

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

Ethics Ordinance Worksheet:

Module #2



City of Denton's Code of Ethics
City Council Work Session
Saturday, January 27, 2018

Discussion Items:

1. Conflicts of Interest
2. Gifts, honoraria, travel, meals & entertainment
3. Outside Employment
4. Representation of Others
5. Improper Influence

Section 1. Conflicts of Interest

A. Questions:

1. What amount of business interest will trigger the Code of Ethics?
 - ☐ \$_____ value of ownership interest
 - ☐ \$_____ annual income
 - ☐ \$_____ value of land
 - ☐ % of stock: _____
 - ☐ % of ownership: _____
2. Will there be exceptions (exclusions)?
 - ☐ Mutual funds
 - ☐ Common investment funds
 - ☐ Other: _____
3. What level of membership in a nonprofit entity will trigger the Code of Ethics?
 - ☐ Due paying members
 - ☐ Officers
 - ☐ None
4. What degree of familial relationships will be covered?
 - ☐ 2nd Degree by Affinity (Marriage) (Tex. Gov't Code Ch. 573)
 - ☐ 3rd Degree by Consanguinity (Blood or Adoption) (Tex. Gov't Code Ch. 573)
 - ☐ Other: _____
5. What's required if there's a prohibited interest?
 - ☐ Disclosure
 - ☐ Abstention

B. Sample Language:

Example #1

Financial interest. It is a violation of this code for an official to transact any business on behalf of the city in an official capacity regarding any business entity or real property in which the official has a financial interest. *City of Lakeway*, §2.04.031 [General Prohibitions]

Example #2

Financial interest. An economic interest in the form of ownership of stock, ownership of real property, employment relationship, independent contractor relationship, party status in a judicial proceeding, or party status in an administrative law proceeding. This interest is shared among relatives within the 1st degree by consanguinity (blood or adoption) and affinity (marriage). *City of Lakeway*, §2.04.004 [Definitions]

Example #3

Economic interest. Includes, but is not limited to, legal or equitable property interests in land, chattels, and intangibles, and contractual rights having more than the minimis value. Service by a city official or employee as an official, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create for that city official or employee an economic interest in the property of the organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in such securities or other assets unless the person in question participates in the management of the fund. Ownership of stock in a publicly traded corporation does not constitute ownership for purposes of this code if the employee or official owns less than 10% of the voting stock or shares of the entity and the value of the stock is less than \$15,000. *City of Laredo*, §1.02(o) [Definitions]

Example #4

- (a) **General Rule.** To avoid the appearance and/or risk of impropriety, an official or employee shall not take any official action that he or she knows is likely to affect the economic interests of:
- 1) the official or employee;
 - 2) his or her parent, child, spouse, or other family member within the second degree of affinity or within the [fourth] third degree of consanguinity;
 - 3) his or her outside client;
 - 4) a member of his or her household;
 - 5) any outside employer of the official or employee or of his or her parent, child, spouse, or member of the household;
 - 6) a business entity in which the official or employee knows that any of the persons listed in Subsections (a)(1) or (a)(2) of this Section holds an economic interests as that term is defined in Section 1.02 (Definitions);
 - 7) a business entity which the official or employee knows is an affiliated business or partner of a business entity in which any of the persons listed in Subsection (a)(1) or (a)(2) of this Subsection holds an economic interest as defined in Section 1.02 (Definitions);
 - 8) a business entity or nonprofit entity for which the city official or employee serves as an officer or director or in any other policy making position; or
 - 9) a person or business entity with whom, within the past twelve months:
 - a) the official or employee, or his or her spouse, directly or indirectly has
 - (i) solicited an offer of employment for which the application is pending;
 - (ii) received an offer of employment which has not been rejected;
 - (iii) accepted an offer of employment, or
 - b) the official or employee, or his or her spouse, directly or indirectly, engaged in negotiations pertaining to business opportunities, where negotiations are pending or not terminated.

- (b) **Recusal and Disclosure.** A city official or employee whose conduct violates Subsection (a) must recuse him or herself, and from the time that the conflict is, or should have been recognized, if applicable, he or she shall:
- 1) Immediately refrain from further participation in the matter, including discussions with persons likely to consider or participate in the matter;
 - 2) File the appropriate form with the external auditor using the current process through our external auditor within three (3) business days disclosing the nature and extent of the prohibited conduct;
 - 3) Promptly bring the conflict to the attention of his or her supervisor who will then, if necessary, reassign responsibility for handling the matter to another employee;
 - 4) Promptly disclose the conflict to other members of the council, board or commission in which he or she serves and shall not be present during the board's discussion of, or voting on, the matter; and
 - 5) For purposes of this Section, an action is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or any segment thereof. *City of Laredo*, §2.01 [Conflicts of Interest]

Example #5

Economic interest includes a legal or equitable interest in real property, personal property, or intangible property, or a contractual right. Service by a city official or employee as an officer, director, advisor, or other active participant in a nonprofit educational, religious, charitable, fraternal, or civic organization does not create for that city official or employee an "economic interest" in the property of the organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an "economic interest" in the securities or other assets unless the person in question participates in the management of the fund. *City of San Marcos*, §2.422. [Definitions]

- a) **General rule.** It is unlawful for a city official or employee to take any official action that he or she knows is likely to:
- 1) Affect an economic interest of:
 - a) the official or employee;
 - b) his or her immediate family member;
 - c) a member of his or her household;
 - d) an outside employer of the official or employee or of his or her immediate family member;
 - e) a business entity in which the official or employee or his or her immediate family member holds an economic interest;
 - f) a business entity for which the city official or employee serves as an officer or director or in any other policy making position; or

- g) a person or business entity from whom the official or employee, or his or her immediate family member, has solicited, received and not rejected, or accepted any benefit or an offer of employment within the past 24 months.
 - 2) Confer a benefit on the official or employee, or deprive the official or employee of a benefit, where the effect of the action on the official or employee is distinguishable.
 - 3) From the effect of the action on members of the public in general or a substantial segment of the public.
- b) **Meaning of "affect".**
- 1) In subsection (a)(1) above, an action is likely to affect an official's or employee's economic interest if it meets all of the following:
 - a) The action is likely to have an effect on that interest, either positive or negative, that is distinguishable from its effect on members of the public in general or a substantial segment of the public;
 - b) The effect of the action on that interest is direct, and not secondary or indirect. However, the action need not be the only producing cause of the effect in order for the effect to be direct;
 - c) The effect on the interest must be more than insignificant or *de minimis* in nature or value.
 - 2) In determining whether a person, entity or property is or was "affected" by a vote or decision, it will not be necessary to prove the actual existence or occurrence of an economic effect or consequence if the effect or consequence would be reasonably expected to exist or occur.
- c) **Recusal and disclosure.** A city official or employee whose conduct would otherwise violate subsection (a), or a state conflict of interest law, if he or she took an action must abstain from participation in the action in accordance with the following:
- 1) Immediately refrain from further participation in the matter, including communications with any persons likely to consider the matter, such as any department, agency, commission or board of the city, from the time he or she discovers or reasonably should have discovered the matter triggering the recusal and until a decision regarding the matter has been made by the council, board or commission having final approval authority;
 - 2) Promptly file a form for disclosing the nature and extent of the interest triggering the recusal with the city clerk, if the person is an official, or with the person's supervisor, if the person is an employee;
 - 3) Promptly notify the person's supervisor of the nature and extent of the interest triggering the recusal, if the person is a city employee, so that the supervisor can reassign responsibility for handling the matter to another person; and

- 4) Promptly disclose the interest triggering the recusal, if the person is a member of a city board or commission, to other members of the board or commission, and leave the room in which the board or commission is meeting during the board or commission's discussion of, or voting on, the matter. *City of San Marcos*, §2.423 [Prohibition Against Involvement in Actions Affecting Economic Interests]

C. Notes:

Section 2. Gifts, Honoraria, Travel, Meals & Entertainment

A. Questions:

§2-1. Gifts

1. Will the Code defer to the state law on gifts? ☐ YES or ☐ NO
2. If no, and the Code will govern gifts, will the maximum value amount be:
☐ \$50 (Tex. Pen. Code §36.08.)
☐ Lower: \$_____
3. If the Code governs gifts, is there an annual maximum? ☐ YES or ☐ NO
4. If the Code governs gifts, will there be a reporting requirement (disclosure)?
☐ YES or ☐ NO
5. If an unsolicited gift is received, which you are prohibited from accepting, can you cure by donating it to a government agency or recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes? ☐ YES or ☐ NO

§2-2. Honoraria

1. Does the Code prohibit payments for providing services (e.g., consulting or speaking engagements) if the services would not have been solicited but for the person's official position or duties with the city? (as per Tex. Pen. Code §36.07) ☐ YES or ☐ NO

§2-3. Travel

1. Will the Code allow transportation, lodging and travel related expenses to be paid by those seeking to do business with the city (as vendors or applicants for approvals)?
☐ YES or ☐ NO
2. If so, is there a dollar limit? ☐ YES or ☐ NO
3. If the receipt of expenses is allowed, must the donor be present? ☐ YES or ☐ NO
4. If there is a dollar limit on travel paid for by those seeking to do business with the city, the limit should be: \$_____ per roundtrip, and \$_____ annually (cumulative of all travel in a fiscal year).

§2-4. Meals

1. Can city officials accept a meal paid for by those seeking to do business with the city (as vendors or applicants for approvals)? ☐ YES or ☐ NO
2. If yes, must the donor be present? ☐ YES or ☐ NO
3. If so, is there a dollar limit? ☐ YES or ☐ NO
4. If there is a dollar limit on meals paid for by those seeking to do business with the city, the limit should be: \$_____ per meal, and \$_____ annually (cumulative of all meals in a fiscal year).

§2-5. Entertainment

1. Are city officials allowed to attend civic, arts, sports, music or other entertainment events at the expense of those seeking to do business with the city (as vendors or applicants for approvals)? ☐ YES or ☐ NO
2. If yes, must the donor be present? ☐ YES or ☐ NO
3. If so, is there a dollar limit (per event, or annual)? ☐ YES or ☐ NO
4. If there is a dollar limit in our Code on entertainment, the limit should be: \$_____ per event, and \$_____ annually (cumulative of all events in a fiscal year)
5. If our Code addresses entertainment, will there be a reporting (disclosure) requirement? ☐ YES or ☐ NO

B. Sample Language:

Example #1

City officials and employees shall adhere to state law regarding giving and/or receiving/accepting gifts, as set forth in the V.T.C.A. Penal Code, Ch. 36 et seq., and as amended from time to time. *City of Bastrop*, §1.15.034 [Gifts]

Example #2

It is a violation of this code for an official to accept any gift or favor from any person, firm or corporation that might reasonably tend to influence the official in the discharge of public duties, or grant in the discharge of municipal operations any improper favor, service or thing of value. This prohibition does not apply to:

- a) Items cumulatively valued at fifty dollars (\$50.00) or less per calendar year.
- b) Honorary items, such as plaques, trophies, ribbons, and floral arrangements.

- c) Entertainment in the form of food, beverages, travel or spectator events at which the recipient is a guest accompanying the host cumulatively valued at fifty dollars (\$50.00) or less per calendar year.
- d) Donations made to the city as an entity for use on city property or for city events. *City of Lakeway*, §2.04.031(1) [General Prohibitions]

Example #3

- a) **General Rule.** An officer or employee shall not solicit, accept, or agree to accept for themselves or a relative, the following:
 - 1) any gift, of which the known or readily apparent value for each separate gift, exceeds seventy-five (\$75) dollars in value;
 - 2) any gift that might reasonably tend to influence them to act improperly in the discharge of official duties, or reasonably tend to improperly reward official conduct; or
 - 3) any gift from any lobbyist registered under chapter 2.94 of this Code, of which the known or readily apparent value for each separate gift exceeds ten (\$10) dollars in value.
- b) **Special Applications.** Subsection A above does not include:
 - 1) political contributions made or received and reported in accordance with law;
 - 2) awards, such as plaques, certificates, trophies or personalized mementos, which are reasonable in light of the occasion and publicly presented in recognition of public service;
 - 3) a gift conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
 - 4) gifts or other tokens of recognition presented by representatives of governmental bodies or political subdivisions who are acting in their official capacities which are accepted for the city or in conjunction with the officeholder duties of an elected official;
 - 5) commercially reasonable loans made to an officer or employee in the ordinary course of the lender's business;
 - 6) complimentary copies of trade publications;
 - 7) reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official city business, if furnished by the sponsor of such public event; or in connection with attending seminars or workshops, speaking engagements, teaching, or rendering other public assistance to an organization or another governmental entity;
 - 8) an honorarium, transportation or lodging, the acceptance of which is not prohibited under Sections 36.07 and 36.08, Texas Penal Code;
 - 9) a ticket or admission pass, regardless of the actual or fact value of the ticket or admission pass, to an event that is sponsored or conducted by the City;

- 10) a ticket or admission pass, regardless of the actual or face value of the ticket or admission pass, to an event in which the officer or employee is participating in connection with official duties or in which the officer or employee is participating in connection with his spouse's or child's position or duties, provided that the receipt of such ticket is reported as a reportable gift if such reporting is required under section 2.92.070 B.2. of this Code; and
- 11) any solicitation for civil or charitable causes, or admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the officer or employee. *City of El Paso*, §2.92.040 [Gifts]

Example #4

No officer of the city or a relative thereof shall: Accept any gift from any person that might reasonably tend to influence such officer in the discharge of such person's official duties. The prohibition against gifts shall not apply to:

- a) A lawful campaign contribution;
- b) An honorarium in consideration for services unless the officer would not have been asked to provide the services but for the officer's position;
- c) Meals, lodging, transportation in connection with services rendered by the officer at a conference, seminar or similar event that is more than merely perfunctory;
- d) Complimentary copies of trade publications and other related materials;
- e) Attendance at hospitality functions at local, regional, state or national association meetings and/or conferences;
- f) Any gift which would have been offered or given to the person if such person was not an officer or employee of the city;
- g) An occasional item with a value less than \$50.00;
- h) Tee shirts, caps and other similar promotional material;
- i) Meals, transportation and lodging in connection with a seminar or conference at which the officer is providing services;
- j) Gifts on account of kinship or a personal, or professional, or business relationship independent of the officer's status;
- k) Complimentary attendance at political or charitable fund raising events; and
- l) Meals, lodging, transportation, or entertainment furnished in connection with public events, appearances or ceremonies related to official city business, if furnished by the sponsor of such public events. *City of Farmer's Branch*, §2-279 [Standards of Conduct]

C. Notes:

Section 3. Outside Employment

A. Questions:

1. Should the Code restrict employment outside of city hall? ☐ YES or ☐ NO
2. If yes, will those restrictions apply to:
 - ☐ Employees
 - ☐ Elected officials
3. If the Code covers outside employment, will it:
 - ☐ Require pre-approval from supervisor
 - ☐ Cover only employment that is related to the public duties
 - ☐ Cover any employment even if unrelated to public duties

B. Sample Language:

Example #1

A city official or employee shall not solicit, accept, or engage in concurrent outside employment or work activity which could reasonably be expected to impair independence of judgment in, or faithful performance of, their official duties. A city official or employee shall not engage in outside employment, including self-employment, where such employment would constitute a conflict of interest or would adversely affect the city official's or employee's performance of his or her work responsibilities with the city. For employees, all outside employment shall comply with the city's employment personnel policies or procedures. *City of Bastrop*, §1.15.036 [Conflicting Outside Employment]

Example #2

- (a) **General rule.** A City official or employee shall not solicit, accept, or engage in concurrent outside employment which could reasonably be expected to impair independence of judgment in, or faithful performance of, official duties.
- (b) **Special application.** The following special rule applies in addition to the general rule: A City official or employee shall not provide services to an outside employer related to the official's or employee's City duties.
- (c) **Other rules.** The general rule stated above applies in addition to all other rules relating to outside employment of City officials and employees, including requirements for obtaining prior approval of outside employment as applicable. *City of San Antonio*, §2-48 [Conflicting Outside Employment]

C. Notes:

Section 4. Representation of Others

A. Questions:

1. Will the Code hinder the ability of city officials to advocate on behalf of other persons before city boards or commissions? ☐ YES or ☐ NO?
2. If the Code restricts the representation of others, will it apply to:
 - ☐ Employees
 - ☐ Electeds
 - ☐ All Boards and Commission Members
 - ☐ Certain Boards and Commissions, such as P&Z, Board of adjustment, _____
3. If the Code limits the representation of others, will it exempt representation:
 - ☐ Before Boards the person does not serve on
 - ☐ Without pay
 - ☐ Of one's Self (regarding own property or business)
 - ☐ Of one's Relatives

B. Sample Language:

Example #1

Representation. A presentation of fact, either by words or by conduct, made to induce someone to act. Representation does not include appearance as a witness in litigation or other official proceedings. *City of Laredo*, Section 1.02 (cc) [Conflicts of Interest]

Example #2

No officer of the city or a relative thereof shall: ... Represent or appear in behalf of private interests of others before the city council, or any agency, board, commission, corporation, or committee of the city, nor shall represent any private interests of others in any action or proceeding involving the city, nor voluntarily participate on behalf of others in any litigation to which the city is, or might be, an adverse party. The restrictions of this subsection do not prohibit an officer, or relative of an officer, who is the president, vice president or officer of a homeowners association from appearing before the city council, or any agency, board, commission, or committee of the city to represent such homeowners association, except that no such officer or relative of such officer shall appear before the agency, board, commission or committee of the city of which such officer is a member. *Farmer's Branch*, §2-279 [Standards of Conduct]

Example #3

- a) **Representation of private interests before the City by a member of the board.**

A City official or employee who is a member of a board or other City body shall not represent any person, group, or entity:

 - 1) Before that board or body;

- 2) Before City staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
 - 3) Before a board or other City body which has appellate jurisdiction over the board or body of which the City official or employee is a member, if any issue relates to the official's or employee's official duties.
- b) **Representation of private interests before the City by City officials and employees.**
- 1) **General rule.** A City official or employee shall not represent for compensation any person, group, or entity, other than himself or herself, or his or her spouse or minor children, before the City. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
 - 2) **Exception for board members.** The rule stated in Subsection (b)(1) does not apply to a person who is classified as a City official only because he or she is an appointed member of a board or other City body.
- c) **Prestige of office and improper influence.** In connection with the representation of private interests before the City, a City official or employee shall not:
- 1) Assert the prestige of the official's or employee's City position for the purpose of advancing private interests; or
 - 2) State or imply that he or she is able to influence City action on any basis other than the merits.
- d) **Representation in litigation adverse to the City.**
- 1) **Officials and employees (other than board members).** A City official or employee, other than a person who is classified as an official only because he or she is an appointed member of a board or other City body, shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the City is a party, if the interests of that person, group, or entity are adverse to the interests of the City.
- e) **Board members.** A person who is classified as a City official only because he or she is an appointed member of a board or other City body shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the City is a party, if the interests of that person, group, or entity are adverse to interests of the City and the matter is substantially related to the official's duties to the City. *City of San Antonio*, §2-47 [Representation of Private Interests]

C. Notes:

Section 5. Improper Influence

A. Questions:

1. Will the Code preclude the use of one's official position to provide a benefit or impose a harm upon a person or business that would not otherwise be due to the same degree as the general public ☐ YES or ☐ NO?
2. Will the Code seek to prevent:
 - ☐ Verbal or written representations of undue influence
 - ☐ Conduct (acts or omissions) asserting undue influence
 - ☐ Both

B. Sample Language:

Example # 1

General Rule. A city official or employee shall not use his or her official position to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person (including himself or herself) any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons. A city official or employee who represents to a person that he or she may provide an advantage to that person based on the official's or employees violates this rule. *City of Laredo*, §2.02(a) [Unfair Advancement of Private Interests]

Example # 2

No officer of the city or a relative thereof shall: ... (5) Use such person's official position to secure special privileges or benefits for such person or others. (6) Grant any special consideration, treatment or advantage to any citizen, individual, business organization or group beyond that which is normally available to every other citizen, individual, business organization or group. *City of Farmer's Branch*, §2-279 [Standards of Conduct]

Example # 3

It shall be unlawful for any elected city official to:

- a) Use or attempt to use the official's position to exercise any administrative powers over any city department, as provided for in section 10, article VII of the City Charter.
- b) Use or attempt to use the official's position to influence or attempt to influence a contractor or a recipient of grant money administered by the city to utilize the goods, labor, or services of any person for the private gain or advantage of the official or others; provided, this provision shall not be construed to prohibit an official, acting in the capacity of a citizen, from communicating with a contractor concerning matters not related to or affecting city business. *City of Houston*, §18-3 [Standards of Conduct]

C. Notes:
