



City of Carson Report to Mayor and City Council

April 2, 2013
New Business Discussion

SUBJECT: FURTHER RECONSIDERATION OF STANDARD MANAGEMENT PROCEDURE 1.45 - SUB-COMMITTEES, MEETING CONVENED BY LESS THAN A QUORUM OF THE CITY COUNCIL & USE OF CITY RESOURCES FOR THE SAME WHICH ADDRESSES TOWN HALL STYLE MEETINGS

Submitted by David C. Biggs
City Manager

Approved by David C. Biggs
City Manager

I. SUMMARY

This matter is on the agenda at the request of Mayor Dear.

On February 21, 2012, the City Council amended Standard Management Procedure (SMP) 1.45 to allow individual Councilmembers to convene Town Hall Meetings. (Exhibit No. 1). Prior to that amendment SMP 1.45 was previously amended by the City Council on January 19, 2010 (Exhibit No. 3).

II. RECOMMENDATION

CONSIDER and PROVIDE direction.

III. ALTERNATIVES

1. Further REVISE Standard Management Procedure 1.45.
2. REINSTATE Section F & G of this Standard Management Procedure.
3. MAINTAIN this Standard Management Procedure with no changes.
4. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

On February 21, 2012, SMP 1.45 was amended to the current version (Exhibit No. 2). The changes that were made on February 21, 2012 include redactions of points F (1) and (2) and G (**Triangle 9**). These specific sections of the SMP dealt with:

F. Advisory Groups Not Created by City Council Action and Group, Community, or Town Hall Style Meetings *Not* Called or Convened in Compliance With the Brown Act.

G. Advisory Groups Created by City Council Action and Group, Community, or Town Hall Style Meetings Called and Convened in Compliance With the Brown Act.

In addition the Council action included a caveat for limited staff support for Town Hall Meetings. Staff support would consist of developing a flyer, having 199 copies reproduced as allowed by the FPPC, and placing the flyer on the City's website.

23

V. FISCAL IMPACT

The fiscal impact of revising this SMP is the cost of staff time which will be absorbed in the adopted FY 2012/13 budget.

VI. EXHIBITS

1. City Council Minutes & Staff Report, February 21, 2012, Item 15. (pgs. (3-12)
2. Current Version of Standard Management Procedure 1.45. (pgs. 13-15)
3. City Council Minutes & Staff Report, January 19, 2010, Item No. 19. (pg. 16-46)

Document1

Prepared by: Lisa Berglund, Principal Administrative Analyst

TO:Rev01-23-12

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Development Services
Economic Development	Public Services

Action taken by Successor Agency

Date_____ Action_____

ITEM NO. (15) RECONSIDERATION OF STANDARD MANAGEMENT PROCEDURE 1.45
(CITY MANAGER)

City Manager Biggs summarized the staff report and recommendation.

RECOMMENDATION for the City Council:

1. CONSIDER and PROVIDE direction.

ACTION: It was moved to eliminate Standard Management Procedure 1.45 with the caveat that staff would not be required to attend town hall meetings on motion of Gipson and seconded by Davis-Holmes.

Substitute Motion

Mayor Dear offered a substitute motion that City Council town hall meetings represent unity with all five council members in attendance and seconded by Santarina.

During discussion of the substitute motion, City Attorney Wynder clarified the difference between sanctioned town hall meetings vs. non-sanctioned town hall meetings. He referred to the main motion and suggested amended language to repeal Section II, General, Subsection F, Advisory Groups Not Created by City Council Action and Group, Community, or Town Hall Style Meetings Not Called or Convened in Compliance With the Brown Act, and Subsection G, Advisory Groups Created by City Council Action and Group, Community or Town Hall Style Meetings Called and Convened in Compliance with the Brown Act.

Motion to Call the Previous Question and End Debate

It was moved to call the previous question and end debate on motion of Dear, seconded by Ruiz-Raber and carried by the following vote:

Ayes:	Mayor Dear, Mayor Pro Tem Ruiz-Raber, Council Member Gipson, and Council Member Santarina
Noes:	Council Member Davis-Holmes
Abstain:	None
Absent:	None

Vote on Substitute Motion

The substitute motion failed to carry by the following vote:

Ayes:	Mayor Dear and Council Member Santarina
Noes:	Mayor Pro Tem Ruiz-Raber, Council Member Davis-Holmes, and Council Member Gipson
Abstain:	None
Absent:	None



Vote on Main Motion

The main motion to repeal Section II (F)(G), as suggested by City Attorney Wynder, was carried by the following vote:

Ayes: Mayor Pro Tem Ruiz-Raber, Council Member Davis-Holmes, and Council Member
Gipson
Noes: Mayor Dear and Council Member Santarina
Abstain: None
Absent: None

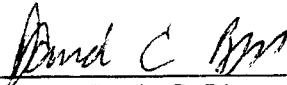


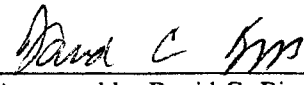


City of Carson Report to Mayor and City Council

February 21, 2012
New Business Discussion

SUBJECT: RECONSIDERATION OF STANDARD MANAGEMENT PROCEDURE 1.45


Submitted by David C. Biggs
City Manager


Approved by David C. Biggs
City Manager

I. SUMMARY

On February 7, 2012, the City Council added this matter to tonight's agenda for consideration at the request of Councilmember Gipson. Attached for the Council's review is Standard Management Procedure (SMP) 1.45 which was considered and adopted on January 19, 2010 (Exhibit Nos. 1 and 2).

Should the City Council choose to eliminate SMP 1.45 it is important to note that staffing levels have changed and will continue to change. The level of staffing that was provided before SMP 1.45 was established, to aid elected officials in presenting town hall style, community or other types of meetings open to the public and convened by less than a quorum of the City Council, will be limited.

II. RECOMMENDATION

CONSIDER and PROVIDE direction.

III. ALTERNATIVES

1. TAKE no action on this Standard Management Procedure.
2. Further REVISE Standard Management Procedure 1.45.
3. ELIMINATE Standard Management Procedure 1.45.

IV. BACKGROUND

At the City Council meeting of October 7, 2009, the Council gave direction to develop an appropriate SMP to prohibit town hall style, community, or other types of meetings open to the public that are scheduled, promoted, or convened by less than a quorum of the City Council unless such meeting(s) is a public meeting, and is (are) noticed and agendized so that any and all councilmembers can attend the same who wish to do so.

During consideration of that item, there was discussion of the circumstances under which less than a quorum of the Council could, individually or collectively, hold these types of meetings, and whether such Councilmember(s) could utilize city staff, other city resources, or free use of city facilities to schedule, promote, and convene such meetings.

The Council determined that these types of meetings should be open to any and all members of the Council as well as the entire community, and directed that an SMP be prepared to assure that no city staff, other city resources, or free use of city facilities could be utilized to schedule, promote, or convene these types of meetings by less than a quorum of the Council.

During discussion of the proposed SMP, Councilmember Santarina requested that such SMP make clear that any Councilmember(s) could continue the practice of scheduling, promoting, and convening these style of meetings, provided it was made explicit in the SMP that such Councilmember(s) did so at his, her, or their own time, cost, and expense, and that no city staff, or other city resources, or free use of city facilities be expended or made available in connection with the same.

In the past staffing these events consisted of scheduling and publicizing the event, booking speakers, sending invitations, determining audio visual needs, gather and provide hand-outs and sign in sheets, locate visuals such as enlarged maps and easels to be set up at the event and provide refreshments. At the event a staff member would staff the sign-in table and take notes for the duration of the meeting. In the following days, staff would follow up on constituent questions from that evening, send thank you letters to the speakers and attendees and return maps, easels and audio visual equipment to other workgroups.

Should the City Council choose to make amendments to SMP 1.45, it is important to note that staffing levels have been reduced dramatically since this SMP was first introduced. Furthermore staffing levels will continue to be reduced. The City Manager's office has been operating without a city council field representative since December 2009 and the management assistant has been out on leave for 14 out of the last 20 months. There is also a typist clerk vacancy position in the Council Office that is being back filled with a temporary employee at this time. That position may or may not be permanently filled. These changes in staff levels dramatically reduce the ability of staff to organize such events and as such we will not be able to do so beyond the scheduling of rooms and the creation of a flyer.

V. FISCAL IMPACT

None at this time.

VI. EXHIBITS

1. Standard Management Procedure 1.45. (pgs. 4-7)
2. Minutes, City Council meeting, January 19, 2010, Item No. 19. (pg. 8)

City of Carson

Report to Mayor and City Council

February 21, 2012

TO:Rev01-23-12

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Development Services
Economic Development	Public Services

Action taken by Successor Agency

Date_____ Action_____



CITY OF CARSON

0106
0377

POLICY/PROCEDURE

NUMBER: 1:45

ORIGINAL ISSUE:

2/05/92

EFFECTIVE:

2/05/92

SUBJECT

MEETINGS CONVENED BY LESS THAN A QUORUM OF THE CITY COUNCIL & USE OF CITY STAFF RESOURCES, OR FREE USE OF FACILITIES FOR THE SAME

CURRENT ISSUE:

1/19/10

EFFECTIVE:

1/19/10

CATEGORY

I. CITY COUNCIL POLICY

SUPERSEDES
2/05/92

I. PURPOSE AND SCOPE

To establish operational guidelines and procedures regarding the holding of sub-committee, task force, town hall style, community, or other meetings or gatherings with constituents which may consist of: (1) Councilmembers solely, or (2) Councilmembers, other elected officials, and/or members of the public. This policy shall not affect City commissions, committees or boards created by formal Council action or by ordinance and meetings called therefore in compliance with the Brown Act.

II. GENERAL

Sub-Committees Created by City Council Action

A. Creation of sub-committees. There are two types of City Council Sub-committees recognized by the city: standing sub-committees and ad hoc sub-committees. No City Council sub-committee may consist of more than two members of the Council, although the Council may designate as members of the sub-committee other elected officials and citizens of Carson. All sub-committee members shall be appointed by the Mayor and subject to formal approval by a majority of Councilmembers present and voting at a properly noticed and agendized public meeting.

B. Standing sub-committees. A standing sub-committee is one created for an indefinite time period or to address general subjects. Generally, any sub-committee created that does not clearly qualify, as an ad hoc sub-committee will be a standing sub-committee.

C. Ad hoc sub-committees. An *ad hoc* sub-committee is one created for a limited period to address a specific subject or issue of a temporary nature.

D. Brown Act. All standing sub-committees and ad hoc sub-committees shall comply with all provisions of the Brown Act, except that an ad hoc sub-committee comprised solely of two Councilmembers and no other persons are exempted, in accordance with State law.

E. No exceptions. There are no exceptions to this SMP. All bodies created by formal City Council action which include one or more Councilmembers, whether called a committee, task

force, special committee, advisory committee, or any other name, shall be considered either a standing sub-committee or *ad hoc* sub-committee for purposes of this SMP.

F. Advisory Groups Not Created by City Council Action and Group, Community, or Town Hall Style Meetings Not Called or Convened in Compliance With the Brown Act. An individual Councilmember, or two Council members together (but not 3 or more Council members) may create an informational advisory or other group to discuss City or non-City issues, and may convene town hall style, community, or other collective gatherings, **provided, however**, that the same are subject to the following two (2) rules:

(1) No City staff, other City resources, or free use of City facilities may be utilized to schedule, invite attendees, receive or process RSVPs, advertize, promote, or convene the same, and no City staff shall attend the same in their official capacity. Use of a Council member's own City Hall office or the City Hall Executive Conference Room (if available) to hold a meeting shall not constitute use of City resources.

(2) The informational advisory or other group, town hall style meeting, community meeting, or other collective gathering may not suggest or imply it is in any way an official sub-committee or group recognized by the City. (For example, "Carson Council Task Force for the Environment" would be prohibited, but "Councilmember Jones' Task Force for the Environment" would be permitted because it does not imply it is a City-sanctioned event.)

G. Advisory Groups Created by City Council Action and Group, Community, or Town Hall Style Meetings Called and Convened in Compliance With the Brown Act. A Councilmember who wishes to hold an informational advisory or other group, town hall style meeting, community meeting, or other collective gathering open to the public may use City staff, other City resources, or free use of City facilities to schedule, invite attendees, receive or process RSVPs, advertize, promote, or convene the same **provided, however**, that the same are called by official order of the Mayor, or in the absence of the Mayor by the Mayor *Pro Tem*, or by a majority of the Council, pursuant to Carson Municipal Code § 2403(b), and is noticed and agendized in full compliance with the Brown Act. The use of City resources, if any, for such a meeting called by official procedure is within the City Manager's discretion.

H. Except as noted in II(G), above, informational advisory or other group, town hall style meeting, community meeting, or other collective gatherings are not required to comply with the Brown Act, in accordance with State law.

I. Nothing in this Section should be construed to limit the ability of any member of the Council from calling or attending any meeting(s) with constituents when no City resources are used.

III. PROCEDURE

The following applies to sub-committees created by formal action or meetings approved by the Council. It does not apply to informational advisory or other group, town hall style meeting, community meeting, or other collective gatherings held by one or two Council members together, described in Section II(F), above, where not City resources shall be used.

Meetings

A. The meeting dates/times will be organized by the General Manager or senior staff member assigned to the sub-committee.

- B. Meeting dates/times will be arranged to accommodate the schedules of the Councilmember(s) appointed to the sub-committee.
- C. Meeting dates/times and agendas may be scheduled on short notice provided all formal posting and notification requirements of the Brown Act are met, unless the sub-committee is not subject to the Brown Act (see Section II(D), Brown Act).

Sub-committee Agenda Items

- A. Any member of a City Council Sub-committee and/or the City Manager may place items on the agenda for consideration by a City Council Sub-committee.
- B. Agenda preparation will be completed by the General Manager or senior staff member assigned to the sub-committee and copies will be distributed to the full Council.

Staff Support to Sub-committees

- A. General Managers or senior staff members will be assigned to the various sub-committees according to specific subject matters at the direction of the City Manager.
- B. The meetings of standing sub-committees shall be recorded on tape and germane minutes taken by the General Manager or senior staff member to the sub-committee. Tapes will not be transcribed unless requested by a Councilmember or otherwise necessary for conducting of city business. Councilmember requests for verbatim transcription of items considered by any sub-committee will be requested through an item on the City Council agenda.
- C. Approved minutes of standing sub-committees shall be kept on file in the City Clerk's office for five years.

Advertisement and Promotion of Meetings

If there is any advertisement or promotion of the meeting, including production of flyers, mailers, handouts, press releases, emails, etc., staff shall follow SMP 1.56 (COUNCIL COMMUNICATIONS (FLYERS, HANDOUTS AND OTHER PRINTED MATERIAL) and SMP 1.55 (CITY COUNCIL REQUESTS FOR ISSUANCE OF PRESS RELEASE).

Reports and/or Recommendations to Council/Agency

- A. As soon as practical following each standing sub-committee meeting, the General Manager or senior staff member will complete an agenda disposition, noting any decisions or recommendations, and forward this report to all Councilmembers and others as appropriate. Sub-committee agenda dispositions for each sub-committee held during the previous two weeks will be placed on the City Council agenda (consent) following each meeting.
- B. If a formal report to the Council/Agency is required, and/or if further action is needed by the Council/Agency, then the General Manager or senior staff member will prepare an appropriate agenda item.



IV. EXCEPTION

There shall be no exceptions to this policy, except through direct instructions of the City Council

V. AUTHORITY

City Council Agenda Item No. __, dated November __, 2009.



Jerome G. Grooms
City Manager

2/10/10

Date



ITEM NO. (19) FURTHER CONSIDERATION OF FURTHER REVISIONS TO STANDARD MANAGEMENT PROCEDURE ("SMP") NOS. 1.45, MEETINGS CONVENED BY LESS THAN A QUORUM OF THE CITY COUNCIL & THE USE OF CITY STAFF RESOURCES, OR FREE USE OF FACILITIES FOR THE SAME & SMP 1.56, DEALING WITH COUNCIL COMMUNICATIONS (FLYERS, HANDOUTS, CEREMONIAL LETTERS FOR DISTRIBUTION AND OTHER PRINTED MATERIALS) (CITY MANAGER)

This item was heard at 10:33 P.M.

City Attorney Wynder summarized the staff report and recommendation. He clarified that whenever ceremonial letters are provided, members should inform the organization about the distribution limitation.

RECOMMENDATION for the City Council:

TAKE the following actions:

1. ADOPT revised Standard Management Procedure No. 1.45, and
2. ADOPT revised Standard Management Procedure No. 1.56.

ACTION: It was moved to approve staff recommendation Nos. 1 and 2 on motion of Dear and seconded by Santarina.

Upon inquiry, City Attorney Wynder offered the following comments: 1) when the City provides a photograph to a third party organization, a cautionary directive should be sent to the third party organization that the letter should be handed out in the brochure; 2) with respect to Triangle Page No. 29, B(1)(b), the word "no," under the new interpretation, would be stricken, which was subsequently accepted by Dear and Santarina; and 3) clarified that the focus of the Fair Political Practices Commission was not on the existence of a signature or photograph; the focus was on the method of delivery on Triangle Page No. 22 and meant that if one member could have a photograph, then all five could do so.

Mayor Pro Tem Davis-Holmes requested his interpretation in writing.

The motion, as amended, was carried by the following vote:

Ayes:	Mayor Dear, Council Member Santarina, and Council Member Ruiz-Raber
Noes:	None
Abstain:	None
Absent:	Mayor Pro Tem Davis-Holmes and Council Member Gipson





CITY OF CARSON

POLICY/PROCEDURE

NUMBER: 1:45

SUBJECT
COUNCIL SUB-COMMITTEES

ORIGINAL ISSUE:

EFFECTIVE:

2/05/92

2/5/92

CURRENT ISSUE:

EFFECTIVE:

2/21/12

2/21/12

CATEGORY

I. CITY COUNCIL POLICY

SUPERSEDES
1/19/10**I. PURPOSE AND SCOPE**

To establish operational guidelines and procedures regarding the holding of sub-committee. This policy shall not affect City commissions, committees or boards created by formal Council action or by ordinance and meetings called therefore in compliance with the Brown Act.

II. GENERAL**Sub-Committees Created by City Council Action**

- A. Creation of sub-committees. There are two types of City Council sub-committees recognized by the City: standing sub-committees and ad hoc sub-committees. No City Council sub-committee may consist of more than two members of the Council, although the Council may designate as members of the sub-committee other elected officials and citizens of Carson. All sub-committee members shall be appointed by the Mayor subject to formal approval by a majority of Councilmembers present and voting at a properly noticed and agendized public meeting.
- B. Standing sub-committees. A standing sub-committee is one created for an indefinite time period or to address general subjects. Generally, any sub-committee created that does not clearly qualify, as an ad hoc sub-committee will be standing sub-committee.
- C. Ad hoc sub-committee. An ad hoc sub-committee is one created for a limited period to address a specific subject or issue of a temporary nature.
- D. Brown Act. All standing sub-committees and ad hoc sub-committees shall comply with all provisions of the brown act, except that an ad hoc sub-committee comprised solely of two Councilmembers and no other persons are exempted, in accordance with state law.
- E. No exceptions. There are no exceptions to this **SMP**. All bodies created by formal City Council action which include one or more Councilmembers, whether called a committee, taskforce, special committee, advisory committee, or any other name, shall be considered either standing sub-committee or ad hoc sub-committee for purposes of this SMP.
- F. Informational advisory or other group, town hall style meetings, community meetings, or other collective gatherings are not required to comply with the Brown Act, in accordance with State law.
- G. Nothing in this Section should be construed to limit the ability of any member of the Council from calling or attending any meeting(s) with constituents when no City resources are used.

EXHIBIT NO. 02

13

III. PROCEDURE

The following applies to sub-committees created by formal action or meetings approved by the Council. It does not apply to informational advisory or other group, town hall style meeting, community meeting, or other collective gatherings held by one or two Council members together.

Meetings

- A. The meeting dates/times will be organized by the General Manager or senior staff member assigned to the sub-committee.
- B. Meeting dates/times will be arranged to accommodate the schedules of the Councilmember(s) appointed to the sub-committee.
- C. Meeting dates/times and agendas may be scheduled on short notice provided all formal posting and notification requirements of the Brown Act are met, unless the sub-committee is not subject to the Brown Act (see Section II, Brown Act).

Sub-committee Agenda Items

- A. Any member of a City Council Sub-committee and/or the City Manager may place items on the agenda for consideration by a City Council Sub-committee.
- B. Agenda preparation will be completed by the General Manager or senior staff member assigned to the sub-committee and copies will be distributed to the full Council.

Staff Support to Sub-committees

- A. General Managers or senior staff members will be assigned to the various sub-committees according to specific subject matters at the direction of the City Manager.
- B. The meetings of standing sub-committees shall be recorded on tape and germane minutes taken by the General Manager or senior staff member to the sub-committee. Tapes will not be transcribed unless requested by a Councilmember or otherwise necessary for conducting of city business. Councilmember requests for verbatim transcription of items considered by any sub-committee will be requested through an item on the City Council agenda.
- C. Approved minutes of standing sub-committees shall be kept on file in the City Clerk's office for five years.

Advertisement and promotion of Meetings

If there is any advertisement or promotion of the meeting, including production of flyers, mailers handouts, press releases, emails, etc., staff shall follow SMP 1.56 (Council Communications (FLYERS, HANDOUTS AND OTHER PRINTED MATERIAL) and SMP 1.55 (CITY COUNCIL REQUESTS FOR ISSUANCE OR PRESS RELEASE).

Reports and/or Recommendations to Council/Agency

14

- A. As soon as practical following each standing sub-committee meeting, the General Manager or senior staff member will complete an agenda disposition, noting any decisions or recommendations, and forward this report to all Councilmembers and others as appropriate. Sub-committee agenda dispositions for each sub-committee held during

the previous two weeks will be placed on the City Council agenda (consent) following each meeting.

- B. If a formal report to the Council/Agency is required, and/or if further action is needed by the Council/Agency, then the General Manager or senior staff member will prepare an appropriate agenda item.

IV. EXCEPTION

There shall be no exceptions to this policy, except through direct instructions of the City Council

V. AUTHORITY

City Council Agenda Item No. 15, dated February 21, 2012.

David C. Biggs
City Manager

Date

ITEM NO. (19) FURTHER CONSIDERATION OF FURTHER REVISIONS TO STANDARD MANAGEMENT PROCEDURE ("SMP") NOS. 1.45, MEETINGS CONVENED BY LESS THAN A QUORUM OF THE CITY COUNCIL & THE USE OF CITY STAFF RESOURCES, OR FREE USE OF FACILITIES FOR THE SAME & SMP 1.56, DEALING WITH COUNCIL COMMUNICATIONS (FLYERS, HANDOUTS, CEREMONIAL LETTERS FOR DISTRIBUTION AND OTHER PRINTED MATERIALS) (CITY MANAGER)

This item was heard at 10:33 P.M.

City Attorney Wynder summarized the staff report and recommendation. He clarified that whenever ceremonial letters are provided, members should inform the organization about the distribution limitation.

RECOMMENDATION for the City Council:

TAKE the following actions:

1. ADOPT revised Standard Management Procedure No. 1.45, and
2. ADOPT revised Standard Management Procedure No. 1.56.

ACTION: It was moved to approve staff recommendation Nos. 1 and 2 on motion of Dear and seconded by Santarina.

Upon inquiry, City Attorney Wynder offered the following comments: 1) when the City provides a photograph to a third party organization, a cautionary directive should be sent to the third party organization that the letter should be handed out in the brochure; 2) with respect to Triangle Page No. 29, B(1)(b), the word "no," under the new interpretation, would be stricken, which was subsequently accepted by Dear and Santarina; and 3) clarified that the focus of the Fair Political Practices Commission was not on the existence of a signature or photograph; the focus was on the method of delivery on Triangle Page No. 22 and meant that if one member could have a photograph, then all five could do so.

Mayor Pro Tem Davis-Holmes requested his interpretation in writing.

The motion, as amended, was carried by the following vote:

Ayes:	Mayor Dear, Council Member Santarina, and Council Member Ruiz-Raber
Noes:	None
Abstain:	None
Absent:	Mayor Pro Tem Davis-Holmes and Council Member Gipson




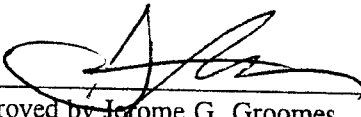


City of Carson Report to Mayor and City Council

January 19, 2010
Unfinished Business

SUBJECT: FURTHER CONSIDERATION OF FURTHER REVISIONS TO STANDARD MANAGEMENT PROCEDURE ("SMP") NOS. 1.45, MEETINGS CONVENED BY LESS THAN A QUORUM OF THE CITY COUNCIL & THE USE OF CITY STAFF RESOURCES, OR FREE USE OF FACILITIES FOR THE SAME & SMP 1.56, DEALING WITH COUNCIL COMMUNICATIONS (FLYERS, HANDOUTS, CEREMONIAL LETTERS FOR DISTRIBUTION AND OTHER PRINTED MATERIALS)


Submitted by William W. Wynder
City Attorney


Approved by Jerome G. Groomes
City Manager

I. SUMMARY

This item was continued from the City Council meeting of November 17, 2009 in order to allow the Office of the City Attorney to seek (Exhibit No. 1) and obtain an opinion from the Fair Political Practices Commission (the "FPPC") (Exhibit No. 2). That opinion has been received, and the conclusions there from are incorporated into this staff report.

At its meeting of October 7, 2009, the City Council gave direction to develop an appropriate Standard Management Procedure ("SMP") to prohibit a town-hall style, community, or other types of meetings that are scheduled, promoted, or convened by less than a quorum of the City Council unless such a meeting is a public meeting, and is noticed and agendized so that all councilmembers who wish to may attend and participate in the same.

During the discussion of this item, Councilmember Santarina requested that the SMP be clarified to make explicit that any Councilmember(s) could unilaterally schedule, promote, and convene such meetings, *provided* it was made explicit in the SMP that such Councilmember(s) did so at his, her, or their own time, cost, and expense, and that *no* city staff, other city resources be expended, or free use of city facilities be made available in connection with the same.

Attached is revised SMP 1.45 which has been prepared in response to the Council's direction (Exhibit No. 3). Incorporated into the revised SMP are the opinions received from the FPPC relevant to this subject.

At its Council meeting of October 7, 2009, the City Council also determined to rescind its informal policy on the writing and signing of ceremonial or other letters intended for inclusion in various event programs, brochures, or other commemorative pamphlets. Under former policy, the entire City Council would

sign such ceremonial letters. The Council rescinded that policy, returning to a policy whereby only the Mayor signs such writings.

During discussion of this item, questions were raised by the Mayor *Pro Tem* about the circumstances under which Councilmembers may utilize city staff and other city resources to write and distribute ceremonial communications. Attached is revised SMP 1.56 (Exhibit No. 4) which has been prepared in response to questions raised about the law regarding "mass mailing" of Council or Councilmember ceremonial letters, invitations, or other writings (Exhibit No. 3). Incorporated into the revised SMP are the opinions received from the FPPC on this subject.

II. RECOMMENDATION

TAKE the following actions:

1. ADOPT revised Standard Management Procedure No. 1.45, and
2. ADOPT revised Standard Management Procedure No. 1.56.

III. ALTERNATIVES

1. TAKE no action on either SMP.
2. Further REVISE the attached revised Standard Management Procedure No. 1.45.
3. Further REVISE the attached revised Standard Management Procedure No. 1.56.
4. TAKE another action the Council deems appropriate.

IV. BACKGROUND

At the City Council meeting of October 7, 2009, the Council gave direction to develop an appropriate Standard Management Procedure ("SMP") to prohibit town hall style, community, or other types of meetings open to the public that are scheduled, promoted, or convened by less than a quorum of the City Council *unless* such meeting(s) is a public meeting, and is (are) noticed and agendized so that any and all councilmembers can attend the same who wish to do so.

During consideration of that item, there was discussion of the circumstances under which less than a quorum of the Council could, individually or collectively, hold these types of meetings, and whether such Councilmember(s) could utilize city staff, other city resources, or free use of city facilities to schedule, promote, and convene such meetings.

The Council determined that these types of meetings should be open to any and all members of the Council as well as the entire community, and directed that an

January 19, 2010

SMP be prepared to assure that *no* city staff, other city resources, or free use of city facilities could be utilized to schedule, promote, or convene these types of meetings by less than a quorum of the Council.

During discussion of the proposed SMP, Councilmember Santarina requested that such SMP make clear that any Councilmember(s) could continue the practice of scheduling, promoting, and convening these style of meetings, *provided* it was made explicit in the SMP that such Councilmember(s) did so at his, her, or their own time, cost, and expense, and that no city staff, or other city resources, or free use of city facilities be expended or made available in connection with the same.

The Office of the City Attorney was asked whether the Council had the legal authority to enact such prohibitions. We are of the opinion that, within the limits set forth in attached revised SMP 1.45, the Council has such legal authority. We have sought and obtained a legal opinion from the office the FPCC who is of the same opinion (Exhibit No. 2).

State law provides that a city council acts as the "legislative body" for a city. There is no state law or case explaining with any specificity the rights of individual members of a city council. While it is possible for a charter city to give members of that city's legislative body certain individually innumeral rights or powers, state law does not expressly confer such rights to individual councilmembers in general law cities.

Moreover, state law provides that payments of money must be done by resolution approved by the Council majority (California Government Code §§ 36935-936). Therefore, ultimate authority over the use of city funds and other city resources (staff time, duplication equipment, franking privileges, and the like) rests with the sound discretion of the *entire* City Council and it is consistent with state law to conclude that use of use of city funds and other city resources can be limited by a duly adopted Council policy.

Under a city manager form of government, the city manager is directed to administer the day-to-day affairs of the city, including the power to direct city employees in their duties. Carson Municipal Code § 2107 provides:

"The City Manager shall be the administrative head of the city government under the direction and control of the City Council, except as otherwise provided in this Code. He shall be responsible for the efficient administration of all the affairs of the city which are under the City Manager's control."

In addition to the City Manager's general powers as administrative head, (s)he has the power and duty to:

"Control, order, give directions to, appoint, promote, discipline and demote or remove all heads of groups and divisions, except the City Clerk, the City Attorney, and the City Treasurer, and all subordinate officers and employees of the city." (CMC § 2107(b)(1).)

"To exercise control over and to supervise in general all groups and divisions of the city government and all appointive officers and employees thereof except the City Clerk, the City Attorney, and the City Treasurer." (CMC § 2107(c).)

"To perform such other duties and exercise such other powers as may be delegated to the City Manager from time to time by ordinance or resolution of the City Council." (CMC § 2107(r).)"

Importantly, "[t]he City Council and its members shall deal with the administrative services of the city *only through the City Manager*, except for the purpose of inquiry, and *neither the City Council nor any members thereof shall give orders to any subordinates of the City Manager*" (CMC § 2110). It is the duty of all other city officers "to cooperate with and assist the City Manager in administering the affairs of the city most efficiently, economically, and harmoniously (CMC § 2109).

It is our understanding there has been a "custom" or "practice" that individual members of the City Council could directly request assistance from staff to schedule, promote (by composing, creating, copying, and distributing fliers or other writings to members of the community), convene, and require that staff attend community or other town hall style meetings scheduled by less than a quorum of the City Council.

While this certainly could be an appropriate use of City resources, if the City Council chooses to adopt a formal policy prohibiting this custom or practice, we are of the legal opinion that such a prohibition is lawful, *provided* the policy does not purport to in any way limit the actions of any member of the Council to engage in such community or town hall style meetings at his or her own cost and expense and without calling upon city staff, or other resources, or the free use of city facilities, for the same. In addition, the FPPC has opined that state law "*permits the City to adopt a policy that would prohibit elected officials* from

using city resources to create, compose and distribute substantially similarly mailings of fewer than 199 items per month" (Exhibit No. 2).

In addition, at the Council meeting of October 7, 2009, the City Council also determined to rescind its policy on the writing and signing of ceremonial or other letters intended for inclusion in various event programs, brochures, or other commemorative pamphlets. Under former policy, the entire City Council would sign such ceremonial letters or other writings. The Council rescinded that policy and returned to a policy whereby only the Mayor signs such writings.

Mayor *Pro Tem* Davis-Holmes questioned the legal authority of the Council to adopt such a policy and has asked the Office of the City Attorney to review for the Council the "mass mailing" rules regarding the distribution and signing of letters. Government Code § 89001 states: "No newsletter or other mass mailing shall be sent at public expense." From this simple statement of law, there has spawned a vast body of administrative regulations that are, at once, intricate and somewhat counter-intuitive.

The FPPC has, by regulation, interpreted "mass mailing" to be the mailing or distribution of 200 or more of the same or substantially similar pieces to the residences, places of employment or businesses, or post office boxes of recipients. While FPPC regulations define what constitutes a "mass mailing," there is nothing in State law or the FPPC regulations that confers upon an individual Councilmember the right to compose, create, copy, and distribute less than 200 pieces of "mail" that is the same or substantially similar and *at city expense* (Exhibit No. 2).

Again, it is our understanding there has been a "custom" or "practice" that individual members of the City Council could call upon city staff to compose, create, copy, and distribute or mail less than 200 of the same or substantially similar pieces each month to constituents at city expense. We are of the legal opinion that the Council can lawfully adopt a policy that ceremonial letters be composed, created, copied, and distributed at city expense only when signed by the Mayor, *provided* that such a policy does not purport to prohibit in any way individual members of the Council from creating, copying, and distributing such ceremonial letters, or other writings for that matter, that are the same or substantially similar at his or her own expense and without recourse to city staff or other city resources. And, the FPPC has confirmed our analysis in its recent letter when it opined that state law "*permits the City to adopt a policy that would prohibit elected officials* from using city resources to create, compose and



distribute substantially similar mailings of fewer than 199 items per month" (Exhibit No. 2).

The Mayor *Pro Tem* also questioned whether the Mayor can sign ceremonial or other letters intended for inclusion in various event programs, brochures, or other commemorative pamphlets where the number of programs, brochures, or pamphlets distributed exceeds 199. We have further sought the opinion of the FPPC regarding the issues raised in the creation, signing, and distribution of ceremonial letters where the same is paid for at city expense. The advice of the FPPC is set forth hereinafter and incorporated into the revised SMP 1.56.

Under current FPPC regulations, as clarified in the recent letter from the FPPC (Exhibit No. 2), the following is a summary of the rules that apply to composition, creation, copying, or distribution of ceremonial or other letters signed by one or more members of the Council where the distribution of the same *exceeds* 199 of the same or substantially similar pieces:

1. *Signed* letters or other writings composed, created, duplicated, printed or otherwise distributed *entirely* at the expense of a Councilmember and without the use of city staff or other City resources are unaffected by the "mass mailings" regulations regardless of the number of the same or substantially similar pieces mailed. If no city resources are used, the mass mailing regulations do not apply and ceremonial letters and other writings paid for solely by and councilmember(s) cannot be prohibited.
2. *Signed* letters or other writings composed, created, duplicated, printed, or otherwise distributed at city expense are unaffected by the "mass mailings" regulations *provided* no city funds are used to mail or otherwise distribute copies of the writing to recipients at their residences, places of business or offices, or post office boxes (Exhibit No. 2). [Note: in the event the ceremonial letter or other writing is related to the a town hall style or other community meeting scheduled, convened, or advertized by less than a quorum of the Council, the limitations contained in SMP 1.45 regarding use of public funds shall also apply.]
3. The City Council has the legal authority to adopt a policy requiring all ceremonial letters only be signed by the Mayor. [Note: in the event the ceremonial letter or other writing is related to the a town hall style or other community meeting scheduled, convened, or

advertized by less than a quorum of the Council, the limitations contained in SMP 1.45 regarding use of public funds shall also apply.]

4. *Signed* ceremonial letters or other writings composed, created, duplicated, printed, and *mailed or "delivered, by any means to recipients at their residences, places of employment or business, or post office boxes"* at city expense which have the same or substantially similar content may *not* be distributed in excess of 199 in any calendar month.

5. *Signed* ceremonial letters or other writings composed, created, duplicated, or printed at city expense which have the same or substantially similar content may be distributed in excess of 199 pieces in any calendar month *provided* they are "*[s]et out for the public to pick up* in public areas, including government offices, *or are handed out* in meetings or public areas, or handed out at an event," and are *not otherwise mailed or "delivered, by any means to recipients at their residences, places of employment or business, or post office boxes"* (Exhibit No. 2).

6. *Unsigned* ceremonial letters or other writings composed, created, duplicated, or printed at city expense which have the same or substantially similar content may be *mailed or delivered by any means to recipients at their residences, places of employment or business, or post office boxes* in excess of 199 pieces in any calendar month *provided* the same (1) have no photograph of any elected official, and (2) make no reference to any elected official *except* under the following circumstances:

(i) a "roster style" listing containing the names of *all* elected officials is permitted on such letters or other writings (provided that all such names must appear in the same font size, same font type, same font color, and same location) ,or

(ii) the name of an elected official may appear once in a letterhead or logo-type of stationary, and

(iii) forms, such as "for your information" or "compliments of" may print the name of the elected official, and



(iv) envelopes of the public agency which lists a return address may include the name of an elected official.

[Note: in the event the ceremonial letter or other writing is related to the a town hall style or other community meeting scheduled, convened, or advertized by less than a quorum of the Council, the limitations contained in SMP 1.45 regarding use of public funds shall also apply.]

7. The limitations in sub-paragraph 4, above, does not apply if the distribution is done by a newspaper sending copies to its subscribers. Accordingly, an advertisement placed in a *bona fide* newspaper and sent to its subscribers will not be considered a mass mailing even if paid for by the city. [Note: in the event the ceremonial letter or other writing is related to the a town hall style or other community meeting scheduled, convened, or advertized by less than a quorum of the Council, the limitations contained in SMP 1.45 regarding use of public funds shall also apply.]

8. The limitations in sub-paragraph 4, above, does not apply if the distribution is in response to specific, unsolicited requests for a ceremonial letter or other writing. Accordingly, if 200 or more people request a copy of a specific city document that also has a councilmember's signature; since it is an unsolicited request for information the city may send out the document. [Note: in the event the ceremonial letter or other writing is related to the a town hall style or other community meeting scheduled, convened, or advertized by less than a quorum of the Council, the limitations contained in SMP 1.45 regarding use of public funds shall also apply.]

Accordingly, attached is a revised SMP 1.56 which expands the prior discussion of "mass mailing" regulations to assist Councilmembers and staff in understanding and comporting with the requirements of the law.

V. FISCAL IMPACT

The fiscal impact of revising these two Standard Management Procedures is unknown as of the preparation of this report.

VI. EXHIBITS

1. Letter from City Attorney's Office to FPPC. (pgs. 10-17)

January 19, 2010

2. Opinion letter from the FPPC. (pgs. 18-23)
3. Draft SMP 1.45. (pgs. 24-27)
4. Draft SMP 1.56. (pgs. 28-30)

Prepared by: William W. Wynder, City Attorney

sf:Rev061902

Reviewed by:

City Clerk	<u>City Treasurer</u>
<u>Administrative Services</u>	<u>Development Services</u>
<u>Economic Development Services</u>	<u>Public Services</u>

Action taken by City Council

Date _____	Action _____



**ALESHIRE &
WYNDER, LLP**
ATTORNEYS AT LAW
www.awattorneys.com

RESPOND TO LOS ANGELES OFFICE

Email: wwynder@awattorneys.com
Direct Dial: (310) 527-6667

Chiron

Los Angeles
South Bay Centre, South Tower
1515 West 190th St., Suite 565
Gardena, CA 90248
P 310.527.6660 • F 310.532.7395

Orange County
18881 Von Karman Ave., Suite 400
Irvine, CA 92612
P 949.223.1170 • F 949.223.1180

Sacramento
980 9th St., 16th Floor
Sacramento, CA 95814
P 916.449.9690 • F 916.449.9689

November 19, 2009

General Counsel
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, California 95814

Attention: Advice Division

Re: City of Carson; Mass Mailing Regulations Questions

To the General Counsel:

This firm represents the City of Carson as its City Attorney. We have been requested by a member of the Carson City Council to seek a formal opinion from the Fair Political Practices Commission staff (the "FPPC") on certain matters pertaining to the mass mailing regulations under the Political Reform Act (Government Code § 89011) as the same is to be applied to the creation, signing, and distribution of ceremonial or congratulatory letters from the City Council of the City of Carson.

We have been tasked to prepare for City Council consideration a formal written policy, referred to in Carson as a standard municipal practice (or "SMP"), which specifies that only the Mayor, as the presiding officer of the city, shall sign ceremonial or congratulatory letters sent on behalf of the City. In the past, there has been an unwritten City Council policy that all such letters be signed by the entire City Council.

Because these ceremonial or congratulatory letters are often reproduced and more than 200 copies of the same are distributed, the creation, signing, and distribution of the same raises questions under the FPPC's mass mailing regulations. Accordingly, before finalizing for presentation to the Carson City Council a written SMP governing such letters, we seek your advice and response to the following legal issues relating to the creation, signing, and distribution of these kinds of letters.

Question Nos. 1-4:

We are advised that, in many Southern California cities, there is a common practice of sending ceremonial or congratulatory letters to various groups or organizations as a way to recognize an achievement, commemorate an event, or to offer good wishes in connection with an annual celebration. By way of example only, the National Association for the Advancement of



General Counsel, FPPC
November 19, 2009
Page 2

Colored People (NAACP) Carson-Torrance Branch has an annual dinner and in connection with that dinner produces a commemorative program or brochure.

That brochure will contain congratulatory letters from numerous state and local elected officials. The Carson City Council typically sends its own congratulatory letter which is printed in the program and distributed to attendees of the event. Again, by way of illustration, enclosed is the congratulatory letter sent this year in connection with the 100th anniversary of this important civil rights organization.

For the purpose of our questions to you, please assume the following facts to be true and correct:

(a) the congratulatory City Council letter was printed by the NAACP Carson-Torrance Branch in its event commemorative program, and that over such 200 programs were distributed to individuals and/or attendees at the group's annual dinner, and

(b) the City expended less than \$50.00 of City resources to design, produce, and forward this letter to the NAACP.

Question 1: If the City of Carson purchases a full-page advertisement in the NAACP Carson-Torrance Branch program at a cost of \$150 for the purpose of displaying the letter, does the creation and distribution of the same constitute a prohibited mass mailing?

Question 2: If the City of Carson simply forwards the letter to the NAACP, and the Carson-Torrance Branch elects to print the letter in its event program, and at no additional cost to the City of Carson, does the creation and distribution of the same constitute a prohibited mass mailing?

Question 3: If the City of Carson (a) pays more than \$50.00 to be a co-sponsor of an event of some third-party entity or organization (such as, by way of our example only, the NAACP), *and* (b) the Carson City Council sends a separate ceremonial or congratulatory letter, signed by the Mayor, which the third-party entity or organization (again, in our example, the NAACP) independently determines to print in its program at no additional cost to the City of Carson, does the creation and distribution of the same constitute a prohibited mass mailing?

To state Question 3 another way, assume that a third-party entity or organization independently determines to print all congratulatory letters received by federal, state, or local elected officials, regardless of whether the same are also sponsors or paid advertisers of an event, and there is no express or implied agreement between the City and such entity or organization that a ceremonial or congratulatory letter will be printed *because* Carson is a co-sponsor, is the creation and distribution of such letter in the event program or commemorative brochure a prohibited mass mailing?



General Counsel, FPPC
November 19, 2009
Page 3

Question 4: If the answer is "Yes" to any of Questions 1 through 3, would it make a difference if the letter contained no photographs, no signatures, and no references to any elected official, except for the inclusion of the names of all elected Carson officials in a "roster" list?

Question 5: If the answer is "Yes" to any of Questions 1 through 3, would it make a difference if the letter contained no photographs, no signatures, and no references to any elected official, except for the name of the Mayor in the "letterhead" of the letter (*e.g.*, "From the Office of Jim Dear, Mayor of Carson.")

Question Nos. 6-8:

Each year the City of Carson sponsors a series of community events, community celebrations, or community recognitions, which are often organized by boards or commissions created by the City and whose members are appointed by the City Council. Again, by way of illustration, the Carson Senior Citizens Advisory Commission organizes a Senior Recognition Awards Banquet to recognize Carson senior citizens who have volunteered significant time or otherwise made extraordinary contributions to the City or local charitable groups.

Enclosed is a copy of the City created, printed, and distributed program from the 10th Annual Senior Recognition Awards Banquet, which includes a ceremonial letter, signed by Mayor Jim Dear, on the inside of the program's cover page.

For the purpose of our additional questions to you, please assume the following facts to be true and correct:

(a) the City creates, prints, and distributes more than 200 copies of the program (including the ceremonial letter signed by the Mayor) to attendees at this annual event, *and*

(b) the City would have created, printed, and distributed the program with or without a ceremonial letter signed by the Mayor, *and*

(c) the City did not add an additional page to the program to accommodate the Mayor's ceremonial letter (simply using the "inside cover page" to reproduce the same), *and*

(d) had the ceremonial letter from Mayor Dear not been printed on the inside of the cover page of the program the same would have been left blank, *and*

(e) the City expended less than \$50.00 of City resources to design, produce, and print the ceremonial letter signed by the Mayor and included in the program (but the full cost to the City to design, produce, and print the event program is in excess of \$50.00 of City resources).



General Counsel, FPPC
November 19, 2009
Page 4

Question 6: Under the forgoing assumed facts, does the distribution of more than 200 copies of such an event program (including the ceremonial letter signed by the Mayor), and at a City sponsored event, constitute a prohibited mass mailing?

Question 7: If the answer is "Yes" to Question 6, would it make a difference if the letter contained no photographs, no signatures, and no references to any elected official, except for the inclusion of the names of all elected Carson officials in a "roster" list?

Question 8: If the answer is "Yes" to Question 6, would it make a difference if the letter contained no photographs, no signatures, and no references to any elected official, except for the name of the Mayor in the "letterhead" of the letter (e.g., "From the Office of Jim Dear, Mayor of Carson.")

Question No. 9

The final issue upon which we shall appreciate your opinion relates to whether the Political Reform Act confers authority on a local elected official to distribute less than 200 pieces of substantially similar mail at public expense. Government Code § 89001 provides that no newsletter or other mass mailing shall be sent at public expense, and the FPPC has determined that 200 or more pieces constitute a "mass mailing."

A question has been raised whether this regulation constitutes an affirmative grant of authority to members of a city council to mail or distribute writings (using city resources, such as city-purchased stationary, computers, stamps, and assistance from city staff) to 199 or fewer constituents in the same month for the sole purpose of communicating with them about city issues or events. Stated in other words, do the FPPC mass mailing rules prevent a city from adopting a formal policy that would prohibit elected officials from utilizing city resources, including city staff, to create, compose, and distribute substantially similar mailings of less than 199 per month?

If you need additional information or have questions regarding this matter, please do not hesitate to contact me. I can be reached at the direct dial number noted above or at (714) 313-7366. Thank you for your consideration of these questions, and for your service to the people of the State of California.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'William W. Wynder'.

William W. Wynder
of ALESHIRE & WYNDER, LLP

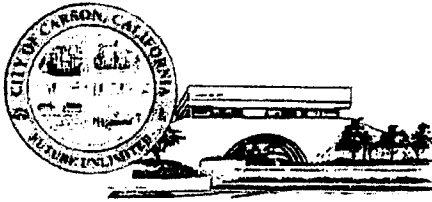
Enclosures



General Counsel, FPPC
November 19, 2009
Page 5

cc: Honorable Mayor & Councilmembers,
City of Carson
Mr. Jerome Groomes,
City Manager





CITY OF CARSON

P.O. BOX 6234 • CARSON, CALIFORNIA 90749

Dear Friends:

On behalf of the City Council and the citizens of the City of Carson, we would like to extend our personal greetings and congratulations to the National Association for the Advancement of Colored People as you celebrate your 100th Anniversary.

We applaud the NAACP Carson-Torrance Branch for your remarkable efforts and strong commitment to this great civil rights organization by advocating and championing their mission of eliminating racial prejudice, removing racial barriers and encouraging political, educational, social and economic equality for all citizens. We commend you for continuing to make a difference in our community and abroad.

We hope that you will find inspiration in all the organization's outstanding accomplishments over the past 100 years and that each day's hard work brings us one step closer to a world without racial hatred or discrimination.

Best wishes for a memorable event and continued success in all future endeavors.

Sincerely,

Jim Dear

Mayor Jim Dear

Lula Davis-Holmes
Lula Davis-Holmes, Mayor Pro Tem

Elito M. Santarina
Elito M. Santarina, Councilmember

Mike Gipson
Mike Gipson, Councilmember

Julie Ruiz-Raber
Julie Ruiz-Raber, Councilmember



Mayor Jim Dear



Lula Davis-Holmes, Mayor Pro Tem



Elito M. Santarina, Councilmember



Mike Gipson, Councilmember



Julie Ruiz-Raber, Councilmember

701 EAST CARSON STREET • P.O. BOX 6234 • CARSON, CALIFORNIA 90749 • (310) 830-7600





CITY OF CARSON

October 15, 2009

OFFICE OF THE MAYOR
JIM DEAR

Dear Friends:

On behalf of the city of Carson, I would like to welcome you to the 10th Annual Senior Recognition Awards Banquet. This is a day we honor our seniors for their volunteerism and commitment to the needs of the citizens of Carson. Their commitment and dedication to our community does not go unnoticed and it is with great pleasure that we honor these outstanding volunteers, who have given so much to realize a "Future Unlimited" for the city of Carson.

Please join us as we pay honor to these esteemed individuals and hope you enjoy today's program and the activities designed as a lasting tribute to them.

Sincerely,

Jim Dear
Mayor

CITY HALL • 701 E. CARSON STREET • P.O. BOX 6234 • CARSON, CA 90749 • (310) 850-7600
WEBSITE: ci.carson.ca.us

32

City of Carson

Senior Citizens Advisory Commission

*10th Annual
Senior Recognition
Awards Banquet*



"Aging Well During Retirement"

Thursday, October 15, 2009

11:00 a.m. to 2:00 p.m.

HUMAN SERVICES DIVISION



CONGRESSWOMAN

JUANITA MILLENDER-MCDONALD

COMMUNITY CENTER-3 CIVIC PLAZA DR.,

CARSON, CALIFORNIA



rec 1/12/2010

FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

January 7, 2010

William W. Wynder
Aleshire & Wynder, LLP
1515 West 190th Street, Suite 565
Gardena, California 90248

**Re: Your Request for Advice
Our File No. A-09-255**

Dear Mr. Wynder:

This letter is in response to your request for advice, on behalf of the City of Carson (the "City"), regarding the mass mail provisions of the Political Reform Act (the "Act").¹ Please note that this letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as the finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) In addition, this letter should not be construed as advice on any conduct that may have already taken place. (See Regulation 18329(b)(8)(A).)

Also, there are other bodies of law, separate and apart from the Act's mass mailing provisions, which may apply to your situation. Laws outside the Act, which may be implicated in the design, publication and distribution of a letter include, but are not limited to, Section 8314 and Penal Code Section 424 which proscribe the use of public moneys for specified activities by state and local governmental entities.

QUESTIONS²

1. May the City produce and deliver to a private organization, whether or not the production and delivery are made at city expense, a congratulatory letter signed by the mayor that the organization will reproduce and include in a printed program for a commemorative

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² For purposes of simplifying our advice, we have combined several of your questions.

34

event, if the organization distributes more than 200 programs to individuals who attend the event? Does the fact that the City pays to be a co-sponsor of the event change the result?

2. May the City produce and distribute to attendees of a city sponsored event, at city expense, more than 200 printed programs that include a ceremonial letter signed by the mayor?

3. Does the Act and Commission regulations confer authority on or constitute an affirmative grant to members of the city council or other local elected officials to distribute fewer than 200 pieces in a calendar month of substantially similar mail at public expense?

4. Does Regulation 18901 prevent the adoption of a formal city policy that would prohibit elected officials from using city resources, including staff, stationary, computers and postage, to create, compose and distribute substantially similar mailings of fewer than 199 per month.

CONCLUSIONS

1. Yes. Under Regulation 18901(a), the mass mailing prohibition of Section 89001 of the Act applies only when items are delivered to recipients at their residence, place of employment or business, or post office box. Thus, the distribution of the programs, including the letter, to attendees of an event is not a prohibited mass mailing, even if the City pays to co-sponsor the event.

2. Yes. Because the programs, including the mayor's letter, will be delivered only to attendees of the event, and not delivered to recipients at their residence, place of employment, business or post office box, the production and distribution of the programs is not prohibited.

3. The Act does not confer authority on elected officials to distribute materials. Instead, the Act prohibits the distribution, at public expense, of materials that constitute a mass mailing, as defined in Regulation 18901. Laws outside the Act may apply to the situation you describe.

4. No. The Act and Commission regulations generally do not govern a city's formal or informal policies except where such policies may conflict with the Act. (See Section 81013.) Instead, they regulate conduct relating to elections and the holding of public office or certain government positions. Section 89001 and Regulation 18901 regulate the distribution, at public expense, of materials that constitute a mass mailing. However, laws outside the Act may apply to the situation you describe.

FACTS

As a member of the law firm that represents the City of Carson as its city attorney, you are requesting advice on the city council's behalf. The city council has asked you to prepare a



formal written policy that would specify that only the mayor, as the presiding officer of the city, can sign ceremonial or congratulatory letters sent on behalf of the City. These letters are often reproduced and more than 200 copies are distributed. You have described a common practice of many Southern California cities of sending ceremonial or congratulatory letters to various groups or organizations as a way to recognize an achievement, commemorate an event, or to offer good wishes in connection with an annual celebration. The City would like to send this type of letter to organizations that will then print the letter in a program for an event. The programs may be distributed to more than 200 people, but, per our telephone conversation of December 16, 2009, the programs will only be distributed to individuals attending the event.

You ask several questions relating to the application of the Commission's mass mailing regulations. In each instance, the letter from the City will be signed by the mayor. Does Regulation 18901 prohibit the City from:

- (i) purchasing a full-page advertisement in an organization's program at a cost of \$150 for the purpose of displaying a congratulatory letter and the organization prints the letter in a program distributed to individuals attending the event;
- (ii) sending the letter to the organization and the organization prints the letter in the program at no cost to the City;
- (iii) paying more than \$50 to be a co-sponsor of an event and sending the letter to the co-sponsoring organization which may then decide to print the letter in the program at no additional cost to the City;
- (iv) creating and printing a program (including a ceremonial letter signed by the mayor) and then distributing the program to attendees of an annual City event.

All the foregoing questions assume that more than 200 programs will be distributed to attendees of the event.

Your final two questions relate to the distribution of fewer than 200 items in a calendar month. You ask whether

- (i) the Act confers authority on local elected officials to distribute fewer than 200 pieces in a calendar month of substantially similar mail at public expense; and
- (ii) Regulation 18901 permits the City to adopt a policy that would prohibit elected officials from using city resources to create, compose and distribute substantially similar mailings of fewer than 199 items per month.

ANALYSIS

In 1988, Section 89001 of the Act was added to provide that "[n]o newsletter or other mass mailing shall be sent at public expense." In order to avoid the result of literally prohibiting any and all mass mailings created or distributed with public funds, regardless of their content or



purpose, the Commission adopted Regulation 18901, clarifying which mailings are permissible and which are not.

Under Regulation 18901, a mass mailing is defined as more than 200 substantially similar tangible items delivered in a calendar month, by any means, to recipients at their residence, place of employment, business, or post office box. (See also Section 82041.5 defining "mass mailing.") Regulation 18901, subdivision (a), states:

"(a) Except as provided in subdivision (b), a mailing is prohibited by section 89001 if all of the following criteria are met:

"(1) Any item sent is delivered, by any means, *to the recipient at his or her residence, place of employment or business, or post office box*. For purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

"(2) The item sent either:

"(A) Features an elected officer affiliated with the agency which produces or sends the mailing, or

"(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

"(3) (A) Any of the costs of distribution is paid for with public moneys; or

"(B) Costs of design, production, and printing exceeding \$ 50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.

"(4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b)." (Emphasis added.)

In order for an item to be a prohibited "mass mailing", all four enumerated criteria listed above must be met. (See Regulation 18901, subdivisions (a)(1) – (a)(4).) If all four criteria under subdivision (a) apply, the mass mailing is prohibited, barring the application of any exceptions. (See Regulation 18901, subdivisions (b)(1) – (b)(11) listing the general exceptions to the Act's mass mailing prohibition.)

Question 1: May the City produce and deliver to a private organization, at city expense, a congratulatory letter signed by the mayor that the organization will reproduce and include in a printed program for a commemorative event, if the organization distributes more than 200 programs to individuals who attend the event? Is the answer the same if the City pays to be a co-sponsor of the event?

Subdivision (a)(1) of Regulation 18901 only restricts items that are mailed or delivered, by any means, to a person's home, office or post office box. If items are set out for the public to pick up in public areas, including government offices, or are *handed out in meetings* or public areas, the restrictions of the regulation do not apply to those items, and the items do not count toward the 200-item limit. (Regulation 18901(a)(1); *Hightower* Advice Letter, No. A-08-050; *Stone* Advice Letter, No. A-06-153; *Mohan* Advice Letter, No. A-99-249; *Moore* Advice Letter, No. A-93-307; *Waggoner* Advice Letter, No. A-92-247.) Your facts indicate that the event program that includes the congratulatory letter will only be handed out at an event, not unlike a meeting. Thus, the distribution of the program is not a prohibited mass mailing.

Question 2: May the City produce and distribute, at city expense, more than 200 printed programs that include a ceremonial letter signed by the mayor to attendees of a city sponsored event?

Handing out programs that include the ceremonial letter at city sponsored events is also a distribution not subject to the mass mailing rules because the distribution will not be made to the recipients' residences, places of employment or businesses, or post office boxes.

Question 3: Does the Act or Commission regulations confer authority on or constitute an affirmative grant to members of the city council or other local elected officials to distribute fewer than 200 pieces in a calendar month of substantially similar mail at public expense?

The Act does not confer authority on elected officials to distribute materials. Instead, the Act prohibits the distribution, at public expense, of materials that constitute a mass mailing, as defined in Regulation 18901. Laws outside the Act may apply to the situation you describe.

Question 4: Does Regulation 18901 prevent the adoption of a formal city policy that would prohibit elected officials from using city resources, including staff, stationary, computers and postage, to create, compose and distribute substantially similar mailings of fewer than 199 per month?

The Act and Commission regulations generally do not restrict local governments from adopting more restrictive requirements so long as these requirements do not conflict with the Act. (See Section 81013.)



Finally, please note that Regulation 18901 provides a variety of additional exceptions to the four-criteria prohibition described above. Those exceptions are contained in subdivision (b) of the regulation.³

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel



By: Valentina Joyce
Staff Counsel, Legal Division

VJ:jgl

³ For instance, under Subdivisions (b)(3) and (b)(4), Regulation 18901 exempts inter-governmental and intra-governmental mailings sent in the normal course of business. Therefore, mailings which meet the criteria in subdivision (a) and which are sent in the normal course of business to other governmental entities or officers, or to intra-agency employees and other staff, will not be prohibited. (Regulation 18901(b)(3), (b)(4).)



CITY OF CARSON

0302
0377

POLICY/PROCEDURE

NUMBER: 1:45

ORIGINAL ISSUE:

2/05/92

EFFECTIVE:

2/5/92

CURRENT ISSUE:

10/20/09

EFFECTIVE:

10/21/00

SUPERSEDES

09/09/06

SUBJECT

MEETINGS CONVENED BY LESS THAN A QUORUM OF THE CITY COUNCIL & USE OF CITY STAFF, RESOURCES, OR FREE USE OF FACILITIES FOR THE SAME

CATEGORY

I. CITY COUNCIL POLICY

I. PURPOSE AND SCOPE

To establish operational guidelines and procedures regarding the holding of sub-committee, task force, town hall style, community, or other meetings or gatherings with constituents which may consist of: (1) Councilmembers solely, or (2) Councilmembers, other elected officials, and/or members of the public. This policy shall not affect City commissions, committees or boards created by formal Council action or by ordinance and meetings called therefore in compliance with the Brown Act.

II. GENERAL

Sub-Committees Created by City Council Action

A. Creation of sub-committees. There are two types of City Council Sub-committees recognized by the city: standing sub-committees and ad hoc sub-committees. No City Council sub-committee may consist of more than two members of the Council, although the Council may designate as members of the sub-committee other elected officials and citizens of Carson. All sub-committee members shall be appointed by the Mayor and subject to formal approval by a majority of Councilmembers present and voting at a properly noticed and agendized public meeting.

B. Standing sub-committees. A standing sub-committee is one created for an indefinite time period or to address general subjects. Generally, any sub-committee created that does not clearly qualify, as an ad hoc sub-committee will be a standing sub-committee.

C. Ad hoc sub-committees. An *ad hoc* sub-committee is one created for a limited period to address a specific subject or issue of a temporary nature.

D. Brown Act. All standing sub-committees and ad hoc sub-committees shall comply with all provisions of the Brown Act, except that an ad hoc sub-committee comprised solely of two Councilmembers and no other persons are exempted, in accordance with State law.

E. No exceptions. There are no exceptions to this SMP. All bodies created by formal City Council action which include one or more Councilmembers, whether called a committee, task

40

force, special committee, advisory committee, or any other name, shall be considered either a standing sub-committee or *ad hoc* sub-committee for purposes of this SMP.

F. Advisory Groups Not Created by City Council Action and Group, Community, or Town Hall Style Meetings Not Called or Convened in Compliance With the Brown Act. An individual Councilmember, or two Council members together (but not 3 or more Council members) may create an informational advisory or other group to discuss City or non-City issues, and may convene town hall style, community, or other collective gatherings, **provided, however**, that the same are subject to the following two (2) rules:

(1) No City staff, other City resources, or free use of City facilities may be utilized to schedule, invite attendees, receive or process RSVPs, advertize, promote, or convene the same, and no City staff shall attend the same in their official capacity. Use of a Council member's own City Hall office or the City Hall Executive Conference Room (if available) to hold a meeting shall not constitute use of City resources.

(2) The informational advisory or other group, town hall style meeting, community meeting, or other collective gathering may not suggest or imply it is in any way an official sub-committee or group recognized by the City. (For example, "Carson Council Task Force for the Environment" would be prohibited, but "Councilmember Jones' Task Force for the Environment" would be permitted because it does not imply it is a City-sanctioned event.)

G. Advisory Groups Created by City Council Action and Group, Community, or Town Hall Style Meetings Called and Convened in Compliance With the Brown Act. A Councilmember who wishes to hold an informational advisory or other group, town hall style meeting, community meeting, or other collective gathering open to the public may use City staff, other City resources, or free use of City facilities to schedule, invite attendees, receive or process RSVPs, advertize, promote, or convene the same **provided, however**, that the same are called by official order of the Mayor, or in the absence of the Mayor by the Mayor *Pro Tem*, or by a majority of the Council, pursuant to Carson Municipal Code § 2403(b), and is noticed and agendized in full compliance with the Brown Act. The use of City resources, if any, for such a meeting called by official procedure is within the City Manager's discretion.

H. Except as noted in II(G), above, informational advisory or other group, town hall style meeting, community meeting, or other collective gatherings are not required to comply with the Brown Act, in accordance with State law.

I. Nothing in this Section should be construed to limit the ability of any member of the Council from calling or attending any meeting(s) with constituents when no City resources are used.

III. PROCEDURE

The following applies to sub-committees created by formal action or meetings approved by the Council. It does not apply to informational advisory or other group, town hall style meeting, community meeting, or other collective gatherings held by one or two Council members together, described in Section II(F), above, where not City resources shall be used.

Meetings

A. The meeting dates/times will be organized by the General Manager or senior staff member assigned to the sub-committee.

41

- B. Meeting dates/times will be arranged to accommodate the schedules of the Councilmember(s) appointed to the sub-committee.
- C. Meeting dates/times and agendas may be scheduled on short notice provided all formal posting and notification requirements of the Brown Act are met, unless the sub-committee is not subject to the Brown Act (see Section II(D), Brown Act).

Sub-committee Agenda Items

- A. Any member of a City Council Sub-committee and/or the City Manager may place items on the agenda for consideration by a City Council Sub-committee.
- B. Agenda preparation will be completed by the General Manager or senior staff member assigned to the sub-committee and copies will be distributed to the full Council.

Staff Support to Sub-committees

- A. General Managers or senior staff members will be assigned to the various sub-committees according to specific subject matters at the direction of the City Manager.
- B. The meetings of standing sub-committees shall be recorded on tape and germane minutes taken by the General Manager or senior staff member to the sub-committee. Tapes will not be transcribed unless requested by a Councilmember or otherwise necessary for conducting of city business. Councilmember requests for verbatim transcription of items considered by any sub-committee will be requested through an item on the City Council agenda.
- C. Approved minutes of standing sub-committees shall be kept on file in the City Clerk's office for five years.

Advertisement and Promotion of Meetings

If there is any advertisement or promotion of the meeting, including production of flyers, mailers, handouts, press releases, emails, etc., staff shall follow SMP 1.56 (COUNCIL COMMUNICATIONS (FLYERS, HANDOUTS AND OTHER PRINTED MATERIAL) and SMP 1.55 (CITY COUNCIL REQUESTS FOR ISSUANCE OF PRESS RELEASE).

Reports and/or Recommendations to Council/Agency

- A. As soon as practical following each standing sub-committee meeting, the General Manager or senior staff member will complete an agenda disposition, noting any decisions or recommendations, and forward this report to all Councilmembers and others as appropriate. Sub-committee agenda dispositions for each sub-committee held during the previous two weeks will be placed on the City Council agenda (consent) following each meeting.
- B. If a formal report to the Council/Agency is required, and/or if further action is needed by the Council/Agency, then the General Manager or senior staff member will prepare an appropriate agenda item.

IV. EXCEPTION

There shall be no exceptions to this policy, except through direct instructions of the City Council

V. AUTHORITY

City Council Agenda Item No. __, dated January __, 2010.

Jerome G. Groomes
City Manager

Date



CITY OF CARSON

0302
0377

POLICY/PROCEDURE

NUMBER: 1.56

SUBJECT

ORIGINAL ISSUE:

December 20, 2005

EFFECTIVE:

December 20, 2005

COUNCIL COMMUNICATIONS
(FLYERS, HANDOUTS,
CEREMONIAL LETTERS FOR
DISTRIBUTION AND OTHER
PRINTED MATERIALS)

CURRENT ISSUE:

November 17, 2009

EFFECTIVE:

November 17, 2009

CATEGORY

CITY COUNCIL POLICY

SUPERSEDES

Prior version of SMP 1.56

I. PURPOSE AND SCOPE

- A. To establish a policy regarding the use of City staff and other City resources for the preparation and dissemination of flyers, handouts, invitations, and other printed communications (collectively referred to herein as "flyers"), regardless of whether the flyers are mailed out, distributed door-to-door, or left in public places to be picked up.
- B. To appropriately address individual councilmember's requests to prepare and disseminate any Communication that reflects his or her personal opinion or position.
- C. To appropriately address ceremonial letters prepared using City staff and other City resources intended for distribution.

II. PROCEDURE/POLICY

- A. City Approval Required for Flyers. No flyer shall be prepared, composed, copied, or distributed by city staff during work hours, or using City resources (e.g., computers or printers), unless express approval for the flyer has been given in advance by the City Manager, or by official action of the City Council at a public meeting in compliance with all notice and agenda requirements of the Brown.

1. No Business/Political Purpose. Under no circumstances shall any flyer described herein be used for business purposes or for any political campaign purposes. This includes, but is not limited to, any flyer that advocates a position in connection with any upcoming candidate or ballot measure election.

2. FPPC Compliance. Flyers prepared, mailed or otherwise distributed by the City may not violate any FPPC regulations or Council policies. In general, 200 or more flyers featuring the name, photo or signature of one or more elected official should not be mailed or distributed by the City. The names of all elected officials in a "roster" where each name is the same size and font type may be appropriate. See FPPC Reg. 18901 for details or contact the City Attorney's Office to review before distribution of the flyer.



3. City Manager Authority. Nothing in this SMP limits the ability of the City Manager, or Public Information Manager, to prepare, compose, or copy a flyer, handout or other communication to publicize a City event, disseminate City news, promote City success stories, etc. The City Council authorizes the City Manager to exercise his best professional discretion as to the final wording and content of any official city flyer; provided, however, that the foregoing shall not prohibit any Councilmember from offering suggestions as to the wording or content of any official city flyer.

B. Ceremonial Letters and Similar Communications Distributed by Others. Occasionally, a City-produced letter or other writing, such as a ceremonial letter intended to appear in a dinner program, event brochure, event pamphlet or other ceremonial booklet, may be created with City resources where it is reasonably foreseeable that 200 or more copies will then be distributed or mailed by another group or person. On such occasion, the FPPC imposes the certain mass mailing regulations on such communications. When City staff or other City resources are used such ceremonial letters or other writings the same are deemed an official communication from the City. In that event, such ceremonial letter or other writing shall come from, and be signed by, the Mayor as the City Council's presiding officer. In order to comply with FPPC mass mailing rules and effectuate the Council's desired policy, the following rules shall apply to such ceremonial letters or writings:

1. Whenever City staff time or other City resources are utilized to create, compose, copy, and distribute such ceremonial letter or other writing, and **provided** that the same will be set out of the public to pick up in public areas, including government offices or facilities, or are handed out in meetings or public areas, and **provided further** that the same will **not** be distributed or mailed to recipients are their residences, places of employment or business, or post office boxes, then **only** the Mayor's name and signature shall appear on the letter, subject to the following limitations: (a) there is a City purpose for such ceremonial letter or other writing, (b) no photographs of any elected officials appear in such ceremonial letter or other writing, (c) no mention of, or reference to, any specific elected officials are included in the letter, except the name of the Mayor may be mentioned once plus the signature of the Mayor may be included once, and (d) such ceremonial letter or other writing expresses clearly that it is issued on behalf of the City and the entire City Council.

2. For all other letters not included in B(1), above, where (a) City staff or other City resources are utilized to create, compose, copy, distribute or mail such ceremonial letter or other writing to recipients are their residences, places of employment or business, or post office boxes, and (b) where it is reasonably foreseeable that more than 200 copies of the same or substantially similar such ceremonial letter or other writing will be distributed or mailed to recipients are their residences, places of employment or business, or post office boxes, then all mass mailing rules shall apply. Such rules include, among other requirements, that no names, photos, signatures, or references to or of elected officials be included except as authorized in applicable regulations. See FPPC Reg. 18901 attached hereto for details or contact the City Attorney's Office to review before City resources, including staff time for production of ceremonial letters or similar documents.

4. Nothing in this policy, however, shall prevent any individual member of the Council from sending a letter composed, printed, and distributed entirely at his or her expense regardless of the number the same or substantially similar pieces distributed or mailed.

- C. Flyers by Councilmembers at Their Own Expense. Flyers which are not approved by the City Manager or by official action of the City Council, as described above, may be prepared by the individual councilmember, **at his or her own expense**. No City resources may be used in connection with such flyers, which includes no assistance with distribution, copying, postage, handling of media inquiries, or receiving or processing RSVPs. The City Seal and/or City letterhead may not be used, however, the flyer may include the sender's title, such as "Councilmember _____" or "Mayor _____." The flyer must not imply that it is an official statement from the City.

III. EXCEPTIONS

There shall be no exceptions to this policy, except through direct instructions of the City Council, at a public meeting in compliance with all notice and agenda requirements of the Brown Act.

IV. AUTHORITY

City Council Agenda Item No. ____, dated January ____, 2010.

Jerome G. Groomes
City Manager

Date

