought in the name of the City for the recovery for such amount.

Section 10 REFUND OF TAX, PENALTY, OR INTEREST PAID MORE THAN ONCE, OR ERRONEOUSLY OR ILLEGALLY COLLECTED

Whenever the amount of any tax, penalty, or interest imposed by this ordinance has been paid more than once, or has been erroneously or illegally collected or received by the City it may be refunded provided a verified claim in writing, therefore, stating the specific ground upon which such claim is founded, is filed with the Director of Finance within one (1) year from the date of payment. The claim shall be filed by the person who paid the tax or such person's guardian, conservator of the executor of her or his estate. No claim may be filed on behalf of other taxpayers or a class of taxpayers. The claim shall be reviewed by the Director of Finance and shall be made on forms provided by the Director of Finance. If the claim is approved by the Director of Finance, the excess amount collected or paid may be refunded or may be credited against any amounts then due and payable from the Person from whom it was collected or by whom paid, and the balance may be refunded to such Person, his/her administrators or executors. Filing a claim shall be a condition precedent to legal action against the City for a refund of the tax.

Section 11 MISDEMEANOR VIOLATION

Any Owner who fails to perform any duty or obligation imposed by this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than \$1,000 or by imprisonment for a period of not more than one year, or by both such fine and imprisonment

The penalties provided in this section are in addition to the several remedies provided in this ordinance, or as may otherwise be provided by law

Section 12 BOARD OF REVIEW

Any person dissatisfied with any decision of the Director of Finance adversely affecting the rights or interests of such person made by the Director of Finance under the authority of this ordinance, may appeal therefrom in writing to the Business Tax Board of Review (the "Board") within sixty (60) days from the date of mailing such decision by the Director. All filings with the Board relating to appeals or otherwise shall be made to the Chairperson of the Business Tax Board of Review in care of the Revenue Department, 250 Frank Ogawa Plaza, 1st Floor, Oakland, CA 94612. The Board may affirm, modify or reverse such decision or dismiss the appeal therefrom, as may be just, and shall prescribe such rules and regulations relating to appeals as it may deem necessary. The Board's decision on appeal will become final upon mailing notice thereof to the Person appealing the Board's decision at such Person's last known address shown on the Tax Records.

Any tax, penalty or interest found to be owed is due and payable at the time the Board's decision becomes final.

The Board shall approve, modify or disapprove all forms, rules and regulations prescribed by the Director of Finance in administration and enforcement of this tax. Such forms, rules and regulations shall be subject to and become effective only on such approval.

All decisions rendered by the Board shall be final, and no further administrative appeal of these decisions is provided or intended.

PART 4 PARKING TAX SURCHARGE

The Municipal Code is hereby amended to add as set forth below (section numbers and titles are indicated in bold type, additions are indicated by underscoring and deletions are indicated by ~~strike-through-type~~, portions of the regulations not cited or not shown in underscoring or ~~strike-through-type~~ are not changed) Section 4 16 031 of the Municipal Code is hereby added to read as follows.

4 16.031 imposition of Surcharge

Subject to the provisions for the collection of taxes and definitions in this chapter, there shall be an additional tax of eight and one-half (8 1/2) percent imposed on the rental of every parking space in a parking station in the City.

By adopting this ordinance the People of the City of Oakland do not intend to limit or in anyway curtail any powers the City Council may exercise as to the subject matter of this ordinance, including, but not limited to, raising the rate of taxation or surcharge, lowenng the rate of taxation or surcharge, eliminating the tax or surcharge, or creating or defining new categoens of taxpayers under this ordinance.

and be it

RESOLVED The City Council may designate one or more of its members to advise the City Attorney regarding the abbreviated statement of measure (ballot question),

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the consolidation of the Oakland Municipal election with the statewide presidential election of November 2, 2004, consistent with provisions of State Law, and be it

FURTHER RESOLVED: That the City Council hereby authorizes and directs the City Clerk of the City of Oakland (the "City Clerk") at least 88 days pnor to November 2, 2004, to file with the Alameda County Clerk certified copies of this resolution, and be it

FURTHER RESOLVED: That the City Council does hereby request that the Board of Supervisors of Alameda County include on the ballots and sample ballots the recitals and measure language contained in this resolution to be voted on by the voters of the qualified electors of the City of Oakland, and be it

FURTHER R ESOLVED: That the City Clerk is hereby directed to cause the posting, publication and pnting of notices, pursuant to the requirements of the Charter of the City of Oakland, the Government Code and the Elections Code of the State of California, and be it

FURTHER R ESOLVED: T hat the City Council does hereby request that the Registrar of Voters of the County of Alameda perform necessary services in connection with said election, and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to obtain pnting, supplies and services as required, and be it

FURTHER RESOLVED: T hat the City Clerk is hereby authozed to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Oakland, and be it

FURTHER RESOLVED That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed ordinance, and said date shall be posted in the Office of the City Clerk, and be it

FURTHER RESOLVED That the City Clerk and City Administrator are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2004 special election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct November 2, 2004, general election, consistent with law

IN COUNCIL, OAKLAND, CALIFORNIA, JULY , 2004

JUL 20 2004

PASSED BY THE FOLLOWING VOTE

AYES- ~~BRUNNER~~, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND PRESIDENT DE LA FUENTE **7**

NOES- **BROOKS - 1**

ABSENT- **0**

ABSTENTION- **0**

Attest



CEDA FLOYD
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIFORNIA

VIOLENCE PREVENTION BALLOT QUESTION

To reduce violent crime and increase public safety, shall the City of Oakland increase successful after school, counseling, truancy, and job training programs, early intervention programs for children who witness violence, programs to prevent child abuse and domestic violence, and increase community police officers, paramedics and emergency fire personnel in each neighborhood by authorizing a surcharge on parking in commercial parking lots and parcel tax subject to annual performance and financial audits by a citizens oversight committee?

SUPPLEMENT D

ATTACHMENT 10

ATTACHMENT A
Adopted December 19, 2005

BYLAWS OF THE VIOLENCE PREVENTION AND PUBLIC SAFETY OVERSIGHT COMMITTEE

ARTICLE I NAME

The name of this organization is the Violence Prevention and Public Safety Oversight Committee.

ARTICLE II PURPOSE

It is the purpose of the Violence Prevention and Public Safety Oversight Committee, hereinafter referred to as the "Oversight Committee", to ensure proper administration of the revenue collection and spending, and the implementation of the programs mandated by this ordinance

ARTICLE III FUNCTIONS

The Committee shall review the annual audit, evaluate, inquire and review the administration, coordination and evaluations of the programs funded by The Violence Prevention and Public Safety Act ("Measure Y") revenues. The Committee shall make recommendations to the Mayor and the City Council for any new regulations, resolutions or ordinances for the administration of the programs to comply with the requirements and intent of Measure Y.

In prescribing the above duties and functions of the Oversight Committee, it is not the intent of the Council to duplicate or overlap the functions, duties, or responsibilities heretofore or hereafter assigned to any other City board or commission or to a City department. As to such functions or responsibilities of another board or commission or of a department of the City, the Oversight Committee will render assistance and advice to such board, commission or department as may be requested. The Oversight Committee shall work with other boards, commissions and City staff, such as the Oakland Fund for Children and Youth, to encourage coordination of City funds

ARTICLE IV MEMBERSHIP

Measure Y contained provisions for the appointment of an 11-member oversight committee, with three members being appointed by the Mayor and one member

appointed by each City Councilmember. Members need to reside and/or be employed in the City of Oakland. Seven members shall constitute a quorum.

The members shall be appointed to terms of one year, said term to commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired term only. Members may be reappointed to subsequent terms. If a Member has not been reappointed or replaced by the expiration of his or her one year term, that Member may remain in hold-over status for up to one year, but may be replaced by the appointing authority at any time during the hold-over period.

A vacancy on the Oversight Committee will exist whenever a member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the Council within ninety (90) days of appointment.

A member may be removed pursuant to Section 601 of the charter. Among other things, conviction of a felony, misconduct, incompetence, inattention to or inability to perform duties, or absence from three (3) consecutive regular meetings except on account of illness or when absent from the City by permission of the Oversight Committee, shall constitute cause for removal.

ARTICLE V OFFICERS

The members shall elect a chairperson and a vice chairperson who shall serve for a one year term.

ARTICLE VI MEETINGS

The Oversight Committee shall meet at City Hall, and at an established date and time suitable for its purpose. Such meetings shall be designated regular meetings. Other meetings called by the Mayor or City Administrator and meetings scheduled for a time or place other than for regular meetings shall be designated special meetings. All meetings shall be held in accordance with the Brown Act and Sunshine Ordinance.

ARTICLE VII RULES AND PROCEDURES

The Oversight Committee shall, in consultation with the Mayor, establish rules and procedures for the conduct of its business by a majority vote of the members present. Voting shall be required for the adoption of any motion or resolution. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Oversight Committee in all cases to which they are applicable and in which they are

not inconsistent with these bylaws and any special rules of order the Oversight Committee may adopt

**ARTICLE VIII
REPORTS AND RECOMMENDATIONS**

The Oversight Committee shall make reports, findings and recommendations either to the City Administrator or the City Council, as appropriate. An annual report will be presented in writing to the City Council

Recommendations from the Oversight Committee shall first be carefully and fully considered by the City Administrator. If rejected by the City Administrator, the Oversight Committee may submit recommendations to the City Council for consideration, as appropriate

**ARTICLE IX
STAFF**

The City Administrator, or a designee, may provide the Oversight Committee with staff assistance.

**ARTICLE X
COMMITTEES**

The Oversight Committee may not create any Standing Committees for the purpose of delegating any of the Committee's decision-making or duties, but may form ad hoc committees as needed

**ARTICLE XI
AMENDMENTS OF BYLAWS**

These Bylaws may be amended, or new Bylaws adopted, at any regularly scheduled meeting of the Oversight Committee provided that notice of the proposed action shall have been sent to each member of the Oversight Committee at least fifteen (15) days before said meeting. A two-thirds (2/3) vote of the total Oversight Committee active membership shall be required to amend and/or adopt new Bylaws.

The Oversight Committee may amend without permission of the City Council, Office of the City Administrator, Oakland Police Department or Department of Human Services only those elements of these Bylaws which do not give itself powers that are reserved for the City Council/City of Oakland, Office of the City Administrator, Oakland Police Department or Department of Human Services.

125