



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3050 • Sacramento, CA 95811

December 18, 2024

City of Costa Mesa  
Kimberly Hall Barlow, City Attorney  
[khb@jones-mayer.com](mailto:khb@jones-mayer.com)

**Advisory Letter Re: FPPC No. 2022-01071, In the Matter of City of Costa Mesa**

Dear City of Costa Mesa:

The Enforcement Division of the Fair Political Practices Commission (the “Commission”) enforces the provisions of the Political Reform Act (the “Act”).<sup>1</sup> This letter is in response to a sworn complaint and two anonymous complaints regarding whether the City of Costa Mesa sent prohibited campaign-related mass mailings at public expense by sending mass mailings regarding Measure K, a local ballot measure on the November 2022 ballot that would change the city’s ordinance to allow for development of housing in commercial and industrial areas. The Enforcement Division completed its review of the case and will close its file on this matter without prosecution.

The Act prohibits sending a newsletter or other mass mailing at public expense.<sup>2</sup> Specifically, a mass mailing is prohibited if (1) the item is a tangible item; (2) the item expressly advocates the qualification, passage, or defeat of a clearly identified measure, or unambiguously urges a particular result in an election; (3) public moneys are paid to distribute the item, or to prepare the item, for more than \$50, with the intent of sending the item; and (4) more than 200 substantially similar items are sent during the course of an election.<sup>3</sup> This prohibition limits the public subsidy of political campaigns, which would grant an unfair advantage to governmental bodies that desire to use public resources in pursuit of favorable election results.

An item unambiguously urges a particular result in an election in one of two ways: (1) when it clearly is campaign material or campaign activity because it is related to an election and it is an item such as bumper stickers, billboards, door-to-door canvassing, posters, advertising “floats,” or mass media advertising;<sup>4</sup> or (2) when the style, tenor, and timing of the communication can be reasonably characterized as campaign material and not a fair presentation of facts serving only an informational purpose.<sup>5</sup>

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in sections 18104 through 18998 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

<sup>2</sup> Section 89001.

<sup>3</sup> Regulation 18901.1, subdivision (a).

<sup>4</sup> Regulation 18901.1, subdivision (c)(1).

<sup>5</sup> Regulation 18901.1, subdivision (c)(2).

A payment of public moneys by a local governmental agency made in connection with a communication, whether it is a mass mailing or not, that expressly advocates passage of a ballot measure, or that taken as a whole and in context, unambiguously urges a particular result in an election is an independent expenditure.<sup>6</sup> Any person or combination of persons who, in a calendar year, makes independent expenditures totaling \$1,000 or more qualifies as an independent expenditure committee.<sup>7</sup> An independent expenditure committee must file semi-annual campaign statements each year for the period ending June 30 and December 31 if it made independent expenditures during the 6-month period prior to those dates.<sup>8</sup> Further, an independent expenditure committee must report its late independent expenditures within 24 hours of the time they are made to the appropriate filing officers.<sup>9</sup>

Our review found that the mass mailing sent by the City of Costa Mesa did not contain express words of advocacy. The mass mailing was generally informational, not argumentative, and moderate in tone. However, parts of that mass mailing came close to meeting the standard of unambiguously urging a particular result in an election. The mass mailing included statements that presented the need for Measure K, including that eviction rates in Costa Mesa were high, that rents were rising, and that housing conditions were poor due to overcrowding and having physical defects. Generally, the mailing only presented the positive impacts and reasons for why Measure K should be approved by voters. In addition, the mailing included statements such as, “The Costa Mesa City Council voted overwhelmingly to place Measure K on the November 8<sup>th</sup> ballot...” The mailing argues that Measure K will address housing challenges in a way that at times strayed from a strictly informational tone.

However, the statements in the mass mailing are not sufficiently inflammatory and argumentative to conclude that the mass mailing constituted campaign activity rather than informational material. Thus, the Enforcement Division cannot conclude that the mass mailings in question violated the Act’s prohibition against campaign mass mailings at public expense. Therefore, we are closing this matter with this advisory letter.

Although we are closing our file, please be advised of the provisions in the Act and regulations regarding campaign-related communications. If you need additional guidance, you may contact the Commission’s Advice team by sending an email to [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov). There is also information pertaining to campaign-related communications and advertisement disclosure requirements available on the Commission’s website, [www.fppc.ca.gov](http://www.fppc.ca.gov) and [www.fppc.ca.gov/learn/campaign-rules/campaign-related-communications-at-public-expense.html](http://www.fppc.ca.gov/learn/campaign-rules/campaign-related-communications-at-public-expense.html).

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<sup>6</sup> Section 82031; Regulation 18420.1, subdivision (a).

<sup>7</sup> Section 82013, subdivision (b).

<sup>8</sup> Section 84200, subdivision (b).

<sup>9</sup> Section 84204.

Should you have any questions regarding this letter, please feel free to contact me at [tgilbertson@fppc.ca.gov](mailto:tgilbertson@fppc.ca.gov) or (279) 237-5960.

Sincerely,

A handwritten signature in blue ink, appearing to read "Theresa Gilbertson", with a stylized, cursive script.

Theresa Gilbertson  
Senior Commission Counsel  
Enforcement Division

CC: Sworn Complainant, John Merrill