ETHICS, CONSIDERATIONS, AND EXPECTATIONS FOR PLANNING COMMISSIONERS

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Midwest Section APA Texas Workshop

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MORALS VERSUS ETHICS

**Moral Decision...**
Judgment of the goodness or badness of human action and character—a value judgment.

**Ethical Decision...**
Principles of conduct based on system of rules/standards governing members of profession or group.

**Ethics Code...**
A formal system of rules explicitly adopted by group.
Ethics: the principles of conduct governing an individual or a group – *Merriam Webster*

There are standards for ethical conduct:

- State Guidelines
- APA Ethical Planning Principles
- AICP Code of Ethics
- Your City’s Code of Ethics
- Your Own Moral Compass

Ethical behavior is not always easy to achieve, but the *Statement of Ethical Principles* is a good place to start.

“Ethics are what you do when no one is looking.”
– George Bernard Shaw
LOCAL ETHICS ORDINANCES

Prohibited conduct:
- Solicitation/acceptance of gifts
- Misuse of position
- Conflict of interest (generally financial)
- Ex parte communications
- Serial meetings
- Open Meetings violation

Disclosure:
- Forms and/or procedure provided by the City - does not have to be very detailed
**Ethical Principles in Planning**

The American Planning Association has guidelines for ethics: *Ethical Principles in Planning*.

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

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

*www.planning.org*
The planning process must continuously pursue and faithfully serve the public interest.
Who are the Public and what is their Interest?

The Public is ordinary citizens: people, citizens, subjects, general public, electors, electorate, voters, taxpayers, residents, inhabitants, citizenry, population, populace, community, society, country, nation, world; everyone.

Their Interest is in having a safe, attractive, livable community in which they can live, work, travel around, shop, and play. Sometimes there are conflicting interests.
1. Recognize the rights of citizens to participate in planning decisions.
Why are we concerned about Ex Parte?

- The decision maker may be inaccurately informed;
- The perception that the commission can be susceptible to improper influence;
- Improper *ex parte* communications can invalidate the actions of the commission.

Ex Parte is any oral or written communication outside the record of the hearing with either proponents or opponents of a pending proceeding.

A discussion where only one side is presented
A **serial meeting** can be a series of communications (direct communication, technological methods such as email, telephone calls, or social media.

**Continuing discussion** after the meeting is adjourned is another kind of serial meeting.

All your correspondence could be subject to discovery if there is legal action.

**Forward** all applicable correspondence to designated staff for distribution and file.
2. Give citizens full, clear, and accurate information.
You Must Remember:

- Have an ethical obligation of fairness to the public
- Public participation is more than something to satisfy public process
- Sometimes it is impossible to involve all parties
3. Expand choice and opportunity for all persons.

- Your Comprehensive Plan and your decisions and recommendations at your meetings should be inclusive.
- Listening to all the relevant testimony and questions.
- The Plan should address inclusion whether in business development or in housing choices or in public participation.
4. Assist in the clarification of community goals.

- This involves using the Comprehensive Plan.
- You need to be aware of the goals set forth in your Comprehensive Plan.
- You need to be able to explain them to your friends and neighbors. Staff can help.
- You need to relate the goals to the cases you hear.
PLANNING PROCESS

The planning process exists:
- To serve the public interest
- Requires a conscientiously held view of the policies
- Requires actions that best serve the community.

Whether a professional or a volunteer, we are all planners.

Planning issues and decision commonly involve:
- Large interests at stake
- Potential conflict of values
- Interpretation of plans, ordinances and codes
- Use of the Comprehensive Plan
The planning process is aimed at implementing the comprehensive plan and/or achieving the desired vision of the community.

**Planning Process**

- **Pre-application, plan submittal, work session, preparation for public hearings**

- **Internal Plan Process:**

  - Applicant has met with the city several times, modified, convinced staff of proposal, without meaningful comment

- **What the Public Sees:**

  - Notice of Application, Neighborhood Meeting, Public Hearings

- **Perception:**

  - Applicant has met with the city several times, modified, convinced staff of proposal, without meaningful comment
5. Ensure that information available to decision makers is also available to the public.

Proper public notification is essential to the planning process.
WHAT IS PROPER NOTIFICATION?

- Notice by mail to property owners in the notification area usually within 200 or more feet of subject property.
- Notice in a newspaper in general distribution.
- Notice posted at City Hall where it can be easily read, usually on window or outside public access bulletin board.
- Notice on Commission and City’s official websites.
- And more recently, but unofficially and sometimes controversially, on social media without any comments.
- Also, having the case materials available for view at City Hall.
Open Meetings Act*

General Rule: Every regular, special, or called meeting of a governmental body MUST be open to the public, and the public must be given adequate notice of the topics to be discussed.

There are NO informal meetings!

https://www.texasattorneygeneral.gov/og/oma-training
6. Strive to protect the integrity of the natural environment and the heritage of the built environment.

- Comprehensive plans, often address these concerns in the Future Land Use or a section devoted to the environment.
- Preservation of character for both rural and infill development may focus on compact and contiguous growth ranging from appearance and livability to desired new development and utility provision.
- This is your reference for decisions.
7. Pay special attention to the interrelatedness of decisions and the long-range consequences of present actions.

Think about what may happen when you approve or disapprove a case. This is where the Comprehensive Plan is necessary as to what it says particularly for future land use, transportation, and utilities.
PLANNING PROCESS
PARTICIPANTS CONTINUOUSLY STRIVE TO ACHIEVE HIGH STANDARDS OF INTEGRITY AND PROFICIENCY SO THAT PUBLIC RESPECT FOR PLANNING PROCESS WILL BE MAINTAINED.
HOW TO STRIVE TO ACHIEVE HIGH STANDARDS OF INTEGRITY AND PROFICIENCY

- Understand your role
- Know your relationships
- Do your homework
- Ask questions
- Listen carefully
- Vote your conscience
What is the Planning Commissioner role?

A Planning Commission may be defined as: A group of citizens appointed by the legislative body that performs both required and discretionary functions in land use matters. * This can include:

- Develop and update the comprehensive plan
- Implement land use patterns
- Monitor current zoning ordinance
- Make recommendations on zoning changes
- Recommend approval of (or approve) subdivisions
- Make recommendations for annexation
- Interface with public on community vision through public meetings, focus groups, and neighborhood organizations

* Texas Local Government Code 211.007
Understanding the Your Role

To become familiar with your responsibilities/expectations both on and off the Commission/Council, you should:

Have an orientation to begin to grasp:
- Legal issues - Open Meetings Act, Conflicts
- Basic elements of Planning
- Comprehensive Planning
- Zoning Ordinance
- Subdivision Regulations
- Enabling statutes in state law for planning/zoning

- Review local resources with your staff and/or city attorney
  - Charter
  - Code of Ordinances
  - By-laws or rules of procedure
Exercise fair, independent, and honest judgment.

You are there to think/consider based on:

- the information you are provided;
- your individual experience; and
- what you hear at the meeting.

This is doing your homework.
TRAITS OF A GOOD COMMISSIONER

A good commissioner, board member, even a city council member should:

- Have a feel for the assets, problems and potential of the city
- Can see the big picture without missing the details
- Recognize conflicts of interest
- Understands obligations
  - Come to meetings prepared
  - Balance commitments
You should:

1. Publicly disclose any personal interests. *

2. Define personal interest broadly.

3. Abstain from participation in a matter if a personal interest and leave the chamber when the matter is being deliberated.

* You need to be aware of your business, financial, and personal/family interests.
## CONFLICT OF INTEREST

You have a potential conflict of interest if you...

<table>
<thead>
<tr>
<th>Condition</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Live in the notification area</td>
<td>You or close family member has a financial interest (determined by your city)</td>
</tr>
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<td>Have oversight of client (petitioner) accounts</td>
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<td>Sit on another Board connected to the case</td>
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</table>
**CONFLICT OF INTEREST CONTINUED**

<table>
<thead>
<tr>
<th>What to do...</th>
<th>Recognize that you might have a conflict.</th>
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<tbody>
<tr>
<td></td>
<td>Get advice from staff or city attorney, if not sure.</td>
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<tr>
<td></td>
<td>State at the meeting that you have a conflict.</td>
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<td></td>
<td>Recuse yourself and <strong>LEAVE THE ROOM</strong>.</td>
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<td></td>
<td>The Chair should state for the record that you have left and when you return.</td>
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<td></td>
<td>Fill out the appropriate form.</td>
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<td></td>
<td>Do not engage in <strong>any</strong> discussion or action on the case in or outside the meeting.</td>
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Financial Conflict of Interest

In general, conflicts of interest are conflicts due to an official’s substantial interest in a “business entity” that has an issue before the City.

- Have financial interest in real estate involvement case.
- Have financial investments that exceed the local cap.
- Work for someone that has financial involvement in the case.

Financial Interest also Include:
- Stock Interest
- Business Ownership
- Interest Income
- Real Property
- Close *Family Member* or *Relatives* with any above Interests
You are considered to have a substantial interest if a person is related to you in the first degree by *consanguinity* (blood) or *affinity* (marriage)*.

**Who is kin?**

- Fathers
- Mothers
- Sons
- Daughters
- Brothers
- Sisters
- Spouse
- Father-in-law
- Mother-in-law
- Son-in-law
- Daughter-in-law
- Brother-in-law
- Sister-in-law

* Affinity relationships continue after divorce or death if there is a living child of the marriage.
SAMPLE FORM

CITY OF DALLAS

DISCLOSURE OF CONFLICT STATEMENT

This statement is filed in accordance with Chapter 12A of the Dallas City Code. Copies of the applicable code sections and additional copies of this form may be obtained from the City Secretary’s office.

Please print or type all information. Attach additional pages if more space is needed.

CHART TABLE

<table>
<thead>
<tr>
<th>Official Type</th>
<th>Office Held</th>
<th>Title/Department</th>
</tr>
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<tbody>
<tr>
<td>Elected Official</td>
<td>Office Held</td>
<td>Title/Department</td>
</tr>
<tr>
<td>Appointed Official</td>
<td>Board or Commission Title</td>
<td></td>
</tr>
<tr>
<td>City Employee</td>
<td>Title/Department</td>
<td></td>
</tr>
</tbody>
</table>

1. Name of Employee/Official: __________________________

I, ____________________________________________, have a conflict as defined in Chapter 12A, Article II, of the Dallas City Code in the following matter:

_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

Nature of Conflict:

_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

As a result of this conflict, I will not take any official action in regard to the matter stated above.

Signature of Employee/Official: __________________________
Date: __________________________

BEFORE ME, the undersigned authority, on this day personally appeared

__________________________________________, who on oath stated that the above facts are

within __________________________________________ personal knowledge and are true

and correct.

SWORN TO AND SUBSCRIBED BEFORE ME on this ______ day of ________________.
20____, to certify which, witness my hand and seal.

<NOTARY SEAL>

Signature of officer administering oath
Printed name of officer administering oath
Title of officer administering oath

OFFICE OF THE CITY SECRETARY 1 DALLAS, TEXAS

OFFICE OF THE CITY SECRETARY 2 DALLAS, TEXAS
Not seek (nor accept) gifts or favors.

It is up to you and your city to determine a policy on gifts, but remember it is PERCEPTION that may matter more.
HAVING BEEN AN ADVOCATE

Abstain from participation as an advisor or decision maker on any plan or project in which you have previously participated as an advocate.

Were you involved with the case before the commission as a neighbor or planner or representative? You could be exerting undue influence.

Serve as advocate only when the objectives are legal and serve the public interest.

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 no earlier than one year following termination of the role as advisory or decision maker.
Not use confidential information to further a personal interest.

Not disclose confidential information.

Not misrepresent facts or distort information.
Not participate in any matter unless prepared.
Respect the rights of all persons. Circling back, to the first one – where we serve the public interest by first respecting rights of citizens to be involved in the planning process.
What are the expectations?

- Staff
- Commissioners
- Each Other
- Applicants
- Council Expectations of Commissioners and Staff
WHAT COMMISSIONERS SHOULD EXPECT OF STAFF

- Training on process, roles, responsibilities, terminology
- Report facts of the case related to codes and ordinances
- Advocate for good planning
- Keep reports easy to read, jargon-free
- Identify relationships between adopted planning documents

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WHAT STAFF EXPECTS OF COMMISSIONERS

- Read and study materials
- Ask questions
- Show respect
- No blindsiding
- Give forewarning of concerns
WHAT COMMISSIONERS SHOULD EXPECT OF EACH OTHER

Preparation

Ask questions

Read case prior

Educational moments

Stay on topic

Work together
EXPECTATION OF APPLICANTS BY STAFF AND COMMISSIONERS

Answer questions
Reach out
Present honest representation
Stay professional
Show up

Expectations by Applicants: Treated respectfully and in a timely manner.
**What City Council expects of Commissioners and Staff**

- **Staff:**
  - Recommendations based on ordinances and procedures

- **Planning and Zoning Commission:**
  - Solid recommendations based on input

  - Staff recommendation
  - Public input
  - Consideration of implications
QUESTIONS TO ASK YOURSELF:

Zoning
- What is the applicant asking for?
- What effect will it have on the site?
- What effect will it have on surrounding land uses?
- Is it in accordance with the Comprehensive Plan?

Subdivisions
- Does it meet the requirements of the Regulations?

What should NOT play a part in the decision
- Identity of applicant
- Financial capability of applicant
- What the structures will look like*

*unless there are architectural controls in the ordinances
WHAT TO DO...

- When there is a social event where a quorum may be present, it is generally OK as long as cases or issues are not discussed.
- Do not use position title to request special treatment by city employees or private interests.
- Have a designated separate email for your commission correspondence. Why?
- Follow the relationship to the Comprehensive Plan!
TO THINK ABOUT...

- You have a friend who owns and large tract of land he wants to develop and wants your help. How can you help him?

- A controversial project is on the agenda. You know there are several sides to the issues. What are your actions?

- A local church has approached you about rezoning a tract for expansion of their activities. What is your advice?

- A fellow commissioner calls you to discuss a case and says he has talked to other commissioners. What do you say to him?

- You are asked to recommend someone to represent a case. What do you do?
Good Luck!

Take the high road—there is less traffic!
Training and Resources for Planning Commissioners

- City orientation and training for new Commissioners
- American Planning Association – publications and conferences
  - *Planning* Magazine including a section for Commissioners
  - National Planning Conference
  - [www.planning.org](http://www.planning.org)
  - CD-ROM training packages
  - [www.planningbooks.com](http://www.planningbooks.com)
- Your state’s Secretary of State
- Your state’s municipal league
- Your chapter and sections
- Your planning staff
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