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INTEROFFICE MEMORANDUM

TO: All City Employees

FROM: Tracy Reeve *JRR*
City Attorney

SUBJECT: Political Activities Restrictions and City Employees

This is a reminder about laws affecting political activities¹ by City employees, including elected officials.

Under certain circumstances, employees or officials who violate election laws may be held personally liable for unauthorized expenditure of public money and may incur additional penalties. In addition, City Code provides that employees may be disciplined for violating federal or state law, the City Charter, ordinances, or any City rules, including bureau policies. All employees must be aware of and compliant with these laws and any related bureau policies.

State law requires public employers to post a standard notice in places likely to be seen by employees. The notice summarizes key aspects of election laws. **Supervisors and managers should urge all employees to read the notice.** Please notify the Auditor if you need copies.

In addition, federal laws include prohibitions restricting the actions of City employees who work with programs funded in whole or in part by federal loans or grants. While most of the prohibitions are similar to those imposed by state law, one significant difference is that City employees whose salaries are paid for entirely by federal funds are prohibited from running for partisan office.

As noted below, restrictions on elected officials differ in part from those on other City employees. Restrictions on non-elected employees will be discussed first.

¹ As used in this memorandum, a "political activity" is an activity directed toward supporting or opposing federal, state or local candidates, ballot measures, political committees, recalls or petitions.

I. RESTRICTIONS ON CITY EMPLOYEES, OTHER THAN ELECTED OFFICIALS, ENGAGING IN POLITICAL ACTIVITIES

A. Who is a Public Employee?

The State Attorney General’s office has interpreted “public employee” to include all local government public employees and officials other than elected officials. Thus, City appointed board and commission members should comply with the restrictions below. The Secretary of State has clarified that uncompensated volunteers (other than members of boards or commissions) are not subject to the restrictions below.

B. When do the Laws Apply?

With regard to measures, the restrictions apply after the City Council has referred a measure to the ballot or after an initiative or referendum prospective petition is filed. With respect to candidates or political committees, the restrictions below apply at all times.

The restrictions end at 8:00 PM on the election date at which the candidate or measure is voted on.

C. Engaging in Political Activity.

State law, ORS 260.432, provides that public employees, while on the job during working hours:

- May not promote or oppose candidates, political committees, ballot measures, or recall of a public office holder.
- May not solicit money, influence, or services on behalf of or in opposition to candidates, political parties, or ballot or recall measures.
- May not promote or oppose the gathering of signatures for initiatives, referenda, or recall measures.

The Secretary of State has adopted a manual entitled *Restrictions on Political Campaigning by Public Employees – ORS 260.432* by administrative rule. The manual provides additional detail about allowable and prohibited political activities and violations of the rule are enforceable as violations of ORS 260.432. Links to the manual are located on the City Attorney’s and Secretary of State’s webpages.

In summary, non-elected public employees, acting in their public capacities, may not express political opinions and they may not work for or against political parties, ballot measures, signatures on measures, candidates, or recall of elected officials while they are at work and acting in their public capacities.

However, City employees and board and commission members may express personal political views (for example, during a personal conversation with a colleague) even while on the job during working hours. ORS 260.432(2). Obviously, this statutory provision is not a license to spend time expressing personal views instead of doing one's job. Section 2-610 of Portland's Charter requires all City employees, elected or appointed, to devote their time during paid hours to the interest of the City.

City employees and board and commission members may campaign for or against political parties, ballot measures, signatures, or candidates while on their own time outside of working hours without using City resources. Salaried employees must be careful during all appearances both after normal work day hours as well as during working hours. They must not advocate on behalf of, or against a petition, measure or candidate if they are considered to be in their "official capacity." The Secretary of State recommends personal note-keeping by salaried employees of when the employees are on or off duty to help determine whether they are acting in their "official capacity." Also, during public appearances, City employees and board and commission members should specifically announce to the audience in what capacity they are speaking. In addition, employees must know and follow City and bureau rules about conduct outside of work. For example, HRAR 4.06 prohibits participating in political activities while wearing a City uniform or any part or likeness thereof.

D. Requiring Others to Engage in Political Activity.

ORS 260.432(1) prohibits any person from requiring, coercing, or commanding a public employee to engage in political activity, or attempting to do so, even if that activity would occur on the employee's own time off the job. Thus, City employees and board and commission members may not be required by an elected official, non-elected public employee, or any other person to engage in any political activity, regardless of whether the activity itself would be lawful or unlawful.

E. Examples:

1. Campaigning or Soliciting Campaign Funds or Assistance. Prohibited at work.

Campaigning or soliciting campaign funds or assistance is prohibited while on the job during working hours. The Oregon Supreme Court has stated that governments and their employees (except for elected officials as noted below) must refrain from supporting or

opposing candidates or ballot measures. It is not the function of governments or public employees to spend public time or public funds to support or oppose candidates or ballot measures, or to solicit funds or assistance from others for such purposes.

**2. Preparing or Distributing Campaign Literature.
Prohibited at work.**

While on the job during working hours, City employees and board and commission members may not distribute literature promoting or opposing a candidate or a ballot measure. City employees and board and commission members may not use City resources such as interoffice mail, telephones, fax machines, Internet access or copying machines in support of or in opposition to a candidate or ballot measure.

**3. Use of City Email System, City Sponsored Social Media Sites or Other City Resources for Political Activity.
Prohibited at work.**

City employees may not use the City email system, social media or other City resources (e.g., telephone or copy machines) to campaign for or against or to distribute advocating or fundraising materials in support of or in opposition to a candidate or ballot measure. Sometimes employees receive unsolicited, mass-distributed, campaign-related email at a City email address. In that circumstance, the employee may delete the email, and should not forward it to others.

**4. Placing Posters, Notices, or Bumper Stickers.
Prohibited at work.**

City employees and board and commission members may not hand out on City property or affix to City property posters, bumper stickers, announcements of campaign events, or similar campaign materials promoting or opposing a candidate or ballot measure.

**5. Providing Information about Ballot Measures.
Allowed if done properly.**

Even during work hours, City employees and board and commission members may prepare and provide neutral and objective information about the expected effect of ballot measures. However, the courts strictly interpret this restriction. Courts look at not only the words used, but also the context, timing, emphasis, and what is left out. Even if a City-produced document does not urge a yes or no vote or was prepared before a measure was proposed, it may be unlawful to distribute or post. Any information concerning the anticipated effects of a measure on the ballot should be submitted to the City Attorney's Office for review before distribution or posting on a City website.

6. Wearing Buttons.
Allowed if expressions of personal opinions.

On or off the job, public employees may wear buttons that are intended and viewed as personal expressions of their political views. However, since citizens might mistake a personal expression as an official one, discretion is advised in such situations. Furthermore, special restrictions might apply to employees in certain circumstances, such as those who wear City uniforms while on the job. Employees should review and follow the policies of their respective bureaus.

7. Having Political Conversations.
Allowed if expressions of personal opinions.

(a) With co-workers: State law guarantees public employees the right to express personal political views. City employees and board and commission members may express their personal view in casual, personal conversations with co-workers during working hours.

(b) With citizens: State law appears to permit City employees and board and commission members, even while on the job during working hours, to express personal political views to citizens. However, since citizens might mistake a personal expression as an official one, caution is advised in such situations. Furthermore, bureau rules might impose additional restrictions in some situations.

(c) In any case, employees and board and commission members, while on the job, should never solicit money or take any steps beyond mere expressions of personal opinions.

Note: All of the above restrictions arise from state law. City employees must also comply with City rules, such as Human Resources Administrative Rule 4.06, which mirrors state law, but in some instances provides more specificity. For example, HRAR provides examples of prohibited use of official authority or influence while engaged in a political activity:

Employees may not use their official authority or influence while engaged in a political activity. Examples of prohibited use of official authority or influence while participating in any political activity include but are not limited to: using their official title; using a government-owned or leased vehicle; wearing their official uniform or any part thereof; or posting or using any image of their official badge, insignia or uniform.

In limited circumstances, City bureaus may adopt more stringent restrictions. Before adopting any such restrictions, bureaus should consult the City Attorney's Office. Employees should be advised of specific bureau policies regarding campaign issues, and each employee should review and follow their bureau's policies.

II. RESTRICTIONS ON ELECTED CITY OFFICIALS ENGAGING IN POLITICAL ACTIVITIES

A. Prohibited Activities.

As mentioned above, elected officials may not try to or actually coerce, command or require City employees or board and commission members to engage in political activities, even if those activities would be legal and would occur off the job. ORS 260.432(1). Elected officials should be particularly careful about asking public employees for assistance with political activities even after work, to avoid any appearance or perception of coercion or command.

An elected official may not use City employees or board and commission members to prepare or deliver information advocating the passage or defeat of a ballot measure or the election or defeat of a candidate. As noted above, the law also prohibits trying to affect the gathering of signatures on measures proposed for the ballot.

In addition to violating ORS 260.432, any of these activities could be an unauthorized expenditure of public funds for which the official, City employee or board and commission member could be held personally liable. ORS 294.100(2).

Section 2-204 of the City Charter prohibits elected officials from serving "on or under any committee of any political party" during the official's term of office. This section does not preclude an elected official from serving on a committee to support a candidate so long as the committee is not part of or formed by a political party.

B. Allowed Activities.

Elected officials and their staffs may prepare and disseminate reports about the work of their office or the bureaus they oversee. So long as sufficient funds are budgeted, publication of such reports is permissible if the reports serve the public interest.

An elected official may have City staff prepare factual, neutral information concerning a pending ballot measure and its anticipated consequences. However, the line between factual information and advocacy is often difficult to discern. For example, even factually accurate material can violate the law if it is unbalanced. Caution is required. This material should be reviewed by the City Attorney's Office before distribution.

Unlike other City employees, elected officials may engage in political activity at any time, on or off work, as long as they comply with City Charter Section 2-610 discussed above.

III. SUMMARY

Non-elected City employees and board and commission members:

- May not spend time on the job promoting or opposing candidates or ballot measures.
- May not spend time on the job promoting or opposing political committees or the gathering of signatures for proposed ballot measures.
- May not use City resources to promote or oppose candidates, ballot measures or political committees or the gathering of signatures for a proposed ballot measure.
- May not require or attempt to require or coerce another City employee or board and commission member to engage in any political activity.

Non-elected City employees and board and commission members:

- May express personal political views, subject to bureau rules.
- May engage in political activities outside of work, subject to City and bureau rules.

Elected City officials:

- May not require or attempt to require or coerce a City employee or board and commission member to engage in political activity of any kind at any time.
- May not use City property, City funds, or City staff to promote or oppose ballot measures, signatures on proposed measures, political committees, or election or recall of officials or candidates.
- May not serve on or under any committee of a political party.

Elected City officials:

- May themselves, subject to the requirements of Charter Section 2-610, promote or oppose candidates or ballot measures at any time.
- May utilize their staff members to disseminate information in the public interest concerning the work of the City, as well as neutral and objective information concerning the anticipated effects of ballot measures on the City. Any information concerning the effects of a ballot measure should be submitted to the City Attorney's Office for review before distribution.

IV. REMINDER

Questions may arise that are not answered by this memorandum. Furthermore, it may not be clear how the information in this memo applies to specific situations. Whenever you or your employees are uncertain, please contact Kim Sneath in our office for assistance. You may also contact the City's Elections Officer, Deborah Scroggin, for additional written guidance and trainings regarding the elections laws.

TR/ks