



**To:** Chair Miadich, and Commissioners Cardenas, Hatch, Hayward, and Wilson

**From:** Thomas Jones, Executive Director  
Galena West, Chief of Enforcement  
Ruth Yang, Commission Counsel

**Date:** January 3, 2020

**RE:** Assignment of Hearing to Administrative Law Judge

**Case Name:** In the Matter of City of Fountain Valley; FPPC No. 16/20109

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## **I. INTRODUCTION**

Respondent City of Fountain Valley (the “City”) is a suburban city in the County of Orange. On July 19, 2016, the Fountain Valley City Council voted to place Measure HH on the November 8, 2016 ballot. Measure HH imposed a one-cent sales tax increase for a twenty-year term to generate revenue to maintain emergency fire, police, and paramedic services; maintain anti-gang, anti-drug, after school, and senior programs; and upgrade first responder disaster communication.

The City used public funds to send prohibited mass mailings, published magazine advertisements without including an advertisement disclosure statement, failed to timely file a semi-annual campaign statement, failed to timely file a verification for its independent expenditures, and failed to timely file a 24-Hour Independent Expenditure Report. The City, through its attorney Colin Burns of the Law Offices of Harper & Burns LLC, filed a notice of defense in response to the Accusation and requested an administrative hearing.

## **II. COMMISSION ACTION ONLY REQUIRED IF THE COMMISSION DESIRES TO PARTICIPATE IN THE ADMINISTRATIVE HEARING**

The Executive Director and the Chief of Enforcement are recommending an administrative law judge (“ALJ”) conduct the hearing pursuant to Government Code section 11512, subdivision (a). The ALJ will then make a recommendation to the Commission on the findings of fact, law and penalty, if applicable, in the matter. The Commission will then make the final determination on the case.

This memorandum is submitted to each member of the Commission pursuant to California Code of Regulation section 18361.5, subdivision (b), which provides:

If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available.

Thus, no Commission action is required if the Commission approves the recommendation that the administrative hearing in this matter should be conducted before an ALJ. However, two or more Commissioners may vote to keep the matter with the Commission if so desired.

### **III. PROCEDURAL HISTORY**

The Enforcement Division initiated this administrative action against the City on March 5, 2018 by serving it with a Report in Support of a Finding of Probable Cause (“PC Report”) by certified mail. On March 19, 2018, the City responded to the PC Report with a letter requesting discovery and a probable cause conference. On or around May 21, 2018, the Enforcement Division served the City with records responsive to the request for discovery. On June 9, 2018, the City submitted a response to the PC Report and discovery records. On or around June 25, 2018, the Enforcement Division served the City with a rebuttal to the response.

On August 2, 2018, Hearing Officer Jack Woodside conducted a probable cause conference, and the City made an appearance through its counsel and a councilmember. On August 7, 2018, Hearing Officer Woodside issued an order finding that there was probable cause to believe the City violated the Act based on the PC Report, all subsequently submitted documents, and arguments presented at the probable cause conference. The order also directed the Enforcement Division to issue an accusation against the City in accordance with the finding.

On November 7, 2019, the Commission’s Chief of Enforcement Galena West, issued an Accusation against the City. The Accusation was delivered to the City by personal service on November 8, 2019. The City submitted a signed notice of defense, dated November 20, 2019, to request an administrative hearing on this matter.

### **IV. HEARING OPTIONS**

Every hearing in a contested case must be presided over by an ALJ. The agency itself shall determine whether the ALJ is to hear the case alone or whether the agency itself is to hear the case with the ALJ.<sup>1</sup>

When the agency itself hears the case, the ALJ shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the ALJ. When the ALJ hears a case, he or she shall exercise all powers relating to the

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<sup>1</sup> See Gov’t Code § 11512, subd. (a).

conduct of the hearing. A rule of the ALJ admitting or excluding evidence is subject to review in the same manner and to the same extent as the ALJ's proposed decision in the proceeding.<sup>2</sup>

## **V. SUMMARY OF THE ACCUSATION**

The Accusation alleges that the City violated the Political Reform Act as follows:

### Count 1: Prohibited Campaign Related Mass Mailings Sent at Public Expense

As a local government agency, the City was prohibited from sending campaign related mass mailings at public expense. The City sent campaign related mass mailings at public expense when it used public moneys to mail more than 200 copies of two letters on or around August 15, 2016 and September 6, 2016 to its residents to unambiguously urge support for Measure HH. By sending the mass mailings at public expense, the City violated Government Code section 89001 and Regulation section 18901.1.

### Count 2: Failure to Include Advertisement Disclosure Statement

As an active committee, the City had a duty to include a proper disclosure statement on a magazine advertisement in the October 2016 issue of *Fountain Valley Living Magazine* that it purchased to support Measure HH. The City failed to include a proper disclosure statement on a magazine advertisement in the October 2016 issue of *Fountain Valley Living Magazine* that it purchased to support Measure HH. By failing to include a proper disclosure statement on a magazine advertisement it purchased to support a ballot measure campaign, the City violated Government Code sections 84506, subdivision (a)(1) and 84507.

### Count 3: Failure to Timely File a Semi-Annual Campaign Statement

As an active committee, the City had a duty to timely file a semi-annual campaign statement for the reporting period of July 1, 2016 through December 31, 2016 by the deadline of January 31, 2017. The City failed to timely file the semi-annual campaign statement for the reporting period of July 1, 2016 through December 31, 2016 by the deadline. By failing to timely file the semi-annual campaign statement by January 31, 2017, the City violated Government Code section 84200, subdivision (b).

### Count 4: Failure to Timely File an Independent Expenditure Verification

As an active committee, the City had a duty to file a verification for its independent expenditures within 10 days after the City made its first independent expenditure supporting Measure HH. The City failed to file a verification for its independent expenditures by August 28, 2016. By failing to file a verification for its independent expenditures by August 28, 2016, the City violated Government Code section 84213, subdivision (b).

### Count 5: Failure to Timely File a 24-Hour Independent Expenditure Report

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<sup>2</sup> See Gov't Code § 11512, subd. (b).

As an active committee, the City had a duty to file a 24-Hour Independent Expenditure Report for four independent expenditures amounting to \$1,775 by September 29, 2016. The City failed to file a 24-Hour Independent Expenditure Report for four independent expenditures amounting to \$1,775 by September 29, 2016. By failing to file a 24-Hour Independent Expenditure Report by September 29, 2016, the City violated Government Code section 84204.

## **VI. CONCLUSION**

If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an ALJ is available.<sup>3</sup> Otherwise, hearing of this matter will be conducted before an ALJ alone pursuant to Section 11512, subdivision (a).

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<sup>3</sup> Reg. § 18361.5, subd. (b).

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8  
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
10 STATE OF CALIFORNIA

11 In the Matter of ) FPPC No. 16/20109  
12 )  
13 CITY OF FOUNTAIN VALLEY, ) **ACCUSATION**  
14 )  
15 Respondent. ) (Gov. Code §11503)  
16 )  
17 )

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, after a finding  
19 of probable cause pursuant to Government Code Section 83115.5, alleges the following:

20 **JURISDICTION**

21 1. Complainant is the Enforcement Division of the Fair Political Practices Commission (the  
22 “Commission”) and makes this Accusation in its official capacity and in the public interest.

23 2. The authority to bring this action is derived from Title 2, California Code of Regulations,  
24 Sections 18361 and 18361.4, subdivision (e), and the statutory law of the State of California, specifically  
25 including, but not limited to, Government Code Sections 83111, 83116, and 91000.5, which assign to the  
26 Enforcement Division the duty to administer, implement, and enforce the provisions of the Political  
27 Reform Act, found at Government Code Sections 81000 through 91014.

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1           9.       A mass mailing expressly advocates for or against a measure if it contains words like “vote  
2 for,” “elect,” “support,” “defeat,” or “reject” in relation to a specific candidate or ballot measure.<sup>6</sup>

3           10.       A communication “unambiguously urges a particular result” if either (1) it is clearly  
4 campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or  
5 other mass media advertising including, but not limited to, television and radio advertisements; or (2)  
6 when considering the style, tenor, and timing of the communication, it can be characterized as campaign  
7 material and is not a fair presentation of the facts serving only an informational purpose.<sup>7</sup>

8           11.       In considering the style, tenor, and timing of a mailing, factors to be considered include,  
9 but are not limited to, whether the communication (1) was funded from a special appropriation related to  
10 the measure; (2) was consistent with the normal communication pattern for the agency; (3) was consistent  
11 with the style of other communications issued by the agency; or (4) used inflammatory or argumentative  
12 language.<sup>8</sup>

13           12.       The Commission adopted Regulation 18901.1 after the California Supreme Court’s  
14 decision in *Vargas v. City of Salinas, et. al.* (2009) 46 Cal. 4<sup>th</sup> 1.<sup>9</sup> The Court in *Vargas* considered whether  
15 written communications concerning a ballot measure sent by the City of Salinas that did not contain  
16 express advocacy nevertheless was campaign activity and therefore an unauthorized use of public funds.  
17 The communications in question consisted of minutes from a city council meeting; city reports posted to  
18 the city’s website regarding the potential impact on city services the measure would cause; a one page  
19 document available at city buildings that listed the service and program reductions the city would institute  
20 if the measure passed; and a city newsletter that described the proposed reductions in services that would  
21 result if the measure passed.

22           13.       In its decision in *Vargas*, the Court relied on and reaffirmed its decision in *Stanson v. Mott*  
23 (1976) 17 Cal. 3d 206. *Stanson* established the analysis for determining when communications by a  
24 governmental agency that do not contain express advocacy still constitute campaign activity. The Court  
25 drew a distinction between campaign expenditures made with public funds, which are prohibited absent  
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27           <sup>6</sup> Regulation 18225, subd. (b)(2).

<sup>7</sup> Regulation 18901.1, subd. (c).

28           <sup>8</sup> Regulation 18901.1, subd. (e).

<sup>9</sup> Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25, page 3.

1 express authority, and informational activities by public agency which are generally permissible. The  
2 Court stated that “[w]ith respect to some activities, the distinction is rather clear: thus, the use of public  
3 funds to purchase such items as bumper stickers, posters, advertising “floats,” or television and radio  
4 “spots” unquestionably constitutes improper campaign activity.”<sup>10</sup> The Court went on to conclude that  
5 certain publicly financed literature that is not clearly campaign material and that purports to contain only  
6 relevant factual information can be prohibited campaign activity depending on the “style, tenor and timing  
7 of the publication; no hard and fast rule governs every case.”<sup>11</sup>

8 14. The Court in *Vargas* concluded that the literature produced by the city was not clearly  
9 campaign material (i.e. not bumper stickers, posters, advertising floats, or television or radio sports),<sup>12</sup> so  
10 it applied the “style, tenor and timing” test from *Stanson* and concluded the materials in question were  
11 informational material, not campaign materials.<sup>13</sup>

12 15. Neither *Vargas* nor *Stanson* directly concerned any provisions of the Act. They were  
13 decided based on the constitutional prohibition against unauthorized use of public funds by public  
14 officials, specifically, the use of public funds for campaign activity which advocates for or against a ballot  
15 measure, as opposed to activity that merely educates the voters on an issue. But since in those cases the  
16 California Supreme Court had defined when government agencies are prohibited from using public  
17 moneys to pay for communications related to ballot measures, the Commission adopted the parameters  
18 described in *Vargas* for determining when a government agency participates in campaign activity by  
19 making independent expenditures under the Act.<sup>14</sup>

20 16. While *Vargas* and *Stanson* were instructive in determining when communications by a  
21 public agency constitute campaign activity, Regulation 18420.1 is the authority for determining when a  
22 payment of public money qualifies as an “independent expenditure” under the Act.

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26 <sup>10</sup> *Stanson*, 17 Cal.3d 206, 221.

27 <sup>11</sup> *Id.* at 222.

28 <sup>12</sup> *Vargas*, 46 Cal.4th 1, 35.

<sup>13</sup> *Id.* at 37-38.

<sup>14</sup> Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25, page 3.



1 **B. Government Agencies as Campaign Committees**

2 17. Any person or combination of persons who, in a calendar year, makes independent  
3 expenditures totaling \$1,000 or more qualifies as an independent expenditure committee.<sup>15</sup>

4 18. An expenditure is any monetary or nonmonetary payment made for a political purpose,  
5 such as influencing or attempting to influence the action of the voters for or against the passage of any  
6 measure.<sup>16</sup> It includes any monetary or non-monetary payment that is used for communications which  
7 expressly advocate the passage or defeat of a clearly identified ballot measure.<sup>17</sup>

8 19. A payment of public moneys by a local governmental agency made in connection with a  
9 communication that expressly advocates passage of a ballot measure, or that taken as a whole and in  
10 context, unambiguously urges a particular result in an election is an independent expenditure.<sup>18</sup>

11 **C. Advertisement Disclosure**

12 20. An advertisement is any general or public advertisement which is authorized and paid for  
13 by a committee for the purpose of supporting or opposing a candidate for elective office or one or more  
14 ballot measures.<sup>19</sup> Such an advertisement, that is paid for by an independent expenditure, must include a  
15 disclosure statement that identifies the name of the committee.<sup>20</sup>

16 21. "Paid for by" should immediately precede the committee's name, and all of the disclosure  
17 statement must be printed clearly and legibly in no less than 14-point bold, sans serif type font.<sup>21</sup>

18 **D. Duty to File Campaign Statements and Reports**

19 22. If a local government agency makes expenditures and qualifies as a committee, it must file  
20 campaign statements.<sup>22</sup>

21 23. A state or local governmental agency qualifies as an independent expenditure committee  
22 when it makes independent expenditures that exceed \$1,000 in a calendar year.<sup>23</sup>

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24 <sup>15</sup> Section 82013, subd. (b).

25 <sup>16</sup> Regulation 18225, subd. (a)(1).

26 <sup>17</sup> Regulation 18225, subd. (b).

27 <sup>18</sup> Section 82031; Regulation 18420.1, subd. (a).

28 <sup>19</sup> Section 84501, subd. (a); Regulation 18450.1, subd. (a)(2).

<sup>20</sup> Section 84506, subd. (a)(1).

<sup>21</sup> Section 84507; Regulation 18450.4, subd. (b).

<sup>22</sup> Regulation 18420, subd. (d).

<sup>23</sup> Section 82013, subd. (b).

1           24. A committee making an independent expenditure must file a verification that the  
2 expenditure was independent within 10 days after the date the committee makes its first independent  
3 expenditure supporting a candidate or measure in an election.<sup>24</sup>

4           25. An independent expenditure committee also must file semi-annual campaign statements  
5 each year for the period ending June 30 and December 31 if it made independent expenditures during the  
6 6-month period prior to those dates.<sup>25</sup> However, if an independent expenditure committee newly forms  
7 during the second half of a year, the reporting date begins on January 1.<sup>26</sup>

8           26. A committee also must file a 24-Hour Expenditure Report within 24 hours of making an  
9 expenditure of \$1,000 or more during the 90 days prior to an election and disclose the independent  
10 expenditure on a subsequent campaign statement.<sup>27</sup> It must report the committee's name, committee's  
11 address, number or letter of the measure, jurisdiction of the measure, amount, date, and description of  
12 goods or services for which the late independent expenditure was made.<sup>28</sup>

13 **E. Factors to be Considered by the Fair Political Practices Commission**

14           27. In framing a proposed order following a finding of a violation pursuant to Section 83116,  
15 the Commission and the administrative law judge shall consider all the surrounding circumstances  
16 including but not limited to: (1) The seriousness of the violation; (2) The presence or absence of any  
17 intention to conceal, deceive or mislead; (3) Whether the violation was deliberate, negligent or inadvertent;  
18 (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other  
19 government agency in a manner not constituting a complete defense under Section 83114(b); (5) Whether  
20 the violation was isolated or part of a pattern and whether the violator has a prior record of violations of  
21 the Act or similar laws; and (6) Whether the violator, upon learning of a reporting violation, voluntarily  
22 filed amendments to provide full disclosure.<sup>29</sup>

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26 <sup>24</sup> Section 84213; Regulation 18465.1, subd. (b).

27 <sup>25</sup> Section 84200, subd. (b).

28 <sup>26</sup> Section 82046, subd. (b).

<sup>27</sup> Sections 84200.6, subd. (b), and 84204.

<sup>28</sup> Section 84204.

<sup>29</sup> Regulation 18361.5, subd. (d).

GENERAL FACTS

28. On July 19, 2016, the Fountain Valley City Council voted to place Measure HH on the November 8, 2016 ballot. Measure HH imposed a one-cent sales tax increase for a twenty-year term to generate revenue to maintain emergency fire, police, and paramedic services; maintain anti-gang, anti-drug, after school, and senior programs; and upgrade first responder disaster communication.

29. The City disseminated communications that unambiguously urged support for Measure HH by way of letters and magazine advertisements. The style, tenor, and timing of the letters unambiguously urged support for Measure HH, and the magazine advertisements were clearly campaign material or activity that unambiguously urged support for Measure HH.

**A. Letters**

30. On or around August 15, 2016, the City included a letter with every water bill mailed to its residents. The City also sent a substantially similar letter, dated September 6, 2016, to “community leaders,” who the City targeted as people who staff believed were interested in Measure HH.

31. The two letters were the type of mailing prohibited by Section 89001 and Regulation 18901.1 because (1) they were tangible items; (2) those items unambiguously urged the passage of Measure HH; (3) at least \$175 of public moneys were paid to distribute the items; and (4) 15,048 substantially similar items were sent prior to the November 8, 2016 election.

32. The two letters did not expressly advocate for the passage of Measure HH, but an examination of the style, tenor, and timing of the letters supports the conclusion that these letters unambiguously urged support for Measure HH.

33. The two letters were funded from a general appropriation of the City’s budget and were signed by three executive-level officials, the City Manager, Police Chief, and Fire Chief, to lend credibility to the declarations made in the letters. The two letters were not consistent in style with past communications. Previous communications from the City informed residents of changes to local ordinances or solicited assistance from community volunteers. Previous communications also were not signed by three executive-level officials. The two letters regarding Measure HH clearly departed from the City’s normal style and tone of communication.

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1           34.     The two letters also used inflammatory and argumentative language to promote Measure  
2 HH. Descriptions such as “vital community services” “and “critical mission safety equipment” elevated  
3 the urgency and importance of those matters. “... we will continue to keep the community informed ...  
4 on our efforts to maintain your essential services” showed that the City was making an “effort” to get  
5 Measure HH passed. “We all know that adequate police and fire fighter staffing are necessary to prevent  
6 crime and save lives” presented the opinionated statement as an obvious and undeniable fact. “... unless  
7 additional funding is identified, Fire Station number 2 will have to be closed” presents the passage of  
8 Measure HH as an ultimatum. “State of California has taken approximately \$100 million of Fountain  
9 Valley’s money” and “reliable source of locally-controlled funding that can’t be taken by Sacramento”  
10 portrayed the State as an unfriendly entity against which residents of Fountain Valley must unite.

11 **B.     Magazine Advertisements**

12           35.     On or about August 18, 2016, the City also purchased space for two advertisements to  
13 promote Measure HH in Fountain Valley Living Magazine (the “FVL Magazine”), a privately-owned  
14 publication that distributes approximately 25,000 copies to Fountain Valley residents.

15           36.     The City’s advertisements were published in the September 2016 and October 2016 issues  
16 (“Measure HH ads”). The City paid \$800 to place each of the Measure HH ads in FVL Magazine, for a  
17 total cost of \$1,600, not including the cost to produce.

18           37.     The Measure HH ads unambiguously urged the passage of the measure because magazine  
19 advertisements are “mass media advertising,” which clearly are campaign material.

20           38.     Even when assessed under the style, tenor, and timing test, the Measure HH ads  
21 unambiguously urged the passage of the measure.

22           39.     The City’s Measure HH ads were not consistent in style with past communications. The  
23 City previously purchased advertisement space in FVL Magazine to communicate with its residents, but  
24 those examples differ significantly in tone and style from these Measure HH advertisements.

25           40.     Previous advertisements in FVL Magazine promoted City programs and events, such as  
26 shopping at local Fountain Valley businesses, home improvement loans and grants, community  
27 recreation classes, summer festival, and senior transportation program.

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1 41. Unlike those previous magazine advertisements, the Measure HH ads displayed the City’s  
2 seal on top and featured the pictures, names, and titles of City officials on the bottom, highlighting the  
3 City’s support of the measure and borrowing from the City officials’ reputational capital within the  
4 community to promote Measure HH.

5 42. The September 2016 ad showed City Manager Hall’s and Fire Chief Coppolino’s picture,  
6 title, and name, and the October 2016 ad also incorporated Police Chief Llorens’s picture, title, and name.

7 43. Additionally, the Measure HH ads used the same inflammatory and argumentative  
8 language as the letters to support the passage of the measure, such as “funding to maintain vital  
9 community services such as police and fire, including keeping both of the current Fountain Valley fire  
10 stations open,” “state of California has taken approximately \$100,000,000 of Fountain Valley’s money –  
11 causing reductions to the services our residents rely on,” “We all know that adequate firefighter staffing  
12 is necessary to prevent crime and save lives,” “unless additional funding is identified, Fire Station No. 2  
13 will have to be closed,” and “provide a reliable source of locally controlled funding that can’t be taken  
14 by Sacramento.”

15 44. The City exceeded the \$1,000 threshold when it published and paid for its advertisement  
16 in the October 2016 issue of FVL Magazine on or around September 28, 2016. Having made expenditures  
17 totaling \$1,775, the City qualified as an independent expenditure committee.

18 45. As a result, the October 2016 ad required a disclosure statement identifying the name of  
19 the committee with “paid for by” immediately preceding the committee’s name.

20 46. The October 2016 ad did not feature such a disclosure statement.

21 **C. Campaign Statement and Report**

22 47. Since the City qualified as an independent expenditure committee, it was required to file  
23 several forms to disclose its campaign activities to the public.

24 48. The City needed to file an independent expenditure verification with the Commission and  
25 has yet to file it.

26 49. The City also should have filed with its local filing officer a semi-annual campaign  
27 statement to itemize its campaign activities for the period covering January 1, 2016 through

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1 December 31, 2016 by January 31, 2017. The City has yet to file the semi-annual campaign statement to  
2 disclose its campaign activities during the November 8, 2016 election.

3 50. In addition to the independent expenditure verification and semi-annual campaign  
4 statement, the City was required to file a 24-Hour Independent Expenditure Report within 24 hours of  
5 making an expenditure of \$1,000 or more during the 90 days prior to November 8, 2016. The expenditure  
6 for the two letters and the Measure HH ads were made during the 90 days prior to November 8, 2016,  
7 and the total in the aggregate exceeded \$1,000 on or around September 28, 2016. The City has yet to file  
8 a 24-Hour Independent Expenditure Report.

### 9 PROCEDURAL HISTORY

10 51. On December 6, 2016, the Enforcement Division received an initial complaint alleging that  
11 the City used public moneys to campaign for the passage of Measure HH.

12 52. The Enforcement Division investigated the allegations and determined that the City had  
13 violated the Act by using public moneys to produce, print, and distribute campaign related  
14 communications to support Measure HH and failed to report those independent expenditures on a  
15 verification form, campaign report, or campaign statement.

16 53. The Enforcement Division initiated an administrative action against the City in this matter  
17 by serving its counsel with a packet containing a cover letter, a Report in Support of a Finding of Probable  
18 Cause (“PC Report”), a fact sheet regarding probable cause proceedings, selected sections of the  
19 Government Code regarding probable cause proceedings for the Commission, and selected regulations of  
20 the Commission regarding probable cause proceedings.

21 54. On March 5, 2018, the City was served with the PC Report. The information contained in  
22 the PC Report packet advised the City that it had 21 days in which to request a probable cause conference,  
23 file a written response to the PC Report, or both.

24 55. On March 19, 2018, the City responded to the PC Report with a letter requesting discovery  
25 of the evidence in the possession of and relied upon by the Enforcement Division in pursuit of this matter.  
26 In this letter, the City also requested a probable cause conference.

27 56. On or around May 21, 2018, the City was served with records in response to its request for  
28 discovery.

1 57. On June 9, 2018, the City submitted a response to the PC Report and discovery records.

2 58. On or around June 25, 2018, the City was served the with a rebuttal to its response to the  
3 PC Report.

4 59. On August 2, 2018, a Hearing Officer conducted a probable cause conference, and the City  
5 made an appearance through its counsel and a councilmember.

6 60. On or about August 7, 2018, the Hearing Officer issued an order finding, based on the PC  
7 Report and all documents subsequently submitted by the Enforcement Division and the City in response  
8 to the PC Report, that there was probable cause to believe the City violated the Act and directed the  
9 Enforcement Division to issue an accusation against the City in accordance with the finding.

10 **VIOLATIONS**

11 61. The City committed five violations of the Act as follows:

12 **Count 1**

13 **Prohibited Campaign Related Mass Mailings Sent at Public Expense**

14 62. Complainant incorporates paragraphs 1 – 61 of this Accusation, as though completely set  
15 forth here.

16 63. As a local government agency, the City was prohibited from sending campaign related  
17 mass mailings at public expense.

18 64. The City sent campaign related mass mailings at public expense when it used public  
19 moneys to mail more than 200 copies of two letters on or around August 15, 2016 and September 6, 2016  
20 to its residents to unambiguously urge support for Measure HH.

21 65. By sending the mass mailings at public expense, the City violated Government Code  
22 section 89001 and Regulation section 18901.1.

23 **Count 2**

24 **Failure to Include Advertisement Disclosure Statement**

25 66. Complainant incorporates paragraphs 1 – 65 of this Accusation, as though completely set  
26 forth here.

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1 **Count 5**

2 **Failure to Timely File a 24-Hour Expenditure Report**

3 78. Complainant incorporates paragraphs 1 – 77 of this Accusation, as though completely set  
4 forth here.

5 79. As an active committee, the City had a duty to file a 24-Hour Independent Expenditure  
6 Report for four independent expenditures amounting to \$1,775 by September 29, 2016.

7 80. The City failed to file a 24-Hour Independent Expenditure Report for four independent  
8 expenditures amounting to \$1,775 by September 29, 2016.

9 81. By failing to file a 24-Hour Independent Expenditure Report by September 29, 2016, the  
10 City violated Government Code section 84204.

11 **MITIGATING OR EXCULPATORY FACTORS**

12 82. The City does not have a prior enforcement history.

13 **AGGRAVATING FACTORS AND OTHER RELEVANT MATERIALS**

14 83. On October 28, 2016, days before the General Election, John Collins published an online  
15 opinion editorial “[a]s Mayor Pro Tem of the city of Fountain Valley.” Mayor Pro Tem Collins’ piece  
16 responded to a newspaper editorial that criticized Measure HH, and it used biased phrases, such as “soon  
17 there will be nothing we can tap into,” “essential services will be impacted,” “vital safety services,”  
18 “lowest-impact option,” and “keep our town solvent, healthy and functioning as it should.” Furthermore,  
19 Mayor Pro Tem Collins’ piece amplified its argumentative tone when it alluded to two City Council  
20 candidates who publicly opposed Measure HH. At the end, Mayor Pro Tem Collins’s editorial expressly  
21 advocated “Yes on HH.” Publishing the article does not violate the Act only because the City did not pay  
22 to post it online. However, the article underscores the City’s willingness to advocate for Measure HH and  
23 to exploit the title and reputation of their officials to achieve that end.

24 **PRAYER**

25 WHEREFORE, Complainant prays as follows:

26 1. That the Fair Political Practices Commission hold a hearing pursuant to Section 83116 and  
27 Regulation 18361.5, and at such hearing find that the City violated the Act as alleged herein;

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- 1           2.     That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),  
2           order the City to pay a monetary penalty of up to \$5,000 for the violation of the Political  
3           Reform Act alleged in **Count 1**;
- 4           3.     That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),  
5           order the City to pay a monetary penalty of up to \$5,000 for the violation of the Political  
6           Reform Act alleged in **Count 2**;
- 7           4.     That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),  
8           order the City to pay a monetary penalty of up to \$5,000 for the violation of the Political  
9           Reform Act alleged in **Count 3**;
- 10          5.     That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),  
11          order the City to pay a monetary penalty of up to \$5,000 for the violation of the Political  
12          Reform Act alleged in **Count 4**;
- 13          6.     That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),  
14          order the City to pay a monetary penalty of up to \$5,000 for the violation of the Political  
15          Reform Act alleged in **Count 5**;
- 16          7.     That the Fair Political Practices Commission, pursuant to Regulation 18361.5, subdivision  
17          (d), consider the following factors in framing a proposed order following a finding of a  
18          violation pursuant to Section 83116: (1) the seriousness of the violation; (2) the presence or  
19          absence of any intention to conceal, deceive or mislead; (3) whether the violation was  
20          deliberate, negligent or inadvertent; (4) whether the violator demonstrated good faith by  
21          consulting the Commission staff or any other government agency in a manner not  
22          constituting a complete defense under Section 83114, subdivision (b); (5) whether the  
23          violation was isolated or part of a pattern and whether the violator has a prior record of  
24          violations of the Act or similar laws; and (6) whether the violator, upon learning of a  
25          reporting violation, voluntarily filed amendments to provide full disclosure.

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8. That the Fair Political Practices Commission grant such other and further relief as it deems just and proper.

Dated: 7 Nov 19

  
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Galena West  
Chief of Enforcement  
Fair Political Practices Commission