

ETHICS AND THE PLANNING COMMISSIONER

Carol Barrett, FAICP

As a planning commissioner, you have been given significant authority and you are expected to use that authority with integrity. High ethical standards are required to secure and maintain public trust that is essential to the planning process.

Planning officials often operate according to an unwritten, personal code of ethics. As a new planning commissioner, you know yourself to be honest in your day-to-day dealings with friends and family and you are reliable in your business life as well. Therefore, you assume that the way you deal with ethical questions that come up as a planning commissioner will be honest as well. Most people have convictions about what is right and wrong based on religious beliefs, culture, family teachings, lessons learned in life, laws, and habits. These are not the best values to use to make ethical planning decisions because they will vary among your fellow commissioners. For example, loyalty to friends and family may conflict with one's responsibility to service the public interest. Religious beliefs and culture are also a source of continuous historical disagreement over all kinds of matters.

Working as a planning commissioner will take you into new intellectual fields. The world of ethics for planning commissioners is some of that unplowed

ground. There will be things for you to consider that you may have never thought about before. The purpose- of this chapter is to help you understand some of the more universal behavior standards for planners and planning officials so you are better prepared to think through what your response should be when ethical issues arise.

For planning commissioners, ethics refers to a common and coherent standard of behavior accepted by all those wishing to act in an ethical manner. The American Planning Association has adopted a Statement of Ethical Principles to help planning officials understand the basic ethical expectations. It is attached to this document. There is also a Code of Ethics for professional planners who have passed an examination and are members of the American Institute of Certified Planners. Their Code is also included for your reference.

Laying the Groundwork for Ethical Planning Officials

Serving as a planning official is not easy, especially in the face of public cynicism regarding the motives of community leaders. But there are things that you and your community can do to help shape the public's perception about the values which underlay your decisions as a commissioner.

Elected officials should appoint good planning commissioners. A good planning commissioner is more than someone who can avoid financial conflicts of interest. A good commissioner should also have:

- An open mind to listen to new ideas.
- An ability to see both the strengths and weaknesses of the proposals.
- Critical thinking skills leading toward finding solutions.
- A commitment to making the process fair to all.
- Independent thinking skills.
- Faith in the future and the ability of the community to shape that future.

Planning commissions should have ground rules. Every commission needs bylaws, written rules of procedures, and a statement of the ethical principles which will guide their work. Together, these documents provide assurance that everyone who interacts with the commission has rights -- due process, fairness, and equity. By-laws and rules of procedure tell people what to expect and help make work with the planning bodies more productive. They also set the benchmark for fair, ethical, and prompt decisions. If the process itself appears fair, there will be a much higher degree of confidence in the decision itself. By-laws and public hearing procedures from the City of San Marcos are attached for your information.

Planning commissions should use standard planning procedures to ensure full, open consideration. Standard planning procedures help planning commissioners do their job in an ethical manner. If commissioners are expected to provide thorough and diligent services, they need relevant information on a timely basis. If the commissioners seek to support community involvement in

planning, then the work has to be organized so that residents can find out what is going on and can make their points of view known.

Standard procedures also help ensure that issues will be properly aired without undue influence either in fact, or in appearance.

Acting Ethically

Planning commissions should know where ethical guidance can be found.

Ethical standards for planners and planning officials have been promulgated by the American Planning Association and the American Institute of Certified Planners. The text of both is attached. There may also be local ethics ordinances which regulate behavior although these may not pertain to the planning commission. Ethics ordinances tend to regulate two things: activities that require disclosure such as sources of income; and behavior that is prohibited. There may be quite a bit of overlap between the standards of the APA and local ordinances. For example, a prohibition against soliciting or accepting gifts is a common element.

Example: Can a planning commissioner accept a bottle of wine as winter holiday thank you from a local architect?

Answer: Yes. Commissioners should not solicit or accept items of a value great enough to affect their judgment. Items that can easily be consumed fall outside of influencing behavior. The prohibition against taking gifts applies in the circumstances where a reasonable person might think the commissioner's judgment had been impaired.

Example: Can a planning commissioner accept a case of wine as a winter holiday thank you from a local architect?

Answer: No. See above.

Example: Can a planning commissioner accept two free weeks at a local developer's condo on the beach in California?

Answer: No. See above. Accepting such a posh offer would leave people with the impression that you were indebted to the developer and that your decisions would be affected by your sense of owing something to another person.

State law in Texas regulates conflicts of interest. Planning commissioners need to be familiar with Chapter 171 of Texas Local Government Code (which is also attached). It governs the conduct of planning officials who make decisions that are more than advisory. The law addresses potential conflicts of interest by local officials. The law seeks to prevent public officials from having dealings with their governmental bodies if they would derive a personal benefit. The law requires disclosure and abstention when it is time to vote if there is a substantial financial interest.

Texas Local Government Code Chapter 171 defines *substantial interest* as:

- (a) Owning 10% or more of the voting stock or shares or an ownership of \$15,000 or more of the fair market value of the business;
- (b) Receiving funds from the business exceeding 10 percent of the commissioner's gross income from the pervious year;
- (c) Having an interest in real property that is either equitable or legal ownership with a fair market value of \$2500 or more;
- (d) Being related by marriage or ancestry or affinity to someone who has an interest as described above.

The national codes of APA and AICP also address conflict of interest, but call for a higher standard — even the appearance of a conflict of interest should be avoided.

Example: A realtor sits on the Planning Commission and from time-to-time, his broker appears before the Planning Commission to seek a zoning change on behalf of a client. Can the realtor vote on these requests?

Answer: According to the APA's Statement of Ethical Principles, because securing a change in the zoning is often a contract contingency, the realtor has a financial interest in working for a successful broker. The realtor should declare the conflict of interest and not participate in the discussion. According to Texas Law, this would not be a conflict of interest.

Additional guidance can also be derived from your local ethics ordinances. In the case of San Marcos, their Code states:

It is the policy of the City of San Marcos that all city officials and employees shall act and conduct themselves both inside and outside the city's service so as to give no occasion for distrust for their integrity, impartiality or of their devotion to the best interest of the City of San Marcos and the public trust which it holds.

That kind of a standard would prohibit voting by the realtor in a rezoning request made by his or her broker.

Planning commissions should adopt ethical standards. Your community should know that you have ethical principles that will be used in decision-making. These standards may already be in place (local ordinances and charter) or you may need to draft and adopt them. The APA Statement of Ethical Principles has already been suggested for consideration. In brief, the Statement identifies the following ethical principles:

A. Serve the public interest.

1. Recognize the rights of citizens to participate in planning decisions.

2. Give citizens full, clear, and accurate information.
3. Expand choice and opportunity for all persons.
4. Assist in the clarification of community goals.
5. Ensure that information available to decision makers is also available to the public.
6. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

B. Strive to achieve high standards of integrity and proficiency.

1. Exercise fair, independent, and honest judgment.
2. Publicly disclose any personal interests.
3. Define personal interest broadly.
4. Abstain from participation in a matter in which you have a personal interest and leave the chamber when the matter is being deliberated.
5. Seek no gifts or favors.
6. Abstain from participating as an advisor or decision maker on any plan or project in which you have previously participated as an advocate.
7. Serve as advocates only when the objectives are legal and serve the public interest.
8. Not participate as an advocate on any plan or program in which you have previously served as an advisory or decision maker except after full disclosure and in no circumstance earlier than one year following termination of the role as advisory or decision maker.
9. Not use confidential information to further a personal interest.
10. Not disclose confidential information.
11. Not misrepresent facts or distort information.
12. Not participate in any matter unless prepared.
13. Respect the rights of all persons.

These principles are aspirational in nature and they seek to inspire voluntary commitment through appeals to conscience. They are a positive obligation. There are no sanctions for failing to comply nor is there any regulatory scheme.

If APA's Statement seems too detailed for your community, you can always consider something shorter. A quick check of the web will turn up a number of examples. In reality, the actual language finally adopted is less important than the discussion that will surround the adoption. A conversation with planning colleagues will clarify points of differing interpretation. Adopting ethical standards will also advise the community that there are principles upon which they can rely. Indirectly, you will be putting people on notice that certain forms of conduct are not acceptable. Finally, once you have an adopted statement of ethical principles, it can easily eliminate the need for debate about personalities or individual proclivities. A short statement can simply be made referring to the adopted Statement and how it either encourages or precludes certain forms of conduct.

The decisions made by planning commissions should reflect the adopted ethical principles. Planning commissions should be attentive to every point of view laid out at a commission meeting: property owner rights; equitable procedures; opinions of residents; and the environment. To sort through the plethora of

information and arrive at the best decision, the commissioner needs to ask herself "What decision will promote the entire community's best interest over time?"

Commissioners should also be attentive to the integrity of the planning process. Decisions should be based upon full information. This information should be discussed in an open forum where it can be debated. Certainly planning reports, studies, and other records should be available to persons on either (or any) side of an issue. Other meetings or communications a commissioner may have related to a proposed decision must be noted at a public hearing to ensure full information, comments, and rebuttals as appropriate. If a commission conducts its business in a consistent and open manner, then the community will have more faith in the process.

Ex-parte communications. Ex-parte communications are those that occur outside of the formal meeting. These kinds of communications can undermine your efforts to establish a reputation for planning commission fairness. Why is it a problem when information is communicated to you outside of a meeting?

- Not everyone has the same information.
- The applicant cannot respond, if accusations are made.
- You can't readily assess the accuracy of the information by seeking confirmation from staff
- It violates the perceived fairness of process if special information has been conveyed to a subset of the board membership.

Some planning commissioners insist that they are comfortable with receiving communications from the projects' neighbors or other concerned citizens. They believe being open to community input is part of their job. Those members explain that they report the ex-parte communications prior to the beginning of the official meeting. But disclosing may not be enough. You can't easily convey the full text of information received or the way you may have been influenced.

Site visits are a form of ex-parte communication. However, they are desirable. They can take the form of individuals driving by a site, or exploring it alone on foot. Some communities chose to organize group visits with staff. Since you may have a quorum of Planning Commissioners present, such site visits should be posted as a public meeting. Staff should prepare a brief write up of the visit for the public record. While on the site, board members should maintain an open-minded frame of mind and refrain from offering opinions to the property owner who is likely to be present.

Example: Can a planning commissioner receive information or explanations from an applicant outside of the regular meeting?

Answer: If the information is designed to influence the thinking of the Commissioner, the information should be presented in a public meeting. It should be in writing and should be part of the official public record.

Serial meetings. A serial meeting occurs when a series of communications among board members results in a debate and discussion of a pending item or

policy. Serial meetings may be prohibited by state or local ethics codes. Whether precluded or not, they should be avoided. Serial meetings are the product of high technology, particularly e-mail. Meetings where decisions are made have to be conducted in public. E-mails about pending matters should be avoided.

Example: Can the staff send a notice to all the Planning Commission advising them that an item has been dropped from the agenda at the request of the applicant?

Answer: Yes. No discussion of pros or cons was undertaken. No replies were needed.

Example: Can planning commissioners send e-mails using the "reply to all" feature speculating why the applicant made the decision and what, if anything, the commission can do as a group to help get the project back on track?

Answer: No. The commission would be discussing a topic with the intention of arriving at a consensus to guide future public action outside of a public meeting.

Individual planning commissioners should be prepared to address ethical challenges. There are several steps to follow to help resolve and ethical problem.

1. Stop and define the problem. Avoid the temptation to go along to get along. Take the time to make sure you can clearly express, at least to yourself, what are your misgivings.
2. Collect the facts. Who is involved? How credible is the information you've been offered? How reliable are the people providing information? And is the information complete?
3. Refer to your guidance material. Whatever principles or codes or ordinances apply to your work, know what the recommendations are and how they would be applied.
4. See if you can generate alternative courses of action and decide if they would have better probable outcomes. You can ask people individually or in a public setting, ask the Commission Chair to address the problem, or request a memo from the staff. When you have a list of alternatives, look for the ones that can help solve the problem while building ethical bridges to the rest of the commission.

5. Act on the best alternative.

Example: You have observed two members of the commission, in public meetings, urge the staff to waive the criteria for a variance to the subdivision standards for certain members of the development community. The commission usually goes along.

Answer: using the above guidelines:

1. Stop and define the problem. Long time developers are receiving preferential treatment and are being granted variances to the subdivision standards without meeting the criteria.
2. Collect the facts. You always take detailed notes of the Commission's debate. Within the past six months, only two developers and all of their projects have been the subject of requests of staff by the same two commissioners. Each time, the argument is made to waive standards to support economic development and encourage homebuilding. Some of the waivers are minor; others are significant. But in each case, they are lobbying for the approval of subdivisions that are substandard.
3. Refer to guidance material. The APA Statement of Ethical Principles states that those who participate in the planning process should "Exercise fair, honest, and independent judgment. You believe the Commissioners are failing to achieve this standard and the credibility of the Commission has been affected.
4. Generate alternatives. Talk to the Chair of the Planning Commission. Talk to the two Planning Commissioners. Request a briefing from staff of the formal process of seeking variances and waivers. Invite a representative from the Texas Chapter of APA to discuss the potential long-term costs of waiving certain subdivision standards.
5. Act on the best alternative. You decide to talk to the Chair of the Planning Commission because this option doesn't preclude other actions if your conversation is not productive. It is your hope that together the two of you can approach the other Commissioners.

When You Have Serious Concerns about Ethical Misconduct

What can you do when there are ethical violations that taint the public planning process? When you notice a consistent pattern of unethical behavior

and simple, direct remedies have failed, it may be time to consult with others who can bring to bear the influence of another entity.

In the case of alleged unethical conduct by a certified professional planner (AICP), you can conduct the Professional Development Officer of the APA Texas Chapter regarding a general question about accepted standards for behavior. To make a specific complaint, you should contact the Executive Director of the American Planning Association who serves as the Ethics Officer for the American Institute of Certified Planners. Contact information for these individuals is available on the Texas Chapter website: www.txplanning.org or that of the APA www.planning.org. Your peers from another jurisdiction can also be helpful in sorting out the issues and alternatives. This is particularly true when you have concerns about the conduct of a planner and you don't want to consult with Texas APA members.

Ultimately, an ethical commissioner must be prepared to consider whether events are of such a serious nature as to require resignation. Conversely, the Commissioner may decide, upon reflection, to maintain a lonely outpost as the ethical beacon. That Commissioner can be effective in a number of simple ways. One could request that the APA Statement of Ethical Principles be placed on an agenda of the Commission. A frank discussion can then occur without appearing to judge any individual(s). The Commissioner could request training on ethics as a part of the overall development program for volunteers. Even

without bringing these outside resources to the table, consistently ethical actions by one Commissioner will, over time, raise the ethical consciousness of the entire Planning Commission for the benefit of the whole community.

**APA Statement of Ethical Principles
Ethical Principles in Planning
(As Adopted May 1992)**

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

The planning process must continuously pursue and faithfully serve the public interest.

Planning Process Participants should:

1. Recognize the rights of citizens to participate in planning decisions;

2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;

3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker (see also Advisory Ruling "Conflicts of Interest When a Public Planner Has a Stake in Private Development")
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, **public** agency or court with jurisdiction to rule on ethics matters **has** expressly authorized their participation;

5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
7. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate; Serve as advocates only when the client's objectives are legal and consistent with the public interest.
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome (see also Advisory Ruling "Honesty in the Use of Information");
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations (see also Advisory "Sexual Harassment").

APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the planning process and thus serves the public interest.

APA Members who are practicing planners:

1. Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics;
2. Do not commit a deliberately wrongful act which reflects adversely on planning as a profession or seek business by stating or implying that they are prepared, willing or able to influence decisions by improper means;
3. Participate in continuing professional education;
5. Contribute time and effort to groups lacking adequate planning resources and to voluntary professional activities; Accurately represent their qualifications to practice planning as well as their education and affiliations;
6. Accurately represent the qualifications, views, and findings of colleagues;
7. Treat fairly and comment responsibly on the professional views of colleagues and members of other professions;
8. Share the results of experience and research which contribute to the body of planning knowledge;
9. Examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation;
10. Contribute time and information to the development of students, interns, beginning practitioners and other colleagues;
11. Strive to increase the opportunities for women and members of recognized minorities to become professional planners;
12. Systematically and critically analyze ethical issues in the practice of planning. (See also Advisory Ruling "Outside Employment or Moonlighting").

AICP Code of Ethics and Professional Conduct

Adopted March 19, 2005

Effective Rine 1, 2005

The Executive Director of APA/AICP is the Ethics Officer as referenced in the following.

We, professional planners, who are members of the American Institute of Certified Planners, subscribe to our Institute's Code of Ethics and Professional Conduct. Our Code is divided into three sections:

Section A contains a statement of aspirational principles that constitute the ideals to which we are committed. We shall strive to act in accordance with our stated principles. However, an allegation that we failed to achieve our aspirational principles cannot be the subject of a misconduct charge or be a cause for disciplinary action.

Section B contains rules of conduct to which we are held accountable. If we violate any of these rules, we can be the object of a charge of misconduct and shall have the responsibility of responding to and cooperating with the investigation and enforcement procedures. If we are found to be blameworthy by the AICP Ethics Committee, we shall be subject to the imposition of sanctions that may include loss of our certification.

Section C contains the procedural provisions of the Code. It (1) describes the way that one may obtain either a formal or informal advisory ruling, and (2) details how a charge of misconduct can be filed, and how charges are investigated, prosecuted, and adjudicated.

The principles to which we subscribe in Sections A and B of the Code derive from the special responsibility of our profession to serve the public interest with compassion for the welfare of all people and, as professionals, to our obligation to act with high integrity.

As the basic values of society can come into competition with each other, so can the aspirational principles we espouse under this Code. An ethical judgment often requires a conscientious balancing, based on the facts and context of a particular situation and on the precepts of the entire Code.

As Certified Planners, all of us are also members of the American Planning Association and share in the goal of building better, more inclusive communities. We want the public to be aware of the principles by which we practice our profession in the quest of that goal. We sincerely hope that the public will respect the commitments we make to our employers and clients, our fellow professionals, and all other persons whose interests we affect.

A: Principles to Which We Aspire

1. Our Overall Responsibility to the Public

Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. We shall achieve high standards of professional integrity, proficiency, and knowledge.

To comply with our obligation to the public, we aspire to the following principles:

- a) We shall always be conscious of **the** rights of others.
- b) We shall have special concern for the long-range consequences of present actions.
- c) We shall pay special attention to the interrelatedness of decisions.

- d) We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.
- e) We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.
- f) We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.
- g) We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.
- h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

2. Our Responsibility to Our Clients and Employers

We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer's interest. Such performance, however, shall always be consistent with our faithful service to the public interest.

- a) We shall exercise independent professional judgment on behalf of our clients and employers.
- b) We shall accept the decisions of our client or employer concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.
- c) We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

3. Our Responsibility to Our Profession and Colleagues

We shall contribute to the development of, and respect for, our profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.

- a) We shall protect and enhance the integrity of our profession.
- b) We shall educate the public about planning issues and their relevance to our everyday lives.
- c) We shall describe and comment on the work and views of other professionals in a fair and professional manner.
- d) We shall share the results of experience and research that contribute to the body of planning knowledge.
- e) We shall examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and shall not accept the applicability of a customary solution without first establishing its appropriateness to the situation.
- f) We shall contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.
- g) We shall increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.
- h) We shall continue to enhance our professional education and training.

i) We shall systematically and critically analyze ethical issues in the practice of planning.

j) We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

B: Our Rules of Conduct

We adhere to the following Rules of Conduct, and we understand that our Institute will enforce compliance with them. If we fail to adhere to these Rules, we could receive sanctions, the ultimate being the loss of our certification:

1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.
2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of *these* rules.
3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.
4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.
5. We shall not, as public officials or employees; accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.
6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.
7. We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer. Nor shall we disclose such confidential information except when (1) required *by* process of law, or (2) required to prevent a clear violation of law, or (3) required to prevent a substantial injury to the public. Disclosure pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, exhausted efforts to obtain reconsideration of the matter and have sought separate opinions on the issue from other qualified professionals employed by our client or employer.
8. We shall not, as public officials or employees, engage in private communications with planning process participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.
9. We shall not engage in private discussions with *decision* makers in the planning process in any manner prohibited by law or by agency rules, procedures, or custom.
10. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.

- 11.. We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress.
12. We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.
13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.
14. We shall not use the power of any office to *seek* or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.
15. We shall not accept work beyond our professional competence unless the client or employer understands and agrees that such work will be performed by another professional competent to perform the work and acceptable to the client or employer.
16. We shall not accept work for a fee, or pro bono, that we know cannot be performed with the promptness required by the prospective client, or that is required by the circumstances of the assignment.
17. We shall not use the product of others' efforts to seek professional recognition or acclaim intended for producers of original work.
18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.
19. We shall not fail to disclose the interests of our client or employer when participating in the planning process. Nor shall we participate in an effort to conceal the true interests of our client or employer.
20. We shall not unlawfully discriminate against another person.
21. We shall not withhold cooperation or information from the AICP Ethics Officer or the AICP Ethics Committee if a charge of ethical misconduct has been filed against us.
22. We shall not retaliate or threaten retaliation against a person who has filed a charge of ethical misconduct against us or another planner, or who is cooperating in the Ethics Officer's investigation of an ethics charge.
23. We shall not use the threat of filing an ethics charge in order to gain, or attempt to gain, an advantage in dealings with another planner.
24. We shall not file a frivolous charge of ethical misconduct against another planner.
25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.

C: Our Code Procedures

1. Introduction

In brief, our Code Procedures (1) describe the way that one may obtain either a formal or informal advisory ethics ruling, and (2) detail how a charge of misconduct can be filed, and how charges are investigated, prosecuted, and adjudicated.

2. Informal Advice

All of us are encouraged to seek informal ethics advice from the Ethics Officer. Informal advice is not given in writing and is not binding on AICP, but the AICP Ethics Committee shall take it into consideration in the event a charge of misconduct is later filed against us concerning the conduct in

question. If we ask the Ethics Officer for informal advice and do not receive a response within 21 calendar days of our request, we should notify the Chair of the Ethics Committee that we are awaiting a response.

3. Formal Advice

Only the Ethics Officer is authorized to give formal advice on the propriety of a planner's proposed conduct. Formal advice is binding on AICP and any of us who can demonstrate that we followed such advice shall have a defense to any charge of misconduct. The advice will be issued to us in writing signed by the Ethics Officer. The written advice shall not include names or places without the written consent of all persons to be named. Requests for formal advice must be in writing and must contain sufficient details, real or hypothetical, to permit a definitive opinion. The Ethics Officer has the discretion to issue or not issue formal advice. The Ethics Officer will not issue formal advice if he or she determines that the request deals with past conduct that should be the subject of a charge of misconduct. The Ethics Officer will respond to requests for formal advice within 21 days of receipt and will docket the requests in a log that will be distributed on a quarterly basis to the Chair of the AICP Ethics Committee. If the Ethics Officer fails to furnish us with a timely response we should notify the Chair of the AICP Ethics Committee that we are awaiting a response.

4. Published Formal Advisory Rulings

The Ethics Officer shall transmit a copy of all formal advice to the AICP Ethics Committee. The Committee, from time to time, will determine if the formal advice provides guidance to the interpretation of the Code and should be published as a formal advisory ruling. Also, the Ethics Committee has the authority to draft and publish formal advisory rulings when it determines that guidance to Interpretation of *the* Code is needed or desirable.

5. Filing a Charge of Misconduct

Any person, whether or not an AICP member, may file a charge of misconduct against a Certified Planner. A charge of misconduct shall be made in a letter sent to the AICP Ethics Officer. The letter may be signed or it may be anonymous. The person filing the charge is urged to maintain confidentiality to the extent practicable. The person filing the charge should not send a copy of the charge to the Certified Planner identified in the letter or to any other person. The letter shall accurately identify the Certified Planner against whom the charge is being made and describe the conduct that allegedly violated the provisions of the Rules of Conduct. The person filing a charge should also cite all provisions of the Rules of Conduct that have allegedly been violated. However, a charge will not be dismissed if the Ethics Officer is able to determine from the facts stated in the letter that certain Rules of Conduct may have been violated. The letter reciting the charge should be accompanied by all relevant documentation available to the person filing the charge. While anonymously filed charges are permitted, anonymous filers will not receive notification of the disposition of the charge. Anonymous filers may furnish a postal address in the event the Ethics Officer needs to reach them for an inquiry.

6. Receipt of Charge by Ethics Officer

The Ethics Officer shall maintain a log of all letters containing charges of misconduct filed against Certified Planners upon their receipt and shall transmit a quarterly report of such correspondence to the Chair of the Ethics Committee. Within two weeks of receipt of a charge, the Ethics Officer shall prepare a cover letter and transmit the charge and all attached documentation to the named Certified Planner, who shall be now referred to as "the Respondent." The Ethics Officer's cover letter shall indicate whether the Ethics Officer expects the Respondent to file a "preliminary response" or whether the Ethics Officer is summarily dismissing the charge because it is clearly without merit. A copy of the cover letter will also be sent to the Charging Party, if identified. If the cover letter summarily dismisses the charge, it shall be sent to an identifiable Charging Party by receipted Certified Mail. The Charging Party will have the right to appeal the summary dismissal as provided in Section 11. After the Ethics Officer has received a charge, the Charging Party may withdraw it only with the permission of the Ethics Officer. After receiving a charge, the Ethics Officer shall have a duty to keep an identified Charging Party informed of its status. If an identified Charging Party has

not received a status report from the Ethics Officer for 60 calendar days, the Charging Party should notify the Chair of the AICP Ethics Committee of the lapse.

7. Right of Counsel

A planner who receives a charge of misconduct under a cover letter requesting a preliminary response should understand that if he or she desires legal representation, it would be advisable to obtain such representation at the earliest point in the procedure. However, a planner who elects to proceed at first without legal representation will not be precluded from engaging such representation at any later point in the procedure.

8. Preliminary Responses to a Charge of Misconduct

If the Ethics Officer requests a preliminary response, the Respondent shall be allowed 30 calendar days from receipt of the Ethics Officer's letter to send the response to the Ethics Officer. The Ethics Officer will grant an extension of time, not to exceed 15 calendar days, if the request for the extension is made within the 30 day period. Failure to make a timely preliminary response constitutes a failure to cooperate with the Ethics Officer's investigation of the charge. A preliminary response should include documentation, the names, addresses and telephone numbers of witnesses, and all of the facts and arguments that counter the charge. Because the motivation of the person who filed the charge is irrelevant, the Respondent should not discuss it. The Ethics Officer will send a copy of the preliminary response to the Charging Party, if identified, and allow the Charging Party 15 calendar days from the date of receipt to respond.

9. Conducting an Investigation

After review of the preliminary response from the Respondent and any counter to that response furnished by an identified Charging Party, or if no timely preliminary response is received, the Ethics Officer shall decide whether an investigation is appropriate. If the Ethics Officer determines that an investigation should be conducted, he or she may designate a member of the AICP staff or AICP counsel to conduct the Investigation. The Respondent must cooperate in the investigation and encourage others with relevant information, whether favorable or unfavorable, to cooperate. Neither the Ethics Officer, nor designee, will make credibility findings to resolve differing witness versions of facts in dispute.

10. Dismissal of Charge or Issuance of Complaint

If, with or without an investigation, the charge appears to be without merit, the Ethics Officer shall dismiss it in a letter, giving a full explanation of the reasons. The dismissal letter shall be sent to the Respondent and the Charging Party by receipted Certified Mail. If, however, the Ethics Officer's investigation indicates that a Complaint is warranted, the Ethics Officer shall draft a Complaint and send it to the Respondent by receipted Certified Mail, with a copy to the Charging Party. The Complaint shall consist of numbered paragraphs containing recitations of alleged facts. Following the fact paragraphs, there shall be numbered paragraphs of alleged violations, which shall cite provisions of the Rules of Conduct that the Ethics Officer believes are implicated. The allegations in the Complaint shall be based on the results of the Ethics Officer's Investigation of the charge and may be additional to, or different from, those allegations initially relied upon by the Charging Party. The Ethics Officer shall maintain a log of all dismissals and shall transmit the log on a quarterly basis to the Chair of the Ethics Committee.

11. Appeal of Dismissal of Charge

Identified Charging Parties who are notified of the dismissal of their ethics charges shall have 30 calendar days from the date of the receipt of their dismissal letters to file an appeal with the Ethics Committee. The appeal *shall* be sent to the Ethics Officer who shall record it in a log and transmit it within 21 calendar days to the Ethics Committee. The Ethics Committee shall either affirm or reverse the dismissal. If the dismissal is reversed, the Ethics Committee shall either direct the Ethics Officer to conduct a further investigation and review the charge again, or issue a Complaint based on the materials before the Committee. The Ethics Officer shall notify the Charging Party and

the Respondent of the Ethics Committee's determination..

12. Answering a Complaint

The Respondent shall have 30 calendar days from receipt of a Complaint in which to file an Answer. An extension not to exceed 15 calendar days will be granted if the request is made within the 30 day period. In furnishing an Answer, the Respondent is expected to cooperate in good faith. General denials are unacceptable. The Answer must specifically admit or deny each of the fact allegations in the Complaint. It is acceptable to deny a fact allegation on the ground that the planner is unable to verify its correctness, but that explanation should be stated as the reason for denial. The failure of a Respondent to make a timely denial of any fact alleged in the Complaint shall be deemed an admission of such fact. The Ethics Officer may amend a Complaint to delete any disputed fact, whether or not material to the issues. The Ethics Officer also may amend a Complaint to restate fact allegations by verifying and adopting the Respondent's version of what occurred. The Ethics Officer shall send the Complaint or Amended Complaint and the Respondent's Answer to the Ethics Committee with a copy to an identified Charging Party. The Ethics Officer shall also inform the Ethics Committee if there are any disputed material facts based on a comparison of the documents,

13. Conducting a Hearing

a) If the Ethics Officer notifies the Ethics Committee that material facts are in dispute or if the Ethics Committee, on its own, finds that to be the case, the Chair of the Committee shall designate a "Hearing Official" from among the membership of the Committee. At this point in the process, the Ethics Officer, either personally or through a designated AICP staff member or AICP counsel, shall continue to serve as both Investigator-Prosecutor and as the Clerk serving the Ethics Committee, the Hearing Official and the Respondent. In carrying out clerical functions, the Ethics Officer, or designee, may discuss with the Ethics Committee and the Hearing Official the procedural arrangements for the hearing. Until the Ethics Committee decides the case, however, the Ethics Officer or designee shall not discuss the merits of the case with any member of the Committee unless the Respondent is present or is afforded an equal opportunity to address the Committee member.

b) The Ethics Officer shall transmit a "Notice of Hearing" to the Respondent, the Hearing Official and an Identified Charging Party. The hearing shall normally be conducted in the vicinity where the alleged misconduct occurred. The Notice will contain a list of all disputed material facts that need to be resolved. The hearing will be confined to resolution of those facts. There shall be no requirement that formal rules of evidence be observed,

c) The Ethics Officer will have the burden of proving, by a preponderance of the evidence, that misconduct occurred. The Ethics Officer may present witness testimony and any other evidence relevant to demonstrating the existence of each disputed material fact. The Respondent will then be given the opportunity to present witness testimony and any other evidence relevant to controvert the testimony and other evidence submitted by the Ethics Officer. The Ethics Officer may then be given an opportunity to present additional witness testimony and other evidence in rebuttal. All witnesses who testify for the Ethics Officer or the Respondent shall be subject to cross-examination by the other party. The Hearing Official shall make an electronic recording of the hearing and shall make copies of the recording available to the Ethics Officer and the Respondent.

d) At least 30 calendar days before the hearing, the Ethics Officer and the Respondent shall exchange lists of proposed witnesses who will testify, and copies of all exhibits that will be introduced, at the hearing. There shall be no other discovery and no pre-hearing motions. All witnesses must testify in person at the hearing unless arrangements can be made by agreement between the Respondent and the Ethics Officer prior to the hearing, or by ruling of the Hearing Official during the hearing, to have an unavailable witness's testimony submitted in a video recording that permits the Hearing Official to observe the demeanor of the witness. No unavailable witness's testimony shall be admissible unless the opposing party was offered a meaningful opportunity to cross-examine the witness. The hearing shall not be open to the public. The Hearing Official shall have the discretion to hold open the hearing to accept recorded video testimony of unavailable witnesses. The Respondent will be responsible for the expense of bringing his or her witnesses to the hearing or to have their testimony video recorded. Following the closing of the hearing, the Hearing Official shall make findings only as to the disputed material facts and transmit the findings to the full Ethics Committee, the Ethics Officer, and the

Respondent. The Hearing Official, prior to issuing findings, may request that the parties submit proposed findings of fact for his or her consideration.

14. Deciding the Case

The Ethics Committee (including the Hearing Official member of the Committee) shall resolve the ethics matter by reviewing the documentation that sets out the facts that were not in dispute, any fact findings that were required to be made by a Hearing Official, and any arguments submitted to it by the Respondent and the Ethics Officer. The Ethics Officer shall give 45 calendar days notice to the Respondent of the date of the Ethics Committee meeting during which the matter will be resolved. The Ethics Officer and the Respondent shall have 21 calendar days to submit memoranda stating their positions. The Ethics Officer shall transmit the memoranda to the Ethics Committee no later than 15 calendar days prior to the scheduled meeting. If the Committee determines that the Rules of Conduct have not been violated, it shall dismiss the Complaint and direct the Ethics Officer to notify the Respondent and an identified Charging Party. If the Ethics Committee determines that the Ethics Officer has demonstrated that the Rules of Conduct have been violated, it shall also determine the appropriate sanction, which shall either be a reprimand, suspension, or expulsion. The Ethics Committee shall direct the Ethics Officer to notify the Respondent and an Identified Charging Party of its action and to draft a formal explanation of its decision and the discipline chosen. Upon approval of the Ethics Committee, the explanation and discipline chosen shall be published and titled "Opinion of the AICP Ethics Committee." The determination of the AICP Ethics Committee shall be final.

15. Settlement of Charges

a) Prior to issuance of a Complaint, the Ethics Officer may negotiate a settlement between the Respondent and an identified Charging Party if the Ethics Officer determines that the Charging Party has been personally aggrieved by the alleged misconduct of the Respondent and a private resolution between the two would not be viewed as compromising Code principles. If a settlement is reached under such circumstances, the Charging Party will be allowed to withdraw the charge of misconduct.

b) Also prior to issuance of a Complaint, the Ethics Officer may enter into a proposed settlement agreement without the participation of an identified Charging Party. However, in such circumstances, the proposed settlement agreement shall be contingent upon the approval of the Ethics Committee. An identified Charging Party will be given notice and an opportunity to be heard by the Ethics Committee before it votes to approve or disapprove the proposed pre-Complaint settlement.

c) After Issuance of a Complaint by the Ethics Officer, a settlement can be negotiated solely between the Ethics Officer and the Respondent, subject to the approval of the Ethics Committee without input from an identified Charging Party.

16. Resignations and Lapses of Membership

If an AICP member who is the subject of a Charge of Misconduct resigns or allows membership to lapse prior to a final determination of the Charge (and any Complaint that may have issued), the ethics matter will be held in abeyance subject to being revived if the individual applies for reinstatement of membership within two years. If such former member, however, fails to apply for reinstatement within two years, the individual shall not be permitted to reapply for certification for a period of 10 years from the date of resignation or lapse of membership. If the Ethics Officer receives a Charge of Misconduct against a former member, the Ethics Officer shall make an effort to locate and advise the former member of the filing of the Charge and this Rule of Procedure.

17 . Annual Report of Ethics Officer. Prior to January 31 of each calendar year the Ethics Officer shall publish an Annual Report of all ethics activity during the preceding calendar year to the AICP Ethics Committee and the AICP Commission, The AICP Commission shall make the Annual Report available to the membership.

BY-LAWS OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF SAN MARCOS

ARTICLE I. NAME

The name of the Commission shall be "The Planning and Zoning Commission of the City of San Marcos, Texas." Within these By-laws this commission may be referred to as either "the Planning and Zoning Commission", "Planning and Zoning Commission" or "the Commission."

ARTICLE II. PURPOSE, AUTHORITY, AND DUTIES

Section 1. The Planning and Zoning Commission is responsible for the orderly growth and physical development of the City of San Marcos and its extraterritorial jurisdiction through the implementation of the community's Master Plan and related land use and development ordinances

Section 2. The Planning and Zoning Commission shall have powers and duties expressly granted to it under Article VII of the City Charter of the City of San Marcos, the ordinances of the City of San Marcos, and the laws of the State of Texas

ARTICLE III. MEMBERSHIP, TERMS, QUORUM, ATTENDANCE

Section 1. The Planning and Zoning Commission shall consist of nine members appointed by the City Council; seven members shall be residents of and own real property in the City. One member shall be a resident of and own real property within the extraterritorial jurisdiction of the City. One member shall be a resident of and owner of real property in either the City or the extraterritorial jurisdiction of the City. Members of the Commission shall serve without compensation.

Section 2. Each Commission member serves a three year term. Terms are staggered so that three of the members' terms expire in any given year. Terms expire on the last day of January. Commission members shall be eligible to serve a maximum of two full terms. If a person is appointed to fill an unexpired term of more than eighteen months, the person will serve the remainder of that term and shall be eligible for reappointment for no more than one full term. If a person is appointed to fill an unexpired term of less than eighteen months, the person shall be eligible for reappointment for no more than two full terms.

Section 3. A quorum shall be no less than five members. No business shall be conducted or actions taken without a quorum of the membership present except to call the meeting to order, take roll, declare that a quorum is not present, set time and date of next meeting, and either recess or adjourn the meeting.

Section 4. Absences from meetings shall be governed by Section 2.069 of the City Code.

ARTICLE IV. OFFICERS

Section 1. The offices of Commission Chair, Commission Vice-Chair and Recording Secretary are established. The Commission shall elect a Chair and Vice Chair at the first regular meeting in February of each year. The Commission shall also confirm, as needed from time to time to fill a vacancy, the Director of Planning's appointment of a Recording Secretary. The Recording Secretary shall be a member of the Planning and Development Services Department staff and shall not be a member of the Commission.

Section 2. The Chair shall:

- (a) Preside at all meetings of the Commission;
- (b) Call special meetings of the Commission in accordance with Article V of these bylaws;
- (c) Sign official documents of the Commission;
- (d) Appoint special committees of the Commission; and,
- (e) See that all actions of the Commission are properly taken.

Section 3. The Vice-Chair shall, during the absence, disability or disqualification of the Chair, perform all the duties of the Chair.

Section 4. In the event that both the Chair and Vice-Chair are absent from any one meeting, the remaining members of the Commission shall elect a temporary Chair to preside over the meeting.

Section 5. In the event of a vacancy in an unexpired term of the Chair, the Vice-Chair will automatically become the Chair and hold an election to fill the unexpired term of the Vice-Chair. Likewise, in the event of a vacancy in an unexpired term of

the Vice-Chair, the Chair will hold an election to fill the unexpired term of the Vice-Chair. If both the Chair and Vice-Chair seats are vacated simultaneously, the remaining members of the Planning Commission will hold an election to fill both unexpired terms of office.

Section 6. The Recording Secretary shall:

- (a) Post the agenda for all meetings of the Commission;
- (b) Give or serve all public notices as required by law;
- (c) Attend the meetings of the Commission and record all votes or other actions taken by the Commission;
- (d) Prepare the written minutes in accordance with the provisions of Article V; Section 2 of these bylaws;
- (e) Be the custodian of all Commission records;
- (f) Sign and attest to the signature of the Chair on all official documents of the Commission;
- (g) Ensure the proper recordation of subdivision plats and other documents requiring filing with the County Clerk's office.

ARTICLE V. COMMISSION RECORDS

Section 1. A public record shall be maintained of all Commission proceedings. The recording secretary, pursuant to the duties in Article IV, Section 6, shall be responsible for all Commission records. All records of the Commission shall be subject to applicable State laws governing the records of a public board.

Section 2. Meeting minutes shall be prepared after each Commission meeting and permanently maintained in the Planning and Development Services Department of the City. Meeting minutes shall be considered draft minutes until the Commission takes formal action to approve the minutes. Meeting minutes shall be a concise record of each agenda item, the action taken on each item, and a listing of those who spoke regarding each item. The minutes shall reflect only a short abstract of the position taken by each speaker and shall be neither a verbatim transcript nor a lengthy description of the discussion. Meeting minutes shall accurately reflect all motions and seconds, along with the results of the vote taken on each motion. Where substitute motions or motions to reconsider are

made, such motions and the votes on those motions shall also be reflected in the meeting minutes.

Section 3. Each Commission member shall have an obligation to check the meeting minutes for accuracy prior to the meeting at which the minutes will be considered for approval. If a Commission member has more than three corrections or amendments to make to a given set of minutes, the member shall report the corrections in writing, to the Recording Secretary prior to the meeting. When the approval of minutes is subsequently called up for discussion, the Recording Secretary shall announce that written corrections have been received and the Commission shall automatically table the minutes to the next meeting without further discussion. Three or fewer corrections may be offered and voted on at the meeting where the minutes are being considered. Approved minutes shall be signed by all members who attended that meeting.

Section 4. Commission meetings shall be recorded on audiotape. The tapes of Commission meetings shall be retained for the period of time prescribed by State law. The Commission Chair shall require that each person coming before the Commission identify himself or herself for the record prior to addressing the Commission.

ARTICLE VI. MEETINGS, RULES OF CONDUCT

Section 1. The regular meeting of the Commission shall be on the fourth Tuesday of the month.

Section 2. Additional or special meetings of the Commission may be held at any time upon the request of either the Chair, the City Council or a majority of the members of the Commission. Such meetings shall follow at least seventy-two hours of notification of Commission members and the public.

Section 3. All meetings of the Commission shall be conducted in accordance with the Texas open meetings law, Article 6252-17, Vernon's Texas Civil Statutes.

Section 4. Regular meetings of the Commission may be canceled by the Director of Planning with the consent of the Chair if both of the following criteria are met:

- (a) No new items requiring the Commission's attention have been submitted by the public as of 5 p.m. of Monday, three weeks prior to any regular meeting date; and
- (b) The Chair, a majority of the Commission membership, or the Director of Planning have not submitted any items for discussion as of ten days prior to any regular meeting date.

Section 5. The Commission may vote to reschedule or cancel the dates of regularly scheduled meetings to avoid conflicts with holidays or for other special circumstances. The rescheduling or canceling of regular meetings shall be done at least 30 days in advance of the regularly scheduled meeting date.

Section 6. Except as provided in these bylaws, the rules of conduct contained in 'the most current edition of Robert's Rules of Order Revised shall govern the meetings of the Planning and Zoning Commission.

Section 7. Members, including the Chair and Vice-Chair, shall have the right to vote on all matters coming before the Commission, except for those matters on which the member has a conflict of interest. Voting shall be by roll call vote and the order of voting is to be rotated with each item.

Section 8. Any member of the Planning and Zoning Commission who has a conflict of interest, as defined in Chapter 2, Article V of the City's Code of Ordinances or State law, concerning a matter that is on the agenda of the Commission shall:

- (a) Publicly announce the nature of the conflict immediately after the agenda item has been called up for discussion or action;
- (b) Leave the room during the discussion of the item; and
- (c) Refrain from any discussion or voting on the matter.

Section 9. Any member of the Planning and Zoning Commission who does not legally have a conflict of interest but would like to avoid the appearance of a

conflict of interest may elect to follow the procedure established in Section 8 of this Article.

Section 10. Members shall have an obligation to vote on all matters coming before the commission unless the provisions of Sections 8 and 9 of this Article apply or the member was absent during the discussion of the matter.

Section 11. Members shall not represent themselves or any other person, group or interest before the Commission, the Zoning Board of Adjustments and Appeals or the City Council on any matter involving land use or development. This provision shall not preclude a member from representing an interest in his or her homestead. Members may represent an interest in their own property before the City Council. Members may represent the Commission in reporting on the activities of the Commission to the Zoning Board of Adjustments and Appeals or the City Council.

ARTICLE VII. COMMITTEES

Section 1. Committees, standing or special, may be established or abolished by the direction of a majority of the entire membership of the Commission.

Section 2. The Chair shall appoint members of all committees.

ARTICLE VIII. AMENDMENTS

These rules may be amended at any meeting by a vote of the majority of the entire membership of the Commission provided a minimum of seventy-two hours notice of the intent to change the bylaws has been given to the public and each member of the Commission.

PASSED, APPROVED AND ADOPTED by the City of San Marcos Planning and Zoning Commission on this the 8th day of March, 2005.

Attest:

Francis Sema
Recording Secretary
Commission

Bob Thornton, Chair,
Planning and Zoning

Revised February 22, 2005

Public Hearing Procedures

1. General

The Planning and Zoning Commission Chair conducts the public hearing to generally follow the following steps:

2. The Planning and Zoning Commission Chair opens the public hearing with the following statements:

A. *We will now open the public hearing. The Secretary will please read into the record the case number of the application to be heard and the information as posted on the agenda.*

B. *I will briefly summarize the sequence of events to be followed in the public hearing.*

- i.** *The background information on the project will be presented.*
- ii.** *Public testimony will be taken and any one in support of the project or in opposition will have three minutes to speak to the Commission. Please watch the light on the podium which will go from green to yellow when you only have one minute left.*
- iii.** *Staff will present their recommendation.*
- iv.** *The Planning Commission will discuss the proposal and formulate a recommendation.*

3. The Planning Commission Chair invites the applicant to make up to a 10 minute presentation.

A. Commissioners may ask questions of the applicant or staff but should defer discussion of the merits of the proposal until the deliberation phase.

4. Chair opens the public testimony portion of the hearing by stating:

A. *Anyone wishing to speak in support of or opposition to this project should please step to the podium. Please state your name first and remember the three minute time limit.*

- B. The Planning Commission may ask questions of anyone giving testimony or of the staff or applicant to clarify the factual information presented.
- 5. The Chair closes the public hearing and calls for the staff recommendation.
- 6. Staff presents relevant highlights from the staff report including the recommendation.
 - A. The Planning Commission may ask questions to clarify the factual information presented.
- 7. The Chair calls for discussion and recommendations by the Planning Commission.
 - A. The Planning Commission discusses and formulates a recommendation.
- 8. The Chair puts the motion before the Commission by saying:
 - A. Commissioner _____ has made a motion to approve (or deny) and the motion has been seconded. Would the Commission Secretary please call the roll?*
 - B. The Commission Secretary announces the results of the voting.*
- 9. The Chair calls for the next item on the agenda.

TEXAS LOCAL GOVERNMENT CODE
SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND
EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL
GOVERNMENT
CHAPTER 171. REGULATION OF CONFLICTS OF INTEREST OF
OFFICERS OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER
LOCAL GOVERNMENTS

Sec. 171.001. DEFINITIONS. In this chapter:

(1) "Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

(2) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 171.002. SUBSTANTIAL INTEREST IN BUSINESS ENTITY. (a) For purposes of this chapter, a person has a substantial interest in a business entity if

(1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

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

(b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

(c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 561, Sec. 37, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 849, Sec. 1, eff. Sept. 1, 1997.

Sec. 171.0025. APPLICATION OF CHAPTER TO MEMBER OF HIGHER EDUCATION AUTHORITY. This chapter does not apply to a board member of a higher education authority created under Chapter 53, Education Code, unless a vote, act, or other participation by the board member in the affairs of the higher education authority would provide a financial benefit to a financial institution, school, college, or university that is:

(1) a source of income to the board member; or

(2) a business entity in which the board member has an interest

distinguishable from a financial benefit available to any other similar financial institution or other school, college, or university whose students are eligible for a student loan available under Chapter 53, Education Code.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 41(a), eff. Aug. 28, 1989.

Sec. 171.003. PROHIBITED ACTS; PENALTY. (a) A local public official commits an offense if the official knowingly:

(1) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or

(2) acts as surety on any official bond required of an officer of the governmental entity.

(b) An offense under this section is a Class A misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.004. AFFIDAVIT AND ABSTENTION FROM VOTING REQUIRED. (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

(1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

(2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(b) The affidavit must be filed with the official record keeper of the governmental entity.

(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.005. VOTING ON BUDGET. (a) The governing body' of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest.

(b) Except as provided by Section 171.004(c), the affected member may not participate in that separate vote. The member may vote on a final budget if:

(1) the member has complied with this chapter; and
(2) the matter in which the member is concerned has been resolved. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 171.006 and amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.006. EFFECT OF VIOLATION OF CHAPTER. The finding by a court of a violation under this chapter does not render an action of the governing body voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed the governing body without the vote of the person who violated the chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 171.008 by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.007. COMMON LAW PREEMPTED; CUMULATIVE OF MUNICIPAL PROVISIONS. (a) This chapter preempts the common law of conflict of interests as applied to local public officials.

(b) This chapter is cumulative of municipal charter provisions and municipal ordinances defining and prohibiting conflicts of interests.

Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.009. SERVICE ON BOARD OF CORPORATION FOR NO COMPENSATION. It shall be lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity.

Added by Acts 1989, 71st Leg., ch. 475, Sec. 2, eff. Aug. 28, 1989.

Sec. 171.010. PRACTICE OF LAW. (a) For purposes of this chapter, a county judge or county commissioner engaged in the private practice of law has a substantial interest in a business entity if the official has entered a court appearance or signed court pleadings in a matter relating to that business entity.

(b) A county judge or county commissioner that has a substantial interest in a business entity as described by Subsection (a) must comply with this chapter.

(c) A judge of a constitutional county court may not enter a court appearance or sign court pleadings as an attorney in any matter before:

(1) the court over which the judge presides; or
(2) any court in this state over which the judge's court exercises appellate jurisdiction.

(d) Upon compliance with this chapter, a county judge or commissioner may practice law in the courts located in the county where the county judge or commissioner serves.

Excerpt from the City of San Marcos Code of Ordinances

ETHICS

ARTICLE 5. CODE OF

***Charter references:** Personal interest and code of ethics § 12.02.

State law references: Code of ethics V.T.C.A., Local Government Code, § 171.001 et seq.

DIVISION 1. GENERALLY

Sec. 2.421. Policy.

It is the policy of the city that all city officials and employees shall conduct themselves both inside and outside the city's service so as to give no occasion for distrust of their integrity, impartiality or devotion to the best interest of the city and the public trust which the city holds. To this end and to expressly ensure its accomplishment, the city council establishes a code of ethics for the city to serve as a guide for conduct of the city's public servants and as a basis for discipline for those who violate its terms.

(Code 1970, § 2-71; Ord. No. 2003-67, § 1, 10-27-03)

Sec. 2.422. Definitions.

In this article:

Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including any money, real or personal property, purchase, sale, lease, contract, option, credit, loan, discount, service or other tangible or intangible thing of value. "Benefit" includes a pecuniary gain or pecuniary advantage to any other person in whose welfare the beneficiary has a direct and substantial interest.

Business entity means a corporation, partnership, sole proprietorship, firm, holding company, joint stock company, receivership, trust or any other entity organized for profit. *Employee* means any person employed by the city, whether under civil service regulations or not, including those individuals on a part-time basis, but not including any independent contractor.

Immediate family means the spouse, children, brothers, sisters and parents of an officer or employee.

Officer or *official* means the mayor or any member of the city council and any appointive member of a city board, commission or committee established by ordinance, charter or state law on a permanent basis.

(Code 1970, § 2-72; Ord. No. 2003-67, § 1, 10-27-03)

Sec. 2.423. Standards of conduct.

(a) It is unlawful for an immediate family member to intentionally or knowingly:

- (1) Solicit, accept or agree to accept from another person any benefit that the member's relative, who is a city officer or employee, is prohibited from soliciting, accepting or agreeing to accept under state law;
 - (2) Misuse any official information obtained from the member's relative, who is a city officer or employee, to which the relative has access by virtue of the relative's office or employment and that has not been made public, in a manner prohibited as to the relative under state law; or
 - (3) Misuse, as defined in V.T.C.A., Penal Code § 39.01, any city property, services, personnel or any other thing of value belonging to the city that has come into the member's custody or possession by virtue of the office or employment of the member's relative who is a city officer or employee.
- (b) No city officer or employee shall knowingly:
- (1) Appear before the body of which the officer or employee is a member, as a representative for any private person, including the officer or employee or any immediate family member, or any group or interest;
 - (2) Represent, directly or indirectly, any private person, including the officer or employee or any immediate family member, or any group or interest in any action or proceeding against the interests of the city or in any litigation in which the city or any department, agency, commission or board thereof is a party;
 - (3) Accept other employment or engage in outside activities incompatible with the full and proper discharge of city duties or that might impair independent judgment in the performance of city duties; or
 - (4) Make a false statement of material fact at a public meeting. This subsection shall not be construed to deprive an officer or employee of the right to due process under the law, including the right to represent himself/herself in a court proceeding.
- (c) No city council member shall knowingly represent any private person, including the city council member or any immediate family member, or any group or interest in any matter before any department, agency, commission or board of the city, except that city council members may represent their interests in their owner-occupied homesteads before a board, agency, commission or department of the city other than the city council.
- (d) In any action or proceeding in the municipal court which is instituted by a city officer or employee in the course of official duties:
- (1) No city council member shall knowingly represent any private person other than himself or herself. If a city council member elects to have a trial in municipal court, the city council, without the participation of the affected city council member, will appoint a special judge to preside over the trial.

(2) No city officer or employee shall knowingly represent any private person other than himself or herself, including any immediate family member, or any group or interest.

(e) A member of the planning and zoning commission shall not knowingly represent the member or any other person, group or interest in any matter before the zoning board of adjustments involving land use or development, and a member of the zoning board of adjustments shall not knowingly represent the member or any other person, group or interest in any matter before the planning and zoning commission involving land use or development. This subsection does not apply to members representing their interests in their owner-occupied homesteads.

(Code 1970, § 2-73; Ord. No. 1994-52, § 1, 7-11-94; Ord. No. 1994-75, § 1, 9-12-94; Ord. No. 1995-21, § 2, 2-27-95; Ord. No. 2003-67, § 1, 10-27-03)

State law references: Certain gifts prohibited, V.T.C.A., Penal Code, §§ 36.08--36.10.

Sec. 2.424. Contracts with city; eligibility for appointment or election to office.

(a) No member of the city council and no city employee shall have a financial interest in the sale to the city of any land, materials, supplies or service, outside of the person's position with the city. Any person having an interest shall be ineligible for election as a city council member or appointment as a city employee, and any city council member or city employee who acquires an interest shall forfeit the office or employment. Any violation of this subsection with the actual or constructive knowledge of the city council member or employee shall render the contract voidable by the city manager or the city council.

(b) In subsection (a) of this section and in subsection 2.425(c), the term "sale to the city" includes a sale to city-sponsored entities and organizations subject to substantial control by the city in one or more of the following respects:

- (1) All or a majority of the governing body of the entity or organization is appointed by the city council;
- (2) The city provides more than one-half of the operating funds of the entity or organization;
- (3) The city has approval authority over purchasing decisions made by the entity or organization;
- (4) The city has approval authority over bonds or other indebtedness issued by the entity or organization; or
- (5) The city has approval authority over the budget of the organization.

(c) This section does not apply to acquisition of property by the city as a result of eminent domain proceedings or the threat of eminent domain proceedings.

(Code 1970, § 2-75; Ord. No. 1998-78, § 1, 11-9-98; Ord. No. 2003-67, § 1, 10-27-03)

Sec. 2.425. Restrictions on former employees.

(a) No former city employee shall, for a period of one year from the date of leaving city employment, knowingly:

(1) Appear at a meeting of a board or commission staffed by members of the department of which the employee was a member, as a representative for any private person, including the employee or any immediate family member, or any group or interest.

(2) Represent, directly or indirectly, any private person, including the former employee or any immediate family member, or any group or interest in any action or proceeding against the interests of the city or in any litigation in which the city or any department, agency, commission or board thereof is a party.

This subsection shall not be construed to deprive a former employee of the right to due process under the law, including the right to represent himself/herself in a court proceeding.

(b) In any action or proceeding in the municipal court which is instituted by a city officer or employee in the course of official duties, no former city employee shall, for a period of one year from the date of leaving city employment, knowingly represent any private person other than himself or herself, including any immediate family member, or any group or interest.

~~(c)~~ For a period of one year from the date of leaving employment, a former city employee shall not have any financial interest in the sale to the city of any land, materials, supplies or service. Any violation of this subsection with the actual or constructive knowledge of the former city employee shall render the contract voidable by the city manager or the city council. This subsection shall not apply to a former city employee whose employment was terminated as part of a reduction in force. (Ord. No. 2003-67, § 1, 10-27-03)

Secs. 2.426-2.440. Reserved.

ETHICS

DIVISION 2. ETHICS REVIEW COMMISSION*

*Cross references: Boards, committees and commissions, § 2.066 et seq.

Sec. 2.441. Established; composition; term of members.

An ethics review commission is established, to be composed of seven members, all of whom will reside in the city. Members of the commission will be appointed for staggered three-year terms, and will serve until their respective successors are appointed.

(Code 1970, § 2-91; Ord. No. 2000-54, § I, 8-14-00; Ord. No. 2003-67, § 1, 10-27-03)

Sec. 2.442. Organization; rules and regulations.

The ethics review commission each year will elect from its membership its chairperson and will promulgate its own rules and regulations as to its forms and procedures and maintain proper records of its opinions and proceedings.

(Code 1970, § 2-92; Ord. No. 2003-67, § I, 10-27-03)

Sec. 2.443. Authority and duties.

(a) *Generally.* The ethics review commission shall act as authorized by section 12.02 of the Charter concerning conflicts of interest, ethical conduct or interests of city officials and employees.

(b) *Review and recommendations.* The commission will meet at least once a year to review this article and may make recommendations to the city council.

(c) *Hearings.* The commission shall conduct hearings into allegations of violations of this article.

(1) Any allegation by any citizen, public official or employee that a person has violated this article or a state conflict of interest law may be referred to any member of the commission. A commission member receiving an allegation pursuant to this subsection may request the commission to convene to review the allegation.

(2) The commission shall recommend to appropriate authorities cases for prosecution or other action for violation of this article or a state conflict of interest law. For the mayor, a city council member, a member of a city board or commission, or an employee who is a council appointee, a copy of the recommendation shall be provided to the city council. For employees who are not city council appointees, a copy of the recommendation shall be provided to the city manager.

(3) The chair of the commission or any person acting in that capacity and the recording secretary of the commission, are authorized to administer oaths to persons who testify at hearings conducted by the commission.

(4) It is unlawful for a person who has filed a complaint alleging a violation of this article or a state conflict of interest law by a city officer or employee, or a person against whom such a complaint has been filed, to communicate verbal or in writing about the subject matter of the complaint with a member of the ethics review commission at any time other than during a public meeting of the commission. All such communications by such persons to the commission outside of a public meeting of the commission must be directed to the city attorney. The city attorney will collect all such communications and provide them to the commission with the agenda materials for the meeting at which the complaint is considered. The city attorney will make copies of these communications available to interested persons in accordance with state law.

(d) *Advisory opinions.* The commission shall render advisory opinions on potential conflicts of interest or violation of this article at the request of a public official or employee, subject to the terms of this article.

(e) *Opinions binding.* Any advisory opinion rendered by the commission is binding on the commission in any subsequent charges concerning the person about whom the opinion was requested and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in connection with the opinion.

(Code 1970, § 2-93; Ord. No. 2000-54, § 1, 8-14-00; Ord. No. 2003-67, § 1, 10-27-03; Ord. No. 2004-11, § 2, 3-8-04; Ord. No. 2004-14, § 1, 3-22-04)

Sec. 2.444. Special counsel.

(a) An independent outside attorney approved by the city council, who does not otherwise represent the city, shall be retained to serve as special counsel to the **ethics** review commission in the following situations:

(1) When a complaint is filed alleging that the mayor or a member of the city council, or the city manager, city attorney, city clerk or municipal court judge violated this article or a state conflict of interest law.

(2) When an advisory opinion is requested under section 2.443(d) by the mayor or a member of the city council, or by the city manager, city attorney, city clerk or municipal court judge.

(Code 1970, §§ 2-101, 2-102; Ord. No. 2003-67, § 1, 10-27-03; Ord. No. 2004-11, § 1, 3-8-04)

Secs. 2.445-2.460. Reserved.

DIVISION 3. FINANCIAL DISCLOSURE

Sec. 2.461. Definitions.

In this division:

Board member means a member of a board or commission whose membership is wholly appointed by the city council.

Business entity means a corporation, partnership, sole proprietorship, firm, holding company, joint stock company, receivership, trust or any other entity organized for profit. *Candidate* means every person who declares for or files for any city office to be filled by election.

Compensation means any benefit received in return for labor, services, property or investment.

Family member means the spouse and any dependent children of any official or candidate.

Gift means benefit received other than as compensation, but not including campaign contributions reported as required by state law.

Identification means, for an individual, the person's name, street address, city and state. For any entity other than an individual, the term "identification" means the name, address, city and state of the entity's principal location or place of business; the type or nature of the entity's principal location or place of business; the type or nature of the entity; the date on which it came into existence; the state of incorporation, if any; and the names of the partners or officers of the entity.

Income means a benefit received.

Source of income means any business entity, employment, investment or activity which earned or produced income, including interest, dividends, royalties or rents.

(Code 1970, § 2-81; Ord. No. 1998-78, § 2, 11-9-98; Ord. No. 2003-67, § 1, 10-27-03) Cross references: Definitions and rules of construction generally, §§ 1.002, 1.003.

Sec. 2.462. Financial disclosure statement required.

(a) Between March 15 and April 30 of each year, every city council member, and the city manager, city attorney, municipal court judge, and city clerk shall file a sworn financial disclosure statement with the city clerk reflecting the financial situation of the official as of December 31 of the previous year and the official's financial activity between January 1 to December 31 of the previous year.

(b) A newly appointed or elected city official shall file a sworn financial disclosure statement with the city clerk within 30 days from the date the

position is assumed. The statement shall reflect the financial condition as of the date and financial activity for the previous 12 months.

(c) A candidate for city council shall file a sworn statement with the city clerk not later than ten days from the date the candidate files with the city clerk an application to be placed on the official ballot. This statement shall include:

(1) A list of any financial interest the person has, direct or indirect, in real property located within the corporate limits or within the extraterritorial jurisdiction of the city.

(2) A list of any financial interest the person has, direct or indirect, in any business entity located in the city or its extraterritorial jurisdiction or any business entity doing business with the city.

(3) The financial interests listed by the person shall include those held at any time during the 12 months preceding the date of filing for office and shall include any interest held by the candidate or a family member of the candidate.

(d) All board members shall file a disclosure statement with the city clerk within 30 days after their initial appointment, and thereafter between October 1 and October 31 of each year, regarding their relevant substantial interests in business entities and real property during the 12-month period preceding the date of the statement. The statement shall be on a form provided by the city. For purposes of this section, the term "business entity" and the determination of substantial interests in business entities and real property shall be as defined and determined under V.T.C.A., Local Government Code Chapter 171

(e) Any person filing a statement required by this section may include additional time periods. (Code 1970, § 2-82; Ord. No. 1998-78, § 2, 11-9-98; Ord. No. 2003-67, § 1, 10-27-03)

Sec. 2.463. Information required on financial disclosure statement.

(a) Every person required to file a financial disclosure statement under subsection 2.462(a) or (c) shall include in that statement the following information:

(1) The person's name, the name of each family member and all names under which the person or family members do business.

(2) Identification of each source of income amounting to more than \$2,000.00 received in the reporting periods by the person or family members, stating the name, address, and nature of the source of income and stating the amount of income received; and identification of each option held, owned, acquired or sold during the reporting period,

stating the nature of the option, the amount of transaction, and identification of the other parties to the transaction.

(3) Identification of each business entity, nonprofit entity or union in which the person or family member:

- a. Was a partner, manager, officer, member of the board of directors, proprietor or beneficiary, during the reporting period, stating the position held; or
- b. Had an ownership interest of more than \$2,000.00 at the fair market value at any time during the reporting period, stating the value and a description of that ownership interest; provided that, where the ownership interest includes or consists of shares of stock, the number of shares owned shall be stated together with the number of outstanding shares; and if sold during the reporting period a statement of the net gain or loss realized from the sale.

(4) Identification by street address, legal or lot-and-block description of all real property located within the city and its extraterritorial jurisdiction, together with its fair market value and present use, in which the person or family member has an interest as:

- a. Fee simple owner; Beneficial owner;
- b. Partnership owner, naming the partners;
- c. Joint owner with an individual or corporation, naming them;
- d. Board member, officer or the owner of more than five per cent of a corporation that has title to the real property, naming the corporation; or
- e. A leaseholder, naming the person or corporation from whom the property is leased and the amounts of annual rental.

(5) Identification of persons, business entities or guarantors to whom the person or a family member owed a debt of more than \$2,000.00 during the reporting period, stating the amount, but not including debts owed to persons related within the second degree of consanguinity or affinity and excluding loans to a political campaign which were reported as required by law. If this debt was repaid during the reporting period, the date and amount of repayment shall also be stated.

(6) Provided this information is not privileged by law, identification of persons, entities or guarantors who owed the person or a family member a debt of more than \$2,000.00 during the reporting period, stating the amount, including all bonds, notes and other commercial paper held or owed by the person reporting or any family member during the reporting period, but not including debts owed by persons related within the second degree of consanguinity or affinity. If this debt

was repaid during the reporting period, the date and amount of repayment shall also be stated.

(7) Identification of the source of each gift or accumulation of gifts from one source of more than \$250.00 in value received by the person or family member, or received by another person for the use and benefit of the person or family member, within the reporting period, stating the amount; but this requirement does not include:

- a. A gift received from a relative if given because of kinship; or
- b. A gift received by will, by intestate succession or as distribution from an inter vivos or testamentary trust established by a spouse or ancestor.

(8) Provided this information is not privileged by law, if the person filing the statement is the owner of five per cent or more of any business entity, the person shall list all customers from whom the entity received at least ten per cent of its gross income during the reporting period.

(9) Identification of any financial interest in or any transaction during the reporting period with any holder of any franchise issued by the city, other than as a utility or franchise customer or patron, stating the nature and amount of interest and transaction, including transactions by any family member and any business entity in which the person filing the statement has an ownership interest of five percent or more.

(b) Except for the identification of transactions and amounts required by subsection (a)(9) of this section, any amount required to be reported under subsection (a) of this section may be reported by categories as follows:

- (1) *Category I.* At least \$2,000.00 but less than \$25,000.00;
- (2) *Category II.* At least \$25,000.00 but less than \$50,000.00; or
- (3) *Category III.* \$50,000.00 or more.

(Code 1970, § 2-83; Ord. No. 2003-67, § 1, 10-27-03)

Sec. 2.464. Retention of statements and inspection.

(a) The city clerk shall maintain all statements required to be filed with the city clerk under section 2.462 as public records and shall retain them for a period of three years, after which the statements will be returned to the person filing them or will be destroyed.

(b) The financial disclosure statement file maintained by the city clerk under this section shall be kept in alphabetical order for each year in which statements are filed. This file is open to public inspection during normal hours. The city clerk shall maintain a list of all persons requesting to inspect these files, identifying the files inspected. (Code 1970, § 2-84; Ord. No. 2003-67, § 1, 10-27-03)

Sec. 2.465. Forms of statements.

Financial disclosure statements shall be filed on the form promulgated by the city clerk. The city clerk will provide a form to any person requesting one and, not less than ten days before the last day set for filing a statement by any person, shall send a form to the person.

(Code 1970, § 2-85; Ord. No. 2003-67, § 1, 10-27-03)

Secs. 2.466-2.480. Reserved.

ARTICLE XII. GENERAL PROVISIONS

Sec. 12.01. Public access to records.

All information collected, assembled or maintained by the city pursuant to law or ordinance or in connection with the transaction of official city business is public information and available to the public during normal business hours of the city under the terms and conditions provided in the Texas Public Information Act as amended.

(Ord. No. 1988-15, Prop. 16, 2-8-88/5-7-88; Ord. No. 2000-12, 2-14-00/5-6-00; Ord. No. 2004-44, § 5, 8-9-04)

State law references: Public records act, V.T.C.A., Government Code, § 552.001 et seq.

M I

Sec. 12.02. Personal interest and code of

(a) (1) All elected and appointed officers of the city shall comply with applicable requirements of state law pertaining to conflicts of interest of local government officials.

(2) The code of adopted by the city council under subsection (b) of this section

shall require annual disclosure by members of city boards and commissions of their relevant substantial interests in business entities and real property as defined under state law.

(3) No member of the city council, and no employee of the city shall have a financial interest in the sale to the city of any land, materials, supplies or service, outside of the person's position with the city. Any person having such an interest shall be ineligible for election as a city council member or appointment as an employee of the city, and any city council member or employee who acquires such an interest shall forfeit the office or employment. Any violation of this provision with the actual or constructive knowledge of the city council member or employee shall render the contract voidable by the city manager or the city council.

These provisions shall not apply to acquisitions of property by the city as a result of eminent domain proceedings or the threat of eminent domain proceedings.

(b) It is the policy of the City of San Marcos that all city officials and employees shall act and conduct themselves both inside and outside the city's service so as to give no occasion for distrust for their integrity, impartiality or of their devotion to the best interest of the City of San Marcos and the public trust which it holds. To this end and to expressly assure its accomplishment, the city council shall establish an ethics review commission which shall propose a code of ethics for officials and employees of the City of San Marcos for adoption by ordinance by the city council. The city council shall appoint an ethics review committee composed of seven citizens of the City of San Marcos to serve three-year staggered terms. A chair shall be elected by a majority of the commission after the annual appointment of members to the commission.

Duties of the ethics review commission:

(1) The ethics review commission shall meet at least once a year to review the code of ethics of the City of San Marcos and make recommendations, if any, to the city council.

(2) Conduct hearings into allegations of violations of the city's code of ethics or a state conflict of interest law. Any allegation by any citizen, public official or employee that a person has violated the code of ethics or a state conflict of interest law may be referred to any member of the commission who then may request the commission to convene to review the allegation.

(3) Render advisory opinions on potential conflicts of interest or violation of the city's code of ethics at the request of a public official or employee covered by the code of ethics.

(4) Recommend to appropriate authorities cases for prosecution or other action for violation of the code of ethics or a state conflict of interest law.

(5) Review and monitor financial reports required by the Texas Election Code with respect to city-sponsored elections.

(Res. No. 1979-2R, Props. 5, 7, 1-8-79/4-7-79; Ord. No. 1986-4, Props. 22--24, 1-27-86/4-5-86; Ord. No. 1988-15, Prop. 17, 2-8-88/5-7-88; Ord. No. 1990-8, Prop. 5, 2-12-90/5-5-90; Ord. No. 1998-7, Prop. 11, 2-9-98/5-5-98; Ord. No. 2000-12, 2-14-00/5-6-00; Ord. No. 2000-40, 5-9-00/5-6-00)

Sec. 12.03. Nepotism.

The members of the city council, and, the city manager, city clerk, city attorney and presiding judge of the municipal court are the public officials of the city who are subject to the nepotism prohibitions defined under State law.