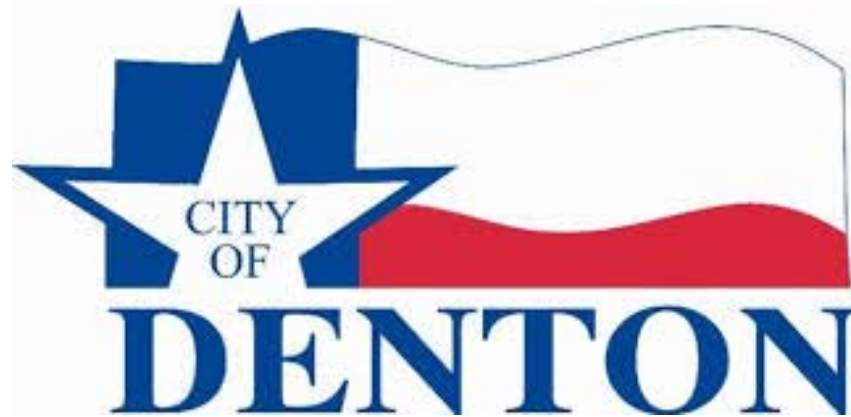


MUNICIPAL ETHICS: Crafting a Code



Alan Bojorquez
City Council Meeting
December 5, 2017



Agenda: *Laying the Foundation*

1. How we got here
2. Where we are
3. Introduction to Ethics
4. Overview of State Law
5. L.A.R.I.A.T.
6. Common components of Codes of Ethics
7. Process moving forward

How We Got Here



Denton voters demanded ethics reform at the ballot box

By Trent Seibert - November 9, 2017



City of Denton, TX / Bojorquez Law Firm

Charge to Charter Review Comte

To consider and advise the City Council of Denton whether and in what manner to revise the current City Charter provisions of Article XIV, Sections 14.04 and 14.05 so as to replace the Denton citizen-adopted Texas Local Government Code, Chapter 171 conflict of interest and nepotism standards with **alternative ethics provisions**, and to revise any other City Charter provisions that relate to ethics.

Charter Review Comte's "Letter"

Charge #6 – Ethics: Ordinance Recommendations

It is recommended the Ethics Ordinance address the following issues at a minimum:

- Elected and appointed officials shall **recuse** themselves from any discussion or agenda item wherein a conflict or appearance of conflict of interest may exist.
- Recusal shall mean not only NOT VOTING but also **not participating** in discussions, deliberations, or lobbying regarding the matter or closely related matters, either in the public forums or otherwise.
- Conflict shall be at a minimum as defined in the state law and more stringent in that percentage of ownership shall not be greater than **2 %** or **\$ 500**, whichever is less, nor income derived be greater than **\$ 1,000** for either prior or current year.
- Conflict criteria shall apply to officials and appointees who have fiduciary relationships with parties with pecuniary interest in such matters.
- Elected and appointed officials shall comply with all applicable laws of the State of Texas, including but not limited to Local Government Code Chapter 145, Local Government Code Chapter 171, Local Government Code Chapter 176, Penal Code, Sections 36.02, 36.03, and 36.04.
- Ethics complaints shall be heard by a **three-person panel** with mediation and arbitration experience. Council shall select and determine remuneration for a panel pool of not less than seven so that a rotating sequence may be established.
- A mandatory Ethics **training** regimen shall be adopted and enforced for all elected and appointed public officials. The regimen shall address both introductory and ongoing training with a minimum of quarterly continuing education for Ethics.
- Consideration shall be undertaken to include all city employees under the Ethics Ordinance to promote employee ethics education, compliance and ongoing training. Care should be exercised to fully interface existing policies and procedures to avoid management conflicts.

Charter Review Comte: Final Report

Add the following section:

- The City Council shall **adopt an ethics ordinance**.
- At the minimum, the ethics ordinance shall incorporate the conflict of interest standards that appear in chapter **171** of the Texas Local Government Code and all state law as presently exist or may be hereafter amended or adopted.
- The Council may adopt more stringent standards than those that appear in state law, but the ethics ordinance shall at a minimum include the following components:
 - (1) Definition of a **prohibited improper economic interest and personal gain**;
 - (2) Definition of **recusal and improper participation** when a potential conflict of interest is present;
 - (3) **Avoidance of appearance of conflict of interest**; and
 - (4) Administration and **enforcement** of ethics ordinance coupled with strong and meaningful remedies for infraction.

Charter Election 2017

Proposition D: Shall Sections 14.04 and 14.05 of the City Charter be repealed and replaced with a provision requiring the adoption of an ethics ordinance by the city council in accordance with Texas law and adheres to certain minimum standards?



| | |
|------|--------|
| YES: | 1, 822 |
| NO: | 276 |

Texas Headlines

- *State Legislators Talk about Ethics Reform Bill*
— DAILY TEXAN
- *Will Texas lawmakers toughen the ethics rules governing themselves?*
— AUSTIN AMERICAN STATESMAN
- *Texas ethics reform bill marks progress but doesn't touch dark money*
— DALLAS MORNING NEWS
- *The FBI just arrested almost all of this Texas town's leaders*
— WASHINGTON POST
- *Why Is Public Corruption So Common in South Texas?*
— GOVERNING
- *In Texas, a Collapse of Ethics Reform*
— TEXAS TRIBUNE
- *Texas Has a Corruption Problem*
— NATIONAL REVIEW

Round Rock mayor's work for city raises conflict of interest questions



Mike Parker - Austin Community Newspapers Staff

Updated 11:45 a.m. Thursday, Nov. 30, 2017 Filed in Round Rock



National Stats

2017 - The Pew Research Center

- Percentage of Americans who trust the government in Washington to do what is right: **20%**

2017 – Gallop Poll

- Percentage trusting the American people: **62%**
- Percentage trusting political leaders: **48%**
- Trust Federal Government (*International*): **52%**
- Trust Federal Government (*Domestic*): **45%**
- Trust State Government: **63%**
- Trust Local Government: **70%**

What is “Ethics”?

- 1) Ethics are the moral guide we choose for our behavior.
- 2) Ethics are the rules we choose to follow even when no one is looking.
- 3) Ethics are our internal moral compass.

Constituents

Who do we serve?

- 1) Organization** (the municipality)?
- 2) Administrators** (the managers)?
- 3) Electeds** (mayor and council)?
- 4) Citizens** (residents and businesses)?
- 5) Self / Family / Friends / Neighbors** ?!?!?

Virtues

Examples:

- Honesty
- Independence
- Competency
- Commitment to doing your best
- Patience

Values

Examples: *To be...*

- Efficient
- Effective
- Equitable
- Inclusive
- Legal
- Transparent
- Timely
- On budget
- Politically Acceptable

Principles

Examples:

- Being fiscally sound
- Public data readily available
- Citizen access to meetings
- Contracts awarded based on merit
- Employees hired based on skills and experience

Overcoming Obstacles

- 1) Leadership Myopia
 - *Lack of Foresight, Insight*
- 2) Lack of Awareness
- 3) Current Culture
- 4) Ethical Illiteracy
- 5) Personal Needs Wants & Desires
 - *All those voids, empty holes to fill*

3 Approaches

- a) Compliance Approach (Rules)**
- b) Integrity Approach (Values)**
- c) Ideal Approach (Combo)**



Ethical Issue v. Management Issue

- a) Purchasing Dept.
- b) Human Resources Dept.
- c) Civil Service Commission
- d) Ethics Commission

Charter: City Manager

Sec. 5.03. - The city manager: powers and duties.

The city manager shall be the chief executive officer and the head of the administrative branch of the city government. He shall be responsible to the council for the proper administration of all affairs of the city placed under his control by this Charter or by ordinance or resolution of the council, and to that end he shall:

- (a) **Appoint and remove any employee** of the city, except as otherwise provided by this Charter and except as he, or she may authorize the head of a department to appoint and remove subordinates in such department. ...

Choose Integrity Daily

- Know the Law
- Know City Policies
- Know Professional Norms
- LEADS:
 - Is it **L**egal?
 - Is it **E**thical?
 - Is it **A**cceptable?
 - Is it **D**efensible?
 - Is it **S**ensible?



LEADS: Dr. Peter Sandman, <http://us9.campaign-archive2.com/?u=c0a17b949ebe29eab9654f6d0&id=7380da2458&e=d68db40c32>

State Law



Role of Legal Counsel

Guidance & Advocacy regarding:

- a) Purchasing Laws
- b) Employment Laws
- c) Election Laws
- d) Open Government Laws

Legal does not mean Ethical

TX: Resign to Run

- Texas Constitution art. 3, §19
- By *Accepting 2nd Office, Resign* from 1st
- If currently hold seat that has more than 1 yr remaining on a term of 3 or 4 years
- Run for more than one office at a time
- Run for Legislature when hold paid office
- Many exceptions

TX: Incompatibility

- Common Law Rule (not Statutory)
- Case-By-Case Determination by Courts
- *Thomas v. Abernathy County Line ISD* (1927)
- Conflict of Loyalties
- Conflict of Duties
- Can't appoint yourself
- Can't be own supervisor
- e.g., Councilmember can't be City Manager, Mayor can't be on School Board



TX: Public Disclosures

- Tex. Loc. Gov't Code §176
- Mayors & Council Members must file
- Conflicts Disclosures Statements
 - Business / Employment Relationships (\$2,500+)
 - Family Relationships (1st Degree)
 - Gifts (\$250+ in 12 mos.)
- When person is seeking city business

Disclosure: LGC 176

Relationship with Vendors (business or familial)

| LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT | | FORM CIS |
|---|--|------------------------|
| (Instructions for completing and filing this form are provided on the next page.) | | |
| This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code. | | OFFICE USE ONLY |
| 1 | Name of Local Government Officer | Date Received |
| 2 | Office Held | |
| 3 | Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code | |
| 4 | Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in Item 3. | |

Disclosure: LGC 145

Personal Financial Statement (mayor & council in cities > 100,000 pop.)

| | | | | | | | | | |
|--|--|--|--|--------------------------|--|--|--|----------------------|--|
| Texas Ethics Commission | | P.O. Box 12070 | | Austin, Texas 78711-2070 | | (512) 463-5800 | | (TDD 1-800-735-2989) | |
| PERSONAL FINANCIAL STATEMENT | | | | | | FORM PFS COVER SHEET PAGE 1 | | | |
| Filed in accordance with chapter 572 of the Government Code. For filings required in 2014, covering calendar year ending December 31, 2013. Use FORM PFS--INSTRUCTION GUIDE when completing this form. | | | | | | TOTAL NUMBER OF PAGES FILED: | | | |
| | | | | | | ACCOUNT # | | | |
| 1 NAME | | TITLE; FIRST; MI NICKNAME; LAST; SUFFIX | | | | OFFICE USE ONLY | | | |
| 2 ADDRESS | | ADDRESS / PO BOX; APT / SUITE #; CITY; STATE; ZIP CODE | | | | Date Received | | | |
| 3 TELEPHONE NUMBER | | AREA CODE PHONE NUMBER; EXTENSION () | | | | Receipt # | | | |
| 4 REASON | | | | | | HD / PM | | Amount | |
| | | | | | | Date Processed | | | |
| | | | | | | Date Imaged | | | |

TX: Criminal - Bribery

- Tex. Penal Code §36.02
- Public Servant violates the law if they
 - Offer, Solicit or Accept
 - Any Benefit as Consideration
 - For a Decision, Opinion, Vote, Recommendation, or Action



TX: Criminal - Coercion

- Tex. Penal Code §36.03
- Coercion is a Threat (to harm, expose, ridicule)
- Coercion of a Public Servant:
 - A Person Attempts to Influence a Public Servant
- Coercion of a Voter



TX: Criminal - Honorarium

- Tex. Penal Code § 36.07
- Gifts for Services:
 - Public Servant Solicits or Accepts
 - Honorarium
 - For Services would not have been requested to provide ***but for*** official duties or position
- Transportation & Lodging OK if related to speaking event
- Gifts, Awards & Mementos OK if < **\$50**

TX Criminal - Misuse Info

- Tex. Penal Code §39.06
- A Public Official cannot use
- For Personal Gain or Speculation
- Knowledge acquired by holding public office
- Not available to the general public



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TX Criminal - Abuse of Office

- Tex. Penal Code §39.02
- Public Servant commits offense *if*
 - Intends to obtain a **benefit**, or
 - Intends to **harm** or **defraud** another
 - Violates law regarding office held, or
 - Misuses government property, services, personnel, or other



TX: Conflict of Interest

- Tex. Loc. Gov't Code §171
 - Related to Finances and Real Estate
 - Substantial Interest:
 - 10% Stock
 - \$15,000 in fmv
 - 10% Income
 - \$2,500 Real Property
 - Must **Abstain** (“Participation” = Talking & Voting)
 - Must **Declare** (Through Affidavit)
- Note:** Applies to Council, and P&Z, but not Employees



TX: Conflict of Interest- Plats

- Tex. Loc. Gov't Code §212
- Substantial Interest in Subdivided Tract if:
 - Own \$2,500 of land
 - Act as Developer
 - Own 10% Stock of Business
 - 10% of fmv of Business
 - \$5,000 of fmv of Business
 - 10% of Income
- Must File Affidavit & Abstain



TX: Nepotism

- Tex. Gov't Code §573
- Can't Bestow Patronage on Relatives
- Mayor & Council's family cannot be hired by City if related within:
 - 2nd degree by affinity (marriage)
 - 3rd degree by consanguinity (blood or adoption)
- Full-Time, Part-Time (but not volunteer)
- Ok if Charter gives Hiring Authority to City Manager

Professional Associations





Fostering Integrity at City Hall

Leadership
Administration
Regulation
Instruction
Accountability
Transparency

L.A.R.I.A.T.

Leadership:

- Inspiring the troops and role-modeling by the top brass.
- Leaders not only play a symbolic role in setting the tone and the agenda
- Leaders are crucial when it comes to resource allocation and prioritization of tasks.
- For an organization to truly embrace ethical decision-making (and rise above mere rule following), the top executives must lead by example and, when necessary, cheerlead.

L.A.R.I.A.T.

Administration:

- Modifying routines and procedures for daily implementation of policies to ensure equity, fairness, and procedural justice.
- Evaluate how the organization provides services, processes permits, awards contracts, and makes employment decisions.
- Procedures are not just a means to an end; in terms of ethics, fair procedures are an end themselves.

L.A.R.I.A.T.

Regulation:

- Enacting rules that require certain actions
- Enacting rules that prohibit specific behavior.
- Establishing oversight and enforcement.
- Provide for Punishment and Remedies
- Adopting and following rules is not enough, but it is a legitimate component of a broader ethical program.

L.A.R.I.A.T.

Instruction:

- Facilitating ongoing training that provides information.
- Promoting networking opportunities that reinforce shared norms.
- Educational events and professional memberships are vital to changing organizational culture and nourishing a community of ethical decision-makers.
- Continuous conversations about shared values, and discussions about ethical dilemmas are more likely to foster a workplace with integrity than is strict code compliance

L.A.R.I.A.T.

Accountability:

- Assuring that there will be consequences for unwelcomed behavior
 - either internally or at the ballot box.
- There should be a system of rewards and punishments.
- Incentivize positive behavior and look for examples that can inspire good governance.
- Provide a means of reprimanding those who exhibit poor behavior and deviate from established norms.

L.A.R.I.A.T.

Transparency:

- Promote Open Government.
- Adhere to Open Meetings and Open Records.
- Nurture a culture that favors disclosure.
- For citizens to more fully participate in government and trust their public servants, the citizens need to have greater access to data and the decision-making process.



Fostering Integrity at City Hall

Leadership
Administration
Regulation
Instruction
Accountability
Transparency

Municipal Codes of Conduct

Common Ordinance Provisions

- Policy Statement
- Applicability (who's covered)
- Oversight (Board, Department, Individual)
- Composition, Eligibility, Appointment, Removal
- Staff (human resources)
- Training
- Advisory Opinions

Municipal Codes of Conduct

Standards:

- Conflicts of Interest
- Gifts, Honoraria, Travel, Meals, Entertain
- Outside Employment (offers, soliciting, moonlighting, revolving door)
- Representation of Others
- Improper Influence

Municipal Codes of Conduct

Standards:

- Abuse of Information
- Abuse of Resources
- Abuse of Position
- Hindrance (thwart or interfere)
- Disclosures
- Lobbyists
- Campaign Finance

Municipal Codes of Conduct

Complaints:

- Form Document
- Sworn Affidavits
- Statute of Limitations
- Investigations & Hearings
- Pre-Screening or Preliminary Hearings
- Ex Parte Communications
- Procedures, Rules, Rights

Municipal Codes of Conduct

Sanctions:

- Letters of Notification, Admonition, or Reprimand
- Recommendation for Censure or Removal from Position
- Deemed Ineligible for Appointment, or Contracting
- Reconsideration and Appeals
- Civil Penalties or Criminal Prosecution

Municipal Codes of Conduct

Dismissals:

- Frivolous Complaints
- Penalties and Legal Costs for Baseless Harassment
- Abuse of Process (civil tort action)
- Prosecution for Perjury

Moving Forward

- Initial Feedback from Council
- Instructions from Council
- Schedule Future Meetings

