

**MEMORANDUM**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**  
**FROM: CAROL W. LYNCH, CITY ATTORNEY**  
**DATE: JUNE 15, 2010**  
**SUBJECT: PERMISSIBLE ACTIONS BY THE CITY COUNCIL CONCERNING THE INITIATIVE PETITION REGARDING MARYMOUNT COLLEGE EXPANSION**

**REVIEWED: CAROLYN LEHR, CITY MANAGER** 

**RECOMMENDATION**

Receive and file this Staff report.

**BACKGROUND**

On March 2, 2010, Dr. Susan Soldoff submitted to the City Clerk a Notice of Intent to Circulate a Petition within the City of Rancho Palos Verdes for the purpose of amending the City's General Plan and Zoning Code to allow the expansion and modernization of the Marymount College campus ("the Marymount Initiative"). The City Clerk has reported to the City Council this evening that the Marymount Initiative has qualified for a special election and to be placed on the ballot for the statewide general election on November 2, 2010.

Another report that is being presented to the City Council this evening discusses the expansion project that would be allowed by the Marymount Initiative and how that proposal differs from the proposed improvements to the Marymount Campus that the City Council recently approved.

Pursuant to direction received from the City Council at the April 20, 2010 City Council meeting, this report has been prepared for the City Council to advise the Council about the activities that the Council Members and the City can and cannot conduct in connection with the Marymount Initiative.

## **DISCUSSION**

### **Council Members' Activities Regarding an Initiative**

Council members have the right, as individuals, to express support or opposition to any initiative measure and to lead or lend their support to any campaign concerning an initiative. However, neither a Council Member nor the entire City Council may expend City funds or resources in furtherance of a political purpose. (*League of Women Voters v. Countywide Criminal Justice Coordination Committee* (1988) 203 Cal.App.3d 529, 555-56).

This means that Council Members may allow their names and titles to be listed among supporters or opponents of an initiative, may campaign, speak, or debate others about an initiative, may make contributions to an initiative campaign, may place lawn signs on their property, and may engage in any other political advocacy, provided that no public funds are expended in that effort.

Expenditures of public funds do not merely include "out of pocket" expenses. Thus, expenditures of public funds also include the use of City resources, such as telephones, stationary, or staff time. Accordingly, City resources and staff time cannot be used in any effort to support or defeat an initiative.

As a body, the City Council also may take a position of support or opposition to an initiative, provided that the Council takes this action as part of a regularly scheduled City Council meeting, and the public is given an opportunity to comment on the proposed action in accordance with the provisions of the Brown Act. (*Id.* at 560 quoted with approval *Choice in Education League v. Los Angeles Unified School District* (1993) 17 Cal.App.4th 415, 430).

This means that the City Council can publicly announce its collective position about the Marymount Initiative at a duly noticed City Council meeting, including the adoption of a resolution that memorializes the City Council's position about the Marymount Initiative. Like all other City Council resolutions, this resolution would be available to the public and would be maintained in the City's files and on the City's website.

Likewise, the City Council may choose to draft ballot arguments supporting or opposing a measure. To comply with the Brown Act, the City Council could designate two of its Members to serve on one or more ad hoc committees to draft a resolution, ballot arguments or other materials, which subsequently could be presented to the entire City Council for approval at a public meeting.

However, even though the City Council may take a formal position on an initiative, the City Council is not permitted to expend public funds to promote its position. Therefore, we recommend against spending any public resources to draft a resolution regarding

the Marymount Initiative, drafting ballot arguments or spending public funds to publicize the City Council's position on the initiative.

### City Activities Regarding an Initiative

The City Council and City Staff may expend City funds for the purpose of educating or informing the public concerning an initiative. Any educational activities must include a "fair presentation of the facts" and be undertaken for the purpose of providing information to the public, and not for the purpose of persuading the public to support or oppose the initiative. (*Stanson v. Mott* (1976) 17 Cal.3d 206).

Unfortunately, the line between unauthorized campaign expenditures and permissible educational activities is not clear. In *Stanson*, and more recently in *Vargas v. City of Salinas* (2009) 46 Cal.4<sup>th</sup> 1, the California Supreme Court has explained that the determination of the propriety of an expenditure of public funds on educational communications regarding a ballot measure will depend upon a consideration of factors such as the style, tenor, and timing of the communication funded by the City. (17 Cal.3d. at 222).

The Court's decision in *Vargas* is instructive on this point. In *Vargas*, proponents of a measure that would have repealed the Salinas utility users tax argued that publishing minutes and other items on the City of Salinas' website as well as the City's publication of a brochure, which was available at City Hall and other locations, and inclusion of an article about the predicted effects of the measure in the City's newsletter all were impermissible expenditures of public funds that were designed to influence the outcome of the election. The Court disagreed with the proponents finding that the City's expenditures were lawful because the methods that the City used to distribute the information along with the factual tenor of the various publications demonstrated that they were educational materials rather than campaign materials. The Court found that the materials were designed to inform the public about the consequences of the adoption of the measure, including its fiscal effect upon the City and upon various city programs that would have had to be eliminated if the measure were adopted. The Court noted that their tone, style and tenor did not include inflammatory rhetoric. The Court also looked at the methods of distribution of these materials and found that they were consistent with the City's typical methods of communicating with its residents. For all of these reasons, the Court concluded that they were not impermissible campaign materials and upheld the City's expenditure as a valid use of public funds.

### CONCLUSION

Expenditures for certain events or publications, such as sponsorship of a debate between initiative supporters and opponents or interviews of both proponents and opponents of an initiative in a city newsletter or by a city television station, clearly are educational. However, as demonstrated in *Vargas*, when expenditures on other types of materials are not as obviously educational in nature, the City runs the risk that the

expenditure will be challenged as improper. As a consequence, if the City Council wishes to expend any public money to educate residents about the effects of the Marymount Initiative, the expenditure and the communication that it is financing should be carefully evaluated and coordinated to ensure that it is a fair and impartial communication of facts and information so as to avoid any appearance of political advocacy.