

Memorandum



DATE January 18, 2021

TO: The Honorable Mayor and City Councilmembers

SUBJECT Political Activities of City Councilmembers, City Officials, City Employees, and Citizens for Elections

This memorandum is a summary of the applicable rules that currently govern the political activities of city councilmembers, city officials, city employees, and citizens in connection with elections. Some of these rules apply to all four categories of persons listed, but some specific rules also apply to each category. Therefore, this memorandum sets forth general information and then divides the four categories of persons. This is not an exhaustive list of all laws that may apply to an election.

General Information

1. “Political advertising” is defined as:

[A] communication supporting or opposing a candidate for nomination or election to a public office. . . that . . . in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or . . . appears . . . in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or . . . on an Internet website.¹

2. Political signs.

- a. A “political sign” is a sign that contains primarily a political message.² If a citation or notice is issued, the person who received the citation or notice may appeal to the board of adjustment within 10 days, and the board of adjustment can issue a ruling on whether a sign is political.³
- b. A permit is not required for political signs on private property with consent of the property owner unless the sign:
 - i. has an effective area greater than 36 square feet;

¹ Tex. Elec. Code §251.001(16).

² Dallas Development Code §51A-7.705.

³ *Id.* at §51A-7.705(b).

- ii. is more than eight feet high;
 - iii. is illuminated;
 - iv. has moving elements;
 - v. is on public property or an easement that allows the city to use the property for public purposes; or
 - vi. is on a structure that is available for rent or purchase, such as billboards.⁴
- c. Signs may not be placed in the public right-of-way.⁵ Political signs must have the following notice printed on them: “Notice: it is a violation of state law (Chapters 392 and 393, Transportation Code) to place this sign in the right-of-way of a highway.”⁶
- d. Signs that require permits may not be placed on roofs.⁷
- e. Temporary political campaign signs.
- i. A “temporary political campaign sign” is a sign that refers to issues or candidates involved in an election that has been ordered by a governmental entity.⁸
 - ii. Temporary political campaign signs may be placed on public property that is an early voting location or that is an election day voting location.⁹ Only signs that refer to a candidate or issue on the ballot can be placed on public property.¹⁰ Temporary political campaign signs may not be placed on public property if prohibited by a governmental entity other than the city or if prohibited by city ordinance or state or federal law.¹¹
 - iii. A temporary political campaign sign on public property may not have an effective area greater than 20 square feet, be more than eight feet high, be illuminated, have moving elements, be placed over the public right-of-way, or project more than 18 inches above a roof.¹²

⁴ Tex. Loc. Gov’t Code §§216.903(c) and (d); Dallas Development Code §§51A-7.209(c) and 7.602(b).

⁵ Dallas Development Code §51A-7.203(b).

⁶ Tex. Elec. Code §255.007(a).

⁷ Dallas Development Code §51A-7.203(a).

⁸ Dallas City Code §15A-14(2).

⁹ *Id.* at §15A-15(a).

¹⁰ *Id.* at §15A-15(a).

¹¹ *Id.* at §15A-15(c).

¹² *Id.* at §15A-15(b).

- iv. Temporary political campaign signs placed at an early voting location may be put up no more than two days before commencement of early voting and must be removed within two days after the last day of early voting.¹³
- v. Temporary political campaign signs placed at an election day voting location may be put up no more than two days before the election and must be removed within two days after the election.¹⁴

City Councilmembers

1. A city councilmember is not prohibited from lending their name and official city title in connection with any election ordered by the City of Dallas on a proposition or measure.¹⁵
2. A city councilmember is not prohibited from lending their name and their designation “honorable” in connection with any election for public office or in connection with any election ordered by the City of Dallas on a proposition or measure.¹⁶
3. A city councilmember may not serve as the designated campaign treasurer for a candidate under the Texas Election Code.¹⁷
4. A city councilmember may not solicit or receive contributions for a candidate, political party, or political committee.¹⁸ A city councilmember may serve on a steering committee to plan a program of solicitation. The city councilmember’s name may be listed, without reference to the city councilmember’s title, when the committee as a whole is listed.¹⁹
5. 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 candidate or 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.²⁰

¹³ *Id.* at §15A-16(a).
¹⁴ *Id.* at §15A-16(a).
¹⁵ *Id.* at §12A-10(a)(1)(B).
¹⁶ *Id.* at §12A-10(a)(1)(C).
¹⁷ *Id.* at §12A-10(a)(2).
¹⁸ *Id.* at §12A-10(a)(3).
¹⁹ *Id.* at §12A-10(a)(3).
²⁰ *Id.* at §12A-10(c).

6. A city councilmember shall not directly or indirectly accept anything of value for political activity relating to an item pending on the ballot, 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.²¹
7. A city councilmember may display campaign bumper stickers on their personal vehicle but may not display campaign bumper stickers on a city vehicle. A city councilmember must remove campaign bumper stickers from a city vehicle that is under the city councilmember’s control.²²
8. A city councilmember 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
9. Political advertising.
 - a. A city councilmember may not knowingly spend or authorize the spending of public funds (including public resources) for political advertising.²⁴
 - b. A city councilmember may not use the city’s internal mail system for the distribution of political advertising.²⁵
 - c. Political advertising must (1) state that it is political advertising and (2) contain the name of the person, committee, or candidate who authorized and paid for the advertising.²⁶ The requirement does not apply to tickets or invitations to fund-raising events, campaign buttons, or circulars that cost in aggregate less than \$500 to publish and distribute.²⁷
10. A city council candidate may not knowingly accept a contribution that exceeds the dollar amounts allowed by Dallas City Code Section 15A-2.²⁸

City Officials

1. A “city official” includes:
 - a. municipal judges;
 - b. the city manager, the first assistant city manager, and all assistant city managers;

²¹ *Id.* at §12A-10(d).
²² *Id.* at §12A-10(e).
²³ *Id.* at §§12A-9 and 10(h).
²⁴ Tex. Elec. Code §255.003(a).
²⁵ *Id.* at §255.0031(a).
²⁶ *Id.* at §255.001(a).
²⁷ *Id.* at §255.001(d).
²⁸ Dallas City Code §15A-6(b).

- c. the city auditor and first assistant city auditor;
 - d. the city attorney and first assistant city attorney;
 - e. the city secretary and first assistant city secretary;
 - f. all department directors and their supervisors;
 - g. members of city boards and commissions;
 - h. members appointed by the city council to boards of entities not created by the city council;
 - i. chief financial officer; and
 - j. for purposes of Chapter 12A only, a citizen volunteer on committees or task forces formed by boards or commissions.²⁹
2. A city official who is a member of any board or commission appointed by the city council or who is an appointed official or officer of the city, including municipal judges and city appointees to the Dallas Area Rapid Transit Board and D/FW International Airport Board, immediately forfeits their position with the city if the person becomes a candidate for any public office.³⁰ A person may apply for a position as a municipal judge while a candidate for nomination or election to any public office.³¹
 3. A city official may not use the prestige of their position with the city on behalf of a candidate, political party, or political committee.³² A city official may, however, lend their name so long as the office held with the city is not mentioned in connection with the endorsement.³³
 4. A city official may not serve as the designated campaign treasurer for a candidate under the Texas Election Code.³⁴
 5. A city official may not solicit or receive contributions for a candidate, political party, or political committee.³⁵ 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.³⁶

²⁹ *Id.* at §12A-2(24).

³⁰ Dallas City Charter Chapter III, §17(a).

³¹ *Id.* at Chapter III, §17(a).

³² Dallas City Code §12A-10(a)(1).

³³ *Id.* at §12A-10(a)(1)(A).

³⁴ *Id.* at §12A-10(a)(2).

³⁵ *Id.* at §12A-10(a)(3).

³⁶ *Id.* at §12A-10(a)(3).

6. 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 candidate or 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.³⁷

7. A city official shall not directly or indirectly accept anything of value for political activity relating to an item pending on the ballot, 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.³⁸
8. 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.³⁹
9. 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.⁴⁰
10. Political advertising.
 - a. A city official may not knowingly spend or authorize the spending of public funds (including public resources) for political advertising.⁴¹
 - b. A city official may not use the city’s internal mail system for the distribution of political advertising.⁴²

³⁷ *Id.* at §12A-10(c).

³⁸ *Id.* at §12A-10(d).

³⁹ *Id.* at §12A-10(e).

⁴⁰ *Id.* at §§12A-9 and 10(h).

⁴¹ Tex. Elec. Code §255.003(a).

⁴² *Id.* at §255.0031(a).

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.⁴³
 2. A city employee is not prohibited from becoming a candidate for public office.⁴⁴ The city may not take disciplinary action, including termination, against a city employee solely because the employee becomes a candidate for public office.⁴⁵ The city employee must, however, still fulfill all the duties and responsibilities associated with their city employment.⁴⁶
 3. A city employee may not use the prestige of their position with the city on behalf of any candidate, political party, or political committee.⁴⁷
 4. 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 candidate or 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.⁴⁸
5. A city employee shall not directly or indirectly accept anything of value for political activity relating to an item pending on the ballot, 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.⁴⁹
 6. 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.⁵⁰

⁴³ Dallas City Code §12A-2(18).

⁴⁴ Tex. Local Gov’t Code §150.041(b).

⁴⁵ *Id.* at §150.041(c).

⁴⁶ *Id.* at §150.041(c).

⁴⁷ Dallas City Code §12A-10(f).

⁴⁸ *Id.* at §12A-10(c).

⁴⁹ *Id.* at §12A-10(d).

⁵⁰ *Id.* at §12A-10(e).

7. 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.⁵¹
8. A city employee or an association of city employees may not publicly endorse or actively support candidates for city council, or any political organization or association organized to support candidates for city council.⁵² City employees, however, are not prohibited from expressing their support for city council candidates with other individuals and with groups of 15 or fewer people.⁵³
9. A city employee may not circulate petitions for city council candidates. A city employee may, however, sign such a petition.⁵⁴
10. A city employee may not contribute, directly, indirectly, or through an organization or association, to a city council candidate's campaign. A city employee may not solicit or receive contributions for a city council candidate's campaign.⁵⁵
11. 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.⁵⁶
12. In an election other than for the Dallas city council, a city employee may not:
 - a. use the prestige of the employee's position with the city for any partisan candidate;
 - b. manage a partisan political campaign;
 - c. solicit or receive contributions for a partisan political campaign; or
 - d. actively support a candidate while at work, in a city uniform, or in a City of Dallas building.⁵⁷

⁵¹ *Id.* at §§12A-9 and 10(h).

⁵² *Id.* at §12A-10(g); Dallas City Charter Chapter XVI §16(b)(1). The term “actively support” is not defined in the Charter.

⁵³ *Wachsman v. City of Dallas*, 704 F.2d 160, 162 n. 3 (5th Cir. 1983). In *Wachsman* the city acknowledged that a city employee may: (1) place city council campaign signs in their yards and on the premises of their homes; (2) place city council campaign bumper stickers on the vehicles that they own; or (3) wear city council campaign buttons and distribute campaign literature, except while at work, or in a city uniform, or in the offices or buildings of the City of Dallas. Conversely, the court found that the city had a compelling interest in prohibiting the endorsement by an individual employee or association at a public event, such as a convention, caucus, rally, or similar gathering. *See id.* at 171. An individual city employee, however, on their own time, is not prohibited from endorsing candidates at private and/or nonpolitical gatherings (*e.g.*, a Kiwanis Club meeting or a neighborhood barbecue).

⁵⁴ Dallas City Code §12A-10(g); Dallas City Charter Chapter XVI §16(b)(2).

⁵⁵ Dallas City Code §12A-10(g); Dallas City Charter Chapter XVI §16(b)(3).

⁵⁶ Dallas City Code §12A-10(g); Dallas City Charter Chapter XVI §16(b)(4).

⁵⁷ Dallas City Code §12A-10(g); Dallas City Charter Chapter XVI §16(c).

13. A sworn employee of the police department or the fire-rescue department may engage in political activities to the extent permitted by state law.⁵⁸
- a. While in uniform or on active duty, sworn police department and fire-rescue department employees may not engage in a political activity relating to a campaign for elective office, including:
 - i. making a public political speech supporting or opposing a candidate;
 - ii. distributing a card or other political literature relating to the campaign of a candidate;
 - iii. wearing a campaign button;
 - iv. circulating or signing a petition for a candidate;
 - v. soliciting votes for a candidate; or
 - vi. soliciting campaign contributions for a candidate.⁵⁹
 - c. While out of uniform and not on active duty, sworn police department and fire-rescue department employees may engage in a political activity relating to a campaign for elective office, including the activities listed in (a) above, except that the person may not solicit campaign contributions for a candidate other than from members of an employee organization to which that employee belongs.⁶⁰
14. Political advertising.
- a. A city employee may not knowingly spend or authorize the spending of public funds (or public resources) for political advertising.⁶¹
 - b. A city employee may not use the city's internal mail system for the distribution of political advertising.⁶²

⁵⁸ Dallas City Charter Chapter XVI §16(d).

⁵⁹ Tex. Loc. Gov't Code §§150.002(a) and (b).

⁶⁰ *Id.* at §150.002(c).

⁶¹ Tex. Elec. Code §255.003.

⁶² *Id.* at §255.0031(a).

Residents

1. An individual may not make a campaign contribution of more than \$1,000 in support of or opposition to a single city council candidate's campaign or more than \$5,000 in support of or opposition to a single mayoral candidate's campaign.⁶³
 - a. Each individual may make these campaign contributions, regardless of marital status.⁶⁴
 - b. An initial election and a runoff election are separate elections.⁶⁵
2. A political committee may not make a campaign contribution of more than \$1,000 per contributing member to a single city council candidate, or more than \$5,000 per contributing member to a single mayoral candidate's campaign.⁶⁶ A political committee may not make a total campaign contribution of more than \$2,500 per city council candidate, or more than \$10,000 per mayoral candidate.⁶⁷ An initial election and a runoff election are separate elections.⁶⁸
3. A general purpose political committee that makes a contribution to support or oppose a candidate for city council or for a city measure must file reports with the city secretary containing the designation of the campaign treasurer, the number of contributing members of the committee, and a copy of the monthly reports filed with the Texas Ethics Commission for three months preceding the date of the contribution and for two months after the date of the contribution.⁶⁹ A general purpose political committee must file the report with the city secretary within five business days after the first contribution, and then monthly as required by Chapter 254 of the Texas Election Code.⁷⁰
4. A specific purpose political committee must file campaign reports with the city secretary in accordance with Chapter 254 of the Texas Election Code.⁷¹
5. An applicant in a designated zoning case may not knowingly make a campaign contribution to a city councilmember or city council candidate during the period between the time when notices of the city plan commission hearing are mailed and 60 days after the zoning case becomes final.⁷² This does not apply to applications for historic districts, conservation districts, or neighborhood stabilization overlays.⁷³

⁶³ Dallas City Code §15A-2(a).

⁶⁴ *Id.* at §15A-2(b).

⁶⁵ *Id.* at §15A-2(d).

⁶⁶ *Id.* at §15A-2(c)(1) and (2).

⁶⁷ *Id.* at §15A-2(c)(3).

⁶⁸ *Id.* at §15A-2(d).

⁶⁹ *Id.* at §15A-3(a)(1).

⁷⁰ *Id.* at §15A-3(b).

⁷¹ *Id.* at §15A-3(c).

⁷² *Id.* at §15A-4.1(b). *See* Dallas City Code §15A-4.1(a)(5) for a definition of "designated zoning case."

⁷³ Dallas City Code §15A-4.1(c).

6. An applicant in a designated public subsidy matter may not knowingly make a campaign contribution to a city councilmember or city council candidate during the period between the time when the item is posted on a city council committee or city council agenda and 60 days after the city council votes on the application or the application is withdrawn.⁷⁴
7. A person responding to a request for bids or request for proposals on a city contract may not knowingly make a campaign contribution to a city councilmember or city council candidate during the period between the time when the advertisement or public notification of the request for bids or proposals is made and 60 days after the contract is awarded.⁷⁵
8. A person may not make a campaign contribution in support of or in opposition to a city council candidate in the name of another person.⁷⁶

Please distribute this memorandum as you deem appropriate.

s/ Christopher J. Caso

CHRISTOPHER J. CASO
City Attorney

⁷⁴ Dallas City Code §15A-4.1(d) and *see id.* at §15A-4.1(a)(4) for a definition of “designated public subsidy matter.”

⁷⁵ *Id.* at §15A-4.1(e).

⁷⁶ *Id.* at §15A-5.