

**MUNICIPAL ETHICS
ORDINANCES
and
STATE ETHICS LAWS AND OPINIONS**

Municipal Law Section of the Dallas Bar Association

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by

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ARE ETHICS ORDINANCES NECESSARY?

- Crystal City, Texas' mayor, city manager, mayor pro tem, one of three current councilmen and a former councilman were all arrested pursuant to a federal indictment that accuses them of taking bribes from contractors and sending city workers to help an illegal gambling operator. A second councilman is already charged in a separate case with smuggling Mexican immigrants. That leaves just one councilman not facing federal charges in Crystal City. (Dallas Morning News, March 5, 2016) (San Antonio Express News, March 12, 2016) (Washington Post, February 8, 2016: "Joel Barajas was the only Crystal City council member to show up at the office Friday. That's because everyone else he works with is facing felony charges.")
- Moral: Corruption can take down your entire city government.

ARE ETHICS ORDINANCES NECESSARY?

- A Clinton, Michigan city council member appeared in federal court on charges he demanded and took bribes in exchange for his vote on municipal contracts. Dean Reynolds is accused of accepting \$50,000-\$70,000 from a company that secured a “significant” contract with Clinton. Reynolds also accepted \$17,000 from an undercover FBI agent, which was recorded on video. (Detroit News, October 14, 2016)
- Moral: Even if you’re not watching, the Feds are.

ARE ETHICS ORDINANCES NECESSARY?

- Three New York City police officers and a Brooklyn businessman were arrested Monday, the latest fallout from a wide-ranging municipal corruption probe that has touched the upper ranks of the NYPD and rattled City Hall. (Wall Street Journal, June 20, 2016)
- Moral: Corruption can be caused by people outside city hall.

ARE ETHICS ORDINANCES NECESSARY?

- Prosecutors announced charges against seven former top officials in the city of Beaumont, California, alleging a sweeping web of corruption that dates back more than two decades and cost taxpayers nearly \$43 million. The district attorney's office accused the officials of an elaborate scam involving the sale of municipal bonds for projects handled by companies in which they had a financial interest. They also alleged officials secured interest-free loans for friends and colleagues with taxpayer money. (Los Angeles Times, May 17, 2016)
- Moral: Corruption can lead to financial disaster for your city.

ARE ETHICS ORDINANCES NECESSARY?

- The former Opa Locka, Florida city manager and former assistant public works director were charged in a two-year-long bribery and extortion conspiracy. They are charged with using their official positions to solicit, demand, and obtain thousands of dollars in illegal cash payments from businesses and individuals in exchange for taking official actions to assist and benefit those businesses and individuals in their dealings with the city. In exchange for the illegal payments, the public officials would direct city employees to issue occupational licenses, waive or settling code enforcement, initiate or restore water service, and assist with zoning. (US Department of Justice, August 5, 2016)
- Morals: Corrupt city officials can coerce city employees. Corruption undermines the public's faith in the fairness of city hall processes.

ARE ETHICS ORDINANCES NECESSARY?

- A federal corruption probe landed a dozen Jersey City, New Jersey cops behind bars. The probe focused on off-duty private security work. The feds investigated officers who cut the city out as the middleman and either performed work under the table or took money without working at all. Payroll records showed one officer's payments for off-duty work, a total of \$129,445, was higher than his annual salary of \$121,338. Three officers made more than \$100,000 from off-duty work. (New [jersey.com](http://www.nj.com), January 14, 2017)
- Moral: Corruption can be very lucrative, and therefore very tempting.

PURPOSE OF ETHICS ORDINANCES

- Ensure public trust in government operations.
- Create a culture of ethics at city hall.
- Ensure that decisions are made using proper procedures and are free from improper influence.
- Provide transparency to the public.
- Prevent actual conflicts of interest.

PURPOSE OF ETHICS ORDINANCES

- Prevent perceptions of conflicts of interest.
- Prevent personal gain from public transactions.
- Maintain city government as nonpartisan.
- Ensure civility in governmental proceedings.
- Ensure respect for input from citizens and the desires of the public.

PURPOSE OF ETHICS ORDINANCES

- Ensure compliance with city ordinances, and state and federal statutes and regulations.
- Prevent waste of city resources and taxpayer revenues.
- Provide a process for enforcement and mechanisms for punishment.
- Provide staffing and resources for training on ethics.

COMMON PROVISIONS

- Based on: Arlington, Austin, Boston, Chicago, Denver, Dallas, El Paso, Fort Worth, Houston, Los Angeles, New York, Philadelphia, Phoenix, Portland, San Antonio, Seattle, Washington D.C.
- Statement of purpose and general principles of conduct.
 - The statement of purpose and general principles are usually not enforceable.
- Definitions.

COMMON PROVISIONS

- Improper financial interests.
 - Direct financial interests of the city official or city employee.
 - Financial interests in the official's or employee's clients or employers.
 - Financial interests in the business entities affiliated with the official or employee.

COMMON PROVISIONS

- Improper financial interests (continued).
 - Financial interest in businesses that have offered employment to the official or employee.
 - Financial interests of the official's or employee's family members.
 - Financial interests in business entities affiliated with the official's or employee's family members.

COMMON PROVISIONS

- Unfair advancement of private interests.
 - Prohibition on granting treatment that is not available to the public.
 - Prohibition on impeding someone from obtaining treatment that is available to the public.
- Acquisition of an interest in a pending matter.
- Acquisition of an interest in a previously decided matter.
- Reciprocal favors.

COMMON PROVISIONS

- Nepotism.
 - Prohibits officials from appointing family members to city boards and commission.
 - Prohibits employees from supervising family members.
- Gifts.
 - Prohibition on accepting gifts to reward or influence actions.
 - Prohibition on offering gifts that reward or influence actions.
 - Reporting requirements for gifts.
 - Items that are not considered gifts (loans, awards, scholarships, campaign contributions).

COMMON PROVISIONS

- Confidential information.
 - Improper access to information.
 - Improper disclosure of information.
- Representation of private interests.
 - Representing parties before city boards and commissions.
 - Representing parties before the city in general.
 - Improper use of city position to advance private interests.
 - Representing parties in litigation against the city.

COMMON PROVISIONS

- Conflicting outside employment.
 - Prohibits employment that could impair independent judgment.
 - Prohibits employment with entities that are seeking approvals from the city.
- Use of public property and resources.
 - Prohibits waste or improper use of city resources.
 - Requires use of city resources on the same basis as available to the general public.

COMMON PROVISIONS

- Political activities.
 - City officials:
 - Cannot use cannot use their city position on behalf of a candidate.
 - Cannot act as a campaign treasurer.
 - Cannot solicit or receive campaign contributions.
 - City employees:
 - Can be candidates for public office.
 - Cannot use city resources for campaigns.
 - Cannot use their city position on behalf of a candidate.

COMMON PROVISIONS

- Political activities (continued).
 - Officials and employees cannot influence subordinates to participate in campaign.
 - Officials and employees may not act as paid campaign workers on city ballot initiatives.
 - City vehicles cannot be used for campaign purposes, including bumper stickers.
 - Public resources cannot be used for campaigns.

COMMON PROVISIONS

- Actions of others.
 - It is a violation to assist someone to violate the code of ethics.
 - It is a violation to engage someone else to violate the code of ethics.
 - Persons are required to report violations of the code of ethics.

COMMON PROVISIONS

- Prohibited interests in contracts.
 - Officers and employees may not submit bids or proposals for city contracts.
 - Officers and employees may not negotiate city contracts for themselves.
 - Officials and employees may not enter into contracts with the city.
 - Applies also to companies associated with the officials or employees.

COMMON PROVISIONS

- Rules for former officials and employees.
 - Former officials and employees may not disclose confidential information.
 - Former officials and employees may not represent parties before the city for one year.
 - Former officials and employees may not represent parties in litigation against the city if the litigation involves a project the official or employee worked on.

COMMON PROVISIONS

- Rules for former officials and employees (continued).
 - Former officials and employees may not state that they are able to improperly influence city actions.
 - Former officials and employees may not submit bids or proposals, negotiate contracts, or enter into contracts for one year.
 - For one year, former officials and employees may not work under a contract that they negotiated or awarded when then worked for the city.

COMMON PROVISIONS

- Lobbyist regulations.
 - Persons who “lobby” city officials on “municipal questions” must register as lobbyists.
 - Certain persons are not required to register as lobbyists.
 - Lobbyists must file a report every quarter disclosing any lobbying contacts, any lobbying expenses, any gifts, and any exchanges with businesses affiliated with city officials or employees.

COMMON PROVISIONS

- Lobbyist regulations (continued).
 - Persons who are not lobbyists must file a disclosure statement if they lobby city officials or employees on certain zoning cases or public subsidy matters.
 - Other restricted activities are: false statements, failure to correct statements, personal obligations by officials or employees, improper influence, false appearances, stating that they can improperly influence city actions, and lobbying city council members on pending contracts.
 - Lobbyists must identify their client in all public appearances, oral lobbying contacts, and written lobbying contacts.

COMMON PROVISIONS

- Reporting and disclosure requirements.
 - Persons who appear before city boards and commissions must identify themselves.
 - A person who represents someone else before a city board or commission must identify the person being represented.
- Creation of an ethics commission.
- Enforcement.
 - It is a violation to induce someone to violate the code of ethics.
 - It is a violation to conspire with someone to violate the code of ethics.
 - Culpable mental state: violations must be done knowingly.

COMMON PROVISIONS

- Recusal and disclosure requirements.
 - Recusal from decision making when there is an actual conflict of interest.
 - Disclosure of offers of employment.
 - Certain officials must file an annual report of financial interests.
 - Certain officials must file an annual report of any travel paid by an entity other than the city.
 - Annual reporting of gifts given to the officials or employees, donations of goods or services to the city, and protocol gifts given to the city.

COMMON PROVISIONS

- Penalties.
 - Violation of the lobbyist regulations is a Class C misdemeanor punishable by a \$500 fine.
- Miscellaneous provisions.
 - The city attorney acts a counsel to the Ethics Commission.
 - The city attorney can issue ethics opinions. Officials and employees who rely on an ethics opinion cannot be subject to sanctions.
 - Persons may be prosecuted by perjury.
 - Persons who file frivolous complaints may be prohibited from filing an ethics complaint for up to five years.

COMMON PROVISIONS

- Perjury: It is an ethics violation to commit perjury or encourage perjury.
- Disclosure of conflicts of city officials and employees on zoning cases: Applicants on zoning cases must disclose any conflicts of interest that city commissioners or employees have.
- Disclosure of conflicts of city officials and employees: Applicants to city boards must disclose any conflict of interest on that board. Contract applicants must disclose any conflicts of interest of city officials or employees. Recipients of economic benefits must disclose any conflicts of city officials or employees.

COMMON PROVISIONS

- Ethics pledge: Officers and employees must file a pledge to follow the code of ethics.
- City ethics officer: The city must have hire a city ethics officer.
- Departmental ethics officer: Each city department must have an ethics officer.

COMMON PROVISIONS

- Mandatory ethics training: Officers and employees must have periodic ethics training.
- City loans to officers and employees: City officials and employees cannot make loans to employees. City officials and employees cannot become guarantor on loans of employees.
- Duty to report ethics violations: Officers and employees have a duty to report ethics violations. Failure to report is a violation.

COMMON PROVISIONS

- Whistleblower protection: Officers and employees who report ethics violations have whistleblower status.
- Subpoenas: The ethics commission can issue subpoenas for documents and witnesses.
- Interference with an investigation: It is a violation to interfere with an ethics investigation.

COMMON PROVISIONS

- Prior employment not a disqualifier: Applicants for city jobs cannot be disqualified because of prior employment. Former city employees will not be given special advantage.
- Prior employment as influence on contracts: City officials and employees cannot influence a contract if they were employed by the contractor within the last 12 months.
- Thwarting ordinances: It is a violation to thwart the execution of city ordinances.

COMMON PROVISIONS

- Lobbying by former employees: Certain former city officials and employees cannot register as lobbyists for two years.
- Time records for city council staff: City councilmembers must keep time records of their staff, and records will be available to the public.
- Contract inducement: Payments and offers of employment cannot be made as an inducement to award a contract.

COMMON PROVISIONS

- Elected official influencing a contract: It is a violation for a city official to influence a contractor or grant recipient for private gain.
- Discrimination: It is an ethics violation to discriminate against a protected class or to engage in sexual harassment.
- Ex parte communications: It is an ethics violation to have ex parte communications with a quasi-judicial board.

COMMON PROVISIONS

- Attendance: It is an ethics violation for city officials and employees to violate attendance rules.
- Elected official exercising administrative duties: It is an ethics violation for a city official to exercise administrative powers over city departments.
- Illegal computer software: It is an ethics violation to use or install illegal computer software.

ETHICS COMPLAINT PROCEDURES

- Complaints alleging violations of the code of ethics are filed with the city secretary.
 - Complaints can also be filed anonymously via the City Auditor's fraud, waste, and abuse hotline.
- A preliminary panel of the Ethics Commission determines if there is "just cause" for the complaint.
- The complaint is then considered by the entire Ethics Commission during an evidentiary hearing.
 - The ethics commission will recommend an appropriate sanction.
- The "sanctioning body" will impose a sanction.

SANCTIONS

- Factors to consider when imposing sanctions:
 - The culpability.
 - The harm to public or private interests.
 - The need to preserve public trust.
 - Any pattern of disregard for ethical standards.

SANCTIONS

- Possible sanctions:
 - Letter of notification.
 - Letter of admonition.
 - Reprimand.
 - Resolution of censure.

SANCTIONS

- Possible sanctions:
 - Referral to ethics training.
 - Referral for legal action for damages or injunction.
 - Referral for criminal prosecution.
 - Voiding of prior actions.

SANCTIONS

- Possible sanctions:
 - Disqualification from contracting or lobbying.
 - Suspension from office.
 - Removal from office.
- Imposition of sanctions does not preclude criminal prosecution.

STATE LAWS

- Texas Local Government Code Chapter 171: Regulation of Conflicts of Officers of Municipalities.
 - City officials must file a disclosure and abstain from voting if they have \$2500 in real estate or own 10% of a business that will be affected by a vote. Must also abstain if a family member has a substantial interest in real estate or a business.

STATE LAWS

- Texas Local Government Code Chapter 145: Financial Disclosure by and Standards of Conduct for Local Government Officers.
 - City officials and candidates in cities over 100,00 must file a financial disclosure statement with the city secretary.

STATE LAWS

- Texas Local Government Code Section 212.017: Conflict of Interest on Municipal Regulation of Subdivisions.
 - City officials must file a disclosure and abstain from voting if they have \$2500 in real estate or own 10% of a business that will be affected by a subdivision (platting) application. Must also abstain if a family member has a substantial interest in real estate or a business.

STATE LAWS

- Texas Local Government Code Chapter 176: Disclosure of Certain Relationships with Local Government Officers.
 - City officials must file a disclosure statement if they have business over \$2500 or receive gifts over \$2500 from a company that is contracting with the city.
 - Contractors must file a disclosure statement if they have any business relationship with city officials or if they have given gifts to city officials.

STATE LAWS

- Texas Election Code Chapter 255: Regulating Political Advertising and Campaign Communications.
 - City officials and employees may not use public funds for political advertising.
 - City officials and may not use the city's internal mail system to distribute political advertising.
 - Political advertising must state that it is political advertising and the identity of the entity that paid for the advertising.

STATE LAWS

- Texas Penal Code Chapter 36: Bribery and Corrupt Influence.
 - It is a criminal offense to bribe a city official.
 - It is a criminal offense to improperly influence or coerce a public servant.
 - A public servant may not accept an honorarium for a service that he was required to perform as a public servant.
 - Limitations on gifts to public servants.

STATE LAWS

- Texas Penal Code Chapter 39: Abuse of Office.
 - It is a criminal offense for a public servant to knowingly misuse government property, services, or personnel.
 - It is a criminal offense for a public servant to subject a citizen to unlawful treatment, prevent the citizen from exercising rights, or subject a citizen to sexual harassment.
 - It is a criminal offense to misuse confidential government information for financial gain.

ETHICS OPINIONS

Question: A city would like to release a brochure to answer questions regarding the election on a sale and use tax to fund an emergency services district. The city will release the brochure on its website and social media sites. Does this violate the prohibition on using public funds for political advertising?

ETHICS OPINIONS

Answer: The critical question is whether the information supports or opposes a measure. While the brochure includes information beyond a factual description of the measure, it does not promote the outcome of the measure and therefore does not constitute political advertising. Therefore, public funds may be used to distribute the brochure. (TEC Op. 538, April 8, 2016).

ETHICS OPINIONS

Question: Can a city councilmember distribute political advertising on letterhead that contains a logo and a slogan that were designed with the city's public funds? The councilmember used a personal computer to modify the city letterhead by removing the names of the other city council members, and changing the return address to his own. The letter would include a statement that no city funds were used to print or mail the letter.

ETHICS OPINIONS

Answer: Although city equipment or employees were not used to modify the logo and slogan, they are the city's intellectual property and, as such, would constitute a city resource. A city councilmember may not use letterhead that is created by city staff or with city resources to write and distribute political advertising. (TEC Op. 532, October 5, 2015).

ETHICS OPINIONS

Question: Is a city council member's newsletter political advertising that may not be paid for with public funds? The newsletter is four pages. It includes one individual picture of the city councilmember and 22 other pictures in which the city councilmember appears with other persons. The area covered by the pictures is almost 50 percent of the newsletter. Also, the name of the city councilmember appears 22 times in print type that is bolded or larger than the main text.

ETHICS OPINIONS

Answer: The mere fact that the name or picture of a city councilmember appears in a newsletter does not determine whether it is political advertising. A newsletter may contain no more than two pictures of the public officer per page, if the pictures are no more than 20 percent of any page. Also, the public officer's name should not be set apart from other text. This newsletter is a self-promotion of the city councilmember, and constitutes political advertising. Therefore, public funds may not be used to pay for the newsletter. (TEC Op. 476, August 21, 2007).

ETHICS OPINIONS

Question: Does the recording and the televising of city council meetings run afoul of the prohibition on political advertising when a council member states an opinion concerning a measure that is or may be on an upcoming ballot?

ETHICS OPINIONS

Answer: The city is not prohibited from broadcasting a city council meeting if the broadcast is in keeping with the city's regular practice of broadcasting meetings. City resources would not be used "for" political advertising even if an incidental effect of broadcasting the tape would be to broadcast statements supporting or opposing a ballot measure. (TEC Op. 456, July 16, 2004).

ETHICS OPINIONS

Question: Can a city adopt a campaign finance ordinance that requires candidates and officeholders to file reports electronically and not paper copies? The city's proposed system would allow filers to print a paper copy, and paper copies would be available upon request.

ETHICS OPINIONS

Answer: A home-rule city may impose additional campaign finance regulations as long as it is possible to give effect to both the city regulations and the Texas Election Code. A home-rule city may adopt an ordinance that requires city candidates and officeholders to transmit reports electronically rather than on paper as long as a paper copy of the report that conforms to the same format and paper size as the form prescribed by the Texas Election Commission is available. (TEC Op. 459, November 12, 2004).

ETHICS OPINIONS

Question: Can a nonprofit corporation formed by various benefactors fund the cost of printing of the newsletter for a city councilmember? Although the newsletter might mention city officials and their activities, it is not intended as a political mailing and would not contain any candidate endorsements or other political messages.

ETHICS OPINIONS

Answer: First, any expenditures by a group to produce the newsletter would be officeholder contributions. As such, the expenditures would be subject to the campaign finance reporting requirements. Second, the Texas Election Code generally prohibits both for-profit and nonprofit corporations from making political contributions. If the "benefactors" form a political committee and incorporate for liability purposes only, the incorporated political committee may produce the newsletter. Otherwise, a corporation formed by the benefactors could not produce the newsletter for the council member without violating the prohibition on corporate political activity. (TEX Op. 242, January 13, 1995).

ETHICS OPINIONS

Question: Can city employees accept discounts from child care providers under a group discount program offered to the personnel of large employers even if the city regulates child care providers?

ETHICS OPINIONS

Answer: Penal Code Section 36.08 prohibits a public servant in an agency performing regulatory functions from accepting a benefit from a person subject to regulation by the agency. Nevertheless, a discount offered to government employees on the same terms as offered to employees of other large employers does not raise the appearance of impropriety. The discount would not be allowed if they were offered to the city employees on more favorable terms than those offered to employees of large employers in the private sector. (TEC Op. 282, October 13, 1995).

ETHICS OPINIONS

Question: Can city police officers accept a cash award in recognition of their contributions for improvements in the justice system from a national foundation that recognizes improvements in the administration of justice? The two police officers chosen to receive the award initiated the development of a countywide, multiple-agency program to reduce auto theft.

ETHICS OPINIONS

Answer: First, a payment is prohibited if it is in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties. In this case there is no payment for "requested" services because the foundation making the award did not request any services or receive any benefit. Second, a police officer may not accept a "benefit" from a person the police officer knows may be subject to investigation by his agency. The police officers may accept the cash award because the national foundation is not subject to investigation by the police department. (TEC Op. 226, September 9, 1994).

Questions and Discussion

If you want a copy of the powerpoint:
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