

**CITY OF MADISON  
OFFICE OF THE CITY ATTORNEY  
Room 401, CCB  
266-4511**

Date: April 24, 2024

**FORMAL OPINION NO. 2024-001**

TO: Erin Hillson  
Human Resources Director

FROM: Michael Haas  
City Attorney

RE: Political Activity by City Employees

You requested a summary of relevant laws related to the rights of City employees to engage in political activity and specifically regarding a potential City referendum to exceed State-imposed levy limits. There are four relevant sections in the City's Ethics Code and this memorandum outlines those provisions. The provisions are fairly brief and straightforward so I am including the full language below. I have also attempted to provide a condensed set of rules as a more user-friendly resource following the analysis.

The Ethics Code is contained in MGO 3.35 and its focus is on prohibiting the use of City resources or positions for improper non-public purposes, including political activity. First, MGO 3.35(5)(b)2. states as follows:

The use of City equipment and property including City-owned vehicles, cameras, projectors, audio systems, copy machines, fax machines, computers, telephones, software and uniforms is prohibited for both partisan and non-partisan political activity. Use of City property which is available and accessible to the general public is not considered a violation of this ordinance, nor is it a violation for an incumbent to use photographs existing before the first date that nomination papers may be circulated and taken during the regular course of the incumbent's duties. For the purposes of this paragraph (b)2., political activity has the meaning found in Section [3.35\(8\)](#), MGO.

Property that is available and accessible to the general public might be website links, memos or other documents produced for the Common Council, or informational materials produced by the City.

The second relevant provision is MGO 3.35(5)(b)3. which states:

No City employee shall use or allow the use of City equipment or property, including vehicles, cameras, projectors, audio systems, copy machines, fax machines, computers, telephones, software, and uniforms, to engage in, organize, or conduct a grass-roots campaign to lobby any incumbent on any matter pending before the City. No City employee, while on duty for the City, shall engage in, organize, or conduct a grass-roots campaign to lobby any incumbent on any matter pending before the City, nor shall any incumbent direct an employee to do so. By resolution, the Council may waive this prohibition as to specific employees or for a specific matter.

Finally, MGO 3.35(8) includes specific prohibitions related to political activity by City employees. Subsection (8)(a) states:

No employee while on duty or on official City business shall, for the apparent purpose of influencing the outcome of any referendum, or improving the chance of election of a person seeking elective office:

1. Wear or display any campaign material.
2. Distribute any campaign literature.
3. Solicit, receive or give subscriptions, contributions or service for any candidate or referendum position.
4. Actively campaign for any candidate or any referendum position.

And Subsection (8)(b) states:

No employee while on duty or other official City business or off duty shall in any way coerce or attempt to coerce subscriptions, contributions or service from subordinate employees in support of a political party or a candidate for elective office or for or against a referendum position, or retaliate against or reward an employee for refraining from participating in any political activity. No employee on or off duty shall use her or his title or position or indicia thereof in any elective political activity.

Taken together, these provisions have a common theme of prohibiting the use of City resources and positions for political purposes, which includes advocating for or against a referendum. This includes the use of an employee's time while on duty.

To cite some examples, employees cannot use City computers or copiers to produce literature supporting or opposing a candidate or a referendum question. They cannot make phone calls or have meetings while on duty for lobbying or political purposes, such as planning to appear before the Common Council to testify about a resolution authorizing a resolution, organizing support or opposition to a referendum, or soliciting contributions. (There is also a separate state law prohibiting candidates or campaigns

from soliciting contributions from public employees in the workplace or while they are on duty.) And they cannot use their position to pressure subordinate employees to support or oppose a candidate or referendum question, whether on or off duty.

Outside of those restrictions, City employees retain their First Amendment rights when not on duty with a couple of important caveats discussed below. City employees can appear before the Common Council or City committees to advocate regarding a resolution authorizing a referendum and organize a grass roots campaign to lobby on such a resolution as long as they do not use City resources to produce their testimony. In that way they are equivalent to any other member of the public.

City employees can also support or oppose any political candidate or referendum question on their own time provided that they do not use City resources to do so. To ensure that the political activity is permissible, City staff can ask themselves whether they are doing it on City time or using City resources such as computers, phones or vehicles. And whether they are attempting to coerce subordinate employees into joining the political activity, including by basing any job action on whether the subordinate employee agrees with their political viewpoint or joins the cause.

The two restrictions regarding political activity even when City employees are off duty are 1) they may not wear City uniforms, and 2) they may not use their title or position or indicia thereof in any elective political activity. For instance, City employees may not pose for a photo for candidate literature or to support or oppose a referendum while in uniform (for example police officers and firefighters) or while wearing any type of clothing identifying them as a City employee. City employees may identify their title or position when providing public comments to the Common Council or a City committee about specific resolutions or ordinances because that is legislative activity and not elective political activity.

Also, it is my opinion that City employees can identify that they work for the City or identify their position at the City when engaging in organizational activity such as meeting with a group outside of work to plan political activities. I interpret "elective political activity" to mean more public expressions of support or opposition, such as using a City title in a letter to the editor or on campaign literature. However, I have not located a prior City Attorney opinion on this point and so if any City employee wishes to seek confirmation or clarification from the Ethics Board on its interpretation of "elective political activity," they may submit a request through our office.

Finally, union representatives and employee association representatives may engage with other City staff, agencies and officials on behalf of their members. These responsibilities are not affected by the rules related to political activity by City employees. Union and association representatives are free to advocate on behalf of their members, seek information from City agencies and management, and distribute information to their members related to developments that may impact them, provided that they do not use City resources to advocate regarding a candidate or referendum. Sending emails to union or association members calling attention to information about the City budget or a possible referendum is permitted but sending an email or posting

a message on a workplace bulletin board advocating for a yes or no vote on a referendum is not.

In addition, I believe that using a union or association title or affiliation, such as “MPSEA President” or Teamsters Local 695 Union Steward” on letters to the editor or other communications is permissible because that indicates a position with an association or union rather than a City title or position, again assuming that the action or communication does not involve the use of City time or resources.

In summary, I believe the rules for City employees can be summarized as follows:

1. Do not engage in political activity while working, including wearing or displaying any materials advocating for a particular vote, distributing campaign literature, soliciting or accepting any campaign contribution, or actively campaigning for or against any candidate or referendum outcome.
2. Do not use City resources, including City equipment, supplies, computers, telephones, vehicles or uniforms to advocate for or against a candidate or a referendum result. This applies while working or while off duty.
3. Do not use City time or resources to organize a grass-roots campaign to lobby members of the Common Council or any City body on any matter before it, such as a resolution to authorize a referendum.
4. While on duty, do not pressure subordinates or colleagues to engage in political activity or condition any job decision on their participation.
5. Do not use any indication of your City title or position while engaging in public political activity, such as writing a letter to the editor or when listing your name on campaign literature or appearing in a campaign advertisement.
6. City employees may engage in political activity to support or oppose a candidate or a vote on a referendum while off duty provided that they do not use City resources or indicate their City title or position.
7. City employees may appear before the Council or other City bodies to advocate regarding a resolution to authorize a referendum or other legislative action, may organize a grass roots effort to lobby Council members, and may indicate their City title or position while doing so, provided that they are off duty and do not use City resources to engage in that activity.
8. City employees may use and distribute publicly available materials such as memos, reports or website links provided that they do not use City printers or copiers to reproduce materials for use in political activity.
9. City employees can identify themselves and their position or title while engaging in non-public campaign activity, such as when introducing themselves in a meeting of campaign supporters.

10. City employees may indicate their position with a union or employee association while engaging in campaign activity.
11. The typical work of union and employee association members to engage with City agencies and provide information to members is permitted, but they may not use City email or other resources to engage in political activity or advocate for a particular candidate or referendum vote.

I hope this information is helpful but I am happy to address other questions from either your office or from City employees, unions or employee associations.