

Public Notice of a Meeting

**City of Austin
2006 Bond Oversight Committee**

**Nov. 28, 2007
8:00 A.M. - 10:00 A.M.**

**City Hall
Boards and Commissions Room
301 West 2nd Street**

AGENDA

- I. Citizen Communications
- II. Approval of June, 27, 2007 minutes
- III. Briefing on the Green Water Treatment Plan Decommissioning Project – Fred Evins, Redevelopment Project Manager, Economic Growth and Redevelopment Services
- IV. Ethics briefing – John Steiner, City of Austin Integrity Officer
- V. Discussion of committee bylaws
- VI. Discussion and action on committee workplan
- VII. **ADJOURN**

For more information on the 2006 Bond Oversight Committee,
please contact Shelley Kilday, 974-7922.

ADA Compliance:

The City of Austin is committed to compliance with the American with Disabilities Act. Reasonable Modifications & Equal Access to Communications provided upon request. Please call 974-3256 (Voice) or 974-2445 (TDD) or e-mail dolores.gonzalez@ci.austin.tx.us if you need information.

Meeting Minutes
City of Austin
2006 Bond Oversight Committee

June 27, 2007
8:00 A.M. – 9:02 A.M.

City Hall
Boards and Commissions
301 West 2nd Street

Present: Dave Sullivan, Beverly Silas, Melvin Wrenn, Jennifer McPhail, Dave Anderson, Michael Casias

Absent: Rick Burciaga

Citizen Communications:

No citizens signed up to speak.

Approval of June 20, 2007 minutes:

The minutes were approved.

Committee action on proposed 5-year 2006 Bond appropriation schedule:

- Committee reviewed the draft recommendation.
- Members decided that there were a few missing elements that they would like to incorporate.
- Committee took a 15 minute working recess to discuss and craft their edits.
- Once resituated, the committee walked through a series of 4 changes to the original draft resolution.
- The committee took up a motion to approve the memorandum as amended. The memo expressed the committee's support for the bond appropriation schedule as proposed by staff with modifications as outlined. See attached final document.
- The committee supported the motion on a vote of 5-0-1, which Michael Casias abstaining from items related to Proposition 4 and Proposition 5. Rick Burciaga was not present.

Since the bond election, two significant changes in city policy affecting housing and open space have been discussed. First, the Affordable Housing Incentive Task Force has proposed a density bonus scheme to entice builders to provide some housing or pay a fee in lieu of. The potential yield of new affordable units is uncertain. Second, the Parks and Recreation Department has proposed a new parkland dedication fee that is projected to raise an additional \$3.3 M / year on average. (PARD briefing to Parks Board, 12/19/2006)

As a result of the issues discussed above, we believe that there may be both increased uncertainty and flexibility in the 7 year schedule. Furthermore, the BOC believes this offers an opportunity to move up appropriations in the affordable housing category by shifting the schedules in other propositions to later years. Please note that we do not recommend delaying appropriations for public safety projects, and we recognize the importance of providing funds for real estate acquisitions early in the 7-year bond cycle due to rapidly escalating land values. We offer one possible outcome for housing appropriations that would satisfy the BOC's intent below.

	2007	2008	2009	2010	2011	2012	2013
Prop. 5 Housing	\$5 M	\$12 M	\$10 M	\$10 M	\$10 M	\$8 M	

On March 8, the City Council unanimously adopted agenda items 2 and 3 which related to the allocation of funds to each of the propositions. Along with our support of staff recommendations, the BOC submitted a memorandum requesting additional items be addressed in conjunction with the propositions. While the memorandum was not specifically discussed during the City Council meeting, it is our hope that the intent and spirit of the memorandum be honored.

This memorandum strongly requested the amount of \$600,000 be allocated from general funds for a consultant to assist in determining how the appropriations to Proposition 5 could best be leveraged. This is Austin's initial opportunity to use bond money to address affordable housing; and our desire is that it be done with expertise from proven best practices. While the proposed 2007-2008 budget indicates a portion of this amount has been allocated, we are requesting this decision be revisited in hopes that the full amount be included in the budget.

The \$600,000 amount was not suggested without thought. We reviewed the amount being spent for the Downtown neighborhood plan and the disparity study for small businesses. Knowing affordable housing has a greater priority, we feel an allocation of this amount would demonstrate the city's commitment. The BOC strongly encourages the city to involve us in the management of the \$600K study in conjunction with the department and the City Council.

Attachment

From the [www.housingworksaction .org](http://www.housingworksaction.org) site:

Austin has become the least affordable place to live in Texas. Our average home price is the highest in the state and has risen faster than elsewhere (Tx Real Estate Center.) Yet our wages have not risen as fast. By 2000, 37,586 city households were paying more than half of their monthly income for housing in 2000 (Census 2000.)

The gap between housing costs and incomes continues to grow:

- * Divergent trends: Between 2000 and 2003, median incomes fell 14%, while rents fell only 4.3%. At the same time, home sales prices have risen 11.2% (Source: ACS, 2004)

- * Growth in low wage jobs: 37 percent of jobs to be added by 2010 have average wages of \$18,330 or less. By 2010, nine of the most common jobs in the region, employing close to 110,000 people, will offer median wages well below those needed to either own or rent a home. (TxWorkforce Commission projections and wage data, CHP housing data.)

- * Housing Wage Highest in State. To afford to 2 bedroom apartment requires full time work at \$17.54/hour in Austin—higher than any other city in the state.

Lowest income, Latino residents are especially hard hit:

- * Budget squeeze. 23,424 renter households with incomes below \$29,450 in 2000 paid more than half their income for housing, leaving a family of four \$1200 per month to cover all other expenses. (HUD, CHAS, 2000. or cite Figure 2q in Con Plan, 2-15.)

- * Lack of options. 4500 households are on the waiting list for Housing Choice Vouchers; 4,026 families were on the waiting list for Public Housing (HACA, 4/26/04, cited in Con Plan, 2-42.)

Homelessness. 3761 people are estimated to be homeless in Austin—of these, 587 are chronically homeless (ECHO)

- * Latino households overrepresented in statistics on housing problems. 70% of very low income elderly Latino renters and 36% of low income elderly Latino owners faced either high costs or poor conditions in 2000, according to HUD. (Con Plan, 2-11.)

Homeownership out of reach for many:

- * Low city homeownership rate: Only 48 percent in 2002, compared to 64 percent for Texas as a whole. Homeownership was especially low for African-Americans (37.2%) and Latinos (36.3%.) (ACS, 2000 cited in Con Plan, 2-7.)

- * Discrimination in home mortgage lending: Austin ranked second of 20 cities in a national study of lending discrimination, after New York. One-quarter of African-Americans and 32 percent of Hispanic buyers locally faced discrimination (AAS, 11/10/02.)

- * Subprime lenders target minority neighborhoods. Residents of minority neighborhoods more likely than similar residents of white neighborhoods to pay higher interest rates and fees on loans, making it harder to build home equity. Austin ranked 9th of 117 studied (Austin Business Journal, 3/15/2004.)

From the CoA Web site and U.S. HUD:

A person on SSI has around \$623 a month or about \$7,500 a year for income. This equates to 15% of Austin's Median Family Income for 1 person. The 2006 Austin MFI for an individual is \$49,800 and \$14,950 is 30% MFI for 1 person. This is twice the amount a person on SSI receives. Individuals who earn 60% MFI have an income of \$29,850 and those earning 80% have incomes of \$39,850. HUD states that the Fair Market Rent for the Austin/San Marcus area is \$686 a month at 50% MFI. A person earning 60 or 80% MFI can easily afford to pay the rental amount whereas a recipient of SSI would have to pay everything he/she receives towards the rent with nothing left for other bills.

**Green Water Treatment Plant
Decommissioning, Deconstruction
And Redevelopment**

Bond Oversight Committee Meeting
November 28, 2007

Feb. 9, 2006 Council Resolution

- Designated Green WTP Property as Central Library Site

May 24, 2007 Council Briefing

- Evaluate Seaholm South Substation (SSS) Site
 - Inclusion in Green WTP Redevelopment RFP
 - Central Library Site
 - Site Feasibility Study Preliminary Findings

Dec. 2007 Council Meeting

- Policy Direction on Green WTP Redevelopment RFP
 - Central Library
 - Green WTP vs. SSS Site
 - Standalone vs. Mixed-Use

Jan. 2008 – Issue Green WTP RFP

July 2008 – Select Redevelopment Team

Sept. 2008 – Complete Decommissioning & Deconstruction Design and Permitting

Feb. 2009 – Initiate Deconstruction

Feb. 2010 – Complete Deconstruction; Close on Land Sale to Redevelopment Team

FY2010-2011 – Bond Sale Scheduled for Central Library Construction



Conflicts of Interest for Members of “Sovereign” Boards

City of Austin
Integrity Office




Thanks for Your Service to the City

- Local government depends on the service of community-minded individuals.
- With public service come additional responsibilities.
- Board members are City officials.
- As a City official you become subject to laws that are designed to ensure the transparency and impartiality of your government.

1




Why do we need ethics rules?

- We’re good people, why do we need all these ethics rules?

2




Self-Interest and The Four Kinds of Spending

	Your Money	Other Peoples Money
On Yourself	Quality And Economy	Quality Only
On Other People	Economy Only	No Control

3




The Core Values of “Ethics” Laws

- To ensure transparency and impartiality
- To ensure that our personal interests do not compromise our decision making
- To ensure that our decisions about the public’s lives and fortunes don’t depend on who bought us the best presents most recently
- To insure that the public remains confident that the resources of the government are being used in a way that benefits the public good and not for the private benefit of those to whom those resources have been entrusted
- To ensure that the public has no reason to doubt the fairness of the administration of their City

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Applying the Rules

- The application of conflict rules requires a close knowledge of an individual’s relationships and financial affairs.
- It is ultimately the personal responsibility of each board member to be aware of the relevant rules and to comply with them.

5





What is a conflict of interest?

- When your personal interests intrude on your ability to adhere to the highest standards in your decision making, or if it would appear so an observer, you have a conflict of interest.
- Conflicts can arise in a number of ways.
 - financial relationships
 - occupational concerns
 - personal relationships



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Ask Yourself:

- Could there be benefits (or consequences) for me that could cast doubt my objectivity?
- 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 by the way this issue is resolved?
- Could this situation have an influence on any future employment opportunities for me?
- How would I feel if my role were portrayed in the media?
- Would I be happy if my personal connection to the issue became known to the public or my colleagues?



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The rules deal in conflicts in three ways

- They may prohibit the conflict
- They may require recusal (Taking yourself out of the loop)
- They may leave the matter up to your judgment (The law cannot always codify common sense)



8



Prohibited Conflicts

- First we'll discuss conflicts that ordinarily *can't* be cured by recusal.



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Disqualification of City Lobbyists

- A person who is
 - registered as a lobbyist
 - required to register as a lobbyist, or
 - an employee of a person required to register
 under the City's lobbying ordinance
- may not serve on a City board within three years of engaging in lobbying activity.



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Lobby Regulation at the City of Austin (City Code Ch. 4-8)

- By ordinance the City requires
 - registration
 - payment of a \$300 annual fee and
 - disclosure filing
 - by some individuals and entities that
 - are compensated
 - are reimbursed or
 - make expenditures
 in connection with direct advocacy
- to certain City officials or employees
- on municipal issues.



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Not every bit of paid advocacy requires registration

- Whether registration is required depends
 - on the nature of the communication,
 - to whom the communication is directed, and
 - the nature and amount of the compensation, reimbursement, or expenditure made in connection with the communication.
- There are also a number of free-standing exceptions.



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Standards of Conduct

- A City board member may not:
 - formally appear before the board of which he or she is a member while acting as an advocate for himself or herself, or for any other person, group, or entity,
 - represent a private person or entity in an action in Municipal Court that was instituted by or arises from a decision of the member's board, or
 - accept paid campaign work relating to a ballot proposition if the member's board exercised discretionary authority with respect to the proposition and the member participated in the board's discussion or vote.



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Standards of Conduct

- A board member may not solicit or accept
 - employment or
 - compensation
- that could
 - reasonably be expected
 - to impair the board member's independence of judgment.



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Contracting With the City

- A person may not be involved in the
 - development,
 - evaluation, or
 - decision-making process
 - of any solicitation
- And have a financial interest, direct or indirect, in the contract resulting from that solicitation



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Conflicts Requiring Recusal

- Next we'll discuss conflicts that can be cured by recusal.
- The rules on recusal sometimes apply differently to different types of City boards.



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Types of City Boards

- Citizen boards are variously called board, commission, committee, council, task force, etc.
- These terms are all synonymous.



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Types of City Boards

- Some of boards have responsibilities that are purely advisory.
 - These are called “advisory boards.”
- Some boards exercise independent authority.
 - These are called “sovereign boards.”



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Rules that Apply to all Boards

- Members of *all* City boards are subject to the City’s ordinances regarding conflicts of interest.
- Actions of *all* City boards that involve the use of federal funds have conflict-of-interest requirements under federal law.



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An Additional State Law Applies to Members of Sovereign Boards

- Under state law a “local public official” means an officer, whether elected, appointed, paid, or unpaid, of a municipality who exercises responsibilities beyond those that are advisory in nature.
- A member of a sovereign board is a “local public official.”



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An Additional State Law Applies to members of Sovereign Boards

- As a member of a sovereign board the state conflict of interest statute applies to *you*.
- Therefore the law applies to *all* of your actions as a board member,
 - *not* just those actions that are more than advisory in nature.



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State and City Recusal Provisions

- State and City recusal provisions use similar terminology.
- However, the state and city requirements differ in some important details and in the severity of the sanctions for a failure to comply.
- You must comply with both.
 - That means you must comply with whichever law is more strict in a given circumstance.



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Recusal Under the City Code

- The City Code requires a board member to recuse when
 - the member has a “substantial interest” in a person or entity
 - that would be “affected” by a vote of the board of which he or she is a member.



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Recusal under the City Code - What is a “substantial interest”?

A "substantial interest" includes, among other things:

- (1) **ownership of 5%** or more of the voting stock, shares or equity of an entity, or
- (2) **ownership of \$5,000** or more of the equity or market value of an entity, or
- (3) **receipt of funds** from a person or entity during the previous 12 months or during the previous calendar year equaling or exceeding any one of the following:
 - (a) **\$5,000 in salary**, bonuses, boards or professional fees, or
 - (b) **\$20,000 in payment** for goods, products or nonprofessional services, or
 - (c) **10% of the person's gross income**, or



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Recusal under the City Code – What is a “substantial interest”?

- (4) **service as a corporate officer or member of the board of directors** or other governing board of a for-profit entity, or
- (5) **being a creditor, debtor, or guarantor** of another person or entity in an amount of \$5,000 (except for a home mortgage loan for a homestead, or a loan or lease of a personal automobile, entered into at a market rate with a commercial lending institution before the previous 12 months).



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Recusal under the City Code – What is a “substantial interest”?

- A substantial interest in real estate is an interest worth \$5,000 or more.
- A substantial interest of a spouse of an advisory board member is a substantial interest of the board member.
- Doing business through corporations and partnerships may create additional substantial interests.



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Recusal under the City Code – What Does “Affected” Mean?

- “Affected” means “reasonably likely to be subject to a direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question.”
- The vote or decision need not be the only producing cause of the economic effect or consequence. It’s enough that the effect or consequence would be reasonably expected to occur.
- The vote or decision need not be the only decision or the final decision on the matter.



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Recusal under the City Code – What Does “Affected” Mean?

- For example:
 - A person or entity owning real property is “affected” by a vote or decision related to the zoning of the property.
 - A person seeking a contract is “affected” by a vote or decision related to the award of the contract.
 - A person seeking a permit from the City is “affected” by a vote or decision related to granting or denying the permit.



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Recusal under the City Code – What Does “Affected” Mean?

- “Affected” does not include an indirect or secondary effect from official action.
 - Creditors, independent contractors, or guarantors of a person “affected” by a vote or decision are not also “affected” by virtue of their relationship with the affected person.



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What else requires recusal under the City Code?

- **Directorship of a Nonprofit Entity**
 - A City board member who serves as
 - a corporate officer
 - or member of the board of directors
 - of a nonprofit entity
 - may not participate in a vote or decision regarding funding by or through the City for the entity.



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Recusal Under State Law

Recusal is required when

- it is reasonably foreseeable
- that a board action will have
- a “special economic effect” on the entity or real estate in which the board member has a “substantial interest”
- that is “distinguishable from the effect on the public.”



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Recusal Under State Law What is a “substantial interest”?

- **Under the state law a substantial interest includes:**
 - owning 10 percent or more of the voting stock, shares, or fair market value of a business entity or an interest worth \$15,000
 - Receipt of funds a business entity that exceed 10 percent of a person's gross income for the previous year.
 - an equitable or legal ownership in real estate with a fair market value of \$2,500 or more.



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Recusal Under State Law What is a “substantial interest”?

- **Under the state law, a substantial interest of a board member's relative in the first degree by blood or marriage counts as the board member's substantial interest.**
- **Under the City Code, that interest is extended to the interests of a relative of the second degree.**



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What is a Second Degree Relative?

- **Your second degree relatives by blood include**
 - your parents and children (first degree)
 - and
 - your brothers, sisters, grandparents, and grandchildren (2d degree)
- **Your second degree relatives by marriage include**
 - your spouse, your spouse's children,
 - your children's and parent's spouses, (first degree)
 - and
 - your spouse's brothers, sisters, grandparents, and grandchildren;
 - the spouses of your brothers, sisters, grandparents, and grandchildren (second degree)
- **A marriage that has ended because of death or divorce is considered to continue as long as a child of that marriage is living.**



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How to Recuse Under the City Code

- **To recuse from a vote or decision, a member must**
 - Not vote.
 - Take no part in any discussions leading up to the vote (on or off the dais).
 - The City ordinance uses the phrase “may not participate in a vote or decision.”
 - Make a public disclosure of the nature and extent of the interest that appears “in the official records of the body.”
 - A member should take care that the disclosure appears in the board's official minutes.



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How to Recuse Under State Law

- When recusal is required under the state law
 - A board member with a substantial interest in a matter must file an affidavit with the City Clerk stating the nature of the interest.
 - Forms are available for this purpose
 - This affidavit must be filed *before* the vote, so carefully read the agenda in advance of the meeting!



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How to Recuse Under State Law

- To recuse under state law you must
 - File the affidavit.
 - Not vote.
 - Take no part in any discussions leading up to the vote.
 - The exact words used in the state law are "shall abstain from further participation in the matter."



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Failure to Recuse Under State Law

- Failure to recuse under state law
 - is a Class A misdemeanor
 - punishable by
 - a fine of \$4,000
 - or a year in jail
 - or both.



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Federally-funded Projects

- If a City board reviews a federally-funded project or activity, the members are *also* subject to the federal conflict rules for the federal program that is the source of the funding.
- Each federal program has specific conflict of interest rules.
 - Requirements set by various federal agencies may vary.



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Federally-funded Projects

- Typically, an official or an official's relative or business associate may not have a financial interest in the federal activity.
- The prohibition applies during the official's tenure and for a year thereafter.



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Recusal is an option even when it's not required

- Some conflicts are not recognized by the law and require common sense
- Don't over-legalize
- Be sensitive to public perception
- "What is indispensable is common sense, and that is atrophying as this lawyer-ridden nation sinks deeper into the delusion that sensible behavior can be comprehensively codified." - George Will



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Keep Austin Ethical

Can gifts or favors create a conflict?

Yes. Gifts create a problem because of the power imbalance between the government and the governed.

- The City regulates - People fear that regulatory power.
- The City provides necessary services - People may be concerned about whether they can get services they need
- We are a major player in the local economy - Many businesses are dependent on city contracts



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Keep Austin Ethical

What's the gift policy?

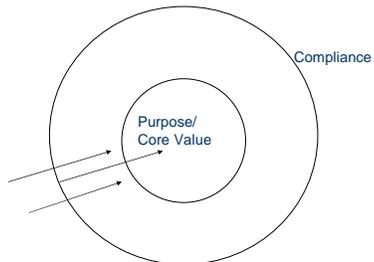
- You may not:
 - accept or solicit any gift or favor that might *reasonably tend to influence you* in the discharge of official duties,
 - accept or solicit any gift or favor that you should know has been offered with the *intent to influence* your official conduct,
 - accept or solicit any gift or favor that you should know has been offered with the *intent to reward* your official conduct.



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Keep Austin Ethical

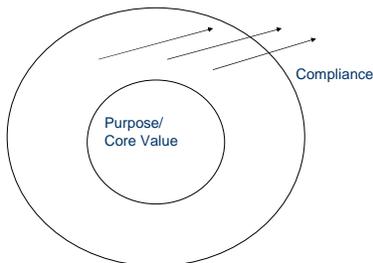
The Core Values of Gov't "Ethics" Laws



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Keep Austin Ethical

The Core Values of Gov't "Ethics" Laws



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Keep Austin Ethical

What if I have a question?

- Contact the City's Integrity Officer
 - John Steiner
 - 974-2180
 - john.steiner@ci.austin.tx.us



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What an City of Austin Advisory Board Member Should Know About Conflicts of Interest

**Prepared by the City of Austin Integrity Office
For more information call 974-2180**

Thank you for your interest in public service as an appointee to a City of Austin advisory board or commission.

Local government depends on the service of community-minded individuals to perform many of its services and regulatory responsibilities. However, with public service come additional responsibilities of which you should be aware. As a public servant you become subject to laws that are designed to ensure the transparency and impartiality of your government. Because the application of these rules requires a close knowledge of an individual's relationships and financial affairs, it is ultimately the personal responsibility of each board member to be aware of the relevant rules and to comply with them.

The City has many citizen boards that are variously called board, commission, committee, council, task force, etc. These terms are all synonymous. For ease of reference, this paper uses the term "board" throughout.

This paper is solely intended for members of boards that have no responsibilities beyond those that are purely advisory.

Some of City boards have responsibilities that are purely advisory. Other boards exercise independent authority, for example (and among others) the Planning Commission, the Board of Adjustment, and the Urban Renewal Board. A member of a board that exercises responsibilities beyond those that are purely advisory is also subject to the state conflict of interest statute (Chapter 171 of the Local Government Code). That statute differs in the detail of its application, and in the severity of its penalties, from the City ordinances that are discussed here, and is not addressed in this paper.

General Considerations

Members of all City boards are subject to the City's ordinances regarding conflicts of interest. In addition, some board actions that involve the use of federal funds can have conflict-of-interest requirements under federal law.

Of course, a member of a City board is always at liberty to recuse on any matter if the member has a private interest that may affect (or appear to affect) the member's judgment. Please do not mistake this brief explanation of the rules to be an endorsement of mere compliance as a

standard of behavior. The rules merely set a minimum standard in this regard by presuming that a conflict exists in the case of certain relationships. Keep in mind that the purpose of the law is to create and maintain public confidence in the decisions of the government by avoiding even the appearance of impropriety.

Some City board members are subject to annual personal financial disclosure requirements.¹ These requirements, when applicable, vary from board to board and are not discussed in detail here. However, applicants for appointment to a City board should consider whether they will be uncomfortable with these required disclosures.

If you are interested in urban renewal, you should be aware that becoming a city official may restrict your ability to own an interest in an urban renewal project.²

Lobbying and City Board Membership

A person who is registered or who is required to register as a lobbyist under the City's lobbying ordinance, or who or is an employee of a person required to register may not serve on a City board or commission within three years of engaging in lobbying activity.³ The City's lobbying ordinance requires registration, with some exceptions, by a person who receives compensation of \$200 or more in a calendar quarter for lobbying, receives reimbursement of \$200 or more in a calendar quarter for lobbying, or expends \$200 or more in a calendar quarter for lobbying, or who lobbies as an agent or employees of a person who meets one of those thresholds.⁴ Lobbying is communicating (other than by public expression at a meeting held under the Open Meetings Act) in an effort to influence or persuade a City councilmember, certain City employees⁵, or certain City board or commission members⁶ on a municipal question (a proposed or proposal for

¹ City Code, §2-7-71 et seq.

² Local Government Code, § 374.908.

³ City Code, §2-1-8.

⁴ City Code, Chapter 4-8.

⁵ The city manager, an assistant city manager, their aides, the city attorney and an assistant city attorney, a department head and deputy department head, and, where no deputy department head serves, the first principal assistant of the department. City Code §4-8-3(25).

⁶ The Austin Airport Advisory Commission; Airport Zoning Commission; Arts Commission; Brackenridge Hospital Oversight Council; Building and Fire Code Board of Appeals; Building and Standards Commission; Telecommunications Commission; Civil Service Commission; Community Development Commission; Economic Development Commission; Electric Board; Electric Utility Commission; Environmental Board; Ethics Review Commission; Historic Landmark Commission; Human Rights Commission; Mechanical, Plumbing and Solar Board; Parks and Recreation Board; Planning Commission; Zoning and Platting Commission; a retirement board, including the Firemen's Relief and Retirement Fund Board and the Police Retirement Board; the Resource Management Commission; and the Water and

an ordinance, resolution, motion, recommendation, report, regulation, policy, appointment, sanction, and bid, including the development of specifications, an award, grant, or contract for more than \$2,000). If you think you may be subject to the registration requirement, please review the requirement and the exceptions carefully.⁷

Minimum Standards of Conduct

A City board member may not:

- * transact any business in the member’s official capacity with any entity in which the member has a “substantial interest” (this term is explained below),
- * formally appear before the board of which he or she is a member while acting as an advocate for himself or herself, or for any other person, group, or entity,
- * represent a private person or entity in an action in Municipal Court that was instituted by or arises from a decision of the member’s board,
- * solicit or accept a gift or favor that might reasonably tend to influence the member in the discharge of the member’s duties or that the member should know has been offered with the intent or influence or reward official conduct,
- * solicit or accept employment that could reasonably be expected to impair the member’s independence in judgment or the member’s performance of City duties,
- * use City facilities, personnel, equipment or supplies for private purposes, except to the extent those things are available to the public.
- * accept paid campaign work relating to a ballot proposition if the member’s board exercised discretionary authority with respect to the proposition and the member participated in the board’s discussion or vote.⁸

Some violations of these standards may also violate state laws with criminal penalties.⁹

Wastewater Commission; City Code §4-8-3(1) – (24).

⁷ City Code, §§ 4-8-4 and 4-8-5.

⁸ City Code, §2-7-62(A), (B), (F), (G), (H)(1), (J), and (K).

⁹ e.g., Penal Code, § 36.02 (Bribery); 36.08 (Gift to Public Servant); §39.02 (Abuse of Official Capacity).

Managing a Conflict; Recusal

Conflicts can be managed by a variety of strategies, depending on the nature of the conflict, and the position and duties of the public servant. In some cases, the law will require a conflict to be managed in a particular way, and failure to take the necessary action may result in a breach of the City's policies, and may even result in criminal liability.

Sometimes the rules simply prohibit the official from engaging in activity that may give rise to a conflict, for example a lobbyist serving as a board member is simply prohibited. In that case, recusal is insufficient.

On the other hand, when the conflicting relationship itself is not prohibited, the problem of a conflict can generally be managed by recusal. Recusal means taking no part in the decision or the decision-making process. You don't have to be the final decision maker to be required to recuse, you just have to be part of the process.

The City Code requires a board member to recuse when the member has a "substantial interest" in a person or entity that would be "affected" by a vote of the board of which he or she is a member.

Both "substantial interest" and "affected" are defined terms that must be explained.

What "Affected" Means

"Affected" means "reasonably likely to be subject to a direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question." For instance, a person or entity owning real property, entering into a contract with the City, or seeking a permit or franchise is "affected" by votes or decisions such as zoning of the property, approval of the contract, or granting of the permit. The term "affected" does not include those persons or entities that are subject to an indirect or secondary effect from official action. Creditors, independent contractors, or guarantors of a person "affected" by a vote or decision are not also deemed to be "affected" by virtue of their relationship with the affected person. The vote or decision need not be the only producing cause of the economic effect or consequence. It's enough that the effect or consequence would be reasonably expected to occur.¹⁰

Substantial Interest

A person has a "substantial interest" in another person ("person" includes associations,

¹⁰City Code, §2-7-2.

businesses, corporations, and government agencies¹¹) or in an entity (‘entity’ includes any entity recognized by law through which business may be conducted¹²) if:

- (1) the interest is ownership of 5% or more of the voting stock, shares or equity of the entity, or
- (2) the interest is ownership of \$5,000 or more of the equity or market value of the entity, or
- (3) funds received from the other person or entity during the previous 12 months or during the previous calendar year equaled or exceeded any one of the following:
 - (a) \$5,000 in salary, bonuses, boards or professional fees, or
 - (b) \$20,000 in payment for goods, products or nonprofessional services, or
 - (c) 10% of the person's gross income during that period, or
- (4) the person serves as a corporate officer or member of the board of directors or other governing board of the entity (this criterion doesn't apply to a non-profit entity or to a corporate entity owned by the City or created by the City Council), or
- (5) the person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000 (this criterion doesn't apply to a home mortgage loan for the person's homestead or to a loan or lease of a personal automobile if entered into at a market rate with a commercial lending institution before the previous 12 months).¹³

A person has a substantial interest in real estate for purposes of Chapter 2-7 of the City Code if the person has a legal or equitable interest in the real property with a market value of \$5,000 or more.¹⁴

A substantial interest of a partnership, professional corporation, or other entity *is deemed to be* a substantial interest of a board member if:

- (1) the board member is a member of a partnership or professional corporation, or conducts business through another entity that has fewer than 20 partners or shareholders, or
- (2) the board member is a member of a partnership or professional corporation, or conducts business through another entity, and the official or employee has an equity interest, share, or draw equal to or greater than 5% of either
 - (a) the capital of the partnership, professional corporation, or other entity, or
 - (b) revenues of the partnership, professional corporation, or other entity.¹⁵

In addition, a board member *has a substantial interest in a client* of a partnership, professional corporation, or entity through which the board member conducts business if the official has

¹¹ City Code, § 1-1-2.

¹² City Code § 2-7-2.

¹³ Id.

¹⁴ Id.

¹⁵ City Code, § 2-7-61.

personally acted in a professional or fiduciary capacity for that client within the preceding 24 months.¹⁶ This applies regardless of the amount of funds received from the client.

A substantial interest of a spouse of a board member is a substantial interest of the board member.¹⁷ (Except that the substantial interests of a partnership are *not* deemed to apply to a board member solely because the spouse of the board member does business through the partnership or other business entity.¹⁸ However, income from a spouse's partnerships, business entities, or clients may constitute a substantial interest¹⁹.)

How to Recuse

To effectively recuse from a vote or decision, a member should not only refrain from voting, but also take no part in any discussions leading up to the vote. The City ordinance uses the phrase “may not participate in a vote or decision.”²⁰

When recusal is required under the City ordinance, a public disclosure of the nature and extent of the interest must appear “in the official records of the body.”²¹ Accordingly, a member should take care that the disclosure appears in the board's official minutes.

It is not required to leave the dais, though that does help reinforce the point that the member is not taking part in the deliberation. A member who is recused may not participate as a member of the public.²²

Sanctions for a Failure to Recuse Under the City Code

The City Code does not itself provide a criminal penalty for a failure to recuse with respect to a

¹⁶Id.

¹⁷ City Code, § 2-7-65(A).

¹⁸ City Code, § 2-7-65(B).

¹⁹See City Code §2-7-2.

²⁰City Code, §2-7-63.

²¹Id.

²² City Code, §2-7-62(B).

“substantial interest” as the term is defined in the City Code.²³ Instead, an alleged violation of the City Code’s recusal requirement is to be heard by the Ethics Review Commission through a procedure set out in §§ 2-7-41 through 2-7-48 of the City Code.

To summarize this process, the Ethics Review Board, either on receipt of a complaint or on its own motion, may conduct hearings to determine if a violation has occurred. If the Ethics Review Commission finds that a violation has occurred, then it may impose a range of sanctions from a letter of notification (when it finds the violation is clearly unintentional) to a recommendation of removal by the City Council (when it finds that a serious or repeated violation has occurred through intentional or culpable disregard of the ordinance by a board member).²⁴

However, even though the City Code does not itself create a criminal penalty for failure to recuse, it is an offense under state law if, with the intent to obtain a benefit or with the intent to harm or defraud another, a public servant knowingly violates a law relating to the public servant's office.²⁵ A City board member is a public servant, and the City Code’s recusal requirement could be such a law. This offense is a Class A misdemeanor. It is punishable by a fine not to exceed \$4,000, up to a year in jail, or both.

Contracting With the City

The City does not specifically prohibit board members from bidding or contracting with the City. However, seeking a City contract where your board has a role to play in the development, evaluation, or award of the contract can be problematic. A bidder is excluded from bidding if the bidder has had any involvement in the design or specifications of the procurement, or if the bidder will have any role in the award of the contract or any advantage due to inside information. The rule is that you can participate in the development of the project or you can bid for the work, but you can't do both because it's anti-competitive.²⁶ The City's standard terms and conditions exclude city officers who have a role in the solicitation (board members are officers) from having even an indirect financial interest in the contract: "No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation."

A City contract may also give rise to a substantial interest requiring recusal on a subsequent issue related to the subject matter of the contract.

²³ City Code, §2-7-48(A).

²⁴ City Code, §2-7-48(B)(1)-(4).

²⁵ Penal Code, §39.02(a)(1), and (b).

²⁶ See Tex. Att'y Gen. Op. Nos. JC-0124 (1999) at 2; JM-940 (1988) at 7, JM-282 (1984) at 8.

Federal Law

Generally, if a City board reviews a federally-funded project or activity, the members will be subject to the federal conflict of interest requirements attached to the federal program that is the source of the funding. Each federal program has a specific conflict of interest rule.

Requirements set by various federal agencies may vary, and in each case the specific regulations with respect to the specific federal activity must be reviewed.

What follows is very general overview using a couple of Department of Housing and Urban Development (HUD) programs as an example. It is intended to suggest the framework of the federal approach to these issues.

HUD's conflict of interest rules for various programs generally apply in a similar manner and apply to a City official or agent who exercises a function or responsibility with respect to an activity, or who is in a position to participate in a decision-making process or gain inside information with regard to an activity under the program.²⁷ The rules prohibit an official, or a person with whom the official has a family or business tie, from having a financial interest in the federal activity. The prohibition applies during the official's tenure and for a year thereafter. HUD may grant a waiver if the nature of the conflict was publicly disclosed, if the conflict does not violate local or state law, and if HUD determines that granting the waiver will serve to further the purposes of the federal activity as well as the effective and efficient administration of the participating jurisdiction's program or project.²⁸

Consequences for failure to comply could range from the loss of an opportunity to participate in a program to civil or criminal liability. Compliance with the federal conflict of interest requirements for a project will not ordinarily excuse failure to comply with local and state law requirements.

Citations

City Code provisions can be seen in their entirety and in context on-line at the Austin City Connection <http://www.ci.austin.tx.us/> and selecting "Code of Ordinances" from the "Select a Service" pull-down menu at the top of the page. Then select the link to "Volume I and Volume II, Code of Ordinances." By expanding the titles in the framed version, sections may be easily found. The first number of a City Code section is the title number.

State statutes can be seen in their entirety and in context on-line at the Texas Legislature Online

²⁷ See, for example, 24 Code of Federal Regulations §570.611, Conflict of Interest (Community Development Block Grants); and 24 Code of Federal Regulations §574.625; Conflict of Interest (Housing Opportunities for Persons with Aids).

²⁸ Id.

<http://www.capitol.state.tx.us/> and selecting “State Statutes” from the menu on the left, under the heading “Research.” The statutes are organized by code.

The Code of Federal regulations is available at the U.S. Government Printing Office’s GPO Access site <http://www.gpoaccess.gov/ecfr/>.

Texas Attorney General opinions are available at <http://www.oag.state.tx.us/opinopen/opindex.shtml> , where they are indexed by number.

2006 Bond Appropriation/Sale Schedule

(\$000s)

Project ID	Project Name	Approved 2007	Approved 2008	Proposed 2009	Proposed 2010	Proposed 2011	Proposed 2012	Proposed 2013	Proposed 2014	Total
Proposition 1 - Transportation										
	Traffic Signals									
	Appropriation- Proposed	0	0	1,600	1,600	1,600	1,600	1,600	0	8,000
	Appropriation- Approved	0	250	1,550	1,550	1,550	1,550	1,550	0	8,000
Proposition 5 - Affordable Housing										
	Home Ownership Programs									
	Appropriation- Proposed	2,000	3,320	3,320	3,320	3,320	3,320	3,400	0	22,000
	Appropriation- Approved	2,000	3,400	3,320	3,320	3,320	3,320	3,320	0	22,000
	Rental Housing Development Programs									
	Appropriation- Proposed	3,000	4,980	4,980	4,980	4,980	4,980	5,100	0	33,000
	Appropriation- Approved	3,000	5,100	4,980	4,980	4,980	4,980	4,980	0	33,000
	Subtotal Appropriation- Proposed	5,000	8,300	8,300	8,300	8,300	8,300	8,500	0	55,000
	Subtotal Appropriation- Approved	5,000	8,500	8,300	8,300	8,300	8,300	8,300	0	55,000
Proposition 7 - Public Safety										
	Animal Shelter									
	Appropriation- Proposed	850	0	11,150	0	0	0	0	0	12,000
	Appropriation- Approved	850	2,000	9,150	0	0	0	0	0	12,000