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**OFFICE OF THE CITY ATTORNEY**  
ROCKARD J. DELGADILLO  
CITY ATTORNEY

To: All Elected City Officers and  
Heads of All Departments and Offices

From: Rockard J. Delgadillo, City Attorney

Date: March 27, 2002

Re: Mass Mailings at Public Expense

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In our effort to ensure that City Departments receive information relevant to their operations, we are offering the following general guidance relating to mass mailings at public expense. There are very specific rules concerning the sending of mass mailings at public expense that mention elected officials. These rules apply whether or not your department produced the item or brochure.

Government Code § 89001, part of the Political Reform Act, prohibits mass mailings at public expense. Section 18901 of the Fair Political Practices Commission regulations interprets the statute to apply only to mailings referencing elected officials and provides rules for those mass mailings at public expense. It generally prohibits the individual distribution of more than 200 copies of substantially similar items in a calendar month if the items include the name, office, photograph, or other reference of an elected official, unless one of a number of exceptions applies. (Items are individually delivered if they are sent by any means to individual homes, offices, etc.) However, you can legally place the item on a public counter or on a table at a meeting because copies of the item would not be individually delivered.

Some of the exceptions include: items sent between governmental entities or officers in the normal course of business; internal agency communications to employees, officers, deputies, and other staff sent in the normal course of business; items on which the only mention of the elected official appears on the official letterhead of the official, department or office; or a meeting announcement that contains the elected official's name. Even if an item qualifies for an exemption, it may not include the picture or signature of the elected official.

For example, if you are asked by another City agency to distribute copies of a brochure which contains the signature or picture of an elected official, you may distribute it to your staff or leave it on a public counter or table, but you may not send it to more than 200 City residents or businesses within a calendar month.

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As you may know, the City's mail room requires the City Attorney's approval before it will mail any item making any reference to an elected official. Even if you do not use the City's mail room, and you would like to produce and send these items, you must also seek the City Attorney's advice. We have attached the relevant FPFC regulation for your review. For additional information, you should contact Assistant City Attorney Anthony Saul Alperin at (213)847-3141 or Deputy City Attorney Renee Stadel at (213)847-0163.

Attachment

## HISTORY

1. New section filed 7-28-76; effective thirtieth day thereafter (Register 76, No. 31).
2. Amendment filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
3. Amendment of subsections (c), (e), repealer of former subsection (h) and relettering, and amendment of new subsections (h)-(j), repealer of subsection (l) and amendment of NOTE filed 4-21-92; operative 5-21-92 (Register 92, No. 19).
4. Amendment of subsection (g) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

### § 18752. Nonsubstantive Amendments of Conflict of Interest Codes.

(a) A state agency or a local government agency with jurisdiction in more than one county may make nonsubstantive alterations of a conflict of interest code for its agency.

(b) No alteration of a conflict of interest code shall be deemed nonsubstantive until the agency has requested and received prior written approval from the Executive Director of the Fair Political Practices Commission, or his or her designee, to classify the alteration as nonsubstantive.

(c) Each request for a nonsubstantive alteration shall be in writing and shall be accompanied by:

- (1) The conflict of interest code for the agency showing the proposed nonsubstantive amendments in strikeout/underscore format;
- (2) A brief description of the proposed amendments; and
- (3) A declaration by the chief executive officer of the agency declaring that the code specifically enumerates each of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest.

(d) The Executive Director, or his or her designee, shall respond in writing to each request for interim approval within 30 calendar days or receipt.

(e) Nonsubstantive alterations of conflict of interest codes shall be limited to the following:

(1) The reclassification or renaming of previously designated positions, provided no designated positions are created, and provided no existing disclosure responsibilities are modified;

(2) The deletion of a position for which the classification has been abolished by the agency;

(3) The addition, deletion or modification of definitional or operational provisions of a conflict of interest code in conformity to a statutory amendment, a regulation of the Fair Political Practices Commission, a decision of the California Supreme Court, or a final decision of a California Court of Appeal; or

(4) The modification of any provision of a conflict of interest code, provided no disclosure or disqualification obligation of any designated employee is disturbed thereby.

(f) Nonsubstantive amendments to a state agency conflict of interest code which have been approved by the Executive Director or his or her designee shall be transmitted within 30 days by the agency to the Office of Administrative Law for filing with the Secretary of State without further review pursuant to Article 6 (commencing with Section 11349) of Chapter 3.5 of Division 1 of Title 2 of the Government Code. When the agency files the nonsubstantive amendments with the Office of Administrative Law, it shall:

(1) Indicate that it is transmitting a conflict of interest code approved by the Fair Political Practices Commission for filing; and

(2) Request that the Office of Administrative Law publish the code in its entirety, or request that the Office of Administrative Law print an appropriate reference to the agency's code in its title of the California Code of Regulations.

(3) The nonsubstantive amendments to the conflict of interest code shall become effective on the thirtieth day after approval by the Executive Director or his or her designee or in the case of a state agency, the thirtieth day after the date of filing with the Secretary of State.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87306, Government Code.

## HISTORY

1. New section filed 6-3-77; effective thirtieth day thereafter (Register 77, No. 23).
2. Amendment of subsection (a) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).
3. Amendment filed 1-11-83; effective thirtieth day thereafter (Register 83, No. 3).
4. Amendment filed 4-21-92; operative 5-21-92 (Register 92, No. 19).
5. Editorial correction of subsection (f)(2) (Register 95, No. 40).

### § 18753. Statements of Economic Interests; Where to File.

City and county treasurers and "other public officials who manage public investments" as that term is used in Government Code Section 87200, who are required to file statements of economic interests pursuant to Title 9, Chapter 7, Article 2 of the Government Code shall file those statements as follows:

(a) County treasurers and other county public officials who manage public investments for the county shall file one original with the county clerk who shall make and retain a copy and forward the original to the Fair Political Practices Commission which shall be the filing officer.

(b) City treasurers and other city officials who manage public investments for the city shall file one original with the city clerk who shall make and retain a copy and forward the original to the Fair Political Practices Commission which shall be the filing officer.

(c) Except as otherwise provided in Government Code Section 87500, state officials who manage public investments for a state agency shall file one original with the filing officer for the agency who shall make and retain a copy and forward the original to the Fair Political Practices Commission which shall be the filing officer.

(d) Except as provided in subdivisions (a) and (b) of this section, members of local government agencies, boards, or commissions who manage public investments on behalf of their agency shall file one original with the filing officer of the local agency, board, or commission who shall make and retain a copy and forward the original to the Fair Political Practices Commission which shall be the filing officer. At its discretion, the Fair Political Practices Commission may provide that the original be filed directly with the local government agency, board, or commission.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 87200 and 87500, Government Code.

## HISTORY

1. New section filed 10-14-92; operative 11-13-92 (Register 92, No. 42).

### § 18760. Conflict of Interest Codes Affected by Health Department Reorganization.

NOTE: Authority cited: Section 83112, Government Code.

## HISTORY

1. New section filed 6-22-78 as an emergency; effective upon filing (Register 78, No. 25).
2. Certificate of Compliance filed 8-25-78 (Register 78, No. 34).
3. Repealer filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).

## Chapter 9. Incumbency

### § 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 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.

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).
7. Amendment filed 12-9-88 as an emergency re adoption of amendment originally filed 8-8-88; operative 12-9-88 (Register 88, No. 52). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-8-89.
8. Certificate of Compliance including repealer of Section 18901 and new Section 18901 transmitted to OAL 2-9-89 and filed 3-13-89; operative 4-12-89 (Register 89, No. 11).
9. Repealer and new section filed 6-29-90; operative 7-29-90 (Register 90, No. 35).
10. Editorial correction of HISTORY 1 (Register 95, No. 21).
11. Editorial correction inserting previously deleted HISTORY NOTES 1-8 and renumbering remaining HISTORY NOTES (Register 95, No. 25).
2. Editorial correction of subsection (c)(3)(A)1. (Register 95, No. 30).

### § 18902. Declaration of Candidacy.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 89001, Government Code.

#### HISTORY

1. New section filed 8-20-76; effective thirtieth day thereafter (Register 76, No. 34).
2. Amendment of section heading filed 10-29-81; effective thirtieth day thereafter (Register 81, No. 44).
3. Repealer filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

## Chapter 9.5. Ethics

### § 18930. Guide to Honorarium Regulations.

(a) Prohibition on Acceptance of Honoraria—Government Code Section 89502;

(b) Definition of "Honorarium" — Government Code Section 89501(a);

(1) Definition of "Speech Given" — Section 18931.1;

(2) Definition of "Article Published" — Section 18931.2;

(3) Definition of "Attendance" — Section 18931.3;

(c) Exceptions to and Exclusions from "Honorarium":

(1) Eamed Income — Section 18932;

(2) Bona Fide Business, Trade or Profession — Section 18932.1;

(3) Teaching As A Bona Fide Profession — Section 18932.2;

(4) Definition of "Predominant Activity" — Section 18932.3;

(5) General Exceptions — Section 18932.4;

(6) Direct Donations to Charitable Organizations — Section 18932.5;

(7) Travel — Section 18950, *et seq.*

(d) Returning Honoraria — Section 18933.

NOTE: Authority cited: Sections 83112 and 89501, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

1. New section filed 11-12-92; operative 12-14-92 (Register 92, No. 46).
2. Change without regulatory effect adopting new chapter 9.5 and relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Amendment of section heading, first paragraph, subsections (a), (e), (f) and NOTE filed 7-25-95; operative 7-25-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
4. Amendment of section heading, repealer of first paragraph, amendment of subsections (a), (b) and (d), repealer of subsections (e)-(f), and amendment of NOTE filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

### § 18930.1. Prohibition on Acceptance of Honoraria.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 and 89502, Government Code.

#### HISTORY

1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Amendment of section heading and subsection (c) filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
4. Repealer of section and amendment of NOTE filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

### § 18931. Definition of "Honorarium."

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 and 89502, Government Code.

#### HISTORY

1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Repealer of section and amendment of NOTE filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).

### § 18931.1. Definition of "Speech Given".

For purposes of Government Code Sections 89501 through 89506, "speech given" means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. A "speech given" does not include a comedic, dramatic, musical, or other similar artistic performance.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Amendment of section and NOTE filed 7-25-95; operative 7-25-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).

### § 18931.2. Definition of "Article Published".

(a) For purposes of Government Code Sections 89501 through 89506, an "article published" means a nonfictional written work:

(1) That is produced in connection with any activity other than the practice of a bona fide business, trade, or profession; and

(2) That is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication.

(b) For purposes of this regulation, an individual receives payment for an article published if he or she receives a payment for:

(1) Drafting any part of an article published, except activities solely involving secretarial assistance.

(2) Being identified as an author of or contributor to the article.

(c) "Article" does not include books, plays, or screenplays.

NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 89501 through 89506, Government Code.

#### HISTORY

1. New section filed 7-1-92; operative 7-31-92 (Register 92, No. 28).
2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Amendment of subsections (a) and (b) and NOTE filed 7-25-95; operative 7-25-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).