

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** DISCUSSION AND DIRECTION FROM THE CITY COUNCIL ON HB 362 COUNTY SPONSORED PROPOSITION FOR A LOCAL OPTION GENERAL SALES TAX DEDICATED TO TRANSPORTATION

**SUMMARY:** To discuss the County sponsored vote for a 0.25% local option sales tax and what the City will/will not do to inform the voters of West Jordan of the "factual information" related to this ballot proposition.

**FISCAL IMPACT:** Staff time to fulfill any direction given by the Council.

**STAFF RECOMMENDATION:** None.

**MOTION RECOMMENDED:** None, direction only.

**Prepared by:**



Bryce Haderlie  
Interim City Manager

**BACKGROUND:** The Salt Lake County Council has authorized the question for HB 362 to be put on the 2015 ballot. I have attached information provided by the Utah League of Cities and Towns regarding the involvement that the City can have in this process if it chooses to. I am seeking input from the Council so that we are following your direction on how much information you want to make available to the West Jordan City voters on this subject. A list of projects that the money (if approved by the voters) will be used for is also attached. More information on this subject is available on the Utah League of Cities and Towns website: [www.ulct.org](http://www.ulct.org)

**Table 14 Priority Roadway Improvements for 2025: West Jordan City Responsibility**

Project Number	Roadway Project	Average Daily Traffic	Score	Project Type	Project Cost	Project Funding	West Jordan Contribution	
15	5600 West: 6200 South to 7000 South	13000	70	Widening	\$7,000,000	West Jordan/WFRC	16%	\$1,120,000
5	7000 South: Redwood Road to Bangerter Highway	22100	53	Widening	\$14,960,000	West Jordan/WFRC	100%	\$14,960,000
1	7800 South: Bangerter Highway to Airport Road	7700	50	Widening	\$6,640,000	West Jordan	100%	\$6,640,000
14	7000 South: Airport Road to 4800 West	4900	49	Widening	\$1,000,000	West Jordan	100%	\$1,000,000
3	7800 South: 5900 West to 6700 West	9600	48	Widening	\$7,810,000	West Jordan/WFRC	100%	\$7,810,000
2	5600 West: 8200 South to 8600 South	2750	47	Widening	\$5,550,000	West Jordan/WFRC	100%	\$5,550,000
43	1300 West: Northern City Border to Southern City Border	9125	39	Widening	\$10,500,000	West Jordan/WFRC	20%	\$2,100,000
7	6200 South: Bangerter Highway to 4800 West	18567	46	Widening	\$14,440,000	West Jordan/WVC	50%	\$7,220,000
12	4000 West: Old Bingham Hwy to Southern Border	8200	45	Widening	\$1,500,000	West Jordan/WFRC	100%	\$1,500,000
32	7800 South: SR-111 to Future North/South Collector in Annexation Area	3500	34	New Road	\$3,680,000	West Jordan	25%	\$910,000
22	Old Bingham/10200 South: 5600 West to Mountain View Corridor	2200	23	Widening	\$8,310,000	West Jordan/WFRC	100%	\$8,310,000
8	10200 South: Mountain View Corridor to HWY 111	2200	15	New Road	\$23,830,000	West Jordan/WFRC	51%	\$12,150,000
<b>Total</b>					<b>\$105,220,000</b>			<b>\$69,270,000</b>

**Table 15 Priority Roadway Improvements for 2025: UDOT Responsibility**

Project Number	Roadway Project	Average Daily Traffic	Score	Project Type	Project Cost
4	7000 South: Jordan River (Eastern Border) to Redwood Road	26500	63	Widening	\$9,000,000
41	SR-111: New Bingham Highway to Northern Border	5240	42	Widening	\$11,730,000
6	9000 South: 6400 West to SR-111	5400	22	New Road	\$11,180,000
<b>Total</b>					<b>\$0</b>

\*UDOT Responsibility Due to Jurisdictional Transfer

**Table 16 Priority Intersection Improvements for 2025: West Jordan City Responsibility**

Project Number	Intersection Improvement	Score	Intersection Type	Total Cost	Project Funding	West Jordan Contribution	
59	4000 West & 7800 South*	64	Traffic Signal	\$1,000,000	West Jordan	100%	\$1,000,000
44	1300 West & 7800 South	63	Traffic Signal	\$550,000	West Jordan/ WFRC	100%	\$550,000
45	2700 West & 7000 South	54	Traffic Signal	\$180,000	West Jordan	100%	\$180,000
63	4800 West & New Bingham*	52	Traffic Signal	\$180,000	West Jordan	100%	\$180,000
46	3200 West & 7000 South	46	Traffic Signal	\$500,000	West Jordan	100%	\$500,000
47	4000 West & Old Bingham	45	Traffic Signal	\$800,000	West Jordan	100%	\$800,000
48	5600 West & 8200 South	35	Traffic Signal	\$250,000	West Jordan	50%	\$125,000
49	6700 West & 7800 South	34	Roundabout	\$330,000	West Jordan	100%	\$330,000
50	Prosperity & 10200 South	32	Traffic Signal	\$250,000	West Jordan/ SJC	50%	\$125,000
51	6400 West & 7800 South	21	Roundabout	\$330,000	West Jordan	100%	\$330,000
<b>Total</b>				<b>\$4,370,000</b>			<b>\$4,120,000</b>

\* West Jordan Responsibility Due to Jurisdictional Transfer

**Table 17 Priority Intersection Improvements for 2025: UDOT Responsibility**

Project Number	Intersection Improvement	Existing Volume	Score	Intersection Type	Total Cost
53	Redwood Rd. & 7000 South	6525	60	Traffic Signal	\$250,000
55	Redwood Rd. & 7800 South	6680	58	Traffic Signal	\$250,000
56	Bangerter Hwy. & 9000 South	6730	55	Interchange	\$49,000,000
60	1300 West & 9000 South*	4205	49	Traffic Signal	\$180,000
61	Redwood Rd. & 9000 South	5970	47	Traffic Signal	\$250,000
54	4000 West & 9000 South*	3235	45	Traffic Signal	\$1,100,000
62	2700 West & 7800 South	4165	46	Traffic Signal	\$180,000
57	2200 West & 9000 South*	3990	40	Traffic Signal	\$500,000
58	3200 West & 9000 South*	3785	39	Traffic Signal	\$500,000
64	1300 West & 7000 South	3580	34	Traffic Signal	\$500,000
65	6400 West & New Bingham	930	31	Traffic Signal	\$500,000
52	Old Bingham & 7800 South		28	Traffic Signal	\$500,000
<b>Total</b>					<b>\$53,710,000</b>

\*UDOT Responsibility Due to Jurisdictional Transfer

West Jordan City  
Asphalt Trails

Trail Name	Address	Miles	Width/ft.	Condition	Est. Cost	Notes
<del>Jordan River Trail</del>	<del>7700 s - Winchester</del>	<del>1.91</del>	<del>10'</del>	<del>Poor</del>	<del>\$302,500</del>	<del>Needs to be overlaid/shoulder work</del>
Jordan River Trail	8350 s - 9000 s	1.08	10'	Excellent		
Jordan River Trail (Lucky Clover Cont.)	7200 s 1050 w	0.22	10'	Good		
Jordan River Trail (8600 s Connector)	8600 s 1075 w	0.10	10'	Excellent		
Mountain View Corridor Trail	MVC 9000 s - 9400 s	1.50	10'	Excellent		
Mountain View Corridor Trail	MVC 9000 s - 7800 s	1.62	10'	Excellent	\$1,000	Sink hole by box near south end/need repair
Mountain View Corridor Trail	MVC 7800 s - 7000 s	1.17	10'	Excellent		
Barney's Wash Trail	8950 s 6400 w - Duck Ridge	0.33	10'	Poor	\$52,300	Needs to be overlaid/shoulder work
Barney's Creek Trail	8600 s 6260 w - 6130 w	0.27	10'	Good		
Barney's Creek Trail	8350 s 6000 w 5900 w	0.18	10'	Good	\$30,000	The trail needs to be finished to connect to the Mountain View Corridor Trail (285')
No Name (High School Wash)	8085 s 6400w - 6500 w	0.18	10'	Excellent		
Sycamores Trail	New Sycamores Dr	0.39	10'	Good	\$4,000	On the east side there is a 15' section that is sunk and needs to be replaced
Clay Hollow Wash Trail	7800 s U-111 - 6700 w	0.27	8'	Fair	\$10,000	Shoulder work needed, willows coming through asphalt, cracks, needs repair
Clay Hollow Wash Trail	7800 s 6700 w - 6450 w	0.29	8'/12'	Fair/Excellent	\$5,000	Old 8' section has two trench's that need to be repaired
Clay Hollow Wash Trail (connector)	7800 s 6540 w	0.01	8'	Excellent		
Clay Hollow Wash Trail (connector)	7800 s 6500 w	0.07	9'	Excellent		
Senior Housing Trail	Sugar Factory Rd 2200 w	0.31	11'	Fair	\$3,000	Needs to be crack sealed on west end
Barney's Creek Trail (north)	7900 s 4800 w - 5000 w	0.26	8'	Very Poor	\$71,100	Needs to be replaced, zipper, compact, install new asphalt
Barney's Creek Trail (south)	7900 s 4800 w - 5600 w	1.10	8'	Very Poor	\$139,400	Needs to be overlaid/shoulder work, some areas need to be removed and replaced
Barney's Creek Trail (Connector west)	Mack's Inn Circle	0.01	8'	Fair	\$1,300	Needs to be overlaid/shoulder work
Barney's Creek Trail (Connector Tunnel)	Grizzly Way 8100 s	0.07	8'	Very Poor	\$8,900	Needs to be overlaid/shoulder work, some areas need to be removed and replaced
Barney's Creek Trail (Connector School)	Amethyst Dr 5140 w	0.07	8'	Poor	\$8,900	Needs to be overlaid
Barney's Creek Trail (Connector Park)	Amethyst Dr 4880 w	0.02	6'	Poor	\$1,900	Needs to be overlaid
Barney's Creek Trail	Window Ranch Wy 5600 w	0.18	8'	Fair	\$1,200	Needs crack seal
U-111 Frontage Trail	U-111 7800 s - 8200 s	0.47	9'	Good		
<b>Total</b>		<b>12.08</b>			<b>\$640,500</b>	



# HB 362 Local Option: County Requirements <sup>1</sup>

A county must follow these steps if the county submits the ballot proposition to voters in 2015:

**AS SOON AS THE COUNTY ACTS:** The county clerk must prepare an election notice of the election either 100 days prior to the election OR as soon as possible before the local election to use in conjunction with a federal write-in absentee ballot<sup>2</sup>

- The notice must include the ballot propositions and other offices as well as instructions for how to use the federal write-in absentee ballot
- The county clerk must post the notice on the county website & provide it upon request<sup>3</sup>
- Once the ballot is certified, then the county clerk must update & publish the notice

**AUG 30 (LAST DATE FOR 2015 ACTION):** The county governing body must submit the certified ballot title of the ballot proposition to the county clerk 65 days prior to the election<sup>4</sup>

**AUG 30:** The county clerk must receive petitions from supporters and opponents to prepare arguments for and against the ballot proposition for the local voter information pamphlet<sup>5</sup>

- If more than one person files a request to prepare arguments for or against the ballot proposition in the local voter information pamphlet, then the governing body must make the final designation<sup>6</sup> and give priority to members of the governing body. The voter information pamphlet arguments may not exceed 500 words in length and not list more than five names as sponsors.<sup>7</sup>

**SEP 4:** Per the TBPA, the county clerk must provide the ballot proposition title, number, and text, the county legislative vote, and other factual information to the lieutenant governor for the Statewide Electronic Voter Information Website<sup>8</sup>

- The county governing body must provide a 500 word argument in favor of the ballot proposition to the county clerk per the TBPA to later publish on the county website, state website, and county newsletter (if applicable) by Sep 4
- The county clerk must receive the 500 word opposing argument by Sep 4 as well
- If multiple opposing arguments arrive, then the county clerk designates one as "official"

**SEP 14:** The authors of the 500 word arguments for the voter information pamphlet must submit their arguments to the county clerk<sup>9</sup>

**SEP 24:** The county governing body may provide a 250 word rebuttal per the TBPA to the opposing argument

- The opponents may provide a 250 word rebuttal to the county rebuttal by Sep 24 too

**OCT 4-NOV 3:** The county per the TBPA must post the argument, opposing argument, and rebuttals on the county website, state website, & the county newsletter (if applicable) until Election Day

**OCT 20-30:** The county governing body per the TBPA must publicize and hold one public meeting after 6 pm during this time frame and present both supporting and opposing arguments

<sup>1</sup> Transparency of Ballot Propositions Act, Utah Code Ann. § 20A-1-1602; voter information pamphlet, § 20A-7-402

<sup>2</sup> Utah Code Ann. § 20A-16-502(1),(2)

<sup>3</sup> Utah Code Ann. § 20A-16-502(5)

<sup>4</sup> Utah Code Ann. § 20A-6-106

<sup>5</sup> Utah Code Ann. § 20A-7-402(1),(2)(a)(i)

<sup>6</sup> Utah Code Ann. § 20A-7-402(2)(a)(ii)

<sup>7</sup> Utah Code Ann. § 20A-7-402(2)(a)(v)

<sup>8</sup> Utah Code Ann. § 20A-7-801(4)(iii)

<sup>9</sup> Utah Code Ann. § 20A-7-801(2)(a)(vi)



## Public Entities: What can and can't be done<sup>10</sup>

\* Consult with your city attorney and see the *Public entity and public official involvement memo* available on ULCT website for more details

**CAN:** provide a “brief statement” about the public entity’s position & reason for the position<sup>11</sup>

**CAN:** provide “factual information” as long as the public entity grants “equal access” to opponents of the ballot proposition<sup>12</sup>

**CAN:** provide “factual information” that is consistent with the TBPA—up to 500 word arguments & 250 word rebuttals—for publicizing arguments & rebuttals<sup>13</sup>

**CAN:** neutrally encourage voters to vote regardless of whether the city/town provides a “brief statement” or “factual information”<sup>14</sup>

**CANNOT:** make an expenditure from public funds to influence a ballot proposition<sup>15</sup>

**CANNOT:** spend public money or provide anything of value to campaign or advocate for or against the ballot proposition<sup>16</sup>

**CANNOT:** Provide services at less than fair market value for a political issues committee<sup>17</sup>

## Public Officials & Public Employees: What can and can't be done

**CAN:** advocate for or against the ballot proposition by speaking independently of the public entity, using your personal email account, and without using public funds<sup>18</sup>

**CAN:** advocate for or against the ballot proposition by providing campaign contributions from personal resources<sup>19</sup>

**CANNOT:** use your public email account to send emails that advocate for or against the ballot proposition<sup>20</sup>

**CANNOT:** approve expenditures from public funds to influence the ballot proposition<sup>21</sup>

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<sup>10</sup> Transparency of Ballot Propositions Act, Utah Code Ann. § 20A-1-1602; Political Activities of Public Entities Act, § 20A-11-1201

<sup>11</sup> Utah Code Ann. § 20A-11-1202(6)(a),(b)

<sup>12</sup> Utah Code Ann. § 20A-11-1206(2),(3)

<sup>13</sup> Utah Code Ann. § 59-1-1604

<sup>14</sup> Utah Code Ann. § 20A-11-1206(3)

<sup>15</sup> Utah Code Ann. § 20A-11-1203(1)

<sup>16</sup> *Id.*; Utah Code Ann. § 20A-11-1202(4)(a)

<sup>17</sup> Utah Code Ann. § 20A-11-1202(4)(e)

<sup>18</sup> Utah Code Ann. § 20A-11-1206(1)

<sup>19</sup> *Id.*

<sup>20</sup> Utah Code Ann. § 20A-11-1205(1)

<sup>21</sup> Utah Code Ann. § 20A-11-1203(1)

**Date:** July 31, 2015  
**To:** ULCT membership and other public entities in Utah  
**From:** Cameron Diehl and the ULCT legal team  
**RE:** Public entity and public official involvement during a ballot proposition election

## **INTRODUCTION**

*(Note: ULCT urges city officials to consult with your city attorney and to consider any relevant municipal ordinances in your jurisdiction)*

Three acts govern public entity involvement in ballot propositions. First, the legislature enacted the Transparency of Ballot Propositions Act (TBPA) in 2014 that only applies to the entity that imposes the tax. In this case, the imposing entity is the county. Second, the county is also responsible for arguments in the voter information pamphlet. Third, the Political Activities of Public Entities Act (PAPEA) applies to all public entities, regardless of who imposes the tax. The PAPEA allows public entities to offer a brief statement of support and provide factual information so long as opponents have equal access. PAPEA also prohibits public entities from using public funds to influence the ballot proposition election.

Once your county governing body votes to place the local option on the ballot for the November election, then the county triggers both the official ballot proposition and the governing statutes. This memo examines the TBPA, PAPEA, and the voter information pamphlet requirements, and encourages election consolidation between counties and municipalities.

## **I) TRANSPARENCY OF BALLOT PROPOSITIONS ACT AND VOTER INFORMATION PAMPHLET**

### **A) MANDATORY AND EXCLUSIVE COUNTY ACTION TO PUBLICIZE SUPPORT AND OPPOSITION**

The Transparency of Ballot Propositions Act defines the procedure for a governing body to propose a ballot proposition to their voters. A taxing entity must comply with the Act to submit a ballot proposition. In the case of the HB 362 local option, the governing body is the county governing body.

Once a county governing body submits the local option to voters, the county must then follow TBPA guidelines to provide public statements of support, offer an opportunity for the opposition to respond, and hold a public meeting in October on the local option. The county must also provide a local voter information pamphlet which has a different calendar and argument requirements than the TBPA.

First per TBPA, the county governing body must submit to the county clerk an argument in favor of a ballot proposition. In reply, any eligible voter may submit to the county clerk an argument against the ballot proposition.<sup>1</sup> Both arguments must not exceed 500 words in length and be submitted no later than 60 days before Election Day.<sup>2</sup> In 2015, the 60 day deadline is Friday, September 4.

Second, both the county governing body and the opponent may provide a rebuttal argument to each other that does not exceed 250 words and is submitted at least 40 days before Election Day. In 2015, the 40 day deadline is Thursday, September 24. If multiple opponents submit arguments and rebuttals against the county position, then the county clerk designates one of the opponents to provide the official counter argument and rebuttal.<sup>3</sup>

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<sup>1</sup> Utah Code Ann. § 59-1-1604(1)

<sup>2</sup> Utah Code Ann. § 59-1-1602, 1604(2)

<sup>3</sup> Utah Code Ann. § 59-1-1604(1)(b)(ii)

Third, the county governing body must then post the arguments and rebuttals on the Statewide Electronic Voter Information Website and the county website for 30 consecutive days before the election. In 2015, the 30 day window begins on Sunday, October 4.<sup>4</sup> The county governing body would also have to post the arguments and rebuttals in the next scheduled newsletter (if the county has a newsletter) published before Election Day.<sup>5</sup>

Fourth, the county governing body must hold a public meeting between four and 14 days before Election Day, which would be between Tuesday, October 20, and Friday, October 30.<sup>6</sup> The county governing body must allow equal time for a presentation of the arguments both in favor of the ballot proposition and against the ballot proposition.<sup>7</sup> The public meeting must begin at or after 6 pm.<sup>8</sup> The county governing body must then provide a digital audio recording of the public meeting no later than three days after the meeting on the county website or, in the case of counties without websites, at the primary government building.<sup>9</sup>

#### **B) CERTIFIED BALLOT AND VOTER INFORMATION PAMPHLET**

Meanwhile separate from TBLA, the county governing body must submit the certified ballot title of the ballot proposition to the county clerk 65 days prior to the election<sup>10</sup> which is Sunday, August 30. Additionally, the county clerk must also prepare a voter information pamphlet and receive petitions from supporters and opponents to prepare arguments for and against the ballot proposition by August 30. If more than one person files a request to prepare arguments for or against the ballot proposition in the local voter information pamphlet, then the governing body must make the final designation<sup>11</sup> and give priority to sponsors or members of the local governing body. The voter information pamphlet arguments may not exceed 500 words in length and not list more than five names as sponsors.<sup>12</sup> The authors of the 500 word arguments for the voter information pamphlet must submit their arguments to the county clerk<sup>13</sup> by 50 days before Election Day which is September 14.

#### **C) TBPA APPLICATION TO OTHER PUBLIC ENTITIES**

Cities and towns and other public entities are not officially responsible for any of the aforementioned requirements because only counties can impose the HB 362 local option. However, the Transparency in Ballot Propositions Act provides a framework for other public entities that could fit within the broad parameters of the Political Activities of Public Entities Act.

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<sup>4</sup> Utah Code Ann. § 59-1-1604(5)

<sup>5</sup> Utah Code Ann. § 59-1-1604(6)

<sup>6</sup> Utah Code Ann. § 59-1-1605(1)

<sup>7</sup> Utah Code Ann. § 59-1-1605(2)

<sup>8</sup> Utah Code Ann. § 59-1-1605(3)(b)

<sup>9</sup> Utah Code Ann. § 59-1-1605(4)

<sup>10</sup> Utah Code Ann. § 20A-6-106

<sup>11</sup> Utah Code Ann. §20A-7-402(2)(a)(ii)

<sup>12</sup> Utah Code Ann. §20A-7-402(2)(a)(v)

<sup>13</sup> Utah Code Ann. § 20A-7-402(2)(a)(vi)



## II) POLITICAL ACTIVITIES OF PUBLIC ENTITIES ACT (PAPEA, 20A-11-1201)

### A) WHAT ALL PUBLIC ENTITIES CANNOT DO

A public entity such as the state, county, municipality, or governmental inter-local cooperative may NOT make an expenditure from public funds for political purposes or to influence a ballot proposition.<sup>14</sup> Violating this section of state law is a class B misdemeanor.<sup>15</sup> As “political purposes” refers to the elections of candidates and judges, this analysis will focus only on the ballot proposition restriction.<sup>16</sup>

A “public entity” includes the state, county, municipality, governmental interlocal cooperation agency, local district, and each administrative subunit therein.<sup>17</sup> As such, the Utah Department of Transportation, all counties, all cities and towns, the Utah League of Cities and Towns, associations of governments and the Utah Transit Authority and other transit agencies are considered “public entities.”

State law defines an “expenditure” as a “payment, donation, gift of money, or anything of value” for any recipient.<sup>18</sup> State law further defines “expenditure” when the recipient is a political issues committee as “goods or services provided for political purposes at less than fair market value.”<sup>19</sup> State law also defines “public funds” as any money received by a public entity from appropriations, grants, taxes, fees, interest, or returns on investment.<sup>20</sup>

State law defines “influence” as “campaign or advocate for or against a ballot proposition” with one key exception. “Influence” does **not** mean “providing a brief statement about a public entity’s position on a ballot proposition and the reason for that position.”<sup>21</sup> This exception is critical because it allows the public entity to explain why the ballot proposition would be beneficial and allows for the activities that the TBPA requires of counties.

In short, a county, city, town, or other public entity may not spend taxpayer dollars to campaign or advocate for or against a ballot proposition with the notable exception of providing a “brief statement” and/or “factual information” with “equal access” (analysis below) about the public entity’s position.

### B) WHAT ALL PUBLIC ENTITIES CAN DO

Per PAPEA, the public entity may provide a “brief statement” about the public entity’s position and the reason for that position.<sup>22</sup> A public entity (both those that impose the tax and those who do not impose like a city or town) may also provide “factual information” about the ballot proposition to the public, so long as the entity grants “equal access” to both the opponents and proponents of the ballot proposition.<sup>23</sup> The public entity may also neutrally encourage voters to vote.<sup>24</sup>

Even though the county is the governing body that submits the ballot proposition to voters and thus **must** comply with the aforementioned Transparency of Ballot Propositions Act, any public entity like a city or town **may** provide a “brief statement” and “factual information” with “equal access” to explain the entity’s position without violating the PAPEA restriction on influencing the election.

<sup>14</sup> Utah Code Ann. § 20A-11-1203(1)

<sup>15</sup> Utah Code Ann. § 20A-11-1204

<sup>16</sup> Utah Code Ann. § 20A-11-1202(9)

<sup>17</sup> Utah Code Ann. § 20A-11-1202(10)

<sup>18</sup> Utah Code Ann. § 20A-11-1202(4)(a)

<sup>19</sup> Utah Code Ann. § 20A-11-1202(4)(e)

<sup>20</sup> Utah Code Ann. § 20A-11-1202(11)(a), (b)

<sup>21</sup> Utah Code Ann. § 20A-11-1202(6)(a)

<sup>22</sup> Utah Code Ann. § 20A-11-1206(6)(b)

<sup>23</sup> Utah Code Ann. § 20A-11-1206(2)

<sup>24</sup> Utah Code Ann. § 20A-11-1206(3)

### **III) ULCT RECOMMENDATION: WHAT CITIES, TOWNS, & PUBLIC ENTITIES MAY DO PER BOTH ACTS**

PAPEA allows for a “brief statement” and “factual information” so long as the public entity provides “equal access.” Even though TBPA does not apply to cities, towns, and other public entities in this context because counties will impose the tax, the TBPA does provide a parallel framework for public entities (like cities and towns) to provide the PAPEA-allowed “factual information” with “equal access.”

#### **A) BRIEF STATEMENT**

A public entity may provide a “brief statement” explaining their position on the ballot proposition and the reason for that position. PAPEA and case law are silent as to what a “brief statement” is. For example, ULCT believes that cities and towns (and public officials) can reference the resolutions that they passed that demonstrate the official municipal position on the local option.

#### **B) FACTUAL INFORMATION AND EQUAL ACCESS**

PAPEA allows but does not require a public entity to provide “factual information” to the public about the ballot proposition so long as the public entity provides “equal access” to opponents. PAPEA does not provide guidance for “factual information” and “equal access.” However, TBPA allows an imposing public entity (in this case counties) up to a 500 word public argument and 250 word rebuttal to express support for the ballot proposition. TBPA also outlines how the public entity should provide equal access to opponents by providing an opportunity to a registered voter in the county to submit counter arguments that would be publicly shared in the same manner as the public entity argument.<sup>25</sup>

Since PAPEA does not require a city, town, or other public entities to provide “factual information,” then a city, town, and other public entities need not provide “factual information.” If a city or town decides not to provide “factual information,” then the city or town need not provide “equal access” to opponents to respond. The city or town could still offer a “brief statement” though the line separating a “brief statement” and “factual information” with “equal access” is unclear.

If a city or town elects, however, to provide “factual information” to demonstrate support of the local option, then ULCT recommends that the city or town follow the same framework in the TBPA: 500 word argument and counter argument, 250 word rebuttal and counter rebuttal, and post all arguments on the municipal website. Since PAPEA is silent about how to provide “equal access” to opponents, ULCT recommends that the city or town could use the same counter argument and counter rebuttal that the county clerk has designated for the county per TBPA. The city or town may choose to have an open meeting to discuss the local option as TBPA requires of counties but that meeting is not mandatory to satisfy the “equal access” requirement.

In conclusion, if a city or town elects to provide “factual information” about the ballot proposition, the city or town should follow the TBPA “equal access,” argument, and counter argument framework.

#### **C) WHAT A PUBLIC OFFICIAL AND PUBLIC EMPLOYEE CANNOT DO—EMAIL**

A “public official” has a different legal framework than a “public entity.” A “public official” includes both elected and appointed government officials who have authority to make public policy. A “public official” also includes any person with “supervisory authority over the personnel and affairs of a public entity and approves the expenditures of funds.” As such, a “public official” does not include public employees who do not have authority to make public policy nor does it include public employees who do not have supervisory authority over the public entity’s personnel AND do not have the authority to approve expenditures.<sup>26</sup>

<sup>25</sup> Utah Code Ann. § 59-1-1604; see section I(a) above

<sup>26</sup> Utah Code Ann. § 20A-11-1202(12)

Public officials may not use public funds to influence a ballot proposition. Specifically, the legislature in 2015 enacted a provision that now also restricts a person—public official, public employee, or anyone—from using the email of a public entity to send an email to advocate for or against a ballot proposition.<sup>27</sup> The county clerk may impose a civil fine of \$250 for the first violation and then \$1000 for each subsequent violation multiplied by the number of violations that the person commits.<sup>28</sup> The violation is the act of sending the email from the public account, regardless of the quantity of recipients.<sup>29</sup> Receiving an email on your public account, however, is not a violation. The law does provide for a safe harbor if the lieutenant governor determines that the email was inadvertently sent as a reply.<sup>30</sup>

Consequently, anyone—public official, public employee, etc.—with access to an email of a public entity may not send an email from the public account to advocate for or against the ballot proposition.

#### **D) WHAT A PUBLIC OFFICIAL AND PUBLIC EMPLOYEE CAN DO**

A public official may advocate for or against a ballot proposition and may speak, contribute personal money, or otherwise exercise his/her First Amendment rights independent of the public entity and without using public funds or resources.<sup>31</sup> For example, a public official may post on his/her personal Facebook page but he/she may not send an email from the email of a public entity or face a civil fine. Public officials and public employees may use their own personal email accounts and other modes of communication to exercise their First Amendment rights so long as they do not use public funds.

#### **IV) ELECTION CONSOLIDATION**

Previous ULCT analysis determined that state law encourages but does not require counties and municipalities to consolidate elections.<sup>32</sup> As of July 2015, many municipalities still intend to conduct their own election in November. If the county in which those municipalities reside puts the ballot proposition to voters, then the voters in that county could receive one ballot from the city/town with the city/town council candidates and another ballot from the county with the ballot proposition. Voters receiving two ballots may be confused about which ballot to submit and may result in low turnout. Consequently, ULCT recommends that counties and municipalities consider election consolidation.

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<sup>27</sup> Utah Code Ann. § 20A-11-1205(1) (note: though the word “influence” is not used in this statute, the definition herein is consistent with “influence” within PAPEA)

<sup>28</sup> Utah Code Ann. § 20A-11-1205(2)

<sup>29</sup> Utah Code Ann. § 20A-11-1205(5)

<sup>30</sup> Utah Code Ann. § 20A-11-1205(5)

<sup>31</sup> Utah Code Ann. § 20A-11-1206(1)

<sup>32</sup> Utah Code Ann. §20A-1-204(2)(a),(b)