

Ballot Measures and Municipal Elections: What Local Leaders Need to Know

**Tuesday, May 24, 2022
1:00 – 2:30 pm**

THANK YOU FOR JOINING

Webinar Host & Moderator

Melissa Kuehne

Senior Program Manager
Institute for Local Government



TODAY'S AGENDA

Welcome, Logistics & Introductions

Presentations and Discussion:

Richard C. Miadich, Chair, Fair Political Practices Commission

Craig Steele, Shareholder, Richards Watson Gershon

Dave Bainbridge, General Counsel, Fair Political Practices Commission

Q&A

Resources

Wrap Up & Adjourn

HOW TO ASK A QUESTION

- All webinar participants will be on MUTE during the entire call.
- Please TYPE any questions into the question box at any time during the webinar.
- The moderator will read your questions during the question period at the end of the webinar.



ILG IS NON-PROFIT, NON-PARTISAN & HERE TO HELP

- ILG is the non-profit training and education affiliate of three statewide local government associations
- Together with our affiliates, we serve over 2,500 local agencies – cities, counties and special districts
- We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground



**California Special
Districts Association**
Districts Stronger Together

OUR PROGRAMS AND SERVICES

Program Areas

Leadership & Governance

Civics Education & Workforce

Public Engagement

Sustainable & Resilient Communities



Services

Education & Training

Technical Assistance

Capacity Building

Convening

Our mission is to help local government leaders **navigate complexity, increase capacity & build trust** in their communities

TODAY'S PRESENTERS

Craig Steele
Shareholder

Richards Watson Gershon



Richard C. Miadich
Chair

Fair Political Practices
Commission



Dave Bainbridge
General Counsel
Fair Political Practices
Commission



OVERVIEW & CONTEXT SETTING



Chair Richard C. Miadich

The Legal Framework

- **The authority for agencies to submit issues to the voters is constitutional, statutory and judge-made.**
- **The authority for public agencies to lobby the Legislature is statutory.**
- **There is NO legal authority for public agencies to “lobby” the voters.**

“Money is the mother’s milk of politics.”

-Jesse M. Unruh

- **Ballot Measures: It’s All About the Money**
 - Who, what, when
- **Preparation vs. Campaign**
 - A very clear line
- **Information vs. Advocacy**
 - The line is not so clear
 - Both sides or just one?

Stanson v. Mott

- Without statutory authorization, public agencies may not expend public funds to influence the voters for or against a measure.
- *“The selective use of public funds in election campaigns, of course, raises the specter of an improper distortion of the electoral process.”*

Stanson v. Mott

- Recognizes the “informational role” public agencies must play.
- Notes the possibility of personal liability for improper political expenditures “in the absence of due care.”
- The campaign activity/informational activity “dichotomy.”
- The envelope is large enough as it is; don’t push it.

It's all about the money

- **Government Code Section 8314**
 - A local agency officer, employee or consultant may not spend or authorize the expenditure of public funds to support or oppose a candidate or ballot measure.
 - EXCEPT: “fair, and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure” in communications otherwise permitted by law.
 - Possible individual liability for civil penalty of \$1,000 and up to 3X the value of resources illegally expended.
 - Intentional or negligent violations

It's all about the money

- **Government Code Section 54964**

- A state or local officer, employee or consultant may not expend or authorize the expenditure of public funds to support or oppose a ballot measure or a candidate.
 - Clearly defined measure or candidate
 - Express advocacy
 - Misdemeanor

It's all about the money

- **Penal Code Section 424**
 - Misappropriation of public funds.
 - Misdemeanor or felony

PUBLIC AGENCY BALLOT MEASURES

The Political Reform Act and the FPCC



REGULATION 18420.1

(a) A payment of public moneys by a state or local governmental agency, or by an agent of the agency, made in connection with a communication to the public that expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, as defined in Section 82025(c)(1), or that taken as a whole and in context, unambiguously urges a particular result in an election is one of the following: (1) A contribution under Section 82015 if made at the behest of the affected candidate or committee. (2) An independent expenditure under Section 82031.

18420.1(b) – UNAMBIGUOUSLY URGES

For the purposes of subdivision (a), a communication paid for with public moneys by a state or local governmental agency unambiguously urges a particular result in an election if the communication meets either one of the following criteria:

- (1) It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television, electronic media or radio spots.
- (2) When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.

18420.1(c) – DIRECT AND INDIRECT COSTS

For purposes of subdivision (a), payments of public moneys by a state or local governmental agency made in connection with a communication include payments for both the direct and indirect costs of the communication. Indirect costs of a communication are costs reasonably related to designing, producing, printing, or formulating the content of the communication including, but not limited to, payments for polling or research; payments for computer usage, software, or programming; and payments for the salary, expenses, or fees of the agency's employees, agents, vendors, and consultants.

18420.1(d) – STYLE, TENOR, AND TIMING

For purposes of subdivision (b)(2), when considering the style, tenor, and timing of a communication, factors to be considered include, but are not limited to, whether the communication is any of the following:

- (1) Funded from a special appropriation related to the measure as opposed to a general appropriation.
- (2) Is consistent with the normal communication pattern for the agency.
- (3) Is consistent with the style of other communications issued by the agency.
- (4) Uses inflammatory or argumentative language.

18420.1(e) – PERMISSIBLE COMMUNICATIONS

Notwithstanding subdivision (a), a payment for the following communications are not considered a contribution or an independent expenditure:

(1) An agency report providing the agency's internal evaluation of a measure made available to a member of the public upon the individual's request.

(2) The announcement of an agency's position at a public meeting or within the agenda or hearing minutes prepared for the meeting.

(3) A written argument filed by the agency for publishing in the voter information pamphlet.

(4) A departmental view presented by an agency employee upon request by a public or private organization, at a meeting of the organization.

(5) A communication clearly and unambiguously authorized by law.

REGULATION
18420.1 (f) –
SUBJECT TO PRA

A state or local governmental agency that qualifies as a committee under Section 82013 must file campaign statements and reports pursuant to Chapter 4 and any other relevant provisions of the Act

IN THE MATTER OF COUNTY OF LOS ANGELES

- “The Los Angeles County Homeless Initiative” with the Homeless Initiative logo
- “Real help. Lasting Change.”
- “Measure H on the March 7 Ballot” and “Are you ready? Vote March 7.”

NORTON ADVICE LETTER A-21-120

- Request for advice from City of Riverside
- City called a municipal election and put Measure C on the ballot.
- Measure C would transfer a portion of public utilities revenue to city general fund
- Concern about confusion with Governor recall election in September.

Website

- Highlighted language deemed argumentative instead of purely informational because:
 - 1) Measure C would provide continued use of "unrestricted" funds, which are not limited to the items listed;
 - 2) Items listed are popular/not controversial and generally viewed favorably by voters; and
 - 3) Specific reference to medical emergency services in the last highlighted paragraph is argumentative because it implies that Measure C is needed to preserve these services when, as discussed above, the funding provided by Measure C is unrestricted and not limited to specific purposes like medical emergency services.
- Note: The enumeration of specific services that could be funded or cut depending of the outcome of a ballot measure is not per se argumentative. Whether a communications crosses the line from informational to campaign material requires an evaluation of all the facts. For example, in Vargas, the California Supreme Court determined that a city website listing specific services that would be cut if a ballot measure passed was informational and not campaign-related where the City had previously voted to cut the services identified if the measure passed.

November 2nd Municipal Election Information

[Include Button on the City's Homepage]

On August 3rd, the Riverside City Council placed the Riverside Services Protection Measure – Measure C—on the November 2nd ballot.

Measure C does not change electricity rates or raise City taxes. It renews permission for the City to continue paying for the services Riverside residents currently receive, such as police and firefighter services and road repairs, through a continued revenue transfer from the City's electric utility to the general fund. This practice has been in place locally since 1968 and approved by voters on two previous occasions.

Measure C will help maintain local funding that is important for City service needs and priorities including:

- Addressing homelessness
- Maintaining City streets/street repairs
- Maintaining police and fire/paramedic services
- Investigating and preventing property crimes
- Preparing for and recovering from public health emergencies
- Retaining local businesses
- Keeping public areas and parks clean and safe
- Preventing and preparing for wildfires

With nearly three in every four calls made to the City of Riverside dispatch for medical emergencies or rescues. Measure C can help ensure Riverside maintains the needed firefighters-paramedics, infrastructure, lifesaving equipment, personal protective equipment and communications technology to save lives in any type of natural disaster or health emergency.

As there are no City Council district runoff needs, Measure C is the only item on your November 2nd Municipal Election ballot.

Links:

[Community Presentation](#)

[Public FAQ](#)

[Resolution/Ordinance](#)

[The Riverside Discussion](#)

FAQ

- Unlike the City's web page, FPPC advised that this FAQ was informational and not a campaign-related communication. Key differences include:
- 1) Content of the FAQ is broader than just what Measure C would do, including facts on why the election on the measure was not combined with the upcoming State election; and
- 2) Overall tenor of the FAQ is less argumentative than the web page, which included the specific statement that Measure C could "save lives" by avoiding cuts to emergency medical services.

November 2nd Municipal Election Information

What's on the November 2nd Ballot?

As all the City Council races were decided in June, Measure C is the only item on the Municipal Election ballot.

What is Measure C?

If enacted, Measure C maintains existing levels of local funding that by law cannot be taken by the county, state or federal government. This maintains services such as firefighting, paramedics, police, street repair, and senior and youth programs.

Why are we doing this now?

Particularly in times like this, the City faces tremendous pressure on its budget from the economic impacts of the Coronavirus. Riverside has a responsibility to maintain its local funding and financial stability -- and continue providing essential local services like firefighting, paramedics, police, street repair, and senior and youth services that are more important than ever. Measure C maintains existing levels of local funding that by law cannot be taken by the county, state or federal governments.

Does Measure C raise taxes or fees?

Measure C does not change electricity rates or raise City taxes. It simply renews permission for the City to continue paying for the services Riverside residents currently receive, such as police and firefighter services and road repairs, through a transfer of revenue from the electric utility to the general fund that has been in place locally since 1968 and approved by voters on two previous occasions.

Why doesn't the City combine this election with the State Recall in September?

Unfortunately, the State called the election in a manner which did not allow time for any county or city with a municipal election, to consolidate.

How do I vote?

Vote by mail ballots will be mailed to registered voters the week of October 4th. Vote by mail ballots must be postmarked on or before Election Day and must be received within three days of Election Day to be counted.

Where can I get more information?

You can visit the City's website www.RiversideCA.gov or the County Registrar of Voters at www.voteinfo.net.

Utility Insert

Facts disclosed to FPPC staff indicated the City routinely uses utility inserts to communicate with the public, and the use of inserts for purely informational purposes is generally permitted.

However, FPPC staff determined the content of this insert crossed the line into campaign-related material for many of the same reasons applicable to the City's website. Specifically, the highlighted language in the insert was deemed argumentative instead of purely informational because:



NOVEMBER 2, 2021
MUNICIPAL ELECTION GUIDE

On August 3, the Riverside City Council placed the Riverside Services Protection Measure – Measure C – on the November 2 ballot.

Measure C does not change electricity rates nor raise City taxes. It renews permission for the City to continue paying for the services Riverside residents currently receive, such as police and firefighter services and road repairs, through a continued revenue transfer from the City's electric utility to the general fund. This practice has been in place locally since 1968 and approved by voters on two previous occasions.

Measure C will help maintain local funding that is important for City service needs and priorities including:

-  Addressing homelessness
-  Maintaining City streets/street repairs
-  Maintaining police and fire/paramedic services
-  Investigating and preventing property crimes
-  Preparing for and recovering from public health emergencies
-  Retaining local businesses
-  Keeping public areas and parks clean and safe
-  Preventing and preparing for wildfires

With nearly three in every four calls made to the City of Riverside dispatch for medical emergencies or rescues, Measure C can help ensure Riverside maintains the needed firefighters-paramedics, infrastructure, lifesaving equipment, personal protective equipment and communications technology to save lives in any type of natural disaster or health emergency.

As there are no City Council district runoff needs, Measure C is the only item on your November 2 Municipal Election ballot.

1. Measure C would provide continued use of "unrestricted" funds, which are not limited to the items listed;
2. Items listed are popular/not controversial and generally viewed favorably by voters;
3. Location and formatting of the specific uses for Measure C funding resemble how campaign-related communications prominently display information considered "key" to persuading voters; and
4. Specific reference to medical emergency services in the last highlighted paragraph is argumentative because it implies that Measure C is needed to preserve these services when, as discussed above, the funding provided by Measure C is unrestricted and not limited to specific purposes like medical emergency services.

ADVICE AND RESOURCES

- Consult agency counsel
- Consult the FPPC website:
<https://fppc.ca.gov/learn/campaign-rules/campaign-related-communications-at-public-expense.html>
- Email the FPPC at advice@fppc.ca.gov

Express Advocacy

- “A communication **“expressly advocates”** the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as **“vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for”** or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, **unambiguously urges a particular result in an election.”**

The Fine Line Between...

- **Express Advocacy**
 - “Vote Yes/No”
 - Result-oriented
 - One-sided; emotional
 - Targeted

- **Impartial Information**
 - Factual - attribution
 - Both sides of the story (although not always)
 - Widely disseminated, not just voters
 - Consistent style, tenor, timing

Avoid Hidden Advocacy

- **Style**
 - Consistent with other communications
- **Tenor**
 - Moderate, unemotional
 - “If passed” not “when passed”
 - Explaining Process
 - Voter registration
- **Timing**
 - Before vs. after measure is identified
 - Normal communications cycles

Permissible Uses of Public Resources

- **Drafting a measure**
- **Pre-measure polling**
- **Impartial information**
- **Voter registration and GOTV**
- **Resolution of support/opposition**
- **Response to requests for information**

Prohibited Uses of Public Resources

- Production/printing of campaign literature
- Digital Advertising
- Campaign use of public equipment, facilities, supplies, technology
- Distribution of campaign material
- Favoritism/discrimination against particular message
- Mass mailing at public expense

Public Employees

- **May not work on campaign activities during compensated time.**
- **May not be coerced or directed into working on campaign in off hours.**
- **May not use District resources or technology for campaign activities.**
- **May not campaign in uniform.**

Public Employees

- **May not circulate petitions on official time.**
- **May not solicit, directly or indirectly, a political contribution from another employee or officer.**
- **May not promise employment action in exchange for a vote.**
 - Except union/organization activities
 - Misdemeanor

When in Doubt...

- **It's probably advocacy.**
- **The stakes are too high to push the envelope.**
 - Criminal Penalties
 - Financial Penalties
 - Disqualification
 - Discipline/Termination
- **Consult with the Agency Attorney IN ADVANCE.**

Getting the Message Out

- Use private resources through a campaign group.
- Inform the public about ballot issues in an impartial way.
- Make staff available to respond to requests for information.
- Do it on your own time.

Common Questions

- **Candidates' Forum**
- **Ballot Arguments**
- **Use of Photographs/Video**
- **Booths at Public Events**
- **Information on Public Websites**
- **“Townhall” Meetings**
- **Campaigning on Public Property**

QUESTIONS & DISCUSSION



RESOURCES

Consult your agency counsel

Consult the FPPC website: <https://fppc.ca.gov/learn/campaign-rules/campaign-related-communications-at-public-expense.html>

Email the FPPC at advice@fppc.ca.gov

ILG Ballot Measure Resources: www.ca-ilg.org/ballot-measure-activities

Cal Cities Departments (City Attorneys, City Clerks):
www.calcities.org/get-involved/professional-departments

STAY IN TOUCH

Facebook



Like us on Facebook

@InstituteFor
LocalGovt

Twitter



Follow us on Twitter

@instlocgov

LinkedIn



Connect with us on LinkedIn

Institute for Local
Government

Newsletter



Sign up for our e-newsletter

www.ca-ilg.org/news

THANK YOU!

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