



**SUPPLEMENTAL AGENDA ITEM
 AGENDA STAFF REPORT**

MEETING DATE: 02/27/18
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: Third District and Fourth District
DEPARTMENT HEAD REVIEW: _____
Department Head Signature
DEPARTMENT CONTACT PERSON(S): Vice Chairman Shawn Nelson (714) 834-3440
 Supervisor Todd Spitzer (714) 834-3330

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 2018 FEB 21 AM 10:32
 BOARD OF SUPERVISORS
 COUNTY OF ORANGE CALIFORNIA

SUBJECT: Ballot Measure Adopting Mass Mailing Restrictions

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
_____	_____	Discussion
<i>CEO Signature</i>	<i>Action</i>	3 Votes Board Majority

	<i>County Counsel Signature</i>	

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A
Staffing Impact: N/A **# of Positions:** **Sole Source:** N/A
Current Fiscal Year Revenue: N/A
Funding Source: N/A **County Audit in last 3 years** N/A

Prior Board Action: 02/06/17 #27

RECOMMENDED ACTION(S)

1. Direct the Registrar of Voters to place "AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA, ADDING ARTICLE 6 TO TITLE 1, DIVISION 1 OF THE CODIFIED ORDINANCES OF THE COUNTY OF ORANGE ADOPTING RESTRICTIONS REGARDING THE PUBLIC FUNDING OF MASS MAILINGS" on the June 5, 2018, Statewide Direct Primary Election.
2. Direct the County Counsel to prepare the ballot language and impartial analysis of the ordinance, and to forward these items to the Registrar of Voters.
3. Direct the Auditor-Controller to prepare a fiscal impact statement consistent with Section 701 of the County Charter which estimates the amount, if any, of any increase or decrease in revenues or costs to the County as well as any applicable funding source or funding mechanism if the ordinance is adopted.

SUMMARY:

Directing the Registrar of Voters to place on the June 5, 2018, Statewide Direct Primary Election ballot a measure adopting restrictions on publicly-funded mass mailings will enable the electorate to add limitations on County-funded mass mailings that are greater than currently exist under State law.

BACKGROUND INFORMATION:

In June 1974, California voters passed Proposition 9 which added the Political Reform Act to the California Government Code. The Political Reform Act contains numerous rules guiding the activities of public officials and employees, such as prohibitions on conflicts of interests, limitations on receipt of gifts, and disclosure of sources of income. Among the rules the voters enacted with the Political Reform Act was “[n]o newsletter or other mass mailing shall be sent at public expense.” The Political Reform Act further defined “mass mailings” as “over two hundred 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.”

Since 1974, the Fair Political Practices Commission (“FPPC”) implemented the Political Reform Act’s prohibition on mass mailings at public expense through regulation. The FPPC’s regulations on mass mailings provided further definitions on what constitutes “substantially similar” and “unsolicited request” for the purposes of the mass mailing prohibition. Importantly, the FPPC regulations identified that mass mailings prohibition under the Political Reform Act was aimed at mailings that feature or identify elected officials affiliated with the agency that sends or produces the mailing at public expense.

The FPPC regulations also provided many exceptions to the mass mailing prohibition. These exceptions include references to elected officials on such things as mailings necessary for the administration of a government program, phone directories, legal notices, and inter-governmental records. Exceptions also included references to elected officials on letterhead, return addresses, announcements of constituent meetings or agency events, and business cards.

In October 2017, the California Legislature passed Senate Bill 45 to largely incorporate into the Political Reform Act the then-existing FPPC regulations on mass mailings. It also established that some of the exceptions to the mass mailing prohibition are unavailable 60 days before an election where a candidate for elective office is referenced in the mailing. The exceptions unavailable during the 60-day “blackout period” include the letterhead, return addresses, announcements of constituent meetings or agency events, and business cards exceptions.

There has been recent controversy over some mass mailings produced or sent at public expense. Some recent mailers have: been sent without final County Counsel review; announced County events at private residences; not expressly identified how the announced event directly related to the featured elected official’s incumbent duties; named multiple County elected officials in a single mailer; and, featured a non-County official who is a candidate for public office.

If adopted by the County Electorate, the proposed ordinance will add restrictions for mass mailers produced or sent at County expense relating to constituent meetings or County events. These restrictions are greater than currently exist under State law in the Political Reform Act. The proposed ordinance will:

- Require any announcement sent to a County elected officer’s constituents concerning a public meeting state that the meeting is directly related to the County elected officer’s incumbent County governmental duties, is to be held by the County elected officer, and that the County elected

officer intends to attend the meeting. Such public meeting must have a clearly stated public purpose prominently displayed on the announcement. An announcement of a “meet and greet” or gathering alone without a clearly stated public purpose would be prohibited.

- Outlaw the reference to more than one elected official except in specified circumstances for announcements of constituent meetings and County events.
- Prohibit the reference to candidates for public office in announcements of constituent meetings or County events.
- Ban the use of mass mailings to announce constituent meetings or County events held in private residences.
- Require County Counsel’s approval for legal compliance of the final design and mailing list criteria of constituent meeting or County event announcements before such announcements may be produced or sent.

Should the Board approve the Recommended Actions, the proposed ordinance will be submitted to the voters for their approval on the June 5, 2018, Statewide Direct Primary Election ballot.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A – Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF ORANGE,
CALIFORNIA, ADDING ARTICLE 6 TO TITLE 1, DIVISION 1
OF THE CODIFIED ORDINANCES OF THE COUNTY OF
ORANGE ADOPTING RESTRICTIONS REGARDING THE
PUBLIC FUNDING OF MASS MAILINGS

The People of the County of Orange, California, ordain as follows:

SECTION 1. Article 6 is added to Title 1, Division 1 of the Codified Ordinances of the County of Orange:

Article 6. Mass Mailings

Sec. 1-1-90. Definitions

For purposes of this article, the following terms have the following meanings:

- (a) "Candidate" means any person who has publicly declared his or her candidacy for elective office at the Federal, State, County, City, School District, or Special District level.
- (b) "County elected officer" means any person, whether appointed or elected, who is a member of the Board of Supervisors, the Assessor, the Auditor-Controller, the Clerk-Recorder, the District Attorney-Public Administrator, the Sheriff-Coroner, the Treasurer-Tax Collector, or, in the event any of the listed consolidated County offices are separated or any of the listed separate offices are consolidated, is occupying a separated or consolidated office which is elective.
- (c) "Elected officer" means any person who holds, whether by appointment or election, an elective office at the Federal, State, County, City, School District, or Special District level, including a County elected officer.
- (d) "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.

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

1. Two items are "substantially similar" if any of the following applies:

- a. The items are identical, except for changes necessary to identify the recipient and his or her address.
- b. 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.

c. Both of the following apply to the items mailed:

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

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

2. 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." The informational materials shall not include the elected officer's name, photograph, signature, or any other reference to the elected officer except as permitted elsewhere in this article.

3. An item is only considered substantially similar to other items sent by the same official, not to items sent by other officials in the County.

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

1. A written or oral communication, including a petition, that specifically requests a response and 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, that does not contain a specific request for a response shall be deemed to constitute an unsolicited request for a single written response.

2. An unsolicited request for continuing information on a subject shall be deemed 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.

3. 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 does not constitute a solicitation under this article.

4. 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 deemed an unsolicited request.

5. 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.

Sec. 1-1-91. Prohibitions

Except as provided in Section 1-1-92, a mailing is prohibited from being sent at public expense if all of the following criteria are met:

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

(b) The item sent either:

1. Features an elected officer when the County produces or sends the mailing.

2. Includes the name, office, photograph, or other reference to an elected officer when the County produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

(c) Any of the costs of distribution are paid for with public money or the costs of design, production, and printing exceeding fifty dollars (\$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 this article.

(d) 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 described in Section 1-1-92.

Sec. 1-1-92. Exemptions

Notwithstanding Section 1-1-91, a mass mailing of the following items is not prohibited from being sent at public expense:

(a) An item in which the County 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 of the County, or of a committee of the County, or of the County elected officer, or in a roster listing containing the names of all elected officers of the County. For purposes of this article, the return address portion of a self-mailer is considered the envelope. 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 an elected officer's photograph, signature, or any other reference to an elected officer, except as specifically permitted by this article. The item may, however, include the County elected officer's office or district number and the County elected officer's name or district number in his or her Internet Web site address or electronic mail address.

- (b) A press release sent to members of the media.
- (c) An item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer, including all local, state, and federal officers or entities.
- (d) An intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff.
- (e) An item sent in connection with the payment or collection of funds by the County, including tax bills, checks, and similar documents, in any instance in which use of the County elected officer's name, office, title, or signature is necessary to the payment or collection of the funds. The item shall not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted by this article.
- (f) Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance in which the mailing of the item is essential to the functioning of the program, the item does not include the County elected officer's photograph, and use of the County elected officer's name, office, title, or signature is necessary to the functioning of the program.
- (g) Any legal notice or other item sent as required by law, court order, or order adopted by an administrative agency pursuant to the State of California's Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), 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 paragraph, 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 that notice or other item.
- (h) A telephone directory, organization chart, or similar listing or roster which includes the names of County elected officers as well as other individuals employed by the County, in which the name of each County elected officer and individual listed appears in the same type size, typeface, and type color. The item shall not include a County elected officer's photograph, name, signature, or any other reference to a County elected officer, except as specifically permitted by this article.
- (i) An announcement of any meeting or event, as permitted under Section 1-1-93.
- (j) An agenda or other writing that is required to be made available pursuant to Government Code Sections 11125.1 and 54957.5, 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.
- (k) A business card that does not contain the County elected officer's photograph or more than one mention of the County elected officer's name.

Sec. 1-1-93. Exemptions for Meetings and Events

(a) An announcement of any meeting or event of either of the following shall be permissible under Section 1-1-92(i):

1. An announcement sent to a County elected officer's constituents concerning a public meeting that is directly related to the County elected officer's incumbent County governmental duties, is to be held by the County elected officer, and that the County elected officer intends to attend. Such public meeting must have a clearly stated public purpose prominently displayed on the announcement. An announcement of a "meet and greet" or gathering alone without a clearly stated public purpose is prohibited.

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

(b) Any announcement provided for in this section shall not include any County elected officer's photograph or signature and may include only a single mention of a single County elected officer's name except as permitted in subdivision (c) of this section or elsewhere in this article.

(c) An announcement provided for in this section may not include the name, office, or other reference to any additional elected officer unless both of the following apply:

1. The name, office, or other reference to the additional elected officer is in smaller font than the mention of the single County elected officer's name and is grouped together on the announcement with other guests, panelists, or invitees to the event.

2. The announcement includes an explanation of the purpose of the additional elected officer's presence at the event and expressly states that the additional elected officer is a guest, panelist, invitee, or other similar term. Any such purpose must be directly related to that elected officer's incumbent governmental duties.

(d) An announcement provided for in this section may not include the names of any candidates. Nothing in this subsection shall prevent an announcement from including the name of an elected officer who is also a candidate if the announcement complies with all other provisions of this section.

(e) An announcement provided for in this section may not be sent for any meeting or event held in a private residence.

(f) A mailing may not be printed or sent under this section unless the Office of the County Counsel has approved the final design of the mailing for compliance with Federal, State, and County laws, regulations, and ordinances, including this article.

(g) The Office of the County Counsel may not approve any mailing until after reviewing the final mailing list criteria utilized to determine which residents of Orange County shall receive the mailing. The mailing list criteria may not target recipients by any criteria other than geography,

unless the event's name and purpose explicitly refers to specific demographic groups, including but not limited to their age or gender, in which case criteria that limits recipients to those specific demographic groups may be utilized to the extent legally permitted.

Sec. 1-1-94. Mailing Blackout Period

Notwithstanding Sections 1-1-92 and 1-1-93, a mass mailing, as defined in Government Code Section 82041.5, that meets the criteria of Section 1-1-91 shall not be 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, except as provided in subsections (b) to (h), inclusive, and subsection (j) of Section 1-1-92.

Sec. 1-1-95. Amendment

The Board of Supervisors, by a majority vote, may amend this article to make technical nonsubstantive changes. The Board of Supervisors, by a two-thirds vote, may make substantive amendments to this article only to further the purposes of this article in restricting the use of public funds for mass mailings.