

# Drafting a Municipal Code of Ethics



Texas City Attorneys Association  
Summer Conference- Bastrop, TX  
June 15, 2018

TM  
**BOJORQUEZ**  
**LAW FIRM, PC**  
[TexasMunicipalLawyers.com](http://TexasMunicipalLawyers.com)

# Introduction

---

## Purpose for Drafting / Amending?

- 2017 Pew Survey:
  - 19% trust gov't to do right;
  - 27% voters think gov't is enemy; and
  - 50% citizens think can influence gov't.
  
- Media (traditional and social).

# What are Ethics?

---

- Moral Guide.
- What you ought to do.
- Principles, Values, Virtues, Duties.
- Rules we follow when nobody's looking.
- Internal compass.
- Code of conduct regulating behavior.



# Approaching the Task

---

- Problem Identification:
  - Crisis? Scandal? Recent Happenings?
- Authority:
  - Home-Rule? General-Law (A,B,C)?
- Applicability:
  - Council? Staff? Boards? Vendors? Former?
- Values:
  - Justice? Fairness? Objectivity? Efficiency?  
Effectiveness? Innovation? Transparency?

# Approaching the Task

---

## ■ Approach:

- a) Compliance (rules & enforcement).
- b) Integrity (awareness, leadership, culture).
- c) Hybrid (combo is ideal).



# Contents of a Code

---

## ■ State Law:

- Conflicts, Nepotism, Financial Disclosures;
- Honoraria, Gifts, Transportation, Meals;
- Bribery, Coercion, Abuse of Office; and
- Obstruction, Misuse of Info.

## ■ Charter:

- 78% restrict Conflicts of Interest;
- 79% restrict Nepotism; and
- 59% restrict Gifts.

# Contents of a Code

---

## Top 5 Areas Covered in Codes of Ethics:

- 1) Improper Economic Benefit;
- 2) Unfair Advancement of Private Interests;
- 3) Gifts;
- 4) Representation of Private Interests; and
- 5) Conflicting Outside Employment.



# Be the Voice of Reason

---

## Calling upon the Municipal Lawyer:

- Don't adopt rules that can't be understood;
- Don't adopt rules that can't be enforced;
- Don't deter business people from serving;
- Remember the First Amendment; and
- Remember Rights of Privacy.



# Advisory Opinions

---

- Issued by the Board of Ethics?
- Issued by the City Attorney?
- Issued by Outside Independent Counsel?
- Create an Affirmative Defense?

# Oversight

---

- Separate Board or Council?
- Membership.
- Procedures.
- Prescreening.
- Transparency.



# Investigations

---

- **Garrity Warning:** Won't Use in Criminal;
- **Brady Rule:** Disclose Exculpatory Evidence;
- **Upjohn Warning:** Attorney Representation;
- Disavow Privilege; and
- Protect the Privilege.

# Sanctions

---

- Letter of Warning;
- Letter of Admonishment;
- Letter of Reprimand;
- Disciplinary Action (for employees);
- Removal (employees & volunteers);
- Voiding of Contracts;
- Ineligibility for future Contracts / Services;
- Referral for Prosecution / Civil Action.

# Training:

---

- Rules & Enforcement are good.
- Education & Conversations are crucial.
- Promote Routine Training.
- Address the Code of Ethics.
- Cover Professional Norms.

# Support Staff

---

- City Manager?
- City Secretary?
- City Auditor?
- Who is the Client?
  - Individual? Entity?
- Role of City Attorney
  - Lawyer's Own Interest v. Client's Interest?
- Role of Special Counsel.

# Conclusion

---

- One Size does **NOT** fit all.
- Code of Ethics must be understandable, enforceable, and reflect local values.
- Don't let Ethics be used as a Weapon.
- Avoid involving City Hall in Defamation.
- Strive ***not*** to let Board of Ethics devolve to catch-all *Complaint Department* or default *Appellate Body of Last Resort*.



# Priorities for Codes of Ethics

---

## Fostering Integrity at City Hall

**L**eadership

**A**dministration

**R**egulation

**I**nstruction

**A**ccountability

**T**ransparency

# Website for Cities!

## TexasEthics.com

HOME TRAINING ABOUT US ETHICS CODES RESOURCES CONTACT US

### Texas Center for Municipal Ethics™

TO PROMOTE INTEGRITY IN MUNICIPAL DECISION-MAKING AND A CULTURE OF ETHICS AT CITY HALL

#### INTEGRITY AT CITY HALL


**Q:** Can a city council member represent private clients before municipal boards?

**A:** Yes, absent a local ethics ordinance or home-rule charter provision to the contrary. If the council member is being paid to advocate on a client's behalf, the council member probably has to file an affidavit with the city secretary and abstain from any council action on the subject pursuant to Tex. Loc. Gov't Code § 171.

*"For what does it profit a man to gain the whole world and forfeit his soul?"*

- Mark 8:36

#### Articles



#### Which of These 8 Ethical Styles Are You?

[Read more](#)

#### Oklahoma GOP Rep Proposes Bill To Make It Illegal To Prosecute Elected Officials.

[Read more](#)

#### What is the Proper Role for the Chief Lawyer for a Government Entity?

[Read more](#)