



CITY OF EL PASO

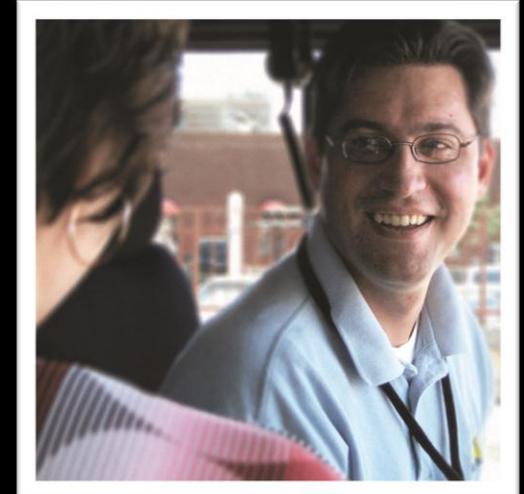
ETHICS IN CITY GOVERNMENT

for

BOARDS, COMMISSIONS OR COMMITTEES

August 9, 2012

Training Objective



To inform city employees, elected officials and officers and members of City boards, commissions and committees of their obligation to the citizens of El Paso to conduct themselves in a manner that demonstrates our commitment to honesty, integrity and ethical behavior.

Focus on Training



- Although training includes legal terms and phrases, the purpose is to educate and stress the importance and seriousness of ethics in city government.
- As a member of a City board, commission or committee, your focused attention is imperative.

Developing Ethical Standards

- On what do we base our ethical standards?
- How do these standards get applied to specific situations we face?
- Viewed as window dressing by some
- Difficult to monitor compliance





“Ethics” Defined

A set of principles of right or good behavior; a theory or a system of moral values; the rules or standards of a person or the members of a profession.

What Ethics is Not

- Ethics is not the same as “emotional gut checks”
 - Some people feel bad when they do wrong, others feel good when they do wrong
- Ethics is not religion
 - Many people are not religious, but ethics applies to everyone
- Ethics is not just following the law
 - Law can deviate from what is ethical
 - Law can become ethically corrupt
- Ethics is not just following culturally accepted norms
 - “When in Rome, do as the Romans do”

State Laws Relating to Ethics

- Chapter 36, Texas Penal Code (Bribery & Corrupt Influence)
 - Extends to public servants and immediate family
 - Prohibits bribery; coercion of public servants; improper acceptance of honorariums; and the offering and acceptance of certain gifts
 - An honorarium given solely because of official status, rather than based on skill or knowledge, is unlawful.
 - No gifts can be accepted by decision makers from a person interested in a city contract

State Laws Relating to Ethics (cont'd)

- Chapter 37, Texas Penal Code
 - Prohibits tampering with governmental records
- Chapter 39, Texas Penal Code
 - prohibits abuse of office; official oppression; and misuse of official information.
 - Prohibits the misuse of government property, services and personnel
 - Prohibits an unlawful arrest, detention, search and seizure, and placement of an assessment of lien known to be unlawful

Ethics Ordinance

Title 2, Chapter 2.92 of the EL Paso Municipal Code

www.elpasotexas.gov/government

The screenshot shows a web browser window with the Municode website. The browser's address bar shows "EP Government | Ho..." and "Municode". The website header includes the Municode logo, a search bar, and navigation links like "BUY PUBLICATION", "MY DASHBOARD", "HELP", and "LOG IN". The main content area is titled "El Paso, Texas, Code of Ordinances >> Title 2 - ADMINISTRATION AND PERSONNEL >> Chapter 2.92 - ETHICS >>". A red arrow points to the "Title 2 - ADMINISTRATION AND PERSONNEL" link in the left-hand navigation menu. The main content area displays "Chapter 2.92 - ETHICS" with a list of sections: 2.92.010 - Policy and purpose, 2.92.020 - Definitions, 2.92.030 - Ethics review commission, 2.92.040 - Gifts, 2.92.050 - Standards of conduct, 2.92.060 - Restrictions, 2.92.070 - Reporting requirements, 2.92.080 - Complaints—Filing—Review, 2.92.090 - Complaints—Hearing—Disposition, 2.92.100 - Campaign finances, 2.92.110 - Disclosure of campaign contributions, 2.92.120 - Ethics training, 2.92.130—2.92.140 - Reserved, and 2.92.150 - Penalty. The section "2.92.010 - Policy and purpose" is expanded, showing two sub-sections: A. All city officers and employees have a fiduciary duty to the citizens of the city to be ethical in fulfilling the responsibilities of their positions. At the very least, being ethical includes being disposed to comply with all laws that apply to one's position. B. Ethical conduct is motivated by sources inside and outside the law. The Texas local government, Election and Penal Codes regulate aspects of the conduct of city officers and employees. However, as ethical conduct is more than complying with state codes, the city strongly encourages all of its officers and employees to maintain the highest personal values and

Ethics Ordinance

- All members of a City board, commission or committee have a responsibility to the citizens of the city to be ethical in fulfilling the responsibilities of their positions and are expected to comply with all laws that apply to one's position.

ORDINANCE NO. 017112

ANCE AMENDING TITLE 2 (ADMINISTRATIVE), CHAPTER 2.92 (ETHICS); TO AMEND PARAGRAPH 2.92.090 AND SECTION 2.92.150; TO REVISE AND STANDARDS OF CONDUCT, RULES AND PROCEDURES OF THE ETHICS COMMISSION, REVISE THE PROCESS FOR RECEIVING GIFTS, CREATE RESTRICTIONS FOR OFFICIALS LEAVING CITY SERVICE, REVISE THE CRIMINAL AND CREATE ADDITIONAL VIOLATIONS AND PENALTIES AS PROVIDED IN SECTIONS 2.92.150 AND 2.92.155 OF THE EL PASO CITY CODE.

In 2007, the voters of the City added provisions in the City Charter that created the Ethics Commission and conferred duties upon the Commission.

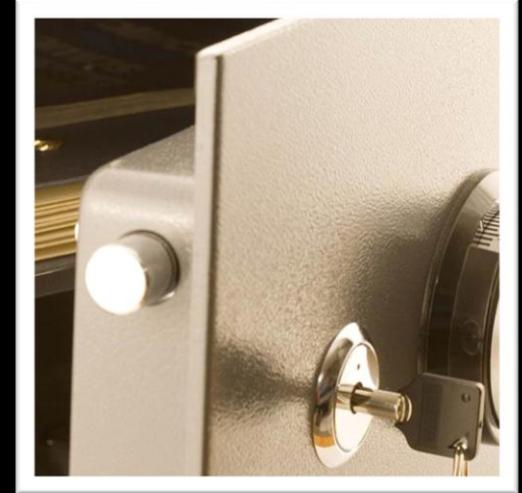
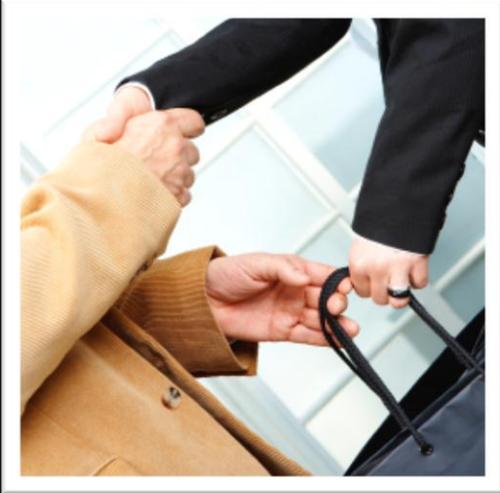
The City Council requested a complete review of the City Charter by the City Council Rules Legislative Review Committee and

Ethics Ordinance

“Board” Defined

- “Board” means a board, commission or committee:
 - Which is established to participate in some manner in the conduct of city government, including participation which is merely advisory, whether established by city ordinance or City Charter, Interlocal contract, state law or any other lawful means; and
 - Any part of whose membership is appointed by the city council, but does not include a board, commission, or committee, which is the governing body of a separate subdivision of the state.

Unethical Conduct includes but is not limited to:



- Showing favoritism
- Seeking privileges or special treatment
- Accepting improper gifts
- Theft
- Breach of confidentiality or gossip
- Using city resources to profit personally

(This is not an all inclusive list)

Ethics Ordinance, Standards of Conduct

Title 2, Chapter 2.92.050



- Applies to all city officers and employees including the Mayor, Council Representatives and all Board and Commission members, including the Public Service Board (PSB).

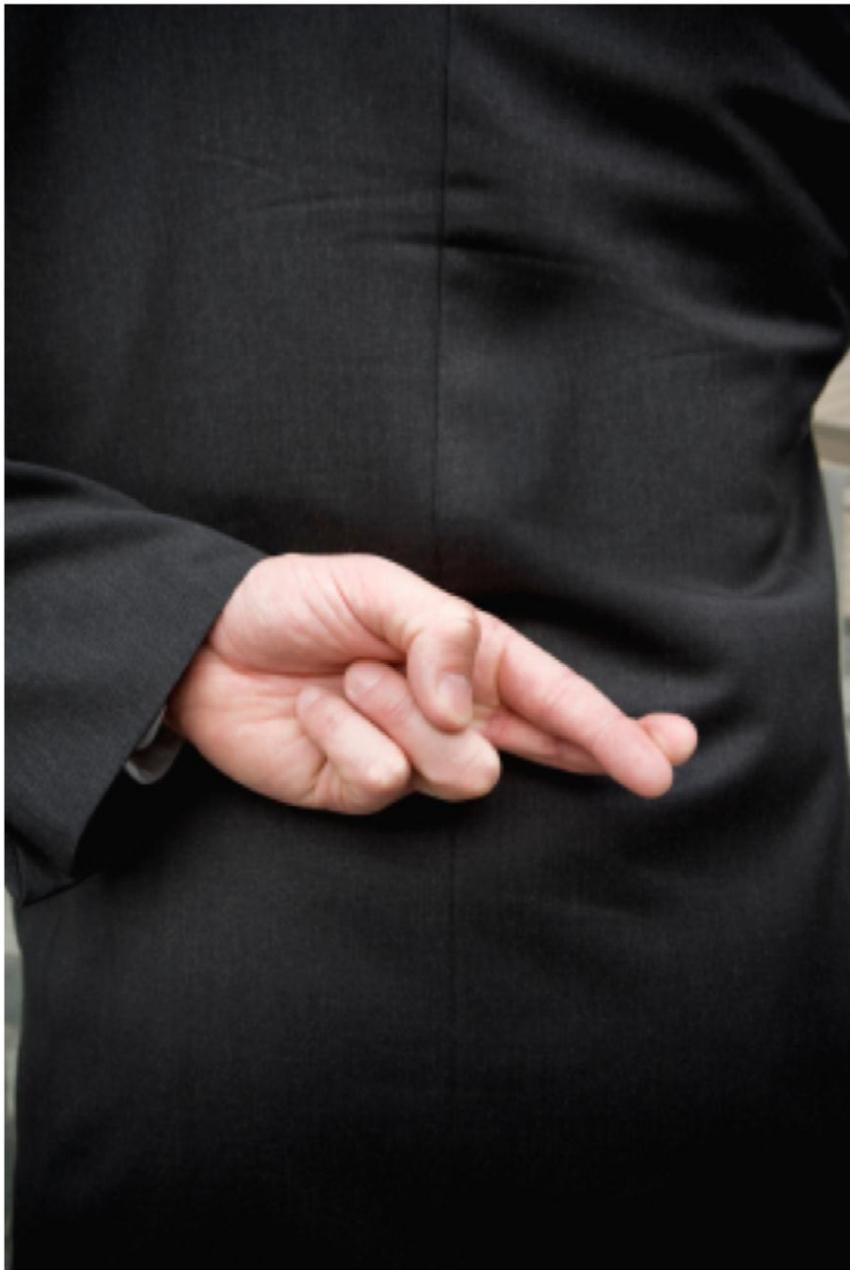
Standards of Conduct



- Prohibit unfair and other inappropriate decision-making.
- Require independent judgment in the performance of duty.
- Prohibit financial or other personal gains from the transaction of city business.
- Prohibit the misuse or improper release of confidential information.

Standards of Conduct (cont'd)

- Prohibit inappropriate use of city resources for personal benefit or the benefit of others.
- Prohibit appearance before a city board or department to represent the interests of another.
- Regulate other employment and outside activities that are incompatible.



Standards of Conduct (cont'd)

- Prohibit the transaction of business with entities in which officer has a financial interest.
- If matter under consideration involves business entity that you are an officer, agent or member of or have a financial interest, you must abstain from voting and refrain from discussing the matter.
 - Includes all types of membership on the board of a nonprofit and applies even if there is no financial interest in the entity.
 - Applies to all officers and to all employees.

Standards of Conduct

Section 2.292.050 P

- Board Members shall not personally represent or appear in behalf of the private interests of another:
 - Before the board for which he or she is a member;
 - Before the City Council unless the board member discloses his or her status as a board member to the Council and the representation does not relate to a matter that was heard or decided by the board of which the person is a board member;
 - Before a board which has appellate jurisdiction over the board of which he or she is a member; or
 - In a judicial or quasi-judicial proceeding to which the city or an employee of that city is a party.

Standards of Conduct

Statutory Conflicts of Interest

- Chapter 171 Local Government Code:
 - Officers are prohibited from voting or participating in a decision in which you have a “substantial interest” in the involved property or business.
 - Applies if
 - 10% or more of income comes from the entity;
 - Own 10% or \$15,000 of FMV (Fair Market Value) of entity; or
 - Have \$2,500 interest in FMV of the real property.
 - Conflict extends to relatives in the 1st Degree (spouse, parents and children).

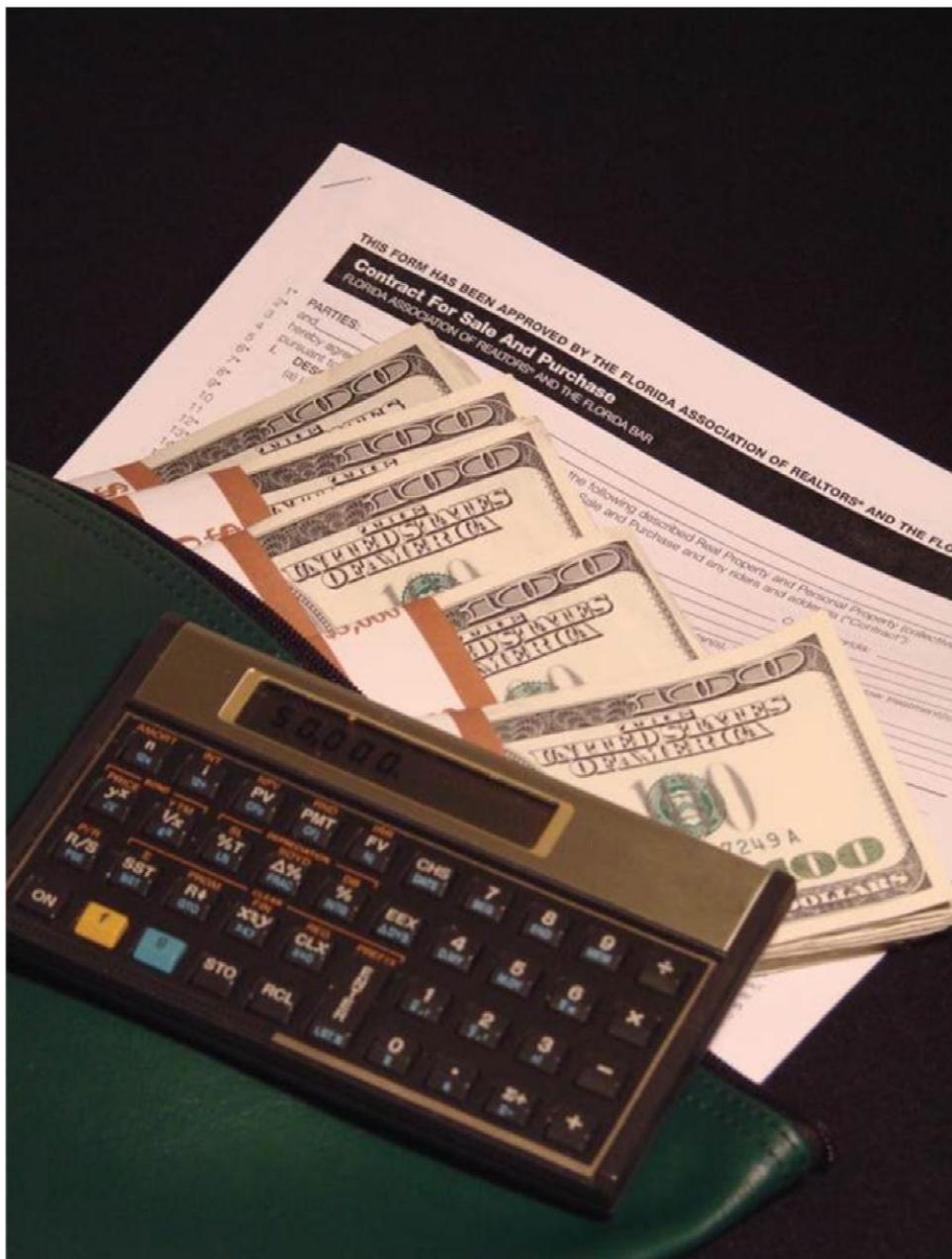
Standards of Conduct

Statutory Conflicts of Interest

- Chapter 171 Local Government Code:
 - Officers must file an affidavit with the City Clerk prior to the item first coming before council.
 - Officers must abstain from participation and voting.
 - Officers are the Mayor and City Council and the members of the Building & Standards Commission, City Plan Commission, Construction Board of Appeals, Historic Landmark Commission, Public Service Board, and Zoning Board of Adjustment.

Standards of Conduct Statutory Conflicts of Interest

- Section 553.002,
Government Code
 - If you have a legal or equitable interest in real property that is to be acquired by city by purchase or condemnation, an affidavit with the County Clerk must be filed within 10 days before the purchase or acquisition date.



Standards of Conduct

Statutory Conflicts of Interest (cont'd)

- Chapter 176, Local Government Code:
 - Conflict disclosure statement must be filed if the city or PSB is entering into a written contract with a person who has an employment or other business relationship with a member of the City Council or PSB or their family member that results in the member or his family member receiving taxable income, other than investment income, that exceeds \$2,500, or the member has received a \$250 gift from the person, within previous 12 months.
 - Must be filed with the City Clerk within seven (7) days after the member becomes aware of the situation.

City Ethics Code

Reporting Requirements

Title 2, Chapter 2.92.070

- Financial Disclosure Statements
 - Must be filed between June 1-June 30 of each year.
 - Revised Financial Disclosure Statements must be filed at any time in which the board member changes his primary employment or has made changes in financial investments which cumulatively total more than 35% of the members total investments.
 - Failure to submit financial disclosure statements before the deadline may result in removal of the board member in accordance with the Ethics Ordinance, El Paso City Charter or Texas Local Government Code.

City Ethics Code

Reporting Requirements

- Financial Disclosure Statements
 - This requirement applies to members of Building and Standards Commission, City Plan Commission, Civil Service Commission, Construction Board of Appeals, Ethics Review Commission, Historic Landmark Commission, Parks and Recreation Board, Public Service Board, and Zoning Board of Adjustment.
 - Board whose regulation is pre-empted by federal or state law, or who are expressly exempted by the City Council for reasons to be stated by the City Council, are exempt from this requirement.

Regulation of Gifts

Title 2, Chapter 2.92.040

General Rule – Officers and employees shall not solicit, accept, or agree to accept for themselves or a relative:



- Any gift exceeding \$75 in value.
- Any gift that would influence improper action.
- Any gift from a registered lobbyist exceeding \$10 in value.

Regulation of Gifts

Exceptions



- Political contributions
- Awards and personalized mementos
- Personal matters: gifts and ordinary loans
- Official tokens of recognition
- Reasonable hosting in connection with certain public events
- Allowable honorariums
- Tickets to city sponsored events or events that are part of official duties, or a spouse's or child event*
- Attendance to most charity events

**may require reporting of gifts received*

Reporting of Gifts

Title 2, Chapter 2.92.070, Section B

- Some gifts may require the need to report.
- For those gifts that do need to be reported, utilize the Reportable Gift Form:
 - File with City Clerk no later than 10th of month
- Report accepted/unreturned gifts
 - State the value and the reason for accepting
 - “*Value Unknown*” is not acceptable

Report of Reportable Gifts under Section 2.92.070B, El Paso City Code*

Name: First Last Reporting period: January 2012
Title: City Representative-District 15

Description of Gift	Name of Person or Organization who made the gift	Relationship of the donor to the reporter	Immediate or Intended Disposition of the Gift	Value or estimated value of the gift** (All gifts over \$10.00)	If Gift is over \$75.00, report date gift was turned over to the City, or whether there is an exception under Section 2.92.040B and state exception.
Candy bouquet	Office Supply Specialists	None	Accepted	\$10.00	
Poster	Community Stars	None	Accepted	\$5.00	

*To be filed by each officer, city manager, deputy city manager, department head, and executive assistants to the mayor each calendar month during which the person receives a reportable gift, no later than the 10th day of the following calendar month.
**The value of all gifts reported must be stated. Do not state "unknown" as a value. If the exact value is not known, the reporter must determine a readily ascertainable value and state that as the value.

City Ethics Code

Restrictions

Title 2, Chapter 2.92.060

- Civil Service Commission
 - Former members, during the 12 months after having served, shall not represent any classified employee of the City before the Commission or before a Hearing Officer.
 - Former members shall not represent an employee before the Commission on any matter that was before the Commission during the time the former member served.
 - Former members, during the 12 months after having served and left the Civil Service Commission, shall not be appointed as a Hearing Officer for the Commission.

City Ethics Code Restrictions

- Hearing Officers
 - An appointed Hearing Officer shall not, during the time of service and for 12 months after having served as Hearing Officer, represent any classified City employee before the Civil Service Commission or before a Hearing Officer appointed by the Commission;
 - Former Hearing Officers shall not represent a classified City employee on any matter before the Commission or a Hearing Officer on any item that was before such person during the time he served.

Lobbying Ordinance

Title 2, Chapter 2.94

- Requires lobbyists to register – any person who lobbies city officials and earns salary or compensation of \$200 in a 3 month period.
- Lobbyists must file quarterly reports, abide by the “Cone of Silence” if the matter is a city procurement, and are limited on the types of gifts they can give to city officials.
- Members of city boards and commissions with independent decision-making authority are not allowed to register as a lobbyist.

ORDINANCE NO. 016448

ORDINANCE AMENDING TITLE 2 (ADMINISTRATIVE) OF THE EL PASO CITY CODE CHAPTER 2.94 (REGULATION OF LOBBYING ACTIVITIES THEREUNDER; TO AMEND SECTIONS 2.94.010 THROUGH 2.94.050 AND 2.94.060 TO ADD SECTIONS 2.94.070 THROUGH 2.94.100; TO AMEND SECTIONS 2.94.110 THROUGH 2.94.130 TO ADD SECTIONS 2.94.140 THROUGH 2.94.160; AND TO RESTRICT THE PENALTY BEING ASSESSABLE UNDER SECTIONS 2.94.030 AND 2.94.130 OF THE EL PASO CITY CODE.

The City Council adopted the City's first ordinance on March 7, 2006; and

used on the implementation of this ordinance. It is determined that amendments to the ordinance are a continuation of the ordinance and to reduce the burden

Lobbying Ordinance

- Prohibits lobbyists from
 - Giving any gift to a city official or a member of his or her immediate family, except as permitted in accordance with Chapter 2.92 of the Ethics Code
 - Knowingly or willfully making false or misleading statements or misrepresentations of the facts to a city official.
 - Publically stating that they can control or obtain the vote or action of any city official.

Lobbying Ordinance

Economic Development Projects

- Prohibits persons, at any time prior to the presentation of a recommendation by city staff to the City Council in an official meeting regarding an economic development project seeking incentives, from contacting any elected official or their staff regarding the project.
 - This does not include participation and communication with members of the City Council in public activities initiated by city staff in attracting new or retaining or expanding existing businesses.



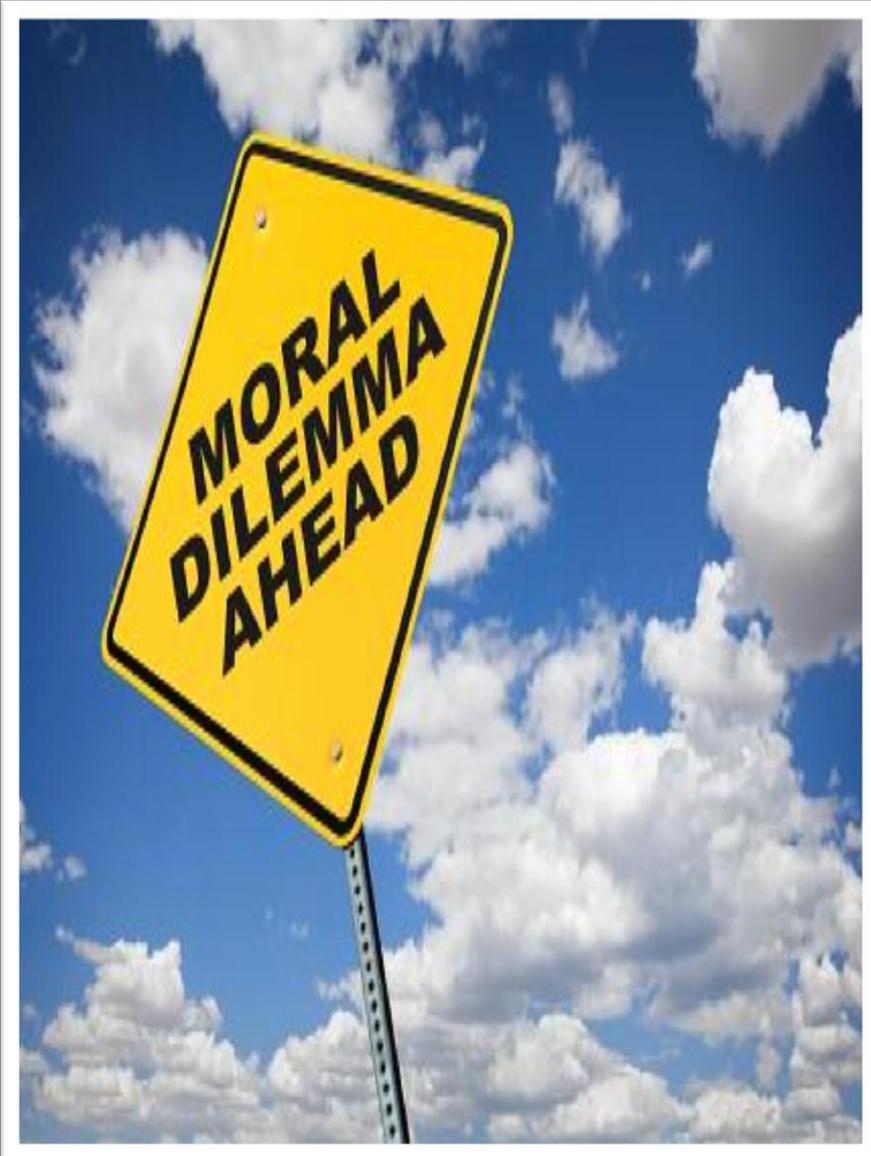
City Code

Title 1, Chapter 2.44.050

The “Ticket” Code

“...it is unlawful for any city official or employee, or any other person, to solicit of any police officer or other city employee or official the dismissal, cancellation, taking up or other disposition of any such ticket, citation, notice, summons, or process issued by a member of the police force...”

Your Inner Voice



- Do not assume
- If you ask someone and they're not sure, ask another
- Ignorance is not an acceptable excuse
 - *"I didn't know I could not do this."*
 - *"It's always been done like this."*
 - *"Why not? Others have done it before."*

Your Inner Voice



- Ask yourself,
 - *“Is this a conflict of interest?”*
 - *“Will this influence the performance of my official duties?”*
 - *“Am I gaining financially or personally from this?”*
- *Anytime when in doubt, ask the Board Secretary, City Manager’s Office or City Attorney’s Office.*

Misconduct May Result In



- Criminal charges
- Negative publicity / media attention
- Jail/prison time
- Fine(s)



Scenarios

Landing A Job

Ann is a member of a City board. She recently applied for a position with the company that has a business matter before the board. While Ann has not officially been given a job offer, she has been negotiating terms of an employment agreement.

How should Ann handle this matter?

According to the City's Ethics Ordinance, Ann must immediately notify the board for which she is a member of that she is in employment negotiations with the firm. Further, she must refrain from discussing the matter at any time with other board members and abstain from voting on the matter.

Don't you know who I am?

Omar is a member of a City board. While driving in town he gets pulled over by a police officer for speeding. When he is asked for his driver's license Omar shows him his city ID and business card. When asked again for his driver's license he asks the officer, "Don't you know who I am? I am an appointee of the City Council and trust me, you don't want to give ME a ticket!"

The City's Ethics Ordinance states that officers or employees shall not solicit of any police officer the dismissal, cancellation, taking up or other disposition of any ticket, citation, notice or summons issued by a member of the police force.

Cone of Silence

A friend of yours, who owns a local company, calls you and mentions they have read a bid posting on the city's website and will be bidding on the project. Knowing you are an appointee of the Council, they ask you to call the Council and put in a good word for them.

This is a violation of the Cone of Silence. Upon learning of the vendor's intention to discuss an active bid, you must immediately refrain from discussing the matter and refer them to the Purchasing Department to answer their questions.

A Familiar Face

You are a new member to a city board that hears matters relating to land use and development. There is an item on an upcoming agenda that impacts a property owned by your father-in-law.

How do you handle this scenario?

Chapter 171 of the Local Government Code states officers are prohibited from voting or participating in a decision in which you have a “substantial interest” in the involved property or business, and requires the filing of an affidavit stating the conflict of interest.