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File #: 2018-201, Version: 1

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## Report to Mayor and City Council

Tuesday, April 03, 2018

Consent

### SUBJECT:

**ADOPT AMENDED COUNCIL POLICY 1.1.02 (FORMALLY SMP 1.56) RELATED TO COUNCIL COMMUNICATIONS (CITY COUNCIL)**

### **I. SUMMARY**

This matter was continued from the March 20, 2018 City Council meeting.

The City Council recently adopted Ordinance No. 18-1801 regarding mass mailings by elected officials in the City of Carson. In addition, the City Council considered revisions to Council Policy and Procedure 1.1.02 (formally Standard Management Procedure 1.56) which governs the “preparation and dissemination of flyers, handouts, invitations, and other printed communications” at city expense.

The City’s Standard Management Procedures are in the process of being divided and converted into City Council Policies and Procedures and Administrative Policies and Procedures.

Following consideration of these two items, it was determined that Ordinance No. 18-1801 could proceed forward for adoption on second reading without further modification.

However, staff and the City Attorney were directed to “tweak” the original draft of Council Policy and Procedure 1.1.02 to be consistent with the discussions of the City Council. Because those “tweaks” involved more than minor revisions to the SMP, the same is returned to the City Council for formal adoption.

The fine tuning of the original draft of Council Policy and Procedure 1.1.02 are reflected in ***bold & italic*** text changes in the attached iteration of the Council Policy and Procedure and is ready for City Council formal approval.

### **II. RECOMMENDATION**

ADOPT Council Policy and Procedure 1.1.02 (formally Standard Management Procedure 1.56), as revised following City Council comments on the same.

### **III. ALTERNATIVES**

1. Take NO ACTION on this agenda item;
2. DIRECT the Office of the City Attorney to further revise Council Policy and Procedure 1.1.02 and return the same to a future Council meeting for further consideration;
3. TAKE such action as the Council deems appropriate consistent with the requirements of law.

### **IV. BACKGROUND**

Council Policy and Procedure 1.1.02 (formally Standard Management Procedure 1.56) has been further revised to reflect comments and suggestions from members of the City Council. The amended Council Policy and Procedure 1.1.02 is attached for the Council's review and consideration.

### **V. FISCAL IMPACT**

Potential Savings in an amount which cannot be ascertained at the time of writing this staff report.

### **VI. EXHIBITS**

1. Council Policy and Procedure 1.1.02 (formally Standard Management Procedure 1.56). (pgs. 3-14)

1.

Prepared by: Sunny K. Soltani



**CITY OF CARSON**

**POLICY/PROCEDURE**

NUMBER: COUNCIL POLICY 1.1.02 (FORMALLY SMP 1.56)

SUBJECT

COUNCIL COMMUNICATIONS  
(FLYERS, HANDOUTS,  
CEREMONIAL LETTERS FOR  
DISTRIBUTION AND OTHER  
PRINTED MATERIALS)

ORIGINAL ISSUE:

January 23, 2018

EFFECTIVE:

January 23, 2018

CURRENT ISSUE:

APRIL 17, 2018

EFFECTIVE:

APRIL 17, 2018

CATEGORY

CITY COUNCIL POLICY

SUPERSEDES

Prior version of SMP 1.56

**I. PURPOSE AND SCOPE**

- A. To establish a policy regarding the use of City staff and other City resources for the preparation and dissemination of flyers, handouts, invitations, **letters** and other printed communications (collectively referred to herein as "flyers"), regardless of whether the flyers are mailed out, distributed door-to-door, left in public places to be picked up **or disseminated in any other manner in accordance with the FPPC (Fair Political Practices Commission)**
- B. To appropriately address requests from elected officials to prepare and disseminate any communication that reflects his or her personal opinion or position, or that extends an invitation or provides information from an individual elected official.
- C. To appropriately address ceremonial letters prepared using City staff and other City resources intended for distribution.

**II. PROCEDURE/POLICY**

**A. City Approval Required for Flyers.** No flyer shall be prepared, composed, copied, or distributed by city staff, or using City resources (e.g., computers or printers, envelopes, mailing or distribution), except for the use of **the** standard flyer format attached hereto as Exhibit "1A" **or Exhibit "1B" as designated by the Attachment 1 to this SMP, the implementation guidelines of SMP 1.56. The only exception to this rule is individual notecards.**

1. **No Business/Political Purpose.** Under no circumstances shall any flyer described herein be used for business purposes or for any political campaign purposes. This includes, but is not limited to, any flyer that advocates a position in connection with any upcoming candidate or ballot measure election.

2. **Effect of Municipal Code § 2419.** (a) No elected official shall cause to be designed, produced, printed, copied, or distributed, by any means, to any person's residence, place of employment or business, or post office box, any newsletter, brochure, flyer, letter, or other mailing at city expense, excluding **those that use the provided format attached hereto as Exhibit "1A" or Exhibit "1B" and any letter sent in response**

to an unsolicited request, E-mail, and text message, without the prior approval of the City Council at a regular or special meeting of the City Council.

(b) City expense shall be defined as any expenditure of city funds, any use of city staff time or city facilities or equipment to design, produce, print, distribute or copy any newsletter, brochure, flyer, poster, letter, or other mailing.

3. City Manager Authority. The City Manager, or Public Information Manager, *may* prepare, compose, or copy a flyer, handout or other communication to publicize a City event, disseminate City news, promote City success stories, etc., only on *the* attached formatted masthead that includes all councilmembers and the mayor.

**4. Fair Political Practices Commission (FPPC) Compliance. All laws set forth by the FPPC Political Reform Act must be adhered to at all times by elected officials and staff. No more than 199 substantially similar items are to be distributed within a calendar month, (flyers, handouts, invitations, letters and other printed communications), excluding any item sent in response to an unsolicited request.**

**B. Ceremonial Letters & Other Writings at City Expense.**

1. Occasionally, a ceremonial letter *or other writing for a private event*, intended to appear in a dinner program, event brochure, event pamphlet or other ceremonial booklet, may be created *using the elected officials individualized letterhead, predicated on the fact that the dinner program, event brochure, event pamphlet or other ceremonial booklet as part of an activity and/or event that is 100% free of any City resources, either actual or in-kind. Additionally, on such occasions, any and all FPPC imposed mass mailing regulations should be followed.*

2. When City staff or other City resources are used to create such ceremonial letters *and it is for an official city event, or city-sponsored (either actual or in-kind) event and/or activity the dinner program, event brochure, or event pamphlet* shall only be produced under the following rules: All such ceremonial letters shall be signed by *the Mayor and all members of the* City Council and shall include a photograph of each Councilmember and the Mayor as reflected in the standard format attached hereto as Exhibit "1B."

3. With respect to event programs, brochures, or pamphlets created for use in connection with any City-sponsored events, it shall be the policy of the City Council to sell space for advertising or other writings in such programs, brochures, or pamphlets for outside business and organizations *as a means of receiving additional funds to help offset the costs of the event. Thus, it is understood that all proceeds of the sale shall go to the City's account.*

**C. Letters & Other Writings by Elected Officials at Their Own Expense** Nothing in this policy, however, shall prevent any individual elected official from sending a letter composed, printed, and distributed entirely at his or her expense regardless of the number the same or substantially similar pieces distributed or mailed. No City resources may be used in connection with such letters, which includes no assistance with distribution, copying, postage, handling of media inquiries, or receiving or processing RSVPs. The City Seal and/or City letterhead may not be used, however, the letter may include the sender's title. The letter must not imply that it is an official statement from the City.

**D. Billboard Messages at City Expense Or Afforded to City by Agreement.** Occasionally, the City is afforded space on electronic billboards *or transit shelter billboards*

operated by private companies that have been permitted by the City and at no costs to the City. When City staff or other City resources are used to create such billboard messages, or when such billboard messages are afforded to advertise City sponsored or Councilmember sponsored events or public service messages, the same are deemed an official communication from the City. In that event, all such billboard messages **that include one councilmember or the Mayor** shall include, on an individual image and rotating basis, the photograph of each Councilmember and the Mayor.

**E. Billboard Messages by Elected Officials at Their Own Expense.** Nothing in this policy, however, shall prevent any individual elected official from purchasing messaging space on any billboard entirely at his or her expense. The City Seal and/or City logo may not be used, however, the electronic message may include the elected official's title.

### III. EXCEPTIONS

There shall be no exceptions to this policy, except through direct instructions of the City Council. Flyers, letters, ceremonial letters, other writings, and advertising issued and distributed in compliance with this SMP shall be deemed to constitute approval by the City Council within the meaning of Municipal Code § 2419(a).

### IV. AUTHORITY

City Council Agenda Item No. \_\_\_\_, dated April 17, 2018.  
Adopted on *April 17, 2018*.

\_\_\_\_\_  
Kenneth C. Farfsing  
City Manager

\_\_\_\_\_  
Date

#### Attachments:

- Exhibit No. 1A
- Exhibit No. 1B
- Exhibit No. 1C
- Exhibit No. 1D



# CITY OF CARSON



## EXHIBIT 1A



Albert Robles  
Mayor



Jawane Hilton  
Mayor Pro Tem



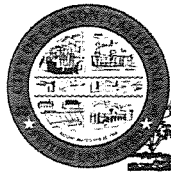
Elito M. Santarina  
Councilmember



Lula Davis-Holmes  
Councilmember



Cedric L. Hicks, Sr.  
Councilmember



CITY OF CARSON



Albert Robles  
Mayor



Jawane Hilton  
Mayor Pro Tem



Elito M. Santarina  
Councilmember



Lula Davis-Holmes  
Councilmember



Cedric L. Hicks, Sr.  
Councilmember

# EXHIBIT 1B

701 EAST CARSON STREET, CARSON, CALIFORNIA 90745 • (310) 830-7600

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18901. Mass Mailings Sent at Public Expense.**

(a) Except as provided in subdivision (b), a mailing is prohibited by section 89001 if all of the following criteria are met:

(1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. For purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

(2) The item sent either:

(A) Features an elected officer affiliated with the agency which produces or sends the mailing, or

(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

(3)(A) Any of the costs of distribution is paid for with public moneys; or

(B) Costs of design, production, and printing exceeding \$ 50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.

(4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).

(b) Notwithstanding subdivision (a), mass mailing of the following items is not



prohibited by section 89001:

(1) Any item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms (including "For Your Information" or "Compliments of" cards), and envelopes of the agency sending the mailing, or of a committee of the agency, or of the elected officer, or in a roster listing containing the names of all elected officers of the agency. In any such item, the names of all elected officers must appear in the same type size, typeface, type color, and location. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted in this subdivision (b)(1) or elsewhere in this regulation.

(2) A press release sent to members of the media.

(3) Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer.

(4) Any intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff.

(5) Any item sent in connection with the payment or collection of funds by the agency sending the mailing, including tax bills, checks, and similar documents, in any instance where use of the elected officer's name, office, title, or signature is necessary to the payment or collection of the funds. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer except as specifically permitted in this subdivision (b)(5) or elsewhere in this regulation.

(6) Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance where the mailing of such item is essential to the functioning of the program, where the item does not include the elected officer's photograph; and

where use of the elected officer's name, office, title, or signature is necessary to the functioning of the program.

(7) Any legal notice or other item sent as required by law, court order, or order adopted by an administrative agency pursuant to the Administrative Procedure Act, and in which use of the elected officer's name, office, title, or signature is necessary in the notice or other mailing. For purposes of this subdivision (b)(7), inclusion of an elected officer's name on a ballot as a candidate for elective office, and inclusion of an elected officer's name and signature on a ballot argument, shall be considered necessary to such a notice or other item.

(8) A telephone directory, organization chart, or similar listing or roster which includes the names of elected officers as well as other individuals in the agency sending the mailing, where the name of each elected officer and individual listed appears in the same type size, typeface, and type color. Such item may not include an elected officer's photograph, name, signature, or any other reference to an elected officer, except as specifically permitted in this subdivision (b)(8) or elsewhere in this regulation.

(9)(A) An announcement of any meeting or event of the type listed in paragraphs 1 or 2.

1. An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.

2. An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.

(B) Any announcement provided for in this subdivision (b)(9) shall not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name except as permitted elsewhere in this regulation.

(10) An agenda or other writing that is required to be made available pursuant to sections 11125.1 and 54957.5 of the Government Code, or a bill, file, history, journal, committee analysis, floor analysis, agenda of an interim or special hearing of a committee of the Legislature, or index of legislation, published by the Legislature.

(11) A business card which does not contain the elected officer's photograph or more than one mention of the elected officer's name.

(c) The following definitions shall govern the interpretation of this regulation:

(1) "Elected officer affiliated with the agency" means an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency, or who appoints one or more members of the agency.

(2) "Features an elected officer" means that the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.

(3) "Substantially similar" is defined as follows:

(A) Two items are "substantially similar" if any of the following applies:

1. The items are identical, except for changes necessary to identify the recipient and his or her address.
2. The items are intended to honor, commend, congratulate, or recognize an individual or group, or individuals or groups, for the same event or occasion; are intended to celebrate or recognize the same holiday; or are intended to congratulate an individual or group, or individuals or groups, on the same type of event, such as birthdays or anniversaries.
3. Both of the following apply to the items mailed:

a. Most of the bills, legislation, governmental action, activities, events, or issues of public concern mentioned in one item are mentioned in the other.

b. Most of the information contained in one item is contained in the other.

(B) Enclosure of the same informational materials in two items mailed, such as copies of the same bill, public document, or report, shall not, by itself, mean that the two items are "substantially similar." Such informational materials may not include the elected officer's name, photograph, signature, or any other reference to the elected officer except as permitted elsewhere in this regulation.

(4) "Unsolicited request" is defined as follows:

(A) A written or oral communication (including a petition) which specifically requests a response and which is not requested or induced by the recipient elected officer or by any third person acting at his or her behest. However, an unsolicited oral or written communication (including a petition) which contains no specific request for a response, will be deemed to constitute an unsolicited request for a single written response.

(B) An unsolicited request for continuing information on a subject shall be considered an unsolicited request for multiple responses directly related to that subject for a period of time not to exceed 24 months. An unsolicited request to receive a regularly published agency newsletter shall be deemed an unsolicited request for each issue of that newsletter.

(C) A previously unsolicited request to receive an agency newsletter or mass mailing on an ongoing basis shall not be deemed to have become solicited by the sole fact that the requestor responds to an agency notice indicating that, in the absence of a response, his or her name will be purged from the mailing list for that newsletter or mass mailing. A notice in the following language shall be deemed to meet this standard:

"The law does not permit this office to use public funds to keep you updated on items of interest unless you specifically request that it do so."

Inclusion of a similar notice in other items shall not constitute a solicitation under this regulation.

(D) A communication sent in response to an elected officer's participation at a public forum or press conference, or to his or her issuance of a press release, shall be considered an unsolicited request.

(E) A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82041.5 and 89001, Government Code.

#### HISTORY

1. New section filed 10-18-77; effective thirtieth day thereafter (Register 77, No. 43). For prior history, see Register 77, No. 14.
2. Amendment filed 10-29-81; effective thirtieth day thereafter (Register 81, No. 44).
3. Editorial correction of subsection (d)(5) (Register 82, No. 17).
4. Amendment filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment filed 8-8-88 as an emergency; operative 8-8-88 (Register 88, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-6-88.
6. Reinstatement of section as it existed prior to 8-8-88 emergency amendment by operation of Government Code Section 11346.1(f) (Register 88, No. 52).

**Implementation Guidelines for Council Policy and Procedure 01.01.2**  
**(formally SMP 1.56)**

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**199 Rule (Government Code Section 89001)**

Government Code Section 89001 regulates the use of City resources in mass mailings. The purpose of the State law is to restrict the use of city resources in electioneering. The City Council has adopted City Council Policy 01.01.2 (formally SMP 1.56) to clarify restrictions on the use of City communications and the use of City staff and other City resources for the preparation and dissemination of flyers, handouts, invitations, **letters** and other printed communications. Flyers prepared, composed, copied or distributed by City staff using City resources as outlined below must be placed on Exhibit A. Any Council letter prepared, composed, copied or distributed by City staff using City resources must be placed on Exhibit B. Ceremonial letters or other writings for private events (i.e. private event program), where there is no use of City resources, can be placed on the elected officials letterhead.

**Moratorium on Mass Mailings 60 day prior to Elections (SB 45)**

SB 45 prohibits the sending of otherwise permissible "mass mailings" within the 60 days preceding an election by, or on behalf of, a candidate who will appear on the upcoming ballot. For example, letters sent on City "letterhead" (meaning any item where the elected official's name appears only in the letterhead/logotype of the item and the official's name is not featured separately from other elected official's names in the same type size, face, color and location – no photos or signatures) which would otherwise be exempt from the mass mailing prohibitions, are prohibited during this 60-day moratorium period.

Even the sending of "meeting/event announcement" (meaning and announcement of an official agency meeting directly related to the Council Member's elected duties, which the elected official will either hold or attend, or an announcement of an official agency event where the agency provides facilities or other financial support, no photos, signatures or more than one mention of the official's name, are prohibited during this 60-day moratorium period.

<b>USE OF FLYERS</b>	<b>REQUIRED STATIONARY</b>
Flyers for City Special Events, City News Releases	Exhibit A
Flyers for recreational classes, programs, etc	No Council Names or Pictures
<b>USE OF LETTERHEAD</b>	<b>REQUIRED STATIONARY</b>
<b><i>Type of Mailed Correspondence:</i></b>	
Business Correspondence (e.g. formal comment letters on land use issues, letters to other agencies regarding the official position of the city, letters resulting from an official vote of the Council)	City Letterhead (without any Council picture)
Invitations to meetings (i.e. Townhalls)	Exhibit 1B
Invitation to workshops	Exhibit 1B
Any letters even if under 199	Exhibit 1B
Individual Notecard (birthdays, condolences, congratulations, etc.)	City notecard (with or without Council picture)

**EXHIBIT 1D**

**Item No. 17.           ADOPT AMENDED COUNCIL POLICY 1.1.02 (FORMALLY SMP 1.56)  
RELATED TO COUNCIL COMMUNICATIONS (CITY COUNCIL)**

Recommendation:

ADOPT Council Policy and Procedure 1.1.02 (formally Standard Management Procedure 1.56), as revised following City Council comments on the same.

**ACTION:**    Item No. 17 was approved on motion of Mayor/Agency Chairman/Authority Chairman Robles, seconded by Council Member/Agency Member/Authority Board Member Santarina and carried with Council Member/Agency Member/Authority Board Member Davis-Holmes voting Noe and Council Member/Agency Member/Authority Board Member Hicks abstaining, with no objections heard.