

CITY OF BOULDER, COLORADO

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MEMORANDUM

TO: City Employees

FROM: Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney ^{Job} TAC

SUBJECT: Participation in Election Campaigns

DATE: August 9, 2013

We will soon be heading into election season. We wanted to take this opportunity to remind you about the rules governing elections as they apply to city employees. As city employees, we retain our first amendment rights to participate in the political process. We must, however, be careful not to use any city resources for campaign purposes. We can participate in campaigns, but we can only do so on our personal time, not at work. We cannot use city resources, including our time at work, to participate in any election in any way. The people who pay our salaries have a right to expect that we will not use our positions to help or hurt a candidate or ballot measure. What we do on our free time is our business; what we do at work is the people's business. When in doubt, ask! Our offices are available to you if you have any question about something that you want to do.

The city has exempted itself from the Colorado Fair Campaign Practices Act, section 1-45-117 C.R.S., however, we aspire to meet the requirements of that Act. The Act limits the campaign activities of cities, city officials and city employees. Also, the city has adopted policies applicable to all employees regarding election campaigns. These laws apply to all ballot questions, not just those placed on the ballot by the city.

USE OF CITY RESOURCES

State law and city policy both prohibit the use of any city resources, including city letterhead, e-mail accounts, city vehicles, or city uniforms to urge electors to vote in favor of or against any issue before the electorate. City employees should never engage in campaign activities during their work time or use equipment or materials for campaign purposes.

CAMPAIGN MATERIALS

Wearing campaign buttons is not prohibited by the Colorado Fair Campaign Practices Act and there are First Amendment implications to any prohibition on their use. However, political buttons may not be worn on uniforms. Also, non-uniformed employees should refrain from wearing campaign

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buttons while on duty. This is particularly important for employees who have contact with the public. The reason for these rules is that it is not appropriate to suggest or imply that a personal political view of an employee is somehow endorsed by the city.

Similar rules apply with regard to campaign literature, and particularly to literature dealing with city ballot measures. The lobby of the municipal building is made available for campaign literature; otherwise no campaign literature should be in public areas of city property. City Council can pass a resolution endorsing or opposing a ballot measure. However, once passed, the council may use only "established means" to distribute that resolution. Therefore, no special or unusual distribution of materials containing political conclusions (even if council endorses a political position) may occur in city buildings or through the use of city resources.

PRESENTATION OR DISCUSSION OF BALLOT MEASURES

The city manager has designated the employees who may speak on behalf of the city regarding pending ballot measures, and has given them the appropriate parameters for such discussion. No other employees may make presentations or participate in discussions in their capacity as a city employee on ballot measures.

ANSWERING QUESTIONS FROM THE PUBLIC

The Fair Campaign Practices Act allows employees to respond to questions from members of the public about a local political issue so long as the "...employee has not solicited the question." An employee may answer an unsolicited question factually without urging a vote for or against a particular ballot measure. However, it is prudent for public employees to exercise caution in such circumstances. A member of the public may become confused about an employee's support of a particular candidate or initiative, and this may bring into question the ability of the employee to carry out his or her duties in an impartial and effective manner as a public employee.

EMPLOYEE FIRST AMENDMENT RIGHTS

The Act recognizes the

...right for individuals to express their own positions and to expend personal funds, make contributions in kind, or use personal time to urge electors to vote in favor of or against any issue before the electorate. §§ 1-45-117(1)(b)(III)(C) C.R.S.

City employees are free to volunteer their time outside of office hours to work on a political campaign. As long as it is on their own time (and not using city equipment, or wearing city uniforms), city employees may sign petitions, participate in elections, donate funds and engage in all other manner of political activity. However, as employees engage in political activity outside of their employment, they should not suggest or imply that they represent the city. For that reason, the city's Conflict of Interests Policy provides:

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Individually or together with other City employees, employees may not identify their position or title or use their uniform while campaigning for or in support of any candidate for any public office, or knowingly permit themselves to be so used.

Questions? If any employee has questions with regard to this topic, both the city manager and the city attorney are available to respond to inquiries.