



# Agenda

MEETING OF THE CITY COUNCIL

TUESDAY, JULY 2, 2024, 10:00 AM

Special City Council Meeting

CITY COUNCIL CHAMBERS

1 Civic Center Drive

San Marcos, CA 92069

**Cell Phones:** As a courtesy to others, please silence your cell phone or pager during the meeting and engage in conversations outside the building.

**Americans with Disabilities Act:** If you need special assistance to participate in this meeting, please contact the City Clerk at (760) 744-1050, ext. 3100.

**Public Comment:** Comments are limited to THREE minutes. The City Council is prohibited by state law from taking action on items NOT listed on the Agenda. However, they may refer the matter to staff for a future report and recommendation. Speakers are asked to fill out a "Request to Speak" form and hand it to staff, although provision of a name, address, or other identifying information is optional.

**Agendas:** Agenda materials are available for public inspection at the time materials or documents are distributed to the City Council. Agenda related documents can be obtained at the City Clerk Department located on the second floor of City Hall, 1 Civic Center Drive, San Marcos, during normal business hours or visit the City's website at [www.san-marcos.net](http://www.san-marcos.net) as time permits.

## CALL TO ORDER

## ROLL CALL

**PUBLIC COMMENT** - Speakers are limited to three minutes. Please complete a "Request to Speak" form and place in basket provided.

**WORKSHOP** - Receive presentation regarding sales tax measure and permitted election-related activities for city employees and officials

## ADJOURNMENT

STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO ) ss.  
CITY OF SAN MARCOS )

AFFIDAVIT OF POSTING

I, Phillip Scollick, City Clerk of the City of San Marcos, hereby certify that I caused the posting of this agenda in the glass display case at the north entrance of City Hall and on the City's website on Friday, June 28, 2024, at 5:00 pm.

  
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Phillip Scollick, City Clerk



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

# Participation in Elections with Ballot Measures

City of San Marcos

# Presenter

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Hong Dao Nguyen assists public clients in transactional and litigation matters concerning municipal government, with a focus on land use and public records law. A partner in the Municipal Law practice group of Best Best & Krieger LLP, she serves as city attorney to the cities of Artesia and Stanton, and assistant city attorney to the cities of Aliso Viejo, Lake Forest and Signal Hill.

# About Us



**12**  
OFFICES

**250**  
ATTORNEYS

**130+**  
YEARS OF SERVICE

Best Best & Krieger serves as a trusted partner and strategist to public and private sector clients across the nation. With offices spanning from coast to coast, the firm's attorneys provide innovative legal solutions and cost-effective representation, working to protect and advance clients' interests at every turn. BB&K is recognized for decades of groundbreaking successes, loyal service, and a culture of inclusion and respect.

# Elections with Ballot Measures



- The City of San Marcos City Council will consider placing a 1% transactions and use tax (sales tax) measure on the November 5, 2024 general municipal election ballot at its meeting of July 9, 2024.
- Should a measure be called, employees and City officials would be subject to certain rules regarding their participation in election matters

# General Rules



- Public agencies may not spend public funds to support or oppose ballot measures.
- Public agencies may adopt a formal position on a ballot measure and educate the public on the measure.
- Stanson v. Mott (1976)
- Vargas v. Salinas (2005)

# Stanson v. Mott

Voters approved a \$250 million bond issue to fund future purchase of park land, recreational, and historical facilities

## KEY FACTS:

- Director of the California Department of Parks and Recreation (Mott) authorized the expenditure of more than \$5,000 to promote the passage of the bond issue
- Written materials prepared and printed by Dept in favor of the bond issue
- Spent public funds for speaking engagements in favor of bond issue and related travel expenses
- Created 3 person Staff specifically on bond act (spent staff time, and dept resources to promote passage)



# State Supreme Court Decision



- Public agencies may not spend public funds to support or oppose ballot measures.
- Expenditures are proper only when they are authorized, explicitly or implicitly, by statute
- Rationale: Spending public funds to promote a ballot issue would fundamentally distort the democratic process and its constitutional commitment to free elections

# Vargas v. Salinas



Measure O – Repeal of the City's Utilities  
Users Tax generating \$8 million annually  
(13% of City's General Fund)

## KEY FACTS:

- Posted information on City Website
- Staff reports re fiscal impact reports and meeting minutes
- Published information in City Newsletter
- Analysis of City Council's actions
- Printed information available in Clerk's Office/ Library
- One-page handout of programs and services that City Council had voted to reduce/eliminate if measure adopted



# Vargas v. Salinas



- Court of Appeals looked at Government Code Section 54964(a), which states: “An officer, employee, or consultant of a local agency may not expend or authorize the expenditure of any of the funds of the local agency to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters.”
- Court of Appeals interpreted that to mean public funds could be expended for communications that do not expressly advocate the approval or rejection of a ballot measure

# State Supreme Court Decision



- Made the following determinations about Government Code Section 54964:
  - Does not permit using public funds for communications that do not expressly advocate
  - Rather, it prohibits using public funds for communications that do expressly advocate
- Agreed that City's communications were permissible informational materials
- Disagreed that Government Code Section 54964 was correct standard
- Proper standard = Stanson v. Mott

# What Can Be Done?

Employees AND Agency Officials

# Mayor and City Council May Campaign



- Council Members retain 1<sup>st</sup> Amendment Rights to Campaign
  - Attending meetings of community groups and speak for or against the measure;
  - Contributing to campaigns for or against the measure;
  - Authoring letters to the editor for or against the measure; and
  - Walking door-to-door supporting or opposing the measure.

# Mayor and City Council May Campaign



- Precautions for Council Members
  - Always clearly identify that you are speaking on your own behalf and on your “own time” and “own dime.” Make it very clear at all engagements that City resources are not supporting the event in any manner.
  - Do not seek reimbursement for any costs that may be associated in any way with campaign activities.
  - Do not conduct campaign activities on City property.
  - Do not contact City staff regarding the campaign. If a member of City staff is assisting in their personal capacity, please do not contact that person during City operating hours, on City electronic devices, or using City email accounts.
  - To the extent possible, avoid meeting in groups of three or more elected officials.

# City Staff May Campaign



- Staff retain 1<sup>st</sup> Amendment Rights to Campaign
  - Absolutely must be on personal time
  - Receive no compensation or benefits for campaign activities
  - At every opportunity make it clear that any City staff participating in campaign activities are doing so on their “own time” and “own dime” and not at the behest of the City Council or senior City management.
  - May not appear in City uniform or City vehicles

# City May Take a Formal Position



- The Mayor and City Council may take a formal position on the measure. The decision to take a formal position must be taken at a time when members of the public are afforded an opportunity to comment. After taking a formal position for or against an initiative measure, the City is also permitted to inform the public and media of this decision but must be careful not to do so in a way that appears to be advocacy

# City May Author Ballot Arguments



- The City may be directly involved in authoring the ballot arguments either for or against a measure. (Elec. Code § 9282; FPPC Reg. 18420.1(e)(3).) The entire City Council may approve and sign arguments for or against such measure.
- Council may designate one or more of its members to author the argument on behalf of the entire Council.

# Informational Handouts and Newsletter Articles



- The City may prepare informational handouts for its website and for members of the public to pick up at City Hall. While the City may not mail these handouts directly, they may be mailed out by third parties and not at City expense.
- The City may also include informational, non-partisan articles in a regularly-published newsletter. These articles can explain the measure at great length but it is important that they be carefully reviewed to avoid taking a pro or con position.

# The City May Identify the Impacts of the Measure

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- Courts have held that a city may identify programs or services that are likely to be cut if a measure passes and may post a report on this (if it is standard practice to do so). For example, it would be appropriate to identify the impact of a yes or no vote on the City's budget.

# What Cannot Be Done?

Employees AND Agency Officials

# The City May Not Expend Resources on Advocacy, Including:

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- The purchase of campaign materials such as bumper stickers, posters, advertising ‘floats,’ or television and radio advertisements promoting or opposing either measure;
- The dissemination of campaign literature prepared by third-party proponents (e.g., the cannabis industry);
- The production or preparation of materials expressly advocating the victory or defeat of a measure;
- Contributions to campaigns supporting or opposing a measure; and
- The use of staff time or City supplies to generate promotional or advocacy materials supporting or opposing a measure.

# Summary

# Do's and Don'ts



- All activities must be on the person's "own time" and "own dime"
- No City resources may be used to advocate for the measure
- Employee uniforms and vehicles may not be used to advocate for the measure
- Elected officials should refrain from participating in campaign activities in groups of three



Questions?

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