

October 24, 2022

VIA EMAIL

Zachary Beck, CMC, CPMC
City Clerk, City of Escondido
201 North Broadway
Escondido, CA 92025

**Re: *Joe Garcia and Joe Garcia for City Council 2022 (Committee No. 1375598)
Investigative Report***

Mr. Beck:

Pursuant to Resolution No. 2022-33 and section 110.5(c) of the Escondido Municipal Code ("EMC") this letter transmits the findings of the Escondido Campaign Control Enforcement Authority related to the complaint submitted on October 4, 2022, by Jeff Griffith ("Complainant"). This Complaint generally alleges that Joe Garcia ("Mr. Garcia") and the *Joe Garcia for City Council 2022* committee (Committee No. 1375598) ("Committee") (Mr. Garcia and Committee hereafter collectively referred to as "Respondent") violated City Campaign Laws (EMC Ch. 2, Art. 7) by using a photograph of Joe Garcia wearing an Escondido Police Department uniform in campaign materials.

Executive Summary

This investigation concerns the use of a single photograph of Mr. Garcia wearing a Police Department uniform in multiple campaign materials and on his campaign website. The investigation concludes that the photograph in question was purchased by Mr. Garcia for his own use in 2018 and that he was authorized to have purchased the photograph. **Since the photograph is not City property, this investigation concludes that it's use in Garcia's campaign materials is not an improper use of City resources for campaign purposes.** Beyond the scope of authority of this investigation, California law provides, "[n]o officer or employee of a local agency shall participate in political activities of any kind while in uniform." (Gov. Code, § 3206.) **To avoid continuing to violate Government Code section 3206, Respondent must immediately remove pictures of himself wearing his police uniform from his campaign website and may not distribute unused campaign materials or create new campaign materials [campaign materials including but not limited to, signs, posters, mailers, door hangers] that include pictures of him wearing his police uniform.**

Summary of Complaint

Complainant, a candidate for Escondido City Council, District 2, alleges that Mr. Garcia, also a candidate for Escondido City Council, District 2, is pictured in a campaign flyer prepared and distributed by the Committee

wearing an Escondido City Police Department uniform. Complainant states this is misleading because it suggests to voters that Respondent is a sworn police officer when he is instead a volunteer chaplain, that the City of Escondido endorses Respondent, and that there has been an improper use of public resources for campaign purposes. Complainant provided pictures of the front and back of what appears to be a campaign door hanger with two pictures of Respondent. In one of the pictures, Respondent is wearing a police uniform with a “chaplain” patch that is visible on the left shoulder facing the camera.¹ (See Exhibit A.) On October 13, 2022, Complainant provided a campaign flyer that also uses a picture of Mr. Garcia wearing a police uniform. (See Exhibit B.)

Investigation

Interviews

Complainant

On Wednesday, October 5, 2022, I spoke to Complainant on the telephone. He generally reiterated his complaint stating:

- Respondent is not a police officer but a volunteer chaplain.
- Respondent believes appearing in a police uniform in campaign material is wrong because:
 - it misleads voters by suggesting he is endorsed by the City;
 - it suggests Garcia is a sworn police officer and not a volunteer chaplain (i.e. stolen valor); and
 - it is an improper use of City resources for a political purpose.

Interim Chief Cramer

On Thursday, October 6, 2022, and Tuesday, October 18, 2022, I spoke with Interim Chief David Cramer (“Cramer”) on the telephone. Cramer was familiar with the initial campaign door hanger provided by Complainant and was provided with a copy of the campaign flyer submitted after the initial complaint. Cramer provided the following information:

- In 2018, in connection with development of a Police Department yearbook, the Department hired a photographer to take pictures of all personnel (including volunteer chaplains).
- Personnel who had their pictures taken were permitted to purchase their own copies of photos taken by the photographer and to have additional photos taken.
- Interim Chief Cramer did not know whether Mr. Garcia purchased photos or had additional photos taken.
- Department photos of this type are routinely provided to members of the public upon request, and it is common for the Department to do so in connection with community events that will feature Department personnel.
- Cramer did not give permission for Mr. Garcia to use the photo as described in Police Department Rules of Conduct sections 1.23 and 1.17. Cramer checked with the former Police Chief (recently

¹ As of October 22, 2022, the same photo featuring Respondent in uniform on the door-hanger also appears to be used on the “About Joe” page of Respondent’s campaign website

retired) and the Lieutenant in charge of the chaplain program and was told that neither had given permission either.

- It is Cramer’s opinion that the Rules of Conduct apply to both paid employees of the Department as well as volunteers.
- After a search of Department records, no official Department photo for *Chaplain* Garcia could be located.
- Cramer provided *Chaplain* Garcia’s picture from the 2018 Department yearbook in which Garcia is pictured wearing a black suit, maroon shirt, and darker maroon tie. (See Exhibit C.)
- Based on a comparison, Cramer believes the photo in the campaign materials is from the photography session for the 2018 yearbook.
- In connection with their duties, chaplains are issued a Class A uniform as well as a polo shirt.

Respondent

Respondent was interviewed via Zoom on Tuesday, October 18, 2022. His attorney was present. Respondent provided the following information:

- He initially ran for Escondido City Council in 2020.²
- He has been a volunteer chaplain for the Escondido Police Department for approximately 16 years. Respondent provided a copy of his Police Department ID badge from 2007. (Exhibit D.)
- He has been issued a Class A police uniform with a chaplain patch, a grey uniform, and a polo shirt. Because of significant weight loss, he purchased an additional Class A uniform at his own expense because the one he was issued no longer fit properly.
- About 4 years ago (in 2018), he had his picture taken for the police yearbook.
- He believes the photo used in his campaign materials was taken at the time of the 2018 yearbook photo shoot.
- He purchased additional pictures, the yearbook itself, and a plaque featuring his picture wearing his uniform. Respondent provided pictures of the pages he appeared on from his copy of the yearbook (Exhibit E) and a picture of the plaque. (Exhibit F.)
- His daughter has also taken his picture in his uniform. In preparation for our interview, he contacted his daughter and determined that the picture in his campaign materials is not any of those taken by her.
- He did not ask for and was not given permission to appear in uniform in campaign materials.
- He used the same picture in campaign materials in 2020 with no complaints and with no one from the City contacting him to say there was a problem. A copy of the 2020 mailer is attached as Exhibit G.
- Because he previously used the same photo without any complaint, he assumed it was ok to use it again.
- He had no intent to deceive anyone or to violate any laws, rules, or policies.
- He was not aware of any prohibition against campaigning in uniform.
- He will comply with the results of this review and is waiting for the city to provide direction.

² Respondent currently represents the Third Council District. Due to redistricting, he is running for the Second Council District in the November 2022 election.

Other Witnesses

Witness 1

On October 18, 2022, Witness 1, contacted the City Clerk to express concern that Respondent is pictured in campaign flyers and signs wearing a police uniform. In her opinion, appearing in uniform is misleading and dishonest because it suggests Respondent is a police officer when he is actually a volunteer. Efforts to reach Witness 1 to determine if she intended her contact with the Clerk to be a formal complaint and to determine whether the campaign materials she is concerned about are the same as those already being investigated, were unsuccessful.

Witness 2

On October 18, 2022, Witness 2 contacted the City Clerk to express concern regarding Mr. Garcia's flyers. Contacted by this investigator, Witness 2 confirmed that the flyers giving rise to his concerns are the same ones being investigated here and that he did not intend his contact with the City Clerk to be a formal complaint.

Relevant Law and Policy

Prohibition Against Use of Public Resources For Political Purposes

California law expressly prohibits a local agency officer, employee or consultant from expending, or authorizing the expenditure, of agency funds to "support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate." Gov. Code § 54964. It is also unlawful for elected state and local officers, appointees, employees and consultants to use and/or permit the use of public resources — any agency-owned property or asset — for a campaign activity or other purpose that is not authorized by law. (Gov. Code § 8314.)

Under government code section 8314, "Any person who intentionally or negligently violates this section is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day on which a violation occurs, plus three times the value of the unlawful use of public resources. The penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000."

Prohibition Against Engaging In Political Activities While In Uniform

Government Code section 3206

Political activities of public employees are of significant statewide concern. (Gov. Code § 3201.) No officer or employee of a local agency shall participate in political activities of any kind while in uniform. (Gov. Code § 3206.)

The Stanislaus County Civil Grand Jury found that [the] Stanislaus County Sheriff violated California Government Code section 3206 by attending political functions, while in uniform. Stanislaus County Civil Grand Jury, Case #11-10C. In *California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, the Court held that a candidate for San Diego County Sheriff violated section 3206 when he had deputies distribute campaign materials while they were in uniform.

Unlike, for example, Government Code section 8314 discussed above, there are no express enforcement provisions referencing Government Code Section 3206. Violation of section 3206 has been the basis for a successful taxpayer action for declaratory relief (See *Duffy*) and has been mentioned by the California Attorney General as a possible basis for a taxpayer action in *quo warreto* (AG Opinion No. 18-202 (April 19, 2019)).

As a City Councilmember, Respondent is an officer of the City. Therefore, whether he is an employee of the Police Department or simply a volunteer, he is within the scope of Government Code section 3206 and is prohibited from participating in political activities of any kind while in uniform.

City of Escondido Code of Conduct

The Code of Ethics of the City of Escondido (Chapter 19, Article 3) (“Code of Conduct”) provides in relevant part, “Public officials ... are **bound to uphold the constitution of the United States and the constitution of this state and to carry out impartially the laws of the nation, state and municipality** and thus to foster respect for all government...” (EMC § 19-85, emphasis added.)

Respondent is subject to the Code of Conduct. To the extent Respondent has violated Government Code section 3206, he would be in violation of EMC section 19-85.

Escondido Police Department Rules of Conduct

The 2022 Escondido Police Department Rules of Conduct (“Rules of Conduct”) are applicable to “on and off duty for sworn officers, community service officers, dispatchers, custody officers, civilian employees, and volunteers” and provide as follows:³

- Employees and volunteers must follow all “rules, regulations, instructions, directives, ... [and] Department Orders” (Section 1.06 – Obedience to Rules) and must “**obey all federal, state, county and municipal laws.**” (Section 1.07 – Obedience to Laws, emphasis added.)
- Employees and volunteers “shall not permit or authorize the use of their name, photographs, or official titles in connection with testimonials or advertisements of any commodity or commercial enterprise, or **in connection with any local, state, or federal election**, if such use identifies the person as a member of the Escondido Police Department, without the approval of the Chief of Police.” (Section 1.17 B – Abuse of Position - Use of Name, Photograph, or Title, emphasis added.)
- Employees and volunteers are prohibited from using or giving the appearance of using “their official status at any time or place for the purpose of soliciting contributions or **attempting to exert influence in respect to any local, state, or federal election**. This includes, but is not limited to, the use of title, wearing of uniform or other apparel or badge, in campaign related activities.” (Section 1.23, Political Activity, emphasis added.)

³Although the preamble explicitly includes volunteers within the scope of the Rules, the term volunteer does not appear again in the document. Instead, the terms “member” and “officer” are defined and used. “Officer” applies to sworn personnel while the term “member” is more broad suggesting that “member” is the defined group to which volunteers belong. For convenience, this investigation uses the term “Employees and volunteers” to mean “members.”

As a volunteer chaplain with the Escondido Police Department, Respondent is subject to the prohibitions contained in the Rules of Conduct. As with the Code of Conduct, the Rules of Conduct require compliance with local state and federal laws.

Authority of the Independent Investigator

The Escondido Municipal Election Campaign Control Ordinance (Article 7 of the Escondido Municipal Code) (“EMECCO”) establishes regulations related to campaign contributions to candidates for City elective office including their, size, source, disclosure, and form, as well as the use of surplus campaign funds. EMECCO prohibits contributions by organizations, limits the use of loans and credit in the financing of municipal election campaigns, and requires independent expenditure committees to clearly indicate on communications that are for or against a candidate, that the communication was not authorized by a candidate or committee. Many of EMECCO’s provisions mirror requirements found in the California Political Reform Act. (Gov. Code § 81000 et seq.) The investigative authority of the Special Counsel retained pursuant to the provisions of EMC § 2-110.5 (“Campaign Control Enforcement Authority”) are explicitly limited to the provisions of EMECCO. Among other potential violations of state law, the use of City resources for campaign purposes could constitute an improper in-kind contribution by the City to a campaign under EMECCO and is therefore within the authority of the Campaign Control Enforcement Authority.

Conclusions and Findings

Use of City Resources for Political Purposes

It is clear to this investigator that the picture used in the 2022 campaign door hanger and 2022 campaign flyer is same one that is in the plaque that Respondent purchased in 2018. This is also the same picture that was used in the 2020 campaign flyer. The Interim Chief and Respondent both testified that personnel were given an opportunity to purchase pictures and other items in connection with the 2018 yearbook photo shoot. Respondent testified that he purchased the plaque using his own money and provided a copy of the plaque. Accordingly, I find that the photo was Respondent’s own property and not City property. **Accordingly, use of the photo in the campaign materials is NOT an improper use of public resources for political purposes.**

Campaigning While in Uniform

California law prohibits “officers” and “employees” from engaging in “political activities of any kind” while in uniform. No mention is made of volunteers. Although Respondent may not have been an “officer or employee” of the City during his 2020 run for office, as a sitting Councilmember, he is now an “officer” subject to the prohibition. In this investigator’s opinion, appearing in one’s own campaign literature is a political activity within the prohibition. **To avoid continuing to violate Government Code section 3206, Respondent must immediately remove pictures of himself wearing his police uniform from his campaign website and may not distribute unused campaign materials or create new campaign materials [campaign materials including but not limited to, signs, posters, mailers, door hangers] that include pictures of him wearing his police uniform.**

In both 2020 and now, Respondent was a volunteer in the Escondido Police Department as was subject to the requirements of the Rules of Conduct which includes both a prohibition against campaigning in uniform

and office and an obligation to abide by City, state and federal laws. Since being elected to office in 2020, Respondent has been an official of the City subject to the Code of Conduct which also requires officials to comply with all local, state and federal laws. Therefore, even if the Government Code doesn't prohibit Respondent's conduct, the Rules of Conduct and Code of Conduct do. Enforcement of City and Police Department Policies are beyond the scope of Campaign Control Enforcement Authority.

Deceptive or Misleading Content

Complainant and others raised concerns that by appearing in uniform Respondent implied that 1) he is a sworn police officer; and 2) the City endorses him.

The implication of a City endorsement is addressed by ensuring that government not participate in elections. This is accomplished by, among other things, prohibiting the use of City resources for political purposes (Gov. Code §§ 8314, 54964) and prohibiting campaigning in uniform (Gov. Code § 3206).

While beyond the scope of the investigation, it is relevant to note that the content of candidate speech is generally considered to be constitutionally protected. Relevant concerns expressed in this matter, the Stolen Valor Act (18 U.S.C. §§ 704 (b), (c)) made it a crime to falsely claim receipt of military decorations or medals with an enhanced penalty if the Congressional Medal of Honor was involved. In 2012, the Supreme Court invalidated the law stating, in part, "[t]he remedy for speech that is false is speech that is true." *U.S. v. Alvarez* (2012) 567 U.S. 709, 727. Under this (so called) *counterspeech* doctrine, the government is generally precluded from silencing speech as a reaction or remedy. Instead, truth and falsity are to be sorted out in the marketplace of ideas and not with the government prohibiting or punishing alleged false speech.

Very truly yours,

DEVANEY PATE MORRIS & CAMERON, LLP



Christina M. Cameron
Partner

CMC/mcl
Enclosures

EXHIBIT A

**JOE
GARCIA**

ESCONDIDO CITY COUNCIL

JoeForEscondido.com

Dedicated to Serve You!

Dear Neighbor,

Your priorities are my priorities! I am dedicated to serve you by keeping our neighborhoods safe, addressing homelessness, promoting local jobs and an affordable cost of living, and keeping our city government accountable to you.

I humbly ask for your vote on or before November 8th, 2022 so that I can continue to serve you!

- Councilmember Joe Garcia



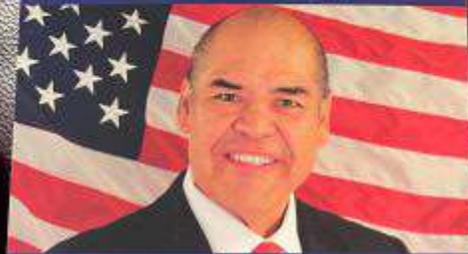
**Learn More and Donate:
www.JoeForEscondido.com**

Paid for by Joe Garcia for City Council 2022 FPPC ID# 1375598

**JOE
GARCIA**

1st ESCONDIDO CITY COUNCIL

JoeForEscondido.com



Joe's Priorities

- Keep Our
Neighborhoods Safe!
- Promote Jobs &
Affordability!
- Hold Government
Accountable!

EXHIBIT B

Councilmember

**JOE
GARCIA**

*Firefighters and
Police Officers choose Joe!*

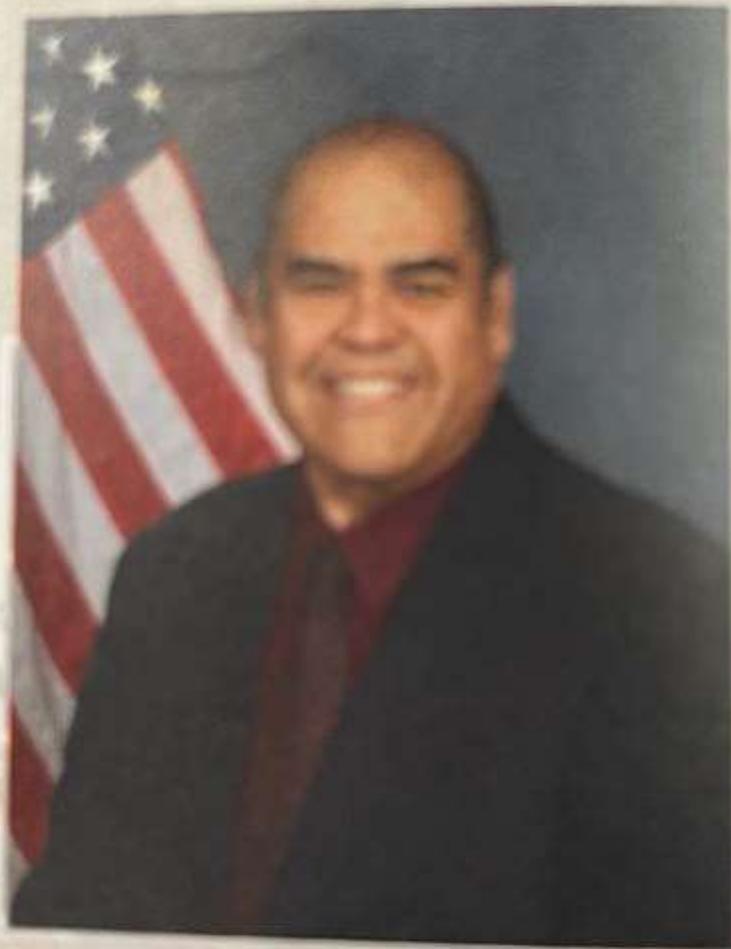


for **ESCONDIDO CITY COUNCIL**

JoeForEscondido.com



EXHIBIT C



Joe Garcia
Chaplain

EXHIBIT D

Escondido
P O L I C E



Agency
Escondido
Police
NCIC 3706

Issued
10/04/2007

Valid Until
Recalled

Garcia,
Jose
Chaplain



Volunteer

EXHIBIT E

Bobbi Adams
CSO

APLAINS



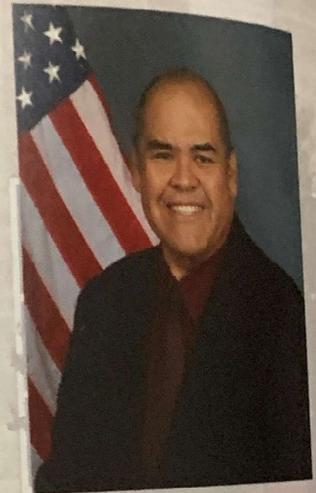
Deborah Arnold
Chaplain



Thomas Fry
Chaplain



Daniel Garcia
Chaplain



Joe Garcia
Chaplain



Gunnar Hanson
Chaplain



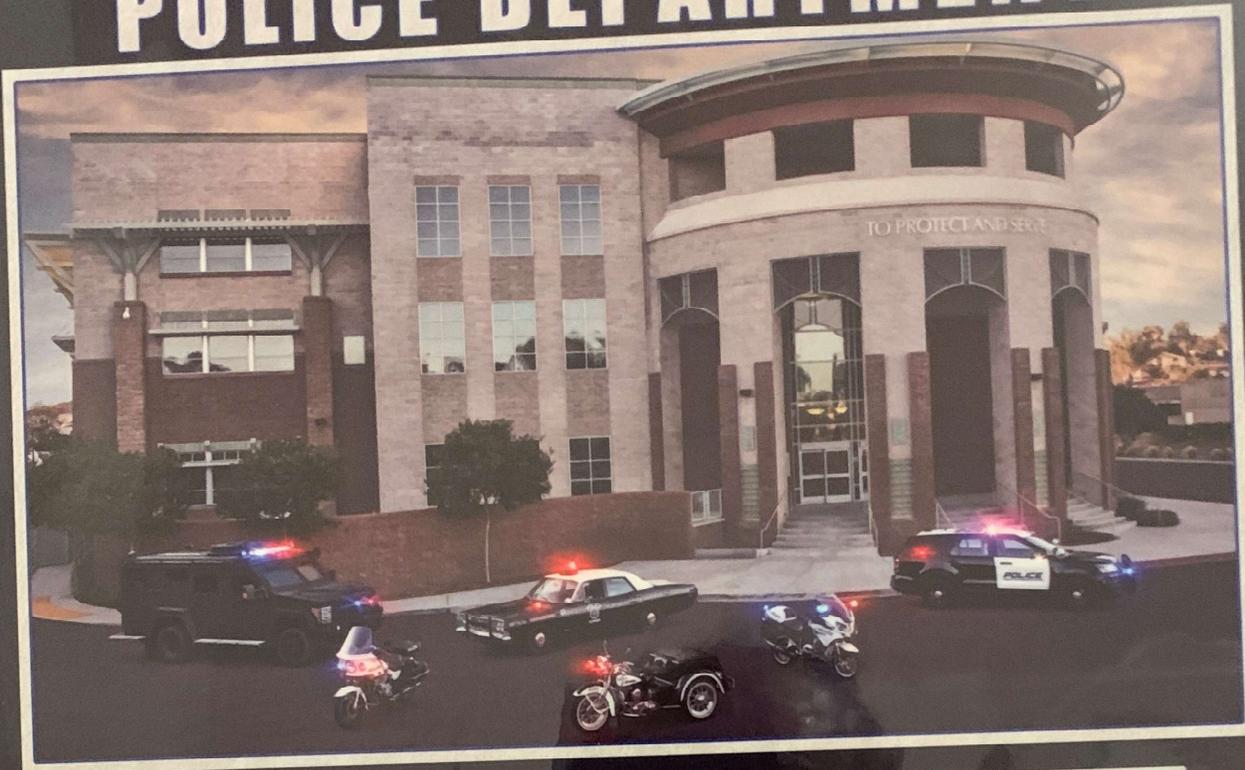
Barry Mahler
Chaplain



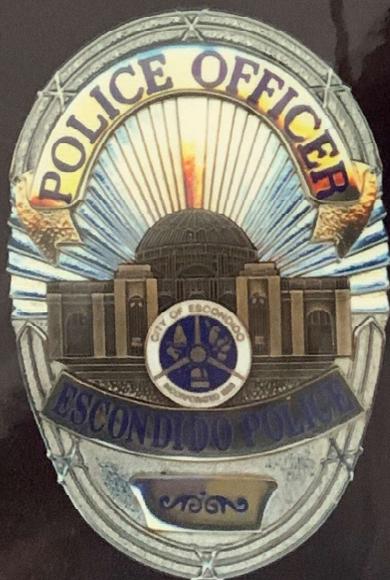
CHAPLAINS

EXHIBIT F

ESCONDIDO POLICE DEPARTMENT



Joe Garcia



2018



EXHIBIT G



JOE GARCIA WILL ALWAYS STAND WITH THE MEN AND WOMEN WHO KEEP US SAFE.

As Chaplain for the Escondido Police Department, Joe Garcia has seen firsthand the sacrifices our first responders make day after day.

As a City Councilman, Joe Garcia will resist any efforts to defund the Escondido Police Department.

**THE ONLY CANDIDATE ENDORSED BY THE
ESCONDIDO POLICE OFFICERS ASSOCIATION**

1507 East Valley Parkway
Suite 3 #354
Escondido, CA 92027



JOE
GARCIA
ESCONDIDO CITY COUNCIL

STANDARD MAIL
U.S. POSTAGE PAID
ESCONDIDO, CA
PERMIT NO. 413

Joe's Plan for Public Safety in Escondido

- ✔ Resist any efforts to defund the police.
- ✔ Require that our officers have adequate training with a focus on handling individuals with mental illness.
- ✔ Ensure that our department has the tools and equipment necessary to deal with any emergency situation.
- ✔ Work to recruit the best new officers, retain the officers we currently have and remove officers with poor records.

Learn More about Joe Garcia: www.JoeForEscondido.com

Paid for by Garcia for City Council 2020 FPPC ID# 1375598