



Date: September 25, 2018

To: Honorable Mayor and Council Members

From: City Attorney

Subject: Free Speech Rights on City Property

The City Clerk received the attached letter from William Eserini dated September 21, 2018, alleging violations of various legal regulations by Hosam Haggag's campaign kick-off party on City property (Fremont Park), and by Mayor Gillmor and Vice Mayor Watanabe's attendance at that party on September 9, 2018. Mr. Eserini's letter implies that he was not actually in attendance at the event, but that the events he describes in his letter came to "his attention."

We have not done an independent investigation of whether the facts he alleges are true because even if they are true, nothing that he alleges constitutes an enforceable violation of law.

Campaign Activities on City Property

Mr. Eserini's first allegation is that it was a violation to conduct a campaign on City property, citing a 2016 memorandum issued by then City Attorney Ren Nosky that stated the California Government Code restricts political activities of Santa Clara officials, employees and candidates on City property. This statement was and is an incorrect statement of the law. The First Amendment of the United States Constitution guarantees all persons, including elected officials, candidates, public officials and public employees, the right to engage in political activities in the form of speech, assembly and the right to petition the government in traditional public forums. Some public properties, such as parks and plazas, are traditional public forums where governments may only impose reasonable time, place and manner regulations. The City cannot restrict speech outright based on its content, for example in support of a campaign or based upon the speaker.

Government Code § 3207, cited in the 2016 memorandum, does not in and of itself place any restrictions on government officers or employees. Instead it permits a local government to impose restrictions on the political activities of its officers¹ and

¹ It does not appear that "officers" as used in this section refers to elected officials.

employees. Pursuant to that statute, on August 18, 1992, the City Council adopted Resolution No. 5739 which provides as follows:

Pursuant to the authority granted by Government Code Section 3207, the City Council hereby prohibits *non-elected* officers and employees of the City of Santa Clara from:

1. Engaging in political activities during working hours, and
2. Engaging in political activities on the premises of the City.

Thus, neither state law nor City policy cited by Mr. Eserini applies to candidates or elected officials; and no law can prohibit non-elected officials and City employees from engaging in political activities on City property that the City has made available to the general public as a public forum (i.e. public parks and streets) as long as they do so outside of work hours.²

Mr. Haggag, the Mayor, and the Vice Mayor have a constitutional right to campaign in City parks and did not violate state law or City policy by holding and/or attending a campaign kick-off party at Fremont Park.

Political Signs on City Property

Mr. Eserini's letter also asserts a violation of Santa Clara City Code section 18.80.170, based upon an allegation that Mr. Haggag had posted several political campaign signs on City property throughout Fremont Park. In **Reed v. Town of Gilbert, Arizona**, 135 S.Ct. 2218, 576 U.S. ____ (2015), the United States Supreme Court ruled that an Arizona town's sign regulations which were based on the content of the message on the sign were unconstitutional. Because Santa Clara's temporary sign and political sign regulations are also based on content, they would be subject to constitutional challenge if the City tried to enforce them. Notably, the City allowed numerous political signs for all of the candidates at Central Park during the recent Art and Wine Festival without enforcing Section 18.80.170.



Brian Doyle
City Attorney

cc: City Manager Deanna Santana
Acting City Clerk Jennifer Yamaguma

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² By its own terms CMD#82 applies only to City employees.