



CITY OF
**PALO
ALTO**

February 20, 2024

Navigating Election Season: A Guide for City Officials, City Employees and the Public

Introduction. As we enter the 2024 election season, the City Manager, City Clerk and City Attorney offer this guide to restrictions on political activities by the City and its Council members, board and commission members, other officials, and employees.

This guide is a general orientation and is not a substitute for obtaining legal advice on a specific question. If you have a question regarding how these rules apply to you, please contact the City Attorney's Office at (650) 329-2171 for advice.

Who Should Use this Guide. This is a public document primarily for the use of City officials, officers, and employees. It may also be useful to members of the public who wish to understand the restrictions on local government officers and employees during election season.

Most of the rules in this guide apply to:

- City officers and officials. In this guide the terms “officer” and “official” are used interchangeably, and generally mean the same thing. Officers and officials are individuals who represent and are authorized to take some actions on behalf of the City.
- Council members and members of City boards, commissions and committees.
- City employees.
- City departments, divisions and work units.
- The City as a whole.

The rules protecting polling places, however, apply to everyone, including members of the public.

How the Guide is Organized. This guide is divided into four sections:

Section 1: Restrictions that apply to individual City employees and officials. No one, including City officials and employees, may use City resources to advocate for or against candidates or ballot measures. The most common City resources are City employees’ work time, City computers, the City website, City e-mail, and City facilities and equipment. However, as a general rule, City officers and employees may support or oppose candidates and ballot measures in their personal capacities while off duty and without using City resources. City officers and employees also may reference their City titles in campaign materials as long as it is clear that they are using the titles only for identification purposes and are not speaking for the City. Beginning this year, City

employees and elected officials who are running for office must comply with limitations on accepting campaign contributions from certain sources and, in some case, may be required to recuse themselves from participating in decision making on certain matters.

Section 2: Restrictions on City departments and the City as a whole. The prohibition on using City resources to advocate for or against ballot measures or candidates extends to City departments and the City as a whole. However, City resources may be used to explore, prepare and place a measure on the ballot. City resources may also be used to analyze and provide information about the effects of ballot measures on City operations, provided that the analysis is objective and avoids advocating for or against the ballot measure. In addition, with limited exceptions the City may not prepare or send more than 200 pieces of similar mail featuring the name or image of any City elected official.

Section 3: Protections for polling places, ballot drop-off locations and election offices. Everyone, including the public, must comply with laws prohibiting campaigning close to polling places, ballot drop-off locations, and election offices.

Section 4: Enforcement. These rules are enforceable through administrative fines, civil liability and criminal liability.

Where to Go for More Information. The following organizations provide materials on various topics covered in this guide:

- **Institute for Local Government:** pamphlets and Frequently Asked Questions on [ballot measure restrictions](#)
- **Fair Political Practices Commission:** explainers and regulations on ["pay to play"](#) and [mass mailing restrictions](#)

City staff can assist with questions about the City's procedures:

- City Manager's Office (650) 329-2100
- City Clerk (650) 329-2571
- City Attorney (650) 329-2171

SECTION 1: Restrictions that apply to individual City employees and officials

State law prohibits City officers, employees, and anyone else from using City resources on campaign activities.¹ At the same time, City officials and employees have a First Amendment right to express their opinion on public matters, including support of ballot measures or candidates. Balancing these rights and obligations requires that City officials and employees strictly separate their official City work from their political and campaign activities.

- **What is a misuse of City resources?**

Any use of City resources or on-duty City personnel for campaign activities is prohibited.² City resources include City land, buildings, equipment, e-mail, websites, logos, telephones, copiers, computers, office supplies, and City employees' work time.³ Prohibited uses of City resources include, for example, addressing envelopes for campaign mailers, circulating ballot petitions, making campaign telephone calls, attending campaign events, soliciting campaign contributions and engaging in similar types of campaign activity.

Example: On his lunch hour, a City employee uses his City computer to send invitations to a fundraiser for a candidate. The employee has misused City resources by using his City computer for political activity. The fact that he was on his lunch hour or used his personal e-mail account does not excuse this improper use of City resources.

Example: A City employee wishes to volunteer with a political campaign on a full-time basis in the weeks leading up to the general election. With proper approval of the leave, the employee may use accrued vacation time or other paid time off while the employee is volunteering for the campaign because an employee's vacation is not "City time" that must be devoted to the employee's official duties.

- **May City officers and employees participate in campaign activities away from work, on their own time? May they take public positions on political issues?**

City officers and employees may participate in campaign activities as long as they do so on their own time *and* do not use any City resources, including City land, buildings, equipment, e-mail, websites, logos, telephones, copiers, computers, or office supplies. Permissible off-duty activities include things like participating in advocacy groups, making appearances at events held by local organizations, writing editorials, posting on social media, fundraising, and meeting with local leaders.

As a general rule, City officers and employees may take public positions on candidates or ballot measures but must make clear that they are speaking in their personal capacity and not as a representative of the City.

As long as they are not using City resources, City officers and employees may use their official titles in campaign communications, but it must be clear that the City officers or employees are making the communication in their personal capacity. To ensure there is no confusion, City officers and employees using their titles in printed campaign materials often include an explicit note that their City titles are included "for identification purposes only."

- **May City officers and employees engage in political activities on City premises?**

City officers and employees may not participate in political activities of any kind while on City-owned or controlled property, other than property that the City makes available to the general public to use for such purposes (such as a public plaza, park or sidewalk, or certain locations in a library or community center).⁴ This prohibition applies even when the officers and employees are “off duty.”

Where City facilities (such as library meetings rooms or City Hall chambers) are made available to the public to reserve or rent, these facilities generally may be reserved or rented by political groups for their activities on the same terms that apply to others. City funds, however, may not be spent on a campaign event or campaign activity, including by publicizing or staffing the event or waiving generally applicable facility fees. There is a limited exception to this rule for a debate or candidate forum where all candidates are invited to attend and are given equal opportunity to speak.

Example: On her break, a City employee walks the hallways of her City department’s offices in City Hall, seeking endorsements for her candidacy for a political party’s central committee. This activity violates the ban on political activity on City premises because it is being done inside City property that is not available to the general public for political purposes.

- **May City officers and employees engage in political activities while in uniform?**

No. City officers and employees may not participate in political activities of any kind while in City uniform, even when off-duty and away from City property.⁵ 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.

Example: A candidate for office asks a Palo Alto firefighter, who is heading to their car and wearing their uniform, to pose with the candidate so that the candidate can post the photo to their campaign social media accounts. The firefighter should not pose for the photo because it would violate the ban on political activity while in uniform.

- **May City officers and employees use their position to influence the outcome of an election?**

No. Public officers and employees may not use their authority or influence in exchange for a campaign contribution or vote, for themselves or any other candidate or ballot measure.⁶ Nor may they promise a gift, money, a promotion, a job, or any other form of compensation to anyone in return for a contribution or a vote.⁷

- **What are the additional rules that apply to Council Members who are running for local, state or federal office?**

In 2022, the legislature passed SB 1439, which amends Government Code Section 84308 (the Levine Act), to apply certain restrictions to local elected officials (Council members) who are running for any local, state or federal elected office. The Levine Act also applies to members of boards and commissions.

Under the amended Levine Act, Council members have two key responsibilities:

- **Contribution Limits:** A local official cannot accept, solicit, or direct a campaign contribution of more than \$250 from a *party* or *participant* involved in a proceeding for a license, permit, or other entitlement for use, including a contract award, that is pending before their agency and for 12 months following the final decision in the proceeding. This includes contracts and most land use and planning approvals that come to Council.
- **Influence Restrictions:** A local official cannot make, participate in making, or in any way attempt to use their official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use if the official has received a campaign contribution of more than \$250 from a *party* or *participant* involved in the proceeding within the past 12 months. This includes contracts and most land use and planning approvals that come to Council.

These two requirements apply whenever a local elected official is running for re-election or election to any local, state, or federal office.

As used here, a *party* is an individual or entity who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use. Examples include developers seeking Council approval for projects, and entities that need Council approval for contracts with the City.

A *participant* is someone who actively supports or opposes a particular decision (for example by making public comment or emailing support or opposition) in a proceeding involving a license, permit, or other entitlement for use and has a financial interest in the decision. In this context, *financial interest* has the same meaning as in the Political Reform Act. This encompasses economic interests in business entities, real property, sources of income, sources of gifts, and personal finances.

Example: The Council is considering a property owner's application to build a five-story mixed-used office and residential building on a City street. A neighbor who owns a home within 500 feet of the proposed building writes to Council expressing opposition due to increased traffic on local roads fronting on his home. The neighbor has contributed \$500 to a Council member who is running for re-election before the application was filed.

Because the Council member has reason to know about the neighbor’s financial interest in the outcome of the application, the Council member must either return the contribution within 30 days of the neighbor’s email or recuse themselves from participating in the hearing and decision on the mixed-used project.

Section 2: Restrictions on the City acting as an organization

The City may not expend or authorize 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.”⁸ However, expenditures to inform the public about the possible effects of a ballot measure on the City’s activities, operations, or policies are allowed provided that:

- The informational activity is not prohibited by the U.S. Constitution or state law.
- The information provided is an accurate, fair and impartial presentation of relevant facts to aid voters in reaching informed judgements regarding the ballot measure.⁹

In certain contexts, the City may take an official position on a measure without spending money to influence its fate in an election.

- **May the City use public resources to develop a measure for the ballot?**

Yes, public resources may be used to consider, develop and place a measure on the ballot. During consideration and development of a potential ballot measure, the measure is not yet with the voters (though of course there is typically considerable public outreach and engagement as part of considering and developing a measure). For this reason, the use of City funds during the period prior to official action to place a measure on the ballot is not considered improper partisan campaigning.¹⁰ City staff time may be used to research issues, develop options, gather input from community stakeholders and share information with the community. City funds may be used to retain consultants to prepare studies and analyses and to poll residents on their views.

The period when public resources may be expended without restriction concludes when the legislative body votes to place a measure on the ballot.

- **May City resources be used to analyze the potential effects of a ballot measure?**

Yes. After a measure has been placed on the ballot, City officers and employees may lawfully use City resources (where budgeted for such a purpose and otherwise authorized) to investigate and evaluate objectively the potential impact of a ballot measure on City operations.¹¹ This applies to City-sponsored measures, as well as measures sponsored by another public entity or placed on the ballot by initiative.

Example: A City department wants to inform the Council about the potential impacts on the department if a ballot measure is approved. If the department has money budgeted for the purpose, the department may research the potential impact of the measure and present objective information to the Council.

- **May the City take an official position on a ballot measure?**

Local legislative bodies like the City Council, acting as a body, may take a position on behalf of the City on ballot measures. This is a limited exception, recognized by California courts, to the general rule prohibiting use of City resources for political activity. The Council’s decision should be made during a regular Council meeting that is open to the public and where members of the public may express their views.¹²

Palo Alto boards and commissions are not authorized to take a position on behalf of the City on ballot measures.

- **May City resources be used to educate voters regarding a ballot measure?**

Yes. While City funds may not be used “to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate by the voters,” expenditures for *informational* purposes, rather than *promotional* purposes, are allowed.¹³ The information must constitute “an accurate, fair, and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the ballot measure.”¹⁴ Spending City funds on communications that “expressly advocate” for or against a clearly identified ballot measure or candidate is explicitly prohibited.¹⁵ But even material that avoids express advocacy may be considered promotional rather than informational depending on factors including the “style, tenor and timing” of the communication.¹⁶

In preparing informational material regarding a ballot measure, the City should present factual information, avoid one-sided or inflammatory rhetoric or campaign slogans, and not urge a vote in one way or another. The City or City department should distribute or publicize its analysis consistent with the department's regular communications practice and should not use special methods – such as methods associated with political campaigns – to distribute its analysis.¹⁷

In general, the City may:

- Post informational material on the City’s website.
- 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 a campaign.
- Hire a consultant to assist in the preparation of informational material. The consultant should be hired for their expertise in preparing fair and impartial informational material

and should not be identified with any particular political interests.

The City may not:

- Spend money on traditional campaign materials or activities such as stickers, posters, door-to-door canvassing, or mass media advertising (including television/radio spots).
- Disseminate campaign literature prepared by private measure proponents or opponents.
- Produce or distribute materials that advocate a “yes” or “no” vote.¹⁸
- **May City officers and employees respond to inquiries about a measure?**

Yes. City officers and employees may respond to public requests for information, including requests to participate in public discussions about ballot measures, if the officers' or employees' statements are limited to an objective and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the effects of the measure on the City.¹⁹

However, City officers and employees should not participate in any campaign event on City time, even to provide an impartial informational presentation on the City's behalf, if the purpose of the event is to support or oppose ballot measures or candidates.

Example: A community organization asks a department head to attend the organization's meeting to provide information about a pending ballot measure. As long as the department head provides impartial and objective information, she can attend the meeting on City time. But if a candidate asks the department head to provide the same information at a campaign fundraiser, the department head cannot attend on City time.

- **May the City send mass mailings at public expense?**

No. In addition to the general prohibition against using public resources or personnel to engage in political activity, the City is barred from using public money to print or send non-political newsletters or mass mailings that feature or make reference to an elected official.²⁰ A non-political newsletter or mass mailing is prohibited if all of the following four requirements are met:

- The item is sent or delivered by any means to the recipient at a residence, place of employment or business, or post office box.
- The item either features a City elected official, or includes the name, office, photograph, or other reference to a City elected official.²¹
- Any public money is used to pay for distribution, or more than \$50 of public money is used to pay for design, production and printing.
- More than 200 substantially similar items are sent in a single calendar month.

The mass mailing prohibition does not apply to e-mails, text messages or postings on websites. It also does not apply to press releases, meeting agendas and intra-office communications.²² Despite these exemptions, careful consideration should be given to communications that highlight elected officials, regardless of the form. While electronic communications of this type are not prohibited by state law, they may nevertheless be viewed by the public as an inappropriate use of City resources and communication channels.

Section 3: Protections for polling places, ballot drop-off locations, and election offices

State law²³ prohibits electioneering within 100 feet of the entrance to a building that contains a polling place,²⁴ an outdoor site at which a voter may cast or drop off a ballot, an elections official's office,²⁵ or a satellite location.²⁶ "Electioneering" means the visible display or audible dissemination of information that advocates for or against any candidate or measure on the ballot, and may include:

- A display of a candidate's name, likeness, or logo.
- A display of a ballot measure's number, title, subject, or logo.
- Buttons, hats, pencils, pens, shirts, signs, or stickers containing electioneering information.
- Dissemination of audible electioneering information.
- Obstructing access to, loitering near, or disseminating visible or audible electioneering information at vote by mail ballot drop boxes.²⁷

Section 4: Enforcement

City officials and employees may be civilly liable for unlawfully using public resources and may be criminally liable for misappropriating public funds.²⁸ The conduct of City officers and employees also could result in fines or liability for the City if the California Fair Political Practices Commission (FPPC) determines that public funding was spent on material that contains express advocacy or unambiguously urges a particular result in an election.²⁹ Finally, City procedures provide for remedies and penalties under appropriate circumstances.³⁰³¹

¹ Gov't Code § 54964 ("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."); Gov't Code § 8314 ("It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.").

² Gov't Code §§ 8314(a); 54964.

³ Gov't Code § 8314(b)(3).

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- ⁴ Gov't Code § 8314.
- ⁵ Gov't Code § 3206.
- ⁶ Gov't Code § 3204.
- ⁷ Gov't Code §§ 3204; 3205.5; Elec. Code §§ 18520; 18522.
- ⁸ Gov't Code § 54964(a).
- ⁹ Gov't Code § 54964(c).
- ¹⁰ *League of Women Voters v. Countywide Crim. Just. Coordination Com.*, 203 Cal. App. 3d 529, 550 (Ct. App. 1988); *see also* Elec. Code § 9222.
- ¹¹ *See Stanson v. Mott*, 17 Cal. 3d 206, 221 (1976). *See also* Elec. Code § 9212 (permitting local agency to prepare a report analyzing the effects a proposed initiative measure may have on the agency).
- ¹² *League of Women Voters v. Countywide Crim. Just. Coordination Com.*, 203 Cal. App. 3d 529, 560 (Ct. App. 1988); *Vargas v. City of Salinas*, 46 Cal. 4th 1, 36 (2009).
- ¹³ Gov't Code § 54964(c); *see* Gov't Code § 8314(d).
- ¹⁴ Gov't Code § 54964(c)(2).
- ¹⁵ Gov't Code § 54964(b)(3).
- ¹⁶ *Stanson*, 17 Cal. 3d at 222; *Vargas*, 46 Cal. 4th at 33.
- ¹⁷ *Vargas*, 46 Cal. 4th at 40.
- ¹⁸ *Vargas*, 46 Cal. 4th at 25 (citing *Stanson*, 17 Cal. 3d at 221).
- ¹⁹ *Id.*
- ²⁰ Gov't. Code § 89001-89003.
- ²¹ State regulations also prohibit public funding for mass mailings that do not feature an elected official if they meet the other requirements of a mass mailing and they “expressly advocate[] the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure...” or “when taken as a whole and in context, unambiguously urge[] a particular result in an election.” Cal. Code Regs. tit. 2, § 18901.1.
- ²² Some exceptions to the mass mailing prohibition do not apply to mailings sent within 60 days of an election by or on behalf of a candidate whose name will appear on the ballot at that election. Gov't Code § 89003.
- ²³ Elec. Code § 319.5.
- ²⁴ “Polling place” means a location where a voter casts a ballot and includes the following terms, as applicable: poll, polling location, and vote center. Elec. Code § 338.5.
- ²⁵ The City Clerk is an elections official.
- ²⁶ Elec. Code § 3018.
- ²⁷ Elec. Code § 319.5(a).
- ²⁸ Gov't Code § 8314; Penal Code § 426.
- ²⁹ *See* Cal. Code Regs. tit. 2, § 18420.1. Expenditures of public funding that meet this definition are considered either contributions or independent expenditures and are subject to the restrictions and reporting requirements of the Political Reform Act, Gov't. Code § 81000, et seq.
- ³⁰ *See* [City Council Procedures and Protocols Handbook](#) and [City Boards, Commissions, and Committees Handbook](#).