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David Zoltner
Via Email: *dzoltner70@gmail.com*

Regarding: City of Denton's Draft Ethics Ordinance

Mr. Zoltner:

As advisor to the City of Denton, I was provided with the comments, questions and suggestions you submitted on March 7, 2018, regarding *Draft "A"* of the Code of Ethics. On behalf of the City, I appreciate you taking the time to provide your feedback into this process. I found your remarks helpful.

Next Tuesday, March 20, 2018, the City Council will be conducting a public hearing on *Draft "B"*, which is the most recent version to be considered. I'm pleased to report to you that many of your concerns have been addressed in this latest document.

For now, please accept the following responses to the concerns you raised.

- 1. Nepotism.** Thus far, the City Council has not deliberated whether to include regulations on Nepotism in the Code of Ethics. I will be presenting the City Council with sample language to consider next Tuesday.
- 2. Misuse of Information.** You requested clarification of the term "Confidential Information", which is defined in the Code of Ordinances as follows:

Confidential Information: any written information that could or must be excepted from disclosure pursuant to the Texas Public Information Act, if such disclosure has not been authorized; or any non-written information which, if it were written, could be excepted from disclosure under that Act, unless disclosure has been authorized by the City Council or City Manager.

Section 3-113(f)(2) of the Code of Ethics includes the following prohibition:

Confidential Information. It shall be a violation of this Article for a City Official to intentionally, knowingly, or recklessly disclose any Confidential Information gained by reason of the City Official's position concerning the property, operations, policies or affairs of the City. This rule does not prohibit the reporting of illegal or

unethical conduct to authorities designated by law.

As currently drafted, the Code of Ethics relies upon the rather well-developed body of state jurisprudence defining “Confidential Information” under the Texas Public Information Act, which characterizes such things as *Privileged Information* to be *Confidential*.

3. **Panels.** It is common for municipal ethics rules to provide some mechanism for pre-screening complaints before going forward with the full-blown formalities of a public hearing. For example, in El Paso complaints go through a preliminary assessment by the City Attorney’s Office, and in Plano complaints are first evaluated by outside legal counsel. In order to keep the initial filtering process in the hands of Denton *citizens*, I suggested the possibility of utilizing rotating, *ad hoc* subcommittees called “Panels.” *Draft “A”* was silent on whether Panels must comply with the Texas Open Meetings Act. *Draft “B”* makes it clear that TOMA compliance is required.

Regarding Advisory Opinions, the City Council has thus far expressed a preference for this form of guidance to be issued by a Panel. In San Antonio, Advisory Opinions are issued by the City Attorney’s Office. The option we are currently considering in Denton keeps the task in the hands of *citizens*. Utilizing Panels will enable the group to meet sooner and issue opinions on a more-timely basis. Organizing gatherings of larger groups tends to take longer. The Denton City Council has expressed the desire to make Advisory Opinions easier to receive in hopes that reliance on such guidance will improve ethical decision making. We hope to encourage officials to seek direction when in doubt.

4. **Testifying at Hearings.** In our work sessions, the City Council has expressed a goal to have those who file ethics complaints take the process very seriously, which includes the requirements that complaints be sworn and based on personal knowledge and evidence, and the Complainant testify at hearings brought to adjudicate the Complaint.

Draft “B” makes it clear that both the Complainant and Accused are expressly extended the right to be represented by legal counsel. *Draft “A”* was silent on that matter.

I hope you found this information helpful. If you have any additional comments, questions or suggestions, please feel free to bring them to our attention. We look forward to your input.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alan J. Bojorquez". The signature is fluid and cursive, with the first name "Alan" and last name "Bojorquez" clearly distinguishable.

Alan J. Bojorquez
Attorney at Law