

OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND

Frequently Asked Questions (FAQs)

Campaign-Related Activities by Elected Officials, Candidates, City Officers and Employees

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I. INTRODUCTION

The City Attorney's Office and the Public Ethics Commission receive many requests for advice about laws regulating campaign-related and other political activity by elected officials, City officers and City employees and candidates for City elected offices. To ensure that the public, City employees and officials and candidates have the same information, the City Attorney and the Public Ethics Commission provide answers to frequently asked questions ("FAQs") in the three areas identified below.

Note: This memorandum is a general guide and does not constitute legal advice as the specific facts and circumstances must be evaluated on a case-by-case basis. Advice from the City Attorney and/or the Public Ethics Commission does not insulate a candidate or elected official from a charge or adverse ruling by the state Fair Political Practices Commission or other agencies. Candidates should consult legal counsel regarding their specific questions and the pertinent facts and circumstances regarding their participation in political activities.

II. SUMMARY

A. Use of City Resources for Political Activities

City and other public resources may not be used to campaign or advocate for or against candidates or ballot measures. City resources include but are not limited to City computers and software, City email, City equipment such as printers and copiers, City property and employees' work time.

B. Political Activity by City Elected Officials, Candidates, Employees and Boards/Commissions

- City officials and employees may participate in political activities or campaigns while off duty and on their own personal time.
- Officials and employees may not engage in political activities while on duty or in a City-owned building. City boards, commissions and departments may not endorse or take a position on campaigns.
- Candidates may use their City titles in campaign materials only for identification purposes.

C. Contributions to and Solicitations from Candidates

- A candidate for City office or the Oakland Unified School District Board may not accept contributions from City contractors at any time during the period beginning on the date of the commencement of negotiations regarding a City contract and ending 180 days after the completion of, or the termination of, negotiations for such contract. Oakland Municipal Code (“OMC”) §3.12.140.
- Candidates and City staff may not solicit contributions while on City time or using City resources which include but are not limited to City equipment and property.
- Candidates (including City employees and non-City employees) may not solicit contributions from City officers or employees unless they make the request as part of a solicitation to a large segment of the public.
- Candidates and City employees/officials may not accept contributions in City buildings such as City Hall; however, they may accept contributions in City Hall plaza, City parks, etc.

III. FREQUENTLY ASKED QUESTIONS REGARDING USE OF CITY RESOURCES

1. *May a candidate place a link or mention his/her campaign on a City web site or in a newsletter prepared with City resources?*

Answer: No. State law prohibits the use of public resources for campaign, personal, or other purposes that are not authorized by law.¹ City and other public resources include City email such as Microsoft Outlook, materials, computers, City email addresses secured from the City’s data base, and City offices. Providing a link or mentioning a campaign on a web site in a newsletter prepared with City resources is a campaign purpose and must not be done with City resources.

2. *May an elected official send out a campaign newsletter to voters using email contacts housed in a City email list (i.e. Can an elected official export his or her City contacts list to his/her campaign?)*

Answer: Yes, an official may use or export his or her contacts list to the campaign IF the elected official obtained the email and contact information

¹ California Government Code §8314.

independently of City-owned computer or server systems and the City's email list is not the source of the email contacts. An official may not use or export contact information from City systems IF the contact information was derived using City systems.

- 3. *May an elected official or the official's staff use a City computer in a City office to log onto a campaign website or campaign or personal email system to do campaign work, even during their lunch hour? How about using the City phone or a City cell phone to make a campaign-related call?"***

Answer: No. State law prohibits the use of public resources for campaign-related purposes.² Public officials and staff may not use City offices, computers, phones or other equipment for campaign-related work, period. This rule applies at all times, including after work hours or when a staffer is on a lunch break.

- 4. *If an elected official/candidate or his/her staff receive an unsolicited email at City email address from a person who expresses a desire to contact or contribute to the candidate's campaign, can the candidate or City staff reply by directing the person to the candidate's campaign website or office?***

Answer: State law prohibits the use of public resources for campaign-related purposes.³ The fundamental rule under state law is that a candidate may not use City resources (City email systems, computers, copy machines, offices, etc.) for personal purposes or "campaign activity." This rule applies at all times, including after work hours or when a staffer is on a lunch break. However, state law specifically states that "campaign activity" does **not** include the "incidental and minimal use of public resources, such as equipment or office space, for campaign purposes including the referral of unsolicited political mail, telephone calls, and visitors to private political entities."⁴ Therefore an elected official/candidate and his/her staff may refer an unsolicited political email to the candidate's campaign website or office, so long as the activity involves an incidental and minimal use of public resources.

The law does not define what constitutes a legally permissible "referral". Whether a response will be considered improper "campaign activity" depends on the context and the wording of the unsolicited email and the "referral"/response.

Candidates/elected officials and their staff should be cautious in their use of the "incidental and minimal" use exception mentioned above. A pattern of multiple referrals of unsolicited emails to a campaign email, website or phone number could fall outside the "minimal use" exception.

² California Government Code §8314.

³ California Government Code §8314.

⁴ California Government Code §8314(b)(2).

5. If an elected official or City staff receives a phone call on a City phone from someone interested in the official's campaign, may the official or the official's staff provide campaign contact information over the phone?

Answer: See detailed response to Question No. 4, above. State law prohibits the use of public resources for campaign-related purposes.⁵ However, state law specifically states that “campaign activity” does **not** include the “incidental and minimal use of public resources, such as equipment or office space, for campaign purposes including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.”⁶ Therefore, providing the phone number or email address of the official's campaign – *in response to an unsolicited phone call requesting that information* – likely would be considered an incidental and minimal use of public resources.

However, as we advised in the answer to Question No. 4, the wording of the inquiry and the response matters. For example, if a member of the public says “I think the elected official is doing a great job” during a call on a City phone, it would be improper for a staffer to respond by advocating for the official's campaign or affirmatively offering to provide contact info for the candidate's campaign.

6. May an elected official/candidate or their staff coordinate, organize, plan or otherwise “set up” campaign meetings or events during work hours or using City equipment or resources?

Answer: No. Organizing, coordinating, planning or otherwise setting up campaign meetings or events using City property is prohibited by state law.⁷

7. May an elected official/candidate or their staff enter scheduling information about campaign meetings or events in a City-owned calendar?

Answer: It probably is Ok for an elected official/candidate or his/her staff to enter scheduling information or “block out” time in a City-owned calendar for campaign or personal appointments to allow the elected official or candidate to schedule work-related (non-campaign) meetings or events. For example, knowing the time, location and nature of the political event allows the candidate/staff to determine availability to schedule work-related meetings.

However, elected officials/candidates and staff should be careful to ensure that this activity does not fall outside of the “incidental and minimal use” of City resources for this purpose. For example, spending significant portion of time entering scheduling information about campaign related meetings could fall outside the exception and thus be considered to be an illegal use of public

⁵ California Government Code §8314.

⁶ California Government Code §8314(b)(2).

⁷ California Government Code §8314.

resources for campaign activity.

8. If someone makes a Public Records Act request for an elected official's schedule, may the official redact campaign or personal events from the records?

Answer: Only information that is expressly exempt from disclosure under the Public Records Act, such as personal medical information (e.g. identification of doctors, treatment) can be redacted. There is no exemption for campaign-related meetings, events, or information; thus, that information must be disclosed.

9. Can City staff work on campaign-related business in a City office using personal equipment, for example a personal laptop computer?

Answer: No. State law prohibits City staff from engaging in campaign activity using City office space.⁸ Likewise, City staff may not conduct campaign activities, even with non-City equipment, during hours they are working for, and being paid by, the City.

Example: A City employee who works for an elected official uses a personal laptop computer on her desk to send campaign emails or work on campaign business during her lunch break or other breaks. This would be a clear violation of state law.

10. May City officers or employees engage in any political activities in a City office building or on City property?

Answer: City resources, including City facilities, may not be used for campaign activity/purposes. Other than when the City makes a facility available to the general public to use for political purposes (e.g. Frank Ogawa Plaza, a public sidewalk, a candidate debate in City Hall or in a public library), political activities are prohibited in City office buildings.

11. May City officials or employees engage in political activities while in uniform?

Answer: No. State law prohibits officers and employees from participating in political activities while in uniform.⁹

⁸ California Government Code §8314.

⁹ California Government Code §3206.

IV. FREQUENTLY ASKED QUESTIONS REGARDING POLITICAL ACTIVITY BY CITY OFFICIAL, EMPLOYEES AND BOARDS AND COMMISSIONS

1. ***May a City employee participate in campaign activities on his or her own, non-City time?***

Answer: Yes. Employees have a right to engage in political activities when they are not working on City time or using City resources.¹⁰

2. ***May a City official use his or her City title in campaign literature that is paid for by the campaign?***

Answer: Yes. State law allows candidates' use of their official titles in campaign materials, but it must be clear that the City officer or employee (1) is making the communication in a personal capacity and (2) is using the title for identification purposes only.¹¹

3. ***May an appointed official (a member of a board or commission or an appointed department head) who is also a candidate accept or solicit campaign contributions?***

Answer: Yes, but subject to certain restrictions. State law prohibits appointed officials from accepting, soliciting or directing campaign contributions of more than \$250 from any party or participant in certain proceedings pending before the official.¹² This prohibition applies during the proceeding and for three months after the final decision is rendered in the proceeding.

This rule applies whether contributions are sought for the official or for someone else, and whether the contributions come directly from the party or the participant, or are made by an agent acting on behalf of the party or participant. Exception: This rule does not apply if the request is made as part of a mass mailing or solicitation to a large segment of the public.

The rule applies to "use entitlement proceedings," which are actions to grant, deny, revoke, restrict or modify certain contracts or licenses, permits or other entitlements to use property or engage in business. The law does not cover proceedings where general policy decisions or rules are made or when the interests affected are many and diverse, such as general building or development standards.¹³

4. ***May a City commission, board or department host or sponsor a debate for candidates for a City office or for supporters/opponents of a City ballot measure?***

¹⁰ California Government Code §3203.

¹¹ California Government Code §§3201-3209.

¹² California Government Code §84308.

¹³ Government Code Section §84308(a)(5).

Answer: There appears to be no legal prohibition against City boards and commissions hosting debates as long as the process, questions, and other aspects of the debate 1) do not favor or oppose a particular candidate, 2) provide an opportunity for all candidates for a particular office to participate, and 3) otherwise do not advocate for or against a particular candidate.

However, because there is no policy regarding this issue, boards and commissions should consult with the City Administrator's Office on a case-by-case basis regarding use of City facilities, costs of hosting a debate, and other practical considerations. For example, boards and commissions do not have budgets to cover costs of hosting debates. Typically budgets cover reimbursement for parking, administrative and legal support and other City services in order to conduct meetings.

5. *May an elected official or candidate participate in or continue to participate in broadcasts or other news or public affairs events that are sponsored by the City?*

Answer: Yes, as long as the official or candidate refrains from including campaign-related communications in the broadcast or event. Featuring or continuing to feature an elected official or candidate for public office over a City-owned broadcast or news channel or a City-sponsored public affairs event would not be a prohibited use of public funds for campaign purposes, as long as the broadcast or event 1) does not contain express advocacy for or against the elected official's or candidate's election, 2) does not make reference to the elected official's or candidate's candidacy for elective office, his or her election campaign, or his or her opponents' qualifications for office, and 3) does not solicit contributions to the elected official's or candidate's campaign or to a third person for use in support of the campaign or in opposition to the elected official's or candidate's opponents.

V. FREQUENTLY ASKED QUESTIONS REGARDING CONTRIBUTIONS TO AND SOLICITATIONS FROM CANDIDATES

1. *May an elected official or candidate for office who is a City employee or official accept a campaign contribution in a City office building? How about in City Hall Plaza, a City park, parking garage or other City property?*

Answer: A candidate may not accept contributions inside a City office building (such as City Hall), but in general, candidates may accept contributions on City-owned property that is not inside a City office building (such as in Frank Ogawa Plaza or a City park).

2. *May a City officer or employee solicit campaign contributions from other City officers or employees?*

Answer: No, unless the solicitation is part of a solicitation made to a “significant segment of the public.” City officers and employees may not directly or indirectly solicit campaign contributions from other City officers or employees, or from other persons on City employment lists unless the request is made as part of a solicitation to a significant segment of the public that happens to include officers or employees of the City.¹⁴

If a candidate is aware that an email distribution list includes City email addresses, it may be advisable for the candidate to remove those individuals from the distribution list to avoid confusion about whether solicitations that are sent to those addresses are individual solicitations or part of a solicitation made to a significant segment of the public.

3. *May a candidate for City office who is not a City official or employee solicit campaign contributions from City officers or employees?*

Answer: See the answer to number 2, above. The same rules apply to candidates for City office who are not City officers or employees.¹⁵

4. *May a candidate for a City office accept contributions from a City contractor?*

Answer: Yes, but only under certain circumstances. Candidates for City office may accept contributions from City contractors only if contract negotiations have terminated or 180 days have elapsed since the completion of negotiations for the contract.¹⁶

5. *May an elected official accept a contribution to his or her officeholder account from a donor who has already contributed the maximum allowed amount to the official’s campaign account?*

Answer: Yes. Both state and local law permit donors to make the maximum allowed contribution to a candidate’s campaign account as well as to the candidate’s officeholder account in the same year.

¹⁴ California Government Code §3205(c).

¹⁵ California Government Code §3205(b).

¹⁶ Oakland Municipal Code §3.12.140.

6. *May an elected official raise money for his/her officeholder account by selling advertising in a newsletter funded by that account, or a newsletter prepared with City resources?*

Answer: No. State law prohibits any kind of “quid pro quo” agreement in exchange for a contribution, including a contribution to an official’s officeholder account.¹⁷

7. *Under what circumstances are expenditure ceilings lifted in City elections?*

Answer: Candidates who voluntarily agree to expenditure ceilings may exceed them when one of two things happens:

- A candidate declines to accept expenditure ceilings and receives contributions or makes qualified campaign expenditures equal to 50% or more of the expenditure ceiling, or
- An independent expenditure committee in the aggregate spends more than \$22,000 on a District City Council or School Board election or \$104,000 in a City Attorney, Auditor, Councilmember-at-Large, or Mayoral election.

If either of these circumstances occurs, the applicable expenditure ceiling for that race shall no longer be binding on any candidate running for the same office, and any candidate running for the same office who accepted expenditure ceilings shall be permitted to continue receiving contributions at the amounts set for such candidates in the Oakland Campaign Reform Act.

¹⁷ California Penal Code Sections 7 & 68.