

\*\*\*\*PUBLIC NOTICE\*\*\*\*



**ETHICS COMMITTEE REGULAR MEETING**

**Monday, July 25, 2022 at 6:00 PM**

**City Hall | 3300 Corinth Parkway**

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**A. CALL TO ORDER**

**B. CITIZENS COMMENTS**

Please limit your comments to three minutes. Comments about any of the agenda items are appreciated by the Ethics Committee and may be taken into consideration at this time or during that agenda item. The Ethics Committee is prohibited from acting on or discussing items brought before them at this time.

**C. BUSINESS AGENDA**

1. Consider and act on minutes from the April 26, 2022, Ethics Committee Meeting.
2. Conduct voting among Ethics Committee Board Members to determine board officers for the current term.
3. Discuss possible revisions to the current ethics code.

**D. REPORTS AND UPDATES**

The purpose of this section is to allow each Board member the opportunity to provide general updates and/or comments to fellow Board members, the public, and/or staff on any issues or future events.

**E. ADJOURN**

Posted on this 19th day of July 2022, at 5:00 PM, on the bulletin board at Corinth City Hall.

A handwritten signature in blue ink that reads "Katherine Lindsey".

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Katherine Lindsey  
Assistant to the City Manager/Deputy  
City Secretary  
City of Corinth, Texas



**CITY OF CORINTH**  
**Staff Report**

<b>Meeting Date:</b>	7/25/2022 <b>Title:</b> Approval of Minutes   4.26.2022
<b>Ends:</b>	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development
<b>Governance Focus:</b>	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder
	<i>Decision:</i> <input checked="" type="checkbox"/> Governance Policy <input type="checkbox"/> Ministerial Function

**Item/Caption**

Consider and act on minutes from the April 26, 2022, Ethics Committee Meeting.

**Item Summary/Background/Prior Action**

Attached are the minutes, in draft form, and are not considered official until formally approved by the Ethics Committee.

**Staff Recommendation/Motion**

Staff recommends approval of the minutes.



**ETHICS COMMITTEE REGULAR SESSION - MINUTES**  
**Monday, April 25, 2022 at 6:00 PM**  
**City Hall | 3300 Corinth Parkway**

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**STATE OF TEXAS**  
**COUNTY OF DENTON**  
**CITY OF CORINTH**

On this 25<sup>th</sup> day of April 2022, the Ethics Committee of the City of Corinth, Texas, met at 6:00 P.M. at Corinth City Hall, located at 3300 Corinth Parkway, Corinth, Texas. The meeting date, time, place, and purpose as required by Title 5, Subtitle A, Chapter 551, Subchapter C, Section 551.041, Government Code, with the following members, to wit:

**MEMBERS PRESENT**

Ashley Ingle  
Joan Mazza  
John Wiorkowski

**MEMBERS ABSENT**

Conner Matney  
Tom Winterburn

**OTHERS PRESENT**

Katherine Lindsey, Assistant to the City Manager/Deputy City Secretary

**CALL TO ORDER**

Joan Mazza called the meeting to order at 6:12 PM.

**CITIZENS COMMENTS**

Please limit your comments to three minutes. Comments about any of the Council agenda items are appreciated by the Council and may be taken into consideration at this time or during that agenda item. Council is prohibited from acting on or discussing items brought before them at this time.

There were no citizens comments.

**BUSINESS AGENDA**

1. Consider and act on minutes from the January 24, 2022, Ethics Committee Meeting.

John Wiorkowski motioned to approve the Minutes from the January 24, 2022, Ethics Committee Meeting,  
Seconded by Ashley Ingle.

Voting Yea: Ingle, Mazza, Wiorkowski

2. Conduct an election among Ethics Committee Board Members to determine board officers for the current term.

It was unanimously decided to Table the election due to only three members being present.

3. Discuss possible revisions to the current Ethics Code.

Board members discussed revisions they would like to include in the new Ethics Ordinance. More research will be done by Staff and Board Members regarding allowing individuals to serve on more than one board simultaneously and conflicts of interests.

**BOARD COMMENTS & FUTURE AGENDA ITEMS**

The purpose of this section is to allow each Board member the opportunity to provide general updates and/or comments to fellow Board members, the public, and/or staff on any issues or future events. Also, in accordance with Section 30.085 of the Code of Ordinances, at this time, any Board member may direct that an item be added as a business item to any future agenda.

The next Ethics Committee meeting will be held on July 25th at 6:00 PM.

**ADJOURN**

Joan Mazza motioned to adjourn the meeting, Seconded by John Wiorkowski.

Voting Yea: Ingle, Mazza, Wiorkowski

Joan Mazza adjourned the meeting at 7:38 PM.

Approved by the Ethics Committee on the \_\_\_ day of \_\_\_\_\_ 2022.

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Katherine Lindsey  
Assistant to the City Manager/Deputy City Secretary



# CITY OF CORINTH Staff Report

<b>Meeting Date:</b>	7/25/2022	<b>Title:</b>	Vote on New Officers
<b>Ends:</b>	<input type="checkbox"/> Resident Engagement <input type="checkbox"/> Proactive Government <input checked="" type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development		
<b>Governance Focus:</b>	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder		
	<i>Decision:</i> <input checked="" type="checkbox"/> Governance Policy <input type="checkbox"/> Ministerial Function		

**Item/Caption**

Conduct voting among Ethics Committee Board Members to determine board officers for the current term.

**Item Summary/Background/Prior Action**

Because the Ethics Committee has started a new term and was inactive for an extended period of time, the officer positions are currently vacant. Board members will need to determine which officer positions the Ethics Committee should have, nominate those they would like to see in those positions, and then conduct a formal vote to fill those positions.

**Staff Recommendation/Motion**

Staff recommends that the board elects a Chair, a Vice Chair, and any other officers the board deems necessary.



# CITY OF CORINTH Staff Report

<b>Meeting Date:</b>	7/25/2022	<b>Title:</b>	Discuss Ordinance Revisions
<b>Ends:</b>	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input checked="" type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development		
<b>Governance Focus:</b>	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder		
	<i>Decision:</i> <input checked="" type="checkbox"/> Governance Policy <input type="checkbox"/> Ministerial Function		

**Item/Caption**

Discuss possible revisions to the current ethics code.

**Item Summary/Background/Prior Action**

Ordinance No. 18-08-02-22 pertains to Chapter 39 of the Code of Ordinances and serves as the current Code of Ethics. The document outlines ethical standards and related procedures that the City Council and Council Advisory Boards must follow. Staff and members of the Ethics Committee have previously discussed the need to revise the Code of Ethics Ordinance. This meeting will serve as an opportunity to examine possible changes in more detail. A copy of an updated ordinance draft is included in the Agenda Packet.

**Staff Recommendation/Motion**

Staff recommends that changes to the Ethics Ordinance be made according to best practices as determined by current research and professional standards. Revisions need to ensure internal integrity within the organization, and foster public trust of the City of Corinth. Staff also recommends that the Ethics Committee consider the written comments made in the accompanying document.

**ORDINANCE NO. ~~18-08-02-2222-XX-XX-XX~~**

Commented [KL1]: New number

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORINTH, TEXAS REPEALING CHAPTER 39, "CODE OF ETHICS" OF TITLE III, "ADMINISTRATION" OF THE CODE OF ORDINANCES OF THE CITY OF CORINTH AND ADOPTING A NEW CHAPTER 39, "CODE OF ETHICS" OF TITLE III, "ADMINISTRATION" OF THE CODE OF ORDINANCES OF THE CITY OF CORINTH; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING FOR AN AMENDMENT TO ADOPT THE CODE OF ETHICS WITH PROVISIONS APPLICABLE TO CURRENT AND FORMER CITY OFFICIALS, VENDORS AND COMPLAINANTS; PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Corinth, Texas is a home rule city acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, on ~~April 7~~**August 2, 2018**~~2005~~, the City Council adopted Ordinance No. ~~05-04-10~~**18-08-02-22** which was codified as Chapter 39, "Code of Ethics" of Title III, "Administration" of the Code of Ordinances of the City of Corinth; and

**WHEREAS**, since the adoption of Chapter 39, the City Council has determined it appropriate to review and update the existing Code of Ethics to determine if amendments are appropriate; and

**WHEREAS**, with the assistance of the City's Board of Ethics, ~~and University of Texas Graduate Capstone Students~~, the existing Code of Ethics was reviewed; and

**WHEREAS**, the Board of Ethics conducted **four public work sessions** to discuss the provisions of the Code of Ethics, Best Practices in the field of municipal ethics were reviewed and incorporated, and upon that basis, a draft Code of Ethics was submitted for consideration by the City Council; and

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**WHEREAS**, having review and discussed the proposed draft, the City Council has determined that the proposed amendments to the existing Code of Ethics, Chapter 39 of Title III of the Code of Ordinances, are reasonable and provide a basis for continuing public confidence in the conduct of the business and affairs of the City; and

**WHEREAS**, This chapter is cumulative of and supplemental to all applicable provisions of the city charter, other city ordinances, and state and federal laws and regulations. Compliance with this chapter does not excuse or relieve any person from any obligation imposed by the city charter, other city ordinances, or state or federal laws or regulations; and

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**WHEREAS**, the City Council finds and determines that existing Chapter 39 Code of Ethics should be repealed in its entirety and the newly proposed Chapter 39, "Code of Ethics" as set forth herein should be adopted.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORINTH TEXAS:**

**SECTION 1.  
INCORPORATION OF PREMISES**

The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

**SECTION 2.  
AMENDMENTS**

**2.01** Chapter 39, "Code of Ethics" of Title III, "Administration" of the Code of Ordinances of the City of Corinth is hereby repealed in its entirety and a new Chapter 39, "Code of Ethics" of Title III, "Administration" of the Code of Ordinances of the City of Corinth is hereby adopted and shall read in its entirety as follows:

**"DIVISION 1. GENERAL**

**Sec. 39.01. Purpose**

The purpose of this Article is to foster an environment of integrity for those that serve the City of Corinth and our citizenry. The City Council enacted this Chapter in order to increase public confidence in our municipal government. It is the policy of the City that all City Officials and employees shall conduct themselves in a manner that assures the public that we are faithful stewards of the public trust. City Officials have a responsibility to the citizens to administer and enforce the City Charter and City Ordinances in an ethical manner. To ensure and enhance public confidence in our municipal government, each City Official must strive not only to maintain technical compliance with the principles of conduct set forth in this Chapter, but to aspire daily to carry out their duties objectively, fairly, and lawfully.

It is not the purpose of this Chapter to provide a mechanism to defame, harass or abuse their political opponents, or publicize personal grudges.

**Sec. 39.02. Applicability**



This Chapter applies to the following persons unless otherwise specified in this

Chapter:

- a) City Officials;
- b) Former City Officials whose separation from city service occurred less than one (1) year ago;
- c) Vendors; and
- d) Complainant(s).

**Sec. 39.03. Definitions**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accepted Complaint:* a sworn allegation of a violation of this Chapter after the required documentation has been submitted to the City Secretary to be passed to the Committee Chair, and determined to be administratively complete.

*Accused:* a City Official who has been charged in a Complaint with having violated this Chapter.

*Actionable Complaint:* an Accepted Complaint that has been deemed by a quorum of the Commission to contain allegations and evidence that, if accepted as true, would support a finding that a violation of this Chapter occurred.

*Advisory Opinions:* written rulings regarding the application of this Chapter to a particular situation of behavior.

*Baseless Complaint:* a Complaint that does not allege conduct that would constitute a violation of this Chapter, or that does not provide evidence that, if true, would support a violation of this Chapter.

*Board of Ethics:* the oversight entity established by the Council to administer this Chapter.

*Board Member:* for the purposes of this Chapter, a person that is currently appointed to the Economic Development Corporation, Finance Audit Committee, Board of Construction Appeals, Zoning Board of Adjustments, Planning and Zoning Commission, Ethics Commission, ~~and~~ Keep Corinth Beautiful Members, and any other council advisory boards created in the future.

*Business Entity:* a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

*Candidate:* a person who has filed an application for a place on a ballot seeking public office, or one who has publicly announced the intention to do so.

*Chapter:* the Code of Ethics for the City of Corinth codified as Chapter 39, "Code of Ethics" of Title III, "Administration" of the Code of Ordinances of the City.

*City:* the City of Corinth in the County of Denton and State of Texas.

*City Official:* for the purposes of this Chapter, the term consists of the City Council, Economic Development Corporation, Finance Audit Committee, Board of Construction Appeals, Zoning Board of Adjustments, Planning and Zoning Commission, Ethics Commission, Keep Corinth Beautiful Members, and any other council advisory boards created in the future  
~~-and Keep Corinth Beautiful Members.~~

*Code:* the Code of Ordinances of the City of Corinth, Texas, as such Code may be amended from time to time.

*Committee:* an ad hoc Board of Ethics subcommittee consisting of three (3) out of the five (5) members assigned by the City Secretary on a rotating basis.

*Committee Chair:* the person appointed to serve in the capacity provided for by Section 39.14 "Preliminary Assessment" of this Chapter.

*Complainant:* the individual who submitted a Complaint to the City.

*Complaint:* written documentation submitted to the City accusing a City Official of violating this Chapter.

*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.

*Conflicting Interest:* any stake, share, or involvement in a situation or undertaking which may prevent individuals from making impartial decisions, derive personal benefits from actions made in their official capacity, or compromise the integrity of the City of Corinth to the benefit of themselves or another party. Conflicting Interest is further defined in Section 39.07a. a stake, share, or involvement in an undertaking in the form of any one (1) or more of the following:

- ~~1) — Ownership of five percent (5%) or more voting shares or stock in a business entity;~~
- ~~2) — Receipt of more than six hundred dollars (\$600.00) in gross annual income from a business entity;~~

**Commented [KL2]:** Where should we include procedures for disclosing conflicts of interest? There are forms mandated by state (should those be included), but should other procedures be included somewhere? Should Conflicting Interest include nepotism/cronyism here or in another section? Could have a "Recusal and Disclosure" section.

**Commented [KL3]:** As defined by the State. Should Corinth have additional stipulations? Preface with Conflicts of Interest as related to the vendors being used, decisions or situations the board is involved in, other organizations the board is involved with or competes with. Includes other Council Advisory Boards with competing interests (P&Z and Construction Appeals, Ethics and the other boards); relatives of board/council members.

See above comment about some boards filing disclosures at start of term.

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~~3) Ownership of more than six hundred dollars (\$600.00) of the fair market value of a business entity;~~

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~~4) Ownership of an interest in real property with a fair market value of more than six hundred dollars (\$600.00);~~

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~~5) Serves on the Board of Directors or as an Officer of a business entity; and/or~~

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~~6) Serves on the Board of Directors or as an Officer of a nonprofit corporation.~~

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~~The term Conflicting Interest shall not include ownership of an interest in a mutual or common investment fund that holds securities or assets unless the City Official participates in the management of the fund.~~

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*Council:* the governing body of the City of Corinth, Texas, including the Mayor and City Council.

*Deliberations:* discussions by a City Official at the dais, voting as a City Official, presentations as a member of the audience before City Council or any City Board or Commission, conversing to or corresponding with other City Officials.

*Frivolous Complaint:* a sworn Complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.

*Gift.* Anything of monetary value, such as personal property, real property, services, meals, entertainments, and travel expenses. This definition shall not apply to:

- 1) a lawful campaign contribution;
- 2) meals, lodging, transportation and related travel expenses paid for (or reimbursed by) the City in connection with the City Official's attendance at a conference, seminar or similar event;
- 3) 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;
- 4) complimentary copies of trade publications and other related materials;
- 5) attendance at hospitality functions at local, regional, state or national association meetings and/or conferences;
- 6) Any gift which would have been offered or given to the City Official because of a personal, familial professional relationship regardless of the City Official's capacity with the City;

**Commented [KL4]:** Stipulate Reasonable expenses (airfare - lowest refundable cost available, government rates for lodging - GSA rates); must follow same travel procedures as employees

- 7) tee shirts, caps and other similar promotional material;
- 8) complimentary attendance at political or charitable fund raising events.

*Pending Matter:* an application seeking approval of a permit or other form of authorization required by the City, State or Federal law; a proposal to enter into a contract or arrangement with the City for the provision of goods, services, real property or other things of value; a case involving the City that is (or is anticipated to be) before a civil, criminal or administrative tribunal.

*Person:* associations, corporations, firms, partnerships and bodies politic and corporate, as well as to individuals.

*Relative:* a family member related to a City Official within the second degree of affinity (marriage) or consanguinity (blood or adoption).

*Shall:* a mandatory obligation, not a permissive choice.

*Special Counsel:* an independent, outside attorney engaged by the City to advise the City as an organization and/or the Board of Ethics.

*Vendor:* a person who provides or seeks to provide goods, services, real property to the City in exchange for compensation.

**Sec. 39.04. Expectations**

- a) City Officials are expected to conduct themselves in a manner that fosters public trust.
- b) City Officials are charged with performing their public duties in a way that projects their own personal integrity and upholds the integrity of the organization.
- c) City Officials shall act above reproach, and avoid appearance of behavior that calls their motives into question and erodes public confidence.
- ~~e) City Officials must avoid behavior that calls their motives into question and erodes public confidence.~~
- d) City Officials shall treat others with dignity and respect. City Officials shall not make comments or take actions that are abusive; belligerent; crude; derogatory; disparaging; impertinent; personal attacks upon the character, integrity, or motives of others; profane; rude; slanderous; or threatening.

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e) City Officials shall place the municipality’s interests and the concerns of those the City serves above personal, individual interests.

f) Those who serve the City are expected to value honesty, trustworthiness, diligence, objectivity, fairness, due process, efficiency, and prudence as values the City professes.

g) City Officials must balance transparency with the duty to protect personal privacy and preserve the confidential information with which the City has been entrusted.

**Sec. 39.05. Cumulative & Non-Exclusive**

This Chapter is cumulative of and supplemental to all applicable provisions of the City Charter, Code, other City Ordinances, and State/Federal laws and regulations. Compliance with this Chapter does not excuse or relieve any person from any obligation imposed by any other provision of the Code, City Ordinance, or State/Federal laws and regulations. Attempts to enforce this Chapter shall not be construed as foreclosing or precluding other enforcement options provided by other law.

**DIVISION 2. RULES OF CONDUCT**

**Sec. 39.06. Mandates**

- a) **Duty to Report.** City Officials shall immediately report any conduct that the person knows to be a violation of this Chapter. Failure to report a violation of this Chapter is a violation of this Chapter. For purposes of this section, a report made to a fraud, waste or abuse 3<sup>rd</sup> party hotline, if any, shall be considered to be a report under this Section.
- b) **Direction and Supervision of Employees, Non-Interference by the City Council: Appointment and Removal of Department Heads.**
  - 1) Except for the purposes of inquiries and investigations as provided by the City Charter or otherwise by law, the City Council or its members shall deal with Board Members and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, either publicly or privately.
  - 2) Neither the City Council nor any of its members shall direct or request the appointment of any person to, or removal from, office by the City Manager or by any other City employee.

**Commented [KL5]:** Chain of procedures for when a board member is deemed incompetent or of unbecoming behavior -- if chair and staff liaison are unable to appropriately address issues themselves

3) The City Manager shall be responsible for and have the authority to appoint, suspend, and/or remove any of the directors of the departments of the City of Corinth.

c) **Financial Disclosures.** All Candidates for City Council, including Candidates for Mayor, shall file financial information reports as required by, and in accordance with, State law. All prospective Vendors and City Officials shall file disclosure forms as required by, and in accordance with, State law.

**Sec. 39.07. Prohibitions**

**a) Conflicts of Interest.**

- 1) An official shall take no action that could benefit the official personally at the unwarranted expense of the City, avoiding even the appearance of a conflict of interest. City officials are expected to exercise prudence and sound judgement at all times.
- 2) Officials shall carefully consider the public perception of personal and professional actions and the effect such actions could have, positively or negatively, on the City's reputation both in the community and elsewhere.
- 3) Officials shall abide by all state laws and definitions pertaining to conflicts of interest, as well as any other city rule, city code, or city charter provision pertaining to ethical conduct and conflicts of interest.
- 4) If a potential conflict of interest arises, the official must submit appropriate documentation to the City Secretary no later than 10 (ten) business days after becoming aware of the potential conflict of interest. Officials shall use sound judgement, and act accordingly, in deciding whether they should be present during discussions involving potential conflicts of interest in the interim period between becoming aware of the potential conflicts of interest and submitting the documentation to the City Secretary.
- 5) If an actual or perceived conflict of interest is determined, officials shall recuse themselves from all discussions and decisions regarding the conflict of interest.
- 6) An actual or perceived conflict of interest includes, but is not limited to, the following:
  - a) Officials being members of an external governing body whether it be by election, appointment, or employment. Officials shall avoid dual office holding as defined by state law.
  - b) Officials who have a substantial interest in a business entity (excluding nonprofit organizations from which officials do not receive compensation) that they are working with, or making decisions about, in their capacity as a city official as defined by state law.

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- c) Officials who have a substantial interest in real property as defined by state law.
- d) Officials involved in pat approval processes who have a substantial interest in a subdivided tract
- e) Officials serving on more than one city advisory board simultaneously, or taking part in certain discussions, if the boards in question have competing roles. Examples include:
  - i. A person is unable to serve on the Planning and Zoning Commission while also serving on the Board of Construction Appeals or Board of Adjustments.
  - ii. A person serving on the Ethics Commission is unable to take part in discussions, hearings, and deliberations regarding ethical complaints pertaining \_\_\_\_\_ to another board if also serving on the board facing the ethical complaint.

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a)b) \_\_\_\_\_

- 1) *Deliberation Prohibited.* It shall be a violation of this Chapter for a City Official to knowingly deliberate regarding a pending matter for which the City Official has a Conflicting Interest. City Officials with a Conflicting Interest in a pending matter must recuse themselves and abstain from Deliberations. It is an exception to this recusal requirement if a majority of the Board or Commission on which the City Official serves is composed of persons who are likewise required to file (and who do file) disclosures on the same pending matter.
- 2) *Disclosure Required.* If a City Official has a Conflicting Interest in a pending matter, the City Official shall disclose the nature of the conflicting interest by filing a sworn statement with the City Secretary.
- 3) *Relative.* A City Official is considered to have a Conflicting Interest if the City Official's Relative has a conflicting interest.

b)c) \_\_\_\_\_ **Gifts.**

- 1) *General.* It shall be a violation of this Chapter for a City Official to accept any Gift that might reasonably tend to influence such City Official in the discharge of official duties.
- 2) *Specific.* It shall be a violation of this Chapter for a City Official to accept any Gift for which the fair market value is one-hundred dollars (\$100.00) or greater. It shall be a violation of this Chapter for a City Official to accept multiple Gifts from a single source for which the cumulative fair market value exceeds one-hundred dollars (\$100.00) in a single fiscal year.

- 3) It shall be a violation of this Chapter for a Vendor to offer or give a Gift to a City Official exceeding one-hundred dollars (\$100.00) per Gift, or multiple Gifts cumulatively valued at more than one-hundred dollars (\$100.00) per a single fiscal year.

e)d) **Representation of Others.**

- 1) *Current City Officials.* It shall be a violation of this Chapter for a City Official to represent for compensation any person, group, or entity before the City.
- 2) *Former City Officials.* It shall be a violation of this Chapter for a City Official to represent for compensation any person, group, or entity before the City for a period of one (1) year after termination of official duties.
- 3) 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.

e)e) **Improper Influence.** It shall be a violation of this Chapter for a City Official to use such person's official title/position to:

- 1) Secure special privileges or benefits for such person or others;
- 2) 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;
- 3) Assert the prestige of the City Official's position for the purpose of advancing or harming private interests;
- 4) State or imply that the City Official is able to influence City action or any basis other than the merits; or
- 5) State or imply to state or local governmental agencies that the City Official is acting as a representative of the City, as an organization, or as a representative of the City Council without first having been authorized by the City Council to make such representation.

e)f) **Misuse of Information.**

- 1) *Personal Gain.* It shall be a violation of this Chapter for a former City Official to use any Confidential Information to which he had access by virtue of his official capacity and which has not been made public concerning the property, operations, policies, or affairs of the City, to advance any personal financial interest.



2) *Confidential Information.* It shall be a violation of this Chapter for a City Official to intentionally, knowingly, or recklessly disclose any Confidential Information gained by reason of said 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.

f)g) **Abuse of Resources.** It shall be a violation of this Chapter for a City Official to use, request, or permit the use of City facilities, personnel, equipment, software, supplies, or staff time for private purposes (including political purposes), except to the extent and according to the terms that those resources are generally available to the City Council for official City purposes.

g)h) **Abuse of Position.** It shall be a violation of this Chapter for any City Official to:

- 1) *Harassment & Discrimination.* Use the City Official's position to harass or discriminate against any person based upon ethnicity, race, gender, gender identity, sexual orientation, marital status, parental status, or religion.
- 2) *Interference.* Interfere with any criminal or administrative investigation alleging the violation of any provision of this Chapter, the City Charter, administrative policy or executive order in any manner, including but not limited to seeking to persuade or coerce City employees, or others to withhold their cooperation in such investigation is a violation of this Chapter.

h)i) **Subsequent Work on Prior Projects.** It shall be a violation of this Chapter for any former City Official, within one (1) year of the cessation of official duties for the City, to perform work on a compensated basis relating to a City contract or arrangement for the provision of goods, services, real property or other things of value, if while in City service the former City Official personally and substantially participated in the negotiation, award or administration of the contract or other arrangement.

i)j) **Travel.** It shall be a violation of this Chapter for any City Official to violate the Travel and Training Policy adopted by City Council, as amended.

### DIVISION 3. IMPLEMENTATION

#### Sec. 39.08. Staffing

The City Secretary's Office shall be responsible to provide staff support to the Board of Ethics to assist in the implementation and enforcement of this Chapter.

**Sec 39.09. Legal Counsel**

- a) **City Attorney.** The City Attorney shall provide legal support to the Board of Ethics.
- b) **Special Counsel.** Independent, outside legal services shall be engaged by the City Attorney on the City's behalf to provide legal support to the Board of Ethics when:
  - 1) In the City Attorney's discretion it is necessary in order to comply with the Texas Disciplinary Rules of Professional Conduct (for lawyers), or is in the best interest of the City; or
  - 2) When the City Council deems Special Counsel is necessary.

**Sec. 39.10. Training**

- a) **Curriculum.** The City Secretary shall approve a training program that provides an introduction and overview of the expectation, mandates and prohibitions provided for by this Chapter.
- b) **Orientation.** City Officials shall complete training session regarding this Chapter within ninety (90) days of commencing the official duties.
- c) **Annual.** City Officials shall complete an annual training session regarding this Chapter.
- d) **Exiting Officials.** Information shall be provided by the City Secretary to City Officials terminating City service regarding the continuing restrictions on the representation of others by certain former City Officials.

**Sec. 39.11. Board of Ethics**

- a) **Creation.** There is hereby created a Board of Ethics for the City of Corinth.
- b) **Appointment.** The Board of Ethics shall be appointed by majority vote of the City Council.
- c) **Number.** The Board of Ethics shall consist of five (5) members.

d) **Terms.** Board of Ethics members shall be appointed for two (2) year, staggered terms. Members may be reappointed for successive terms. Appointment to fill a vacancy shall be for the remainder of the unexpired term. Members of the inaugural Board of Ethics shall draw straws to determine which (3) members shall receive an initial term of one (1) year in order to stagger terms.

e) **Eligibility.** Membership on the Board of Ethics is limited to residents of the City of Corinth.

f) **Ineligibility.** The following shall disqualify a person from serving on the Board of Ethics:

1) Current service as a City Official on a board or commission other than the Board of Ethics;

2) Separation from city service as a City Official within one (1) year of the appointment;

3) Familial relations within the first (1<sup>st</sup>) degree of affinity (marriage), or the first (1<sup>st</sup>) degree of consanguinity (blood or adoption), with another City Official;

4) Current service as an elected official in Denton County;

5) Candidate for elected public office;

4) A person who, for compensation, represents the private interests of others before the City Council or City of Corinth; or

6) Conviction of a felony, or crime of moral turpitude.

g) **Scope of Authority.** The Board of Ethic's jurisdiction shall be limited to implementation and enforcement of this Chapter.

h) **Amendments.** The Board of Ethics may recommend amendments to this Chapter. A recommendation from the Board of Ethics is not required for the City Council to exercise its discretion in amending this Chapter.

**Commented [KL6]:** Is there already an ordinance in place forbidding employees from serving on a board?

**Commented [KL7]:** Keep this in place; representatives from other boards. Or alternate idea

**Commented [KL8]:** May also include domestic partner or family of City employees?

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**Commented [KL9]:** "a paid campaign worker or a political consultant of a current city council member"?

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Sec. 39.12. Advisory Opinions

- a) **Requests.** Any City Official may request an Advisory Opinion on a question of compliance with this Chapter. Requests shall be submitted in writing to the City Secretary, who shall assign the request to the Committee.
- b) **Issuance.** A Committee of the Board of Ethics shall issue Advisory Opinions upon request. Advisory Opinions shall be issued within thirty (30) days of receipt of the request.
- c) **Reliance.** It shall be an affirmative defense to a Complaint that the Accused reasonably relied in good faith upon an Advisory Opinion issued by a Committee. In making a determination on the proper disposition of a Complaint, the Board of Ethics may dismiss the Complaint if the Board finds that:
  - 1) The Accused requested an Advisory Opinion;
  - 2) The request for an Advisory Opinion fairly and accurately disclosed the relevant facts; and
  - 3) Less than five (5) years elapsed between the date the Advisory Opinion was issued and the date of the conduct in question.

**Commented [KL10]:** With an ethics commission of current size, committees are likely not needed, and board seemed to agree. Commission vs Committee. Just stick with Commission and not assign complaints to specific committees. Will also help avoid confusion if small committees are needed to complete certain projects (e.g., helping create or present training material).

**Sec. 39.13. Complaints**

- a) **Complainants.** Any person who has first-hand knowledge that there has been a violation of this Chapter may allege such violations by submitting a Complaint in writing or through a fraud, waste and abuse 3<sup>rd</sup> party hotline, if any. The persons who may submit Complaints includes (but is not limited to) the City Secretary and members of the Board of Ethics. A Complainant must be a resident in the City of Corinth, own Real Property in the City of Corinth or be an employee or City Official to be eligible to file a Complaint with the Board of Ethics.
- b) **Form.** Complaints shall be written on, or accompanied by, a complete form promulgated by the City Secretary or through a fraud waste abuse 3<sup>rd</sup> party hotline.
- c) **Contents.** A Complaint filed under this section must be in writing and under oath and must set forth in simple, concise, direct statements and must state:
  - 1) the name of the Complainant;
  - 2) the street or mailing address, email address, and the telephone number of the Complainant;

- 3) the name of each person Accused of violating the Chapter;
  - 4) the position or title of each person Accused of violating the Chapter;
  - 5) the nature of the alleged violation, including (whenever possible) the specific provision of this Chapter alleged to have been violated;
  - 6) a statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
  - 7) all documents or other material available to the Complainant that are relevant to the allegation.
- d) **Violation Alleged.** The Complaint must state on its face an allegation that, if true, constitutes a violation of this Chapter.
- e) **Affidavit.** A Complaint must be accompanied by an affidavit stating that the Complaint is true and correct or that the Complainant has good reason to believe and does believe that the facts alleged constitute a violation of this Chapter. The Complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.
- f) **Limitations Period.** To be accepted, a Complaint must be brought within six (6) months of the Complainant becoming aware of the act or omission that constitutes a violation of this Chapter. A Complaint will not be accepted more than two (2) years after the date of the act or omission.
- g) **Filing.** Complaints shall be submitted to the Board of Ethics. Submission of Complaints may be made by hand delivery, U.S. Mail, through a fraud, waste and abuse 3<sup>rd</sup> party hotline, or email directed to an email address publicly listed by the City Secretary.
- h) **Acceptance of Complaint.** Within five (5) business days of receiving a Complaint, the City Secretary shall determine if it is administratively complete, and timely.
- 1) *Administratively Complete.* A Complaint is administratively complete if contains the information described above. If the Complaint is administratively complete, the City Secretary shall proceed as described in this Chapter. If the Complaint is incomplete the City Secretary shall

send a written deficiency notice to the Complainant identifying the required information that was not submitted.

- 2) The Complainant shall have ten (10) business days after the date the City Secretary sends a deficiency notice to the Complainant to provide the required information to the City Secretary, or the Complaint is automatically deemed abandoned and may not be processed in accordance with this Chapter. Within five (5) business days of a Complaint being abandoned, the City Secretary shall send written notification to the Complainant.
- i) **Notification of Acceptance.** Within five (5) business days of determining that a Complaint is administratively complete, the City Secretary shall send a written notification of acceptance to the Complainant, the Accused, and the City Attorney.

A Complaint shall be considered an Accepted Complaint when the City Secretary has deemed the submittal administratively complete, and timely.

- j) **Confidentiality.** A Complaint that has been submitted to the City is hereby deemed confidential until such time as the Complaint is either dismissed or placed on an agenda for consideration by the Board of Ethics in accordance with this Chapter. The confidentiality created by this Chapter includes the fact that a Complaint was submitted and the contents of that Complaint. It shall be a violation of this Chapter for a City Official to publicly disclose information relating to the filing or processing of a Complaint, except as required for the performance of official duties or as required by law. Requests for records pertaining to Complaints shall be responded to in compliance with the State law. The limited confidentiality created by this Chapter is limited in scope and application by the mandates of the Texas Public Information Act, Chapter 552 of the Texas Government Code.
- k) **Ex Parte Communications.** After a Complaint has been filed and during the pendency of a Complaint before the Board of Ethics, it shall be a violation of this Chapter:
  - 1) For the Complainant, the Accused, or any person acting on their behalf, to engage or attempt to engage directly or indirectly about the subject matter or merits of a Complaint in *ex parte* communication with a member of the Board of Ethics or any known witness to the Complaint; or

- 2) For a member of the Board of Ethics, to knowingly allow an *ex parte* communication about the subject matter or merits of a Complaint, or to communicate about any issue of fact or law relating to the Complaint directly or indirectly with any person other than a member of the Board of Ethics, the City Secretary's office, the City Attorney's office, or Special Counsel.

**Sec. 39.14. Preliminary Assessment**

- a) **Referral to Chairperson.** Accepted Complaint(s) shall be referred to the Chairperson of the Board of Ethics within five (5) business days of being determined an Accepted Complaint.
- b) **Assignment of Panel.** Within five (5) business days of receiving an Accepted Complaint, the Chairperson of the Board of Ethics shall assign the Complaint to a Committee for preliminary assessment, and appoint a member of the Committee as the Committee Chair.
- c) **Committee Determination.** Within five (5) business days of being assigned an Accepted Complaint, the Committee shall review the Complaint on its face and determine whether the Complaint is an Actionable Complaint, Baseless Complaint, or Frivolous Complaint.

Actionable Complaints shall be returned to the Chairperson for listing on an agenda for a public hearing. Baseless Complaints and Frivolous Complaints shall be dismissed. Written notification of the Committee's determination shall be filed with the City Secretary and sent to the Chairperson, Complainant, the Accused, and the City Attorney within two (2) business days. Written notifications of dismissal shall include notice of the right to appeal.

- d) **Appeals.** Determination of a Committee may be appealed to the Board of Ethics by either the Complainant or the Accused, as applicable. An appeal shall be perfected by filing a written notice of appeal with the City Secretary within ten (10) business days of the date the written notification is placed in the mail for delivery.

**Sec. 39.15. Meetings**

- a) **Calling Meetings.** Meetings of the Board of Ethics shall be called upon request of the Chairperson, three (3) members, or the City Secretary.

- b) **Quorum.** The quorum necessary to conduct meetings of the Board of Ethics shall be three (3). The Chairperson shall count toward the establishment of a quorum.
- c) **Hearings.**
- 1) *Scheduling:* Hearings shall be scheduled by the City Secretary upon the filing of:
    - A) a Committee determination that a Complaint is an Actionable Complaint; or
    - B) an Appeal challenging a Committee's dismissal of a Complaint as a Baseless Complaint or Frivolous Complaint.
  - 2) *Purpose:* The purposes of the hearing(s) shall be solely to determine whether:
    - A) a violation of this Chapter occurred, and if so to assess the appropriate sanction;
    - B) an Accepted Complaint was erroneously dismissed as a Baseless Complaint or Frivolous Complaint by a Committee; and/or
    - C) an Accepted Complaint is a Frivolous Complaint.
  - 3) *Rules of Procedure:* The Board of Ethics shall adopt rules of procedure governing how to conduct hearings on Actionable Complaints. Such procedural rules are subject to confirmation or modification by the City Council.
  - 4) *Sworn Testimony:* All witness testimony provided to the Board of Ethics shall be under oath.
  - 5) *Burden of Proof:* Because the burden of showing that a violation of this Chapter occurred is placed on the Complainant, it is the Complainant that has the obligation to put forth evidence, including testimony, supporting the Complaint. The Complainant is required to testify at the hearing. A Complainant's failure to testify at a hearing shall be grounds for dismissal of a Complaint.
- d) **Open Meetings.** All meetings and hearings of the Board of Ethics shall be conducted pursuant to the Texas Open Meetings Act. The Board of Ethics may



convene in Executive Session (i.e., conduct a closed meeting) as allowed by the act. All final action of the Board of Ethics shall take place in open session.

- e) **Postponement in Certain Instances.** If a Complaint alleges facts that are involved in a criminal investigation or a criminal proceeding before a grand jury or the courts, the Board of Ethics may, when a majority of its members deem appropriate, postpone any hearing or any appeal concerning the Complaint until after the criminal investigation or criminal proceedings are terminated. The imposition of sanctions does not preclude criminal prosecution for the act under city ordinance or state or federal law. A violation of this chapter shall not be prosecuted in municipal court if the violation can be prosecuted by the district attorney under state law or by the United States attorney under federal law

#### Sec. 39.16. Disposition

- a) **Dismissal.** If the Board of Ethics determines at the conclusion of a hearing by simple majority vote of its members that a Complaint should be dismissed, it may do so upon finding:
- 1) the Complaint is a Baseless Complaint or Frivolous Complaint;
  - 2) the alleged violation did not occur;
  - 3) the Accused reasonably relied in good faith upon an Advisory Opinion, as provided in this Chapter; or
  - 4) the Complainant failed to testify at the hearing.
- b) **Sanctions.** If the Board of Ethics determines at the conclusion of a hearing that a violation has occurred, it may within ten (10) business days impose or recommend any of the following sanctions:
- 1) *Letter of Notification.* If the violation is clearly unintentional, or when the Accuser's action was made in reliance on a written opinion of the City Attorney. A letter of notification shall advise the Accused of any steps to be taken to avoid future violations.
  - 2) *Letter of Admonition.* If the Board of Ethics finds that the violation is minor and may have been unintentional, but calls for a more substantial response than a letter of notifications.
  - 3) *A Reprimand.* If the Board of Ethics finds that the violation:

A) was minor and was committed knowingly, intentionally or in disregard of this Chapter; or

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B) was serious and may have been unintentional.

4) *Recommendation of Suspension.* If the Board of Ethics finds that a violation:

A) was serious and that was committed knowingly, intentionally or in disregard of this Chapter or a state conflict of interest law; or

B) was minor but similar to a previous violation by the Person, and was committed knowingly, intentionally or in disregard of this Chapter.

The final authority to impose a suspension rests with the City Council regarding Board Members.

5) *Ineligibility.* If the Board of Ethics finds that a Vendor has violated this Chapter, the Board may recommend to the City Manager and City Council that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Notice of all sanctions imposed by the Board of Ethics shall be transmitted to the Accused, Complainant, City Secretary, City Attorney, and City Council.

c) **Frivolous.**

1) *Prohibition.* It is a violation of this Chapter for a Person to submit a Frivolous Complaint.

2) *Super-Majority Vote.* If the Board of Ethics determines at the conclusion of a hearing by a vote of two-thirds (2/3) of its members that a Complaint was Frivolous, the Board may prohibit the Complainant from filing a Complaint with the Board for a period of time up to one (1) year after the date the Frivolous determination was made.

3) *Factors.* In making a determination on frivolity, the Board of Ethics shall consider the following factors:

A) the timing of the sworn Complaint with respect to when the facts supporting the alleged violation became known or should have become known to the Complainant, and with respect to the date of any pending election in which the Accused is a Candidate or is involved with a candidacy, if any;

- B) the nature and type of any publicity surrounding the filing of the Complaint, and the degree of participation by the Complainant in publicizing the fact that a Complaint was filed;
- C) the existence and nature of any relationship between the Accused and the Complainant before the Complaint was filed;
- D) if the Accused is a Candidate, the existence and nature of any relationship between the Complainant and any Candidate or group opposing the Accused;
- E) any evidence that the Complainant knew or reasonably should have known that the allegations in the Complaint were groundless; and
- F) any evidence of the Complainant's motives in filing the Complaint.

4) *External Remedies.* Complainants who submit Frivolous Complaints are hereby notified that their actions may subject them to criminal prosecution or perjury (criminal prosecution), or civil liability for the torts of defamation or abuse of the process.

**Sec. 39.17. Reconsideration**

The Complainant or Accused may request the Board of Ethics to reconsider its decision. The request must be filed with the City Secretary within five (5) business days of receiving the final opinion of the Board of Ethics. The request for reconsideration shall be sent to the Chairperson of the Board of Ethics, the City Secretary, and the non-filing party (Complainant or Accused). ~~If the Chairperson finds, in the Chairperson's sole discretion, that the request includes new evidence that was not submitted at a prior hearing, and that the new evidence bears directly on the Board of Ethic's previous determination, t~~The Chairperson shall schedule a hearing on the request for reconsideration to occur within thirty (30) days after filing of the reconsideration request. Absent new evidence, the ~~Chairperson shall unilaterally dismiss the request~~Ethics Committee shall dismiss the request for reconsideration and provide the decision to the Parties."

**SECTION 3.  
CUMULATIVE REPEALER**

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are

direct conflicts with the provisions of this Ordinance. Ordinances, or parts thereof, in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated or has arisen under or pursuant to such other Ordinances on this date of adoption of this Ordinance shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

**SECTION 4.  
SAVINGS**

All rights and remedies of the City of Corinth, Texas are expressly saved as to any and all violations of the provisions of any other ordinance affecting zoning which have secured at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances same shall not be affected by this Ordinance but may be prosecuted until final disposition by the court.

**SECTION 5.  
SEVERABILITY**

The provisions of the Ordinance are severable. However, in the event this Ordinance or any procedure provided in this Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, the remaining and lawful provisions shall be of full force and effect and the City shall promptly promulgate new revised provisions in compliance with the authority's decisions or enactment.

**SECTION 6.  
EFFECTIVE DATE**

This ordinance shall take effect upon its publication as required by law. The City Secretary is directed to publish the caption and penalty of this ordinance two times.

**PASSED AND APPROVED THIS 2ND DAY OF AUGUST, 2018.**

APPROVED:

\_\_\_\_\_

Bill Heidemann, Mayor

ATTEST:

| ~~Kimberly Pence~~Lana Wylie, City Secretary

APPROVED AS TO FORM:

| ~~Wm. Andrew Messer~~Patricia Adams, City Attorney



## **Conflict of Interest/Disclosure Laws Applicable to City Officials, Employees, and Vendors**

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This publication is for educational purposes and meant to provide basic information regarding *state* conflict of interest and disclosure laws applicable to city officials, employees, and vendors. A home rule charter, local policy, or ordinance may provide for more stringent requirements in some circumstances. This paper is neither an exhaustive treatment of the law on this subject nor a substitute for the advice of an attorney. It is important to consult the individual state laws cited for detailed information about the issues discussed here and to consult an attorney in order to apply these legal principles to specific fact situations. You can find additional resources regarding many of the topics discussed in this paper on our Web site at [www.tml.org](http://www.tml.org).

*Updated November 2017*

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A common source of alleged wrongdoing revolves around conflicts of interest. Whether real or perceived, these allegations often arise out of situations involving personal financial gain, employment, or special treatment for family members or business relations. To protect city transactions from the undue influence of such conflicts, various state laws require disclosure of city officer, employee, and vendor interests. In the past decade, the number and type of interests that must be disclosed have increased. Keep in mind that each state law discussed here comes with its own separate legal requirements. Thus, complying with one does not fulfill the obligations imposed by the other. In some circumstances, the same financial interest may require a city officer, employee, or vendor to file more than one disclosure form.

## **I. Local Government Code Chapter 171: Real Property and Business Interests**

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest.<sup>1</sup> It prohibits a local public official from voting on or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public.<sup>2</sup>

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper (usually the city secretary), stating the nature and extent of the interest.<sup>3</sup> In addition, a public official is required to abstain from further participation in the matter except when a majority of the members of the governing body also have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter.<sup>4</sup>

The term "local public official" is defined to mean "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . or other local governmental entity who exercises responsibilities beyond those that are advisory in nature."<sup>5</sup> This term includes a member of a planning and zoning commission.<sup>6</sup>

A public official has a substantial interest in a business entity if the official:

1. owns 10 percent or more of the voting stock or shares of the business entity;
2. owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

<sup>1</sup> TEX. LOC. GOV'T CODE §§ 171.001–.010.

<sup>2</sup> *Id.* § 171.004.

<sup>3</sup> *Id.* An example (not a model) affidavit is available here: [http://www.tml.org/legal\\_pdf/Chap171-affidavit.pdf](http://www.tml.org/legal_pdf/Chap171-affidavit.pdf).

<sup>4</sup> TEX. LOC. GOV'T CODE § 171.004.

<sup>5</sup> *Id.* § 171.001(1).

<sup>6</sup> Tex. Att'y Gen. Op. Nos. KP-0105 (2016), DM-309 (1994).



3. receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year.<sup>7</sup>

A public official has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of \$2,500 or more.<sup>8</sup>

A public official is also considered to have a substantial interest in a business entity or real property if the official's relative within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the business entity or real property.<sup>9</sup> As such, any "substantial interest" that a public official's spouse, parent, child, step-child, father or mother-in-law, or son or daughter-in-law has is imputed to the public official. For example, a public official has a "substantial interest" in a business that employs the official's daughter if the official's daughter earns a small income, which exceeds ten percent of her gross income.<sup>10</sup>

A business entity is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law."<sup>11</sup> A nonprofit corporation is considered a business entity.<sup>12</sup> The term also includes a business entity that represents an entity or person with an interest in a matter before the city council.<sup>13</sup> Public entities such as a city, state university or school district, are not a business entities.<sup>14</sup>

The limit on "further participation" by a public official who has a conflict does not preclude the public official from attending meetings, including executive session meetings, relevant to the matter in which he has a substantial interest, provided that the official remains silent during the deliberations.<sup>15</sup> Thus, an interested public official does not participate in a matter by merely attending an executive session on the matter and remaining silent during the deliberations.<sup>16</sup>

The question of whether a vote or decision has a "special economic effect" on a business entity or on the value of real property is generally a question of fact.<sup>17</sup> However, a vote or decision will, as a matter of law, have a "special economic effect" if the governing body considers purchasing goods or services from a business entity in which a local public official has a substantial interest.<sup>18</sup> Additionally, the issue of whether a vote or decision has a special

<sup>7</sup> TEX. LOC. GOV'T CODE § 171.002(a).

<sup>8</sup> *Id.* § 171.002(b).

<sup>9</sup> *Id.* § 171.002(c).

<sup>10</sup> Tex. Att'y Gen. Op. No. JC-0063 (1999).

<sup>11</sup> TEX. LOC. GOV'T CODE § 171.001(2).

<sup>12</sup> Tex. Att'y Gen. Op. No. JM-424 (1986), at 2.

<sup>13</sup> Tex. Att'y Gen. Op. No. DM-309 (1994), at 2.

<sup>14</sup> Tex. Att'y Gen. Op. Nos. GA-0826 (2010), at 1, DM-267 (1993), at 2, JM-852 (1988), at 2.

<sup>15</sup> Tex. Att'y Gen. Op. No. GA-0334 (2005), at 6.

<sup>16</sup> *Id.*

<sup>17</sup> Tex. Att'y Gen. Op. No. GA-0796, at 4 (2010); Tex. Att'y Gen. LO-98-052.

<sup>18</sup> Tex. Att'y Gen. Op. No. GA-0136 (2004), at 3.

economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property.<sup>19</sup>

Whether it is “reasonably foreseeable” that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, is fact specific.<sup>20</sup> In instances where the economic effect is direct and apparent at the time of the action, both a court and the attorney general have concluded that the economic effect was “reasonably foreseeable.”<sup>21</sup>

There are special rules beyond the filing of an affidavit and abstaining from voting that apply to the adoption of a budget. If an item of the budget is specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest, the governing body must vote on that line item separately.<sup>22</sup> The affected member may not generally participate in consideration of that item.<sup>23</sup>

If a public official votes on a matter that he or she has a substantial interest in or fails to abstain from further participation, the action of the governing body on the matter is not voidable, unless the matter that was the subject of the action would not have passed without the vote of the person who had a substantial interest.<sup>24</sup> A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.<sup>25</sup>

## II. Local Government Code Chapter 176: Income and Gifts from, and Family Relationships with Vendors

Chapter 176 of the Local Government Code requires certain local government officers to disclose employment, business, and familial relationships with vendors who conduct business, or consider conducting business, with local government entities. The requirements apply to most political subdivisions, including cities.<sup>26</sup> The Chapter also applies to a “local government corporation, a board, commission, district, or authority” whose members are appointed by a mayor or the city council.<sup>27</sup>

A “local government officer” (officer) includes: (1) a mayor or city councilmember; (2) a director, administrator, or other person designated as the executive officer of the city; and (3) an

<sup>19</sup> Tex Att’y Gen. Op. No. GA-0796 (2010), at 4 (discussing *Dallas Cty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 281-82 (Tex. App.—Dallas 1991, writ denied)).

<sup>20</sup> Tex. Att’y Gen. LO-96-049.

<sup>21</sup> *Dallas Cty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 278 (Tex. App.—Dallas 1991, writ denied); Tex. Att’y Gen. Op. No. GA-0796 (2010), at 6.

<sup>22</sup> TEX. LOC. GOV’T CODE § 171.005.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* § 171.006.

<sup>25</sup> *Id.* § 171.003.

<sup>26</sup> TEX. LOC. GOV’T CODE § 176.001.

<sup>27</sup> *Id.*

agent (including an employee) of the city who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.<sup>28</sup>

An officer is required to file a conflicts disclosure statement in three situations:

1. An officer must file a statement if the officer or officer's family member<sup>29</sup> has an employment or other business relationship with a vendor that results in the officer or officer's family member receiving taxable income of more than \$2,500 in the preceding twelve months.<sup>30</sup> An officer who only receives investment income, regardless of amount, is not required to file a disclosure statement. Investment income includes dividends, capital gains, or interest income gained from a personal or business checking or savings account or other similar account, a personal or business investment, or a personal or business loan.<sup>31</sup>
2. An officer is required to file a statement if the officer or officer's family member accepts one or more gifts (including lodging, transportation, and entertainment accepted as a guest) from a vendor that has an aggregate value of more than \$100 in the preceding twelve months.<sup>32</sup> An officer is not required to file a statement in relation to a gift, regardless of amount, if the gift: (1) is a political contribution; (2) is food accepted as a guest; or (3) is offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.<sup>33</sup>
3. An officer is required to file a statement if the officer has a family relationship with the vendor.<sup>34</sup>

There is at least one exception to the three situations set out above. A local government officer does not have to file a statement if the vendor is an administrative agency supervising the performance of an interlocal agreement.<sup>35</sup>

An officer is required to file a statement no later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of facts that require a filing of the statement.<sup>36</sup>

A "vendor" includes any person that enters or seeks to enter into a contract with a city.<sup>37</sup> The term also includes: (1) an agent of a vendor; (2) an officer or employee of a state agency when

<sup>28</sup> *Id.*

<sup>29</sup> An officer's "family member" is a person related to the officer within the first degree by consanguinity (blood) or affinity (marriage). *Id.*

<sup>30</sup> *Id.* § 176.003(a)(2)(A).

<sup>31</sup> *Id.* § 176.001.

<sup>32</sup> *Id.* § 176.003(a)(2)(B). It is important to remember that state law prohibits the acceptance of certain gifts. *See, e.g.,* TEX. PENAL CODE §§ 36.02, 36.08.

<sup>33</sup> TEX. LOC. GOV'T CODE §§ 176.001(2-b), 176.003(a-1).

<sup>34</sup> *Id.* § 176.003(a)(2)(C). An officer has a family relationship with a vendor if they are related within the third degree by consanguinity (blood) or second degree by affinity (marriage). *Id.* § 176.001.

<sup>35</sup> *Id.* § 176.003(a-2).

<sup>36</sup> *Id.* § 176.003(b).

<sup>37</sup> *Id.* § 176.001.

that individual is acting in a private capacity; and (3) Texas Correctional Industries (but no other state agency).<sup>38</sup>

Chapter 176 applies to any written contract for the sale or purchase of real property, goods (personal property), or services.<sup>39</sup> A contract for services would include one for skilled or unskilled labor, as well as professional services.<sup>40</sup>

A vendor is required to file a conflict of interest questionnaire if the vendor has a business relationship with the city and has: (1) an employment or other business relationship with an officer or an officer's family member that results in the officer receiving taxable income that is more than \$2,500 in the preceding twelve months; (2) has given an officer or an officer's family member one or more gifts totaling more than \$100 in the preceding twelve months; or (3) has a family relationship with an officer.<sup>41</sup>

A vendor is required to file a questionnaire not later than the seventh business day after the later of the following: (1) the date that the vendor begins discussions or negotiations to enter into a contract with the city or submits an application or response to a bid proposal; or (2) the date that the vendor becomes aware of a relationship or gives a gift to an officer or officer's family member, or becomes aware of a family relationship with an officer.<sup>42</sup>

The statements and disclosures must be filed with the records administrator of the city.<sup>43</sup> A records administrator includes a city secretary, a person responsible for maintaining city records, or a person who is designated by the city to maintain the statements and disclosures filed under Chapter 176.<sup>44</sup>

A city that maintains a Web site is required to post on that site statements and disclosures that are required to be filed under Chapter 176.<sup>45</sup> However, a city that does not have a Web site is not required to create or maintain one.<sup>46</sup>

An officer or vendor who knowingly fails to file a statement or a disclosure when required to do so commits a Class A, B, or C misdemeanor, depending on the amount of the contract.<sup>47</sup> It is an exception to prosecution that an officer/vendor files a statement/questionnaire not later than the seventh day after the date the person receives notice from the city of the alleged violation.<sup>48</sup> The

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* §176.006(a).

<sup>42</sup> *Id.* §176.006(a-1).

<sup>43</sup> *Id.* §§176.003(b), 176.006(a-1).

<sup>44</sup> *Id.* §176.001(5).

<sup>45</sup> *Id.* § 176.009.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* §§ 176.013.

<sup>48</sup> *Id.*

validity of a contract between a city and a vendor is not affected solely because a vendor fails to file a questionnaire.<sup>49</sup>

The Texas Ethics Commission is charged with creating statements and disclosure forms. The forms (Form CIS and Form CIQ) may be found at [https://www.ethics.state.tx.us/filinginfo/conflict\\_forms.htm](https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm).

### III. Government Code Chapter 553: Property Acquired with Public Funds

Chapter 553 of the Government Code provides that a “[a] public servant who has a legal or equitable interest in property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation.”<sup>50</sup>

Chapter 553’s affidavit requirement applies to a “public servant,” defined as a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as: (1) a candidate for nomination or election to public office; or (2) an officer of government.<sup>51</sup>

The term “public funds” is defined to “include[] only funds collected by or through a government.”<sup>52</sup> The language of Chapter 553 suggests that a public servant is required to disclose his/her interest in property even when the property is to be acquired by a separate governmental entity with which the public servant is not affiliated. There appears to be no case or attorney general opinion that addresses this issue. Thus, a public servant or official subject to Chapter 553 should consult his/her private legal counsel regarding the application of Chapter 553 in this scenario.

Chapter 553 is not, by its language, limited to real property interests. Thus, if a public servant has a legal or equitable interest in any real (e.g., land) or personal (e.g., a vehicle) property acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant should file a Chapter 553 affidavit.<sup>53</sup>

A Chapter 553 affidavit has to be filed within ten days before the date on which the property is to be acquired by purchase or condemnation.<sup>54</sup> The affidavit is filed with the county clerk of the county in which the public servant resides as well as the county clerk of each county in which the property is located.<sup>55</sup>

The affidavit must include: (1) the name of the public servant; (2) the public servant’s office, public title, or job designation; (3) a full description of the property; (4) a full description of the

<sup>49</sup> *Id.* § 176.006(i).

<sup>50</sup> TEX. GOV’T CODE § 553.002(a).

<sup>51</sup> *Id.* § 553.001(2).

<sup>52</sup> *Id.* § 553.001(1).

<sup>53</sup> *Id.* § 553.002. An example (not a model) affidavit is available on the TML Web site, here: [http://www.tml.org/legal\\_pdf/Chapter553AffidavitSample.pdf](http://www.tml.org/legal_pdf/Chapter553AffidavitSample.pdf)

<sup>54</sup> TEX. GOV’T CODE § 553.002(a).

<sup>55</sup> *Id.* § 553.002(c).

nature, type, and amount of interest in the property, including the percentage of ownership interest; (5) the date the public servant acquired an interest in the property; (6) the following verification: “I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code;” and (7) an acknowledgement of the same type required for recording a deed in the deed records of the county.<sup>56</sup> An affidavit example is available on our Web site at: <http://www.tml.org/example-documents>.

A person who violates Section 553.002 of the Government Code by failing to file the required affidavit is presumed to have committed a Class A misdemeanor offense if the person had actual notice of the acquisition or intended acquisition of the legal or equitable interest in the property.<sup>57</sup>

**IV. Local Government Code Chapter 145: Financial Disclosure in Cities with a population of 100,000 or more**

Local Government Code Chapter 145’s financial disclosure requirements apply *only in a city with a population of 100,000 or more*.<sup>58</sup> In general terms, Chapter 145:

1. requires each mayor, each member of a city council, each city attorney, each city manager, and each candidate for city office to file an annual financial statement with the city clerk or secretary;<sup>59</sup>
2. requires that the financial statement include an account of the financial activity of the covered individual and the individual’s spouse and dependent children, if the individual had control over that activity; and<sup>60</sup>
3. requires that the financial statement include all sources of income; shares of stocks owned, acquired, or sold; bonds, notes, or other paper held, acquired, or sold; any interest, dividend, royalty, or rent exceeding \$500; each person or institution to whom a personal debt of \$1,000 or more exists; all beneficial interests in real property or businesses owned, acquired, or sold; certain gifts received; income in excess of \$500 from a trust; and a list of all boards of directors on which the individual serves; and information about certain contracts with a governmental entity.<sup>61</sup>

Candidates for elected city office are required to file the financial disclosure statement not later than the earlier of: (1) the twentieth day after the deadline for filing an application for a place on the ballot in the election; or (2) the fifth day before the date of the election.<sup>62</sup> Annually, the

<sup>56</sup> *Id.* § 553.002(b).

<sup>57</sup> *Id.* § 553.003.

<sup>58</sup> TEX. LOC. GOV’T CODE § 145.001.

<sup>59</sup> *Id.* §§ 145.002–.003.

<sup>60</sup> TEX. LOC. GOV’T CODE § 145.003(b)(2), TEX. GOV’T CODE § 572.023(a).

<sup>61</sup> TEX. LOC. GOV’T CODE § 145.003(b)(2), TEX. GOV’T CODE § 572.023(b).

<sup>62</sup> TEX. LOC. GOV’T CODE § 145.004(c).

mayor, city councilmembers, the city manager, and the city attorney<sup>63</sup> must file a financial disclosure statement for the preceding year by April 30.<sup>64</sup> A new city manager or a new city attorney must file a financial disclosure statement within forty-five days of assuming the duties of office.<sup>65</sup>

City officers and candidates for elected city office must generally file the financial statement on a form (Form PFS-LOCAL) provided by the Texas Ethics Commission, available here: [https://www.ethics.state.tx.us/filinginfo/pfsforms\\_ins.html](https://www.ethics.state.tx.us/filinginfo/pfsforms_ins.html).<sup>66</sup> A detailed listing of the required contents is found in Section 572.023 of the Texas Government Code. If information in the financial disclosure form is required to be filed by category, Section 572.022 sets forth reporting categories. The city secretary must deliver (by mail, personal delivery, e-mail, or other electronic transfer) copies of the form to city officers and candidates for city office within certain time deadlines.<sup>67</sup>

The completed financial disclosure statement is filed with the city clerk or secretary.<sup>68</sup> Statements are public records and are to be maintained so as to be accessible to the public during regular office hours.<sup>69</sup>

Both criminal and civil penalties may be imposed for failure to file a financial disclosure statement. An offense under Chapter 145 is a class B misdemeanor, which is punishable by a fine up to \$2,000 and/or confinement up to 180 days.<sup>70</sup> Section 145.010 sets forth a process whereby a civil penalty up to \$1,000 may be assessed upon failure to comply after notice is received from the city attorney.

The city secretary shall grant an extension of not more than sixty days for the filing of the financial disclosure statement to a city officer or a person appointed to a city office if: (1) the individual makes an extension request before the filing deadline; or (2) the individual's physical or mental capacity prevents either the filing or the request for an extension before the filing date.<sup>71</sup> Extensions shall not be granted to candidates for elected city office.<sup>72</sup>

The city secretary shall maintain a list of the city officers and candidates required to file a financial disclosure statement. No later than ten days after the filing deadline, the city secretary shall provide a list to the city attorney showing for each city officer and candidate for city office: (1) whether the individual filed a timely statement; (2) whether the individual was granted an

<sup>63</sup> While there appears to be no case or opinion directly on point, advisory opinions issued by the Texas Ethics Commission suggest that an interim city manager or city attorney that has all the duties and powers of a permanent city manager or attorney would also be subject to this requirement. *See* Ethics Advisory Opinion Nos. 27 (1992), 265 (1995).

<sup>64</sup> TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(a).

<sup>65</sup> TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(c).

<sup>66</sup> TEX. LOC. GOV'T CODE § 145.005(a).

<sup>67</sup> *Id.* §§ 145.002, 145.005(b)

<sup>68</sup> *Id.* § 145.003(b).

<sup>69</sup> *Id.* § 145.007(a).

<sup>70</sup> *Id.* § 145.009.

<sup>71</sup> *Id.* § 145.004(e).

<sup>72</sup> *Id.* § 145.004(f).

extension and the new filing deadline; or (3) whether the individual did not timely file a financial statement or receive an extension of time.<sup>73</sup>

## V. Government Code Section 2252.908: Vendor Disclosure of Interested Parties

Government Code Section 2252.908 is a governmental transparency law that was enacted by H.B. 1295 in 2015 and amended by Senate Bill 255 in 2017. It prohibits a governmental entity (defined to include a city<sup>74</sup>) or state agency from entering into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (a Form 1295).

The Texas Ethics Commission (Commission) is charged with adopting rules to implement the statute, developing the disclosure of interested parties form, and posting the form on its Web site.<sup>75</sup>

This new disclosure law applies only to contracts that: (1) require an action or vote by the city council before the contract may be signed; or (2) have a value of at least \$1 million.<sup>76</sup> Pursuant to the Commission's rules, a contract does not require an action or vote by the city council if:

1. The governing body has legal authority to delegate to its staff the authority to execute the contract;
2. The governing body has delegated to its staff the authority to execute the contract; and
3. The governing body does not participate in the selection of the business entity with which the contract is entered into.<sup>77</sup>

It is important to note that the Commission defines the term “contract” to include an amended, extended, or renewed contract.<sup>78</sup> A new rule, effective January 1, 2017, further clarifies when a change to an existing contract triggers the filing of a disclosure form.<sup>79</sup>

The business entities subject to this law are those entities “recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.”<sup>80</sup> The Commission's rules clarify that the term “business entity” includes nonprofits, but does not

<sup>73</sup> *Id.* § 145.008.

<sup>74</sup> TEX. GOV'T CODE § 2252.908(a)(2) (defining “governmental entity” to include a city, county, public school district, or special-purpose district or authority).

<sup>75</sup> *Id.* § 2252.908(g).

<sup>76</sup> *Id.* § 2252.908(b); *but see id.* § 2252.908(c) (expressly exempting certain contracts including a contract with a publicly traded business entity, a contract with an electric utility, and a contract with a gas utility).

<sup>77</sup> 1 T.A.C. § 46.1(c).

<sup>78</sup> *Id.* § 46.3(a).

<sup>79</sup> *Id.* § 46.4.

<sup>80</sup> TEX. GOV'T CODE § 2252.908(a)(1).



include a governmental entity.<sup>81</sup> That means, for instance, if a city executes an interlocal agreement with another city the disclosure requirements of Section 2252.908 are not triggered.

Exactly what types of interested parties must a business entity disclose? A business entity must disclose: (1) a person who has a controlling interest in the business; and (2) any intermediary.<sup>82</sup> The Commission defines the terms “controlling interest” and “intermediary” as follows:

“Controlling interest” means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

“Intermediary,” . . . means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- (1) receives compensation from the business entity for the person’s participation;
- (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- (3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.<sup>83</sup>

It is quite possible that, although a business entity is subject to Section 2252.908, no interested parties will exist. Thus, a business entity may end up filing a form that has very little information on it.

The process for completing and submitting Form 1295 is as follows:

1. A business entity must use the Commission’s online filing application to enter the required information on Form 1295.<sup>84</sup>
2. The completed Form 1295 must be filed with the city “at the time the business entity submits the signed contract” to the city.<sup>85</sup>
3. The city must notify the Commission, using the Commission’s filing application, of the receipt of the filed Form 1295 and certification of filing not later than the 30th day after the date the city receives the disclosure.<sup>86</sup>

<sup>81</sup> 1 T.A.C. § 46.3(b).

<sup>82</sup> *Id.* § 46.3(d).

<sup>83</sup> *Id.* § 46.3(c),(e).

<sup>84</sup> *Id.* § 46.5.

<sup>85</sup> TEX. GOV’T CODE § 2252.908(d).

<sup>86</sup> *Id.* § 2252.908(f), 1 T.A.C. § 46.5(c).

To further explain the process, the Commission has prepared instructional videos and a “FAQ” document, available here: <https://www.ethics.state.tx.us/>.

In order for a business entity to complete Form 1295, it will need some information from the city. Although not required by Section 2252.908, the Commission’s rules provide that the business entity must include on the form an “identification number used by the [city] . . . to track or identify the contract for which the form is being filed.”<sup>87</sup> Even though the rules provide for such a number, nothing in the rule requires a city to create a numbering system of any type.

The whole purpose behind this new disclosure requirement is to give the public more information about government contracts. To that end, the Commission is required to post the completed Form 1295 on its Web site within seven business days after receiving notice from the city that the city has received the filed Form 1295 and certification of filing.<sup>88</sup> In addition, cities must provide the completed forms in accordance with the Public Information Act.

The Commission takes the position that it does not have any authority (beyond rulemaking and adoption of the form) to enforce or interpret Government Code Section 2252.908.<sup>89</sup> All the possible ramifications for a city’s failure to comply with Section 2252.908 are unclear at this time. As for a business entity, the statute requires a Form 1295 disclosure contain “a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury.”<sup>90</sup>

## **VI. Miscellaneous Conflicts Provisions**

### **A. Plat Approval**

A provision governing conflicts of interest in the plat approval process was added to state law in 1989. It requires “[a] member of a municipal authority responsible for approving plats [who] has a substantial interest in a subdivided tract” to file an affidavit stating the nature and extent of the interest and abstain from further participation in the matter.<sup>91</sup> The affidavit must be filed with the municipal secretary or clerk before a vote or decision regarding the approval of a plat for the tract.

For purposes of this disclosure requirement, “subdivided tract” means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.<sup>92</sup>

A person has a substantial interest in a subdivided tract if the person:

<sup>87</sup> 1 T.A.C. § 46.5(a)(4).

<sup>88</sup> TEX. GOV’T CODE § 2252.908(g), 1 T.A.C. § 46.5(d).

<sup>89</sup> *Cf.*, e.g., TEX. GOV’T CODE §§ 571.061 (listing the laws that the Commission administers and enforces), 571.091 (listing the statutes about which the Commission may issue advisory opinions).

<sup>90</sup> *Id.* § 2252.908(e)(2); *see also* TEX. PENAL CODE ch. 37 (providing for offense of perjury).

<sup>91</sup> TEX. LOC. GOV’T CODE § 212.017(d).

<sup>92</sup> *Id.* § 212.017(a).

1. has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more;
2. acts as a developer of the tract;
3. owns 10% or more of the voting stock or shares of or owns either 10% or more or \$5,000 or more of the fair market value of a business entity that:
  - (A) has an equitable or legal ownership interest in the tract with a fair market value of 2,500 or more; or
  - (B) acts as a developer of the tract; or
4. receives in a calendar year funds from a business entity described in (3) that exceed 10% of the person's gross income for the previous year.<sup>93</sup>

A person is also considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity to another person who has a substantial interest in the tract. An offense under this subsection is a Class A misdemeanor.<sup>94</sup> The finding by a court of a violation of this requirement does not render voidable an action of the municipal authority responsible for approving plats, unless the measure would not have passed without the vote of the member who violated the requirement.<sup>95</sup>

## **B. Selection of City Depository**

Local Government Code Section 131.903 regulates conflicts of interest with respect to a city's selection of a depository. A bank is disqualified from serving as the depository of the city if an officer or employee of the city who has a duty to select the depository owns or has a beneficial interest, individually or collectively, in more than 10 percent of the outstanding capital stock of the bank.<sup>96</sup> In other words, a city council may not select a bank as the city's depository if a mayor or councilmember owns more than 10 percent of the bank.

If an officer or employee of the city is a director or officer of the bank, or owns 10 percent or less of the capital stock of the bank, the bank is not disqualified from serving as the city's depository so long as: (1) the interested officer or employee does not vote or take part in the proceedings; and (2) a majority of the other members of the city council vote to select the bank as the depository.<sup>97</sup>

The attorney general has concluded that Section 131.903 is an exception to the general conflicts of interest statute in Chapter 171 of the Local Government Code.<sup>98</sup> That being said, TML attorneys advise that any local public official with a "substantial interest" in a bank, as that term

<sup>93</sup> *Id.* § 212.017(b).

<sup>94</sup> *Id.* § 212.017(e).

<sup>95</sup> *Id.* § 212.017(f).

<sup>96</sup> *Id.* § 131.903(a)(2).

<sup>97</sup> *Id.*

<sup>98</sup> Tex. Att'y Gen. LO-97-093.

is defined by Chapter 171 of the Local Government Code, comply with the Chapter 171 requirements of (1) filing an affidavit that discloses the potential conflict; and (2) abstaining from participating in the selection of the bank, even if the potential conflict doesn't trigger the specific conflict of interest provision under Local Government Code Section 131.903.

### **C. Prohibition Against Acting as a Surety**

There are various instances in which a city may require an entity with which it contracts to utilize a surety (sometimes referred to as a guarantor or secondary obligor).<sup>99</sup> In addition, certain city officers may be required to execute a bond in conjunction with their office.<sup>100</sup>

A local public official commits a Class A misdemeanor offense if the official knowingly: (1) acts as a surety for a business entity that has work, business, or a contract with the governmental entity or (2) acts as a surety on any official bond required of an officer of the governmental entity.<sup>101</sup> For the purposes of these violations, a “local public official” is defined to mean “a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . who exercises responsibilities beyond those that are advisory in nature.”<sup>102</sup>

### **D. Profession-Specific Requirements**

While it is beyond the scope of this publication to discuss in detail, it is important to remember that vendors must sometimes comply with disclosure requirements that are specific to their profession. For instance, investment advisers must disclose to their clients (on Form ADV) ownership and other details about their firm through the Securities and Exchange Commission’s Investment Adviser Public Disclosure Web site. See <https://www.sec.gov/fast-answers/answerscrdhtm.html>.

<sup>99</sup> See, e.g., *Wisembaker v. Johnny Folmar Drilling Co.*, 334 S.W.2d 465, 466 (Tex. Civ. App.—Texarkana 1960, writ dismissed) (describing that the City of Quitman had filed suit against a drilling company and its surety on the company’s performance bond for breach of contract).

<sup>100</sup> See, e.g., TEX. LOC. GOV’T CODE § 22.072(c) (authorizing the city council in a type A general law city to require municipal officers to execute a bond payable to the city and conditioned that the officer will faithfully perform the duties of the office).

<sup>101</sup> TEX. LOC. GOV’T CODE § 171.003; see also Tex. Att’y Gen. Op. No. KP-0132 (2017) (concluding that 171.003 does not prohibit a local public official from acting as a surety on a bail bond, i.e., a surety for an individual made to secure the release of an individual defendant from the State’s custody).

<sup>102</sup> TEX. LOC. GOV’T CODE § 171.001(1).

## Chapter 171 of the Local Government Code – Conflicts of Interest

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest. TEX. LOC. GOV'T CODE §§ 171.001-.010. It prohibits a local public official from voting on or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public. *Id.* §171.004(a).

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper, stating the nature and extent of the interest. *Id.* §171.004(b). In addition, a public official is required to abstain from further participation in the matter. *Id.* However, a public official that is required to file an affidavit is not required to abstain from participating in the matter if a majority of the members of the governing body have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter. *Id.* §171.004(c).

### Local Public Official

A "local public official" is defined as "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any...municipality ... or other local governmental entity who exercises responsibilities beyond those that are advisory in nature." *Id.* §171.001(1). This term includes a member of a planning and zoning commission. Tex. Att'y Gen. Op. Nos. KP-0105 (2016), DM-309 (1994).

### Substantial Interest

A public official has a substantial interest in a business entity if the official:

- (1) owns 10 percent or more of the voting stock or shares of the business entity; (2) owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
- (3) receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year.

TEX. LOC. GOV'T CODE §171.002(a).

A person has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of \$2,500 or more. *Id.* §171.002(b).

A public official is also considered to have a substantial interest in a business entity or real property if the official's relative within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the business entity or real property. *Id.* §171.002(c). As such, any "substantial interest" that a public official's spouse, parent, child, step-child, father or mother-in-law, or son or daughter-in-law has is imputed to the public official. TEX. GOV'T CODE §§ 573.023-.024; Tex. Att'y Gen. Op. No. DM-267 (1993), at 2; Tex. Att'y Gen. LO-95-080, at 3. For example, a public official has a "substantial interest" in a business that employs the official's daughter if the official's daughter earns a small income, which exceeds ten percent of her gross income. *See* Tex. Att'y Gen. Op. No. JC-0063 (1999).

### **Business Entity**

A business entity is defined as “a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.” TEX. LOC. GOV’T CODE § 171.001(2). A nonprofit corporation is also considered a business entity. Tex. Att’y Gen. Op. No. JM-424 (1986) at 2. The term also includes a business entity that represents an entity or person with an interest in a matter before the city council. Tex. Att’y Gen. Op. No. DM-309 (1994), at 2. A city and other public entities, such as a state university or school district, are not a business entity. Tex. Att’y Gen. Op. Nos. DM-267 (1993), at 2, JM-852 (1988), at 2.

### **Further Participation**

The limit on “further participation” does not preclude the interested public official from attending meetings, including executive session meetings, relevant to the matter in which he has a substantial interest, provided that the official remains silent during the deliberations. Tex. Att’y Gen. Op. No. GA-0334 (2005), at 6. As such, an interested public official does not participate in a matter by merely attending an executive session on the matter and remaining silent during the deliberations. *Id.*

### **Special Economic Effect**

The question of whether a vote or decision has a “special economic effect” on a business entity or on the value of real property is generally a question of fact. Tex. Att’y Gen. Op. No. GA-0796, at 4 (2010); Tex. Att’y Gen. LO-98-052. However, a vote or decision will, as a matter of law, have a “special economic effect” if the governing body considers purchasing goods or services from a business entity in which a local public official has a substantial interest. Tex. Att’y Gen. Op. No. GA-0136 (2004), at 3. Additionally, the issue of whether a vote or decision has a special economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property. Tex. Att’y Gen. Op. No. GA-0796 (2010), at 4 (discussing *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 281-82 (Tex. App.-Dallas 1991, writ denied)).

### **Reasonably Foreseeable**

Whether it is “reasonably foreseeable” that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, is fact specific. Tex. Att’y Gen. LO-96-049. In instances where the economic effect is direct and apparent at the time of the action, both a court and the attorney general have concluded that the economic effect was “reasonably foreseeable.” *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 278 (Tex. App.—Dallas 1991, writ denied), Tex. Att’y Gen. Op. No. GA-0796 (2010), at 6.

### **Budget Adoption**

There are special rules beyond the filing of an affidavit and abstaining from voting that apply to the adoption of a budget. If an item of the budget is specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest, the governing body must vote on that line item separately. TEX. LOC. GOV’T CODE § 171.005. The affected member may not generally participate in consideration of that item. *Id.*

### **Depositories**

A city may select a bank as its depository even if one or more of the members of the governing body is an officer or director of the bank or owns or has a beneficial interest, individually or collectively, in ten percent or less of the outstanding capital stock of the bank, so long as two conditions are met. *Id.* §131.903(a)(2). First, a majority of the members of the governing body must vote to select the bank as a depository. *Id.* §131.903(a)(2)(A). Second, the interested

member must abstain from voting or taking part in the proceedings. *Id.* §131.903(a)(2)(B). The attorney general has concluded that this provision regarding conflicts of interests in the selection of depositories is an exception to Chapter 171. Tex. Att’y Gen. LO-97-093.

### **Public Official Acting Individually**

The attorney general has concluded that when the law contemplates an individual public official perform a specific duty, Chapter 171’s disclosure and abstention requirements may not apply. Tex. Att’y Gen. Op. Nos. GA-0784 (2010), GA-0510 (2007). The attorney general recognizes that the term “local public official” as defined in Chapter 171 could be an individual official or an official who is a member of a governing body. Tex. Att’y Gen. Op. No. GA-0784 (2010), at 4. And while an official acting individually does not “vote,” arguably such an official may make a “decision.” *Id.* Thus, when the law imposes on a single, specific official a duty and the official has a conflict under Chapter 171, the attorney general has concluded that the legislature could not have intended for the disclosure and abstention requirements to apply. *Id.* (concluding that section 171.004’s disclosure and abstention requirements did not apply to a sheriff’s statutory bail bond and forfeiture duties).

### **Enforcement**

If a public official votes on a matter that he or she has a substantial interest in or fails to abstain from further participation, the action of the governing body on the matter is not voidable, unless the matter that was the subject of the action would not have passed without the vote of the person who had a “substantial interest.” TEX. LOC. GOV’T CODE §171.006. A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.

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