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MEMORANDUM

TO: see attached

FROM: Todd Cutts, City Manager *copy for TC*

DATE: July 11, 2013

SUBJECT: Use of Public Funds/Facilities on Election Campaigns

I wanted to provide you with some information regarding the relevant statute related to the use of public funds and facilities with respect to election campaigns.

RCW 42.17A.555 states as follows:

RCW 42.17A.555

Use of public office or agency facilities in campaigns — Prohibition — Exceptions.

No elective official nor any employee of his [or her] office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

- (1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;
- (2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;
- (3) Activities which are part of the normal and regular conduct of the office or agency.

Based upon the above state statute, some basic principles were developed by the Washington State Public Disclosure Commission (PDC) regarding local government involvement in election campaigns. These principles are outlined in Public Disclosure Commission interpretation 04-02, *Guidelines for Local Government Agencies in Election Campaigns*. Below is a summary of some key principles outlined by the PDC are summarized below.

- Public facilities may not be used to support or oppose a candidate or ballot proposition. Facilities include local government agency equipment (including uniforms that belong to the public agency), buildings, supplies, employee work time, and agency publications. The statute provides an exception that a legislative body may express a collective decision, such as a Resolution, supporting or opposing a ballot proposition, so long as certain procedural steps are followed.
- Public employees do not forfeit their rights to engage in political activity. Nor may City employees be subjected to coercion, pressure, or undue influence to participate in political activity or to take a particular position. Public officials and employees should make it clear that any participation is personal rather than officially sponsored.
- Public officials and employees are free to support ballot issues and engage in other political activities as long as such activities do not make use of government facilities, time or resources and do not either pressure or condone employees' use of agency facilities, time or resources to support ballot issues.

Based on the above guidelines, campaigning at City Council meetings is prohibited. Therefore, Councilmembers, the City Clerk, or the City Attorney may raise a point of order should the above statute be violated. However, campaigning and distribution of materials in a traditional public forum such as on public sidewalks and at City parks is likely permissible¹.

While the above guidelines address most situations, there are circumstances in which the above guidelines do not squarely address a particular issue. Therefore, if there are questions regarding your participation in election related activities, please feel free to contact the Public Disclosure Commission at 1-877-601-2828. It may also be prudent to review material posted on the PDC website (www.pdc.wa.gov).

¹ Since questions related to the improper use of public facilities for campaign purposes depends on the specific facts, questions should be directed to the Public Disclosure Commission. It is not the intent of this memo to provide legal advice to candidates for public office.