

L.A.R.I.A.T.[™]

Ethics Ordinance Worksheet:[™]

Module #1



City of Denton's Code of Ethics
City Council Work Session
Tuesday, December 19, 2017

Discussion Items:

1. Applicability
2. Policy Statement
3. Oversight
4. Staff
5. Training
6. Advisory Opinions

Section 1. Applicability: *Who is covered?*

A. Questions:

1. Which municipal personnel should be covered by the Code of Ethics (“Code”)?
 - Mayor & Council
 - Manager & Department Heads
 - Employees
 - Members of Boards & Committees
 - Volunteers
 - Consultants & Vendors
 - Candidates

2. Do you prefer rules that apply:
 - uniformly to everyone covered; or
 - to varying degrees depending on the position?

B. Sample Language:

Example #1

This code applies to city councilmembers, commissioners, employees, candidates for the city council, and volunteers appointed by the mayor and confirmed by the city council. *City of Lakeway* § 2.04.001 [Introduction]

Example #2

To implement the purpose and principles of conduct set forth in this section, the city council has determined that it is advisable to enact this code of ethics for all city officials, employees, and persons doing business with the city, to serve as a standard for official conduct and as a basis for discipline. *City of Dallas* §12A-1 [Implementation]

C. Notes:

Section 2. Policy & Purpose Statements: *What's the point?*

A. Questions:

1. What is the City Council's goal in enacting the Code? _____

2. What is the overarching policy? _____

3. What are the top 5 purposes of the Code?
 - 1) _____
 - 2) _____
 - 3) _____
 - 4) _____
 - 5) _____

B. Sample Language:

Example #1

It is hereby declared to be the policy of the city that the proper operation of democratic municipal government requires that public officials and employees be independent and impartial; that the governmental decisions and policy be made in the proper channels of the governmental structure; that no officer, employee or member of any commission should have any interest in, or conflict with the proper discharge of public duties; and that public office should not be used for personal gain. To implement such a policy, the city council deems it advisable to adhere to a code of ethics for designated officials, whether elected or appointed, paid or unpaid, to serve not only as a guide for official conduct of the city's public servants, but also as a basis for discipline for those who refuse to abide by its terms.
City of Lakeway § 2.04.002 [Policy Declaration]

Example #2

- (a) **General policy statement.** It is the policy of the city that all city officials and employees shall conduct themselves both inside and outside the city's service so as to give no occasion for distrust of their integrity, impartiality or devotion to the best interest of the city and the public trust which the city holds.
- (b) **Appearance of impropriety.** Public service is a public trust. All city officials and employees are stewards of the public trust. They have a responsibility to the citizens of the city to administer and enforce the City Charter and city ordinances. To ensure and enhance public confidence in city government, each city official and employee must strive not only to maintain technical compliance with the principles of ethical conduct set forth in this article and in state law, but also to avoid the appearance of impropriety at all times.

(c) **This code of ethics has five purposes:**

- 1) to encourage ethical conduct on the part of city officials and employees;
 - 2) to encourage public service with the city;
 - 3) to establish standards for ethical conduct for city officials and employees by defining and prohibiting conduct that is incompatible with the interests of the city;
 - 4) to require disclosure by city officials and employees of their economic interests that may conflict with the interests of the city; and
 - 5) to serve as a basis for disciplining those who fail to abide by its terms.
- (d) This code of ethics is not intended to be used as a political weapon or to intimidate or embarrass affected persons. The officials charged with administration of this code of ethics shall administer it in a manner that avoids any such use of this code of ethics. *City of San Marcos*, § 2.421 [Policy and purposes]

Example #3

- (a) All city officers and employees have a fiduciary duty to the citizens of the city to be ethical in fulfilling the responsibilities of their positions. At the very least, being ethical includes being disposed to comply with all laws that apply to one's position.
- (b) Ethical conduct is motivated by sources inside and outside the law. The Texas local government, Election and Penal Codes regulate aspects of the conduct of city officers and employees. However, as ethical conduct is more than complying with state codes, the city strongly encourages all of its officers and employees to maintain the highest personal values and standards. While it is impossible to establish specific and exhaustive standards for all situations, the standards established in this chapter are minimum standards below which no city officer or employee's conduct should fall. This chapter has the following purposes:
- 1) to establish an ethics review commission;
 - 2) to maintain and improve standards of public service;
 - 3) to improve public confidence in the integrity of city government;
 - 4) to provide a process by which officers and employees may identify and resolve ethical issues;
 - 5) to avoid conflicts between the personal interest and the public responsibilities of city officers and employees;
 - 6) to establish minimum standards of conduct to be adhered to by city officers and employees;
 - 7) to require disclosure of private financial interests by certain individuals;
 - 8) to require reporting of certain gifts received by certain individuals;
 - 9) to provide for complaints and resolution of ethical issues and concerns; and
 - 10) to provide penalties for failure to adhere to the minimum standards set forth in this chapter. *City of El Paso*, §2.92.010 [Policy and purpose]

Example #4

- a) It is hereby declared to be the policy of the city that the proper operation of democratic government requires that public officials and employees be independent, impartial and responsible only to the people of the city and that governmental decisions and policy should be made in the proper channels of the governmental structure. To implement such a policy, the city council deems it advisable to enact this Code of Ethics for all officers, employees and advisory board members, whether elected or appointed, paid or unpaid, to serve not only as a guide for official conduct of the city's public servants, but also as a basis for discipline for those who fail to abide by its terms. This Code of Ethics is cumulative of other ordinances, City Charter provisions and state statutes defining and prohibiting conflict of interest. This §2-236 is intended to reflect the general intent behind this Code of Ethics and shall not be deemed to be a part of the Code of Ethics or serve as a basis for a violation of this Code of Ethics.
- b) **This Code of Ethics has five primary purposes:**
- 1) to encourage high ethical standards in official conduct by officers, employees and advisory board members;
 - 2) to establish minimum standards of conduct for officers, employees and advisory board members;
 - 3) to establish an ethics review commission;
 - 4) to provide a process for the filing and resolution of complaints asserting violations of this article; and
 - 5) to provide sanctions for violations of this Article.
- c) This Code of Ethics is not intended to be nor shall it be used as a political weapon to intimidate or embarrass any person covered herein. *City of Fort Worth* §2-236 [Declaration of Policy]

Example #5

It is found and declared that accepting a position as a public official carries with it the acceptance of trust that the official will work to further the public interest. Maintaining that public trust is critical to the continued operation of good government. In addition, public decision-making should be open and accessible to the public at large. To preserve this public trust, there are five principles to which public officials should adhere:

- 1) a city official should represent and work towards the public interest and not towards private/personal interests;
- 2) a city official should accept and maintain the public trust (i.e.. must preserve and enhance the public's confidence in their public officials);
- 3) a city official should exercise leadership, particularly in the form of consistently demonstrating behavior that reflects the public trust;
- 4) a city official should recognize the proper role of all government bodies and the relationships between the various government bodies; and
- 5) a city official should always demonstrate respect for others and for other positions. *City of Baytown* §2-801 [Legislative Findings]

Example #6

The city council further believes that an elected or appointed official of the city assumes a public trust and should recognize the importance of high ethical standards within the organization they lead or support. Essential values and ethical behaviors that an elected or appointed official should exemplify include the following:

- 1) commitment beyond self.
- 2) obedience and commitment beyond the law.
- 3) commitment to the public good.
- 4) respect for the value and dignity of all individuals.
- 5) accountability to the public.
- 6) truthfulness.
- 7) fairness.
- 8) responsible application of resources. *City of Dallas* §12A-1 [Principles of Conduct]

C. Notes:

Section 3. Oversight: *Who implements & enforces the Code?*

A. Questions:

1. Should the City designate someone to administer the Code? YES or NO ?

2. If yes, should the City provide for a:
 - Compliance Officer (Employee)
 - Compliance Auditor (Independent Contractor)
 - Board of Ethics (Ethics Commission)
 - Other: _____

3. If yes, what functions do you anticipate them performing?
 - Monitor Conduct within the City
 - Evaluate Disclosure Forms as Filed
 - Prepare and Conduct Training
 - Provide Enforcement (Investigations, Adjudication, Consequences)
 - Recommend revisions or additions to the Code of Ethics
 - Proscribe Forms
 - Issue Advisory Opinions

4. If you choose a Board:
 - (a) Size: How many members? _____
 - (b) Eligibility: Who can be members? _____
 - (c) Appointment: How are they appointed? _____
 - (d) Terms: How long can they serve? _____
 - (e) Qualifications: Any vocations or skills? _____
 - (f) Exclusions: Any prohibitions? _____

5. If you choose to grant someone oversight, what is the scope of their jurisdiction?
 - Code of Ethics
 - State Law
 - Other: _____

6. If you choose to grant oversight, who is within their jurisdiction?
 - Mayor & Council
 - Employees
 - Boards & Committees
 - Volunteers
 - Consultants & Vendors
 - Candidates

B. Sample Language:

Example #1

There is created an advisory board which shall assist and advise the city council and/or the city manager on matters pertaining to the city's code of ethics contained in chapter 2, article VIII of this Code. The commission shall be known as the ethics commission and shall have no rule-making, judicial authority, but shall be solely advisory in nature. *City of Baytown* §2-589 [Created; Purpose]

The ethics commission shall consist of five members who will be appointed by the city council from the membership of the Bay Area Ministerial Alliance and serve without compensation. *City of Baytown* §2-590 [Composition; Term]

Example #2

An ethics review commission is established, to be composed of seven members, all of whom will reside in the city. Members of the commission will be appointed for staggered three-year terms, and will serve until their respective successors are appointed. *City of San Marcos* §2.441 [Established]

Example #3

- (a) **Creation.** There is hereby created an ethics review commission (“ERC”). The ERC shall be composed of five persons, each of whom shall be appointed by majority vote of the city council.
- (b) **Qualifications.**
- 1) All members shall be residents of the city who are at least 18 years of age. At least one member of the ERC shall be an attorney licensed to practice in the State of Texas. As nearly as is reasonably possible, the membership of the ERC shall be fairly representative of all of the several economic, religious, cultural, ethnic and racial groups that comprise the population of the city. The city council may solicit community, civic and professional organizations in the city to make suggestions for appointments to the ERC
 - 2) Additionally, no member of the ERC may be:
 - a) a member of the city council or the spouse or domestic partner of a member of the city council;
 - b) an employee or the spouse or domestic partner of an employee;
 - c) an elected public official;
 - d) a candidate for elected public office; or
 - e) a member of another city board, commission or committee if the ERC has jurisdiction under this Article to review the conduct of that person as a member of such other board, commission or committee.

- c) **Terms.** ERC members shall be appointed to two-year terms, which may be staggered. No member shall be appointed for more than three consecutive full terms. An ERC member may be removed at any time and for any reason by majority vote of the city council. *City of Fort Worth § 2-240* [Creation & Organization].

Example #4

- (a) All members of the ethics review commission shall be residents of the city. No member shall be a city employee, hold any city elected office or be a candidate for any city elected office. A member may contribute to a city political campaign, but to the extent this prohibition is consistent with the charter, no member shall participate in any city political campaign or in a campaign relating to a city referendum or other ballot issue.
- (b) No member of the ethics review commission shall be related within the third degree of consanguinity or within the third degree of affinity to a member of the city council or the city manager. *City of El Paso §2.92.030* [Ethics Review Commission]

Example #5

- (a) **Jurisdiction.** The ERC shall have jurisdiction to review and make findings and conclusions concerning an alleged violation of Division 1 of this article and, if a violation of Division 1 of this article is determined to have occurred pursuant to the process outlined herein, to levy sanctions in accordance with Division 4.
- (b) **Powers.** The ERC shall have the following powers:
- 1) to establish rules and procedures governing its own internal organization and operations, consistent with this article and the city's Charter and ordinances;
 - 2) to prescribe forms for reports, statements, notices and other documents required by this article;
 - 3) to cause sufficient copies of this ordinance, and other ordinances, City Charter provisions and state statutes defining and prohibiting conflicts of interest, to be prepared and published and see that the same are made available to officers, employees, advisory board members, elected officials and the general public;
 - 4) to provide or assist in providing orientations to officers, employees and advisory board members concerning the provisions of this article;
 - 5) to review all statements and reports filed with the ERC in order to obtain compliance with this article;
 - 6) to direct the city secretary to preserve statements and reports filed with the ERC for a period of five years from the date of receipt;
 - 7) to review this article when deemed necessary and make appropriate recommendations to the city council;
 - 8) to request the city attorney's interpretation of or opinion on any provision of this article except in cases involving a complaint filed in accordance with this article, in which case § 2-248 shall apply;
 - 9) in accordance with this article, to review, conduct hearings and make determinations regarding all sworn complaints alleging violations of Division 1 of this article by persons other than members of the city council;

- 10) in any hearing conducted pursuant to this article, to administer oaths and affirmations, take evidence, request and issue subpoenas for witnesses to attend and testify, and request and, subject to § 2-255, issue subpoenas for the production of books, papers, records, or other evidence needed for the performance of the ERC's duties or the exercise of its powers;
- 11) to request the city council and city manager to provide such assistance as the ERC may require in the discharge of its duties;
- 12) on the ERC's own motion or at the request of the city council, to report to the city council when deemed necessary concerning the activities of the ERC; and
- 13) to exercise such other powers and duties as may be established by this article. *City of Fort Worth* § 2-241 [Jurisdiction & Powers]

C. Notes:

Section 4. Staffing: *Who staffs the Oversight function?*

A. Questions:

1. Will city employees be assigned to assist the Oversight body? YES or NO ?
2. If yes, which Department is tasked with supporting the Oversight body?

<input type="checkbox"/> City Manager's Office	<input type="checkbox"/> Internal Auditor's Office
<input type="checkbox"/> City Attorney's Office	<input type="checkbox"/> Procurement & Compliance
<input type="checkbox"/> City Secretary's Office	<input type="checkbox"/> Other: _____

B. Sample Language:

Example #1

The ethics review commission shall be assigned staff by the city manager to assist in its duties, as the city manager deems necessary. *City of El Paso* § 2.92.030.3.D [Ethics review commission]

Example #2

The city attorney shall provide such assistance to the ERC as the ERC shall request except in cases involving a complaint filed in accordance with this article. *City of Fort Worth* § 2-242 [Staffing]

Example #3

Compliance Auditor. The Compliance Auditor shall be selected by the Ethics Review Board and appointed by the City Internal Auditor. The Compliance Auditor may be removed from office for cause by the City Internal Auditor only after consultation with the Ethics Review Board.

City Attorney's Office. The City Attorney's Office shall perform the following duties: Act as legal counsel to the Compliance Auditor and the Ethics Review Board. *City of San Antonio* §2-84 [Compliance Auditor and City Attorney's Office]

C. Notes:

Section 5. Training

A. Questions:

1. Will you require training? YES or NO ?

2. If yes, is it required for:
 - Mayor & Council
 - Employees
 - Boards & Committees
 - Volunteers
 - Consultants & Vendors
 - Candidates

3. If yes, will the training be:
 - Initially
 - Annually
 - Quarterly
 - In Person
 - Video / Paper
 - Other: _____

B. Sample Language:

Example # 1

All officials of the city elected or appointed after September 30, 1997, shall receive training as to the provisions of the code of conduct within sixty (60) days following their initial election or appointment. For those city officials whose initial election or appointment to office occurred prior to September 30, 1997, training shall take place within sixty (60) days following any re-election or re-appointment occurring after September 30, 1997. The training shall be conducted annually by either video or live presentation, whichever is most convenient for the official. Upon completion of training, the official shall notify the city secretary of compliance with this section. *City of Plano* § 2-100 [Training]

Example #2

The City Manager shall ensure that the training required by this section is made available.

- (a) The training course and refresher training courses shall be developed and provided by the City Manager or his designees, and be subject to approval as to form by the City Attorney or his designees.
- (b) The training courses must include instruction in:
 1. requirements relating to the standards of conduct imposed under this chapter, including, but not limited to, the acceptance of gifts;
 2. state penal and other laws that relate to ethical conduct;
 3. reporting and disclosure requirements of the ethics ordinance and state law;
 4. basic requirements of the lobbying ordinance and facilitating compliance by others with that chapter;
 5. penalties and other consequences for failure to comply with the ethics and lobbying ordinances; and
 6. the application of the ethics ordinance to unique situations relating to the board, commission or committee that the officer has been appointed to, or the

application of the ethics ordinance to unique situations relating to the type of work that an employee does or the department he is assigned to.

- (c) The courses of training required under this section may be offered through live instruction or through the use of a video-recorded presentation. *City of El Paso* § 2.92.120 [Ethics Training]

Example #3

- (a) Within 30 days after entering upon the duties of his position, every new city official shall be furnished a written copy of this article. The failure of any city official to receive a copy of this article shall have no effect on that city official's duty to comply with this article or on the enforcement of the provisions of this article. This article shall be posted on the city's webpage.
- (b) The city attorney, in consultation with the ethics commission, shall develop educational materials and conduct educational programs on this article for city officials. Such materials and programs shall be designated to maximize understanding of the obligations imposed by this article.
- (c) The city manager and department of human resources shall enact an administrative directive requiring that all departments provide their employees with training on this article and/or employees' ethical obligations at least once every other calendar year.
- (d) The city attorney shall notify department directors regarding any significant amendments to this article within ten days of adoption. Department directors shall disseminate the information to their employees, who are city officials under this article. *City of Baytown* § 2-808 [Distribution and Training]

C. Notes:

Section 6. Advisory Opinions

A. Questions:

1. Do you want a process for the issuance of Advisory Opinions? YES or NO ?
2. If yes, who should issue Advisory Opinions?
 City Attorney Outside Counsel
 Board of Ethics Other: _____
3. If an option, do Advisory Opinions provide an affirmative defense? YES or NO?

B. Sample Language:

Example # 1

By written request to the city attorney, any officer may request an advisory opinion regarding whether his own proposed actions or conduct would violate this chapter. The city manager may also request an advisory opinion regarding the proposed actions or conduct of one or more employees. Such requests shall be submitted in writing to the city attorney. Within 30 days of receipt, the city attorney shall call a meeting of a panel of the ethics review commission in the same manner as provided in section 2.92.080 H of this Code, for the purpose of addressing the request. The panel shall, with all due diligence, meet and confer to issue an advisory opinion; provided however, the panel may, for good cause shown, decline to issue an advisory opinion, or the panel may refer the matter to the commission as a whole. *City of El Paso* § 2.92.030.F [Ethics review commission]

Example #2

- (a) The board is authorized to issue advisory opinions.
- (b) Advisory opinions are written rulings regarding the application of this code to a particular situation or behavior. Advisory opinions can only be issued in response to the receipt of a written request from any official.
- (c) Requests for advisory opinions satisfying the requirements of this section will be referred by the city secretary to the board chairperson. *City of Lakeway* §2.04.164 [Advisory Opinions]

Example #3

The City Attorney's Office shall perform the following duties: Issue advisory opinions to City officials and employees about the requirements imposed by the ethics laws. *City of San Antonio* § 2-84 [Compliance Auditor and City Attorney's Office]

Example #4

The commission shall render advisory opinions on potential conflicts of interest or violation of this article at the request of a public official or employee subject to the terms of this

article. The opinion must relate to an action proposed to be taken by the person requesting the opinion. *City of San Marcos* § 2.443. [Authority and Duties]

Example #5

A person who reasonably and in good faith acts in accordance with an advisory opinion issued by the Ethics Review Board [or the City Attorney] may not be found to have violated the ethics laws by engaging in conduct approved in the advisory opinion, provided that:

- (a) He or she requested the issuance of the opinion;
- (b) The request for an opinion fairly and accurately disclosed all relevant facts; and
- (c) Less than five (5) years elapsed between the date the opinion was issued and the date of the conduct in question. *City of San Antonio* § 2-89 [Advisory Opinions]

C. Notes:
