

Stephen M. Fischer
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Via First-Class Mail and Email

GWest@fppc.ca.gov

Galena West
Chief, Enforcement Division
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, California 95811

Re: Complaint No. COM-09152020-01716; City of Oxnard

Dear Ms. West:

This letter is written on behalf of the City of Oxnard and provides a response to your letter dated September 16, 2020 regarding a complaint from Phillip Molina, who is the City's elected City Treasurer (hereafter "Molina"). Molina was recently stripped of his administrative duties as City Treasurer by the Oxnard City Council. (See attached City Council staff report dated May 5, 2020.) An attached May 6, 2020 article from the Ventura County Star provides a brief overview of the matter.

Molina's complaint is without merit for a number of reasons, including (but not limited to) the following:

1. The City has not prepared or sent any "promotional materials" for or against Measure L, which is entitled:

"EXPANSION OF DUTIES OF ELECTED CITY TREASURER BY COMBINING THE POSITIONS OF THE CITY TREASURER AND DIRECTOR OF FINANCE AND GIVING THE CITY TREASURER ADDITIONAL DUTIES PURSUANT TO THAT NEW ROLE: AUTHORITY OVER CITY'S FINANCE DEPARTMENT; SELECTION AND OVERSIGHT OF INTERNAL AUDITOR; ESTABLISHMENT, PREPARATION AND SUBMITTAL OF MONTHLY FINANCIAL REPORTS; ESTABLISHMENT, PREPARATION AND SUBMITTAL OF MONTHLY PERFORMANCE MEASUREMENTS FOR CITY DEPARTMENTS; AND PREPARATION AND SUBMITTAL OF ANNUAL CITY BUDGET".

The City also has not sent any mailed materials for or against Measure L to Oxnard residents. The City's website includes the ballot question for Measure L, as well as the City Attorney's impartial analysis. (See <https://www.oxnard.org/ballotmeasures/>.) Mr. Molina is fully aware of the provisions of Measure L because it would give the elected City Treasurer substantial new powers. As indicated in the ballot question for Measure L:

“Shall the initiative ordinance to increase the powers of the City Treasurer, limit the City Council's ability to restrict the powers of the City Treasurer, reduce oversight authority of the City Manager and Director of Finance, mandate the City Treasurer's assumption of professional responsibilities over the City's \$523,000,000 Budget, \$256,000,000 Investment Portfolio, Finance Department, preparation and submittal of the annual municipal budget, and professional financial operations of the City, be adopted?”

The City Council authorized a ballot argument to be prepared opposing Measure L. A member of the City Council also signed the rebuttal argument. This action is clearly authorized under California Supreme Court precedent and state law. (See *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 36 citing Election Code Section 9282 “[authorizing local legislative body to author a ballot pamphlet argument for or against any city measure].”) Molina was a signatory on the rebuttal to the City's argument against Measure L.

2. If Molina is referring to *Measure E* (the City's proposed sales tax measure), the City has not prepared or sent any “promotional materials” for or against Measure E at public expense.

The City also has not sent any mailed materials for or against Measure E to Oxnard residents. The City's website includes the ballot question and the City Attorney's impartial analysis for Measure E. (See <https://www.oxnard.org/ballotmeasures/>.) The City's website also includes additional information regarding Measure E and other election information. (See <https://www.oxnard.org/measureE/>.)

The City Council authorized a ballot argument to be prepared in support of Measure E. A member of the City Council also signed the rebuttal to the argument against Measure E. This action is clearly authorized under California Supreme Court precedent and state law. (See *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 36 citing Election Code Section 9282 “[authorizing local legislative body to author a ballot pamphlet argument for or against any city measure].”) Molina was a signatory on the rebuttal to the City's argument in support of Measure E.

3. If (as it appears) Molina is referring to the Measure E agenda item on the City Council agenda of September 15, 2020 as violating the law, this item has been continued to a special meeting to be held on September 22, 2020. It is anticipated that

City Manager Alex Nguyen will make an informational presentation regarding Measure E at that special City Council meeting.

As to Molina's specific claim that the "City Manager of the City of Oxnard used taxpayers' money to pay city staff and consultants to prepare and present promotional materials for the City's sales tax [m]easure", a review of the presentation clearly demonstrates that it "simply informs the public of its opinion on the merits of a pending ballot measure or of the impact on the entity that passage or defeat of the measure is likely to have." (*Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107, 128 (citing *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 37-38).) There is no basis for Molina's claim that the presentation is "promotional material" or constitutes a campaign activity.

The City respectfully requests that the FPPC take no action on Molina's complaint because the allegations of the complainant do not warrant the FPPC's further action.

Very truly yours,



Kenneth Rozell
Chief Assistant City Attorney

cc: Alexander Nguyen, City Manager
Stephen Fischer, City Attorney
Chloe Hackert, FPPC Enforcement Division
via email @ CHackert@fppc.ca.gov

