



RESTRICTIONS ON THE USE OF GOVERNMENT EXPENDITURES

The [New York City Charter](#) contains provisions restricting the use of government resources by public servants. A public servant is any official, officer, or employee of the City, including a community board member or a paid member of an advisory committee.

WHAT RESTRICTIONS APPLY?

A public servant is prohibited from using government funds or resources (including statements on the Internet) to make public communications that urge the public to elect or defeat a particular candidate for public office, support or oppose a particular political party, or support or oppose a particular ballot referendum question.

OTHER RESTRICTIONS

DURING THE ELECTION YEAR

From January 1st of the election year through the day of the general election, a public servant who is a candidate for nomination or election to any office, or his/her spouse/domestic partner, shall not appear or participate in any television commercial, radio advertisement, or print or electronic (Internet) advertisement paid for using government resources.

PRIOR TO ELECTION DAY

Less than 90 days prior to both the primary and general elections, government funds or resources may not be used for print or electronic mass mailings. This restriction is commonly known as the mass mailing “blackout” period. A “mass mailing” is more than 100 identical or nearly identical pieces of literature or other communication, including but not limited to newsletters, pamphlets, and informational materials, sent to residents or voters.¹ The CFB may assess penalties for violations of this provision and consider such communications in-kind contributions that will count towards a candidate’s expenditure limit(s).

Note: For special elections, the restrictions apply from the day the special election is declared through the day of the special election.

¹ See §1136.1(1)(a). Pursuant to §1136.1(4), the Campaign Finance Board has the authority to enforce this requirement.

EXCEPTIONS

Public servants may participate in, or use government funds for, news coverage in print or electronic media, debates, and public education forums.

Government resources may be used for a mass mailing within 90 days of an election if the mailing is:²

- ◆ Related to the budget, sent only to individuals within the council district, borough, or other geographic area represented by the public servant, and sent **within twenty-one days after the adoption of the executive budget**. Public servants may send only one mailing pursuant to this exception.³
- ◆ **An advertisement or other communication required by law.**
- ◆ **A communication necessary to safeguard public health and safety.** Such communications should involve a specific, imminent risk to the public and must go beyond general education or information (for example, an outbreak of an illness or an increase in crime in a particular area).
- ◆ **A standard communication in response to inquiries or requests.** Such communications should be sent only to those who submitted the inquiry or request, and the content of the communication should be limited to the scope of the inquiry or request.
- ◆ **An ordinary communication between a public servant and members of the public, or between an elected official and his or her constituents.** In determining whether a communication fits this exception, CFB staff will review various factors, including the content, subject matter, and timing of the mailing.
 - › An ordinary communication may include an advertisement for an annual or recurring event, provided that the event is time-sensitive. Such communications are more likely to be considered ordinary if the public servant can provide similar communications from his or her office advertising the same event in previous years. Examples of communications that have typically been deemed ordinary include:
 - » Advertisements of independence days and other ethnic/heritage celebrations.
 - » Advertisements for festivals or events that have been hosted by the same official in previous years.
 - » Communications discussing pending legislation and upcoming hearings sent to a distribution list as part of a regular, pre-existing monthly update program (must focus on the currently pending issues rather than describing the official's past actions or accomplishments).
 - » Communications informing constituents about recent court decisions or law changes that may affect them.
 - » Notifications and reminders of upcoming town hall meetings related to a particular, time-sensitive topic.

² See §1136.1(3)(a).

³ See §1136.1(2)(b).

Even if they fall into one of the above exceptions, mass mailings distributed within 90 days of an election using government resources **must not**:

- ◆ Contain campaign-related, electioneering, or promotional language.
- ◆ Contain contact information for the public servant's campaign.
- ◆ Be distributed outside of the public servant's district or covered area.

Government resources may not be used for a mass mailing within 90 days of an election if the communication is not covered by one of the above exceptions. Examples of prohibited communications include:

- ◆ Seasonal, congratulatory, and commemorative announcements not linked to a specific, time-sensitive event.
- ◆ Communications announcing the release of policy reports.
- ◆ Newsletters, either print or electronic, not linked to a specific, time-sensitive issue.

Electronic Communications

Electronic communications, including, but not limited to, e-mail, text messages, and Internet content, constitute a form of “mass communication” under §1136.1(1)(e). Making identical or nearly identical electronic communications available to residents or voters, for instance, in the text of an e-mail message, by file attachment in an e-mail, through a direct message on a social media or networking site, or through an Internet link contained in an e-mail, text message, or on a website other than the public servant's city government website, constitutes “deliver[y]” under Charter §1136.1(2)(b).⁴

- ◆ Tweets, Facebook status updates, and other postings to social media platforms do not constitute delivery unless sent to specific accounts or addresses. Public servants are strongly encouraged to establish separate Twitter and Facebook pages for their campaigns to avoid the appearance of government resources being used for campaign-related purposes.

For more information, refer to [New York City Charter §1136.1](#). If you have any questions, please contact Mark Griffin, Associate Counsel, at (347) 404-8630 or mgriffin@nyccfb.info.

⁴ See generally [Advisory Opinion No. 2007-1](#) (February 8, 2007).