

MEMORANDUM

Via Electronic Mail

DATE: August 24, 2022
TO: All City Employees
All Candidates
All City Commissioners
FROM: Kristopher J. Kokotaylo, City Attorney 
COPY: Honorable Mayor and City Council
Joan Malloy, City Manager
Anna Brown, City Clerk
RE: **Campaign Activities During Elections**

As the November general election approaches, we provide this informational memorandum to remind you of State and local law restrictions on public employee and public official participation in political activities. This memorandum addresses only the broad outlines of a very complex area of the law and there are many gray areas where hard and fast rules are simply impossible to state. This memorandum is solely intended to provide current guidelines pertaining to political activities.

We recognize that city officials and employees are free to engage in political activities while off duty. But, as a general rule, we want you to keep in mind that the City of Union City, as an entity, cannot participate in political activities. Accordingly, as City officials and City employees, you must refrain from using your official capacity as representatives of the City to convey the impression that the City endorses a political campaign.

Three City Council seats (Districts 2, 3, and 4) and one local City measure, Measure Z are on the November 2022 ballot.

1. Providing Information vs. Campaigning with Regard to a City Ballot Measure or Candidates.

The City has one measure, Measure Z, on the ballot this November. Government Code Section 54964 prohibits any officer, employee or consultant of the City from expending or

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authorizing the expenditure of City funds “to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate by the voters.” The California Supreme Court held that in the absence of clear legislative authorization, “a public agency may not expend public funds to promote a partisan position in an election campaign.”¹

However, expenditures for *informational* purposes, rather than promotional purposes, regarding a ballot measure are allowed.² Whether any particular communication is informational or promotional will depend on factors including the “style, tenor and timing” of the communication on a case by case basis. In general, the City can:

- Educate voters on the measures through facts, provided that the City does not “mount a campaign” to advocate for or against the measure;
- Explain the impacts on the City of passage or defeat of the measure;
- Post informational material on the City’s website;³
- Include the information in a separate document that is not campaign literature, and distribute the document for public information through, for example, the City Clerk’s office or at public libraries;
- Mail information as part of a regular newsletter that was not created specifically for the campaign.⁴

The City may be involved with a ballot measure in other ways:

- The City may hire a consultant to assist in the preparation of informational material. However, the City should make it explicit that the consultant is hired for his or her expertise in preparing fair and impartial informational material. The consultant should not be identified with any particular political interests. If the City Council is interested in disseminating information on a measure, it should plan for a coordinated program that could include the preparation and distribution of materials to voters, and holding public meetings at which informational presentations are made.

¹ *Stanson v. Mott* (1976) 17 Cal.3d 206, 209-210.

² *See Id.* at 206.

³ The City is not required to give ballot measure opponents access to post its own information on the City website, provided that the City website is not a public forum.

⁴ *See Vargas v. City of Salinas* (2009) 46 Cal.4th 1.

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- City employees may make presentations on the ballot measure during City work time, so long as the presentation is a fair and impartial presentations of the facts.⁵

2. Government Code Sections 3201, *et seq.* and Government Code Section 8314.

California Government Code Sections 3201, *et seq.* and California Government Code Section 8314 apply to City officials and employees. Under State law, City officials and employees are prohibited from conducting political activities⁶ in the following circumstances:

- Unlawful use of office, influence, or authority;
 - Neither City officials nor employees may directly or indirectly solicit campaign contributions from other City officials or employees.⁷ Solicitation from other City officials or employees is only permitted if it is part of a general effort that incidentally includes City officials and employees.⁸ For example, a City employee on personal time, participating in a general door-to-door solicitation effort organized by a committee can solicit a contribution from another City employee. This would be considered part of a general effort which incidentally includes the City employee. Similarly, if a City official sends a mailer paid for by a campaign committee to high propensity voters, and officers and employees of the City are intended recipients of that mailer, that would be acceptable.
 - Neither the City Council nor employees may use their office or the influence inherent to their office to help obtain, or obstruct someone from obtaining, a position, promotion or raise within the City upon the consideration or condition that the person helped, or obstructed, will vote a certain way, or will provide political influence for a candidate, officer or party.⁹ Even the “urging or discouraging” of another’s action is prohibited under this statute.
 - Finally, a Councilmember or a candidate for City Council cannot offer or arrange an increase in compensation or salary in exchange for an employee’s

⁵ The drafting of, and use of talking points when making presentations and answering questions about a ballot measure and responding to questions on the ballot measure on City time are permitted.

⁶ “Political activities” include, but are not limited to: advocacy for or against a candidate or ballot measure, solicitation of political funds or campaign contributions, signing petitions, endorsements or nomination papers.

⁷ Gov. Code § 3205.

⁸ Gov. Code § 3205(c).

⁹ Gov. Code § 3204.

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contribution or promise to contribute to any committee directly or indirectly controlled by the Councilmember.¹⁰

- Use of City resources to support or oppose a candidate for any elective office;
- Use of City resources to support or oppose a recall effort against any elected official;
- Use of City resources to support or oppose any initiative, referendum or ballot measure;
- Participation in political activities during work hours on City premises, as governed by local rules and regulations; or
- Participation in political activities while in City uniform.¹¹ “City uniforms” include anything worn by an individual with a City logo, identifying patch, embroidered badge, or any other identifying clothing which is routinely worn at work and has been provided by the City.

“Use of City resources” includes, but is not limited to:

- Using a City-issued landline and/or cell phone to call voters and urge them to “vote yes” on a ballot measure, or for or against a candidate;
- Using a City-issued email address to send an email to voters urging a vote in favor of or against a ballot measure, or candidate;
- Using a City-owned and/or issued computer to prepare materials for or correspond with voters to support or defeat a ballot measure, or candidate;
- Using City-purchased paper, pens, or other office supplies to engage in efforts to support or oppose a ballot measure, or to support or oppose the election or defeat of a candidate;
- Using a City owned/issued printer and/or photocopier to print materials supporting or opposing a ballot measure, or candidate;
- Using “City time” during the workday to participate in campaign activities; and

¹⁰ Cal. Gov. Code § 3205.5. A violation is punishable by imprisonment and/or a fine of up to \$5,000.

¹¹ See Gov. Code §§ 3201-3209, 8314.

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- Using a City owned/issued car, bicycle, or other form of transportation to travel to an activity to support or oppose a ballot measure or candidate.¹²

3. Individual Participation in Campaigning.

The City Council and all City employees have a First Amendment right to express their opinion on City matters, including support of ballot measures or candidates. However, as noted above, public resources may not be used to effectuate or communicate their viewpoints. The City Council and City employees should be careful to separate their official City work from their political and campaign work. Below are examples of permissible activities:

- Less than a quorum of the City Council may participate in the formation and operation of a campaign committee to raise funds and actively participate in campaign activities related to a measure in which the City is precluded from participating.¹³ Such a campaign could hire consultants to craft persuasive messages to the voters and take donations to fund the effort. Such a campaign committee must operate independently of the City.
- Members of the City Council may individually participate in campaign activities related to a measure. Such participation may include making appearances at events held by local organizations, writing editorials, working on fundraising efforts, and meeting with local “opinion-makers.” City Councilmembers may introduce or announce that they are a member of the City Council, and use their title, but must also make clear that they are speaking on behalf of themselves individually, unless the City Council has taken an official position -- then he or she may speak upon the City Council’s official position.
 - A public official should not attend a civic function (such as a meal) paid for or sponsored by the City and stand up and make a speech about why voters should support a ballot measure. However, if a City official is asked a question by an attendee on whether he or she, as an individual, will support the ballot measures, the official has a right to express his or her viewpoint.

¹² See Gov. Code § 8314.

¹³ Less than a quorum may participate in the formation and operation of a campaign committee as the participation of more than quorum would violate the Brown Act open meeting law.

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- Employees may also individually participate in campaign activities, including forming a campaign committee. Employees may not participate in such activities on City time and should not participate in campaign activities on City property. In addition, if employees attend any campaign activities, they should not wear a City-issued uniform, and should not travel to and from campaign activities or events in a City owned vehicle.

4. Union City Municipal Code Chapter 1.08 Prohibits the Use of the City Seal or Logos, except for Official City Business.

Under the Union City Municipal Code, neither employees nor the general public can use the City name, seal, or logo, such as police department or public works logos, for any private purpose.¹⁴

“Private purpose” includes, the support or opposition to: any candidate for a public office, any ballot measure, initiative, referendum, or any other matter voted upon at an election.¹⁵ For example, “private purpose” includes support or opposition for Measure WW, the proposed Union City utility users tax.

A copy of Union City Municipal Code Chapter 1.08 is available online at <http://qcode.us/codes/unioncity/>.

5. Civil and Criminal Penalties for Using City Resources to Support or Oppose a Candidate or Ballot Measure.

State law prohibits using public funds, including public moneys, City facilities, staff, or any other City equipment to support or oppose a candidate or ballot measure.¹⁶ City officials and employees may be civilly liable for unlawfully using public resources, and may be criminally liable for misappropriating public funds.¹⁷

These laws exist to protect employees and ensure that no job is dependent upon an employee’s political viewpoint or beliefs. These laws also help ensure that no political agenda becomes confused with the public policy of any City agency, and help ensure that public officials do not use their public positions for political gain.

¹⁴ Union City Municipal Code (“UCMC”) § 1.08.050; 1.08.060.

¹⁵ UCMC § 1.08.040.

¹⁶ Gov. Code § 8314; see *Stanson v. Mott* (1976) 17 Cal.3d 206; *League of Women Voters v. Countywide Crim. Justice Coordinating Com.* (1988) 203 Cal.App.3d 529.

¹⁷ Gov. Code § 8314; Pen. Code § 424; see *People v. Groat* (1993) 19 Cal.App.4th 1228.

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However, all employees, as stated above, remain free to participate in political activities on their personal time with personal resources.

6. Local Measures on the November 2022 Ballot.

Among candidates for election and other measures, there is one local measure on the November 2022 ballot:

- a. Measure Z, a nine-year extension of the City's existing half-cent sales tax.

While employees can utilize personal time and personal resources to support or oppose Measure Z it is unlawful to use City resources to support or oppose the measure.

If you have any questions, please do not hesitate to contact City Manager Joan Malloy or me at 510.808.2000 or kkokotaylo@meyersnave.com.

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