



Legislation Details (With Text)

File #: 2023-0117 **Version:** 1 **Name:**

Type: Discussion **Status:** Agenda Ready

File created: 2/16/2023 **In control:** City Council

On agenda: 2/21/2023 **Final action:**

Title: CONSIDER (1) RESCINDING COUNCIL POLICY NO. 1.1.02 AND (2) INTRODUCING AN ORDINANCE REPEALING SECTION 2419 OF THE CARSON MUNICIPAL CODE RELATED TO RESTRICTIONS ON COUNCILMEMBER MASS MAILINGS AT PUBLIC EXPENSE (CITY COUNCIL)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Council Policy 1.1.02 (current), 2. Ordinance No. 23-2302 (proposed)

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, February 21, 2023

Discussion

SUBJECT:

CONSIDER (1) RESCINDING COUNCIL POLICY NO. 1.1.02 AND (2) INTRODUCING AN ORDINANCE REPEALING SECTION 2419 OF THE CARSON MUNICIPAL CODE RELATED TO RESTRICTIONS ON COUNCILMEMBER MASS MAILINGS AT PUBLIC EXPENSE (CITY COUNCIL)

I. SUMMARY

This item is being reintroduced from the February 7, 2023, City Council meeting and is on the agenda at the request of Mayor Davis-Holmes separate and apart from the item regarding District Councilmember Events and Town Halls.

The City’s current rules surrounding Councilmembers’ authority to send mass mailings using City funds are confusing, administratively burdensome, unnecessarily more restrictive than state law, and out of date, particularly in light of the City’s switch to Council districts and the need for Council members to publicize District Events including District Town Hall meetings to discuss matters of City governance with their constituents. To address these issues, approval of the recommendation for this item would do the following:

- (1) Rescind Council Policy (“CP”) No. 1.1.02 (“Council Communications [Flyers, Handouts, Ceremonial Letters for Distribution and Other Printed Materials]”) (formerly SMP 1.56); and

(2) Introduce an Ordinance to Repeal Carson Municipal Code (“CMC”) Section 2419 (“Prohibited Mass Mailings by Councilmembers”).

The recommended actions would revert the City back to compliance with state law (the Political Reform Act and the FPPC Regulations thereunder) rather than also being subject to compliance with the more restrictive current City codes and policies, as detailed in the background section of this report.

II. RECOMMENDATION

TAKE all of the following actions:

1. RESCIND CP No. 1.1.02 in its entirety (Exhibit No. 1); and
2. INTRODUCE, for first reading by title only and with full reading waived, Ordinance No. 23-2302, entitled “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, REPEALING SECTION 2419 (PROHIBITED MASS MAILINGS BY COUNCILMEMBERS) OF CHAPTER 4 (CITY OFFICES - COUNCIL CHAMBERS - MEETINGS) OF ARTICLE II (ADMINISTRATION) OF THE CARSON MUNICIPAL CODE” (Exhibit No. 2).

III. ALTERNATIVES

TAKE any other action the City Council deems appropriate that is consistent with the requirements of the law.

IV. BACKGROUND

Current City Rules re: Mass Mailings

CMC 2419 provides, “No member of the City Council nor Mayor 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 any single letter sent in response to an unsolicited request, without the prior approval of the City Council.”

CP 1.1.02 provides that no flyer shall be prepared, composed, copied, or distributed by City staff, or using City resources, except for the use of the standard format attached to the policy as Exhibit 1A, the required stationary for flyers for City Special Events and News Releases (except flyers for recreational programs or classes, which shall have no Council names or pictures) or Exhibit 1B, the required stationary for letters, including invitations to meetings (i.e. town halls), workshops, and any letters even if under 199 pieces (except City Business Correspondence, which shall have no Council pictures, and individual notecards, which shall be on City notecards with or without Council picture).

The required stationary attached to the policy as Exhibit 1A and Exhibit 1B contains the names and photos of all Councilmembers. (See Exhibit No. 1 to this report). The policy states that no flyer described in the policy shall be used for business or political campaign purposes.

CP 1.1.02 also provides that “all Political Reform Act/FPPC laws and regulations must be adhered to at all times. 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.”

Thus, CP 1.1.02 limits the number of pieces that may be sent as part of a mass mailing at public expense to 199, irrespective of any exemption to the state law mass mailing prohibition (as further detailed below).

Also per CP 1.1.02, flyers, letters, ceremonial letters, other writings, and advertising issued and distributed in compliance with the policy shall be deemed to constitute approval by the City Council within the meaning of CMC 2419.

Thus, CP 1.1.02 provides a pre-approval that satisfies the requirement of CMC 2419 in lieu of Council approval needing to be given on a mailing-by-mailing basis, provided the policy is adhered to (including use of the required stationary).

Current State Law re: Mass Mailings

The Political Reform Act, at Government Code Section (“GC”) 89001, provides that “no newsletter or other mass mailing shall be sent at public expense.” “Mass Mailing” is defined to mean “over [200] substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. GC 82041.5.

Per GC 89002(a), unless an exception applies (discussed below), a mailing is prohibited by GC 89001 if all of the following criteria are met:

- (1) An item sent is delivered, by any means, to the recipient at the recipient's residence, place of employment or business, or post office box. The item delivered to the recipient must be a tangible item;
- (2) The item sent either: (i) features an elected officer; or (ii) includes the name, office, photograph, or other reference to an elected officer, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer. “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 the elected officer's name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color;
- (3) Any of the costs of distribution are paid for with public money or the costs of design, production, and printing exceeding \$50 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 GC 89002; and
- (4) More than 200 substantially similar items are sent in a single calendar month, excluding any item sent in response to an unsolicited request and any item that meets one of the exceptions in GC 89002(b).

Exceptions

GC 89002(b) lists 11 types of items and states that a mass mailing of any of those items is not prohibited under GC 89001 even if all the criteria of GC 89002(a) (discussed above) are met. Among the exceptions are the following:

Exception 1: “An 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 or stamps, and envelopes [including the return address portion of a self-mailer] In any such item, the names of all elected officers must appear in the same type size, typeface, type color, and location. The item shall not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted by [GC 89002]. The item may, however, include the elected officer's office or district number and the elected officer's name or district number in the elected officer's internet website address or electronic mail address”; and

Exception 9: An announcement of any meeting or event of either of the following: (i) an announcement sent to an elected officer's constituents concerning a public meeting that is directly related to the elected officer's incumbent governmental duties, is to be held by the elected officer, and that the elected officer intends to attend; or (ii) 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. Any announcement provided for under this exception 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 per another exception.

As seen above, Exception 9 appears to have been designed to allow for promotion of District Events including District Town Hall style meetings by Councilmembers in their districts or at large, as applicable. However, the current CP 1.1.02, by requiring use of a stationary that does not meet the aforementioned restrictions (due to inclusion of Councilmembers' photos, without limitation) and including language that restricts mailings at public expense to 199 pieces without acknowledging availability of the mass mailing exceptions of GC 89002(b), precludes availability of these exceptions to the City for Councilmember mass mailings at City expense.

It is important to note that per Gov't Code §89003, Exceptions 1 and 9 are not available for a mass mailing sent within the 60 days preceding an election by or on behalf of a candidate whose name will appear on the ballot at that election; such mailings are prohibited if they meet the criteria of GC 89002(a) even if one or more of these exceptions would otherwise apply. Additionally, FPPC Regulation 18901.1 provides that the mass mailing prohibition of GC 89001 can also be violated by sending campaign-related mailings sent at public expense, with limited exceptions.

Effect of Proposed Action re: Mass Mailings

The proposed action would rescind CP 1.1.02 and repeal CMC 2419, thus reverting the City to the state law requirements of the Political Reform Act/FPPC regulations in regard to mass mailing. This would constitute a loosening of current restrictions and would restore the availability of the aforementioned state law mass mailing exceptions to the City. Although rescinding the policy would leave the City with no established required stationary for such mailings, the City Council could adopt a new/modified required stationary separately at a later date. Additionally, the City Attorney's office could prepare a quick

reference guide or handbook to be made available to the Councilmembers in advance explaining how to comply with the state laws with respect to mass mailings at City expense.

V. FISCAL IMPACT

The proposed action on mass mailings would allow for Council member mailings at public expense consistent with the restrictions of the Political Reform Act and FPPC regulations, which are less restrictive than the current CP 1.1.02 and CMC 2419 as discussed above. Fiscal impact is unknown at this time, as this would depend on the total number of mass mailings.

VI. EXHIBITS

1. Council Policy 1.1.02 (current) (pgs. 6 - 17)
2. Ordinance No. 23-2302 (proposed) (pgs. 18 - 19)

Prepared by: City Attorney's Office and City Manager's Office