



staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Karl H. Berger, City Attorney 

SUBJECT: Consideration and possible action to receive and file the attached Campaigning Overview memorandum; and direct the City Manager to disseminate the memorandum within the City organization.

DATE: May 23, 2016

EXECUTIVE SUMMARY

The attached memorandum provides an overview of laws as they apply to campaigning by the City and its officials and employees, and a summary of general prohibitions and permissible actions.

RECOMMENDATION TO CITY COUNCIL

- 1) Receive and file the attached memorandum and direct the City Manager to disseminate the memorandum within the City organization; or
- 2) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

There is no fiscal impact at this time.

Attachment:

City Attorney Memorandum, Re: Campaigning Overview dated May 23, 2016.....2

CITY OF BELLFLOWER

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

DATE: May 18, 2016
TO: Citywide Distribution
FROM: City Attorney's Office
SUBJECT: Campaigning Overview

As the November 2016 election draws nearer, we thought it might be useful to remind City officials and employees regarding the “Dos” and “Don’ts” regarding campaigning for candidates and ballot measures. This provides a general overview of both federal and California law. Please note that failure to abide by these rules can result not only in discipline, but also criminal charges filed by the District Attorney’s office. We encourage you to ask if you have any questions.

1. Overview.

a. Elected and appointed officials may campaign for or against a ballot measure or candidate on their own time so long as they do not use any City funds or resources including, without limitation, cell phones paid for by the City; City computers; the City computer system (including email servers); materials prepared at City expense or prepared by City staff (except use of staff reports and agenda materials prepared by City staff); and City facilities (including campaigning on City property). Campaign information cannot be directed specifically to City employees.

b. City staff cannot engage in any campaigning activities while on duty or on City property except in public parks. City employees (including public safety personnel) cannot campaign utilizing or wearing their uniforms. City staff can engage in campaign activities through their unions or as residents of the City so long as they do not use City funds or resources as set forth in the above paragraph. City staff who are ineligible for overtime and are not residents, but engage in campaigning activities are not strictly prohibited from engaging in campaign activities. They should exercise caution, however, since campaigning activities by those individuals can invite questions as to whether they are on-duty or not. This is of specific concern with respect to the City Manager and Department Heads engaging in campaign activities.

c. If the City Council places a proposition on the ballot, preparation and dissemination of information is only permitted if the City has an existing practice of preparing and disseminating this type of information.

2. General Prohibitions.

a. California law prohibits expenditure of public resources to support or oppose ballot measures or candidates. “Public resources” is more than simply money, it also includes employees’ time and any use of publicly owned property.

b. Additionally, California law lists specific prohibitions:

1. It is unlawful to use one’s government office for improper influence;

2. It is unlawful for an officer or employee to knowingly solicit political funds or contributions from other public officers or employees; and

3. It is unlawful for employees to wear a city uniform when engaging in political activities, even during off-duty hours.

c. Campaigning at City Council Meetings.

1. It is important to remember that City Council meetings are government proceedings that are necessary to conduct City business. While the City Council may regulate the activities of persons attending a City meeting to facilitate the orderly progression of the meeting, it cannot generally restrict the content of that person’s speech. The City Council cannot, therefore, prohibit public criticism of the City’s policies, procedures, programs, or services or the acts or omissions of the legislative body.

2. The City Council may, however, prevent members of the public from commenting on matters that are not within the City Council’s subject matter jurisdiction. This generally means that public discussion is limited to such matters that serve the purpose of the City Council in holding its meetings.

3. While there is no specific legal interpretation of the matter – either in case law, statute or otherwise – the most recent opinion by the California Supreme Court (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1) generally supports the notion that campaigning during the public comment period of a City Council meeting is outside the City Council’s subject-matter jurisdiction. Additionally, significant public resources are expended during a City Council meeting, e.g., staff time, publicly funded television, and use of the City Council Chambers. The City Council may, therefore, prevent speakers during public comment to engage in campaigning.

3. Permissible Actions.

a. Cities may use public resources to educate the electorate. Such activity must: (1) present facts and not advocate a position; (2) present both sides of an issue; (3) be informational or analytical in style and tenor; and (4) be timed to educate, not persuade, the electorate.

b. Thus, the City may use public resources to objectively evaluate how a ballot measure will affect the agency. Information provided by the City may (a) present objective facts (e.g., historical information); (b) must avoid argumentative or inflammatory rhetoric; (c) must avoid urging voters to vote in a particular manner or take other actions in support or in opposition to a measure; (d) distribute such information in a manner consistent with the City's established practices (e.g., posting on the City's webpage and the City's regular newsletter sent to residents).

c. The City may also express its own viewpoint regarding a particular ballot measure. Typically, the only permissible means of presenting such a viewpoint is during a public session at which dissenters may respond.

d. Nothing prevents individual officials or public employees from advocating a particular position regarding a ballot measure on their own time. They simply cannot use public resources when doing so.