

2008 Ethics Overview For Council Members

*Keep
Austin
Ethical*



City of Austin Integrity Office

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2008 ETHICS OVERVIEW FOR COUNCIL MEMBERS

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ETHICS RULES AT A GLANCE

The purpose of ethics laws is to ensure the public trust.

The purpose of the points below is to provide a very simplified overview of the rules. Detailed explanations of all the topics outlined below are provided in this handbook.

If you have questions about any of the information provided in this handbook, please contact the Integrity Office at 974-2180.

Gifts

- Following are the six gift rules:
 - ▶ You may never accept anything you know or should know has been offered with the intent to influence or reward your official conduct.
 - ▶ You may never take anything as consideration for an official act.
 - ▶ You may not accept an honorarium for services you would not have been asked to provide because of your official status.
 - ▶ Political contributions may be accepted in accordance with applicable state law, the City Charter, and the City's Campaign Finance Ordinance.
 - ▶ Gifts and benefits are not restricted if your relationship with the donor is completely independent of your status as a Council Member.
 - ▶ Gifts from a person subject to your jurisdiction are restricted.

- If a gift is allowed to be accepted, it may be subject to required disclosure.

- The requirement to disclose a gift does not imply that the gift is allowed by law.

Conflicts of Interest

Interest in a City Contract

A Council Member and a Council Member's spouse may not:

- solicit or propose on a City contract; or
- enter into a contract with the City; or
- receive any pecuniary benefit from any contract with the City.

Substantial Interest & Recusal Provisions

- Both state law and the City Code require a Council Member to recuse when the Council Member has a “substantial interest” in a person, an entity, or real estate that would be affected by a vote of the Council.
- A definition of “substantial interest” is provided both in state law and City ordinance. A detailed discussion of the definition provided by both entities can be found in the Substantial Interest section of this handbook.
- A substantial interest of a close relative may be considered your substantial interest.
- To effectively recuse yourself from a vote or decision, you should not only refrain from voting, but also take no part in any discussions of the matter either on or off the dais.
- When recusal is required by state law, you must file a recusal affidavit with the City Clerk before the Council takes up the item.

Service as an Officer or Director of a Nonprofit

- Service as an officer or director of a nonprofit entity isn't prohibited, but it requires recusal on matters that involve City funding for the nonprofit.

Conflicts & Procurement

- The City Code prohibits any contract that will result in any monetary benefit to a Council Member whatsoever.
- A Council Member is prohibited by the City Code and state law from taking part in any vote or discussion regarding a matter that will have an economic effect on a person or entity in which the Council Member has a “substantial interest.”
- The City has an Anti-Lobbying Ordinance which restricts communications between businesses seeking City contracts and City officers and employees while a competitive process is underway.

To effectively recuse yourself from a vote or decision, you should not only refrain from voting, but also take no part in any discussions of the matter either on or off the dais.

To prevent possible conflicts of interest, Council Members are required to file financial disclosure reports by the City Code and by state law.

Urban Renewal

- Service as a City official restricts a Council Member's ability to own an interest in an urban renewal project.

Nepotism

- The state law on nepotism prohibits a City official from appointing, confirming the appointment of, or voting for the appointment of a close relative to a position that is compensated from public funds.
- Close relatives of Council Members are not eligible to be hired by the City.

Financial Disclosure

- To prevent possible conflicts of interest, Council Members are required to file financial disclosure reports by the City Code and by state law.
- If you or a family member receives gifts from someone who does business with the City, you may also be required to file a "conflicts disclosure statement."

Use of City Property

- Misuse of government resources is a crime.
- "Misuse" means to use the property in a way contrary to the purpose for which it was intended.
- City resources include City Hall, your office space, and such things as the telephones, computers, furniture, supplies, and other office equipment that is paid for at City expense. This also includes funds appropriated for your office, including petty cash, City personnel assigned to assist you, and a City employee's time on the job, including a Council aide's time.
- Council Members are prohibited from spending or authorizing the spending of City funds for political advertising, as well as using or authorizing the use of the City's internal mail system for the distribution of political advertising.

Campaign Finance

- Council Members should be aware that Austin has a campaign finance ordinance and a charter provision on campaign finance.
- The obligation to comply with campaign finance law is a personal obligation of a Council Member. A Council Member should seek advice on campaign finance from private legal counsel.

Revolving Door Issues

- If a Council Member resigns, decides not to seek re-election, or is unsuccessful in a re-election bid, some restrictions may apply during the remainder of the Council Member's tenure and after the member leaves the Council.
- The following restrictions apply to former Council Members:
 - A former Council Member may not contract with the City for two years.
 - A former Council Member may not sell or lease real estate to the City for two years.
 - Former City officers and employees may not use confidential information for personal gain.
 - Former officers and employees are partially restricted in representing another person for compensation. This prohibition lasts for one year.
 - Former officers, former employees, and the current employers of former officers or employees may be required to make certain disclosures in appearances before the City for two years.

The obligation to comply with campaign finance law is a personal obligation of a Council Member.

A former Council Member may not contract with the City for two years.

ETHICS LAWS

GIFTS, CONFLICTS OF INTEREST, AND USE OF CITY PROPERTY

Overview

*As a member of
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As a member of the City Council, you have a duty to hold yourself to a high standard of conduct in the performance of your official duties. This handbook sets out the laws that govern your conduct as a public servant.

This is an area of the law that is difficult to discuss for two main reasons. One reason is the emotional content that the word “ethics” brings to the discussion. The second reason is the sometimes dizzying complexity of the law on the subject. However, if the law is complex, the purpose behind the law is simple.

The purpose of ethics laws is to ensure the public trust. If the public is not confident in the integrity of its government, that trust is lost. Even if an arrangement benefits the public good, the purpose of the law is not served if there is doubt surrounding the integrity of the decision-making process.

It is important to understand the policy behind the law. And it is usually best to avoid any arrangement that is contrary to that policy (or that may be seen by an outside observer as contrary to that policy) even where the letter of the law may permit the arrangement. If you think of it in these terms, it is often unnecessary to parse the legal details.

This handbook is organized by subject matter, but there is quite a bit of overlap among the subjects. As a result, there is some repetition when the same law applies in different contexts.

Part one - Gifts

The City has important regulatory power. It provides necessary services in the community, and it is a major player in the local economy. A gift offered to a City official by a person who has business with the City is most likely offered with the hope of receiving something in return, even if that “something” is just goodwill. Gifts are often given to impress someone who is in a position to do the person offering the gift some good. A gift may even be given in fear of someone who is in a position to do the person offering the gift some harm. Even if a gift is offered with no expectations, it may appear otherwise to an outside observer.

Accordingly, the City Code provides as follows:
No City official or employee shall accept or solicit any gift or favor, that might reasonably tend to influence that individual in the discharge of official duties or that the official or employee knows or should know has been offered with the intent to influence or reward official conduct.¹

This provision applies to Council Members. There are no exceptions to this ordinance. In addition, it prohibits gifts that the state criminal law would permit. The following rules will help you decipher the City and state laws that regulate the acceptance of gifts and other benefits by a public official.

RULE NUMBER 1: You may never accept anything you know or should know has been offered with the intent to influence or reward your official conduct.

Under the City ordinance, you may not:

- accept or solicit any gift or favor that might reasonably tend to influence you in the discharge of official duties;
- accept or solicit any gift or favor that you should know has been offered with the intent to influence your official conduct; or
- accept or solicit any gift or favor that you should know has been offered with the intent to reward your official conduct.

The first part of the rule prohibits gifts or favors that might influence a person’s behavior. The test is not whether the particular employee’s behavior is, in fact, influenced, but whether the gift or favor would tend to influence a reasonable person’s behavior.

Even if a gift is offered with no expectations, it may appear otherwise to an outside observer.

You may never accept anything you know or should know has been offered with the intent to influence or reward your official conduct.

Political contributions may be accepted in accordance with applicable state law, the City Charter, and the City's Campaign Finance Ordinance.

The second two parts of the rule depend on the intent of the donor. It doesn't matter whether the recipient is influenced—or if a reasonable person would be influenced. The only thing that matters is the intent of the donor. If the donor intends to either (1) influence you or (2) reward you with a gift, you can't take it.

The state criminal law makes the acceptance of "benefits" by public servants in certain situations a crime. However, if you follow rule number one, you rarely have to worry about the state criminal law. (State criminal law is discussed further under Rules 2, 3 and 6.)

RULE NUMBER 2: You may never take anything as consideration for an official act.

In other words, you may not accept a bribe—the exchange of an official act for consideration.² An official act includes a decision, opinion, vote, recommendation, any exercise of official discretion, or a violation of an official duty.³ There are no exceptions to this rule. Bribery is, of course, a serious criminal matter. Rules 3 through 6 assume that the offer is not made or accepted as consideration for an official act.⁴

RULE NUMBER 3: You may not accept an honorarium for services you would not have been asked to provide but for your official status.

This means that if you are asked to provide a service because you are a Council Member you cannot accept a payment. For example, if you are invited to a speaking engagement because you are a Council Member, you may not accept a speaker's fee. However, you may accept transportation, lodging and meals.⁵

RULE NUMBER 4: Political contributions may be accepted in accordance with applicable state law, the City Charter, and the City's Campaign Finance Ordinance.

If the thing of value is a political contribution as defined in Title 15 of the Texas Election Code,⁶ you may accept it under the terms set forth in the Texas Election Code, the City Charter, and the City's Campaign Finance Ordinance. The City's Charter and Campaign Finance Ordinance add restrictions to those found in state law. Remember that you may not convert political contributions to your private use. In addition, the ways in which unexpended political contributions may be disposed of is strictly limited by law.⁷

RULE NUMBER 5: Gifts and benefits are not restricted if your relationship with the donor is completely independent of your status as a Council Member.

If something is offered to you that you wish to accept, you must ask yourself whether your relationship with the person is independent of your official status. However, keep in mind that the City Code contains a blanket prohibition against accepting anything you know or should know has been offered with the intent to influence or reward official conduct.

You may accept a gift or benefit if the offer is based on one of the following types of relationship:

- kinship;
- a personal relationship independent of your official status;
- a professional relationship independent of your official status;
- a business relationship independent of your official status; or
- a payment to which you are lawfully entitled in a capacity other than your official status.⁸

You should be cautious when deciding whether a relationship is independent of your official status. If you think that your status as a Council Member is one of the reasons that the gift is offered to you, then the offer is not independent of your official status and restrictions apply.

Even if a gift is allowed, it may be subject to required disclosure. See the Disclosure of Gifts section for a more detailed discussion of disclosure requirements.

RULE NUMBER 6: Gifts from a person subject to your jurisdiction are restricted.

This rule is not like the rule concerning bribery, which requires *the intent* to buy or sell favors. Unless an exception applies the offer or acceptance of the gift is a crime, *regardless of any bad intent on the part of the donor or the public servant.*⁹ In making these prohibitions, the Penal Code uses the terms “benefit” and “public servant.”¹⁰ It is important to know how the terms used in the Penal Code are defined:

- A “benefit” is defined as “anything reasonably regarded as pecuniary gain or pecuniary advantage,

If something is offered to you that you wish to accept, you must ask yourself whether your relationship with the person is independent of your official status.

including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.”¹¹

- A “public servant” means “a person elected, selected, appointed, employed, or otherwise designated” as, among other things, “an officer, employee, or agent of government.”¹²

The definitions are broad and inclusive. It is clear from the plain language of the statute that employees and elected officials of local governments are public servants. A benefit may be almost anything the value of which may be measured in money.

If an offer is not a political contribution, and not based on an independent relationship, then you must determine whether the person is subject to your official jurisdiction. Remember that the City Code contains a blanket prohibition against accepting anything you know or should know has been offered with the intent to influence or reward official conduct. However, if you reasonably determine that a gift will not influence you in the discharge of your official duties **and** you reasonably determine that the gift has not been offered with the **intent** to influence or reward your official conduct, you must still decide whether the donor is subject to your jurisdiction. The following list will help you make your decision.

A person is subject to your jurisdiction if:

- the person is subject to regulation, inspection, or investigation by the City.
- the person is a prisoner in City or County jail on a City charge.
- the person is engaged in pending or contemplated litigation against the City.
- the person is interested in, or likely to become interested in any contract with the City, purchase by the City, or another payment, transaction, or claim involving the City.
- the person is interested in or likely to become interested in any matter before the City Council.¹³

As you can see, the list of persons considered subject to your jurisdiction is very large, and it may include virtually every resident of the City, and a lot of people who do not reside in the City.

The list of persons considered subject to your jurisdiction is very large, and it may include virtually every resident of the City, and a lot of people who do not reside in the City.

Under the City's Lobby Ordinance, a person who lobbies or who engages another person to lobby, may not give to any City official, or to the immediate family of any City Official, gifts that exceed \$100 in aggregate value in a calendar year.¹⁴ It is important to note that this restriction applies to anyone who lobbies, whether or not the lobbying results in the person being required to register as a lobbyist under the ordinance.¹⁵ Remember, under the City Code, you may not accept anything you know or should know has been offered with the intent to influence or reward official conduct. It seems that a gift from a lobbyist that didn't include at least some intent to influence would be a rare circumstance.

Subject to the \$100 aggregate limitation for a person who lobbies, **and subject to the blanket prohibition under the City Code against accepting anything you know or should know has been offered with the intent to influence or reward official conduct**, if a person is subject to your jurisdiction, you **may accept**:

- meals, if you are with the person as a guest;
- entertainment, if the person attends it with you;
- transportation and lodging, if the person travels with you;
- an item, other than cash or a negotiable instrument, with a value less than \$50; or
- an item issued by a governmental body that allows the use of property or facilities owned, leased, or operated by the governmental body.¹⁶

You **may not accept** anything else reasonably regarded as a benefit.¹⁷ Remember that a benefit may be almost anything the value of which may be measured in money.¹⁸ This includes anything reasonably regarded as financial gain for someone in whose welfare you are interested.¹⁹ This rule applies regardless of the intent of the donor in making the offer or your intent in accepting the offer.

DISCLOSURE OF GIFTS

If a gift is allowed to be accepted, it may be subject to required disclosure. **Please note that the requirement to disclose a gift does not imply that the gift is allowed by law.**

The City Code requires the disclosure of the source of any gift or favor (or series of gifts) to you or your spouse that exceeds \$100 in value during a year.²⁰ State law requires the disclosure of the source of a gift to you, your

The requirement to disclose a gift does not imply that the gift is allowed by law.

spouse or your dependent children in excess of \$250 in value and a description of each gift.²¹

In addition, if you receive one or more gifts from an individual or entity who does business with the City or who is being considered by the City for a business relationship, you may need to file a “conflicts disclosure statement.” You are required to file the statement if you or your family members have received one or more gifts from the individual or entity with an aggregate value of more than \$250 in the preceding year.²²

If you accept a trip or excursion from a person or entity other than the City, you will need to disclose certain information. Under the City Code, you must disclose the name of the sponsor, the places to be visited, the purpose of the trip, and the date and duration of the trip. This must be reported **before** leaving on the trip. Within 15 days of your return, you must disclose the approximate value of the trip or excursion.²³

The City Code prohibits a Council Member from receiving anything reasonably regarded as monetary gain or advantage because of a City contract.

Part Two Conflicts of Interest

INTEREST IN A CITY CONTRACT

The City Code prohibits a Council Member and a Council Member’s spouse from:

- ❶ soliciting or proposing on a contract; or
- ❷ entering into a contract with the City; or
- ❸ receiving any pecuniary benefit from any contract with the City.²⁴

The third prohibition, against receiving any pecuniary benefit from a contract, is obviously the broadest, and prohibits benefits that flow to the Council Member or Council Member’s spouse as well as the contractual relationship itself. The term “pecuniary benefit” is not defined in the City Code, but Webster’s Dictionary defines “pecuniary” with the phrases “consisting of or measured in money” and “of or relating to money.”²⁵ The dictionary also gives “monetary” as a synonym for “pecuniary.”²⁶ Black’s Law Dictionary defines “pecuniary benefits” as “benefits that can be measured in money.”²⁷

Thus, a “pecuniary benefit” is anything reasonably regarded as monetary gain or advantage, and the City Code prohibits a Council Member from receiving

anything reasonably regarded as monetary gain or advantage because of a City contract.

This provision of the City Code is a prohibition and cannot be remedied by recusal. The prohibition does not depend on the existence of a “substantial interest,” and applies whether or not the affected Council Member participates in a deliberation or vote on the award of the contract. While this is not a recusal provision, a violation would subject a Council Member to the kind of sanctions applicable to a failure to recuse when recusal is required by the City Code. A more complete discussion of sanctions and recusal provisions is found in the following section, Recusal Provisions.

RECUSAL PROVISIONS

Both state law and the City Code require a Council Member to recuse themselves when the Council Member has a “substantial interest” in a person or entity that would be affected by a vote of the Council. The relevant City Code provision is Section 2-7-63; the state law provision is Chapter 171 of the Local Government Code.

Because the state and City provisions differ somewhat, an explanation of the law on recusal can get complicated. Sometimes the state law definition is more restrictive, sometimes the City Code definition is more restrictive, and sometimes the state law and City Code overlap. But you must always comply with both provisions.

You should consider whether recusal is required whenever a matter involves:

- a business or a person from whom you or a close relative receive income;
- a business, entity, or piece of real estate in which you or a close relative have an interest;
- a business or person with which you or your spouse have a creditor-debtor relationship; or
- a business or entity for which you or your spouse serves as a director or officer.

How To Recuse

To effectively recuse yourself from a vote or decision, you should not only refrain from voting, but also take no part in any discussions of the matter either on or off the dais. The exact words used in the state law are “shall abstain from further participation in the matter;” the City ordinance uses the phrase “may not participate on a vote or decision.”²⁸

Both state law and the City Code require a Council Member to recuse themselves when the Council Member has a “substantial interest” in a person or entity that would be affected by a vote of the Council.

If recusal is required under the state law, a Council Member with a substantial interest in a matter must file an affidavit with the City Clerk.

Service as an officer or director of a nonprofit entity isn't prohibited, but it requires recusal.

If recusal is required under the state law, a Council Member with a substantial interest in a matter must file an affidavit with the City Clerk stating the interest and the nature of the interest.²⁹ This affidavit must be filed before the vote.³⁰ The personal financial statement filed by a Council Member under Section 2-7-72 of the City Code may sometimes suffice as the affidavit required to be filed with the City Clerk. However, as will be discussed more thoroughly in the Substantial Interest section, the definitions of “substantial interest” in the state law and the City ordinance differ. Sometimes the state law requires recusal where the City ordinance requires neither recusal nor disclosure on the financial statement. In such a case, a Council Member should be careful to file an additional affidavit with the City Clerk.

If recusal is required under the City ordinance, a Council Member must publicly disclose “in the official records of the body” the nature and extent of the interest. So if a matter requiring recusal comes before the Council you would need to state from the dais the nature of your conflict, and make sure it gets into the minutes.

It is not required to file an affidavit if recusal is required by the City Code, but not by state law. But this can get confusing. Filing the affidavit, *and* making the disclosure from the dais that appears in the minutes, covers all your bases.

SERVICE AS AN OFFICER OR DIRECTOR OF A NONPROFIT

Service as an officer or director of a nonprofit entity isn't prohibited, but it requires recusal.

The City Code provides that “a City official or employee who serves as a corporate officer or member of the board of directors of a nonprofit entity may not participate in a vote or decision regarding funding by or through the City for the entity.” This would apply to any matter that concerned City dollars flowing to the nonprofit by grant, contract, or otherwise.

You would need to be especially careful about a large ordinance that funds a lot of programs such as the annual budget ordinance. If there is a specific item that regards funding for the nonprofit, it may need to be broken out into a separate ordinance.

As noted, recusal often requires that you file an affidavit with the City Clerk before a vote is taken, but

(if the position as an officer or director of a nonprofit is uncompensated) this wouldn't be one of those times.

SUBSTANTIAL INTEREST

The state law and City ordinance each define “substantial interest.” The definitions are different and overlapping. As noted, you must recuse when you have a substantial interest under either definition.

“Substantial Interest” Under Chapter 2-7 of the City Code

Under Chapter 2-7 of the City Code, a person has a “substantial interest” in another person³¹ or in an entity³² if any of the following conditions are met:

- the interest is ownership of 5 percent or more of the voting stock, shares or equity of the entity; or
- the interest is ownership of \$5,000 or more of the equity or market value of the entity; or
- funds received from the other person or entity during the previous 12 months or during the previous calendar year equaled or exceeded any one of the following:
 - ▶ \$5,000 in salary, bonuses, commissions or professional fees; or
 - ▶ \$20,000 in payment for goods, products or nonprofessional services; or
 - ▶ 10 percent of the person's gross income during that period; or
 - ▶ the person serves as a corporate officer or member of the board of directors or other governing board of the entity (this criterion does not apply to a nonprofit entity or to a corporate entity owned or created by the City Council); or
 - ▶ the person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000 (this criterion does not apply to a home mortgage loan for the person's homestead or to a loan or lease of a personal automobile if entered into at a market rate with a commercial lending institution before the previous 12 months).³³

A person has a substantial interest in real estate for purposes of Chapter 2-7 of the City Code if the person has a legal or equitable interest in the real property with a market value of \$5,000 or more.³⁴

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A substantial interest of a partnership, professional corporation, or entity **is deemed to be** a substantial interest of the City official or employee, if:

- a City official or employee is a member of a partnership or professional corporation, or conducts business through another entity that has fewer than 20 partners or shareholders; or
- if a City official or employee is a member of a partnership or professional corporation, or conducts business through another entity, and the official or employee has an equity interest, share, or draw equal to or greater than 5 percent of either:
 - ▶ the capital of the partnership, professional corporation, or other entity; or
 - ▶ revenues of the partnership, professional corporation, or other entity.³⁵

In addition, a City official **has a substantial interest in a client** of a partnership, professional corporation, or entity through which the City official conducts business if the official has personally acted in a professional or fiduciary capacity for that client within the preceding 24 months.³⁶ This applies regardless of the amount of funds received from the client.

A substantial interest of a spouse of a Council Member is a substantial interest of the Council Member.³⁷ Except that the substantial interests of a partnership are *not* deemed to apply to a Council Member because the spouse of the Council Member does business through the partnership or other business entity.³⁸ However, income from a spouse's partnerships, business entities, or clients may constitute a substantial interest.³⁹

“Substantial Interest” under Chapter 171 of the Local Government Code

Substantial interest is also defined in Chapter 171 of the Local Government Code. Under that chapter, a person has a “substantial interest” in a business entity⁴⁰ if:

- the person owns 10 percent or more of the voting stock or shares of the business entity; or
- the person owns 10 percent or more of the fair market value of the business entity; or
- the person owns \$15,000 or more of the fair market value of the business entity; or
- funds received (for any reason) by the person from the business entity exceed 10 percent of the person's gross income for the previous year.⁴¹

A person has a substantial interest in real property under Chapter 171 if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.⁴²

Under state law, a substantial interest of a person related to a Council Member in the first degree by blood or marriage is deemed to be a substantial interest of the Council Member.⁴³

Substantial Interest of a Relative

The City Code extends the recusal requirement to a vote or decision that would affect a substantial interest of a person related to the Council Member in the *second* degree by blood or marriage.⁴⁴ Relatives in the first degree include the Council Member's:

- spouse;
- parents;
- children;
- the parents and children of the Council Member's spouse; and
- the spouses of the Council Member's parents and children.⁴⁵

Relatives in the second degree include, in addition to those persons listed above:

- the Council Member's siblings;
- the Council Member's siblings' spouses;
- the Council Member's spouse's siblings;
- the Council Member's grandparents, grandchildren, and their spouses; and
- the Council Member's spouse's grandchildren and grandparents.⁴⁶

For purposes of calculating relationships, a marriage is considered to continue so long as a child of the marriage is living, even if death or divorce has ended the marriage.⁴⁷

Requirements and Prohibitions that Depend on the Term "Substantial Interest"

- ① A Council Member *may not*:
 - transact any business in the Council Member's official capacity with any entity in which the Council Member has a substantial interest (as defined by the City Code);⁴⁸ or
 - accept or solicit a promise of future employment from any person or entity who has a substantial interest (as defined by the City Code) in a person, entity, or property that would be affected by the Council Member's action or recommendation;⁴⁹ or

A substantial interest of a person related to a Council Member in the second degree by blood or marriage is deemed to be a substantial interest of the Council Member.

- participate in a vote or decision affecting a person, entity, or property in which the Council Member has a substantial interest (as defined by the City Code).⁵⁰
- ② Before a vote that would affect a substantial interest a Council Member *must* do at least one of the following (the simplest course may be to do both):
 - publicly disclose in the Council minutes the nature and extent of the substantial interest (if recusal is required only by the City Code);⁵¹ or
 - file an affidavit with the City Clerk stating the nature and extent of the substantial interest (if recusal is required by state law).⁵²
- ③ Council Members must also disclose substantial interests (as defined by the City Code) in the financial statements by the City Code.⁵³

SANCTIONS FOR VIOLATIONS OF CONFLICT OF INTEREST PROVISIONS

Sanctions for a Failure to Recuse When Required by State Law

If the failure to recuse is with respect to a “substantial interest” as the term is defined in the Local Government Code, then a Council Member could be subject to prosecution for a Class A misdemeanor. The County or District Attorney prosecutes this offense. It is punishable by a fine not to exceed \$4,000, confinement not to exceed one year, or both.

Sanctions for a Failure to Recuse When Required by the City Code

If the failure to recuse is with respect to a “substantial interest” as the term is defined in the City Code, or if a Council Member violates the prohibition against receiving a pecuniary benefit from a City contract, there is no criminal penalty set by the Code. However, Section 39.02 of the Texas Penal Code makes it an offense for a public servant to violate a law relating to the public servant’s office with the intent to obtain a benefit or with the intent to harm or defraud another person. Therefore, because the City Code is a law relating to a Council Member’s office, if a Council Member violated the Code with the requisite intent, the Council Member could be prosecuted under Penal Code § 39.02 even though the City Code doesn’t establish a

criminal penalty. An offense under Penal Code § 39.02 is a Class A misdemeanor, punishable by up to a year's imprisonment, up to a \$4,000 fine, or both.

In addition to possible criminal process, the City's Ethics Review Commission hears complaints of alleged violations through a procedure set out in the City Code.⁵⁴

To briefly describe this process, the Ethics Review Commission, either upon receipt of a complaint or upon its own motion, may conduct hearings to determine if a violation has occurred. If the Ethics Review Commission finds that a violation has occurred, it may impose a range of sanctions. If the violation is clearly unintentional, the Commission may send a letter of notification. If the Commission finds that a serious or repeated violation has occurred through intentional or culpable disregard of the ordinance, the Commission may send a letter of censure or a recommendation of recall.⁵⁵

CONFLICTS UNDER FEDERAL LAW

If the City Council reviews a federally-funded project or activity, the members will be subject to the federal conflict of interest requirements attached to the federal program that is the source of the funding. Each federal program has a specific conflict of interest rule. Requirements set by various federal agencies may vary, and in each case the specific regulations with respect to the specific federal activity must be reviewed.

What follows is a very general overview using a Department of Housing and Urban Development (HUD) program as an example. It is intended to suggest the framework of the federal approach to these issues.

HUD's conflict of interest rules for various programs generally apply in a similar manner and apply to a City official or agent who exercises a function or responsibility with respect to an activity, or who is in a position to participate in a decision-making process or gain inside information with regard to an activity under the program.⁵⁶ The rules prohibit an official, or a person with whom the official has a family or business tie, from having a financial interest in the federal activity. The prohibition applies during the official's tenure and for a year thereafter. HUD may grant a waiver if the nature of the conflict was publicly disclosed, if

If the City Council reviews a federally-funded project or activity, the members will be subject to the federal conflict of interest requirements attached to the federal program that is the source of the funding.

Sensitivity to conflicts of interest is especially important regarding the complex legal issues surrounding purchasing.

The City Code prohibits any contract that will result in any monetary benefit to a Council Member whatsoever, even if the Council Member's relationship with the contracting entity doesn't meet the "substantial interest" test.

the conflict does not violate local or state law, and if HUD determines that granting the waiver will serve to further the purposes of the federal activity as well as the effective and efficient administration of the participating jurisdiction's program or project.⁵⁷

Consequences for failure to comply could range from the loss of an opportunity to participate in a program to civil or criminal liability. Compliance with the federal conflict of interest requirements for a project will not ordinarily excuse failure to comply with local and state law requirements. Therefore, a violation could subject a person to criminal prosecution in both state and federal court.

Some federal ethics laws apply to public servants in jurisdictions that receive federal funding, and may apply even if the violation is not related to a federally funded project. For example Section 666 of Title 18 of the United States Code prohibits bribery and misapplication of government property.⁵⁸ Section 666 applies to an agent of a local government that receives more than \$10,000 in federal assistance in a year. However, a prosecution may be brought even if the bribery or misapplication is independent of the federal funding.⁵⁹

CONFLICTS AND PROCUREMENT

Sensitivity to conflicts of interest is especially important regarding the complex legal issues surrounding purchasing. While some of the information presented here repeats what is said in other sections of this handbook, it is important to understand how conflict of interest provisions work in relation to procurement issues.

Bottom line cautionary rules:

- The City Code prohibits any contract that will result in any monetary benefit to a Council Member whatsoever, even if the Council Member's relationship with the contracting entity doesn't meet the "substantial interest" test.
- A Council Member is prohibited by the City Code and state law from taking part in any vote or discussion regarding a contract (or any other matter) that will have an economic effect on a person or entity in which the Council Member has a "substantial interest."

- ▶ A Council Member must comply with disclosure and recusal requirements relating to matters that will affect a person or entity in which the Council Member has a “substantial interest.”
- ▶ Failure to disclose or recuse could subject an elected official to prosecution for a Class A misdemeanor, punishable by a fine of up to \$4,000 and confinement not to exceed one year, or both.

The Council’s Role in Procurement

As more fully explained in this section, despite the Council’s limited involvement in procurement of goods and services by the City, many of the laws prohibiting or regulating conflicts apply **regardless** of whether the Council is involved in a particular procurement.

There are several areas where the Council, acting as a body, must approve City contracts.⁶⁰ Under the Charter, the Council must approve franchises⁶¹ and contracts exceeding an annual indexed amount.⁶² The Council must also approve interlocal contracts.⁶³ In every other circumstance, the Council is limited in its authority and ability to influence procurement decisions. In fact, the Charter provides that:

Except for the purpose of inquiry and investigation, the Council and its members shall deal with the administrative service of the City solely through the City Manager and shall not give orders to any of the manager’s subordinates either publicly or privately.⁶⁴

Accordingly, a Council Member should not, except for purpose of inquiry, communicate with staff regarding the award of a City contract.

The Charter prohibits a Council Member from receiving a benefit from the holder of a City franchise. The Charter provides: “Neither the Mayor nor any other member of the City Council, nor any elective or appointive officer of the City, shall be directly or indirectly in the employ of any person, company or corporation, holding or seeking to hold any franchise from the City of Austin, or shall receive directly or indirectly any wage, commission, fee, gift, favor or

A Council Member should not, except for purpose of inquiry, communicate with staff regarding the award of a City contract.

payment from such franchise holder, and any violation of this section shall ipso facto render vacant the office held by the person so violating it.”⁶⁵

Remember that the City Code prohibition against a Council Member having an interest in a City contract is very broad, and prohibits a Council Member or a Council Member’s spouse from:

- soliciting or proposing on a contract,
- entering into a contract with the City, or
- receiving any pecuniary benefit from any contract with the City.

This provision would prevent a business in which a Council Member has an interest from receiving a City contract, unless the interest were in the nature of stock in a large publicly traded company (such as, for example, General Motors), where the funds from the City contract couldn’t be said to accrue to the pecuniary benefit of an ordinary individual stockholder. (However, if the amount of stock you owned in the publicly traded corporation was enough to amount to a “substantial interest,” recusal would be required.)

If a contract resulted in a pecuniary benefit to a Council Member, the interest of the Council Member would *not* have to rise to the level of a “substantial interest” under the recusal standards for the contract to be prohibited.

A Council Member’s Relationship with a Bidder or Proposer

Because the Council has a role in the award of City contracts, a Council Member’s relationship with a bidder or proposer may sometimes disqualify the bidder or proposer. While the prohibition against a Council Member having an interest in a City contract will encompass almost every situation where a Council Member has an interest in a business seeking a business relationship with the City (whether subject to competition or not), the principles of competitive bidding also rule out the relationship when a contract is subject to a competitive process. A bidder or proposer is excluded from bidding if the bidder or proposer has had any involvement in the design or specifications of the procurement, or if the bidder or proposer will have any role in the award of the contract or any advantage due to inside information. The rule is that a person can participate in the development of the project or bid for

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the work, but cannot do both because to do so is anti-competitive. So if a bidder or proposer is partly owned by a Council Member or a Council Member's spouse, the bidder or proposer is excluded from the process.

The City's standard terms and conditions exclude City officers who have a role in the solicitation: "No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation."

THE ANTI-LOBBYING ORDINANCE

The City has an Anti-Lobbying Ordinance which restricts communications between businesses seeking City contracts and City officers and employees while a competitive process is underway.⁶⁶ This is to preserve the level playing field necessary for true competition.

The intent of the Anti-Lobbying Ordinance is to ensure that each bidder or proposer in a competitive procurement process has the same access to information and the same opportunity to present information regarding the solicitation to the City. The ordinance seeks to accomplish this goal by creating a single point of contact for communications during the duration of the competitive process. This single point of contact is called the "authorized contact person."

The ordinance designates the time period between the issuance of a solicitation and the execution of a contract resulting from that solicitation as the "no-contact period." If a solicitation is withdrawn, or if all bids or proposals are rejected, and the solicitation is to be reissued, the no-contact period continues for up to 60 days during the hiatus between the withdrawal and the reissue.

During the no-contact period, all communication from the City and to the City regarding a solicitation must go through the authorized contact person. During this period, bidders and proposers, and anyone acting on behalf of a bidder or a proposer, including an agent or subcontractor, must not contact a Council Member, a Board or Commission member, or a City employee other than the authorized contact person with a communication regarding the solicitation.

It does not matter whether the contact is initiated by the proposer or by a City official or employee. A bidder

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Council Members must exercise caution to avoid disclosing confidential information related to procurements.

or proposer violates the ordinance even if the bidder or proposer makes a prohibited communication in response to an inquiry from a City official, including from a Council Member. This may seem harsh, but otherwise a bidder or proposer with a “friend on the inside” could open a channel of communication that was not available to the other competitors, and the competition would no longer be on even footing.

The penalty for a violation is disqualification from consideration on the solicitation. More than one violation in a three-year period can lead to debarment of the bidder or proposer. A disqualified bidder or proposer is entitled to a hearing that is similar in form to a bid protest.

The Council is provided with regular notices of competitive solicitations. The Anti-Lobbying Ordinance requires that a City official or employee who receives a prohibited communication must notify the authorized contact person of the communication. Without this notification it is not possible to fairly implement the ordinance. When the anti-lobbying provision is circumvented or ignored, it compromises the integrity of the competitive process.

The Anti-Lobbying Ordinance does not apply to communications that are not related to a competitive solicitation. For example, if a bidder or proposer on a competitive solicitation is also seeking a zoning change the bidder or proposer may lobby City officials and staff on the zoning change, so long as the bidder or proposer does not discuss the solicitation. The Anti-Lobbying Ordinance also does not apply to communications made at meetings conducted under the Open Meetings Act, and to certain other necessary communications with City staff that are described in the ordinance.

Council Members must exercise caution to avoid disclosing confidential information related to procurements.

Section 39.06 of the Texas Penal Code makes it a criminal offense for a public servant to use information that has not been made public, and to which the public servant has access by virtue of the public servant’s office, to gain a benefit, or to harm another. It is also an offense for the public servant to engage in a transaction or speculation that may be affected by the information, or to assist another person in such a

transaction or speculation. A violation of this provision is a third degree felony, punishable by two to 10 years imprisonment and a fine up to \$10,000.

Federal law provides criminal penalties in addition to those provided by state law.

Federal law⁶⁷ makes it a criminal offense if an agent of a local government receiving federal funds⁶⁸ “corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$5,000 or more.” The penalty for this offense is a fine or imprisonment for not more than 10 years, or both.

Federal law also criminalizes kickbacks related to federally assisted public works projects.⁶⁹ The penalty for this offense is a fine or imprisonment for not more than five years, or both.

A NOTE ON CRIMINAL LIABILITY

The City may not pay to defend an elected official in a criminal prosecution until the outcome of the prosecution is known, and the official may be determined to have been acting in good faith within the scope of his or her official duties (i.e., is not guilty). Therefore the City must defer a decision whether to pay the official’s legal expenses until after disposition of the charges.⁷⁰

URBAN RENEWAL

Service as a City official restricts a Council Member’s ability to own an interest in an urban renewal project.

A Council Member may not acquire a direct or indirect interest in an urban renewal project, in any property included or planned to be included in an urban renewal project or plan, or in any contract, or contract proposed, in connection with an urban renewal project.⁷¹

If a Council Member owns or controls a direct or indirect interest in property that the Council Member knows is included or planned to be included in an urban renewal project, or if the Council Member owned or controlled any such interest at any time during the two-year period preceding the inclusion or planned inclusion of the property in an urban renewal project, the Council Member must immediately disclose that fact

Service as a City official restricts a Council Member’s ability to own an interest in an urban renewal project.

in writing to the Council, and the Council must enter the disclosure on its minutes. The Council Member may not participate in any action by the City or by the Urban Renewal Agency that affects the property.⁷²

NEPOTISM

The state law on nepotism prohibits a City official from appointing, confirming the appointment of, or voting for the appointment of a relative to a position that is compensated from public funds. The prohibition affects relatives that are related to a Council Member within the third degree by blood or within the second degree by marriage (see discussion of Degrees of Relationship).⁷³ Under the Charter, the only compensated officers voted on by the City Council are the City Manager, the City Clerk, the Municipal Court Clerk, the Municipal Court Judges, and the City Auditor.⁷⁴ In addition, under the state civil service law, the City Council must confirm the City Manager's appointment of the Fire Chief and the Police Chief.⁷⁵

The City's personnel policies prohibit the employment of anyone related to a Council Member or to the City Manager within the second degree by blood or marriage (see discussion of Degrees of Relationship, especially the note about the City's Personnel Policies).⁷⁶ The policies make an exception for a relative of a Council Member who has been in continuous City employment for two years before the Council Member was elected.⁷⁷

The nepotism provisions do not apply to appointments to City boards and commissions since the members of those boards and commissions are not compensated, nor are they City employees.

DEGREES OF RELATIONSHIP

First degree by blood. Relatives in the first degree by blood are one's parents and one's children.

Second degree by blood. Relatives in the second degree by blood are one's siblings, grandparents, and grandchildren.

Third degree by blood. Relatives in the third degree by blood are one's great-grandparents, great-grandchildren, the children of one's siblings, and the siblings of one's parents.⁷⁸

Relationship by marriage. Relatives by marriage are the spouses of one's relatives, or the relatives of one's spouse. Degree is calculated in the same way as for

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blood relatives. For purposes of calculating relationship, a marriage that has ended in death or divorce is considered to continue so long as a child of the marriage survives.⁷⁹

The City Personnel Policies. The City's Personnel Policies use a different calculation for degrees of relationship than does state law. According to the Personnel Policies the hiring prohibition would extend to a Council Member's spouse or domestic partner, parents, children, siblings, grandparents, grandchildren, aunts, uncles, nieces, nephews, and first cousins. The prohibition also extends to the spouses of these relatives, and to the relatives of the Council Member's spouse or domestic partner.⁸⁰

FINANCIAL DISCLOSURE

To prevent possible conflicts of interest, Council Members are required to file financial disclosure reports under the City Code and state law. The disclosure reports are public information. The reports required by the City Code and by the State Law are different, so each Council Member must file both the City-required reports *and* the state-required report.

Annual Disclosure Under the City Code

The City Code requires that you file reports of financial information twice each year.⁸¹ The reports must be filed with the City Clerk no later than the last Friday in April and the last Friday in July. For Council Members who are also candidates the first report (otherwise due the last Friday in April) must be filed within five working days of the filing deadline for a place on the ballot.⁸² Generally, the April report discloses sources of income, real property interests, loans, and gifts for yourself and your spouse during the previous calendar year.

The July report includes only changes in "substantial interests" for the preceding six-month period.⁸³ "Substantial interests" is defined in Section 2-7-2 of the City Code (see discussion of "Substantial Interest" Under Chapter 2-7 of the City Code). The April report is the same as the report filed by candidates seeking election to the Council.⁸⁴

A violation of the financial reporting requirements is punishable by a fine not to exceed \$500.⁸⁵ In addition,

To prevent possible conflicts of interest, Council Members are required to file financial disclosure reports under the City Code and state law.

if the Ethics Review Commission determines that a violation of the financial disclosure reporting provisions has occurred, it may refer the matter to the City Attorney with a recommendation that the City Attorney prosecute the offense.⁸⁶

Annual Disclosure Under State Law

State law also requires that you file a report of financial information once each year. The report must be on a form prescribed by the Texas Ethics Commission.⁸⁷ The report must be filed with the City Clerk no later than April 30. For Council Members who are also candidates, the deadline is earlier: the 20th day after the filing deadline for a place on the ballot.⁸⁸ The financial reporting requirements in the state law overlap the type of financial information that the City Code requires. However, the state law has some lower reporting thresholds for dollar amounts and a stricter penalty for failure to disclose.⁸⁹

Special Disclosure Relating to City Vendors

If you or a family member receives gifts from someone who does business with the City, you may also be required to file a “conflicts disclosure statement.” Specifically, state law⁹⁰ requires that a Council Member file a “conflicts disclosure statement” if in the preceding year, the Council Member or a family member receives one or more gifts with an aggregate value of more than \$250 from an individual or entity who does business with the City or who is being considered by the City for a business relationship.

“Family members” include:

- ❶ the Council Member’s spouse;
- ❷ the Council Member’s parents and children;
- ❸ the parents and children of the Council Member’s spouse; and
- ❹ the spouses of the Council Member’s parents and children.

Conflicts statements must also be filed if the Council Member or any of the family members listed above have received taxable income as a result of a business or employment relationship with an individual or entity who does business with the City or who is being considered by the City for a business relationship. A report must be filed by the seventh day after the Council

If you or a family member receives gifts from someone who does business with the City, you may also be required to file a “conflicts disclosure statement.”

Member becomes aware of the facts that require the filing. These reports will be posted on the City's Internet Web site by the City Clerk's Office.

Bidders and proposers on City solicitations and persons or entities who have entered discussions or contract negotiations with the City will also be required to complete conflict of interest questionnaires describing their relationships, if any, with Council Members, City board members, and the City Manager.⁹¹ These reports will be posted on the City's Internet Web site by the City Clerk's Office.

Part Three *Use of City Property*

MISUSE OF GOVERNMENT RESOURCES

Misuse of government resources is a crime. The state Penal Code prohibits the misuse of "government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment."⁹² "Misuse" means to deal with the property in a way contrary to the purpose for which the public servant has the property.⁹³

The misuse of a government resource is a serious matter and can range from a class C misdemeanor (up to \$500 fine) to first degree felony (5 to 99 years and a fine up to \$10,000), depending on the value of the misuse.⁹⁴

A use of City time and equipment that did not serve a City purpose would be a misapplication of things of value belonging to the City.⁹⁵ City resources include City Hall, your office space, and such things as the telephones, computers, furniture, supplies, and other office equipment that is paid for at City expense. The funds appropriated for your office, including petty cash, are City property. City personnel assigned to assist you are considered a City resource. A City employee's time on the job, including a Council aide's time, is a City resource.⁹⁶

A Council Member's use of City resources and employees to keep track of the Council Member's schedule is not necessarily a misuse of resources, even if it includes personal and political appointments.

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You may not contribute or use City resources (including your aides' and secretaries' time), equipment, or money for election campaigning, either for yourself, another officeholder or candidate, or for a ballot measure.

However, a City employee may not be used as a political or personal scheduler to make personal appointments or organize political events.⁹⁷ For example, the use of City equipment or City employees' work time to handle campaign contributions or expenditures is a misapplication of City property.⁹⁸

Your aides and secretarial staff are subject to the same rules as other City employees. Not every personal use of government property is a misuse. Some property, such as a break room, is expressly provided to make the workplace more comfortable and increase employee efficiency. In the same manner, a reasonably limited use of a desk phone for local calls to take care of necessary personal matters during the day increases employee efficiency. Such calls are not a misuse if only incidental amounts of employee time—time periods comparable to reasonable coffee breaks—are used to attend to an employee's personal matters.⁹⁹

Political Activities

It is advisable to draw and to keep a strict line between your activities as a City official and as a candidate.

The main, common-sense restriction is that you may not contribute or use City resources (including your aides' and secretaries' time), equipment, or money for election campaigning, either for yourself, another officeholder or candidate, or for a ballot measure.

Political Advertising

It is especially important to remember that state law prohibits public officers or employees from spending or authorizing the spending of City funds for political advertising.¹⁰⁰ You are also prohibited from using or authorizing the use of the City's internal mail system for the distribution of political advertising.¹⁰¹ An internal mail system is one operated to deliver written documents within the City, and includes the e-mail system.¹⁰² "Political Advertising" includes communication supporting or opposing a ballot measure, a candidate or a public officer (even if the officer is not currently a candidate).¹⁰³

Elected officials are expected, of course, to have political views. Naturally, you may speak out on the issues of the day. However, you may not use any of the following to support or advocate, or oppose a candidate or a ballot measure:

- City e-mail system;
- City equipment or resources—copiers, supplies, staff, Channel 6;
- City funds;
- City postage or stationary; or
- City bulletin boards.

Part Four Campaign Finance

Campaign Finance is a complex subject, and is beyond the scope of this handbook. However, Council Members should be aware that Austin has a campaign finance ordinance and a charter provision on campaign finance.

The Fair Campaign Ordinance provides for an opportunity for public funding for candidates who choose to sign a campaign contract and abide by its terms.¹⁰⁴ The City Charter also contains provisions on contribution limits, and the disposition of political funds after an election.¹⁰⁵

Both the ordinance and the charter provision impose certain restrictions on raising and spending political funds. Most of these restrictions are not contingent on signing a campaign contract. The ordinance also imposes some reporting requirements that are additional to those found in state law.

The obligation to comply with campaign finance law is a personal obligation of a Council Member. The City must remain neutral in matters related to Council election campaigns. Thus, a Council Member should seek advice on campaign finance from private legal counsel.

Additional Reporting Requirements Under the Campaign Finance Ordinance

In addition to the semiannual contribution and expenditure reports required by state law, Council Members must file the following information under the Austin Fair Campaign Ordinance:

- an individual account reconciliation;¹⁰⁶
- a general reconciliation for all accounts;¹⁰⁷
- an annual reconciliation of campaign debt;¹⁰⁸ and
- identification of persons soliciting contributions on your behalf (“bundling”).¹⁰⁹

State law prohibits public officers or employees from spending or authorizing the spending of City funds for political advertising.

The City must remain neutral in matters related to Council election campaigns.

Forms for these reporting requirements are available from the City Clerk.

When a contribution of \$250 or more is received in a reporting period, the Austin Fair Campaign Ordinance also requires one to report the contributor's occupation and the name of the contributor's employer.¹¹⁰ There is a place for this on the state-prescribed reporting form.

If a Council Member were seeking new employment or had been offered employment the Council Member would need to recuse on a matter affecting the potential employer.

Part Five Revolving Door Issues

Before Leaving the Council

If a Council Member resigns, decides not to seek re-election, or is unsuccessful in a re-election bid, the Council Member should be aware of what restrictions to observe during the remainder of the Council Member's tenure and after the member leaves the Council.

When a member is leaving the Council the Council Member should be aware that the City Code provides that:

If a City official or employee accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official or employee might reasonably be expected to act, investigate, advise, or make a recommendation, the official or employee shall disclose that fact to the board or commission on which he serves or to his supervisor and shall take no further action on matters regarding the potential future employer.¹¹¹

If a Council Member were seeking new employment or had been offered employment the Council Member would need to recuse on a matter affecting the potential employer. In this situation the Council Member would presumably not yet have a "substantial interest" in a potential employer, and so would not have to file the affidavit required by Chapter 171 of the Local Government Code in connection with the recusal. However, if a matter were to come before the Council that would affect a potential employer the Council Member should announce the recusal from the dais, and the reason for it.

After Leaving the Council

Former Council Members are subject to any ordinance or regulation of general applicability. For example, the lobby ordinance would apply to any covered activities in the event a former Council Member were to engage in lobbying after leaving the Council.

The following restrictions apply more specifically to the future activities of a former Council Member.

❶ **A former Council Member may not contract with the City for two years.**

For a period of two years after leaving office, a former Council Member may not solicit or propose on a contract with the City or enter into a contract with the City for the sale to the City of any goods or services other than real estate. This provision does not apply to a former Mayor or Council Member who had a business relationship with the city in the six months immediately preceding taking office if the solicitation or proposal is on behalf of the same business.¹¹²

In addition, under the City's standard purchase terms and conditions, a person may not have a financial interest, direct or indirect, in a contract resulting from a solicitation if the person was involved in development, evaluation, or decision-making process of the solicitation. This could affect, for example, the ability of a company with which a former Council Member becomes associated to propose on a City solicitation if the former Council Member were involved with the development of the solicitation during the former member's tenure on the Council.

❷ **A former Council Member may not sell or lease real estate to the City for two years.**

For a period of two years after leaving office, a former Council Member, members of the former Council Member's family, or anyone acting on their behalf, may not sell or lease any real estate to the City unless the Council has designated the property for acquisition and would otherwise have to acquire the property through its power of eminent domain.¹¹³

❸ **Former City officers and employees may not use confidential information for personal gain.**

If a former City official or employee had access to confidential information about City property,

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with the City for
two years.

operations, policies, or other affairs, and if the information has not been made public, the former official or employee may not use the information to advance a personal financial interest. This prohibition applies to all former City officers and employees, and never expires.¹¹⁴

- 4 Former officers and employees are partially restricted in representing another person for compensation. This prohibition lasts for one year.

Generally speaking, the City Code does not prohibit the employment of a former City officer or employee with any potential employer after the officer or employee leaves City employment. However, for a period of 12 months after leaving City service, a former officer or employee may not **represent another person for compensation** in communications or meetings with City officers, boards, or employees concerning any specific case, project, or matter over which the officer or employee exercised discretionary authority. City Code, §2-7-67(B). Note that this prohibition applies to a **specific** case, project or regulatory matter, for example, a specific zoning case or site plan, over which the former officer or employee exercised discretion. It does not include generic policies, procedures or legislation of general application.¹¹⁵

Whether a former officer or employee had discretionary authority over a matter is a question of fact that must be considered on a case-by-case basis. In light of the Council's authority, a former Council Member should be regarded, at least, as having discretionary authority over any specific case, project or regulatory matter that appeared on a Council agenda during the Council Member's term.

- 5 Former officers, former employees, and the current employers of former officers or employees may be required to make certain disclosures in appearances before the City for two years.

For 24 months after an officer or employee leaves the City, a former officer or employee must disclose the former officer's or employee's previous position and responsibilities with the City in any appearance before the City in which the former officer or employee represents another person.¹¹⁶ In addition,

Former City officers and employees may not use confidential information for personal gain. This prohibition applies to all former City officers and employees, and never expires.

for 24 months after an officer or employee leaves City service, anyone representing the former officer's or employee's current employer with respect to a specific matter over which the City officer or employee had exercised discretionary authority must disclose that they employ the former officer or employee and must disclose the former officer's or employee's involvement in the matter.¹¹⁷

Endnotes

- 1 City Code, § 2-7-62(G).
- 2 Penal Code, § 36.02; and 18 U.S.C. §666.
- 3 Penal Code, § 36.02.
- 4 See also, City Code, § 2-7-62(G).
- 5 Penal Code, § 36.07. Expenses accepted under this provision may be reportable. See Disclosure of Gifts.
- 6 Election Code, § 251.001(2)-(5)
- 7 Election Code, §§ 253.035, 254.203, 254.204, Charter Article III, § 8(F), City Code, ch. 2-2
- 8 Penal Code, § 36.10(a) (1), (2).
- 9 Penal Code, §§ 36.08, 36.09
- 10 Penal Code, § 36.08.
- 11 Penal Code, § 36.01(3).
- 12 Penal Code, § 1.07(a)(41).
- 13 Penal Code, § 36.08.
- 14 City Code, § 4-8-8(A).
- 15 See City Code, § 4-8-2 (definition of Lobby or Lobbying): **LOBBY** or **LOBBYING** means the solicitation of City officials, by private interview, postal or telephonic communications or any other means other than public expression at meetings of City officials open to the public under the Open Meetings Act, directly or indirectly by any person in an effort to influence or persuade the same to favor or oppose, recommend or not recommend, vote for or against, or to take action or refrain from taking action on any municipal question. The term lobby or lobbying shall not include mere requests for information or inquiries about any municipal question, matters, and/or procedures or communications to City officials which are incidental to other employment not for purpose of lobbying.
- 16 Penal Code, § 36.10.
- 17 Penal Code, § 36.08.
- 18 Penal Code, § 36.01(3).
- 19 *Id.*
- 20 City Code, §2-7-72(G) (4). This requirement excludes campaign contributions and gifts from close family members.
- 21 Local Government Code, Chapter 145 and Government Code, § 572.023(b) (7).
- 22 Local Government Code, §176.001 et seq. "Family members" include:
 - (1) the Council Member's spouse,
 - (2) the Council Member's parents and children,
 - (3) the parents and children of the Council Member's spouse, and
 - (4) the spouses of the Council Member's parents and children.Conflicts statements must also be filed if the Council Member or any of the listed family members have received taxable income as a result of a business or employment relationship with a City contractor or a person with whom the City is considering a business relationship.
- 23 City Code, §2-7-72(H).
- 24 City Code, §2-7-62(L).
- 25 *Webster's Ninth New Collegiate Dictionary*, p. 866 (1991).
- 26 *Id.*
- 27 *Black's Law Dictionary 6th Ed.*, p.1131 (1990).
- 28 Local Government Code, § 171.004(a); City Code, § 2-7-63.
- 29 Local Government Code, § 171.004(a).
- 30 *Id.*
- 31 "Person" includes associations, businesses, and "bodies corporate and politic." City Code, § 1-1-2.

- 32 “Entity” includes any entity recognized by law through which business may be conducted.
City Code § 2-7-2.
- 33 *Id.*
- 34 *Id.*
- 35 City Code, § 2-7-61.
- 36 *Id.*
- 37 City Code, § 2-7-65(A).
- 38 City Code, § 2-7-65(B).
- 39 See City Code, §§ 2-7-2, 2-7-65.
- 40 “Business entity” means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law. Local Government Code, § 171.001(2).
- 41 Local Government Code, § 171.002(a).
- 42 Local Government Code, § 171.002(b).
- 43 Local Government Code, § 171.002(c).
- 44 City Code, § 2-7-65(C).
- 45 Government Code, §§ 573.023, 573.024.
- 46 *Id.*
- 47 Government Code, § 573.024(b).
- 48 City Code, § 2-7-62(A).
- 49 City Code, § 2-7-62(H)(2).
- 50 City Code, § 2-7-63.
- 51 City Code, § 2-7-64(B).
- 52 *Id.* Local Government Code, § 171.004.
- 53 Generally, City Code, §§ 2-7-71 through 2-7-77.
- 54 City Code, § 2-7-41 through § 2-7-48
- 55 *Id.*
- 56 See, for example, 24 Code of Federal Regulations §570.611, Conflict of Interest (Community Development Block Grants); and 24 Code of Federal Regulations §574.625; Conflict of Interest (Housing Opportunities for Persons with Aids).
- 57 *Id.*
- 58 In this, the scope of Section 666 is similar to the state laws against bribery and misuse of government property, though the scope of the statute differs in detail.
- 59 Department of Justice Criminal Resource Manual 1001.
- 60 It is a well-established rule, predating the Open Meetings Act, that a governmental body must act as a body. *Webster, et al. v. Texas & Pacific Motor Transport Co., et al.*, 166 S.W.2d 75 (Tex. 1942).
- 61 Charter, Art. XI, §2.
- 62 Charter, Art. VII, §15.
- 63 Texas Government Code § 791.011.
- 64 Charter Art. II, §6.
- 65 City Charter, Article XII, § 1. OFFICERS — NOT TO BE INTERESTED IN FRANCHISES — FORFEITURE OF OFFICE
- 66 City Code, § 2-7-101 et seq.
- 67 18 U.S.C. § 666.
- 68 That is, “in any one year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance. . . . The term ‘in any one-year period’ means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.”
- 69 18 U.S.C. § 874.
- 70 Tex. Att’y Gen. Op. No. JC-0294 (2000) at 9.
- 71 Local Government Code, § 374.908(a).
- 72 Local Government Code, § 374.908(a).
- 73 Government Code, § 573.041.
- 74 City Manager, City Charter, Article V, § 1; City Clerk, City Charter, Article II, § 9; Municipal Court, generally, City Charter, Article VI; City Auditor, City Code Art. VII, § 17.
- 75 Local Government Code, § 143.013(a).
- 76 City Personnel Policies, Chapter A, II.A. 4.
- 77 *Id.*; but see Government Code, § 573.062 which provides that a nepotism prohibition prescribed by a municipal ordinance does not apply to a vote for an appointment or confirmation of an appointment of an individual if the prior employment of the individual is continuous for at least 30 days.
- 78 An individual’s relatives within the third degree by consanguinity are the individual’s:
(1) parent or child (relatives in the first degree);

- (2) brother, sister, grandparent, or grandchild (relatives in the second degree); and
- (3) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

Government Code, § 573.023(c).

79 Government Code, § 573.024.

80 City of Austin personnel Procedure, Nepotism, October 10, 1990. Adm. Bulletin 7-10 (2008).

81 City Code, §2-7-71, et seq.

82 City Code, §2-7-74.

83 City Code, § 2-7-72.

84 City Code, § 2-7-74.

85 City Code, § 2-7-999.

86 City Code, § 2-7-47.

87 Local Government Code, Chapter 145.

88 Local Government Code, §145.004.

89 An offense under Chapter 145 is a Class B misdemeanor (up to a \$2,000 fine, 180 days in jail, or both). Local Government Code §145.009; Penal Code §12.22.

90 Local Government Code §176.001 et seq. (Added by House Bill 914, 79th Legislature, Regular Session, 2005.)

91 *Id.*

92 Penal Code, §39.02(a)(2).

93 Penal Code, §39.01(2).

94 Penal Code, §39.02(c).

95 See generally Tex. Const. art. III, §52 (city funds may not be used for private purposes); Texas Ethics Commission Advisory Opinion No. 164 (1993) (holding that state employee would not be serving agency purpose by searching for other employment).

96 Texas Ethics Commission Advisory Opinion No. 431(2000) (holding that it is misuse of state resources for legislator to use legislative staff members to gather information for use at campaign fundraiser).

97 Texas Ethics Commission Advisory Opinion No. 172 (1993).

98 *Id.*

99 Texas Ethics Commission Advisory Opinion No. 372 (1997).

100 Election Code, §255.003.

101 Election Code, §255.0031.

102 Election Code, §255.0031(d).

103 Election Code, §251.001(16).

104 The Fair Campaign Ordinance is Chapter 2-2 of the City Code.

105 The Charter Provision is Section 8 of Article III of the City Charter.

106 City Code, § 2-2-17.

107 *Id.*

108 City Code, § 2-2-24.

109 City Code, § 2-2-14.

110 City Code, §2-2-13(A).

111 City Code, §2-7-62(H)(2).

112 City Code, §2-7-62(M).

113 City Code, §2-7-62(N).

114 City Code, §2-7-66.

115 City Code, §2-7-67(A).

116 City Code, §2-7-67(C).

117 City Code, §2-7-67(D).



City of Austin Integrity Office
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