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8
9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

10 **STATE OF CALIFORNIA**

11 In the Matter of:

FPPC Case No. 20/1040

12 **STIPULATION, DECISION AND ORDER**

13 CITY OF EL MONTE,

14
15 Respondent.

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17 **INTRODUCTION**

18 Respondent, City of El Monte (the “City”) is located in Los Angeles County and has a
19 population of approximately 113,475.

20 The Political Reform Act (the “Act”)¹ prohibits the sending of a mass mailing featuring an
21 elected official at public expense. The City violated the Act by producing and distributing mass
22 mailings, which featured an elected official, at public expense.

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28 ¹ The Political Reform Act – sometimes simply referred to as the Act – is contained in Government Code sections 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred
3 in 2019 and 2020. For this reason, all legal references and discussions of law pertain to the Act’s
4 provisions as they existed at that time.

5 **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

6 When enacting the Act, the people of California found and declared that previous laws regulating
7 political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was
8 decreed the Act “should be liberally construed to accomplish its purposes.”³

9 There are many purposes of the Act. One stated purpose is to abolish laws and practices that
10 unfairly favor incumbents so that elections may be conducted more fairly.⁴ Another purpose of the Act
11 is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

12 **Mass Mailing at Public Expense**

13 No newsletter or other mass mailing shall be sent at public expense.⁶ Specifically, a mailing is
14 prohibited if all of the following criteria are met:⁷

- 15 (1) An item sent is delivered, by any means, to the recipient at their residence, place of business, or
16 post office box. The item delivered to the recipient must be a tangible item, such as a written
17 document.
- 18 (2) The item sent features an elected officer affiliated with the agency that produces or sends the
19 mailing. An item “features an elected officer” when it includes, among other things, the elected
20 officer’s photograph or singles out the elected officer by the manner of display of his or her
21 name or office in the layout of the document, such as by headlines, captions, type size, typeface,
22 or type color.⁸ A mailing containing the name, office, photograph, or other reference to an
23 elected officer who consults or acts in concert with the agency to prepare or send the mailing
24 also fulfills the second criteria.
- 25 (3) Any of the costs of distribution are paid for with public moneys or the costs of design,
26 production, and printing exceeding \$50 are paid with public moneys, and is done with the intent
27 of sending the item other than as permitted by this section.
- 28 (4) More than 200 substantially similar items are sent in a single calendar month, excluding any item
sent in response to an unsolicited request.

26 ² Section 81001, subd. (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subd. (e).

⁵ Section 81002, subd. (f).

⁶ Section 89001.

⁷ Section 89002, subd. (a).

⁸ Section 89002, subd. (c)(2).

SUMMARY OF THE FACTS

The City produced five Newsletters that provided a variety of information to residents including information on City events and programs, COVID-19 testing and support, and notice of City Council meetings. Above the notice of the City Council meetings, two of the Newsletters included a picture of the Mayor and City Councilmembers. Next to the notice of the City Council meetings, each of the Newsletters had the Mayor and City Councilmembers listed by name and office. However, the Mayor of the City at the time, Andre Quintero (“Quintero”), was singled out in each of the Newsletters by including a quote, which appeared to be from Quintero, above his name and office. The City confirmed that the quotes were not obtained from Quintero but instead were “inspirational statements” created by City staff. There were two at-issue quotes: “We will get through this crisis together, as a community,” which the City states was in reference to the unprecedented COVID-19 pandemic; and “Together, we climb, strive and build. Together, we are El Monte,” which the City states was an apolitical community unifying quote. Next, the type size of Quintero’s name and office was larger than the type size used to list the City Councilmember’s names, further distinguishing Quintero from the other City Councilmembers. As a result, Quintero was featured in each of the Newsletters at issue here. The five Newsletters featuring Quintero were mailed to City residents on or around December 17, 2019, February 4, 2020, March 27, 2020, June 2, 2020, and September 19, 2020.

The City prepared and designed the Newsletters themselves and admitted to using public money to have the Newsletters printed and distributed to residents as follows:

Invoice Date	Newsletter Date	Description	Cost	Amount Mailed
12/17/2019	December 17, 2019	Printing	\$9,086	33,553
12/23/2019		Mailing	\$5,710	
01/30/2020	February 4, 2020	Printing	\$7,285	26,903
		Mailing	\$4,633	
03/25/2020	March 27, 2020	Printing	\$5,851	26,903
03/23/2020		Mailing	\$7,000	
05/25/2020	June 2, 2020	Printing	\$8,065	26,886
05/11/2020		Mailing	\$5,000	
09/16/2020	September 19, 2020	Printing	\$8,020	26,735
09/01/2020 – 11/30/2020		Mailing	\$4,384	
TOTALS:			\$65,034	140,980

1 In summary, in 2019 and 2020, the City designed, printed, and distributed five different
2 Newsletters at a total cost of approximately \$65,034 resulting in 140,980 Newsletters mailed. Each of
3 the five Newsletters were considered a mass mailing under the Act and each featured a public official.

4 VIOLATIONS

5 **Count 1: Mass Mailing Sent at Public Expense**

6 On or around December 17, 2019, the City produced a Newsletter that featured a public official
7 and spent approximately \$14,796 in public money to print and mail this Newsletter to 33,553 residents,
8 in violation of Government Code Sections 89001 and 89002.

9 **Count 2: Mass Mailing Sent at Public Expense**

10 On or around February 4, 2020, the City produced a Newsletter that featured a public official and
11 spent approximately \$11,918 in public money to print and mail this Newsletter to 26,903 residents, in
12 violation of Government Code Sections 89001 and 89002.

13 **Count 3: Mass Mailing Sent at Public Expense**

14 On or around March 27, 2020, the City produced a Newsletter that featured a public official and
15 spent approximately \$12,851 in public money to print and mail this Newsletter to 26,903 residents, in
16 violation of Government Code Sections 89001 and 89002.

17 **Count 4: Mass Mailing Sent at Public Expense**

18 On or around June 2, 2020, the City produced a Newsletter that featured a public official and
19 spent approximately \$13,065 in public money to print and mail this Newsletter to 26,886 residents, in
20 violation of Government Code Sections 89001 and 89002.

21 **Count 5: Mass Mailing Sent at Public Expense**

22 On or around September 19, 2020, the City produced a Newsletter that featured a public official
23 and spent approximately \$12,404 in public money to print and mail this Newsletter to 26,735 residents,
24 in violation of Government Code Sections 89001 and 89002.

25 **PROPOSED PENALTY**

26 This matter consists of five counts. The maximum penalty that may be imposed is \$5,000 per
27 count. Thus, the maximum penalty that may be imposed here is \$25,000.⁹

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⁹ Section 83116, subd. (c).

1 The type of violation in this case is not eligible for the Streamline Programs because it involves
2 mass mailings sent at public expense.¹⁰

3 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
4 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
5 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
6 considers the facts and circumstances of the violation in the context of the following factors set forth in
7 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
8 by the specific violation; (2) The level of experience of the violator with the requirements of the
9 Political Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The
10 presence or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was
11 deliberate, negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the
12 Commission staff or any other governmental agency in a manner not constituting complete defense
13 under Government Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern
14 and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
15 (8) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide
16 full disclosure.¹¹

17 The public harm inherent in violations concerning mass mailings sent at public expense is that
18 the mailings may unfairly favor the featured public official. The City contends the Newsletters were
19 issued solely as encouragement to the community in the face of the COVID-19 pandemic. Although, the
20 violations at issue here were also within a year of the November 3, 2020 General Election where
21 Quintero appeared on the ballot for re-election to his position as Mayor of the City. However, Quintero
22 was not successful.

23 There was no evidence to support an intent to conceal, deceive or mislead the public as the
24 Newsletters clearly showed they were from the City. The City cooperated with the Enforcement
25 Division throughout its investigation and provided all necessary information and supporting records.
26 The evidence shows a pattern of violations as the City continued to use the same format for each
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28 ¹⁰ Regulations 18360.1, subd. (a), and 18360.3, subd. (a).

¹¹ Regulation 18361.5, subdivision (e).

1 Newsletter. Although, the violations here appear to be inadvertent as City staff were not aware of the
2 rules concerning the prohibition of mass mailings at public expense which feature an elected official.
3 The City does not have a prior record of violating the Act. Also, there was no evidence that the City
4 consulted with Commission staff or any other governmental agency prior to producing the Newsletters
5 at issue here.

6 The Commission considers penalties in prior cases with the same or similar violations and
7 comparable facts.

8 *In the Matter of City of Upland*; FPPC Case No. 18/228. The City of Upland produced and
9 distributed over 200 copies of a letter at public expense, which included the name, photograph, and title
10 of the City of Upland Mayor. The costs of the production and postage exceeded \$50. Specifically,
11 14,146 copies were sent to residents for a total cost of \$2,595.03. The Mayor worked in coordination
12 with other City of Upland officials and staff to compose and produce the letter. On May 21, 2020, the
13 Commission approved a penalty of \$2,000.

14 A higher penalty than that approved in *City of Upland* is recommended. Here, similar to *City of*
15 *Upland*, the City mailed over 200 copies of a Newsletter at public expense which included the name,
16 office, and quote from the Mayor of the City at the time. The costs of the production and postage
17 exceeded \$50. Specifically, 140,980 Newsletters were sent to residents for a total cost of \$65,034,
18 significantly higher amounts than that at issue in *City of Upland*. In mitigation, unlike *City of Upland*,
19 the public official here did not coordinate with City staff regarding the design or use of the quote in the
20 Newsletter. Also in mitigation, the section of the Newsletters which featured an elected official was
21 limited to 0.5 pages of each of the Newsletters. Due to the significantly higher amounts of public monies
22 spent and of Newsletters produced, a total penalty of \$15,000 is recommended, \$3,000 per count.

23 CONCLUSION

24 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
25 Respondent, City of El Monte, hereby agree as follows:

26 1. Respondent violated the Act as described in the foregoing pages, which are a true and accurate
27 summary of the facts in this matter.

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1 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at
2 its next regularly scheduled meeting – or as soon thereafter as the matter may be heard.

3 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
4 of reaching a final disposition without the necessity of holding an administrative hearing to
5 determine the liability of Respondents pursuant to Section 83116.

6 4. Respondent has consulted with its attorney, Colin Barr of Olivarez Madruga Lemieux
7 O’Neill, LLP, and understands, and hereby knowingly and voluntarily waives, any and all
8 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through
9 18361.9. This includes, but is not limited to the right to appear personally at any administrative
10 hearing held in this matter, to be represented by an attorney at Respondent’s own expense, to
11 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to
12 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a
13 hearing officer, and to have the matter judicially reviewed.

14 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
15 Respondent agrees to the Commission imposing against them an administrative penalty in the
16 amount of \$15,000. One or more cashier’s checks or money orders totaling said amount – to be
17 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
18 payment of the administrative penalty described above, and same shall be held by the State of
19 California until the Commission issues its decision and order regarding this matter.

20 6. If the Commission refuses to approve this stipulation – then this stipulation shall become
21 null and void, and within fifteen business days after the Commission meeting at which the
22 stipulation is rejected, all payments tendered by Respondent in connection with this stipulation
23 shall be reimbursed to Respondent. If this stipulation is not approved by the Commission, and if
24 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
25 Commission, nor the Executive Director, shall be disqualified because of prior consideration of
26 this stipulation.

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1 7. The parties to this agreement may execute their respective signature pages separately. A
2 copy of any party's executed signature page, including a hardcopy of a signature page
3 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.
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6 Dated: _____
7 Angela J. Brereton, Chief of Enforcement
8 Fair Political Practices Commission
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10 Dated: _____
11 _____, on behalf of
12 City of El Monte, Respondent
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16 The foregoing stipulation of the parties "In the Matter of City of El Monte," FPPC Case No.
17 20/1040, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
18 effective upon execution by the Chair.
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20 IT IS SO ORDERED.
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22 Dated: _____
23 Richard C. Miadich, Chair
24 Fair Political Practices Commission
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