



CITY OF DALLAS

Memorandum

DATE August 9, 2024

TO: The Honorable Mayor and City Councilmembers, City Officials, and City Employees

SUBJECT Political Activities and Advocacy of City Councilmembers, City Officials, and City Employees for an Election Ordered by the City of Dallas for a Measure or Proposition

This memorandum has been prepared in anticipation of the upcoming charter amendment election for voter-initiated measures and city council measures; this memorandum summarizes the applicable rules and regulations governing political activities and advocacy of city councilmembers, city officials, and city employees in an election ordered by the city for a measure or proposition. Some of these rules and regulations apply to all three categories of persons listed above, but some rules specifically apply to a category of persons. Therefore, this memorandum sets forth general information and then divides the three categories of persons for the specific applicable rules.¹

General Information

1. An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.²
2. An officer³ or employee of a political subdivision *may not spend or authorize the spending of public funds* for a communication describing a ballot measure in an election ordered by the City of Dallas if the communication contains information that (1) the officer or employee knows is false and (2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.⁴
3. A person violating Sections 1 and 2 above,⁵ commits a Class A misdemeanor.⁶

¹ This memorandum explains the requirements of the Texas Election Code and the Dallas Ethics Code but does not provide a “safe harbor” from the requirements of Texas Election Code and is not an ethics advisory opinion under DALLAS CITY CODE § 12-47(d) or TEX. ELEC. CODE § 255.003(e).

² TEX. ELEC. CODE §255.003(a). Subsection (a) does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure. *Id.* § 225.003(b).

³ *See Officer*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“Officer (14c) - Someone who holds an office of trust, authority, or command. In public affairs, the term refers especially to a person holding public office under a national, state, or local government, and authorized by that government to exercise some specific function.”).

⁴ TEX. ELEC. CODE § 255.003(b-1) (emphasis added).

⁵ *Id.* § 255.003(a), (b-1).

⁶ *Id.* § 255.003(c).

4. Neither the Texas Election Code nor the Texas Ethics Commission (TEC) specifically define public funds; however, the TEC has issued opinions concluding that the use of public funds means any use of a political subdivision's resources, including, but not limited to, public facilities, employees' work time, internal email system and other equipment, including printers and city phones, as well as the city's logo.⁷
5. "Political advertising" means:
 - (a) a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, or a public officer, that: (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or (B) appears: (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or (ii) on an Internet website;⁸ and
 - (b) a communication that advocates passage or defeat of a measure, and that: (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or (B) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication.⁹

For more information, consult the *Guide to the Prohibition Against Using Political Subdivision Resources for Political Advertising in Connection with an Election* (attached).

City Councilmembers

1. A city councilmember is not prohibited from lending their name and official city title/office held in connection with any election ordered by the City of Dallas on a proposition or measure or any election for public office.¹⁰
2. A city councilmember may not, directly or indirectly, induce or attempt to induce any city subordinate to:
 - a. participate in an election campaign;
 - b. contribute to a political committee;
 - c. engage in any other political activity related to an issue; or
 - d. refrain from engaging in any lawful political activity.

A general statement merely encouraging another person to vote is allowed.¹¹

⁷ See TEX. ETHICS COMM'N OP. NO. 45 (1992); TEX. ETHICS COMM'N OP. NO.443 (2002); TEX. ETHICS COMM'N OP. NO. 532 (2015).

⁸ TEX. ELEC. CODE § 251.001(16).

⁹ *A Short Guide to the Prohibition Against Using Political Subdivision Resources for Political Advertising in Connection with an Election*, TEX. ETHICS COMM'N (Oct. 12, 2017), https://www.ethics.state.tx.us/resources/advertising/Bsub_adv.php.

¹⁰ DALLAS CITY CODE § 12A-21(a)(1)(B) & (C).

¹¹ *Id.* § 12A-21(c).

3. A city councilmember shall not directly or indirectly accept anything of value for political activity relating to an item pending on the ballot of an election ordered by the City of Dallas, if the city councilmember participated in, or provided advice relating to, the exercise of discretionary authority by a city body that contributed to the development of the ballot item. “Anything of value” does not include a meal or other item of nominal value the city councilmember receives in return for providing information on an item pending on the ballot.¹²
4. Political advertising.
 - a. A city councilmember may not knowingly spend or authorize the spending of public funds (including public resources) for political advertising.¹³
 - b. A city councilmember may not use the city’s internal mail system for the distribution of political advertising.¹⁴

City Officials

1. A “city official” includes:
 - a. city council members;
 - b. municipal judges;
 - c. the city manager, the chief of staff, assistant city managers, and chiefs;
 - d. the city auditor and first assistant city auditor;
 - e. the city attorney, first assistant city attorney, and inspector general;
 - f. the city secretary and first assistant city secretary;
 - g. all department directors and their supervisors;
 - h. members of city boards and commissions;
 - i. members appointed by the city council to boards of entities not created by the city council;
 - j. the chief financial officer; and
 - k. for purposes of Chapter 12A only, a volunteer on committees or task forces formed by boards or commissions.¹⁵
2. A city official (who is a city official only because that person is an appointed member of a board, commission, or body) shall not use the prestige of their position with the city on behalf of a political committee.¹⁶ A city official (who is a city official only because that person is an appointed member of a board, commission, or body) may, however, lend their name so long as the office held with the city is not mentioned in connection with the endorsement.¹⁷

¹² *Id.* § 12A-21(d).

¹³ TEX. ELEC. CODE § 255.003(a).

¹⁴ *Id.* § 255.0031(a).

¹⁵ DALLAS CITY CODE § 12A-2(22).

¹⁶ *Id.* § 12A-21(a)(1).

¹⁷ *Id.* § 12A-21(a)(1)(A).

3. A city official may not solicit or receive contributions for a political committee.¹⁸ A city official may serve on a steering committee to plan a program of solicitation. The city official’s name may be listed, without reference to the city official’s title, when the committee as a whole is listed.¹⁹
4. A city official may not, directly or indirectly, induce or attempt to induce any city subordinate to:
 - a. participate in an election campaign;
 - b. contribute to a political committee;
 - c. engage in any other political activity related to a particular issue; or
 - d. refrain from engaging in any lawful political activity.

A general statement merely encouraging another person to vote is allowed.²⁰

5. A city official shall not directly or indirectly accept anything of value for political activity relating to an item pending on the ballot of an election ordered by the City of Dallas, if the city official participated in, or provided advice relating to, the exercise of discretionary authority by a city body that contributed to the development of the ballot item. “Anything of value” does not include a meal or other item of nominal value the city official receives in return for providing information on an item pending on the ballot.²¹
6. A city official may display campaign bumper stickers on their personal vehicle but may not display campaign bumper stickers on a city vehicle. A city official must remove campaign bumper stickers from a city vehicle that is under the city official’s control.²²
7. A city official may not use city facilities, personnel, equipment, or supplies for private purposes, including political purposes, except pursuant to city policies or to the extent and according to the terms that those city resources are available to the public.²³
8. Political advertising.
 - a. A city official may not knowingly spend or authorize the spending of public funds (including public resources) for political advertising.²⁴
 - b. A city official *may not spend or authorize the spending of public funds* for a communication describing a measure in an election ordered by the City of Dallas if the communication contains information that (1) the city official knows is false and (2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.²⁵

¹⁸ *Id.* § 12A-21(a)(3).

¹⁹ *Id.*

²⁰ *Id.* § 12A-21(c).

²¹ *Id.* § 12A-21(d).

²² *Id.* § 12A-21(e).

²³ *Id.* §§ 12A-20 & 12A-21(h).

²⁴ TEX. ELEC. CODE § 255.003(a).

²⁵ *Id.* § 255.003(b-1).

- c. A city official may not use the city's internal mail system for the distribution of political advertising.²⁶

City Employees

1. A city employee includes any person listed on the City of Dallas payroll as an employee, whether part-time, full-time, permanent, or temporary.²⁷
2. A city employee may not use the prestige of their position with the city on behalf of any political committee.²⁸
3. A city employee may not, directly or indirectly, induce or attempt to induce any city subordinate to:
 - a. participate in an election campaign;
 - b. contribute to a political committee;
 - c. engage in any other political activity related to a particular party, candidate, or issue; or
 - d. refrain from engaging in any lawful political activity.

A general statement merely encouraging another person to vote is allowed.²⁹

4. A city employee may display campaign bumper stickers on their personal vehicle but may not display campaign bumper stickers on a city vehicle. A city employee must remove campaign bumper stickers from a city vehicle that is under the city employee's control.³⁰
5. A city employee may not use city facilities, personnel, equipment, or supplies for private purposes, including political purposes, except pursuant to city policies or to the extent and according to the terms that those city resources are available to the public.³¹
6. A city employee may not wear city council campaign buttons or distribute campaign literature while at work, in a city uniform, or in a City of Dallas building.³²
7. Political advertising.
 - a. A city employee may not knowingly spend or authorize the spending of public funds (or public resources) for political advertising.³³

²⁶ *Id.* § 255.0031(a).

²⁷ DALLAS CITY CODE § 12A-2(16).

²⁸ *Id.* § 12A-21(f).

²⁹ *Id.* § 12A-21(c).

³⁰ *Id.* § 12A-21(e).

³¹ *Id.* §§ 12A-20 & 21(h).

³² DALLAS CITY CODE § 12A-10(g); DALLAS CITY CHARTER Ch. XVI § 16(b)(4).

³³ TEX. ELEC. CODE § 255.003(a).

- b. A city employee may not use the city’s internal mail system for the distribution of political advertising.³⁴
 - c. A city employee shall not directly or indirectly accept anything of value for political activity relating to an item pending on a ballot in an election ordered by the City of Dallas, if the city employee participated in, or provided advice relating to, the exercise of discretionary authority by a city body that contributed to the development of the ballot item. “Anything of value” does not include a meal or other item of nominal value the city employee receives in return for providing information on an item pending on the ballot.³⁵
8. A city employee *may not spend or authorize the spending of public funds* for a communication describing a measure in an election ordered by the City of Dallas if the communication contains information that (1) the city employee knows is false and (2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.³⁶

Discussion of Matters Before Calling the Election

The Texas Election Code prohibits the use of public resources to advocate passage or failure of a ballot measure.³⁷ However, the Election Code does not specifically state when this prohibition applies. The TEC has recognized that this prohibition does not apply when city council members discuss whether to place an issue before the voters.³⁸ In TEC Advisory Opinion No. 456, the TEC determined that Section 255.003 was not “intended to inhibit discussion of matters pending before a governmental body. When a city council holds a meeting to discuss whether to place an issue before the voters, council members and members of the public are likely to voice opinions about the issues.”³⁹ The TEC went on to say that the Election Code would not prohibit broadcasting such discussions if broadcasting is the customary practice of the city since the resource was not used “for” political advertising and broadcasting a statement in support or opposition to a ballot measure was incidental.⁴⁰

While the TEC opinion indicates that the governing body may allow discussion of the issues when debating whether to place the items before the voters, the Election Code and numerous TEC Advisory Opinions (cited earlier in this memo) make it clear that other uses of a public facility or publicly-funded newsletter sent through the city’s email, are impermissible uses of public resources.⁴¹ Further examples of impermissible use of public resources include the use of a city letterhead, internal email system, city-contracted video production, and even a government owned vehicle for transportation to events for political advertising.⁴² And, because the Election Code is

³⁴ *Id.* § 255.0031(a).

³⁵ DALLAS CITY CODE § 12A-21(d).

³⁶ TEX. ELEC. CODE § 255.003(b-1).

³⁷ *Id.*

³⁸ TEX. ETHICS COMM’N OP. No 456 (2004).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ TEX. ETHICS COMM’N OP. No. 550 (2019). *See also* TEX. ETHICS COMM’N OP. No. 456 (2004); TEX. ETHICS COMM’N OP. No. 556 (2020).

⁴² TEX. ETHICS COMM’N OP. No. 550 (2019).

silent as to *when* use of public resources to advocate on behalf of a measure, or a potential measure, are impermissible, our office cautions against any use of public resources at any time to advocate on behalf of or in opposition to an item that could become a measure on an upcoming ballot.

Please distribute this memorandum as you deem necessary or appropriate.

/s/ Tammy L. Palomino

TAMMY L. PALOMINO
City Attorney

Attachment: Guide to the Prohibition Against Using Political Subdivision Resources for Political Advertising in Connection with an Election (Texas Ethics Commission)

c: Kimberly Bizer Tolbert, City Manager (I)
Bertram Vandenberg, Chief of General Counsel
Bart Bevers, Inspector General
Baron Eliason, Chief Integrity Officer

A Short Guide to the Prohibition Against Using Political Subdivision Resources For Political Advertising In Connection With An Election

No matter how enthusiastic you are about an election, it is important to remember that the Texas Election Code prohibits the use of political subdivision resources to produce or distribute political advertising in connection with an election. Section 255.003 of the Election Code provides as follows:

- An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.
- This section does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.
- A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

New legislation effective September 1, 2009, further clarifies that an officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:

- (1) the officer or employee knows is false; and
- (2) is sufficiently substantial and important as to be reasonably likely to influence a voter for or against the measure.

To understand the practical significance of this prohibition, it is useful to look at some of the specific words and phrases used in the law.

“**Political advertising**” means

- (1) a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, that: (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or (B) appears: (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or (ii) on an Internet website; and
- (2) a communication that advocates passage or defeat of a measure, and that: (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or (B) appears: (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or (ii) on an Internet website.

Newsletter of Public Officer of a Political Subdivision. The Ethics Commission adopted a rule providing guidelines for when a newsletter of a public officer of a political subdivision is not political advertising. Texas Ethics Commission Rule 26.2 provides as follows:

For purposes of section 255.003 of the Election Code, a newsletter of a public officer of a political subdivision is not political advertising if:

- (1) It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear;
- (2) It includes no more than eight personally phrased references (such as the public officer’s name, “I”, “me”, “the city council member”) on a page that is 8 ½” x 11” or larger, with a reasonable reduction in the number of such personally phrased references in pages smaller than 8 ½” x 11”; and
- (3) When viewed as a whole and in the proper context:

- (A) is informational rather than self-promotional;
- (B) does not advocate passage or defeat of a measure; and
- (C) does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.

The prohibition applies to any “**officer or employee of a political subdivision.**” In other words, if an officer or employee of a political subdivision makes a decision to use political subdivision resources in violation of the prohibition, the employee could be fined by the Ethics Commission or held criminally liable. School board members, as “officers” of a school district, are also subject to the prohibition.

★ The prohibition applies to “**spending or authorizing the spending of public funds**” for political advertising. Not only does this mean that the political subdivision may not purchase or authorize the purchase of new materials for use in creating political advertising, it also means that a political subdivision would violate the prohibition by using existing paper and machinery to generate, display, or distribute political advertising.

Also, it is not permissible to use or authorize the use of the paid time of an employee of a political subdivision to create or distribute political advertising.

★ The prohibition does not apply to “**a communication that factually describes the purposes**” of a measure election. In other words, it is permissible to use the resources of a political subdivision to produce explanatory material about what is at stake in a measure election. However, the communication may not contain information that an officer or employee of a political subdivision knows is false. The information must not be sufficiently substantial and important, such that it would be reasonably likely to influence a voter to vote a certain way.

Violations of the law often occur because someone finds it irresistible to wrap up a factual explanation with a motivational slogan such as:

IT PAYS TO INVEST IN THE FUTURE.

or

IT'S TIME TO MOVE AHEAD.

Another common misstep is to include "calls to action" such as:

LET'S BUILD A BETTER CITY.

or

SHOW THAT YOU CARE ABOUT OUR FUTURE.

Remember: No matter how much factual information about the purposes of a measure election is in a communication, *any amount* of advocacy is impermissible.

★ A violation of the prohibition is a **Class A misdemeanor**. This means that a violation could lead to criminal prosecution. Also, the Ethics Commission has authority to impose fines for violations of section 255.003.

Another provision of the Texas Election Code prohibits an officer or employee of a political subdivision from using or authorizing the use of an internal mail system to distribute political advertising. An internal mail system is a system operated by a political subdivision to deliver written documents to its officers or employees. A violation of this prohibition could also lead to the imposition of fines by the Ethics Commission or to criminal prosecution.

Although you may not use political subdivision resources for political advertising, you are free to campaign for or against a proposition on your own time and with your own resources. If you do plan to become involved in a campaign, you should educate yourself about filing requirements and about the rules regarding disclosures on political advertising.

Information is available from the Texas Ethics Commission by phone at (512) 463-5800 or on the Ethics Commission's web site at <https://www.ethics.state.tx.us>.

A Short Guide to the Prohibition Against Using Political Subdivision Resources For Political Advertising In Connection With An Election



Texas Ethics Commission
P. O. Box 12070
Austin, Texas 78711-2070

(512) 463-5800
Fax (512) 463-5777

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