



AGENDA REPORT
SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: April 7, 2020

Agenda Item 6G

Approvals:

City Manager ED

Dept. Head ES

Attorney _____

Finance SP

Department: City Manager and City Attorney

Prepared By: Robert Dunek, Interim City Manager
Scott C. Smith, City Attorney

Subject: *ADOPTION OF ELECTION AND CAMPAIGN POLICY FOR CITY EMPLOYEES*

Fiscal Impact: None.

Background: In October – November of 2019, the City and representatives from the Orange County Employees Association (“OCEA”), on behalf of the San Clemente City Employees Association (“SCCEA”), exchanged correspondence regarding an email sent and propagated by a City councilmember concerning, among other things, SCCEA operations, its leadership and political endorsement of political candidates, as well as City staffs’ potential use of City resources for political activities. As a remedial action following the councilmember’s email, the City offered to consult with SCCEA/OCEA in developing an election and campaign policy for City employees. The attached policy for consideration and adoption by the City Council is an outgrowth of these efforts.

Discussion: On October 25, 2019, the City received a letter from the OCEA, written on behalf of the SCCEA, concerning an email sent and propagated on social media by a San Clemente City councilmember regarding, among other things, SCCEA operations, its leadership and endorsement of political candidates, as well as City staffs’ potential use of City resources for political activities. On November 26, 2019, the City Attorney’s Office sent a response to OCEA/SCCEA on behalf of the City (Attachment 1). In addition to reaffirming its respect for the rights of City employees to organize and endorse candidates of their choosing for political office, the City promised to undertake certain remedial actions, which included consulting with SCCEA/OCEA in developing an election and campaign policy for City employees.

California Government Code section 3207 authorizes cities to enact rules and regulations prohibiting or restricting officers and employees of the City from engaging in political activities during working hours and prohibiting or restricting political activities on City premises. Relatedly, under California case law, political candidates and political committees are also prohibited from using public resources under the City’s control to influence voters in an election. (*Stanson v. Mott* (1976) 17 Cal.3d 206.) Consistent with State law, and as promised in the City’s response to OCEA/SCCEA, the “Election and Campaign

Policy for City Employees" ("Policy") attached as Attachment 2 to this agenda report clarifies and memorializes the scope of limitations on political activities applicable to the use of City resources, including City facilities, equipment, and staff time.

On January 28, 2020, City representatives met with SCCEA/OCEA representatives regarding the Policy. SCCEA/OCEA was supportive of the Policy and offered limited clarifying edits which have been incorporated into the Policy currently before the Council. Provided below is a summary of the Policy's pertinent provisions.

Political Activities During Work Hours

Consistent with Government Code section 3207, City employees are prohibited from engaging in political activities during work hours. Work hours includes any standard or overtime hours that are part of a shift that a City employee is required to work. City employees are considered off duty for purposes of the Policy when employees are on a permitted lunch break, vacation, administrative day, sick leave, or during a public holiday when not working.

Prohibited political activities during working hours include, but are not limited to: distributing campaign or political materials (e.g., distributing flyers, posting signs, sending political emails), attending campaign events (e.g., meetings, rallies etc.), making campaign-related telephone calls, and performing other campaign-related activities such as stuffing envelopes or writing campaign statements.

The Policy provides that it shall not be applied in a manner that unlawfully curtails the constitutional, statutory, or contractual rights of City employees. To that end, the Policy reaffirms that employees are free to engage in political activities that do not involve use of City time, property, facilities, or equipment.

Prohibition on Use of City Resources for Campaign Activity

City employees may not use City funds or resources to advocate a partisan position or otherwise use City funds or resources to support any personal political activities. Prohibited use of City funds or resources includes, but is not limited to, use of City office equipment (e.g., using City computers to make campaign flyers), using City telephones and/or email accounts (e.g., to make political cold calls), using City office spaces (e.g., to hold a political meeting), using City supplies (e.g., taking City pens and paper clips for use at a campaign office), and using City monies (e.g., purchasing bumper stickers, posters, or television spots with City funds). Consistent with Government Code section 3206, City employees who wear uniforms are prohibited from participating in personal political activities while wearing their City uniform.

Making Promises for Political Favors

Consistent with Government Code section 3204, the Policy prohibits City employees and officers from promising to provide any person with a gift, money, promotion, job, or other form of compensation in return for a contribution or vote. Examples of prohibited conduct include, but are not limited to: promising an increase in pay in return for a political contribution or vote, promising to hire a vendor or third party for a City position in return for a political contribution or vote, or offering money, loans, or gifts in return for a political contribution or vote.

Soliciting Contributions or Political Support

With limited exceptions, and consistent with Government Code section 3205, City employees may not, directly or indirectly, solicit personal contributions from a City officer or employee with knowledge that the person from whom the contribution or support is solicited is an officer or employee of the City.

Providing Information on a Ballot Measure

As noted above, City employees cannot commit public money or resources to influence voters on matters which are on the ballot for an upcoming election. City employees may only expend public funds for "informational" activities giving a "fair presentation of the facts" regarding a ballot measure. To ensure compliance with this prohibition, the Policy provides that any use of public funds to inform the public about a ballot measure should be reviewed by the City Attorney's Office before distribution to the public.

Permissible Lobbying Activities

Consistent with Government Code section 50023, the Policy provides that City officers and employees may lobby or present information to the federal or state legislature, the executive branch, and administrative agencies to aid in the passage of legislation or regulations deemed beneficial to the City.

**Recommended
Action:**

STAFF RECOMMENDS THAT the City Council:

1. Approve the Policy & Procedure "Election & Campaign Policy for City Employees"

Attachments:

- (1) November 26, 2019 City Letter to OCEA/SCCEA
- (2) Election and Campaign Policy for City Employees

Notification: None



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November 26, 2019

VIA U.S. MAIL

Saliem Aregaye
Labor Relations Representative
Orange County Employees Association
830 N. Ross Street
Santa Ana, CA 92701

Re: ***October 25, 2019 Letter re Councilmember Ferguson's Email
Concerning the San Clemente City Employees Association***

Dear Ms. Aregaye:

As you may know, this firm serves as City Attorney for the City of San Clemente ("City"). The City Council has asked us to provide this response to your October 25, 2019 letter, on behalf of the San Clemente City Employees Association ("SCCEA"), concerning an email sent and propogated on social media by a San Clemente city councilmember regarding, among other things, SCCEA operations, its leadership and endorsement of political candidates, as well as City staffs' potential use of City resources for political activities.

At the onset, the City reaffirms unequivocally that it respects the rights of its employees to organize and endorse candidates – of their choosing – for political office. The City likewise acknowledges and respects the SCCEA's right to participate politically by, among other things, endorsing candidates. The City Council asked that we confirm with SCCEA that the email in question was not an official act of the City or authorized by the City Council or City management.

The City is committed to compliance with the Meyers-Milias-Brown Act, and with input from the SCCEA and Orange County Employees Association ("OCEA"), is committed to the following actions:

1. Forward Public Records Requests to the SCCEA/OCEA. As you may know, under the California Public Records Act (Gov. Code, § 6250 *et seq.*) ("PRA"), members of the public may request, and the City is required to produce, copies of non-exempt information



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retained by the City as public records. Notwithstanding the City's obligations under the PRA, moving forward, whenever the City receives PRA requests touching on SCCEA and/or OCEA business, it will forward courtesy copies of such requests to the OCEA and/or SCCEA. Said requests will be directed to the individual (or individuals) designed by OCEA and/or SCCEA to receive such requests.

2. Communicate Only via Designated SCCEA/OCEA Representatives. The City is committed to ensuring that all communications between the City and SCCEA and/or OCEA occur through the proper channels. Consistent with this commitment, moving forward, all communications between the City and SCCEA and/or OCEA shall occur only via representatives designated the City, SCCEA, and OCEA for such communications.

3. Consult with SCCEA/OCEA re Parameters on Use of City Resources. Consistent with California law, the City's ethics rules restrict employees' use of City resources and participation in political activities. In relevant part, the City's ethics policy provides, "[a] public official may not 'use public resources for a campaign activity, or personal or other purposes which are not authorized by law' (Cal. Gov. Code § 8314 (a)). Further, other rules prohibit certain campaign activities in official capacity. For example, a public official may not participate in political activities while in uniform (Cal. Gov. Code § 3206)." ¹ To provide clarity with respect to permitted and prohibited conduct, the City intends to adopt a policy with clear parameters that balance this constraint on the use of public resources with rights of City personnel under the Meyers-Milias-Brown Act (Gov. Code, § 3500 *et. seq.*). In preparing and implementing these policies, the City will meet and confer with the OCEA and/or SCCEA to discuss these parameters in an effort to move forward in a mutually agreeable manner.

In closing, the City reaffirms that it respects the rights of its employees, the SCCEA, and OCEA to organize and participate in the political process. The City's remedial actions will, at a minimum, provide additional clarity to City leadership and staff to ensure that official communications between the City and the SCCEA/OCEA occur in a transparent and organized manner. With respect to actions one and two provided above, the City requests that the SCCEA and/or OCEA provide the names and contact information for the designated individuals.

¹ The City's "Ethical Practices of Government" resource is available on the City's official website at the following location: <https://www.san-clemente.org/about-us/city-organization/city-transparency/ethical-practice-of-government>
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Please feel free to contact me directly if you have any additional questions or wish to discuss this matter further.

Sincerely,



Scott C. Smith
of BEST BEST & KRIEGER LLP

cc: Mayor, City Council, and City Manager



POLICY AND PROCEDURE

Subject: Election and Campaign Policy for City Employees	Index: 600 Number: 608-8-19
Effective Date: April 8, 2020	Prepared By: City Attorney's Office
Supersedes: N/A	Approved By: , City Manager

PURPOSE: California Government Code section 3207 authorizes cities to enact rules and regulations prohibiting or restricting officers and employees of the City from engaging in political activities during working hours and prohibiting or restricting political activities on City premises. Political candidates and political committees are also prohibited from using public resources under the City's control to influence voters in an election. (*Stanson v. Mott* (1976) 17 Cal.3d 206). The purpose of this Election and Campaign Policy for City Employees ("Policy") is to clarify and memorialize the scope of limitations on political activities applicable to the use of City resources, including City facilities, equipment, and staff pursuant to State law. This Policy does not cover every circumstance or scenario that a City employee may encounter while involved in the election process. Should an employee have specific questions not covered by this Policy, they should contact their supervisor or the City Attorney's Office.

POLICY:

1. Political Activities During City Work Hours.

- a. City employees may not engage in political activities during work hours (while "on duty").¹ (Gov. Code, § 3207). Prohibited political activities during work hours include, but are not limited to, the following:
 - i. Distributing Campaign or Political Materials. City employees may not distribute political pamphlets, flyers, or other materials, post signs or political social media posts, or send political emails while on duty.
 - ii. Campaign Events. City employees may not attend campaign meetings, rallies, or other campaign-related functions while on duty.

¹ For purposes of this rule, "during work hours" includes any standard or overtime hours that are part of a shift that a City employee is required to work. A City employee is considered "off-duty" for purposes of this rule when he or she is on a permitted lunch break, vacation, an administrative leave day, sick leave, or during a public holiday when not working.

- iii. Telephone Calls. City employees may not make campaign telephone calls while on duty.
 - iv. Campaign Activities. City 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, hats, shirts, or other clothing, or signs is also prohibited while on duty or while on City property.
- b. City employees may engage in certain permissible political activity, provided such activity does not involve use of City time, property, facilities, or equipment. For any personal political activity a City employee may be involved in, it shall be made clear that the employee is acting personally and not on behalf of the City. Nothing in this Policy shall be applied in a manner that unlawfully curtails the constitutional, statutory, or contractual rights of the employee. Permissible political activities during City employees' off time include, but are not limited to:
- i. Performing volunteer work, endorsing candidates in an individual capacity, taking a position on ballot measures.
 - ii. Using personal funds to make political contributions, subject to any applicable federal or state laws.
 - iii. Soliciting political contributions from persons other than City officials and employees on behalf of candidates or ballot measures.

2. Prohibition on Use of City Resources for Campaign Activity.

- a. City employees may not use City funds or resources to advocate a partisan position or otherwise use City funds or resources to support any personal political activities. Prohibited use of City funds or resources include, but are not limited to, the following:
 - i. Office Equipment. City employees 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 his or her own political activity.
 - ii. Telephones/E-Mail. City employees may not use City phones in support of personal political activities. Prohibited activities include: making political cold calls, calling any campaign organizations with which they may be involved, posting to social media, or otherwise using City issued phone equipment (e.g., a smartphone) 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.

- iii. Office Space. City employees may not use City offices or workspaces to engage in personal political activities. Prohibited activities include: holding political meetings, soliciting signatures for a proposed initiative, organizing political events, preparing arguments, ballot statements, advertisements, and other such political activities.
 - iv. City Facilities. Political campaigning and related activities are deemed to be contrary to the designated purposes and functions of City facilities and are, therefore, prohibited at City facilities. City property shall not be used for posing campaign signs, depositing or distributing campaign literature, or holding campaign events.
 - v. Office Supplies. City employees may not use or appropriate City office supplies in support of personal political activities. For example, a City employee may not print flyers on City printer paper, take pens and paper clips for use at a campaign office, or use City copiers to make copies.
 - vi. City Monies. City employees may not purchase items such as bumper stickers, posters, advertising floats, or television and radio spots using City monies, and are prohibited from displaying these items on City property or vehicles.
- b. City employees who wear a City uniform may not participate in any personal political activity while in uniform. (Gov. Code, § 3206). If a City employee wears a uniform that has become associated with a specific position at the City, he or she may not appear at any political function in that uniform even when off duty. The restriction also applies to any shirts or other items of clothing with any City insignia.
 - c. Employee use of City facilities and/or office space for non-political or campaign related meetings is governed by other City policies.

3. Making Promises for Political Favors.

- a. City employees and officers 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. (Gov. Code, § 3204).
 - i. Hiring. City employees and officers may not promise to hire or appoint any person, vendor or third party for a City position(s) in return for a contribution or vote for or against any candidate or ballot measure.

- ii. Salaries. City employees and officers 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.
- iii. Gifts. City employees and officers 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.

4. **Soliciting Contributions or Political Support.**

- a. A City employee or officer may not, directly or indirectly, solicit a political contribution from a City officer or employee with knowledge that the person from whom the contribution is solicited is an officer or employee of the City. The only exception is if an officer/candidate solicits contributions from a “significant segment of the public which may include officers or employees” of the City. (Gov. Code, § 3205 (c).)² Violation of this rule is a crime, punishable as a misdemeanor. (*Id.*, at (d).)
 - i. No Specific Solicitation of City Officers/Employees – Anywhere. Requests made to City officers/employees (either verbal or written) for contributions or political support are prohibited. This rule applies to both direct (by the employee/officer/candidate) and indirect (through a third party) solicitations. Further, the prohibition applies regardless of location – even solicitations made outside of City facilities.
 - ii. Solicitation of Relatives of a City Officer/Employee – Permissible. Soliciting contributions or political support from the spouse or a relative of a City employee/officer is permissible, so long as it is not a subterfuge for soliciting the City officer/employee.

5. **Providing Information on a Ballot Measure**

- a. City employees cannot commit public money or resources to influence voters on matters which are on the ballot for an upcoming election. (*Stanson v. Mott* (1976) 17 Cal.3d 206.)
- b. City employees and officers may only expend public funds for “informational” activities in which it gives a “fair presentation of the facts” regarding a ballot measure. Therefore, City employees and officers cannot use public funds to expressly urge voters to “Vote Yes” or “Vote No” on ballot measures. However, the use of public funds to inform the public of all

² For example, if a candidate were to send out 1,000 campaign mailers and 20 of them were to City employees as part of a larger group, that would not violate this rule. The key is that City officers/employees cannot be specifically approached for contributions/political support.

consequences, good and bad, of a measure will generally be permissible and should be reviewed by the City Attorney's office before being distributed to the public.

- i. Balanced Presentation. The use of public funds on legitimate informational activities by City employees should present information relevant to both sides of an issue that will appear on the ballot, including its potentially positive and negative impacts.

6. Lobbying Permissible

- a. It is lawful for public officers and employees to lobby or present information to the federal or state legislature, the executive branch and administrative agencies to aid in the passage of legislation or regulations deemed beneficial to the City. (Gov. Code, § 50023). While lobbying is permissible, election activity designated to influence voters is not.