



# City of Denton

City Hall  
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Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Internal Audit

**CITY AUDITOR:** Madison Rorschach

**DATE:** August 1, 2022

### **SUBJECT**

Receive a report, hold a discussion, and take necessary action regarding potential recommendations to amend the Code of Ordinances Chapter 2, Article XI (Ethics) Sec. 2-273 Prohibitions.

### **BACKGROUND**

City of Denton Code of Ordinances Chapter 2, Article XI (Ethics), Sec. 2-277 (i) states that the Board of Ethics may recommend amendments to Article XI (i.e. the Ethics Ordinance) to the City Council from time to time.

During the March 31, 2022 meeting of the Board of Ethics, the Board gave direction to discuss the Ethics Ordinance's conflict of interest section in five parts over several meetings as follows:

1. Disclosure and recusal procedures;
2. Financial considerations and prohibitions;
3. Personal considerations and prohibitions;
4. Applicable relationships; and
5. Period of relevance.

On June 6, 2022 the Board of Ethics discussed disclosure and recusal procedures.

### **DISCUSSION**

The City of Denton currently defines six forms by which a City Official is considered to have a Conflicting Interest per the Ethics Ordinance. The following four forms are related to financial stake, share, equitable interest, or involvement:

- (A) Ownership of five percent (5%) or more voting shares or stock in a Business Entity;
- (B) Receipt of more than six-hundred dollars (\$600.00) in gross annual income from a Business Entity, as evidenced by a W-2, 1099, K-1, or similar tax form;
- (C) Ownership of more than six-hundred dollars (\$600.00) of the fair market value of a Business Entity; and
- (D) Ownership of an interest in real property with a fair market value of more than six-hundred dollars (\$600.00).

The information presented in this Agenda Information Sheet discusses the conflict of interest financial considerations and prohibitions established by other Texas cities' (i.e. the Ethics Benchmark Group's)

ethics ordinances as well as Wechsler’s Model Code. Staff reviewed the Ethics Ordinances of all 10 municipalities included in the Ethics Benchmarking Group, as constituted based on previous analysis.

The results of this review are outlined in Exhibit 2; the population, population growth, and average annual per capita income metrics for each municipality in the Benchmarking Group are included in this Exhibit to provide context. In brief:

- **Generally Defined Financial Prohibitions:** Five of the benchmark municipalities do not have specific financial thresholds defined for their conflict of interest prohibitions. Instead, they typically prohibit official action if the official’s economic interest would be affected in a way that is distinguishable from the effect on the general public.

The model code also takes this approach by prohibiting an official from taking action that may result in a financial benefit that is not shared with a substantial segment of the city’s population. It includes that action is prohibited if it may result in this type of financial benefit for a person with which the official has a financial or business relationship.

- **Specifically Defined Financial Prohibitions:** For the remaining municipalities, all generally address the four financial prohibitions identified in the City of Denton’s Ethics Ordinance, though they generally set higher thresholds as shown below. In addition, Fort Worth and Austin include prohibitions if the official is a creditor, debtor, or guarantor of another person, and Fort Worth includes a prohibition if the official has pledged property to a person, group, or business entity that is worth more than \$5,000.

Prohibition	Denton	Austin	Dallas	Fort Worth	San Antonio	Richardson
Ownership – Shares/Stocks	5%	5%	10%	10%	10%	10%
Income <sup>1</sup>	\$600	\$5,000	10%	10%	Not de Minimis	10%
Ownership – Value	\$600	\$5,000	\$15,000	\$15,000	\$15,000	\$15,000
Real Property	\$600	\$5,000	\$2,500	\$2,500	Not de Minimis	\$2,500

- **Campaign Contribution Prohibitions.**<sup>2</sup> Only one other municipality – San Marcos – included a prohibition on taking official action when an official had received campaign contributions greater than \$300 from a person, business entity, or association. That being said, seven of the municipalities had limits on campaign contributions that were governed outside of their ethics ordinances. San Marcos has a general \$500 limit on campaign contributions from a natural person or business entity other than a corporation.

The model code prohibits official action if the official has received a campaign contribution of more than \$200 in aggregate during the past election cycle from a person or entity.

- **Payments Made by Officials.**<sup>3</sup> None of the benchmark municipality ethics ordinances clearly prohibited officials from taking official action if they had made payments to a person or business entity.

<sup>1</sup> Whereby indicated percentages are of an Officials gross annual income from one source.

<sup>2</sup> In June 2022, the Board of Ethics recommended that the Ethics Ordinance be amended to include “receipt of more than a \$500 campaign contribution from an individual, Business Entity, or other organization. Due to the City Council’s questions regarding time period by which this would be calculated and concerns regarding the threshold, this was sent back to the Board of Ethics for further review and is thus specifically called out here.

<sup>3</sup> In April 2022, the City Council requested that the Board of Ethics discuss and make potential recommendations regarding disclosure and potential recusal requirements regarding City Officials financial relationships with board, commission, and committee appointees. This information is specifically called out here to help facilitate this conversation.

The model code prohibits official action if it may result in a financial benefit for a customer or client of the official. The model code defines this as any person or entity to which the official or their outside employer has supplied goods or services in aggregate valued greater than \$1,000 in the past 24 months. It is not entirely clear if this covers payments made by officials. Exact model code language is shown below for reference:

## **100. General Conflict of Interest Provisions.**

### **1. Conflict of Interest.**

To discuss this provision, click [here](#).

a. An **official or employee\*** may not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows, or has reason to believe, may result in a **personal\*** or **financial benefit\***, not shared with a substantial segment of the city's population, for any of the following persons or entities (no group of government employees may be considered "a substantial segment" for the purposes of this provision):

1. himself or herself;
  2. a member of his or her **household\***, including a **domestic partner\*** and his or her dependents, or the employer or business of any of these people;
  3. a sibling or step-sibling, step-child or foster child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
  4. a person with which he or she has a financial or business relationship, including but not limited to:
    - a. an **outside employer or business\*** of his or hers, or of his or her spouse or domestic partner, or someone who works for such outside employer or business;
    - b. a **client\*** or substantial customer;
    - c. a substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner.
  5. a person or entity from whom the **official or employee\*** has received an election campaign contribution of more than \$200 in the aggregate during the past election cycle (this amount includes contributions from a person's immediate family or business as well as contributions from an entity's owners, directors, or officers, as well as contributions to the **official or employee\*'s** party town committee or non-candidate political committee); or
  6. a nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- b. The prohibition in (a) above applies equally to attempts to use, act, or influence.
- c. It is a violation of this code for an **official or employee\*** to, within two years of entering city employment or service, award a contract or participate in a matter benefiting a person or entity that formerly employed him or her.

### 111. Definitions.

To discuss this section, click [here](#).

To discuss whether some provisions should apply only to certain officials, click [here](#).

Unless otherwise stated or unless the context otherwise requires, when used in this code:

1. To "appear" or "appear before" means to communicate in any form, including, without limitation, personally, through another person, by letter, or by telephone. This definition also applies to the noun form, "appearance."
2. "Consultant" means an independent contractor or professional person or entity engaged by the city or advising a city official, and in a position to influence a city decision or action, or have access to confidential information.
3. "Customer or client" in 100(1)(e) means (a) any person or entity to which a person or entity has supplied goods or services during the previous twenty-four months, having, in the aggregate, a value greater than \$1,000, or (b) any person or entity to which an official or employee's\* outside employer or business\* has supplied goods or services during the previous twenty-four months, having, in the aggregate, a value greater than \$1,000, but only if the official or employee knows or has reason to know the outside employer or business supplied the goods or services.
4. "Domestic partner" is an adult, unrelated by blood, with whom an unmarried or separated official or employee\* has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.
5. "Financial benefit" includes any money, service, license, permit, contract, authorization, loan, discount, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law. A "financial interest" is a relationship to something such that a direct or indirect financial benefit has been, will be, or might be received as a result of it.

Copies of the Benchmark Group's full ethics ordinances may be provided upon request.

### **RECOMMENDATION**

Staff recommends that the Board of Ethics provide direction on the following:

- Any changes the Board wishes to be made to the conflict of interest financial threshold levels set in the Ethics Ordinance based on model code and benchmark municipality information, including the potential to move to generally defined financial prohibitions;
- If the Board wishes to recommend that a financial prohibition on campaign contributions be included in the conflict of interest definition, what threshold should be set and by what time period this should be measured; and
- If the Board wishes to create disclosure and/or recusal requirements around board, commission, and committee appointees or City Official "clients."

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

The Ethics Ordinance was first adopted by the City Council on May 1, 2018. Based on recommendations made by the Board of Ethics the Ethics Ordinance was amended on June 2, 2020 by the City Council. Based on recommendations made by the Board of Ethics, the Ethics Ordinance was amended on July 19, 2022 by the City Council.

### **EXHIBITS**

1. Agenda Information Sheet

Respectfully submitted:  
Madison Rorschach, 940-349-7228  
City Auditor