



Date: August 30, 2018

To: Santa Clara Community

From: Jennifer Yamaguma, Acting City Clerk

Subject: Information regarding Candidate Forums for the November 2018 Election

The City has received several inquiries regarding conducting candidate forums for the November 2018 election, where Santa Clara voters will elect Council Members from District 2 and District 3, as well as the Mayor and City Clerk (partial term) on a City-wide basis. As the questions will likely be asked by other community members, the City is providing this Question & Answers format for the public's awareness to and, particularly, to avoid misinformation that may have already circulated by members of the public.

<i>1. Is the City planning any candidate forums or debates?</i>

No, City staff is restricted from these activities; however, a neutral organization may conduct forums. California law restricts campaign and election activity by municipal governments and their officials, officers and employees and prohibits the use of City funds or resources to advocate for or against a local ballot measure or candidate running for office. Cities have "broad discretion to make public expenditures, subject to the limitations that the expenditure be for a public purpose and not expressly forbidden by law" (Schroder 97 Cal. App. 4th 174, 184-85). While public funds may be expended for the purpose of giving voters relevant facts to aid them in reaching an informed decision, careful analysis is required to classify whether expenditures are an impermissible campaign effort or a permissible informational effort. Upon review of the City's past practices related to the Santa Clara Votes programs, which included conducting candidate forums and a final word forum led by a City-hired consultant with the use of general fund monies, there was significant concern by the City Manager and City Attorney that these practices conflicted with state law and the appropriate use of public funds. Therefore, as has been previously stated, neither a Candidate Forum nor a Final Word Forum will be hosted by the City of Santa Clara this year through the services of a hired consultant.

Neutral Outside Organization's Candidate Forum – While City staff is restricted from supporting candidate forums, as permitted by State law and City policy (Policy and Procedure 008 and 028), the use of public facilities for campaign activities are generally permitted in limited circumstances provided that no public funds or resources are used to support the event, with the specific exemption of allowing for the video recording of a candidate forum organized by the League of Women Voters or another neutral outside organization. Such a forum may be held in the Council Chambers approximately four weeks prior to a municipal election, upon determination of the availability of City Council Chambers. **At this time, the League of Women Voters or another neutral outside organization have not yet organized a specific date to**

conduct a Candidate Forum in the City of Santa Clara for the November 2018 election. If organized and upon confirmation, an announcement will be made through the City's Municipal Cable Channel, website, social media and other media notification.

2. If the Citizen Advisory Committee wanted to host a Candidate Forum, could we get the Council Chambers or subsidized rental of the Senior Center Room or Library Rooms?

Per City policy, City building facilities may be used for group meetings; however, campaign and campaign-related fund raising activities are not allowed. If an organization wishes to use the Council Chambers for a neutral Candidate Forum, they must submit a written request, including the date, hours and purpose of the meeting to the City Manager. In addition, the City Library has two community rooms that may be reserved for general use by members of the public who have a Santa Clara City Library account in good standing and the Senior Center has a number of rooms available for rent through an application process and in accordance with the established City fee schedule.

3. Would the City help publicize the candidate forums?

City policy (Policy and Procedure 028) allows for advertisement of a Candidate Forum hosted by the League of Women Voters or another neutral outside organization under limited circumstances.

4. Is there going to be any ethics consultant or support for the election like we had 2 years ago?

See response to question 1 above. Upon review of the City's past practices related to the Santa Clara Votes programs, which included conducting candidate forums and a final word forum led by a City-hired consultant with the use of general fund monies, there was significant concern by the City Manager and City Attorney that these practices conflicted with state law and the appropriate use of public funds. Therefore, as has been previously stated, neither a Candidate Forum nor a Final Word Forum will be hosted by the City of Santa Clara this year through the services of a hired consultant.

5. If a candidate or member of the public has an issue with how someone is running their campaign (stealing lawn signs, stating endorsements without consent), what is the recourse? Will there be a last word forum or event to air grievances?

Chapter 2.130 *Political Campaign Finance Reform Act* of the Santa Clara City Code has a number of provisions intended to ensure that individuals and interest groups in the City have a fair opportunity to participate in the municipal elective and governmental processes. Article VI speaks to enforcement, including penalties for violation, civil actions, injunctive relief, cost of litigation, disqualification, and the effect of a violation on the outcome of an election. If a member of the public has reason to believe that a candidate has violated the City Code, they should immediately contact the Elections Official (Acting City Clerk, Jennifer Yamaguma). On a case-by-case basis, the Elections Official will coordinate with the City Attorney's Office, City

Manager's Office, Code Enforcement and, dependent upon the nature of the complaint, consultant services may be needed to ensure full due process and impartiality. This is also the case for any potential violation of the City's new "[Dark Money Ordinance](#)" (Article X), whereby the same enforcement measures listed above (Article VI) apply; in addition, there is a specific provision that states any violation shall be considered a material breach of contract by a contracting party and grounds for termination of the contract.



Date: September 4, 2018

To: Santa Clara Community

From: Jennifer Yamaguma, Acting City Clerk

Subject: Response to Media Article regarding Candidate Forums

As the Acting City Clerk and the Elections Official for the City of Santa Clara, I feel compelled to respond to a recent article titled "City Makes About-Face On Election Education And Ethics" which was published by Silicon Valley Voice on August 31, 2018. The notion that the November 2018 election is not transparent, ethical or democratic is not only false, but irresponsible reporting and quite frankly offensive to the residents of Santa Clara. Equally as negligent, is asserting that any previous practices of the City should be followed without care of evaluation and compliance with City policy, the law and best practices.

As a professionally certified municipal clerk with a successful record of supporting many past Santa Clara elections, let me affirm my strong continued commitment to promoting a fair and transparent election this November. Working as partners with the Santa Clara County Registrar of Voters, the City has been, and will continue to be, committed to conducting a fair, impartial and successful election this November.

I will also present the information contained below at the September 11, 2018 Council meeting and will answer any questions that the City Council, candidates, or members of the public may have.

Voter Engagement and Education: Contrary to the referenced article, the City has not lost interest in voter engagement and conducting a fair, impartial and ethical election. On the contrary, the City's voter education and information program for the November 2018 election goes above and beyond any previous program, particularly because of the fundamentally different way that Council Members will be elected through court-ordered district elections.

FACTS:

- The former City Clerk abruptly resigned in February of this year after having 100% turnover of full-time staff during his last year in office, including the resignation of the Assistant City Clerk in December 2017.
- Despite the vacancies, and new staff members, the City Clerk's Office, under my leadership as the Elections Official, is committed to providing a robust educational and engagement campaign for the November election.

- Council was presented with preliminary information and education scheduled activities for the [candidate elections](#) and [two ballot initiatives](#) to mitigate voter confusion and to provide timely information to voters.
- Materials and information on the court ordered district elections have already begun to be disseminated in various mediums (i.e., direct mail, social media, website, etc.) and information has been translated in multiple languages.
- The City's website www.santaclaraca.gov/electioninfo is updated on a regular basis.

Conducting a Fair, Impartial and Ethical Election: Providing information to candidates, the media and the public on ethical campaigning has occurred for decades; and, contrary to the statements made in the article, this year's election is no different. The City has had a formal set of core values and code of conduct for nearly 60 years, with the first Code of Ethics and Values adopted in the 1960's.

FACTS:

- Every candidate was issued the City's Code of Ethics and Values and the state's *Code of Fair Campaign Practices*. Both of these documents have served as the foundation for running for office in past Santa Clara elections and will continue to be used this year.
- Per state law, the *Code of Fair Campaign Practices* is voluntary; however, all but one candidate (Mario Bouza, District 2 candidate) pledged that they would adhere to the "basic principles of decency, honesty, and fair play" (Elections Code 20440-20444)
- November 2018 will be the first election cycle with the newly adopted ["Dark Money" Ordinance](#) in place, which is intended to shed light on the origin of financial contributions for and against local election candidates and measures. With this in place, voters may be fully informed of sources of contributions in support or opposition to city candidates and local ballot measures.
- The role of the previous consultant services appears to have been two-fold: one was to conduct forums in an impartial manner. The other, to have been somewhat of a referee function with respect to accusations about campaign regulation violations. This second role does not appear to have been clearly analyzed and resulted in a review by the Council's Ethics Committee who recognized the shortcomings of attempting to adjudicate violations not necessarily within the City's jurisdiction.
- The Fair Political Practices Commission (FPPC) actually has jurisdiction over most campaign-related activities, not the City Clerk. Complaints about FPPC violations should be made directly with the FPPC.
- If a member of the public wishes to allege a violation of the City Code or City policy, past practice has been to contact the Elections Official who in turn coordinates with the City Attorney's Office, City Manager's Office, Code Enforcement, and, depending upon the nature of the complaint, consultant services may be needed on a case-by-case basis to ensure full due process and impartiality.

Candidate Forums: It is legally problematic for the City staff/resources to initiate and organize candidate forums, however, City Policy allows for neutral organizations to conduct candidate forums in City facilities – despite the article's inaccuracy regarding not allowing candidate forums in City facilities. The City is committed to following City policy, the law and regulations set forth by the Fair Political Practices Commission. The use of tax dollars in support of campaign activities is not permissible, and the City will not simply follow past practice without diligent review and compliance with policy, the law or even the appearance of partisan influence. It is negligent to characterize this as “voter suppression” but it is rather the legal use of tax payer dollars and the professional administration of an election as a compliance officer for federal, state and local statutes. The article should have done a better job of distinguishing between the City Council Policy which allows neutral organizations to use City facilities and the fact that it is legally problematic for City staff to organize candidate forums; instead, it drew false conclusions that attempt to assign a wrong intent.

FACTS:

- Again, a neutral organization may conduct forums. For example, the League of Women Voters or other neutral organizations may contact the City to organize such a forum four weeks prior to the election, which is the week of October 8, 2018. Neutral organizations may contact the City to conduct candidate forums by contacting the City Clerk's Office at (408) 615-2220 or by emailing clerk@santaclaraca.gov.
- The City Clerk's Office will not select or retain consultants with tax payer money to facilitate candidate forums, as it is legally problematic for the City to engage in and organize candidate forums. This is especially important given that the position of the elected City Clerk is on the ballot this November. This was done in the past and could appear to have a conflict of interest given that candidates for the elected City Clerk position may participate in these forums.
- There has not been any direction from the Council to engage in any consultant services for the facilitation of candidate forums; however, there is still ample time to organize should that be the desire of the Council.
- The Ethics Committee was evaluating the conflict of interest related to placing the adjudication of violations that might involve Councilmembers with the City Attorney and the City Manager who are Council appointees.
- The Ethics Committee was also evaluating how other jurisdictions that appoint citizen oversight committees adjudicate allegations of such violations. The Ethics Committee was unable to come to a recommendation in time for this election, but it did not recommend that the City continue with the practice of hiring a consultant to perform any function with regard to candidate forums.
- There were many questions raised about the selection of the previous consultant and whether the consultant was vetted for the appearance of a conflict and whether they should have been a designated Form 700 filer. As noted by Council's requirement of neutrality for candidate forums conducted on City property, anyone who actually conducts a candidate forum cannot be partisan or perceived as being partisan. The payment of an individual with tax dollars adds an even more serious requirement to

ensure complete neutrality and to avoid even the appearance of partisan influence, because of legal prohibitions on the use of tax dollars in support of campaign activities.

As the Elections Official, who has ethically and successfully supported several Santa Clara elections, I am duty-bound to provide factual information and to promote a fair and transparent election for the voters of Santa Clara this November. **It is regrettable that a local media editorial board did not inform the public of these important facts and the process used to evaluate and improve our past practices to ensure the responsible use of tax payer money and to be in compliance with the law and City policy.** As was described in detail over a series of Council meetings earlier this year, the City Clerk is the local official who administers democratic processes and has responsibility for the impartial, effective administration and implementation of such processes. Thousands of statutes and regulations exist, which protect democracy and provide a system of “checks and balances” and it is the City Clerk’s responsibility to ensure compliance with these laws, which are complex and dynamic.

I fully intend to serve as the Election Official to ensure a fair, democratic and impartial election until the next City Clerk is elected.

Jennifer Yamaguma
Acting City Clerk