

As a member of a City of Austin board, commission, committee, or task force, you are a “city official” [City Code §2-7-72(3)]. As a city official, you are allowed to engage in certain election activities but are prohibited from engaging in others.

State law prohibits city officials from spending or authorizing the spending of city funds for political advertising [Texas Election Code §255.003(a)]. The general definition of political advertising is a communication supporting or opposing a ballot item or a candidate for public office. The term “communication” used in the definition is broad and includes, but is not limited to, messages that are broadcast, published, appear on a website, or appear in written form.

In addition to the state law prohibitions, Austin’s City Charter also prohibits city officials from contributing or using city resources for election campaigning [City Charter Article XII, Section 2]. The term “city resources” is broad and includes, but is not limited to, city equipment, staff time, facilities, and supplies.

In August City Council ordered the November 8, 2016 election for municipal officers and for a bond proposition. Therefore, the City is currently in the critical period when the prohibition is in place against using any city resources for political advertising and campaign messaging.

What cannot be done?

- **City funds and resources cannot be used to produce, reproduce, or distribute political advertising or campaign messages.** To avoid unlawful use of city resources, do not use any of the following to advocate for or against passage of any ballot measure or any candidate:
 - City email system or City internet website
 - City equipment such as copiers, supplies, paper products, postage, electronic equipment, podiums
 - City resources such as staff, staff time, ATXN (Channel 6)
 - City facilities, office spaces, bulletin boards
 - City funds
- **City boards may not take a position on a city ballot measure.** Any materials related to a board item or action that could reasonably be characterized as supporting or opposing a candidate or supporting or opposing passage of a ballot measure/proposition may not be broadcast on ATXN (Channel 6) or posted to the City’s website. Because the ballot for the November 2016 election is already set, it should be very unlikely for any matter regarding the ballot measure to appear on a board agenda. However, if for some reason the suggestion is made to put a ballot-related matter on a board agenda, it is imperative to obtain advice from the Law Department in advance of any decision to post such an item.
- **Individual board members are not authorized to speak for the City of Austin or for a City board.** If you are exercising your First Amendment right to speak out on a personal basis, it is your responsibility to ensure that your audience understands you are not speaking for the City of Austin.
- **If you have a City of Austin email account, you may not use it to support or oppose any candidate or ballot measure.**
- **Authorizing use of government resources for political advertising is a Class A misdemeanor, carrying penalties of up to one year jail time and up to a \$4,000 fine. In addition, the Texas Ethics Commission has jurisdiction to hear complaints and to levy civil fines up to \$5,000 or three times the amount at issue. Each person and each event can be fined separately.**

What can be done?

- **The prohibition on political advertising does not apply to a communication that factually describes the purposes of a ballot measure, so long as the communication does not advocate for passage or defeat of the ballot measure.** This may sound easy, but in practice it is quite nuanced and incident-specific.
- **Council members or board members can speak on ballot issues so long as they do not use city resources.** Ordinary deliberation during the course of a meeting would not be considered a violation of the prohibition.
- **As an individual, you have a First Amendment constitutional right to speak out on a personal basis, but not on city time or using city resources.**
- **As an individual, you have a right to contribute personal money to a political campaign including on a ballot measure.**



