

Memorandum



CITY OF DALLAS

DATE March 8, 2024

TO Honorable Mayor and Members of the City Council

SUBJECT **Cancellation of the 2024 Bond Informational Townhall Meetings**

2024 Bond Program Background

As part of the City Council briefings in December 2023 and February 2024, the Office of Bond and Construction Management (BCM) provided a timeline with major milestones leading to a May 2024 election. The timeline shared in the City Council briefings included Informational Townhall Meetings in April 2024. On February 14, 2024, the City Council approved an ordinance approving a May 2024 Bond election.

Following the City Council approval of the May 2024 Bond Election on February 14, 2024, BCM began finalizing the project listing for the Bond program with members of Dallas City Council and working with multiple departments to coordinate the April Informational Townhall Meetings. Since beginning the planning for the 2024 Bond Informational Townhall Meetings has started, clarification has been provided which will result in the cancellation of the town hall meetings. The purpose of this memorandum is to provide additional details which led to the cancellation of the 2024 Bond Informational Townhall Meetings.

Memorandum of Rules of Political Activity and Advocacy

On March 1, 2024, the City Attorney's Office (CAO) provided a memorandum to the City Council Members and City Officials providing general information on applicable rules and regulations guiding political activity and advocacy as it relates to the bond program. Within that memorandum, it was stressed that City Council Members or City Officials cannot "knowingly spend or authorize the spending of public funds for political advertising" or for "communication describing a ballot measure in an election" that would reasonably likely influence a voter to vote for or against a proposition.

Additional Clarification on Bond Informational Townhall Meetings

Since the distribution of the CAO memorandum, BCM met with the CAO for clarification as it related to the informational townhall meetings. It was determined that discussions of individual projects at the informational townhalls would reasonably likely influence a voter to vote for or against a proposition. Any Informational Townhall Meetings would be restricted to the ballot language, proposition description, proposition amount and the payback amount for that proposition with no reference to individual projects.

As a result of the project listing discussion restriction, the informational townhalls for the 2024 Bond program have been cancelled. The Bond Office is working the CAO and bond counsel to determine when the individual project listing can be shared with the public.

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If you have any questions please contact Jenny Nicewander, Director, Office of Bond & Construction Management at jennifer.nicewander@dallas.gov.



Robert M. Perez, Ph.D.
Assistant City Manager

Attachment: City Attorney Office Memorandum, *Political Activities and Advocacy of City Council Members, City Officials, and City Employees for an Election Ordered by the City of Dallas for a measure or Proposition*

c: T.C. Broadnax, City Manager
Tammy Palomino, City Attorney
Mark Swann, City Auditor
Billerae Johnson, City Secretary
Preston Robinson, Administrative Judge
Kimberly Bizer Tolbert, Deputy City Manager
Jon Fortune, Deputy City Manager

Majed A. Al-Ghafry, Assistant City Manager
M. Elizabeth (Liz) Cedillo-Pereira, Assistant City Manager
Jack Ireland, Chief Financial Officer
Genesis D. Gavino, Chief of Staff to the City Manager
Directors and Assistant Directors



CITY OF DALLAS

Memorandum

DATE February 14, 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 bond election for the 2024 Bond Program; 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, 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: (i) 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 and & 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.



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: Bertram Vandenberg, Chief of General Counsel
Bart Bevers, Inspector General
Baron Eliason, Chief Integrity Officer
T.C. Broadnax, City Manager