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MEMORANDUM

TO: The Honorable Chris Watts, Mayor, City of Denton
FROM: Alan Bojorquez, Attorney & Ethics Advisor to the City of Denton
DATE: April 27, 2018
RE: Code of Ethics (*Draft "H"*)

Please accept this memo as my remarks on the newest version of Denton's proposed Code of Ethics, that being *Draft "H"*.

- Preamble:** The second-to-the-last "Whereas" was updated to reflect there have been 4 public hearings and work sessions exceeding 20 hours of City Council deliberations devoted to producing this document.
- Effective Date:** The Effective Date was modified to state that the ordinance shall take effect 14 days from the date of passage.
- Prospective:** The Code cannot serve as the basis for complaints based on actions or inactions dated before May 15th (essentially, the Effective Date). §2-267.
- Vendor:** Rather than limit the definition to capital improvements, it was expanded to cover all public uses. The effect of this is to widen the scope of the limitations placed on the ability of Vendors to give Gifts. §2-269.
- Gifts:** The \$200 annual cap on Gifts to a single City Official will apply to *all* Gifts (cumulative), not just those from a single source. §2-273(b)(2).
- Subpoenas:** While the 2017 Charter Amendment requires that there be a provision for subpoenas as part of the Code, Texas law is not clear on the parameters of such ethics-related subpoenas (i.e., scope, procedure, and punishment). I am concerned that broad, unfettered subpoena power, if exercised frequently, would significantly increase the likelihood of litigation (most likely involving *Motions to Quash* subpoenas). The City Council has been consistent throughout this process in opting for Code language that places the burden of coming forward with evidence upon *Complainants* with personal knowledge of the facts giving rise to the alleged infraction. §2-279 (c)6, (c)7, and (e).
- Thus, it is my recommendation that the Code include limiting language, and that details on subpoenas and the subpoena power be provided in the forthcoming Rules of Procedure (which will be adopted by the Board of Ethics, and confirmed by the City Council). §2-277(h).
- Timelines:** The time limitations for issuance of Advisory Opinions and the Limitations Period for filing Complaints shall be delayed until a Board of Ethics is appointed and has Rules of Procedure. §§2-278(b), 2-29(f).