



BOARD MEETING AGENDA SUBMITTAL

TO: GCSB Board of Directors
FROM: Pete Kampa, General Manager
DATE: March 9, 2021
SUBJECT: Agenda Item 5A. Discussion and Board Direction on Groveland CSD Fire Department Operational and Financial Matters Including Increased Staffing Levels, Expanded Facilities and Equipment, as Well as Funding Proposed to be Provided Through the Tuolumne County Fire Authority

RECOMMENDED ACTION:

This is intended as an update report only and no specific action is required; however, Board direction to staff is appropriate and expected.

BACKGROUND:

The board has requested that we continue to discuss current events related to the status of the operation of the Groveland Fire Department, the Tuolumne County Fire Authority, the June 8, 2021 special tax measure, fire staffing in the region and costs associated with increasing staffing at the GCSB fire station. For each Board meeting a brief written summary of activities will be provided.

During the past month, the general manager and board president have attended board meetings of the Tuolumne County Fire Authority (TCFA) on February 18th, and on March 5th. The TCFA agenda packet for the March meeting is included with this report as it is the most current and the February packet was nearly identical, but also included the approval of Bylaws and the Conflict of Interest policy. This document has been written prior to the March 5th meeting and the TCFA will be considering action at the March 5 meeting to waive the second reading and approve an ordinance authorizing the levy of a fire special tax, subject to voter approval. The election date has been set for an all-Mail ballot on June 8th, 2021.

Pursuant to the joint powers agreement that formed the TCFA, a ballot measure would be developed for consideration by the voters, and if approved would be levied on the 2021/2022 tax rolls. The following information is discussed in more detail in the February 18, 2021 TCFA staff submittal. The estimated cost of the election and expense to each TCFA member is shown below:

Entity	# of Voters	Estimated Cost
City of Sonora	2976	\$8,928
Columbia Fire Protection District	492	\$1,476
County of Tuolumne	26395	\$79,185
Groveland Community Services District	2296	\$6,888
Jamestown Fire Protection District	484	\$1,452
Tuolumne Fire District	1040	\$3,120
Total	33,683	\$101,049

Details on the proposed measure are as follows:

- The tax will be assessed annually
- The tax will be set at a flat rate per parcel as opposed to square footage per parcel or another scalable metric.
- The rate will be set as follows:
 - \$75 per unimproved parcel—parcels with no habitable structures
 - \$150 per improved parcel—parcels with habitable structures (ie: home, barn, commercial, etc.)
- The tax will not have a sunset period; the language on ballot will read “until repealed by voters.”
- Exemptions will be similar to those for regular property taxes, however, there will be no other exemptions for particular parcel types or zoning. This is consistent with other voter-approved bonds and is the most equal since all parcel types utilize services from the fire department.
- The tax will increase annually by 2%. This is consistent with the way property tax is assessed due under Proposition 13 and will ensure this tax collected increases as costs for services increase.

If approved by the voters, following collection of the tax, which is estimated to generate approximately \$4,183,950 annually, each member Fire Department of the TCFA will receive an allocation of the tax based on the number of parcels served as estimated below:

Entity	Total # of Parcels	Estimated Revenue
City of Sonora	2261	\$313,425
Columbia Fire Protection District	217	\$28,650
County of Tuolumne	24,068	\$3,117,975
Groveland Community Services District	4087	\$552,525
Jamestown Fire Protection District	362	\$50,175
Tuolumne Fire District	897	\$121,200
Total	31,892	\$4,183,950

Ballot Measure Related Guidance

Included with this agenda item are three very informative guidance documents relating to Ballot Measures and Public Agencies. We are not anticipating significant discussion at this meeting related to these documents, and they are provided for your reference and understanding of the do's and don'ts related to the TCFA ballot measure. There are very strict requirements and restrictions on what Board members and staff can do and say regarding the ballot measure. If you have any questions at all, please do not hesitate to contact me.

District staff and the county are preparing informational documents, including an FAQ to be published and available for public information. We will be publishing the informational materials, including any documents related to the TCFA meetings and action, on the Announcement Pages of our website:

<https://www.gcsd.org/current-information-news-and-events>

Development Impact Mitigation

As directed by the board over approximately the past year and to reduce impacts on existing taxpayers, staff has proposed additional methods to appropriately distribute the cost of providing park and fire services to new land development projects approved by the County such as residential subdivisions, and projects such as lodging or major commercial developments. The purpose of these new funding mechanisms is to apply all service expansion costs to those who generate the need for such additional services. The District has engaged a consultant who is working on both a development impact fee analysis and schedule, as well as the formation of a community facilities district (CFD). These mechanisms are intended to provide funding in the future for fire and park services as new land development projects move through the County process.

Impact Fees are a one-time, upfront charge to offset the impact of the new development on Fire and Park capital equipment and facilities; thereby allowing us to purchase additional fire engines and expand fire stations in the future as population grows. Impact Fees are charged by the county to the construction permit applicant in accordance with our fee schedule, with payment then remitted to the District.

The CFD is intended to cover the proportional cost of increasing staffing and other operating expenses as needed to maintain current levels of service as the population grows. Once the CFD is implemented, new land development projects will be required to “annex” into the CFD and pay the tax as a condition of development and receiving Fire and Park services.

We have held several meetings and reviewed technical memoranda with the consulting firm, NBS and they are moving quickly toward completion of both studies and related documentation.

ATTACHMENTS:

- Agenda materials for the March 5, 2021 meeting of the Tuolumne County Fire Authority
- Staff submittal for the February 18, 2021 meeting of the Tuolumne County Fire Authority
- Guidance Document Related to Appropriate Activities on Local Ballot Measures (Institute for Local Government)

FINANCIAL IMPACT:

This is an update report only.

Tuolumne County Fire Authority
Board of Directors
Regular Meeting Agenda

(The Tuolumne County Fire Authority is a joint powers authority pursuant to Government Code §6500 et seq. including the following jurisdictions: City of Sonora, Columbia Fire Protection District, County of Tuolumne, Groveland Community Services District, Jamestown Fire Protection District, and Tuolumne Fire District.)

Meeting Location: Board of Supervisors Chambers
2 S. Green St. Sonora, CA 95370
Meeting Date: March 5, 2021
Meeting Time: 11:00am

Public Participation: Enter this link to participate in the meeting through Microsoft Teams
<http://bit.ly/TCFA2>

Or call in (audio only): [+1 209-279-5158](tel:+12092795158), Phone Conference ID: 906 650 107#

1. Call to Order
 - a. Pledge of Allegiance
2. Roll Call
3. Public Comment (No action may be taken by the Board. 5-minute time limit)
4. Consideration of approving the minutes of the February 17, 2021 meeting.
5. Public Hearing to consider waiving the second reading and adopt the ordinance imposing a special parcel tax for fire suppression, protection and prevention on all taxable real property within the boundaries of the Tuolumne County Fire Authority, subject to voter approval.
6. Consideration of adopting a resolution calling for a special all-mail election on June 8, 2021 for the purpose of levying a special parcel tax for fire suppression, protection and prevention on all taxable real property within the boundaries of the Tuolumne County Fire Authority.
7. Consideration of approving, or providing further direction on, the ballot measure argument in favor of the special parcel tax.
8. Member Reports and Comments
9. Adjournment

In compliance with the Americans with Disability Act, if you require special accommodation to participate in TCFA meetings, please contact the County of Tuolumne at (209) 533-5511 prior to meeting and arrangements will be made to accommodate you.

**BOARD OF DIRECTORS
TUOLUMNE COUNTY FIRE AUTHORITY
REGULAR MEETING MINUTES
FEBRUARY 17, 2021
1:00 P.M.**

1. Call to Order:

Liz Peterson, Senior Administrative Analyst (Tuolumne County), acting chairperson, called the meeting to order at 1:10 p.m. in the Board of Supervisors Chambers located at 2 South Green Street, Sonora, California 95370.

a. Pledge of Allegiance

Ms. Peterson led the Pledge of Allegiance.

b. Introductions

All those present introduced themselves.

c. Announcement of JPA Formation

Ms. Peterson announced the formation of the Tuolumne County Fire Authority and that a copy of the agreement is in the agenda backup. Ms. Peterson announced she would serve as chair of the meeting on agenda items 1 through 4, and thereafter the newly elected chair would take over the meeting.

2. Roll Call:

Present for the First Board of Directors Meeting of the Tuolumne County Fire Authority were Directors: Brian Bell, Pete Kampa, Ryan Campbell, Stan Steiner and Jim Garaventa; and Alternate Directors: Mary Rose Axiak-Rutikanga, Janice Kwiatkowski.

Jason Darby, Director; Matt Foust and Anaiah Kirk, Alternates were absent.

Staff present were Liz Peterson, Senior Administrative Analyst (Tuolumne County); Christopher Schmidt, Deputy County Counsel (Tuolumne County); Andy Murphy (Tuolumne County / Groveland Fire Department / Jamestown Fire Department); Debi Bautista (Tuolumne County); Kaenan Whitman (Tuolumne County); Justin Birtwhistle (Tuolumne County) and Nick Casci (Tuolumne County)

3. Public Comment

No comments were received.

4. Formation Administrative Matters:

a. Consideration of adopting bylaws

Ms. Peterson presented draft bylaws to the Board. Christopher Schmidt, Deputy County Counsel commented about procedure. No public comments were received. Director Kampa moved to adopt by draft bylaws without changes, Director Garaventa seconded, and by a vote of 5-0 with one absent (Director Darby), the motion to adopt the bylaws passed.

b. Consideration of adopting conflict of interest code

Ms. Peterson presented a draft conflict of interest to the Board. No public comments were received. Director Campbell moved to adopt the draft conflict of interest code without changes, Director Bell seconded, and by a vote of 5-0 with one absent (Director Darby), the motion to adopt the conflict of interest code passed.

c. Consideration of adopting resolution setting regular meetings

Ms. Peterson presented a draft resolution setting the proposed dates, times and place of regular meetings of the joint powers authority to the Board. No public comments were received. Director Kampa moved to adopt the resolution without changes, Director Campbell seconded, and by a vote of 5-0 with one absent (Director Darby), the motion to adopt the resolution passed.

d. Election of Officers

Ms. Peterson presented the item and the need for the Board to elect a chairperson and vice chair of the Board of Directors, as well as a secretary. Christopher Schmidt, Deputy County Counsel commented about procedure and the Board elected to separate the Board chair, vice chair and secretary election.

Chairperson. Director Bell nominated Director Campbell as chair of the Board, Director Kampa seconded the nomination, there was no public comment received, and by a vote of 5-0 with one absent (Director Darby) the motion passed.

Vice-Chair. Director Campbell nominated Director Garaventa as vice-chair of the Board, Director Kampa seconded the nomination, there was no public

comment received, and by a vote of 5-0 with one absent (Director Darby) the motion passed.

Secretary. Director Campbell nominated Liz Peterson as secretary, Director Bell seconded the nomination, there was no public comment received, and by a vote of 5-0 with one absent (Director Darby) the motion passed.

e. Consideration of ratifying the filing of notice of the JPA agreement with the Secretary of State and State Controller

Ms. Peterson presented the item announcing the filing of the notice of the joint powers agreement with the California Secretary of State and the State Controller, and Mr. Schmidt commented on the need for authorization to cure a defect in the notice. No public comments were received. Director Garaventa moved to ratify the filing of the notice and authorize curing of any defect in the notice, Director Kampa seconded, and by a vote of 5-0 with one absent (Director Darby), the motion to passed.

5. Consideration of waiving the first reading of the ordinance imposing a special parcel tax for fire suppression, protection and prevention on all parcels of taxable real property within the boundaries of the Tuolumne County Fire Authority, subject to voter approval, setting the public hearing and second reading of the ordinance for March 3, 2021, and providing staff direction on the associated resolution calling the election and argument in favor of the ballot measure

(Director Darby joined the meeting at 1:48pm)

Ms. Peterson presented both the ordinance as well as the associated resolution. Director Campbell volunteered to work with Director Kampa on the ballot question and the argument in favor of the ballot measure. No public comments were received. Director Campbell moved to waive the first reading of the ordinance and director Garaventa seconded the motion. The motion passed 6-0 by rollcall vote.

6. Discussion of upcoming agendas

Ms. Peterson described the upcoming meeting schedule and noted the deadline for the ordinance and resolution is March 12, 2021.

7. Member Reports and Comments

Directors Kampa and Campbell had comments on the formation of the JPA and the upcoming election.

8. Adjournment

Chair Campbell adjourned the meeting at 2:19 p.m.

APPROVED:

Ryan Campbell, Chair

ATTEST:

Liz Peterson,
Secretary

ORDINANCE NO. _____

**AN ORDINANCE OF THE TUOLUMNE COUNTY FIRE AUTHORITY IMPOSING
A SPECIAL PARCEL TAX FOR FIRE EMERGENCY RESPONSE, PREVENTION
AND SUPPRESSION SERVICES TO TAKE EFFECT UPON THE APPROVAL OF
TWO-THIRDS OF THE VOTERS VOTING ON THE PROPOSAL**

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The Board of Directors of the Tuolumne County Fire Authority (“Authority”) ordains as follows:

SECTION 1: AUTHORIZATION, PURPOSE, AND INTENT.

It is the purpose and intent of this Ordinance to authorize the levy of a tax on parcels of real property on the secured property tax roll of Tuolumne County within the boundaries of the Authority as depicted in Exhibit A.

Pursuant to the authority of Government Code Section 50075 et seq., Section 53978, Section 6502, and other applicable law, following the certification of results of the June 8, 2021, special election, if two-thirds of the voters vote “yes” on the measure, there shall hereby be levied and assessed a special parcel tax by the Authority on all taxable parcels of real property within its boundaries, for each fiscal year. It is the purpose and intent of this ordinance to impose a special parcel tax for fire emergency response, prevention, suppression and related incidental services, including but not limited to acquiring, operating and maintaining fire prevention and suppression equipment, payment of personnel costs, and funding capital improvements.

SECTION 2: DEFINITIONS.

- A. “Parcel” means the taxable land and any improvements thereon, designated by an assessor’s parcel map and parcel number and carried on the secured property tax roll of Tuolumne County. For the purposes of this Ordinance, Parcel does not include any land or improvements owned by any governmental agency.
- B. “Assessor’s Use Code” shall mean the use code adopted or used by the Tuolumne County Assessor to identify land use categories of real property. If the use codes are modified, the numbers specified herein shall be deemed modified to conform to the new code or designation reflecting the same or substantially similar categories identified herein.
- C. “Fiscal year” means the period of July 1 through the following June 30.

SECTION 3: SPECIAL PARCEL TAX IMPOSED.

A special parcel tax for the purpose specified in Section 1 of this ordinance shall be imposed on all taxable parcels of real property within the jurisdictional boundaries of the Authority as depicted in Exhibit A, each fiscal year until repealed by the voters. The Assessor’s Use Codes

define certain classes of properties that appear on the assessment roll, which may be updated as necessary.

The maximum amount of the special parcel tax for each fiscal year shall be as follows, increased annually at the rate of 2% per year:

<u>Improved Status</u>	<u>Property Type</u>	<u>Assessor's Use Code</u>	<u>Maximum Rate</u>	<u>Per</u>
Unimproved	Residential	00; 02; 03; 04; 05; 06;	\$75.00	Parcel
Unimproved	Commercial	07; 08	\$75.00	Parcel
Unimproved	Miscellaneous	50; 51; 54; 55; 58; 59; 60; 61; 62; 64	\$75.00	Parcel
Improved	Residential	10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 21; 22; 23; 24; 25; 26; 31; 32; 33; 34; 35; 36; 41; 42; 43; 44; 45; 46; 52; 53; 54; 56; 57	\$150.00	Parcel
Improved	Commercial	80; 81; 82; 83; 84; 85; 87	\$150.00	Parcel
Improved	Miscellaneous	13; 20; 30; 40; 59; 63; 64	\$150.00	Parcel

Before the beginning of each fiscal year beyond the first fiscal year the parcel tax is levied, the Board of Directors shall adopt a resolution to increase the maximum parcel tax to be levied upon the parcels for the upcoming fiscal year two percent (2%). Annually, the Board of Directors may set a lower parcel tax rate at its discretion.

The records of the Tuolumne County Tax Collector each year shall provide the basis for determining the calculation of the special parcel tax applicable to each parcel, with such corrections as deemed necessary by the Board of Directors to reflect the actual use and improvement of any parcel.

SECTION 4: SPECIAL FUND, USE OF TAX PROCEEDS.

Pursuant to Section 50075.1(c) of the Government Code, the Authority shall create an account into which the proceeds of this tax shall be deposited. Pursuant to Section 50075.1(b) of the Government Code, the proceeds shall be used by the Authority solely for the purpose of

providing fire emergency response, prevention, suppression and related incidental services, including but not limited to acquiring, operating and maintaining fire prevention and suppression equipment, payment of personnel costs, and funding capital improvements.

SECTION 5: TAXES AS LIENS AGAINST THE PROPERTY.

The amount of taxes for each parcel each fiscal year shall constitute a lien on such property in accordance with Revenue and Taxation Code Section 2187 and shall have the same effect as an ad valorem real property tax lien until fully paid. Said special parcel tax, together with all penalties and interest thereon, shall constitute until paid, to the extent authorized by law, a personal obligation to the Authority by the persons who own the parcel on the date the tax is due.

This tax is a special tax within the meaning of Section 4 of Article XIII A of the California Constitution. Because the burden of this tax falls upon property, this tax also is a property tax, but this tax is not determined according to nor in any manner based upon the value of property; this tax is levied on a parcel, class of improvement, and use of property basis. Insofar as not inconsistent with this Ordinance or with legislation authorizing special taxes, and insofar as applicable to a property tax that is not based on value, such provisions of the California Revenue and Taxation Code and of Article XIII of the California Constitution as relate to ad valorem property taxes apply to the collection and administration of this tax (Severability Clause of Section 10).

SECTION 6: COLLECTION.

If the special tax is approved by two-thirds of the voters voting on the measure, the Authority's appropriations limit will be increased by the amount of this voter-approved tax. The taxes on each parcel shall be billed on the secured roll tax bills for ad valorem property taxes and shall be due to the County of Tuolumne. Insofar as feasible and insofar as not inconsistent with this Ordinance, the taxes are to be collected in the same manner in which the County of Tuolumne collects secured roll ad valorem property taxes. Insofar as feasible and insofar as not inconsistent with the Ordinance, the times and procedures regarding exemptions, due dates, installment payments, correction, cancellations, refunds, late payments, penalties, liens, and collections for secured roll ad valorem property taxes shall be applicable to the collection of this tax. Notwithstanding anything to the contrary in the foregoing, as to this tax: (1) the secured roll tax bills shall be the only notices required for this tax; and (2) the homeowners and veterans' exemptions shall not be applicable to this tax because such exemptions are determined by dollar amount of value.

SECTION 7: ADMINISTRATION AND AMENDMENT.

The Board of Directors of the Authority by resolution may adopt procedures or definitions for the implementation or administration of the special parcel tax. The Authority shall be empowered to amend this ordinance by an affirmative vote of its Board of Directors to carry out the general purposes of this ordinance, to conform the provisions of this ordinance to applicable

state law, to modify the methods of collection, or to assign the duties of public officials under this ordinance. In no event shall the Board of Directors amend this ordinance to increase the maximum amount of the special parcel tax established in Section 3 of this ordinance or modify the purposes for which the tax proceeds were established in Section 4 of this ordinance, unless approved by two-thirds of the voters voting thereon.

SECTION 8: EXEMPTIONS.

The special parcel tax shall not be imposed upon any parcel that is exempt from the special parcel tax pursuant to any provision of the United States Constitution, California Constitution, California State law, or any paramount law. The special parcel tax shall not be imposed upon any parcels which are classified by County Assessor's Use Codes as exempt from ad valorem property taxes. These exemptions include churches, non-profits and local governments that meet the standards for exemption from ad valorem tax.

SECTION 9: ACCOUNTABILITY.

Pursuant to Sections 50075.1(d), 50075.3 and 12463.2 of the Government Code, the auditor of the Authority shall file an annual report with the Board of Directors each year following imposition of the tax which report shall contain a description of the amount of funds collected and expended and the status of any project required or authorized to be funded as identified in this measure, if any.

SECTION 10: SEVERABILITY.

If any provision, section, subsection, sentence, phrase or clause of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of the Ordinance. The voters hereby declare that they would have adopted the remainder of this Ordinance, including each provision, section, subsection, sentence, phrase or clause, irrespective of the invalidity of any other provision, section, subsection, sentence, phrase or clause.

SECTION 11: EFFECTIVE DATE.

This Ordinance shall take effect immediately following the certification of results of the June 8, 2021, special election if approved by the number of voters required by law voting on the tax at an election, and taxes shall first be levied hereunder for the fiscal year beginning July 1, 2021.

SECTION 12: TERMINATION.

The levying of the parcel tax shall continue until repealed by the voters. In the event the Ordinance is repealed, Section 6 relating to collection and enforcement of liens or obligations for the special tax shall continue until collections have been completed.

SECTION 13: PUBLICATION.

A summary of this ordinance shall be published at least once before the expiration of 15 days after its passage in the Union Democrat, a newspaper of general circulation published in Tuolumne County, together with the names of members voting for and against the same.

SECTION 14: VALIDATION.

Pursuant to the provisions of Government Code Section 50077.5, any judicial action or proceeding to attack, review, set aside, void or annul this ordinance or the approval of the special tax or increase in the spending limitation pertaining to the special property tax shall be commenced, if at all, within 60 days of the date of the effective date of the ordinance.

In regular session of the Board of Directors of the Tuolumne County Fire Authority, introduced on the 17th day of February, 2021, and finally passed and adopted this 3rd day of March, 2021, on regular roll call of the members of said Board by the following vote:

Ayes: _____

Noes: _____

Abstain: _____

Absent: _____

, Chair
Board of Directors
Tuolumne County Fire Authority

ATTEST:
Secretary of the Board of Directors

By: _____
Secretary Date

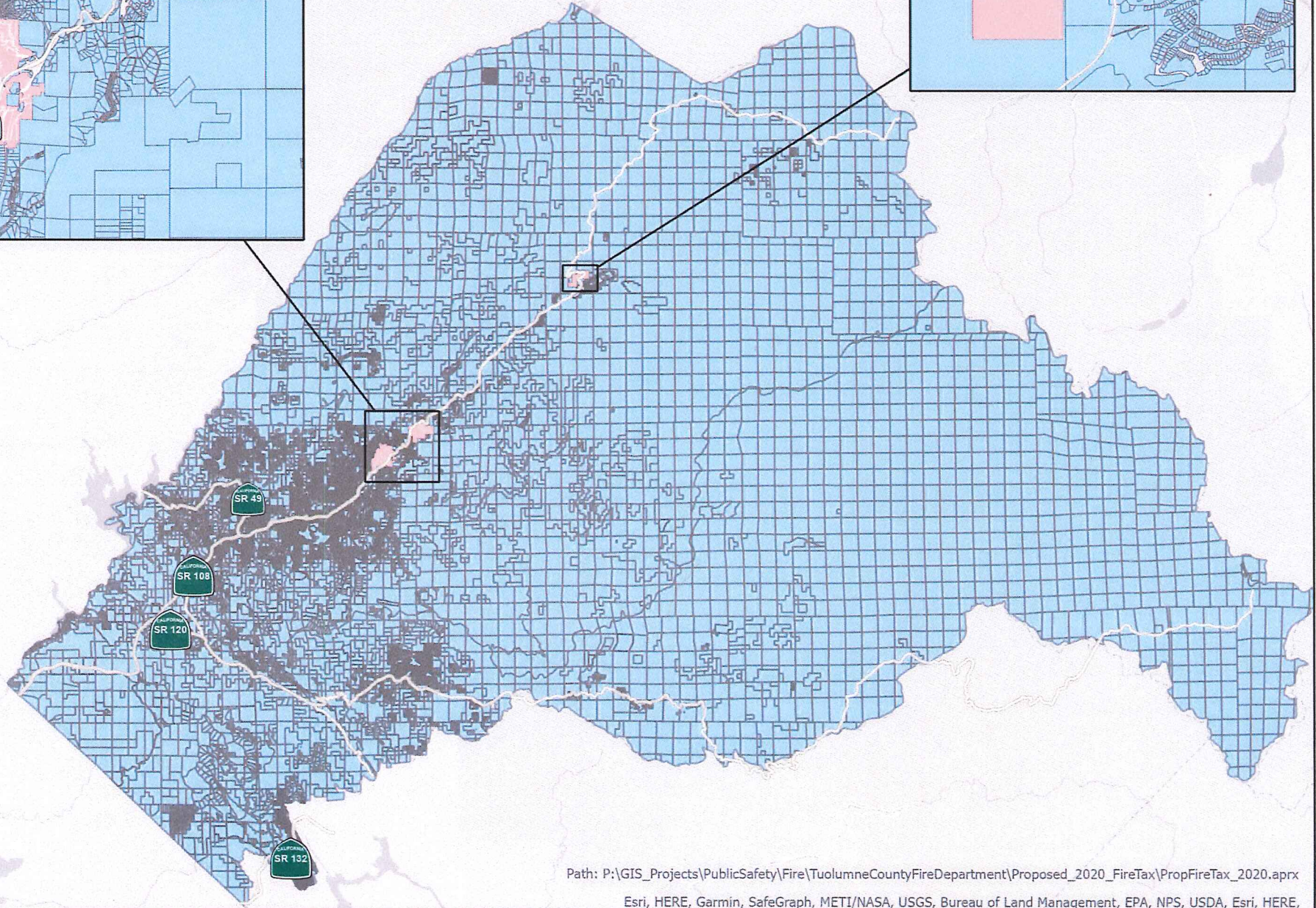
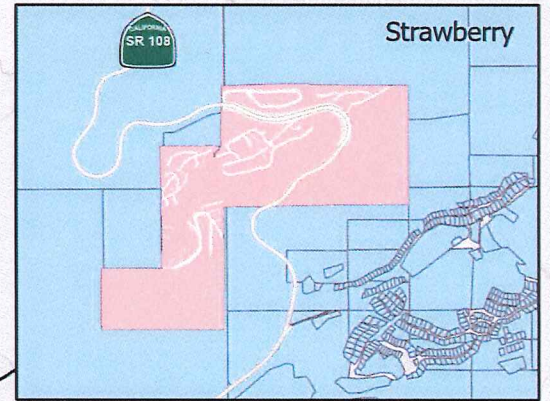
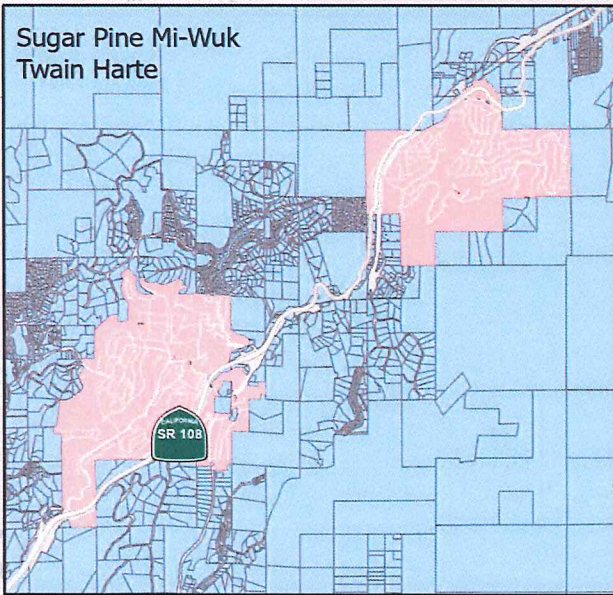
APPROVED AS TO LEGAL FORM:

Date

EXHIBIT A

Tuolumne County Fire Proposed Fire Tax

- Fire Protection District - No Add'l Tax Proposed
- Proposed Fire Tax by Parcel



NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Board of Directors of the Tuolumne County Fire Authority will hold a public hearing on March 5, 2021, at 11:00 a.m. or as soon thereafter as may be heard, in the Board of Supervisors Chambers at the Tuolumne County Administration Center located at 2 South Green Street, 4th Floor, Sonora, California, to consider the following:

Public hearing to consider adopting an ordinance imposing a special parcel tax for fire response, suppression, protection and prevention on all taxable real property within the boundaries of the Tuolumne County Fire Authority (TCFA), subject to voter approval. The TCFA jurisdiction and boundary where the parcel tax would be imposed includes all incorporated (city) and unincorporated areas of the County of Tuolumne *except* areas within the Twain Harte Community Services District, Strawberry Fire Protection District, and Mi Wuk Sugar Pine Fire Protection District.

If adopted by the TCFA Board of Directors, the ordinance will be placed on the ballot at an all-mail special election to occur on June 8, 2021, and will become effective if it is adopted by two-thirds of the voters voting on the measure. The special parcel tax proposed would be at a rate of \$75 per unimproved parcel and \$150 per improved parcel, annually with a 2% annual inflation adjustment, providing \$4,184,471 annually, and continuing until repealed by the voters. The tax would be collected in the same manner, and be subject to the same exemptions and exclusions, as local property taxes.

Any persons affected by the above matter(s) may submit written comments to, or request a copy of the proposed ordinance from, the Secretary of the Authority before the hearing or may speak in support or opposition of the ordinance during the public hearing. The meeting will be physically closed to the public but the public is invited to participate through Microsoft Teams at <http://bit.ly/TCFA2> or may call in for audio only at (209) 279-5158; Phone Conference ID# 906 950 107

Please send all written correspondence or requests for copies to: Tuolumne County Fire Authority Secretary, 2 South Green Street, 4th Floor, Sonora, CA 95370 or (209) 533-6396.

S/Liz Peterson
Secretary, Tuolumne County Fire Authority

PLEASE DO NOT PRINT TEXT TYPED BELOW THIS LINE

Publish Date: **Tuesday, February 23, 2021**
Tuesday, March 2, 2021

CONTACT PERSON: **Liz Peterson/533-6396/ epeterson@co.tuolumne.ca.us**

BILL TO: **Tuolumne County Administrator's Office (Credit Card on file)**

**RESOLUTION OF THE
BOARD OF DIRECTORS OF THE
TUOLUMNE COUNTY FIRE AUTHORITY**

- WHEREAS, the Board of Directors does hereby determine that in order to provide adequate levels of fire protection and prevention services in the jurisdictional boundaries of the Tuolumne County Fire Authority (“Authority”), it is necessary to impose a special parcel tax against taxable real property;
- WHEREAS, pursuant to Government Code Section 50075 et seq., Section 53978, Section 6502, and other applicable law, the Board of Directors of the Authority is authorized to adopt an ordinance proposing a special parcel tax for fire emergency response, protection, prevention and suppression services on taxable real property within the boundaries of the Authority as depicted in Exhibit A (“Ordinance”);
- WHEREAS, Government Code Section 50075 et seq. requires an ordinance imposing a special tax obtain two-thirds voter approval before taking effect; and,
- WHEREAS, the Board of Directors of the Authority desires to call a special election by all-mail ballot held in accordance with the law for the purpose of submitting to the qualified electors of the Authority a measure on whether to enact the Ordinance; and,
- WHEREAS, the Board of Directors desires to call a special election to be held June 8, 2021.

NOW THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Directors of the Tuolumne County Fire Authority as follows:

1. Pursuant to its right and authority, the Board of Directors submits to the voters, by all-mail ballot at a special election on June 8, 2021, the proposed measure to levy a special tax on taxable real property within the boundaries of the Tuolumne County Fire Authority as depicted in Exhibit A (“Ordinance”). All proceeds from this special tax shall be used for fire emergency response, protection, prevention and suppression services, including but not limited to acquiring, operating and maintaining fire prevention and suppression equipment, payment of personnel costs, and funding capital improvements.
2. The special tax shall not become effective unless adopted by two-thirds of voters voting on the measure at the June 8, 2021, special election, at which election the issue to be presented to the voters shall be:

“Tuolumne County Fire Authority Parcel Tax Measure. To protect lives and property from fire, upgrade fire equipment, improve response capabilities, and provide a dedicated source of local funding, shall the measure be adopted authorizing a new parcel tax on real property within the boundaries of the Tuolumne County Fire Authority at a rate of \$75 per unimproved parcel and \$150 per improved residential or commercial parcel, with a 2% annual inflation adjustment, providing \$4,184,471 annually, and continuing until repealed by the voters? Yes ____ No ____”

3. The full text of the measure entitled “*An Ordinance Of The Tuolumne County Fire Authority Imposing A Special Parcel Tax For Fire Emergency Response, Prevention and Suppression Services To Take Effect Upon The Approval Of Two-Thirds Of The Voters Voting On The Proposal*” attached hereto as Exhibit A is adopted by the Board of Directors on March 3, 2021, and approved for submission to the voters by all-mail ballot at the June 8, 2021, special election. If two-thirds of the qualified voters voting on the Ordinance vote in favor thereof, the Ordinance shall be deemed adopted and shall be effective in accordance to its terms.
4. The Board of Directors hereby orders that the election on the measure shall be held June 8, 2021.
5. The election shall be conducted by all-mail ballot as prescribed by California Elections Code §§ 4000 et. seq. within all incorporated and unincorporated areas within the boundaries of the Tuolumne County Fire Authority.
6. The Secretary of the Board is directed to forward to the County Clerk of the County of Tuolumne a copy of this resolution.
7. The County Clerk is authorized and directed to call for arguments for and against said measure, and to conduct said election according to applicable election laws.
8. The County Counsel for the County of Tuolumne shall prepare an impartial analysis of the measure.
9. The Auditor-Controller for the County of Tuolumne shall prepare a fiscal impact statement.
10. The measure shall become operative on July 1, 2021, if adopted by two-thirds of voters voting at the June 8, 2021, special election.

ADOPTED BY THE BOARD OF DIRECTORS OF THE TUOLUMNE COUNTY FIRE AUTHORITY ON MARCH 5, 2021.

Ayes: _____

Noes: _____

Abstain: _____

Absent: _____

 , Chair
 Board of Directors
 Tuolumne County Fire Authority

ATTEST:

Secretary of the Board of Directors

By: _____
Secretary Date

APPROVED AS TO LEGAL FORM:

Date

Pro Argument:

A **YES** vote for Measure __ will finally establish a consistent, predictable source of funding for our fire needs that goes **ONLY** to local fire departments.

Changes in state law over decades have reduced the share of funding local fire districts like ours receive for fire and emergency services. As a result, local districts face dwindling resources and an increasing demand for services with few options to stem the tide of those rising costs. Measure __ gives us the opportunity to determine our own destiny and build a secure source of funding. A **YES** vote for Measure __ will **ensure funding for fire protection services is secure and stays local**. It will help districts replace and upgrade equipment such as fire engines, water tenders, rescue equipment like the “Jaws of Life”, and expand and upgrade fire stations. All the money brought in will stay local and cannot be touched by the state.

We all care about fire safety and supporting our brave firefighters. Tuolumne County area fire districts have joined forces like never before; they formed the Tuolumne County Fire Authority to work toward expanding fire protection for the citizens we serve. **We owe it to our firefighters** to provide them with the equipment, facilities, and training to do their jobs effectively.

Funds from this measure will be distributed directly to Tuolumne County Fire Department, Sonora City Fire Department, Groveland Fire Department, Jamestown, Tuolumne, and Columbia Fire districts based on the number of parcels in each district.

Measure __ has the support of..... local groups and individuals.

Join us in protecting our community and vote **YES** on Measure __

Signed,

The Tuolumne County Fire Authority Directors

Word count: 276

Director Backup / Inclusive Staff Memo

Agenda Item 1: Call to Order

At this first meeting of the Tuolumne County Fire Authority (TCFA), Board Members (Directors) and Alternate Board Members (Alternates) are encouraged to attend. Only Directors or Alternates to absent Directors will vote.

In the absence of a Board Chair, Liz Peterson, Senior Administrative Analyst for the County of Tuolumne will open the meeting and run through agenda items #1 through 4. After Agenda Item #4, the newly elected Board Chair will take over running the meeting.

A copy of the Joint Exercise of Powers Agreement forming the TCFA is provided as Attachment 1.

Agenda Item 2: Roll Call

Ms. Peterson will lead a roll call of Directors and Alternates.

Agenda Item 3: Public Comment

Members of the public may comment on items not on today's agenda that are relevant to the TCFA. Public comments should be limited to no more than 5 minutes. No action will be taken on any public comments.

Agenda Item 4: Formation Administrative Matters

Item 4(a): Consideration of adopting Bylaws and Conflict of Interest Code (Attachment 2)

As set forth in Section 4(g) of the JPA Agreement, draft bylaws are proposed and presented as set forth in Attachment 2. These bylaws provide the rules and regulations for the TCFA governing board's operation. The document was prepared by counsel for GCSD and reviewed by counsel for the County of Tuolumne and the City of Sonora.

Item 4(b): Consideration of adopting resolution approving the conflict of interest code (Attachment 3)

The Political Reform Act requires local government agencies to adopt and promulgate a conflict of interest code and to conduct a review of the code every two years. The Political Reform Act requirements as included in the proposed draft conflict of interest code included as Attachment 3, requires certain JPA officials, specified in section 87200 of the California Government Code, to file economic disclosure forms ("Form 700") and abstain from making or participating in making governmental decisions which have a reasonably foreseeable material effect on an economic interest.

The attached conflict of interest code was prepared by counsel for GCSO and reviewed by counsel for the County of Tuolumne and the City of Sonoma. It is recommended your Board approve the conflict of interest code as set forth on Attachment 3 designating officials and establishing disclosure categories.

Please note, recent changes in law require persons required to prepare and file a Form 700 must list all agencies in which they participate in government decisions. If you have any questions in preparation of that form or the place of filing, please consult agency counsel.

Item 4(c): Consideration of adopting resolution setting the date, time and place of meetings of the Board of Directors (Attachment 4)

Article 3, Section 1, requires your Board to establish by resolution the date, time and place for regular meetings which shall occur at a minimum of two (2) times per year. The proposed resolution as set forth in Attachment 4 provides regular meetings shall occur at the Tuolumne County Administration Center located at 2 South Green Street unless scheduled otherwise by your Board. Those meetings shall occur regularly on the third Wednesday of January and June each year.

When considering the time of regular meetings, it is recommended a time be chosen which accommodates timely adoption of an annual budget and re-election of officers, as necessary on a regular basis.

Item 4(d): Election of Officers: Elect a Chairperson, Vice Chairperson and a Secretary

Article 5 of the TCFA Bylaws specify that the Board of Directors shall elect a Chairperson, Vice Chairperson and a Secretary (or Executive Director). The Chair presides over all meetings, and the Vice Chair shall act in place of and have all the powers and duties of the Chairperson's in his or her absence. The Secretary shall maintain a public record of the Authority Board's resolutions, transactions, findings and determinations, and shall prepare agendas and minutes of all Regular and Special meetings of Authority. It is recommended your Board discuss and elect these officials to serve a term of one (1) year.

Item 4(e): Ratify the filing of the necessary documents with the California Secretary of State and California State Controller (Attachment 5)

Section 19 of the JPA Agreement requires preparation and filing with the California Secretary of State and the State Controller of a notice of the JPA Agreement. This notice is required to be filed within 30 days of the JPA Agreement's execution, which expired prior to this meeting. Therefore, a notice was prepared and filed by Supervisor Ryan Campbell as the director designated by member, County of Tuolumne. It is recommended your Board ratify Director Campbell's preparation and filing of the notice,

a copy of which is in Attachment 5, and authorize an amendment or other corrective measure to the notice to add Jamestown Fire Protection District due to the County's late receipt of their resolution.

AT THIS TIME, THE NEWLY ELECTED CHAIR WILL RUN THE MEETING

Agenda Item 5: Consideration of waiving the first reading of an ordinance imposing a special parcel tax for fire suppression, protection and prevention on all taxable real property within the boundaries of the Tuolumne County Fire Authority, subject to voter approval (Attachment 6), set the public hearing and second reading of the ordinance for March 3, 2021, and provide staff direction on the associated resolution calling the election (Attachment 7) and argument in favor of the ballot measure.

Fire departments provide invaluable services to their communities. Collectively, the Fire Departments within this JPA respond to thousands of calls for service each year and service expectations placed on the fire departments have steadily increased in the areas of:

- EMS delivery
- Natural Disaster response and increased fire problem
- Technical rescue
- Community expectations

This expanding mission comes at a time when budgets are stretched incredibly thin, which translates to more duties with fewer dollars to support them. Funding to support our fire departments has steadily decreased due to the following:

- Property tax and other revenue not keeping up with expenses
- More competition for grants
- Increased expenses (personnel, equipment, etc.)
- Decreased availability and number of volunteers

Tuolumne County Fire JPA

As you know, our respective entities have been working collaboratively for many years and most recently efforts have been focused on placing a measure on the ballot for voters to approve a special parcel tax for fire services. All revenue collected would be placed in a fund set aside only for use for fire services. A special tax also requires approval from 2/3 of the voters, not a simple majority like general taxes.

In December, this Joint Powers Authority was formed in order to jointly levy a unified tax measure for every voter in our respective jurisdictions.

The Twain Harte Community Services District, Mi-Wuk/Sugar Pine Fire Protection District and the Strawberry Fire Protection District opted not to participate in the JPA

because they each have their own assessments/parcel taxes and did not want to add more to their residents. The Tuolumne Rancheria Fire Department also opted not to participate in the tax measure. However, each of these districts have expressed support for this new JPA and the special parcel tax for fire.

Special Tax for Fire Services

Your Board now has the authority to adopt an ordinance for the tax and calling for the special election, as well as to set the tax rate. Voters who are not within the jurisdiction of this newly formed JPA will not vote on the tax.

The special election will be held on June 8, 2021. The cost for the election is estimated to be approximately \$3.00 per voter. The cost of the special election will be shared by each member of the JPA based on the number of voters in each jurisdiction. Approximate costs are as follows:

Entity	# of Voters	Estimated Cost
City of Sonora	2976	\$8,928
Columbia Fire Protection District	492	\$1,476
County of Tuolumne	26395	\$79,185
Groveland Community Services District	2296	\$6,888
Jamestown Fire Protection District	484	\$1,452
Tuolumne Fire District	1040	\$3,120
Total	33,683	\$101,049

Tax Ordinance

Administrative, legal staff and Fire Chiefs have met multiple times with the County Assessor and Auditor-Controller to discuss the details of the tax measure. The tax ordinance for your consideration and approval today (Attachment 6) describes the special tax with the following details:

- The tax will be assessed annually
- The tax will be set at a flat rate per parcel as opposed to square footage per parcel or another scalable metric.
- The rate will be set as follows:
 - \$75 per unimproved parcel—parcels with no habitable structures
 - \$150 per improved parcel—parcels with habitable structures (ie: home, barn, commercial, etc.)
- The tax will not have a sunset period; the language on ballot will read “until repealed by voters.”
- Exemptions will be similar to those for regular property taxes, however, there will be no other exemptions for particular parcel types or zoning. This is consistent

with other voter-approved bonds and is the most equal since all parcel types utilize services from the fire department.

- The tax will increase annually by 2%. This is consistent with the way property tax is assessed due under Proposition 13 and will ensure this tax collected increases as costs for services increase.

It is estimated the tax will bring in approximately \$4,183,950 annually with each entity receiving the following approximate annual revenue:

Entity	Total # of Parcels	Estimated Revenue
City of Sonora	2261	\$313,425
Columbia Fire Protection District	217	\$28,650
County of Tuolumne	24,068	\$3,117,975
Groveland Community Services District	4087	\$552,525
Jamestown Fire Protection District	362	\$50,175
Tuolumne Fire District	897	\$121,200
Total	31,892	\$4,183,950

The attached ordinance imposing the special tax must be brought to your Board for two readings at two different meetings before it can be approved. If you are satisfied with the details of the ordinance, we are requesting your Board waive the first reading of the ordinance today and set the public hearing and second reading for March 3, 2021.

The Resolution and Ballot Question:

At your next Board meeting on March 3rd, you will also be asked to approve a resolution calling for the special election on June 8, 2021. A draft resolution is attached for your consideration today (Attachment 7). The resolution also states the question that will be added to the ballot for voters to approve. The language currently reads as follows:

“Tuolumne County Fire Authority Parcel Tax Measure. To reduce the threat of wildfire and enhance fire protection, prevention and response, shall the measure be adopted authorizing a new parcel tax on real property within the boundaries of the Tuolumne County Fire Authority at a rate of \$75 per unimproved parcel and \$150 per improved parcel, with a 2% annual inflation adjustment, providing \$4,183,950 annually, and continuing until repealed by the voters? Yes ____ No ____”

Your Board can make changes to this language at your meeting today or can appoint two Board members to work on this language outside of a Board meeting and bring it back to your Board for approval on March 3rd. The question must be one sentence and can only be 75 words in length.

Argument in Favor of the Ballot Measure

Your Board also has the ability to write an argument in favor of the ballot measure once the County Clerk has received the approved resolution calling for the special election. Only one argument in favor and one argument in opposition would be published in the voter guide that is mailed to voters. The argument is limited to 300 words. The County Clerk sets the timeline for when ballot arguments would be submitted, typically around 30 days after the special election is called. If an argument in opposition is filed, your Board can also submit a rebuttal, which cannot exceed 250 words. If your Board desired to submit argument in favor of the ballot measure, it is recommended your Board appoint two members to work with staff to develop the argument and bring it back at a later meeting for approval.

Recommendation:

It is respectfully requested your Board waive the first reading of the ordinance imposing a special parcel tax for fire suppression, protection and prevention on all taxable real property within the boundaries of the Tuolumne County Fire Authority, subject to voter approval, set the public hearing and second reading of the ordinance for March 3, 2021, and provide staff direction on the associated resolution calling the election and argument in favor of the ballot measure.

Agenda Item 6: Discussion of upcoming agendas

Below is a list of items to be addressed at upcoming meetings and a draft schedule for the first three meetings.

March 3, 2021, 1:00pm

- o Public hearing and second reading of the parcel tax ordinance

- o Approve Resolution calling the special all-mail election for June 8, 2021
 - Finalized ballot question
 - Finalized argument in favor of ballot measure

March 5, 2021—Opportunity to conduct any additional business before deadline

March 12, 2021—Deadline to approve ordinance and resolution calling election

March 17, 2021 - Any remaining discussion and approval needed for argument

Agenda Item 7: Member Reports and Comments

This is time for any members of the TCFA Board to provide informational reports, comments, suggested future agenda items, etc.

Agenda Item 8: Adjournment



Ballot Measures and Public Agencies

General Framework

2014 Version

www.ca-ilg.org/ballot-measure-activities

Important policy decisions affecting local agencies in California are made by the electorate through the initiative and referendum process. Determining what role local agencies and their officials may play in the initiative and referendum process can be quite complicated.

The following series of questions and answers provide general guidelines and analyses of pertinent issues associated with the use of public resources and ballot measure activities. The purpose of this guide is to provide guidance that represents the Institute's best judgment, based on the law, on how to avoid stepping over the line that divides lawful from unlawful conduct. As a general matter, the Institute believes in not snuggling right up to any such lines, but instead giving them some berth.

It is also important to remember that just because a given course of action may be lawful, it may not satisfy the agency's or the public's notions of what constitutes an appropriate use of public resources. Proper use of public resources is a key stewardship issue for public officials. In determining proper use of public resources, it is important to remember the law creates only minimum standards. In addition, there may be potential political implications of walking too close to the line in terms of the public's overall reaction to a ballot measure and where one wants the public's attention to be focused.

This guide is offered for general information only and is not intended as legal advice. Reasonable attorneys can and do disagree on where the boundaries are on these issues; moreover, the specific facts of the situation are an important element of the analysis. **Always consult an attorney knowledgeable about this area of the law when analyzing what to do in specific situations.**

For more information on legal issues associated with use of public resources and ballot measure activities, see parts 2-4 of this resource available at www.ca-ilg.org/ballot-measure-activities:

- Part 2: Before a Measure is Put on the Ballot
- Part 3: Specific Questions
- Part 4: Activities by Individuals

General Framework

- 1. Our agency is interested in a measure that is appearing on an upcoming ballot. We have information that may be helpful to the public in making its decision on how to vote. What do we need to keep in mind as we consider sharing that information with the public?*

Public agencies play an important and ongoing role in contributing to the public's information on important issues affecting the community. The flow of information back and forth between public agencies and residents, as well as among residents, is vital to effective decision-making.

When it comes to issues that either may be or are on the ballot, there are two different areas of law that provide guidance on public agency communication activities:

- One is a body of case law that says what public agencies may and may not do to communicate their views on ballot measures with public resources. "Public resources" includes not only money, but things paid for with public money, including staff time, agency facilities, materials and equipment and agency communications channels.¹
 - The other area of law relates to campaign restrictions and transparency requirements under the state's Political Reform Act. Part of the theory of transparency requirements is that the public has a right to know who is spending what to influence their votes.² There also are restrictions on using public resources to mail advocacy materials to voters.³
- 2. What is the underlying theory for restricting public agency activities with respect to ballot measure advocacy? Aren't public information efforts relating to what's best for the community a core function for local agencies?*

The reason courts have given for restricting public agency activities with respect to ballot measures is the use of taxpayer dollars in an election campaign could distort the debate⁴ and undermine the fairness of the election.⁵ More specifically, courts have worried about public agency communications overwhelming voters⁶ and drowning out the views of others.⁷ Restrictions also are a way of maintaining the integrity of the electoral process by neutralizing any advantage that those with special access to government resources might possess.⁸

That being said, courts have also recognized that public agencies also have a role to play in making sure the public has the information it needs to make informed decisions. One court explained the role this way:

If government is to secure cooperation in implementing its programs, if it is to be able to maintain a dialogue with its citizens about their needs and the extent to which government can or should meet those needs, government must be able to communicate. An approach that would invalidate all controversial government speech would seriously impair the democratic process.⁹

The court also noted that, if public agencies cannot address issues of public concern and controversy, they cannot govern.¹⁰

3. *What guidelines have the courts provided on using public resources relating to ballot measures?*

The California Supreme Court has, in essence, created three categories of activities:

- a) Those that are usually *impermissible* campaign activities;
- b) Those that are usually *permissible* informational activities; and
- c) Those that may *require further analysis* under the “style, tenor and timing” test.¹¹

Impermissible activities include using public funds to purchase campaign materials: bumper stickers, posters, advertising “floats,” television and radio spots and billboards.¹² Another improper activity is using public resources to disseminate advocacy materials prepared by others.¹³ The production and mailing of “promotional campaign brochures” is also not allowed, even when those documents contain some useful factual information for the public.¹⁴

Permissible activities include:

- Taking a position on a ballot measure in an open and public meeting where all perspectives may be shared;¹⁵
- Preparing staff reports and other analyses to assist decision-makers in determining the impact of the measure and what position to take;¹⁶
- Responding to inquiries about ballot measures in ways that provide a fair presentation of the facts about the measure and the agency’s view of the merits of a ballot measure.¹⁷
- Accepting invitations to present the agency’s views before organizations interested in the ballot measure’s effects.¹⁸

Any activity or expenditure that doesn’t fall into either the “usually impermissible” or “usually permissible” category must be evaluated by a “style, tenor and timing” standard against the backdrop of the overarching concern for fairness and non-distortion in the electoral process.¹⁹

What kinds of things do the courts look for in evaluating “style, tenor and timing”? The safest approach is to deliver the information through regular agency communications channels (for example, the agency’s existing website or newsletter), in a way that emphasizes facts and does not use inflammatory language or argumentative rhetoric.²⁰ Any communications should not encourage the public to adopt the agency’s views, vote one way or another, or take any other actions in support of or in opposition to the measure.²¹

4. *Are there additional restrictions a public agency should keep in mind with respect to ballot measure communications?*

Yes. To complicate matters further, regulations adopted by the Fair Political Practices Commission further prohibit certain kinds of communications using a similar, but not identical, standard as the courts. The regulation prohibits *mailed* communications²² that *either* expressly advocate the passage or defeat of a clearly identified ballot measure²³ *or*, when taken as a whole and in context, unambiguously urge a particular result in an election.²⁴ Among the criteria for whether a communication meets this test is whether, considering the style, tenor and timing of the communication, the communication can reasonably be characterized as campaign material (not a fair presentation of the facts serving only an informational purpose).²⁵

The regulation goes on to say that, when considering the style, tenor and timing of an item, factors to be considered include (but are not limited to) whether the item:

- Uses inflammatory or argumentative language (an indicator of an advocacy piece);
- Is funded from a special appropriation related to the measure (possibly another indicator of an advocacy piece);
- Is consistent with normal communications patterns for the agency (possibly an indicator of an informational piece); and
- Is consistent with the style of other agency communications (possibly an indicator of an informational piece).²⁶

These restrictions expand previous Fair Political Practices Commission interpretations of what constitutes a prohibited mass mailing.²⁷ The basic prohibition is very broad: “No newsletter or other mass mailing shall be sent at public expense.”²⁸ The original ballot measure materials relating to this section indicate that the target of this prohibition was mailings by elected officials to raise their profile with voters.²⁹

Mass mailing restrictions apply to 200 or more substantially similar pieces of mail. Under the Fair Political Practices Commission regulation, items are “substantially similar” if they both expressly advocate or unambiguously urge the passage or defeat of the same ballot measure.³⁰

5. *What about transparency requirements under the Political Reform Act?*

Local agencies engaged in activities related to ballot measures should also be mindful of campaign expenditure reporting requirements when the agency produces materials which either expressly advocate or unambiguously urge a particular result in a ballot measure election.³¹ These reporting requirements apply both *before and after* a measure has qualified for the ballot.³²

In this regard, it is important to distinguish between transparency requirements and prohibitions. The earlier discussion in this guide relates to the *prohibition* against using public resources for campaign purposes. The Political Reform Act's campaign disclosure requirements, however, are *transparency* requirements: the message is that the public has a right to know who is spending what amounts of money to influence elections.

For state and local agencies, the Fair Political Practices Commission's regulations say that public agencies must report the direct and indirect costs of materials and activities that either expressly advocate or unambiguously urge the qualification, passage or defeat of a ballot measure.³³ Communications meet these criteria if they:

- Are clearly campaign material or activities (bumper stickers, billboards, door-to-door canvassing, or mass media advertising, including but not limited to television and radio spots); or
- Can reasonably be characterized as campaign materials considering their style, tenor and timing and do not involve a fair presentation of the facts serving only an informational purpose.³⁴

Again, the regulation goes on to say that, when considering the style, tenor and timing of an item, factors to be considered include (but are not limited to) whether the item:

- Is funded from a special appropriation related to the measure;
- Is consistent with normal communications patterns for the agency;
- Is consistent with the style of other agency communications; and
- Uses inflammatory or argumentative language.³⁵

However, the regulations accept certain communications from reporting requirements. For example, these exceptions include communications providing internal analyses of a measure to a member of the public on request, reports of an agency's position in the minutes of a meeting, agency arguments in a voter's pamphlet, presentations by public employees on the agency's position requested by organizations, and communications "clearly and unambiguously" authorized by law.³⁶

These transparency requirements present tricky issues for local agencies. Local agencies may be inclined to report any costs incurred relating to ballot measure communications out of an abundance of caution. However, in so doing, an agency may be creating a basis for someone to challenge an agency as having made an impermissible expenditure of public resources under the case law and Fair Political Practices regulations discussed under questions 3 and 4, respectively. This is one of the many reasons it is wise to be in close contact with agency counsel regarding issues relating to ballot measure activities.

6. *What are the consequences of stepping over the line dividing permissible from impermissible uses of public resources with respect to ballot measure activities?*

The stakes are high for those involved in misuses of public resources. Public officials face personal liability—criminal and civil—for stepping over the line.

Improper use of public resources is a crime.³⁷ Criminal penalties include a two- to four-year state prison term and permanent disqualification from public office.³⁸

Civil penalties include a fine of up to \$1,000 for each day the violation occurs, *plus* three times the value of the resource used.³⁹ Other consequences may include having to reimburse the agency for the value of the resources used.⁴⁰ Those charged with improper use of public resources may have to pay not only their own attorneys fees, but also those of any individual who is challenging the use of resources.⁴¹

In addition, conflicting perspectives on whether there might be a “*de minimus*” defense makes relying on such a defense risky.⁴² This includes relying on the defense that one has reimbursed the value of using public resources improperly.

Finally, engaging in such activities gives rise to reporting obligations for public agencies under the Political Reform Act.⁴³ Failure to comply with these requirements subjects an agency to additional penalties.⁴⁴

7. *Are there general strategies a public agency should employ to make sure that it doesn't step over any lines?*

The first is to make sure that public agency employee and officials are aware of these restrictions.

Another strategy is to review the issues in this guide with agency counsel at the outset of any ballot measure related activities to be clear on how he or she interprets the law in this area. In many areas, the law is not clear and an agency is well-advised to understand their attorney's interpretations of what is allowed and what is risky. The next strategy is to have a practice of consulting with agency counsel on the application of these restrictions to specific issues that arise.

Finally, documenting an agency's respect for these restrictions is another important strategy. Attorneys refer to this as creating a *record*. Potential challengers to an agency's activities will review the record and other materials (including emails, for example) to determine whether to file a lawsuit. A court will examine the record in deciding whether any missteps occurred. The agency will want to be able to point to documentation that demonstrates that all actions were well within the boundaries dividing lawful from unlawful conduct.

Thanks to Our Supporters

The Institute for Local Government would like to thank the following partners for their support:

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The Institute welcomes feedback on this resource:

- *Email:* ethicsmailbox@ca-ilg.org Subject: *Legal Issues Associated with Use of Public Resources and Ballot Measure Activities Part 1: General Framework*
- *Mail:* 1400 K Street, Suite 205 ▪ Sacramento, CA ▪ 95814

References and Resources

Note: Sections in the California Code are accessible at <http://leginfo.legislature.ca.gov/>. Fair Political Practices Commission regulations are accessible at www.fppc.ca.gov/index.php?id=52. A source for case law information is www.findlaw.com/cacases/ (requires registration).

¹ See *Stanson v. Mott*, 17 Cal. 3d 206, 210-11(1976) (referring to expenditure of staff "time and state resources" to promote passage of bond act); *Vargas v. City of Salinas*, 46 Cal. 4th 1, 31-32 (2009). See also *People v. Battin*, 77 Cal. App. 3d 635, 650 (4th Dist. 1978) (county supervisor's diversion of county staff time for improper political purposes constituted criminal misuse of public monies under Penal Code section 424), *cert. denied*, 439 U.S. 862 (1978), *superseded on other grounds by People v. Conner*, 34 Cal. 3d 141 (1983). *But see Bardolph v. Arnold*, 435 S.E. 2d 109, 113 (N.C. App 1993) (local government may expend public funds to create support for qualified ballot measure), *rev. denied*, 439 S.E.2d 141 (1993).

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- ² See 2 Cal. Code Regs. § 18420.1 (defining campaign-related expenditures as either reportable independent expenditures or contributions).
- ³ See 2 Cal. Code Regs. § 18901.1 (prohibiting campaign mailings sent at public expense).
- ⁴ See *Vargas*, 46 Cal. 4th at 31-32.
- ⁵ *Vargas*, 46 Cal. 4th at 36-37.
- ⁶ See *Vargas*, 46 Cal. 4th at 23-24, 32, citing *Stanson v. Mott*, 17 Cal. 3d 206, 216-217 (explaining that, as a constitutional matter, “the use of the public treasury to mount an election campaign which attempts to influence the resolution of issues which our Constitution leave[s] to the ‘free election’ of the people (see Cal. Const., art. II, § 2) . . . present[s] a serious threat to the integrity of the electoral process”). See also *Keller v. State Bar*, 47 Cal.3d 1152, 1170-1172, (1989), *reversed on other grounds* 496 U.S. 1 (1990).
- ⁷ *Vargas*, 46 Cal. 4th at 46 (concurring opinion).
- ⁸ *San Leandro Teachers Ass’n v. Governing Bd. of San Leandro Sch. Dist.*, 46 Cal.4th 822, 845 (2009).
- ⁹ *Miller v. Comm’n on the Status of Women*, 151 Cal. App. 3d 693, 701 (1984).
- ¹⁰ *Id.*
- ¹¹ *Vargas*, 46 Cal. 4th at 7, citing *Stanson*, 17 Cal. 3d at 222 & n. 8.
- ¹² *Vargas*, 46 Cal. 4th at 24, 32, 42.
- ¹³ *Vargas*, 46 Cal. 4th at 24, 35.
- ¹⁴ *Vargas*, 46 Cal. 4th at 39 n. 20.
- ¹⁵ *Vargas*, 46 Cal. 4th at 37. See also *Choice-In-Education League v. Los Angeles Unified Sch. Dist.*, 17 Cal. App. 4th 415, 429-30 (1993).
- ¹⁶ *Vargas*, 46 Cal. 4th at 36-37.
- ¹⁷ *Vargas*, 46 Cal. 4th at 24-25, 33.
- ¹⁸ *Vargas*, 46 Cal. 4th at 25, 36, citing *Stanson*, 17 Cal. 3d at 221.
- ¹⁹ *Vargas*, 46 Cal. 4th at 7, 30, 40.
- ²⁰ *Vargas*, 46 Cal. 4th at 34, 40 (compare with the tone of the newsletter described in footnote 20).
- ²¹ *Vargas*, 46 Cal. 4th at 40. Here is the full text of the *Vargas*’ court’s conclusion:

In sum, a variety of factors contributes to our conclusion that the actions of the City that are challenged in this case are more properly characterized as providing information than as campaigning: (1) the information conveyed generally involved past and present facts, such as how the original UUT was enacted, what proportion of the budget was produced by the tax, and how the city council had voted to modify the budget in the event Measure O were to pass; (2) the communications avoided argumentative or inflammatory rhetoric and did not urge voters to vote in a particular manner or to

take other actions in support of or in opposition to the measure; and (3) the information provided and the manner in which it was disseminated were consistent with established practice regarding use of the Web site and regular circulation of the city's official newsletter. Furthermore, we emphasize that the principles that we have applied in this setting are equally applicable without regard to the content of whatever particular ballot measure may be before the voters—whether it be a tax-cutting proposal such as that involved in this case, a “slow-growth” zoning measure restricting the pace of development, a school bond issue providing additional revenue for education, or any other of the diverse local ballot measures that have been considered in California municipalities in recent years. (See, e.g., Cal. Elections Data Archive, Cal. County, City & School District Election Outcomes: 2004 Elections: City Offices and Ballot Measures, City Report, table 1.2, pp. 21-43 <<http://www.csus.edu/isr/isr3.html>> [as of Apr. 20, 2009].) In any of these contexts, a municipality's expenditure of public funds must be consistent with the standard set forth in *Stanson, supra*, 17 Cal.3d 206, 130 Cal.Rptr. 697, 551 P.2d 1.

See also Cal. Gov't Code § 54964(a), (b)(3) (prohibiting local public agency expenditures for activities that expressly advocate the approval or rejection of a clearly identified ballot measure).

²² *See* 2 Cal. Code Regs. § 18901.1(a)(1) (referring to “tangible item[s] . . . delivered, by any means . . .”).

²³ *See* 2 Cal. Code Regs. § 18901.1(a)(2)(A).

²⁴ *See* 2 Cal. Code Regs. § 18901.1(a)(2)(B).

²⁵ *See* 2 Cal. Code Regs. § 18901.1(c)(2).

²⁶ *See* 2 Cal. Code Regs. § 18901.1(e).

²⁷ *See* 2 Cal. Code Regs. § 18901.1.

²⁸ Cal. Gov't Code § 89001.

²⁹ *See* California Voters Pamphlet, Proposition 9, Legislative Counsel Analysis, (June 4, 1974) (“[This initiative] would prohibit the mailing of legislative newsletters or other mass mailings at public expense by or on behalf of any state officer after he has filed as a candidate for office.”).

³⁰ *See* 2 Cal. Code Regs. § 18901.1(d) (“For purposes of subdivision (a)(4), an item is “substantially similar” to another item if both items expressly advocate or unambiguously urge the election or defeat of the same candidate or measure.”)

³¹ Cal. Gov't Code § 82013(b), 84200.2 Cal. Code Regs., § 18225(b)(2). *See also* *Yes on Measure A v. City of Lake Forest*, 60 Cal. App. 4th 620, 625-626 (1997).

³² 2 Cal. Code Regs. § 18225(b) (defining an expenditure as monetary and non-monetary payments used for communications with expressly advocate the qualification, passage or defeat of a clearly identified ballot measure).

³³ *See* 2 Cal. Code Regs. § 18420.1(a), (c).

³⁴ *See* 2 Cal. Code Regs. § 18420.1(b).

³⁵ *See* 2 Cal. Code Regs. § 18420(d).

³⁶ *See* 2 Cal. Code Regs. § 18420(e).

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- ³⁷ See Cal. Penal Code §§ 72.5(b) (use of public funds to attend a political function to support or oppose a ballot measure); 424 (misappropriation of public funds); 484-87 (theft). See also *People v. Battin*, 77 Cal. App. 3d 635 (1978) (prosecution of county supervisor for engaging campaign activities during county business hours using county facilities), *superseded on other grounds by People v. Conner*, 34 Cal. 3d 141 (1983).
- ³⁸ Cal. Penal Code § 424.
- ³⁹ Cal. Gov't Code § 8314(c)(1).
- ⁴⁰ *Stanson*, 17 Cal. 3d at 226-227 (finding that "public officials must use due care, *i.e.*, reasonable diligence in authorizing the expenditure of public funds, and may be subject to personal liability for improper expenditures made in the absence of due care"). See also *Harvey v. County of Butte*, 203 Cal. App. 3d 714, 719 (1988).
- ⁴¹ See generally *Tenwolde v. County of San Diego*, 14 Cal. App. 4th 1083 (4th Dist. 1993), *rev. denied*.
- ⁴² See *People v. Battin*, 77 Cal. App. 3d at 65 (1978) (Penal Code section 424's "proscription is not limited to the misuse of public funds in a particular monetary amount. Rather it proscribes *any* misuse, no matter how small." [emphasis in original]). See also *People v. Bishop*, A081989 (1st Dist. 2000) (this unpublished opinion follows *People v. Battin* and holds that reimbursement is not a defense). But see *DiQuisto v. County of Santa Clara*, 181 Cal. App. 4th 236 (2010) (majority found that sending an editorial against a ballot measure via email on one's lunch hour constituted advocacy, but involved a minimal use of public resources—note dissenting opinion disagreeing with majority's minimal-use-of-public-resources conclusion).
- ⁴³ Cal. Gov't Code § 84203.5 (requiring independent expenditure reports by committees spending more than \$500 each year in support or opposition to a ballot measure).
- ⁴⁴ See, for example, Cal. Gov't Code §§ 83116, 91001(b), 91000(a), 91001.5, 91002, 91004, 91005, 91012.



Ballot Measures and Public Agencies

Individual Activities

2014 Version

www.ca-ilg.org/ballot-measure-activities

Important policy decisions affecting local agencies in California are made by the electorate through the initiative and referendum process. What role may local agencies and their officials play in the initiative and referendum process?

The following series of questions and answers provide general guidelines and analyses of issues regarding the ballot measure activities of individuals. The purpose of this guide is to provide guidance that represents the Institute's best judgment, based on the law, on how to avoid stepping over the line that divides lawful from unlawful conduct. As a general matter, the Institute believes in not snuggling right up to any such lines, but instead giving them some berth.

It is also important to remember that just because a given course of action may be lawful, it may not satisfy the agency's or the public's notions of what constitutes an appropriate use of public resources. Proper use of public resources is a key stewardship issue for public officials. In determining proper use of public resources, it is important to remember the law creates only minimum standards. In addition, there may be potential political implications of walking too close to the line in terms of the public's overall reaction to a ballot measure and where one wants the public's attention to be focused.

This guide is offered for general information only and is not intended as legal advice. Reasonable attorneys can and do disagree on where the boundaries are on these issues; moreover, the specific facts of the situation are an important element of the analysis. **Always consult an attorney knowledgeable about this area of the law when analyzing what to do in specific situations.**

For more information on legal issues associated with use of public resources and ballot measure activities, see parts 1-3 of this resource available at www.ca-ilg.org/ballot-measure-activities:

- Part 1: General Framework
- Part 2: Before a Measure is Put on the Ballot
- Part 3: Specific Questions

Individual Activities

1. What may individual public officials do to support or oppose ballot measures?

Individual officials and employees can work on the campaign during their personal time, including lunch hours, coffee breaks, vacation days, etc. They can make a campaign contribution to a ballot measure campaign committee using personal funds, and/or pay for and attend a campaign fundraiser during personal time. They can also make campaign appearances during personal time.

2. May I use agency letterhead or my title when communicating my support for a ballot measure?

Restrictions on the use of an agency's seal, logos and letterhead are common.¹ As a general matter, public agency letterhead is a public resource bought and paid for with taxpayer funds. As a result, it should not be used for ballot measure advocacy activities.²

Sometimes campaigns will use a facsimile letterhead that looks like official agency letterhead but is paid for with private funds. If the agency's letterhead is to be used in this manner, the governing body of the agency should approve such use and the letterhead should clearly indicate that it was not paid for with public funds.³ Other Political Reform Act requirements may also apply, for example, placing the name of the committee or candidate on the outside of the envelope.⁴

Using an agency's logo, letterhead or seal with the intent to deceive voters into thinking the communication is from an agency can be a violation of California election law.⁵ California law makes it a misdemeanor to use city seals with the intention of creating an impression that a document is authorized by a public official.⁶

The tradition when using titles ("county supervisor," "mayor," or "council member") is to indicate that the titles are used for identification purposes only. The theory underlying this policy is to be clear that one is not communicating on behalf of the agency.

For more information on this topic, see "Who Gets to Use Agency Seals, Logos, Letterhead and Other Insignia" available at www.ca-ilg.org/AgencySeals_Logos_Letterhead.

3. Can I contribute to the ballot measure campaign from my campaign funds?

Yes. The Fair Political Practices Commission has generally advised that candidates and officeholders may transfer funds from their candidate committees to ballot measure committees.⁷ In general, money raised to support a person's election to office is considered to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding

office.⁸ As such, these funds must be used only for may only be used for political, legislative, or governmental purposes.⁹

Although the Commission hasn't specifically explained why, one theory is because ballot measures are legislative in nature.

Note, however, that special disclosure rules apply to candidate-sponsored ballot measure committees.¹⁰

4. May I fundraise for the measure, so private resources can pay for campaign activities? What about approaching those who do business with my agency for financial support for the campaign?

The answer is generally yes, although with two caveats.

In terms of legal restrictions, one needs to be aware that the restrictions against seeking campaign contributions from those involved in license and permit proceedings also applies to solicitations of contributions to ballot measure campaigns.¹¹ For more information about this restriction, see "Campaign Contributions May Cause Conflicts for Appointees and Commissioners," which is available online at <http://www.fppc.ca.gov/index.php?id=103>. Local agencies may have their own, broader restrictions.

Even under circumstances when the law does not constrain an official's political fund-raising activities (other than requiring disclosure of donors), it is important to be extraordinarily judicious in choosing who to ask for campaign contributions. If an individual or company has matters pending with one's agency, they (and others, including the media and one's fellow candidates) are going to perceive a relationship between the decision and whether they contribute to one's campaign. The unkind characterization for this dynamic is "shake-down."

Two important points to remember:

- The legal restrictions on campaign fund-raising are minimum standards.
 - Public officials who indicate their actions on a matter will be influenced by whether they receive a campaign contribution put themselves at risk of being accused of soliciting a bribe or extortion.
- 5. May we ask staff to support the ballot measure, for example, by asking them to endorse the measure, make campaign contributions or volunteer their time?***

It's not a good idea. California law has a strong tradition of separating the electoral process from decisions relating to public employment.

For this reason, state law forbids elected officials and employees from soliciting campaign funds from employees.¹² (The exception is if the solicitation is made to a significant segment of the public that happens to include agency officers or employees.¹³)

State law also forbids conditioning employment related decisions on supporting a candidate or “other corrupt condition or consideration” which includes urging “individual employee’s action.”¹⁴

Note that there are exceptions to these restrictions if the ballot measure would affect the rate of pay, hours of work, retirement, civil service or other working conditions.¹⁵

6. *May I ask fellow elected and appointed officials to contribute time, endorsements and/or money to the campaign?*

The same state law that prohibits solicitations of campaign contributions from one’s employees’ prohibits solicitations of one’s fellow officials in the same jurisdiction.¹⁶

7. *I generally share my views on ballot measures with my friends and constituents; is it okay to send that out using my public agency email address and the public agency email system?*

Local officials who have used their agency emails for such purposes have faced criticism. In fact one such use led to a lawsuit that went to the California Court of Appeal. Although a divided court ultimately found that sending an editorial against a ballot measure via email on one’s lunch hour constituted advocacy, it involved only a minimal use of public resources.¹⁷

The better practice is to use a personal email address and send such information from a non-public agency computer system.

8. *May I attend a fundraiser for the ballot measure, using public funds to pay for the ticket?*

No. This squarely violates the proscription against using public funds for ballot measure advocacy.

9. *What about if someone gives me one or more tickets to a fundraiser on a ballot measure?*

From time to time a public official will be invited by candidates or ballot measure campaigns to attend political fundraisers. The rule is that a committee or candidate may provide **two tickets** per event to an official without the invited official having to report the value of the ticket on his or her Statement of Economic Interests.¹⁸ If the official receives more than two tickets, the face value of the extra tickets must be reported on his or her Statement of Economic Interests.

10. I have an agency cell phone; what if someone calls me on it to discuss ballot measure campaign activities?

The safest approach is to ask the caller to call you back on a non-agency line.¹⁹

11. May I wear my public agency uniform while expressing my views about a ballot measure?

No, California law specifically prohibits wearing public agency uniforms while participating in political activities.²⁰

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The Institute welcomes feedback on this resource:

- *Email:* ethicsmailbox@ca-ilg.org Subject: *Legal Issues Associated with Use of Public Resources and Ballot Measure Activities Part 4: Individual Activities*
- *Mail:* 1400 K Street, Suite 205 ▪ Sacramento, CA ▪ 95814

References and Resources

Note: Sections in the California Code are accessible at <http://leginfo.legislature.ca.gov/>. Fair Political Practices Commission regulations are accessible at www.fppc.ca.gov/index.php?id=52. A source for case law information is www.findlaw.com/cacases/ (requires registration).

- ¹ The Institute has collected samples of such policies on its website, available at www.ca-ilg.org/post/sample-policies-related-use-agency-insignia.
- ² See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- ³ See, for example, San Diego County Water Authority Administrative Code, § 1.08.10(d) ("The official seal and any emblem, symbol, logo or other distinctive mark of the Authority shall be used solely for Authority purposes and programs, unless otherwise authorized by the Board. Private, commercial or non-commercial use of the official seal, mark, name or identity of the Authority is prohibited."). The code is available online at: www.sdcwa.org/about/who-admincode.phtml.
- ⁴ See Cal. Gov't Code § 84305.
- ⁵ Cal. Elect. Code § 18304.
- ⁶ See Cal. Gov't Code §34501.5, which provides:
 - (a) Any person who uses or allows to be used any reproduction or facsimile of the seal of the city in any campaign literature or mass mailing, as defined in Section 82041.5, with intent to deceive the voters, is guilty of a misdemeanor.
 - (b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.

Note that a parallel state-wide provision for county and special district seals does not exist, however many have adopted local provisions.

⁷ California Fair Political Practices Commission Advice Letters No. I-00-068 (May 31, 2000) and I-91-153 (April 01, 1991).

⁸ See Cal. Gov't Code § 89510(b).

⁹ Cal. Gov't Code § 89512 (an expenditure of campaign funds must be reasonably related to a legislative or governmental purpose, unless the expenditure confers a substantial personal benefit, in which case such expenditures must be directly related to a political, legislative or governmental purpose). "Substantial personal benefit" means a campaign expenditure which results in a direct personal benefit with a value of more than \$200. Cal. Gov't Code § 89511(b)(3).

¹⁰ 2 Cal. Code Regs. § 18521.5.

¹¹ Cal. Gov't Code § 84308(b).

¹² See Cal. Gov't Code § 3205 (except for those communications to a significant segment of the public that happens to include fellow public officials and employees).

¹³ See Cal. Gov't Code § 3205(c).

¹⁴ See Cal. Gov't Code § 3204, which reads as follows:

No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

¹⁵ See Cal. Gov't Code § 3209 ("Nothing in this chapter prevents an officer or employee of a state or local agency from soliciting or receiving political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of such state or local agency, except that a state or local agency may prohibit or limit such activities by its employees during their working hours and may prohibit or limit entry into governmental offices for such purposes during working hours.").

¹⁶ See Cal. Gov't Code § 3205 (a) ("An officer or employee of a local agency shall not, directly or indirectly, solicit a political contribution from an officer or employee of that agency, or from a person on an employment list of that agency, with knowledge that the person from whom the contribution is solicited is an officer or employee of that agency.").

¹⁷ See *DiQuisto v. County of Santa Clara*, 181 Cal. App. 4th 236 (2010) (Note dissenting opinion disagreeing with majority's minimal-use-of-public-resources conclusion).

¹⁸ 2 Cal. Code Regs. § 18946.4(c).

- ¹⁹ *See* Cal. Gov't Code § 8314(b)(2) (““Campaign activity" does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.”).
- ²⁰ *See* Cal. Gov't Code § 3206 (“No officer or employee of a local agency shall participate in political activities of any kind while in uniform.”).



Ballot Measures and Public Agencies

Questions about Specific Activities

2014 Version

www.ca-ilg.org/ballot-measure-activities

Important policy decisions affecting local agencies in California are made by the electorate through the initiative and referendum process. Determining what role local agencies and their officials may play in the initiative and referendum process can be quite complicated.

The following questions and answers provide guidelines and analyses of pertinent issues associated with the use of public resources and ballot measure activities. The purpose of this guide is to provide guidance that represents the Institute's best judgment, based on the law, on how to avoid stepping over the line that divides lawful from unlawful conduct. As a general matter, the Institute believes in not snuggling right up to any such lines, but instead giving them some berth.

It is also important to remember that just because a given course of action may be lawful, it may not satisfy the agency's or the public's notions of what constitutes an appropriate use of public resources. Proper use of public resources is a key stewardship issue for public officials. In determining proper use of public resources, it is important to remember the law creates only minimum standards. In addition, there may be potential political implications of walking too close to the line in terms of the public's overall reaction to a ballot measure and where one wants the public's attention to be focused.

This guide is offered for general information only and is not intended as legal advice. Reasonable attorneys can and do disagree on where the boundaries are on these issues; moreover, the specific facts of the situation are an important element of the analysis. **Always consult an attorney knowledgeable about this area of the law when analyzing what to do in specific situations.**

For more information on legal issues associated with use of public resources and ballot measure activities, see parts 1, 3, and 4 of this resource available at www.ca-ilg.org/ballot-measure-activities:

- Part 1: General Framework
- Part 2: Before a Measure is Put on the Ballot
- Part 4: Activities by Individuals

Questions about Specific Activities

1. The ballot measure my agency is concerned about has serious legal flaws; may my agency use public resources to file suit against the measure?

Yes. An appellate court has held that a local agency may use public resources to make a pre-election legal challenge to a ballot measure.¹

2. May public resources be used for voter registration or get out the vote efforts?

Yes. An appellate court has determined that this is an appropriate use of public resources, as long as the efforts funded with public resources did not involve urging the public to vote one way or another in upcoming elections.²

3. May an agency adopt a resolution supporting or opposing a ballot measure? Are there restrictions on the language that should be used in such resolutions?

Taking a position on a ballot measure in an open and public meeting where all perspectives may be shared is permissible.³ Additionally, California's Elections Code allows agencies to inform the public of its opinion on a measure by submitting written arguments in favor or against ballot measures.⁴

In terms of language, the safest practice is to apply the Supreme Court's standard of language that is "simple, measured and informative," which is language that emphasizes facts and does not use inflammatory language or argumentative rhetoric.⁵ Additional good practice is to not encourage voters to adopt the agency's views or vote one way or another on the measure.⁶

Always consult with agency counsel when taking a position on a measure to ensure that the agency does not step over the line dividing permissible informational activities from impermissible campaign activities.

4. What about expenditures for writing a report on a ballot measure or submitting an argument for or against a measure for the ballot pamphlet?

Prior to certification of the measure for the ballot, California's Elections Code allows for cities and counties to refer the measure to any city or county agency to report on the impact of the measure on a variety of issues.⁷ After certification, the city or county must adopt the measure without amendment, submit the measure for vote of the electorate, or refer the measure for report on various impacts.⁸

As stated above, the California Elections Code also allows local agencies inform the public of its opinion on a measure by submitting written arguments in favor or against ballot measures.⁹

Both for reports and submitted arguments, it is a good idea to offer an objective, measured analysis of the issue and consider both sides of the argument when formulating and presenting the agency's position. Although stating the agency's position is allowed, the agency must be wary not to engage in activities that could be seen as *campaigning* for or against the measure.¹⁰

5. *May an agency provide links on its website to other organizations' campaign materials on a ballot measure?*

Linking to just one side of the debate on a ballot measure would be impermissible campaigning.¹¹

Providing links to both sides (pro and con) may also be risky.¹² Current case law allows an agency to reserve its website or other communications vehicles to communicating the agency's *own* information.¹³ A concern is that once an agency starts using its site to communicate *others'* information, including that with which it may disagree, the agency may undermine its prerogatives to exclude content.¹⁴

For that reason, the safest approach under both First Amendment principles and use-of-public-resources principles is not to include links to campaign websites. An agency may, however, link to nonpartisan analyses of ballot measures, such as those offered on a statewide basis by the Legislative Analyst's Office, Attorney General and the League of Women Voters' Easy Voter Guide (the latter organization also offers nonpartisan video overviews of ballot measures in English and Spanish via their YouTube channel).

6. *What about using public property for press conferences and rallies relating to ballot measures?*

The key question is the nature of the property. Certain kinds of public property, like streets, sidewalks and parks, have been traditionally open to public assembly and debate.¹⁵ The notion is that everyone can use such spaces and public agencies cannot restrict access to them based on the point of view that will be expressed.¹⁶ Because everyone has access to such spaces and no one can be excluded based on their views, using such spaces for press conference and rallies does not pose a risk of distorting the debate on a ballot measure¹⁷ or undermining the fairness of the election.¹⁸

There are other kinds of public property that are not places that are by tradition or designation a forum for members of the public to communicate with each other.¹⁹ The insides of public buildings tend to fall into this category. The notion is that rallies and press conferences will disrupt the orderly provision of public services in such places.

The basic rule is evenhandedness. If it would be disruptive for some or all perspectives to use a particular place for press conferences and rallies, then no one should be allowed to use those places for those purposes.²⁰

7. *What about using other agency communications channels (for example, email or intra-office mail systems) to communicate the agency's (or public official's) views on a ballot measure?*

The safest approach is *not* to use systems that have been developed with public resources to disseminate campaign materials. This sends a clear message to employees, public officials and others that such systems are not for personal or political use. With respect to intra-net or internal mail systems, restricting such use also avoids putting the public agency in the position of making decisions based on the viewpoint being expressed.²¹

That being said, it should be acknowledged that there is a court of appeal decision in which the majority of justices found that one email sent on a local official's lunch hour transmitting an editorial in favor of one side of an election issue did not constitute a punishable violation of the law.²² The result turned on the majority's conclusion that the action constituted a minimal use of public resources—a conclusion with which the dissenting justice disagreed.

8. *What guidelines should an agency follow with respect to communications relating to public access channel television coverage of the ballot measure? For example, what if either the agency or the League of Women Voters wants to produce a program presenting the views of both proponents and opponents to a ballot measure to help educate the community?*

Generally speaking, the courts distinguish between situations in which public agencies have allowed “general access” to the broadcasting facilities as opposed to allowing “selective access.”²³

If a public agency makes the channel generally available to either all speakers or certain classes of speakers, then the channel is what First Amendment attorneys call a “designated public forum.”²⁴ If the channel falls into this category, the safest approach is generally to treat political programming no differently from any other programming on the public access channel. This would comply with First Amendment protections against discriminating against certain kinds of speech,²⁵ as well as the reasoning in Cable TV Access Channel Rules.²⁶

On the specific issue of debates, the courts have indicated that using public resources for public forums at which all may appear and freely express their views pro and con are not improper; similarly, reasonable expenses for radio and television debates between proponents of the differing sides of the proposition would also be okay.²⁷ The courts have recognized some latitude for those who organize debates to create *viewpoint neutral* criteria to determine who will participate.²⁸

Even so, to avoid arguments over who would be the best representative for each side of the debate, it may be preferable to have an organization that does not have a position on a ballot measure organize the debate or to let each side of a ballot measure select its representative.

Having a viewpoint-neutral group like League of Women Voters organize the debate (as opposed to the local agency that has taken a position on the matter being debated) can also avoid second-guessing about the motivations underlying who was selected to participate.

- 9. *Our staff is sensitive to the issue of not appearing to advocate on ballot measures. Sometimes, however, when we have presented the facts as we understand them or believe them to be, we find that those who disagree with our agency's view of the facts will try to engage staff in a debate. If we respond, we worry we look like we are going beyond our informational role (and potentially being set up to look like we are advocating instead of informing).***

A possible response to suggest staff give in such situations is:

“We are offering this information based on our research and analysis of this issue. If others have research and analysis they want to offer, they should make it available so the public can evaluate all available information, as well as the research and analysis on which the information is based. My role here as a representative of our agency is not to debate, but to provide the information our agency has on this topic.”

It may also be helpful to remind staff that, when in doubt about how to respond in a particular situation, staff may want to keep in mind the option of referring questions or issues to others in the organization. If an issue comes up relating to what the agency has done on a ballot measure, a good practice is for all staff who may receive inquiries to know to whom in the agency such inquiries should be referred.

- 10. *Proposition 218 creates special procedures for the approval of assessments and certain kinds of fees. To what extent do the restrictions on campaign communications apply to agency communications relating to Proposition 218 proceedings?***

No court has squarely addressed this issue, but the prevailing view is that an agency is well-advised to conform its communications that relate to Proposition 218 proceedings to the same standards as it adheres to in typical elections.²⁹ This includes the advisability of communications early on that are even-toned and based on solid analytics about the need to either impose or increase a revenue source that is subject to Proposition 218's procedures. Such communications create a basis for supplemental (and still even-toned) information later on, should questions or arguably inaccurate information creep into discussions about the merits of the measure closer to the decision point.

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¹ *Yes on Measure A v. City of Lake Forest*, 60 Cal. App. 4th 620,625-626 (1997).

² *Schroeder v. Irvine City Council*, 97 Cal. App. 4th 174, 187-88 (2002).

³ *Vargas v. City of Salinas*, 46 Cal. 4th 1, 35-37 (2009). *See also Choice-In-Education League v. Los Angeles Unified Sch. Dist.*, 17 Cal. App. 4th 415, 429-30 (1993).

⁴ Cal. Elect. Code §§ 9282(a),(b) (for city measures placed on the ballot by petition, the legislative body may submit an argument against the ordinance, for city measures placed on the ballot by the legislative body the body may file a written argument for or against a measure), 9162(a) (for county measures, the board of supervisors may file a written argument for or against any county measure), 9315 (for district elections, the district board may file an argument against an ordinance), 9501(a) (for school district elections, the governing board of the district may file a written argument for or against any school measure).

⁵ *Vargas*, 46 Cal. 4th at 34, 40; (compare with the tone of the newsletter described in footnote 20).

⁶ *Vargas*, 46 Cal. 4th at 40. *See also* Cal. Gov't Code § 54964(a), (b)(3) (prohibiting local public agency expenditures for activities that expressly advocate the approval or rejection of a clearly identified ballot measure).

⁷ *See* Cal. Elect. Code §§ 9111, 9212.

⁸ *See* Cal. Elect. Code §§ 9116, 9118, 9215, 9216.

⁹ Cal. Elect. Code §§ 9282(a),(b) (for city measures placed on the ballot by petition, the legislative body may submit an argument against the ordinance, for city measures placed on the ballot by the legislative body the body may file a written argument for or against the measure), 9162(a) (for county measures, the board of supervisors may file a written argument for or against any county measure), 9315 (for district elections, the district board may file an argument against an ordinance), 9501(a) (for school district elections, the governing board of the district may file a written argument for or against any school measure).

¹⁰ *See Vargas*, 46 Cal. 4th at 36-37.

¹¹ *See Vargas*, 46 Cal. 4th at 24 (observing that “. . . the dissemination, at public expense, of campaign literature prepared by private proponents or opponents of a ballot measure” “unquestionably constitutes improper campaign activity” citing *Stanson*).

¹² Strictly speaking, the state law that prohibits using public resources (including equipment and compensated time, *see* Cal. Gov't Code § 8314(b)(3)) for campaign purposes excludes from the prohibition referrals of visitors to private political entities. *See* Cal. Gov't Code § 8314(b)(2) (“Campaign activity” does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.”) Thus, an argument exists that links to campaign resources on a website fall within this exception to the prohibition.

Does this exception satisfy *Stanson*'s requirement that any use of public resources for campaign purposes be “clearly and unmistakably authorized?” One might think so, but as the *Vargas* decision illustrated, courts can find that statutory language that limits the scope of a prohibition does not constitute a clear and unmistakable authorization. *See Vargas*, 46 Cal. 4th at 29-30. The *Vargas* court also noted that even where there are explicit authorizations, such authorizations can present serious constitutional questions. *Id* at 29. Although the “reference to private political entities” would represent a fairly limited authorization, it's not clear how the courts would evaluate this issue.

¹³ *See Vargas*, 46 Cal. 4th at 37 n. 18 (finding city had no obligation to provide those with a different point of view access to the city's website), *citing United States v. Am. Library Ass'n, Inc.*, 539 U.S. 194, 204-206 (2003); *Ark. Educ. TV. v. Forbes*, 523 U.S. 666, 673-677 (1998); *Cornelius v. NAACP Legal Defense & Ed. Fund*, 473 U.S. 788 (1985); *Perry Ed. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983); *Clark v. Burleigh*, 4 Cal.4th 474, 482-491 (1992)) *See also Sutcliffe v. Epping Sch. Dist.*, 584 F.3d 314, (1st Cir 2009) (noting that it is possible there may be cases in which a government entity might open its website to private speech in such a way

that its decisions on which links to allow on its website would be more aptly analyzed as government regulation of private speech); *Hogan v. Twp. of Haddon*, 278 Fed.Appx. 98, 101-02 (3d Cir 2008) (rejecting elected official’s claim that she had a First Amendment right to publish articles in the town newsletter and to post on the town’s website and cable channel because these communications vehicles were local government-owned and sponsored, and as such are not public or limited public forums); *Page v. Lexington County Sch. Dist. One*, 531 F.3d 275, 285-85 (4th Cir. 2008) (rejecting claims that links to other websites did not vitiate school district’s retention of complete control over its website or create a limited public forum, but noting that had a linked website somehow transformed the website into a type of “chat room” or “bulletin board” in which private viewers could express opinions or post information, the issue would, of course, be different).

¹⁴ See also *Sutcliffe v. Epping Sch. Dist.*, 584 F.3d 314, 329-332 (1st Cir. 2009), citing *Pleasant Grove City, Utah v. Sumnum*, 555 U.S. 460, 129 S.Ct. 1125 (2009); *Ampex Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1576 (2005); *Computer Xpress, Inc. v. Johnson*, 93 Cal. App. 4th 993, 1009 (2001) (websites with chat rooms are public forums).

¹⁵ *Preminger v. Peake*, 552 F.3d 757, 765 (9th Cir 2008).

¹⁶ *Police Dep’t of the City of Chicago v. Mosley*, 408 U.S. 92, 97, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972); *Wirta v. Alameda Contra Costa County Transit Dist.*, 68 Cal. 2d 51, 64 Cal. Rptr. 430 (1967).

¹⁷ See *Vargas*, 46 Cal. 4th at 31-32.

¹⁸ *Vargas*, 46 Cal. 4th at 36-37.

¹⁹ *Preminger v. Peake*, 552 F.3d 757, 765 (9th Cir 2008).

²⁰ See generally *San Leandro Teachers Ass’n v. Governing Bd. of San Leandro School Dist.*, 46 Cal. 4th 822, 839 (2009) (noting that, even for nonpublic fora, the government may only impose *reasonable* regulations and the regulation must not relate to disagreement with the speaker’s view), citing *Clark v. Burleigh*, 4 Cal. 4th 474, 483 (1993).

²¹ See *Perry Educ. Ass’n v. Perry Local Educators Ass’n*, 460 U.S. 37, 45 (1983) (noting that, in addition to viewpoint neutral, time, place and manner restrictions, public agencies may reserve communication forums for their intended purposes, as long as restrictions are reasonable and are not based on a speaker’s views). See also *San Leandro*, 46 Cal. 4th 822 (upholding school district’s decision to prohibit use of teacher mailboxes for one-sided political endorsements against challenges under federal and state constitutional protections for free expression).

²² See *DiQuisto v. County of Santa Clara*, 181 Cal. App. 4th 236 (2010) (majority found that sending an editorial against a ballot measure via email on one’s lunch hour constituted advocacy, but involved a minimal use of public resources—note dissenting opinion disagreeing with majority’s minimal-use-of-public-resources conclusion).

²³ See *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 678-82 (1998) (finding that a state public broadcasting entity could, consistent with First Amendment principles, broadcast a debate and use criteria for determining who may participate that are reasonable and do not discriminate based on the speaker’s views).

²⁴ See *Ark. Educ. Television Comm’n*, 523 U.S. at 678-79.

²⁵ See *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995) (noting that when a governmental regulation restricts core political speech like election speech, the courts apply “exacting scrutiny” to assure that the

restriction is narrowly tailored to uphold an overriding state (public) interest). *See also ACLU v. FCC*, 523 F.2d 1344 (9th Cir. 1975) (noting public access channels must be open to non-discriminatory, first come first served access).

²⁶ 83 F.C.C.2d 147 (1980). (Note, however, that the FCC fairness doctrine rules do not apply to PEG channels, only cable providers (e.g. Time Warner Cable, Comcast etc.).

²⁷ *See Choice-In-Education League v. Los Angeles Unified Sch. Dist.*, 17 Cal. App. 4th 415, 429-30 (1993).

²⁸ *See Ark. Educ. Television Comm'n*, 523 U.S. at 678-83 (upholding candidate's exclusion from debate on the grounds that his candidacy had attracted "no appreciable public interest" and hence the exclusion was based on the candidate's status rather than his views).

²⁹ Government Code 53753(e)(6) states that a "majority protest proceeding" (for assessments) "shall not constitute an election or voting for purposes of Article II of the California Constitution or of the Elections Code." This appears to be a limited exception, since Elections Code 4000 treats Proposition 218 elections (for both assessments and fees) as an "election" for the purposes of all-mail ballot proceedings. Note too that the original basis for the rule from the *Mines* case "that the electors of the city who opposed the bond issue "had an equal right to and interest in the [public] funds . . . as those who favored said bonds," seems to apply to any "measure" that has two sides - one "yes" and the other "no." *See Mines v. Del Valle*, 201 Cal. 273, 287 (1927).