City of Long Beach **Memorandum**
Working Together to Serve

Office of the City Attorney

DATE: January 26, 2022

TO: Honorable Mayor and Members of the City Council

FROM: Taylor Anderson, Deputy City Attorney

SUBJECT: Legal Restrictions on Campaign Activities

Since the 2022 election "season" is fast approaching, we would like to remind everyone of some of the legal restrictions applicable to activities associated with campaigning for election. We have attached an excerpt from the "Handbook for Long Beach City Officials & Employees" (the City's Ethics Handbook) which can serve as a general ethical and legal guide as you conduct your election related activities.

Neither this memorandum nor the Ethics Handbook cover every circumstance or scenario that you may encounter while involved in the election process. If you have specific issues or questions not covered in this memorandum or the Ethics Handbook, please feel free to contact the City Attorney's Office or the City Clerk.

As a general guiding principle, State law and the City's own regulations prohibit the use of "**public resources"** for campaign-related purposes. **"Public resources"** are broadly defined to include any property or asset owned by the City including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and City compensated time. An official is considered making "use" of public resources, including staff time, if the use is substantial enough to result in a gain or advantage to the user or a loss to the City for which a monetary value may be estimated.[1]

City officials are prohibited from engaging in political activities or services of any nature during City work hours. Likewise, public officials are prohibited from utilizing any City funds, supplies, property, or equipment in performing any activity related to political campaigning. The rules may be summarized as follows:

1) <u>Political Activities During City Work Hours</u>.

Public officers and employees may <u>not</u> engage in political activities during work hours.[2]

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1 Government Code § 8314
2 Government Code § 3207

For purposes of this rule, "during work hours" includes any standard or overtime hours that are part of a shift that a public officer or employee is required to work. However, a public officer or employee is considered "off-duty" for purposes of this guideline when they are on a permitted lunch break, vacation, an administrative leave day, or during a public holiday.

Implementing this rule:

A. Distribute Materials. A public officer or employee may not distribute political pamphlets, flyers, or other materials, or post political signs while on duty.

B. Campaign Events. A public officer or employee may not attend campaign meetings, rallies or other campaign-related functions while on duty.

C. Telephone Calls. A public officer or employee may not make campaign telephone calls while on duty.

D. Campaign Activities. Public officers or employees may not perform any other campaign-related tasks while on duty. This would include making copies, stuffing envelopes, writing campaign statements or advocating or informing fellow City employees about campaign issues. Wearing of campaign buttons or signs is also prohibited while on duty or while on City property.

2) Use of Public Funds or Resources to Advocate.

A public officer or employee may not use City funds or resources to advocate a partisan position or otherwise use public agency funds or resources to support their personal political activities.[3]

Implementing this rule:

A. Office Equipment. A public officer or employee may not use City copy machines, faxes, computers, printers or other office equipment to design, make, or distribute political pamphlets, flyers, signs, or other materials in support of their own political activity. To do so would be a misuse of public resources.

B. Telephones/E-Mail. A public officer or employee may not use City phones in support of their personal political activities. Prohibited activities include: making political cold calls, calling any campaign organizations with which they may be involved, or otherwise using a City

[3] Government Code § 54964; Vargas v. Salinas, (2009) 46 Cal. 4th 1, 24-25; Stanson v. Mott, (1976) 17 Cal.3d 206, 209-10)

phone or equipment (e.g., smart phone) to communicate personal views about candidates or ballot measures. This would include use of City provided email addresses to send and receive messages related to personal political activities.

C. Office Space. A public officer or employee may not use a City office or workspace to engage in their personal political activities. Prohibited activities include: holding political meetings, organizing political events, preparing arguments, ballot statements, advertisements, and other such political activities.

D. Office Equipment. A public officer or employee may not use or take away City office supplies in support of personal political activities. For example, a public officer or employee may not print off flyers on City printer paper, take pens and paper clips for use at a campaign office, or use City copiers to make copies.

3) Appearance in Uniform.

Employees who wear a City provided uniform required by their employment may not participate in any political activity while in uniform.[4]

This guideline is self-explanatory. If a public officer or employee wears a uniform that has become associated with a specific position at the City, they may not appear at any political function in that uniform even when off duty. Examples of uniformed employees would include, fire, police, code enforcement, animal control, and public works crews.

4) Make Promises.

A public officer or employee may not promise to provide any person with a gift, money, promotion, job, or other form of compensation in return for a contribution or vote.[5]

Implementing this rule:

A. Hiring. A public officer or employee may not promise to hire or appoint any person for a City position in return for a contribution or vote for or against any candidate or ballot measure.

B. Salaries. A public officer or employee may not promise to increase the pay rate, salary, or fringe benefits of any officer or employee in return for a contribution or vote for or against any candidate or ballot measure.

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[4] Government Code § 3206

[5] Government Code § 3204

C. Gifts. A public officer or employee may not promise to provide any person with money, a loan, or a gift in return for a contribution or vote for or against any candidate or ballot measure.

5) What Public Officers and Employees May Do

Off Duty Activities. Acting in their off-duty individual capacity, a public officer or employee may engage in any political activities (e.g. campaigning and fundraisers).

A. Hourly Employees. For purposes of this guideline, public officers and employees are considered to be "off-duty" before the commencement of, or at the end of, any standard or overtime hours in their shift or that they are otherwise required to work. Public officers and employees are considered to be "off-duty" for purposes of this guideline when they are on their approved lunch break or when they are on vacation, have taken an administrative day, or during a public holiday.

B. Salaried Employees. Public officers and employees who are salaried employees and do not have a regular shift or hours are generally considered to be "off-duty" before the commencement of, or at the end of, the City's normal business hours. However, some salaried officers and employees perform part of their official duties outside of the City's normal business hours (e.g.: appearance at after-hours Council, committee and commission meetings). Salaried officers and employees should be particularly careful to observe when they are and are not "off-duty" for purposes of this guideline. A public officer or employee is considered to be "off-duty" for purposes of this guideline when they are on approved lunch breaks or when they are on vacation, have taken an administrative day, or during a public holiday.

C. Political Activities. Political activities include such things as: attending a political rally, participating in a campaign committee, sitting on a phone bank, doing campaign-related work, posting campaign signs, registering voters, or advocating that persons contribute or vote for or against a candidate or ballot measure.

6) City Sponsored Television Channel; Newspapers and Other Mailings

Please remember that the rules regarding television appearances on City-sponsored LBTV and mailings paid for with public funds will change for those elected officials who are conducting election campaigns. Once an elected official has filed their nomination papers for re-election or election to another elected office (**either local, county or state)**, that person may not appear on the City's cable television channel (except at City Council meetings and other public events).

Moreover, **within 60 days of an election (i.e., after April 8, 2022), no mass mailings may be sent by or on behalf of a candidate whose name will appear on the ballot at that election,** per Government Code section 89003. Furthermore, **newsletters and questionnaires may not be sent out to constituents during the campaign period**, regardless of whether the incumbent's name, signature or picture is included.

If you should have any other questions related to campaign activities, please feel free to contact the City Attorney's Office.

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Attachment

cc: Charles Parkin, City Attorney
Dawn McIntosh, Assistant City Attorney
Gary Anderson, Assistant City Attorney
Thomas B. Modica, City Manager
Linda Tatum, Assistant City Manager
Laura Doud, City Auditor
Doug Haubert, City Prosecutor
Monique DeLaGarza, City Clerk
Ruben Duran, Esq.

POLITICAL ACTIVITY

Laws governing the political activity of City officials have been established to: (1) safeguard public resources; (2) ensure the government remains nonpartisan and neutral in election matters; and (3) protect City employees from pressure to support or oppose candidates or ballot measures.

What Is Prohibited Political Activity?

You **may not**:

- use or authorize the use of City offices, stationery, telephones, vehicles, equipment or any other City property for any campaign activity;
- engage in fundraising or other campaign activities during hours for which you are paid to conduct City business;
- knowingly solicit contributions for or against a political candidate or ballot measure from *any* City official or employee. Soliciting a contribution from the spouse of a City officer or employee is permissible so long as it is not a subterfuge for soliciting the City employee;
- permit yourself to be solicited for a campaign contribution by another City official or employee;
- receive, deliver, or attempt to deliver a political contribution in City Hall, any City office building, or in any office for which the City pays the majority of the rent.

POLITICAL ACTIVITY

What Is Permissible Political Activity?

You **may**:

- perform volunteer work, endorse* candidates, and take a position on ballot measures, as long as these activities do not involve the use of City time, property, facilities or equipment;
- use your own funds to make political contributions, subject to applicable laws;
- solicit political contributions from persons *other* than City officials and employees on behalf of candidates or ballot measures.
- use City resources to provide unbiased, balanced, and factual information about the purposes, provisions and estimated impact of City, state and school district bond issues and ballot measures. (Remember, however, that City funds may not be spent to urge the passage or defeat of any ballot measure.)

*City officials should make clear that they are acting as individuals and take *all* steps to avoid giving the impression that the City, as an organization, supports the candidate.