

CITY OF TOLLESON

Important Election Season Reminders Prohibition on the Use of Public Resources To Influence An Election

The City of Tolleson (the “City”) is conducting its regular candidate election on August 2, 2022, which is consolidated with other federal, state and local races and also participating in the statewide general election and potential City runoff on November 8, 2022. The following information is provided to remind City employees and officials of the prohibitions against using public resources for political activities during this election season.

Constraints on Public Employees and Officials

Public employees **cannot use public resources** to influence *any* election at *any* level of government. See A.R.S. § 9-500.14 (prohibiting cities and towns from using public resources for the purpose of influencing an election).

What are Public Resources?

Any thing of value of the City including use or expenditure of monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer hardware and software, web pages, personnel, equipment, materials, buildings and a public employee’s time during work hours.

What is Influencing an Election?

Influencing the outcomes of elections means:

- Supporting or opposing a *candidate* for nomination or election to public office or the recall of a public officer.
- Supporting or opposing a *ballot measure, question or proposition*, including any bond, budget or override election.
- Supporting or opposing the *circulation of a petition* for the recall of a public officer or a petition for a ballot measure, question or proposition in any manner that is not impartial or neutral (this is triggered when a serial number is issued).

This is not limited to an election in your jurisdiction but applies to any election.

Prohibitions

A public employee shall NOT:

- Support or oppose a *candidate* for nomination, election, or recall while at work, in uniform, or otherwise performing official duties.
- Support or oppose a *ballot measure, question, or proposition*, including any bond, budget, or override election, while at work, in uniform, or otherwise performing official duties.
- Support or oppose the *circulation of a petition* for the recall of a public officer or for a ballot measure, question or proposition while at work, in uniform, or otherwise performing official duties.

- Use or promise to use any official authority to influence an election or to influence the vote or political activities of any subordinate employee.
- Use an official City title or designate employment with the City in political advertisements, endorsements or speeches.

Be mindful of what is a public resource and whether your use is influencing an election: Are you sending an email from your work account relating to political activity? Are you transporting campaign supplies in City vehicle? Are you supporting or opposing a candidate or ballot measure on a social media page during work hours or on a device paid for by the City? Are you using your work computer to make flyers for candidates or ballot measures? Are you storing information on your City shares file program to support or oppose a candidate or ballot measure? These are all examples of using a public resource to influence an election and are prohibited by law. Contact the City Attorney if you have specific questions.

Penalties for *each violation* of using public resources to influence an election may not exceed \$5,000 plus any amount of misused funds by a person who knowingly violates or aids another person in violating the law. **The City is not responsible for payment of these penalties – the person deemed out of compliance is responsible for payment of penalties and misused funds.** The attorney general or county attorney may initiate a suit in superior court to enforce these penalties.

Additional Restrictions

The City is prohibited from allowing its buildings, walls or grounds to be used to post campaign signs, flyers or materials for any candidates or ballot measures since this is using a public resource to influence an election. This differs from the placement of political signs, which are regulated by A.R.S. § 16-1019 and permitted in the City's right-of-way if certain conditions are met.

Additionally, Section 12.7 *Political Activity Policy* of the Employee Handbook, states that City employees shall not:

- Solicit or attempt to solicit support for a candidate or political party involved in the City's election from any employee or appointed official.
- When acting as a representative of the City, take part in the campaign of a candidate for election.
- Seek election to public office with the City while employed and paid by the City.
- Use, threaten to use, or attempt to use political influence in securing any employment benefit or advantage.

Further, no employee, appointed official or elected official of the City shall use any influence or pressure upon any employees to obtain any assessment or contribution of money or time, either direct or indirect, for any political campaign or personal gain.

What is Allowed?

The City may:

- Engage in routine communications relating to elections (e.g., notifying the public of the candidates running for office, notifying campaign committees about filing deadlines).
- Use public resources to prepare and distribute the election information required by statute such as the distribution of informational pamphlets on a proposed bond election as provided in A.R.S. § 35-454 if those informational pamphlets present factual information in a neutral manner. Additionally, the Clerk may distribute and collect voter registration forms to return to the county.
- Allow use of City resources, including facilities and equipment, for government-sponsored forums or debates if the government sponsor remains impartial and the events are purely informational and provide an equal opportunity to all viewpoints.
- Rent and permit use of a public facility by a private person or entity that may lawfully attempt to influence the outcome of an election is permitted ***if it does not occur at the same time and place as a government-sponsored forum or debate.***
- Use public resources to respond to questions about ballot measures if providing factual information that suggest neither support nor opposition to a measure.
- Use public resources to investigate the impact of ballot measures on a jurisdiction.
- Preparation and dissemination of materials reporting on official actions of the City such as approving a call of election.

As a Public Employee:

Your civil and political liberties are guaranteed by the United States and Arizona Constitutions. You may engage in the following:

- Express your personal political opinions.
- Join the political party of choice.
- Attend meetings for the purpose of becoming informed concerning candidates for public office and political issues.
- Register and vote in any municipal, special district, school county, state, or federal election.
- Circulate and sign candidate nomination or recall petitions, ballot initiatives or referenda.
- Solicit and make a financial contribution to a political party, candidate or campaign committees.
- Display signs at your residence as long as it is not on government property.
- Display bumper stickers for a candidate or relating to a local election as long as it is not on a City vehicle and the private vehicle with bumper stickers is not permanently parked on City property.

However, except for expressing an opinion or voting during work hours as authorized by A.R.S. § 16-402, an employee shall not engage in any activities permitted by this section while on duty, while in uniform, at public expense, or in any context that implies an employment relationship

with the City or that you are acting on behalf of the City. This means employees should take extra care to ensure these activities are outside of normal working hours or occur when the employee is on personal time or annual leave.

Employees whose pay is fully-funded by federal funds are covered by the Hatch Act (5 U.S.C. §§1501-1508), a federal statute that sets forth specific limitations on the political activities of some public employees. The City Attorney should be consulted with questions about the specific limitations of the Hatch Act for covered employees.

As an Elected Official:

Elected officials have the same rights as public employees. Additionally, they may communicate their views on a pending ballot measure and use their official titles ***but cannot use public resources to fund, facilitate or support such communications.*** This prohibition extends to campaigning from the dais as a Councilmember.

Best Practices

1. Provide any election-related material to the City Attorney for review before distribution.
2. Clarify your employment role, your workday and your use of government resources before engaging in political activity.
3. Manage requests for public records from political campaigns in the same manner as other public records requests.
4. Be aware of specific requirements or restrictions if a City is allowing early voting or election day voting (including dropping off ballots) at City Hall. If the county is administering the election, check with the county at least 60 days prior to the election to obtain instructions and procedures. For example, if City Hall is a designated polling location for early voting or election day voting, A.R.S. § 16-411 prohibits electioneering within 75-feet of the polling location.
5. When in doubt, check with the City Attorney before taking any action.