



# **BOARDS & COMMISSIONS ETHICS TRAINING**

**NJDHS**

**Nichols, Jackson, Dillard, Hager & Smith, LLP**

# CODE OF CONDUCT

- The conduct of DeSoto's public officials is governed by the City Charter; City Code of Ordinances, Article 1.1400 "Code of Conduct"; and 171.001 et seq, Tex. Local Gov. Code.
- The City's Code of Conduct does not apply to employees, including those individuals employed on a full-time, part-time or internship basis nor to independent contractors of the City.
- **Form 1295**  
Certificate of Interested Parties  
Texas Ethics Commission

# Form 1295

Requires a business entity to file form before contract  
may be entered into



# **HB 23**

## **LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT**

Vendor has relationship with officer or family member, and is receiving taxable income exceeding \$2,500 in a 12-month period preceding the date the officer becomes aware that a contract has been executed or before the city is considering entering into a contract with the vendor.

# **HB 23**

## **LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT**

Gift(s) with aggregate value of more than \$100.



# CODE OF CONDUCT

- Ensure public officials are independent, impartial and responsible only to the citizens
- Prevent any interest, financial or otherwise, direct or indirect, or engagement in any business, transaction or professional activity of a public official to conflict with the proper discharge of their duties in the public interest
- Prevent public office from being used for personal gain; and ensure that the boards and commissions are at all times maintained as nonpartisan bodies

# CODE OF CONDUCT

## WHAT IS SUBSTANTIAL INTEREST (2 STEPS)

*In a Business Entity Means*

### Step 1

#### Ownership/Stock Interest

The person owns ten percent (10%) or more of the voting stock or shares of a business entity; or, owns ten percent (10%) or more or \$15,000.00 or more of the fair market value of a business entity; or

#### Income Interest

Funds received by the person from the business entity exceed ten percent (10%) of the person's gross income for the previous year.

# CODE OF CONDUCT

## WHAT IS SUBSTANTIAL INTEREST (2 STEPS)

*In a Business Entity Means*

### Step 2

### Special Economic Effect Analysis

Action on the matter involving the business entity will have a specific economic effect on the business entity that is distinguishable from the effect on the public.

# CODE OF CONDUCT SUBSTANTIAL INTEREST

## *In Real Property Means*

- The person has an interest that is equitable or legal ownership with a fair market value of \$2,500.00 or more; and,
  - It is reasonably foreseeable that an action on a matter involving the real property will have a specific economic effect on the value of the real property distinguishable from its effect on the public.
- An official is considered to have a substantial interest under the code of conduct *if a relative* has a substantial interest under the code of conduct.

# CODE OF CONDUCT

## NO OFFICER OF THE CITY SHALL

- Participate in a vote or decision on any matter in which the officer has a substantial interest
- Represent or appear on behalf of private interests of others before the city council, any agency, board, commission, corporation, or committee of the City, nor represent interests of others in any action or proceeding involving the City, nor voluntarily participate on behalf of others in any litigation to which the City is or may be a party
- Accept certain gifts from any person that might reasonably tend to influence such Officer in the discharge of official duties
  - Does not apply to an item with a value of less than \$50; or tee shirts, caps, mementos and other similar promotional material or items less than \$50

# CODE OF CONDUCT

## NO OFFICER OF THE CITY SHALL

Have a direct or indirect financial interest in any contract with the City or be directly or indirectly financially interested in the sale to the City of any land, or rights or interest in any land, materials supplies or service

*“Financial interest”* requires that the officer receives an actual financial benefit from the transaction with the City.

An actual financial benefit from the transaction *shall not* include:

- ownership in the entity transacting business with the City where the ownership interest is less than 1%; or
- compensation as an an employee, officer or director of the entity transacting business with the City where such compensation is not affected by the entity’s transaction with the City.

# **CODE OF CONDUCT**

## **NO OFFICER OF THE CITY SHALL**

- Use such person's official position to secure special privileges or benefits for such person or others
- 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
- Disclose confidential information

# **CODE OF CONDUCT**

## **NO OFFICER OF THE CITY SHALL**

- Use City supplies, personnel, property, equipment or facilities (whether tangible or intangible) for any purpose other than the conduct of official City business, unless otherwise provided for by law, ordinance or City policy
- Act as a surety on any official bond required of any officer or employee of the City, or for a business that has a contract with the City

# CODE OF CONDUCT

## ADDITIONAL STANDARDS

- No member of the City Council, P&Z Commission or Board of Adjustment shall participate in, or vote on, any land use matter in which such Officer has a ***substantial interest*** in any real property within 200 feet of the real property that is the subject of the land use matter
- No member of the City Council who is on the governing body of a nonprofit organization shall vote on any funding request by that nonprofit organization other than for membership or subscription dues or fees, or as part of the city's annual budget, unless the nonprofit organization has a governing body appointed in whole or in part by the City Council
- With the exception of those proceedings allowed under this Code of Conduct, City Council members shall not personally appear in their own behalf before the Council, or any city board, commission, corporation or committee but may designate and be represented by a person of their choice in any such personal matter

# **CODE OF CONDUCT APPEARANCE BY PAST OFFICER**

No past officer of the City shall, for a period of one (1) year after the date of termination of such relationship with the City, appear before the City Council, or any board, commission, corporation, or committee, to represent the interests of another on any matter

# **CODE OF CONDUCT**

## **DISCLOSURE OF SUBSTANTIAL INTEREST; AFFIDAVIT**

If an Officer has a substantial interest in a matter pending before the body of which the public official is a member, the person must, before a vote or decision on such matter, \*file an affidavit on a form provided by the City, disclosing the substantial interest and abstain from further participation in such matter.

***AND LEAVE THE ROOM***

\*May be criminally prosecuted for failure to file an affidavit.

# **CODE OF CONDUCT**

## **DISCLOSURE OF REAL PROPERTY INTEREST**

- Upon election, appointment or confirmation of appointment, and thereafter on or before January 1<sup>st</sup> of each calendar year, every Officer shall file in writing with the City secretary on a disclosure form provided by the City, the existence and location of any real property in the city in which the officer has any equitable or ownership interest, including any interest of 1% or more in any entity which has an equitable or ownership interest in any real property in the City. The disclosure shall also include the identity and location of all real property within the City in which the Officer has acquired or conveyed any interest since the filing of the last report
- If an officer has an interest in an entity that will not disclose to the officer whether or not the entity has a financial interest in real property in the city, the officer may satisfy this disclosure requirement by stating such fact in writing to the City secretary

# **CODE OF CONDUCT**

## **NEPOTISM**

No person related within the second degree by affinity, or the third degree consanguinity to the Mayor, any member of the City Council, or the City Manager shall be appointed to any paid office, position, clerkship, or other service of the City. This prohibition shall not apply, if the person has been continuously employed in the position for at least six (6) months immediately before the election of the related member of the Mayor or Councilmember, or has been continuously employed in the position for at least thirty (30) days before the appointment of the City Manager, if related to the City Manager.

## **Question:**

May a local official discuss or vote on an item if the effect of the vote on the official's business or property interest is no different than its effect on the general public?

## **Answer:**

Yes. If no distinguishable difference between the item's effect on the local official and its effect on the general public.

**Example:** Adoption of a setback requirement



# FORM OF GOVERNMENT



# COUNCIL-MANAGER

- Similar to Corporation - the stockholders elect a board of directors which then hires a chief executive officer to manage the corporation
- Voters elect City Council which employs a City Manager to manage the City

# COUNCIL-MANAGER CITY COUNCIL

- Legislative body;
- Approves budget;
- Sets the tax rate; and
- Policy maker that determines the scope and functions of City government.



# COUNCIL-MANAGER

- City Councilmembers, and Boards & Commissions' members have no administrative duties
- Administrative duties are vested in the City Manager who directs the workforce and manages the programs of the City in accordance with City ordinances, rules and regulations adopted by the council

# BOARDS & COMMISSIONS

- With few exceptions, City Boards & Commissions are solely advisory body to City Council
- City Charter prohibits City Council from giving any orders publicly or privately to City employees other than City Manager – all request must go through City Manager
- Council cannot delegate to to boards and commissions authority it does not have; therefore, neither boards or commissions, nor any of their members, have authority to direct City staff to perform tasks

# BOARDS & COMMISSIONS

- Because solely advisory in nature, Board & Commission members are not authorized to speak in official capacity for the City (*i.e.* interview requests from media, letters from attorneys requesting response)
- Media inquiries, legal statement requests, etc., should be referred to City Manager's office

# OPEN MEETINGS



# OPEN MEETINGS ACT

- Every regular, special or called meeting of a governing body is open to the public unless a closed meeting is authorized by the Act
- Governing body includes quasi-judicial boards and commissions, subcommittee of City council
- Act requires notice of meeting (agenda) to be posted no later than 72 hours before meeting
- By local City policy, all Boards & Commissions are required to follow the Act

# MEETINGS SUBJECT TO THE ACT

- Any discussion or deliberation between a quorum (majority) or between a quorum and another person regarding public business or policy which the Board controls or supervises or during which formal action is taken
- Deliberation is defined as a verbal exchange during a meeting between a quorum or between a quorum and another person regarding public business or policy

# NOTICE

- 72 hours prior written notice of the date, hour, place and subject of each meeting, including authorized closed meetings
- Notice must be sufficient to inform the public of the subject matter that will be considered in an open or closed meeting
- The more critical the topic, the more specific the notice
- General descriptions are insufficient

# INTERNET WEBSITE NOTICE

- The City is required to post notice of its meetings on the web site
- As an alternative to posting notice on a physical bulletin board, the notice may be posted on an electronic bulletin board at place convenient to the public in City Hall; or, a perpetually illuminated screen on which the City can post viewable notices or messages that can not be manipulated by the public

# OPEN MEETINGS ACT DOES NOT APPLY TO

- Conventions, seminars or workshops, if no formal action is taken and any discussion of public business is incidental
- Social meetings unrelated to public business
- Testimony before legislature and agencies

# MINUTES

- Must prepare and retain minutes or a Tape of each meeting – staff function
- Must state the subject matter of each deliberation, vote, order, decision, or other action and are available to the public

# CONDUCTING MEETINGS

## Role of Chairperson

Presiding officer; ensures rules of procedure are followed; maintains the dignity of the meetings; calls meeting to order; confines the discussion; recognizes members for motions, statements; allows audience participation at appropriate times

## **Question:**

Is a governmental body required to let citizens speak at its meetings?

## **Answer:**

No. If the governmental body decides to allow citizens to speak up, it must not unfairly discriminate, but may establish reasonable restraints on the number, length, and frequency of presentations.



## **Question:**

May a member of a governmental body vote by proxy?

## **Answer:**

No. Members may not submit a written vote without attending the meeting of the body.

# SECRET DELIBERATIONS



- May not contact members by telephone for the purpose of arriving at a decision or consensus concerning public business
- May not use email/voice mail/text messages to arrive at a decision
- May not meet in numbers less than a quorum for the purpose of secret deliberations
- “Walking Quorum”: an overlapping series of meetings or telephone conferences with less than a quorum

# CONSULTATION WITH ATTORNEY

- If a situation arises during the course of a meeting that requires the City Council to seek legal advise, the City council may convene a closed meeting to preserve the attorney/client privilege
- May use a telephone or video conference call or internet communication to consult with an attorney in open or closed meeting, if the attorney is not an employee of the City

# EXECUTIVE SESSIONS

- Limited to specific purposes:
  - Economic development
  - Personnel matters
  - Real estate
  - Consult with an attorney
- Notice must be posted that sets forth the specific section of the Government Code with a brief description

# PROCEDURE FOR CLOSED, EXECUTIVE SESSIONS

- Certified agenda must be kept and must include: announcement at beginning and end of meeting stating the date and time, subject matter and any action taken
- Attendance should be limited to persons necessary for the purpose of an executive session and whose interest is not adverse to the City's

# FINAL ACTION

- Decision must be made in public
- No voting in closed session or by secret ballot
- May disclose the matter(s) discussed in closed session, but may not disclose certified agenda or tape from closed meeting

# VIDEOTAPING



The public has a right, subject to reasonable access, to tape or videotape open meetings

# VIOLATIONS

- Action taken in violation of the Act is voidable
- Action may be set aside by a court but can be cured by a subsequent meeting
- Members who knowingly conspire to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations are in violation of the Act and have committed a misdemeanor
- Members who knowingly call or aid in calling or organizing an illegal closed meeting or participate in an illegal closed meeting or close or aid in closing the meeting to the public have committed a misdemeanor

# VIOLATIONS

- Disclosure of the certified agenda or tape recording of a closed meeting is a misdemeanor
- An offense occurs if a member participates in a closed meeting knowing that a certified agenda or tape recording is not being made
- Members are liable for damages for personal injury, lost wages, defamation, mental or emotional distress, reasonable attorney's fees and court costs if an individual is slandered during a closed meeting

# QUESTIONS

