Meeting Date: 12/15/09

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6B-5

Santa Clara All-America City 2001

Date: December 9, 2009

To: City Manager for Council Information

From: Administrative Analyst to the City Manager

Subject: Information on Allowable Ballot Measure Activities

As the City moves forward with placing a stadium measure on the June 2010 ballot, this is an appropriate time to review the allowable ballot measure activities that may be undertaken by Council and staff.

The basic principle set forth in state law is that public resources may not be used for ballot measure activities. Elected officials and public employees are allowed to engage in ballot measure activities only if they do so on their own time, using their own resources. The Institute for Local Government (ILG), the research and education affiliate of the League of California Cities, has prepared an informational pamphlet that summarizes best practices in applying this key principle. A copy is attached for information. City Manager Directive (CMD) 082, Political Activities of Public Employees (attached), outlines in even greater detail the specific restrictions that are placed on the political activity of public employees.

There are some limited circumstances under which public resources may be used for ballot measure activities. ILG has prepared an informational report about a recent California Supreme Court decision that affirms and clarifies these permissible activities (copy attached). A city may use public resources to place a measure on the ballot, as well as to prepare an objective analysis of the effect the ballot measure has on the city. A city is allowed to disseminate this objective analysis through regular city communication methods. Also, the decision by a City Council to go on record in support of or in opposition to a ballot measure has been determined 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. 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. A city may not engage in activities that advocate support or opposition to a ballot measure.

Pam Morrison
Administrative Analyst to the City Manager

APPROVED:

Jennifer Sparacino
City Manager

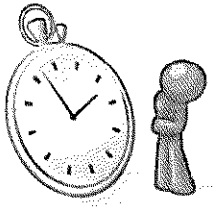
Documents Related to this Report:

1) *Institute for Local Government pamphlet, "Ballot Measure Activities and Public Resources: Rules of the Road"*
2) *Institute for Local Government report, "Public Agencies and Ballot Measure Campaigns" dated August 2009*
3) *CMD 082, "Political Activities of Public Employees" dated April 2006*

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

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Sacramento, CA 95814
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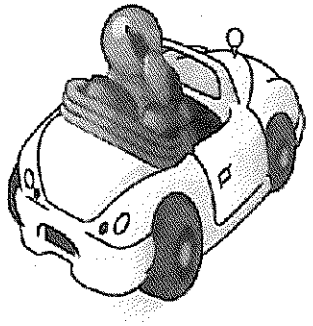
Ballot Measure Activities & Public Resources:

Rules of the Road



Draft 9/12/09

Institute for Local Government

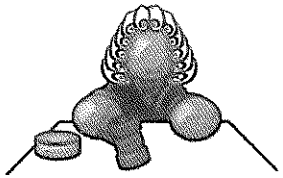
Ballot Measure Activities & Public Resources: Rules of the Road

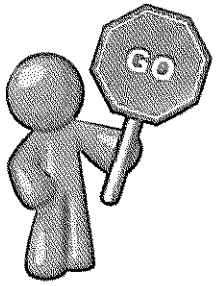
As important as ballot measures are to policymaking in California, public agencies and officials face important restrictions and requirements relating to ballot measure activities.

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.





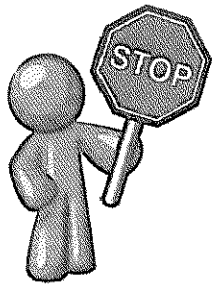
Public agency resources may be used to:

- 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").

INSTITUTE FOR LOCAL GOVERNMENT
FOUNDED 1955

PUBLIC SERVICE ETHICS

Everyday Ethics for Local Officials

Public Agencies and Ballot Measure Campaigns

August 2009

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. Can you provide any information on this issue — did the 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 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 (pursuant to 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 and included the information on what programs and services would be cut 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 the fact 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 reason for the restriction is the court's concern that allowing public agencies to use public resources for ballot measure advocacy raises the specter of distorting the democratic electoral process[6] and undermining its fairness.[7] The court worried 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 Supreme Court reverted to the more fact-based, analytical approach of its earlier decisions on public agency electoral activities. This approach emphasizes 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:

- Taking a position on a ballot measure in an open and public meeting where all perspectives may be shared;[15]
- 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 merits.[19]

The safest approach is to share information in a simple, measured and informative way. This means 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 non-distortion in the electoral process.[23] As the concurring opinion in *Vargas* suggested, time will tell where lines ultimately get drawn.[24]

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

Vargas did not change current law, both statutory and case law, that a local agency may also use public resources to put a measure on the ballot.[25] 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.[26] 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 regarding 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.[27]

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;[28] 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 law[29] 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).[30] The court noted that the activities the agency engaged in occurred before the transportation expenditure plan was approved or the ordinance placing a measure on the ballot was finalized.[31]

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*.[32]

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 suggested that putting a measure on the ballot was OK, but other activities may be a closer call:[33]

> 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.[34]

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.[35] 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.

And Then There Are Political Reform Act Issues

Local agencies engaged in activities related to ballot measures should also be mindful of campaign expenditure reporting requirements when the agency produces materials which either expressly advocate or unambiguously urge a particular result in a ballot measure election.[36] These reporting apply to activities advocating the qualification (as well as the passage or defeat) of a ballot measure.[37] This means that campaign activities that occur after an agency votes to put a matter on a ballot or the measure starts circulating for signatures may be reportable.

In this regard, it is 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 what amounts of money 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.[38] 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.[39]

The Fair Political Practices Commission is re-examining its regulations—including the scope its mass mailing regulations-- in light of the *Vargas* decision at its June meeting. Because this column goes to press before that meeting, the September Legal Notes column will update *Western City* readers on what happened and what it means for local agency ballot measure activities. Impatient? For updates on the status of these regulations, visit http://www.fppc.ca.gov/index.html?id=52 which has both current and pending regulation text.

Stay Tuned

However these issues are resolved, the *Vargas* opinion seems to be an argument for public agencies to continue to strive for robust, regular, diverse and frequent lines of informational communication with their communities on all issues – not just ballot measure issues. For resources on ways to do this, the Institute invites local officials to take advantage of the resources available from its Collaborative Governance Initiative, www.ca-ilg.org/cgi.

This piece originally ran in *Western City* Magazine and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.

The Institute for Local Government is grateful to Karen Getman and Tom Willis of the Remcho, Johansen and Purcell law firm for their suggestions on this column.

Endnotes:

[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)).

[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] *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).

[26] *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).

[27] *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 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.

[28] *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).

[29] 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.

[30] *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.

[31] *Id.* at 1240.

[32] *Id.* at 1241.

[33] *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.")

[34] *Id.* at 554.

[35] *Vargas*, 46 Cal. 4th at 36 (Slip Op. at 43).

[36] Cal. Gov't 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.

[37] *See* 2 Cal. Code 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).

[38] 2 Cal. Code Regs. § 18420.1(a).

[39] 2 Cal. Code Regs. § 18420.1(c).

ADMINISTRATIVE CODE | **CMD NUMBER 82**

CITY MANAGER'S DIRECTIVE-PROCEDURE | **DATE: April 27, 2006**

CANCELS: August 14, 1992

SUBJECT : POLITICAL ACTIVITIES OF PUBLIC EMPLOYEES

POLICY : The purpose of this directive is to notify employees about the State and Federal Government laws/prohibitions concerning political activity; these prohibitions are aimed at activities such as:

- Threats to deny promotion to any employee who does not vote for a certain candidate.
- Requiring employees to contribute a percentage of their pay to a political fund.
- Influencing subordinate(s) or co-workers to buy tickets to political fund-raising dinners and similar events and advising employees to participate in political activity.

In addition, the City Council adopted Resolution No. 5739 prohibiting non-elected officers and employees of the City of Santa Clara from engaging in political activities during working hours and on the premises of the City.

STATE PROVISIONS: The California Government Code[1] prohibits activities such as threatening to deny promotion to any employee who does not vote for certain candidates, requiring employees to contribute a percentage of their pay to political funds, influencing subordinates or co-workers to buy tickets to political fund-raising dinners and similar events, and advising employees to take part in political activity.

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1 Government Code, Sections 3201-3209 entitled *Political Activities of Public Employees*.

An Employee May Not:

1. Directly or indirectly solicit political funds or contributions knowingly from other officers or employees or from persons on the employment lists. However, under state law nothing prohibits an employee from communicating through the mail or by other means requests for political funds or contributions to a significant segment of the public that may include employees of the City.

2. Participate in political activities that would appear that you are representing the City of Santa Clara, rather than expressing your opinion as a private citizen. Examples of prohibited conduct include: participating in political activities of any kind while in uniform, identifying yourself by using your city title or position, using your employee identification card, or using indicia of office such as letterhead, etc.

3. Engage in political activities during working hours.

4. Engage in political activities on the premises of the local agency.

5. Use official authority or influence to secure or prevent an employee from securing any position, nomination, confirmation, promotion, or change in compensation or position.

Employees may engage in political activities during non-working hours (i.e., vacation, compensatory time off, leave without pay) but may not be in uniform or use the premises and/or resources of the local agency to do so.

Violations of State Law

The District Attorney's office is responsible for prosecuting violations of state law.

FEDERAL PROVISIONS :

The Federal Hatch Act[2] provides that no federal funds may be used for political activity of any kind in the administration of federally assisted programs. Hatch Act provisions also apply to employees of private and non-profit organizations that plan, develop, and coordinate federal Community Development Block Grant or economic opportunity programs.

However, Hatch Act provisions do not apply to:

1. A City officer or employee, unless the officer's or employee's principal employment is in connection with an activity which is financed in whole or part by loans or grants made by the United States or a federal agency. The act does not apply to individuals who exercise no functions in connection

[2] The Hatch Act (5 U.S.C. 1501-1508) and Inter-governmental Personnel Act of 1970, as amended, Title IV of Civil Service Reform Act (P.L. 95-454, Section 4728).

with the federally financed activities.

2. The Mayor and Council Members.

3. The City Clerk and Chief of Police.

An employee may, providing all activity is during non-work hours:

1. Be a candidate for public office in a non-partisan election.
2. Campaign for and hold elective office in political clubs and organizations.
3. Actively campaign for candidates for public office in partisan and non-partisan elections.
4. Contribute money to political organizations or attend political fund-raising functions.
5. Participate in any activity not specifically prohibited by law or regulation.

An employee may not:

1. Be a candidate for public office in a partisan[3] election.
2. Use official authority or influence for the purpose of interfering with or affecting the results of an election or a nomination for office.
3. Directly or indirectly coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

Penalties for Violation

If the Merit Systems Protection Board finds that the offense warrants dismissal from employment, the employing agency must:

- Dismiss the employee; or
- Forfeit a portion of the federal assistance equal to two years of the employee's salary.

If the Board finds the violation does not warrant the employee's discharge, no penalty is imposed.

QUESTIONS :

If there are any questions concerning the California Government Code or Hatch Act, contact the Director of Human Resources. Employees who are uncertain whether the rules and regulations regarding political activities apply to them should contact the City Attorney's office. In some instances, running for a non-

[3] Pursuant to the Hatch Act, an election is partisan if any candidate for an elective public office is running as a representative of a political party whose presidential candidate received electoral votes at the preceding presidential election.

partisan political office (i.e., City Council, School Board, etc.) may not violate restrictions on political activities but, if elected, will violate the common law prohibition on incompatible occupations.

RESPONSIBILITY :	ACTION
Director of Human Resources & Department Head	1. Employees promoted from within the City shall also review this CMD, Conflict of Interest Code and Code of Ethics as part of their orientation to new responsibilities.
Director of Human Resources	2. This directive shall be included as part of new employee's orientation, along with an explanation of the City's Conflict Of Interest Code and its Code of Ethics.

Cross-Reference:

Attachment to CMD 67 – Code of Ethics
CMD 100 – Conflict of Interest Code

INTEROFFICE MEMORANDUM

CITY OF SANTA CLARA

DATE: **AUGUST 29, 2008**

TO: **ALL EMPLOYEES**

FROM: **JENNIFER SPARACINO, CITY MANAGER**

SUBJECT: **POLITICAL ACTIVITIES**

This year will be a very busy year for Santa Clara voters with local, regional, and national election issues coming before them in the November 2008 election. The local issues include the election of four City Council seats, City Clerk and Chief of Police positions. As a private citizen, you may choose to participate in the elective process, and may vigorously support or oppose a candidate or ballot measure. However, as a public employee there are restrictions placed on your political activity by the California Government Code and City Manager Directive No. 82 (S:CMD/CMD 082). I am highlighting some provisions of these restrictions for your review:

- **Do not** engage in political activities during work hours.
- **Do not** engage in political activities on City property.
- **Do not** use City equipment, facilities, materials or supplies for any political activity.
- **Do not** participate in political activities of any kind while in uniform.
- **Do not** directly or indirectly solicit funds or contributions from your fellow employees for political activities. However, outside of work, you may take part in general mailings that solicit such funds, which are sent to a significant segment of the public.
- **Do not** engage in any political activity or action, which would make it appear that you are representing the City of Santa Clara rather than expressing your opinion as a private citizen. Some examples of prohibited conduct are: identifying yourself by using your City title or position, using your employee identification card, or using your indicia of office such as letterhead, etc.
- **Do not** use, promise, threaten or attempt to use, either directly or indirectly, your office, authority or influence as a public employee to affect a particular person's vote, e.g., by threatening to withhold a service or deny a promotion unless they vote a certain way.

You may engage in political activities during non-work hours, including vacation, approved CTO or unpaid time-off, as long as you observe the above restrictions. Thank you for your cooperation in complying with these rules.

Jennifer Sparacino
City Manager