

Texas Town & City Legal Q&A
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Is a city prohibited from spending public funds on political advertising?

Yes. Section 255.003 of the Texas Election Code provides that:

- (a) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.
- (b) This section does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.
- (c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

According to the Texas Ethics Commission, "Political advertising" is a communication in almost any written or broadcast form, such as a billboard, a flier, a newsletter, a poster, a television or radio ad, or an Internet Web site. The phrase "spend or authorizing the spending of public funds" for political advertising means that a city may not purchase new materials for use in creating political advertising, nor can it use existing paper and machinery to create, display, or distribute political advertising. Also, it is not permissible to use the paid time of a city employee to create or distribute political advertising.

City resources may be used to produce explanatory material about what is at stake in an election, but the material may not advocate the passage or defeat of a measure. Violations of the law often occur because a city official finds it irresistible to include a motivational slogan in addition to the factual explanation.

A violation of the prohibition is a Class A misdemeanor, which is punishable by a fine not to exceed \$4,000, confinement in jail for a term not to exceed one year, or both. Tex. Penal Code § 12.21. Also, the Ethics Commission has authority to impose fines for violations of Section 255.003.

Of course, a city official is free to campaign for or against a proposition on his or her own time.

Does the recording and the televising of a city council meeting run afoul of Section 255.003 of the Texas Election Code when a council member states an opinion concerning a measure that is or may be on an upcoming ballot?

No. When a city council holds a meeting to discuss whether to place an issue before the voters, city councilmembers and members of the public are likely to voice opinions about the issue. According to the Ethics Commission, Section 255.003 does not prohibit the city from broadcasting a tape of such a meeting so long as the broadcast is in keeping with the city's regular practice of broadcasting meetings. Op. Tex. Ethics Comm'n No. 510 (2004). In that situation, city resources would not be used "for" political advertising, even if an incidental effect of broadcasting the tape would be to broadcast statements supporting or opposing a measure.

Is a peace officer authorized to issue traffic citations on school district property?

Yes. Section 37.102(b) of the Texas Education Code provides that "[a] law or ordinance regulating traffic on a public highway or street applies to the operation of a vehicle on school property." Thus, any peace officer may issue a traffic citation on school district property.

Is a city authorized to enforce land development regulations against a school district?

Courts have generally held that a city cannot prevent a school district from locating schools and school facilities in residential areas. See *Austin Independent School District v. City of Sunset Valley*, 502 S.W.2d

670 (Tex. 1973); *City of Addison v. Dallas Independent School District*, 632 S.W.2d 771 (Tex. App.—Dallas 1982). For example, in *City of Addison*, a city attempted to prevent a school district from locating a bus parking facility in an area zoned residential. The court held the city’s “ordinances inapplicable to the particular school district activity in issue.” *City of Addison*, 632 S.W.2d at 772. However, the Texas Supreme Court has expressly stated that a school district cannot “act with impunity,” and that a district’s actions cannot be “unreasonable or arbitrary.” *City of Sunset Valley*, 502 S.W.2d at 674.

In *Port Arthur Independent School District v. City of Groves*, 376 S.W.2d 330 (Tex. 1964), the Texas Supreme Court stated that “[w]e believe the better rule to be that the school buildings of an independent school district are subject to the reasonable [building code and permit] ordinances of the city.” *Port Arthur*, 376 S.W.2d at 334. Thus, while school districts are exempt from location-based zoning requirements under *City of Sunset* and *City of Addison*, *Port Arthur* clearly holds that they are still subject to police power regulations.

City officials should consult with local legal counsel regarding if, how, when, and where city land development regulations should be enforced against a school district.

Is city-owned property automatically exempt from the city’s zoning ordinance?

No. While federal and state property is exempt from zoning, city property is not automatically exempt. See Tex. Loc. Gov. Code §211.013(c). Cities do, however, have the legislative power to exempt municipal buildings from the zoning ordinance. *City of McAllen v. Morris*, 217 S.W.2d 875 (Tex. Civ. App.-Dallas 1948, writ ref’d n.r.e.). If a city’s ordinance does not provide for such an exemption, it may be amended to do so.

Do city councilmembers have an obligation to vote on matters properly before the council?

Unless a councilmember has a statutory conflict of interest under Chapter 171 of the Texas Local Government Code, the councilmember should participate in deliberations and vote on matters before the council. This obligation stems from a councilmember’s oath of office, which provides that he or she will “faithfully execute the duties of the office,” which arguably includes voting. Tex. Const. art. XVI, § 1.

However, state law does not limit those circumstances under which a councilmember may voluntarily abstain. A councilmember is free to abstain due to perceived conflicts of interest, or for no reason at all. Considering the free speech implications, cities should not require a councilmember to vote on every matter before the council, nor should cities require that a councilmember cite specific reasons for declining to vote.

Can a councilmember acting alone bind the city?

No. Generally, a city may contract only upon the express authorization of the city council. *City of Bonham v. Southwest Sanitation, Inc.*, 871 S.W.2d 765 (Tex. App.--Texarkana 1994). Council authorization is evidenced by a vote that is reflected in the minutes of the meeting in which the vote took place. Mere statements or acts of a mayor, councilmember, or another city official are ineffectual to bind the city to a contract.