

## Neighborhood Council Guidelines for Hosting City Candidates

Questions have arisen about the conditions under which candidates may appear at Neighborhood Council meetings. Neighborhood councils may wish to provide a forum for candidates to provide information to voters. However, there are various laws including the First and Fourteenth Amendments of the Constitution, California Penal Code §§ 424, 524 and court decisions that limit or otherwise restrict the use of public resources in relation to election matters. The California Supreme Court in *Stanson v. Mott* (1976) 17 Cal.3d 206 at 217 provided the general guiding principle prohibiting the use of public funds and resources in election matters: "A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions. A principal danger feared by our country's founders lay in the possibility that the holders of governmental authority would use official power improperly to perpetuate themselves, or their allies, in office [citations]; the selective use of public funds in election campaigns, of course, raises the specter of just such an improper distortion of the democratic electoral process." The court also stated that "judicial reluctance to sanction the use of public funds for election campaigns rests on an implicit recognition that such expenditures raise potentially serious constitutional questions." *Id.* at 216.

Because of the risks associated with hosting candidates in City sponsored forums or other venues, the City has generally left this activity to private sponsors. We note that Channel 35 will be providing election information, including some candidate information, during the City election cycle. However, if a neighborhood council has already hosted a candidate or wishes to consider hosting candidates at its meetings notwithstanding the resulting legal risks associated with doing so, both to the City and neighborhood council boardmembers personally, we offer the following general guidance.

The overriding principles that must be adhered to in providing a venue for prospective candidates during the election are that public resources may not be used for "campaign activity" and may only be used to provide neutral, balanced information, and that all candidates must be provided with an equal and fair opportunity. Individuals with concerns or complaints about how a neighborhood council has handled City candidate(s) should consult with their own private counsel.

### Limitations on Neighborhood Councils as Candidate Forums

A candidate may speak to a neighborhood council in the following circumstances:

- 1) During the public comment portion of a publicly noticed neighborhood council meeting. All such candidates wishing to speak must be provided the same opportunity to do so.
- 2) On a specific policy matter appearing on the neighborhood council agenda. All such candidates wishing to speak must be provided the same opportunity to do so.
- 3) At a candidate forum where all candidates for a particular race are present at the same time hosted by the neighborhood council following the guidelines set forth below.
- 4) At a series of neighborhood council meetings where all candidates are not present at the same time provided that the neighborhood council invites all candidates for that race (i.e.

Mayor) and treats all candidates fairly and equally as set forth below. This would be included on the agenda as a Discussion with Candidate (name).

- 4) The candidates may not seek any contributions at a neighborhood council meeting.

### ***Fair and Equal Access & Format***

- 1) With any format, *all* candidates for that race must be invited with sufficient notice. Please note that the City Clerk has a list of all candidates that will appear on the ballot.
- 2) The format of your candidate forum will play a significant role in ensuring that it remains non-partisan and that candidates are treated fairly and equally. Nothing that you do can show preference for one candidate over another. Several points are important to remember.
  - a) Invite candidates to your forum/meeting with sufficient advance time and provide the invitations at the same time.
  - b) Give each speaker the same amount of time to speak and/or answer questions. Be clear about time limits with the candidates before the event starts, and stick strictly to the limits so no one gets shortchanged.
  - c) Provide candidates with the same or similar seating options in terms of type and location.
  - d) Do not intervene, directly or indirectly, on behalf of a particular candidate.
  - e) Use an unbiased means to determine speaking or appearance order (e.g., drawing straws, alphabetical order).
  - f) Choose a moderator who will ask the questions and make sure that person uses the same wording for each candidate. Your moderator must be unbiased. If you want to take questions from the audience, give people index cards to write them on. The candidates should be given the same number of questions.
- 3) In order to encourage an informed electorate, it is necessary that persons who have limited English proficiency be offered an opportunity to obtain information regarding the candidates and election procedures. Neighborhood councils should distribute a copy of the candidate contact information in all languages (attached) at their meetings where the candidates will be participating.
- 4) Neighborhood councils should not depart from these guidelines, should not co-sponsor any private candidate forums, and should not permit any fundraising activities at neighborhood council meetings. In addition, if using public funds, a neighborhood council may not mail, including email, more than 200 invitations or flyers referencing any candidate. However, you may mail a Neighborhood Council agenda to those on your mailing list.

## Neighborhood Councils and Ballot Measures / Lobbying

Do's/ Ballot Measures	Don'ts/ Ballot Measures
<p>Neighborhood Councils may take positions on a ballot measure (City or state) before it is placed on a ballot and communicate their positions to the City Council.</p>	<p>Neighborhood Councils may not spend public funds to publicize their position on the ballot measure (City or state) after it qualifies for the ballot.</p>
<p>Neighborhood Councils may state their position taken on a proposed ballot measure (City or state) in their minutes and may post the minutes on its website if the Neighborhood Council regularly posts its minutes on its website.</p>	<p>Neighborhood Councils may not spend public funds to publicize their position to members of the public on a proposed ballot measure (City or state) such as: paying for ads in newspapers, posting the position on its website, disseminating flyers, organizing rallies, etc.</p>
<p>Neighborhood Councils may host informational forums about ballot measures (City or state). The forums must provide equal time to each viewpoint to enable all sides to present their positions. Neighborhood Councils should refer and adhere to the guidelines provided by the City Attorney regarding forums. (Please refer to the handout regarding hosting candidate forums.)</p>	<p>Neighborhood Councils may not provide only one side of the issue when providing information about the ballot measure (City or state) at informational forums. If a representative supporting or opposing the issue is unable to attend the meeting, another meeting should be scheduled to allow the unrepresented side to be presented. No Neighborhood Council boardmember may participate as an advocate for or against a ballot measure at the forum.</p>
<p>Neighborhood Councils may use public funds to provide neutral and objective factual material about a ballot measure only upon request. For example, Neighborhood Councils may provide the text of the ballot measure and provide information on where and when people may vote. Neighborhood Councils may place this type of factual, content-neutral information on their website.</p>	<p>Neighborhood Councils may not use public funds to provide a slanted, biased or inaccurate description about a ballot (City or state) measure. Neighborhood Councils may not use public funds to disseminate information about a ballot measure through newsletters or other mass mailing devices.</p>

<p>Neighborhood Councils may take positions on a ballot measure (City or state) after it is placed on a ballot, provided the position is taken at a regular meeting, opposing and supporting views are treated equally, and it is made clear that the Neighborhood Council is only directing its position to the City Council (although there is greater risk in doing so as court cases are unclear on this point).</p>	<p>Neighborhood Councils may not hold special meetings to take a position on a ballot measure (City or state) after it appears on the ballot; they should agendize the item at a regular Neighborhood Council meeting and ensure that supporting and opposing views on the measure are treated equally and should direct their position to the City Council, not the public.</p>
<p><b>Do's/ Neighborhood Council Positions</b></p>	<p><b>Don'ts/ Neighborhood Council Lobbying</b></p>
<p>Neighborhood Councils may encourage stakeholders to attend public meetings to gather information and provide public input on an issue coming before the City's decision makers.</p>	<p>Neighborhood Councils may not use public funds to advocate to members of the public their position taken. Accordingly, Neighborhood Councils may not use public funds to urge members of the public to support the Neighborhood Council's position, e.g., by sending flyers asking them to support a certain position, posting "Vote No on Project X" on its websites, etc.</p>
<p>Neighborhood Council boardmembers, may, in their individual capacities, and outside of Neighborhood Council meetings, advocate for or against any issue, including ballot measures.</p>	<p>Neighborhood Council boardmembers may not use public resources or funds to advocate, in their individual capacities, for or against any issue, including ballot measures.</p>

## Neighborhood Councils and Ballot Measures

There are various laws including the First and Fourteenth Amendments of the Constitution, California Penal Code §§ 424, 524 and court decisions that limit or otherwise restrict the use of public resources in relation to election matters. The California Supreme Court in *Stanson v. Mott* (1976) 17 Cal.3d 206 at 217 provided the general guiding principle prohibiting the use of public funds and resources in election matters: "A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions. A principal danger feared by our country's founders lay in the possibility that the holders of governmental authority would use official power improperly to perpetuate themselves, or their allies, in office [citations]; the selective use of public funds in election campaigns, of course, raises the specter of just such an improper distortion of the democratic electoral process." The court also stated that "judicial reluctance to sanction the use of public funds for election campaigns rests on an implicit recognition that such expenditures raise potentially serious constitutional questions." *Id.* at 216. Consequently, a neighborhood council may not use public funds or resources to support or oppose ballot measures.

The courts have generally distinguished between actions taken before and those taken after a measure is on the ballot. Prior to being placed on the ballot communications regarding the drafting of a proposed measure are generally not considered as actions to influence the voters in a partisan matter, but more closely aligned with the exercise of proper legislative authority, and therefore more likely to withstand challenge. However, even expenditures made prior to a ballot measure being placed on the ballot may be prohibited if they are aimed at influencing the voters or only present one side of the matter.

Expenditures after a ballot measure is placed on a ballot are no longer within the legislative realm and therefore generally prohibited. However, funds can be spent for the limited purposes of providing neutral and objective factual material about a measure upon request. Any other expenditures would be prohibited under the Penal Code and existing case law. See *Penal Code §§ 424, 524; League of Women Voters v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal.App.3d 529, 550-551; Attorney General Opinion 2004-211 (April 7, 2005).

However, although not without risk to the neighborhood council and potential individual liability on behalf of its boardmembers, under certain circumstances,<sup>1</sup> it may be permissible for a neighborhood council to agendize a discussion and potentially take a position on a pending ballot measure even after it is placed before the voters. The Court of Appeal has previously rejected a preliminary injunction against the school

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<sup>1</sup> Less risk would be associated with an item appearing on a regular meeting agenda than an item appearing on a special meeting agenda unless the item is incidental to the holding of the special meeting; i.e. the special meeting agenda also includes other neighborhood council items.

district charging misuse of funds where the district had taken a position at a public and televised meeting of the district in relation to a school-related ballot initiative that had not yet qualified for the ballot. *Choice-in-Education League v. Los Angeles Unified School District* (2d Dist. 1993) 17 Cal. App. 4<sup>th</sup> 415. The court concluded that the district's expenditure of funds regarding the televised airing of its meeting was unrelated to its advocacy of a partisan position particularly given the nature and timing of the broadcast. In making its findings the court appeared to also rely upon the district's responsibilities and the public forum nature of the meeting. See also *League of Women Voters v. Countywide Crim. Justice Coordination Com.*, 203 Cal.App.3d 529, 550-551 (board of supervisors did not improperly spend public funds when it held a public meeting to endorse an initiative that had not yet qualified for the ballot); *Ballot Measure Advocacy and the Law: Legal Issues Associated with City Participation in Ballot Measure Campaigns*, League of California Cities (September 2003). Because the only cases to date have concerned taking a position before a measure is placed on the ballot, it is not entirely clear whether a neighborhood council can take a position on a ballot measure once it has been placed before the voters.

A neighborhood council might also face less risk in holding a public meeting using a neutral framework on a ballot measure provided no other funds are expended because of neighborhood councils' unique nature and role. However, the Attorney General has opined that certain community college auxiliary organizations are subject to the same restrictions on partisan political activities as the college with regard to facilities and resources provided by the college. Attorney General Opinion 2004-211, n. 10 (April 7, 2005).

Consequently, the safest course of action for a neighborhood council is to refrain from taking a position on a ballot measure once it has been placed on a ballot. However, if a neighborhood council decides to take a position on a ballot measure it should ensure that it is contained on a regular meeting agenda and both supporting and opposing views are treated equally. Moreover, given that a court may consider the proximity to the election to be a factor in whether unlawful use of public resources have been spent, a neighborhood council should consider the timing of such a meeting in relation to the election. Even in the event that a neighborhood council was to take a position in opposition or support of a ballot measure at a regular meeting after the measure has been placed on the ballot by the legislative body, no public funds may be used to publicize that position.

Because of these restrictions on the use of public funds in relation to elections, we caution neighborhood councils to be particularly mindful of the legal risks associated with such activity.

## Use of Neighborhood Council Funds for Lobbying

Neighborhood Councils must be concerned spending public funds and lobbying members of the public to adopt a specific point of view because this practice infringes on the public's free speech rights.

In *League of Women Voters v. Countywide Criminal Justice Coordination Committee* (1988) 203 Cal. App. 3d 529, 549, the court explained that while the government has legitimate rights in informing and educating the public, it may not use its public funds as an advantage over the free speech rights of the public. In *Miller v. Miller* (1978) 87 Cal. App. 3d 762, 772, the court disapproved of the grass roots efforts by the California Commission on the Status of Women in using public funds to promote the ratification of the Equal Rights Amendment.

Neighborhood Councils should be cautious when sending out letters, flyers, or posting comments on its website. While the Neighborhood Council may advocate its position to the City decision makers, it may not advocate to the public that a specific point of view be adopted. For example, the Neighborhood Council may hold a public hearing on an issue, have both sides present their views on a particular topic and the Neighborhood Council may take a position on the issue to convey to the City decision-makers. However, the Neighborhood Council may not use public funds to urge members of the public to adopt the Neighborhood Council's position or a specific point of view. While the Neighborhood Council may provide general information to the public, e.g., there will be a public hearing on a certain topic, it may not tell the public what position to adopt, e.g., vote "yes" or "no" or support the Neighborhood Council's adopted position.

If your board has further questions regarding this matter, please contact the Office of the City Attorney, Neighborhood Council Advise Division, at (213) 978-8132.

