

# USE OF PUBLIC FUNDS IN CONNECTION WITH BALLOT MEASURES

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**R|J|P**

# GOALS

- Understand the rules regarding use of public funds in relation to a ballot measure
- Establish process for evaluating different activities
- Recognize when to ask legal counsel for help



# ACTIVITIES IN RELATION TO A BALLOT MEASURE FALL INTO ONE OF THREE CATEGORIES:

- Clearly Impermissible (i.e., campaign activities)
- Clearly Permissible (i.e., informational activities)
- Require Further Analysis (i.e., as to “style, tenor and timing”)



# CLEARLY IMPERMISSIBLE ACTIVITIES

Cannot use public funds for “campaign activities”, including:

- Promoting or urging a particular vote on a ballot measure
- Producing “typical campaign” materials (e.g., bumper stickers, posters, TV/radio “spots”)
- Coordinating with a ballot measure committee to make expenditures in support of or in opposition to a measure



# CLEARLY PERMISSIBLE ACTIVITIES

May use public funds for “informational activities” which include:

- Preparing reports and other analyses to help decision-makers determine the impact of a measure and what position to take
- Providing the public with impartial educational information about the initiative (i.e., fact sheets, reports, newsletters, responses to requests for information/presentations)
- Taking a position on ballot measure in an open and public meeting



# GRAY AREA EXAMPLE

Scenario: Newsletter describes programs to be cut if ballot measure passes. The article shows pictures of a school crossing guard program that would be eliminated and a photo of a Meth lab with a caption that says proposed cuts would “hamper police”.



## CUTS TO POLICE SERVICES EXPECTED IF MEASURE O IS APPROVED BY VOTERS

The magnitude of budget reductions resulting from the potential passage of Measure O, the initiative to repeal the Utility Users Tax, would force the City to cut programs and services in the Police Department totalling \$1.7 million. The \$1.7 million in proposed service cuts include: elimination of the School Crossing Guard Program, reductions in Support Services, such as removal of abandoned vehicles from public streets, elimination of the Narcotics and Vice Unit, reductions to the School Resource Officer Program, and reductions in the Animal Services Program. According to Police Chief Daniel Ortega, each of the programs to be eliminated or reduced significantly impact Salinas' "community policing philosophy" and the Department's ability to tailor services to meet specific community needs.

The chart illustrates the fiscal impacts of the proposed cuts.

PROGRAM	IMPACT OF BUDGET CUTS	BUDGET REDUCTION
School Crossing Guards	Elimination of Program	\$163,000
Support Services	Reduction in Services Such as Vehicle Abatement	\$109,000
Narcotics and Vice	Elimination of Program	\$768,000
School Resource Officers	Reduction in Number of Schools Served	\$585,100
Animal Control	Reduction in Animal Shelter Services	\$111,200
<b>TOTAL</b>		<b>\$1,737,300</b>

Residents interested in learning more about the potential impacts to Police Services can visit the City's Web Site at [www.ci.salinas.ca.us](http://www.ci.salinas.ca.us) or pick up a copy of the City Manager's Utility Users Tax report at the City Hall or at any of the three City Libraries.



*Methamphetamine lab. The proposed elimination of the Narcotics and Vice Unit will hamper Police Department's ability to promote the City Council's #1 goal of maintaining a safe and peaceful community.*



*Students at 27 Salinas schools will lose the benefit of supervised street crossing as a result of the repeal of the Utility Users Tax.*

# RESULT: PERMISSIBLE

As the California Supreme Court explained in *Vargas v. City of Salinas*:

“The additional articles . . . although at times conveying the [municipal] departments’ views of the importance of such programs, were moderate in tone and did not exhort voters with regard to how they should vote.”



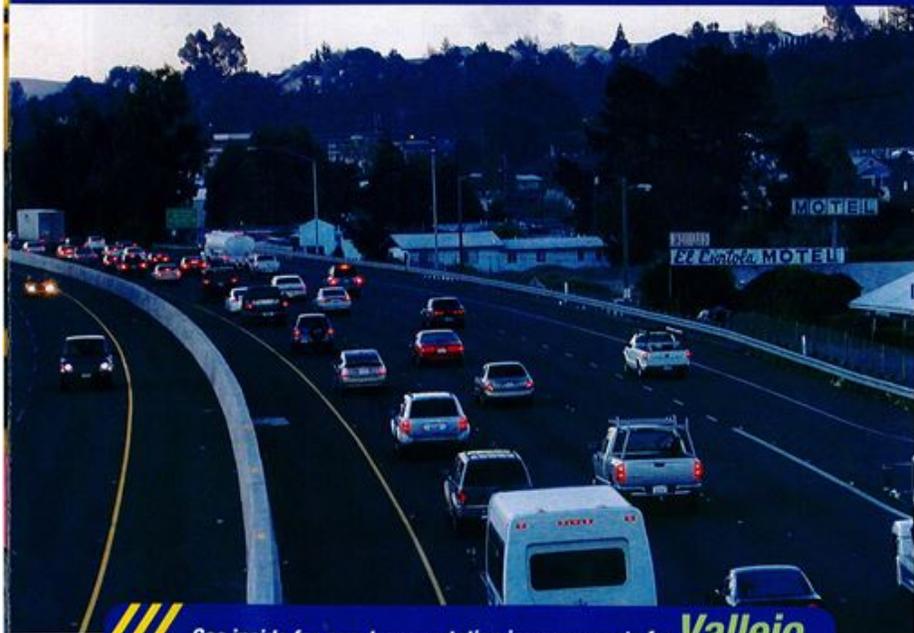
# BROCHURE MENTIONED IN *VARGAS*

Scenario: Brochure sent by the Solano Transportation Improvement Authority.



# VALLEJO-

On June 6th, your vote on **Measure H** will decide the fate of the  
**New Traffic Relief and Safety Plan**  
for **VALLEJO** and all of Solano County



See inside for new transportation improvements for **Vallejo**

SOLANO TRANSPORTATION  
IMPROVEMENT AUTHORITY  
One Harbor Center, Suite 130  
Suisun City, CA 94585



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US POSTAGE  
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# Safeguards



LOOK INSIDE FOR  
PROPOSED NEW  
TRANSPORTATION  
IMPROVEMENTS  
for  
**VALLEJO**

## The Measure H plan for Solano County includes Key Taxpayer Safeguards

The proposed plan includes legal restrictions to ensure that taxpayer funding is spent **only** on transportation projects and services needed for congestion relief, road repairs and safety protections.

It will create an "Independent Taxpayer Watchdog Committee" to audit and monitor all voter-approved taxpayer funds and mandates.

These funds cannot be spent on other public programs without voter approval.

The plan contains additional safeguards to protect local taxpayers:

- ★ **Only approved** transportation and safety improvements from the plan will be eligible to receive sales tax funds.
- ★ **Each year, there will be an independent financial and performance audit** supervised by an Independent Taxpayer Watchdog Committee. All recommendations of the Independent Taxpayer Watchdog Committee shall be made public and presented to the Solano Transportation Improvement Authority (STIA) so that all voter-approved mandates are met and to check on STIA's performance in delivering needed improvements.
- ★ **The plan must be updated every 10 years** to meet changing local transportation needs, as well as technological and demographic changes, with all major changes approved by the voters.
- ★ **Ninety-nine percent of the funds** raised by the proposed sales tax will go directly to needed project and program improvements. No more than one percent can be used for STIA employee salaries and benefits.
- ★ **The sales tax will automatically expire in 30 years**, unless extended by voters by another 2/3 vote.

Voter approval of Measure H would provide a half-cent sales tax for 30 years for Solano County's traffic relief and safety improvements described in this expenditure plan.



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## For more information about Measure H:

Go to [www.stia.ca.gov](http://www.stia.ca.gov) or call us at (707)424-6075 or email your questions to [expenditureplan@sta-snci.com](mailto:expenditureplan@sta-snci.com)

The STIA was created to administer the sales tax program described in this brochure. The STIA Board of Directors is made up of elected representatives of the cities of Benicia, Dixon, Fairfield, Rio Vista, Suisun City, Vacaville, Vallejo and the County of Solano.

# EXAMPLE OF IMPERMISSIBLE CAMPAIGN ACTIVITY

The brochure was referred to as an “improper campaign brochure” by the Supreme Court in *Vargas v. City of Salinas*. The brochure was:

- Oversized and glossy
- In a campaign style
- Mailed to voters before the election



# ACTION PERMITTED BUT FOR WRONG REASON

Scenario: Email sent to about 1,500 people less than one-month before election encouraging them to educate themselves about three measures and attaching an editorial urging “no” for one and “yes” for other two.



# RESULT: INVESTIGATION, LAWSUIT, BUT ULTIMATELY CLEARED

In lawsuit challenging the use of public resources to send the email, the Court of Appeal held in *DiQuisto v. County of Santa Clara* that:

- Email was informational, but attached editorial was impermissible “express advocacy” (i.e., words like “vote for”, “support”, etc.)
- Use of public funds was “incidental and minimal” (i.e., writing and sending email took 10-minutes during lunch period) and therefore fell within exception



# MEASURE RR NOVEMBER 8, 2016

- \$3.5 Billion Bond Measure to support BART.
- BART engaged in public information effort:



- Uploaded video to Twitter and Facebook.

# MEASURE RR NOVEMBER 8, 2016

- Text Messages: Measure RR on the Nov. 8 ballot would help to rebuild and update BART, after 44 years of service and billions of trips taken.
- Tag Line: “It’s time to rebuild.”



# IMPERMISSIBLE

- Fined \$7,500 by FPPC
- Video: BART borrowed “voices and sympathy of its customers” to campaign for Measure RR.
- Social Media and Texts: electronic media advertisements were clearly campaign material.
- FPPC voted to refer BART directors to AG and DA for possible criminal action.



## California watchdog agency says it needs more power to go after misuse of public funds

- “An FPPC study this week said that since 2015, the agency has received 34 allegations of public agencies misusing taxpayer funds for campaign purposes, including mass mailings.”
- “Public agencies that break the law need to be held accountable. That’s not the case today. There are allegations of campaign abuse up and down the state every election cycle. And we need an empowered FPPC or a more active attorney general to protect the public trust.”



# CALTRANS COMPLAINT

- Prop. 6 campaign filed a complaint . . . alleging that taxpayer resources were used improperly to campaign against the initiative. He alleged that state-hired contractors working on a California Department of Transportation road project in San Diego County, with a state supervisor onsite, improperly stopped traffic and gave motorists fliers opposing Proposition 6.
- A flier submitted as evidence urged voters to “Stop the attack on bridge and road safety.”
- The FPPC is still investigating the complaint.



# CURRENT INVESTIGATION OF RM3, NOVEMBER 2018

- Bus ads:



- Could result in fine.

# SUMMARY

- Activities are either impermissible campaign activities, permissible informational activities, or somewhere in between
- Think about the content and context of proposed activities
- Ask legal counsel when you are not sure about a proposed activity
- Remember that even minimal use of public funds related to a measure can lead to investigation and litigation

