



Memo

Date: February 8, 2016

To: North Avenue Task Force

From: Nicole Losch, Senior Transportation Planner

Subject: City Attorney's Guidance for the Task Force

Background

The Task Force has posed several questions that needed additional consideration. The following questions were sent to City Attorney Eileen Blackwood for her counsel:

1. Can the Task Force have a budget to share information about the North Avenue Pilot Project and to generally support their work?
2. Can the Task Force advocate for the pilot project or only inform? What is the difference?
 - a. Is the informational postcard advocacy or information?
3. Can the Task Force advocate against the upcoming North Avenue ballot item? What is the difference between informing and advocating?
4. What can the Task Force say about the ballot item?
5. What is the Task Force's authority or charge? Council resolution created this group to "collaborate" with DPW but what does that mean?

Update

The City Attorney's office was asked to provide guidance on the questions above. Here is the response from City Attorney Eileen Blackwood, Esq.

"Since the Council created them, they're a public body of the City. The law focuses on two aspects—use of public funds and improper influence on elections..."

"...As to budget, public funds can only be used for neutral, factual information, not for advocacy. City phones, email, computers, letterhead, logos, can't be use for advocacy... Off the top of my head, if the resolution didn't give them a budget, then I think they'd have to get the mayor to recommend a budget amendment to the Council to give them money."

"I think the Task Force as an entity appointed by the Council can't formally advocate on the ballot measure. If they aren't being paid by the city, and they aren't using any public funds, then we're looking at the improper influence issue. In Vermont, we believe this prohibits any official voter information being put out by a city body that is more than informational. It should have no opinion or comment."

The guidance we've given departments is that voter information can include:

- An explanation of what issues or problems the ballot measure addresses;
- The financial or other conditions leading up to the measure;
- The alternatives that were considered;
- The reasons this option was chosen;
- The pros and cons behind the decision.

I'd say the resolution says their charge is to foster a collaborative process among DPW and the entities who are represented on the Task Force to implement the pilot. I believe it says they are supposed to work with DPW to figure out how to collect data, to help establish and to review metrics, and to develop public outreach strategies and activities. They also are expected to regularly report to the Council on those elements of the pilot.

After the vote is taken, as long as there is no election measure pending, I think folks can advocate all they want for the project itself.

You should address your questions about advocacy v. information to Gene Bergman. If he's not available, feel free to contact me or any of the other attorneys. It's helpful, though, to give us a little lead time, as the analysis isn't always simple.

On this particular postcard, I think the phrase, "Help to create an avenue for everyone" may cross the line and be considered advocacy. The shorthand references to "Because it's time for North Avenue to: ..." are problematic for that same reason, as is—in this context—the reference on the prior page to "An Avenue for Everyone" and "A Safer North Avenue." At the bottom, "We invite you to join us..." also seems to cross the line. You can absolutely say that the reason for proposing this pilot is to address safety, but it's how you say it that's critical. It can't sound like you are trying to convince people to join you or take your side or vote in a particular way. You want an informational sheet that is factual: For example, "DPW has proposed changes to North Avenue to address safety concerns. These include: 4 to 3 lane conversion, which is proposed to encourage safer driving (and you can describe how); center turn lanes to improve access to homes, etc. by not requiring turning vehicles to cross two lanes of traffic and by allowing through traffic to continue unimpeded; more cross-walks to address pedestrian safety; dedicated bike lanes to improve cycling safety." You can cite to the Council's resolution or other written materials. You can say that the Task Force meetings are open to the public and available to take public input. [Note, this is distinct from asking people to "join" the Task Force.]

Next Steps

- The Task Force cannot advocate the March 3 ballot item.
- The Mayor's office will be developing information on this ballot item.
- After March 3, we should begin to distribute pilot project information again.
 - If the Task Force would like the City to pay for informational materials, the messages must be informational and not advocacy.
 - If the Task Force would like to request a separate budget, the Mayor would have to support this request and amend the budget through Council.