

FAQs about the Use of City Resources for Campaigning

Q: Does the state Fair Campaign Practices Act (“FCPA”) apply?

A: No, the City of Colorado Springs has its own restrictions adopted under its home rule authority. They are similar to the prohibitions in the state FCPA.

Q: What are the City restrictions?

A: The City Code prohibits the use of City resources to support or to oppose (directly or indirectly) a person running for office, the retention of a person who is the subject of a recall election or an “election issue.” For the Coordinated Election on November 7, 2017, this prohibition means that in most circumstances, City employees may not use work time or City resources to campaign (directly or indirectly) for or against an election issue.

Q: When do the restrictions start?

A: When a matter has been submitted to the electors, interpreted as the time when an election issue has been referred to an election ballot. For the City election issue referred by Council, the restrictions became effective August 22, 2017 (stormwater fee issue).

Q: Once an election issue is referred, may Councilmembers take actions that other City officials or employees may not?

A: Yes, City Code permits City Council to use City resources to adopt a resolution supporting or opposing an “election issue.” Also City Councilmembers are not City employees. This means that Councilmembers may engage in campaign activities during regular business hours so long as no City resources are used to do so. Because City resources are broadly implicated at Council meetings and town hall meetings, no campaigning should occur at these events.

Q: Once an election issue is referred, may Councilmembers answer questions about an election issue?

A: Yes, and members of City Council may use City resources to answer questions so long as the Councilmember did not solicit the questions in their official capacity with the City. Answers may be provided in person, in writing, or on the radio/television.

Q: Is City Council permitted to ask City employees to work on the resolution?

A: Yes, for election issues only. Staff time is considered a City resource and the use of City resources is permitted to enable the City Council to consider and adopt the resolution.

Q: Is City Council permitted to ask City employees to develop answers to questions about an election issue?

A: Yes, for election issues only. Staff time is considered a City resource and the use of City resources is permitted to answer questions. (Relying on state law as similar precedent, the answers should relate to factual information and should avoid advocacy for or against an election issue.)

Q: Have these provisions been tested or interpreted in Court?

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A: No. The City provisions were adopted in 2012, and there is no case law interpreting them. However, court decisions interpreting the state FCPA may be looked to for guidance where City provisions or restrictions are similar.

Q: What is the penalty for a violation?

A: The City Code does not fix any punishment or consequence for a violation of the City prohibitions. It is possible that the general penalty provisions of City Code could be determined to apply (a fine of up to \$2,500, or a jail sentence of up to 180 days, or any combination of those). Also, an ethics complaint may result from a perceived violation and critical media coverage would be likely even if a violation is not sustained.

Do:

- Campaign or advocate a position on an election issue on your personal time and with your private resources. Be prepared to document that.
- Write an op-ed piece, letter of support or opposition, or prepare other work product without using City resources. State in the piece (or on the footer) that you prepared it on your own time with your own equipment.
- Keep records to document you've not used or spent City resources to support or oppose an election issue. Make a record to establish this evidence.
- Issue a reminder to Council staff to not engage in any prohibited conduct.
- Use a standard reply format to any solicitations for contributions, public appearances, photo ops, campaign help, etc. that are sent to your City e-mail or phone relating to election issues. [E.g. *Thank you for contacting me regarding _____ . Because City Code prohibits the use of City resources for campaigning, please send all future requests to my personal e-mail: _____ . Thank you again for your request.*]

Don't:

- Use City computers, printers, copiers, telephones, faxes or e-mail addresses for election issue-related communications unless they are permitted resolutions or answers to questions about an election issue.
- Use City letterhead for your letter or op-ed piece.
- Allow City vehicles to be used as a backdrop in a campaign commercial.
- Drive a City vehicle to a campaign event.
- Print any materials that are not answers to questions about an election issue or a resolution adopted by City Council on City resources or using City Office Services.
- Issue official City press releases concerning the election issue except to announce the adoption of a resolution or to answer questions.
- Place any campaign stickers on City vehicles or other City property.
- Place any campaign messages on the City webpage or provide a link to a campaign website from the City webpage.
- Solicit questions or initiate conversation about election issues.

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- Wear shirts, buttons, or hats with campaign slogans or symbols at Council meetings or official City events.