

Ethics for City of Austin Boards and Commissions

Thank you for serving as a City of Austin board or commission member. The city depends on community-minded individuals to perform many of its services and responsibilities. The sacrifice of your personal time in service to your community is greatly appreciated. However, there are additional responsibilities that come with public service. To ensure a fair and open government, as a board or commission member, you are subject to certain laws and regulations concerning your conduct. If your experience has been in the private sector, the rules that apply to you as a board or commission member may be new to you. Many situations considered ordinary business practices in the private sector are not allowed in the public sector.

The laws that regulate your conduct as a public servant are generally referred to as "Ethics Laws." These laws signify the seriousness of the work you are about to undertake. Your actions as a board or commission member affect the lives of the residents of Austin and surrounding communities. Violating the laws that govern your conduct as a public servant can result in more than public embarrassment – it can result in criminal liability.

This module will help you avoid those pitfalls and introduce you to the ethics laws and regulations that apply to your position with the city. It will also provide you with an understanding of the purpose behind the creation of such laws and help you to avoid situations that may lead to a violation.

The goals behind the creation of ethics laws and regulations are to ensure the proper operation of democratic government. This requires that public officials and employees be independent, impartial and responsible; that governmental decisions and policy be

made in proper channel of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.

What are "Ethics Laws"?

Ethics laws are basically a "code of conduct" for public servants. When we think about "government ethics," we generally think about laws that support one of the following five principles of good government.

Transparent and Impartial Government - the public has the right to know what its government is doing.

Decision-Making Free from Personal Interests - duty is to the people, not one's own interests.

Decision-Making Free from Gifts, Bribes, or Intimidation - citizens expect decisions to be made fairly with the best interest of the community and not swayed by bribes or intimidation.

Public Confidence in the Use of Government Resources - resources are used wisely and in the best interest of the city.

Public Faith in the Fair Administration of their City - an open, transparent government that uses its resources wisely and centers all decisions in the best interest of the public inspires the public's faith that its government is administered fairly.

These five principles and the goals set out in the City Code are the driving force behind the ethics laws. These ethics laws apply to all boards and commissions, whether permanent or temporary. Because City boards play an important role in the creation and execution of City policy, it is important

for board members to avoid even the appearance of a conflict of interest.

What is a Conflict of Interest?

A conflict of interest is simply a conflict between your personal interests and your public duties – even if it only appears that way. Anyone can have a conflict of interest. It is merely a situation that exists and does not imply that a person has done something wrong or is in some way dishonest. However, if a conflict exists, it undermines the appearance of fairness and impartiality and undermines the public's trust that all decisions are being made for the public good.

Conflicts can arise for various reasons. Typically they are caused by financial interests, occupational concerns, and personal relationships. While a conflict excludes a member from participating in some action, some level of expertise may be lost. For fairness and impartiality, and the appearance of fairness and impartiality, are valued more highly than the expertise lost.

To help you determine if you have a conflict of interest, when a matter appears on your board's agenda, ask yourself:

- Do I stand to lose or gain anything because of my decision?
- Do I have a close personal or financial relationship with an interested party?
- Have I received a gift or hospitality from anyone who stands to gain or lose from this decision?
- Will this affect my future employment opportunities?
- How would I feel if I saw a story about my connection with this issue on the news or read about it in the paper?
- Would I be embarrassed if people found out about my personal connection to this issue?

Remember, part of the definition for a conflict of interest is a situation that appears to an outside observer to cause a conflict. There are some situations that appear to be a conflict no matter how honest or detached a person is. So, if it looks bad, don't do it. If you are still unsure whether you have a conflict after asking yourself these kinds of questions, talk to the legal counsel assigned to your board or call the City's Integrity Officer.

When you have a conflict

The rules that govern your conduct deal with conflicts of interest in three basic ways:

- through **prohibition** – the conflict is so significant that it would disqualify you from serving on the board, or serving on the board might close a private opportunity that would otherwise be available to you
- through **recusal** – you have a conflict with a specific matter before the board and you may not take part in the decision-making process
- through the use of your **personal judgment** – a conflict not addressed by ethics laws and regulations, you must use personal judgment to decide what to do

Prohibition

You are disqualified from service on a City board if at any time during the last three years you were:

- Registered as a lobbyist
- Required to register as a lobbyist
- An employee of a person required to register as a lobbyist (*Chapter 4-8, City Code*)

Sometimes a conflict prohibits the activity, not service on the board.

- A board member may not appear before the board in which he or she is a member. You cannot be a member of a board and appear before the board as a member of the public

Most City board members are prohibited from service on more than one board at a time.

If you are interested in urban renewal, be aware that becoming a City official may restrict your ability to own an interest in an urban renewal project.

Contracting with the city can lead to problems for board members.

- If you have, or will seek to have, a financial interest, direct or indirect, in a particular contract, you may not participate in the development, evaluation, or decision-making process of the solicitation for that contract.
- If you have played a role in the solicitation process as a board member, you will be prohibited from being a contractor or subcontractor on the particular contract at issue.

Special Interest and Recusal

Recusal means that you remove yourself from participation in a decision to avoid a conflict of interest. Recusal is more than just not voting, you also may not take part in any discussion leading up to a vote either on or off the dais.

There are two types of boards in the City of Austin: advisory and sovereign. You need to know which type of board you are on because the City of Austin and the State of Texas each have laws concerning conflicts of interest and recusal. Sovereign boards must comply with both the City and the State laws. Advisory boards are only subject to the city ordinances. The City Code applies to all city board members, but members of a sovereign board must also comply with the state law. They have similar provisions and terminology but they are not the same. They differ in some very important details including the severity of the sanctions for failing to comply.

City Recusal Requirements

The City Code requires you to recuse yourself when you have a “substantial interest” in a person; in an association, business, corporation, government agency, or other entity; or in a piece of real estate that would be *affected* by a vote of the board on which you serve.

You have a substantial interest in real property if your interest has a market value of \$5,000 or more.

You have a substantial interest in a person, business, or entity if:

- you own 5% of a business or an interest worth \$5,000 in a business
- during a year, you receive income from a person or business that amounts to \$5,000 in salary or professional fees
- during a year, you receive \$20,000 in payment for goods or nonprofessional services, or 10% of your gross income
- you serve as a corporate officer or member of the board of directors or other governing board of an entity
- you owe money or are owed money by a person or business in an amount of \$5,000 or more

An interest in real estate worth \$5,000 or more is a substantial interest.

A substantial interest of your spouse is your substantial interest, even if it is separate property.

Other substantial interests are:

- If you own, partly own, or conduct business through a partnership, professional corporation, or other entity, a substantial interest of that entity is likely to be your substantial interest.
- You may also have a substantial interest in a client of a partnership,

professional corporation, or entity through which you conduct business.

To recuse yourself under the City Code:

- You must make a public disclosure revealing the nature and the extent of your substantial interest.
- You must make sure your disclosure is recorded in the board's official records.
- You must NOT participate in the discussion.
- You must NOT vote.

Leaving the dais is a good way to emphasize that you are abstaining from participating in the discussion and the vote.

State recusal requirements

The state law only applies to sovereign boards. The state law applies in addition to the city's recusal requirements, not instead of them. If you are a member of a sovereign board, you need to be familiar with both the city and state requirements.

It is a sovereign board's power to exercise independent authority which determines whether you are subject to the state law, not whether any individual action by the board is an exercise of independent authority. It does not matter if a particular action is merely advisory, if you are on a sovereign board, the law applies to every action you take as a board member. *The state law is found in Local Government Code chapter 171, and a violation is a Class A misdemeanor.*

The state law requires you to recuse yourself if you have a "substantial interest" in a business entity or piece of real estate that would be affected by a vote or decision of your board.

Under state law, you have a substantial interest in a business entity if:

- You own 10% or more of the voting stock or shares of the entity.

- You own 10% or more or \$15,000 or more of the fair market value of the entity.
- You received funds from the business entity that exceed 10% of your gross income for the previous year.

You have a substantial interest in real property if your interest is an equitable or legal ownership in the real property with a fair market value of \$2,500 or more.

The state law requires you to recuse yourself when it is reasonable foreseeable that the board action will have a "special economic effect" on the business entity or real estate in which you have a substantial interest that is "distinguishable from the effect on the public."

The state law, like the City Code, prohibits you from taking part in any discussion leading up to the vote.

To recuse yourself under the state law:

- You must publicly disclose the nature and extent of the interest by filing an affidavit with the City Clerk *before* the vote.
- You must NOT vote.
- You must NOT take part in the discussions leading up to the vote.

As a member of a sovereign board, it is very important to review each meeting agenda well in advance of the meeting. If you have a substantial interest in a matter, be sure to file your affidavit with the City Clerk before the vote and during regular business hours at the City Clerk's Office.

If you do not properly recuse yourself under the state law, you could be subject to prosecution for a Class A misdemeanor. This offense is prosecuted by the County or District Attorney, and it is punishable by a fine of up to \$4,000, a year in jail, or both the fine and the time in jail. That is why it is

important to know if you are on a sovereign board and how to properly recuse yourself.

Special Interests that belong to your Family Members

If you are on an advisory board, you have a substantial interest if your spouse has a substantial interest.

If you serve on a sovereign board, your interests are extended to a much wider group of relatives. State law considers your interests to be the same as someone related to you in the first degree by blood or marriage. The City Code extends this group of relatives to the second degree. Relatives in the second degree include you and your spouse's:

- Siblings
- Parents
- Grandparents
- Children
- Grandchildren
- The spouses of all of the above relatives

If any one of these relatives has a substantial interest, you are considered to have that same interest.

Personal Judgment

The laws and regulations can not cover every situation that could arise. Nor can they think of every relationship or emotional tie someone might have to an issue. So, use your best judgment. If you do not feel that you can separate your personal feelings from a decision, you are free to recuse yourself. Also, and as important, if you think the public would think your relationship to a particular issue is suspect – recuse yourself.

The law can deal with specific amounts of income and degrees of kinship, but it can not deal with every emotional tie or informal relationship you might have, such as a domestic partner, boyfriend, girlfriend, or old college roommate. Remember, the public

and the press have little difficulty understanding these kinds of relationships. As stated earlier, appearances count.

Federal Conflict of Interest Rules

Members on city boards that review federally-funded projects or activities are subject to federal conflict of interest requirements. Each federal program has its own conflict of interest requirements. In addition requirements set by federal agencies may vary from program to program and from agency to agency.

The penalties for failing to comply with federal conflict of interest requirements can range from the loss of an opportunity to participate in a program to civil or criminal liability. Complying with the federal requirements will not ordinarily excuse you from failing to comply with the city or state requirements. If your board has a role to play in federally-funded activities, you need to become familiar with the specific rules that apply to that federally-funded program.

Gifts Given or Offered to City Officers and Employees

The city ordinance on gifts is strict. It prohibits some gifts that might not even be subject to prosecution under the state's bribery and gifts-to-public-servants law. As a city board member, you are subject to this ordinance.

State criminal laws concerning bribery and gifts to public servants

Bribery is the intentional solicitation, offer, or acceptance of anything of value as consideration for an official act, including a vote or a recommendation. Bribery is an offense under the Penal Code and is a felony of the second degree.

The acceptance or offer from a person subject to your jurisdiction, with some

exceptions, is also a crime. It is a Class A misdemeanor. Unlike bribery, which requires the intent to buy or sell favors, the offer or acceptance of a gift is a crime even if there is no bad intent on the part of the gift giver or the public servant.

If your board has a role to play in the purchasing decisions of the city, a person is subject to your jurisdiction if the person is or is likely to become interested in a purchasing matter that would come before your board. Or, if your board plays a role in one of the City's regulatory functions, such as land-use or zoning matters, a person is subject to your jurisdiction if the person is or is likely to become interested in a regulatory matter that would come before your board.

Under the City ordinance, you may not:

- Accept or solicit any gift or favor that might reasonably tend to influence you in the discharge of your official duties
 - This prohibits things or acts that might influence your behavior. It does not matter if your behavior is actually influenced – the test is whether the gift would tend to influence a reasonable person's behavior.
- Accept or solicit any gift or favor that you should know has been offered with the intent to influence your official conduct
 - The important phrase is “offered with the intent to.” It does not matter if you are actually influenced or if a reasonable person would be influenced. The only thing that matters is the *intent* of the donor, If the donor gift, the rule says you cannot take it.

intends to influence you with a gift, the rule says you cannot take it.

- Accept or solicit any gift or favor that you should know has been offered with the intent to reward your official conduct
 - The important phrase is “offered with the intent to”. If the donor intends to reward you with a gift, the rules says you cannot take it.

Influence is not the same as actually buying your vote. It does not matter that you ultimately vote against a donor's position. Also, as a board member, if someone offers to “pick up the check,” it is a safe bet that they hope to make a good impression on you. There is no minimum amount that is allowable under the city ordinance.

Financial Disclosure

The city requires some of its board members to annually disclose a number of things about the members' personal finances. These disclosures are kept on file in the City Clerk's Office and are open to the public.

The requirement to file a personal financial statement varies from board to board. You will want to check on the exact disclosures that will be required for your board. If you are not comfortable with these required disclosures, you may want to rethink your decision to serve the city as a board member.

If You Have any Questions

If you have any questions, contact the City of Austin Integrity Officer at (512) 974-2180.