



TO: Mayor and Council Members

Cc: Marc A. Ott, City Manager

From: Robert D. Goode, Assistant City Manager

DATE: July 18, 2016

SUBJECT: **Potential 2016 Mobility Bond Election – Next Steps**

As per Council Resolution 20160623-083, the City Manager is directed to develop recommended proposition and ballot language for Council consideration by August 11th for placement on the November 8, 2016 election ballot. In consideration of this directive, staff will develop and bring back to Council the proposed bond package and funding amounts as described in the approved resolution as well as draft ballot and proposition language for Council to consider, along the following proposed timeline:

STEP	DATE/MEETING
City staff develops draft bond proposition and ballot language, other backup materials in preparation for Council consideration	July – August
Council hears presentation from staff regarding bond package, draft proposition and ballot language at work session. Council can discuss and have executive session if need be on August 4 th as well.	August 2nd, work session and August 4 th Potential Executive Session during Council Meeting
Draft bond package, funding amounts, proposition and ballot language are placed on Council agenda for discussion and possible action; staff also provides a recommended 2017/2018 general bond development process/timeline as per Council Resolution	August 9 th Council Work Session (Discussion) August 11 th Council Meeting (Discussion and possible Action)
Option for additional Council discussion on draft bond package, funding amounts, proposition and ballot language, proposed general bond development process	August 16 th Council Work Session (Discussion) August 18 th Council Meeting (Discussion and possible Action; Last <u>Scheduled</u> meeting to Set Election Ballot)
Staff prepares information that factually describes the purposes of the bond election and makes available to the public.	September 9th – 23rd
Early Voting Period	October 24th – November 4th
Election Day	November 8th

During consideration of bond proposition language and setting the ballot, Council may determine that a special called meeting may be necessary. Please note that Council must call the special election and approve proposition and ballot language for a November 8, 2016 bond election between August 11th and August 22nd. If Council has questions about the ballot or the proposition that need to be reviewed by the Texas Attorney General's Office, these questions must be resolved as early as possible before August 22nd.

If Council calls the special election for a mobility bond, also note that there are certain legal considerations for use of City resources, including staff, in communications or provision of information regarding bond propositions put before the voters. We have attached a Brochure from the Texas Ethics Commission regarding these matters.

Please feel free to contact me if you have any questions. Please contact Leela Fireside or Sandra Kim in the Law Department if you have any legal questions.

xc: Assistant City Managers
 Elaine Hart, Chief Financial Officer
 Greg Canally, Deputy Chief Financial Officer
 Ed Van Eenoo, Deputy Chief Financial Officer
 Art Alfaro, City Treasurer
 Mike Trimble, Capital Planning Officer
 Anne Morgan, City Attorney
 Leela Fireside, Assistant City Attorney, Law Department
 Sandra Kim, Assistant City Attorney, Law Department
 Rob Spillar, Director, Austin Transportation Department
 Robert Hinojosa, Acting Director, Public Works Department

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

**GOOD SCHOOLS ARE THE FOUNDATION
OF A GOOD COMMUNITY**

or

EVERY CHILD DESERVES A GOOD EDUCATION

Another common misstep is to include “calls to action” such as:

PUT CHILDREN FIRST

or

SHOW THAT YOU CARE ABOUT EDUCATION

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

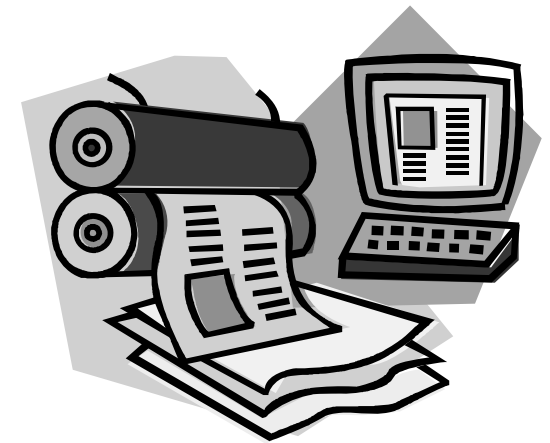
★ A violation of the prohibition is a **Class A misdemeanor**. This means that a violation could lead to criminal prosecution. Also, the Ethics Commission has authority to impose fines for violations of section 255.003.

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 board members 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 <http://www.ethics.state.tx.us>.

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



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Visit us at <http://www.ethics.state.tx.us> on the Internet.

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Revised September 1, 2009

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”** is a communication that advocates a particular outcome in an election. It can be a communication in almost any written or broadcast form, such as a billboard, a flier, a newsletter, a poster, a television or radio ad, or an Internet site.

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.