Social Media & Ethics
Navigating the Social Media Minefield

To view the AICP code of ethics scan with your smart phone or go to http://www.planning.org/ethics/ethicscode.htm
Introduction

- Speakers: Sallie Burchett & Jill Hoffman
- Rules for the day: Text (512) 473-2527 to win
Outline

■ A. Social Media Technological Advances
■ B. Friend: Source for Information Sharing & Public Input
■ C. Foe: Ethical and Legal Violations
■ D. Scenarios
Please note that this session has been created to provide general education regarding the AICP Code of Ethics.

Though examples, sample problems, and question and answer sessions are an important part of illustrating application of the code’s provisions, all certified planners should be aware that “Only the Ethics Officer, Paul Farmer, is authorized to give formal advice on the propriety of a planner’s proposed conduct.” (AICP Code of Ethics, Section C3).

If you have a specific question regarding a situation arising in your practice, you are encouraged to seek the opinion of the Ethics Officer.
Special Thanks to

Jerry Weitz, FAICP
Ethics, not just for AICPs

APA recommends that all elected and appointed public officials adopt the American Planning Association’s *Ethical Principles in Planning*

- Serve the **public interest**.

- Strive to achieve **high standards of integrity and proficiency**.

- Continuously **pursue improvement in their planning** competence.

Go to [https://www.planning.org/ethics/ethicalprinciples.htm](https://www.planning.org/ethics/ethicalprinciples.htm) for the APA’s Ethical Principles in Planning

October 2013 © Bojorquez Law Firm, PC (2013)
Ethics = Rules of Conduct

“Cool people make the rules. They don’t break the rules.” – Leslie Knope
AICP Code of Ethics

- Principles to Which We Aspire - Our Responsibility to the Public, Clients & Employers, & Our Profession & Colleagues
- Rules of Conduct
- Code Procedures
- Code Convictions
Principles

■ 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.

■ 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.

■ 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.
# Rules of Conduct

<table>
<thead>
<tr>
<th>Rule of Conduct</th>
<th>Rule of Conduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Inaccurate info. — untruthfulness</td>
<td>14. Official power used for advantage</td>
</tr>
<tr>
<td>2. Illegal or unethical conduct</td>
<td>15. Work beyond prof. competence</td>
</tr>
<tr>
<td>4. Outside employment (moonlighting)</td>
<td>17. Misuse of others’ work</td>
</tr>
<tr>
<td>5. Acceptance of gifts or advantage</td>
<td>18. Pressure: unsubstantiated findings</td>
</tr>
<tr>
<td>6. Personal or financial gain</td>
<td>19. Conceal interest / fail to disclose</td>
</tr>
<tr>
<td>8. Private communication (public)</td>
<td>21. Cooperation in AICP investigation</td>
</tr>
<tr>
<td>9. Private communication (other)</td>
<td>22. Retaliation for misconduct charge</td>
</tr>
<tr>
<td>10. Misrepresent others’ qualifications</td>
<td>23. Threat to file charge (advantage)</td>
</tr>
<tr>
<td>11. Solicitation via false claims, duress</td>
<td>24. No frivolous ethics charge</td>
</tr>
<tr>
<td>12. Misstatement of one’s qualifications</td>
<td>25. Deliberate, wrongful act</td>
</tr>
</tbody>
</table>

Quick reference courtesy of Jerry Weitz
What is Social Media?

Social media is an internet tool that enables shared community experiences to learn, play, work, organize and socialize.  (TECH. IN TRANSLATION)
Social Media - Friend?

- Timely and Cost Effective Communication
- Increased Public Participation
- One-Stop Shopping (for Public Records and Information)
- Transparency
- Encourages Advocacy
Increased Participation

Over half of the United States has a social media profile including 143 million Americans are on Facebook

The Social Habit, Edison Research October 2013
Cost Effective Outreach

72% of online adults use social networking sites

Pew Research Social-networking-use May 2013
Public Participation

Not just for cities, social media sites are also an information dissemination tool for developers and neighborhoods.
Social Media - Foe?

- Open Meetings Act
- Public Information Act/Records Retention
- State Conflict of Interest Laws
- First Amendment Issues
- Avoiding Discrimination
- Suggestions/Utilizing Policies
Law: Open Meetings

What is a meeting?
- Deliberation
- Public Business/Public Policy
- Quorum

What is not a meeting?
- A gathering that does not meet 3 elements above
- Specific Online Forums (SB 1368)
Public Information:
includes *any electronic communication* created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

Records Retention:
must store information among city records until the records retention period expires for each specific type of information.
Local Government Code Chapter 171

If a **local public official** has a **substantial interest** in a business entity or in real property, the official must, before a vote or decision on any matter involving the business entity or the real property:

(a) **file an affidavit** stating the nature and extent of the interest; and

(b) **abstain** from further participation in the matter

if the action or matter will have a **special economic effect** on the business entity / value of the real property, distinguishable from its effect on the public.
Law: State Conflict of Interest Laws

Penal Code Chapter 36

- Bribery
- Coercion of Public Servant
- Improper Influence
- Acceptance of Honorarium
- Gift to Public Servant
- Exemptions
Law: Free Speech

- Employee’s speech protected if:
  employee’s interest in free speech on a matter of public concern outweighs the government employer’s interest in creating a disruption-free work environment.
Figure 2. Household Internet Use by Race and Ethnicity: 2000-2011

- Hispanic
- Black
- Non-Hispanic White
- Asian

Source: U.S. Census Bureau, Current Population Survey, selected years.

Figure 8. Comparison of ownership of internet-ready devices by income brackets

Source: Pew Research Center’s Internet & American Life Project, August 9-September 13, 2010 Tracking Survey. N=3,003 adults and the margin of error is +/- 2.5 percentage points.
Law: Suggestions

1. Know the Definition of Meeting (OMA)
2. Know the Definition of Public Information
3. Remember that not all Speech is Protected
4. Supplement; Don’t Replace
5. Implement Written Policies
Scenarios
Penny Planner is the Planning Director for the City of Utopia. The City Manager frequently calls her into his office to meet with council members to discuss the merits of upcoming rezoning applications to be voted on by the council. In a meeting regarding an application for rezoning to allow the expansion of an existing nursing home in Utopia, a council member suggests he will not vote in favor of the rezoning. Penny has not written her recommendation, but she knows that there is strong support and need to add beds to the nursing home. Further, the applicant for the nursing home expansion asked that Penny keep her informed of discussions and notify her of any political trends in the community that may affect the rezoning decision as it is processed.
Penny should handle the information obtained from the council member ethically by:

A. Posting a photo on Instagram of the council member with a thumbs down standing in front of the nursing home.
B. Informing the applicant of the council member’s views.
C. Keeping the information to herself.
B.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. . . .
Penny Planner is working on implementing more affordable housing programs for the City of Utopia, population 20,000. In researching options, Penny posts on a mailing list serve a question about other local government zoning provisions on the subject. A planner from another City, the City of Mediocre with a population of 80,000, provides his city’s accessory apartment ordinance provisions. Penny Planner, who has a challenging workload and wants to move on to the next planning issue, takes the provisions and, without additional research or thought, recommends the City of Mediocre’s provisions to the City of Utopia’s planning commission.
Could Penny’s behavior be considered ethical misconduct?

A. Yes
B. No
A.2 (preamble). We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer’s interest.

A.3.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.
3 Investment Opportunity

Colin Commissioner is on the City of Utopia’s Planning Commission and has the opportunity to invest in a corporation that is developing multifamily homes. At least one of the sites proposed for an assisted living center is within the City where Colin works. As a passive investor, Colin will play no active role in business operations; a team of consultants will handle all aspects of the development and approval process; and when completed, a service provider will be hired to operate and administer the centers. (Derived from Perego 2008).
3 Investment Opportunity

Is this investment wise from an ethical perspective?

A. Yes
B. No
B.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.
Private sector planner, Diego Dinero, employed by Entitlements R Us specializing is working on an environmental impact reviews for a hospital. One of your staff members discovers that there are idle oil wells adjacent to, but not on the proposed hospital site. You know that contamination may be an issue, and you tell your boss. Your boss says, “They are idle and not on the property; we don’t need to include anything.” (Carolin, Gerhart- Fritz, and Weitz 2012)
4 Environmental Disclosure

What do you do?

A. Start working on your resume
B. Leave the oil wells off the report
C. Include the oil wells on the report
D. Both A and C
4 Environmental Disclosure

A.1.d. We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.

A.1.g. We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.

A.2 (preamble). 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.2.a. We shall exercise independent professional judgment on behalf of our clients and employers. •

A.2.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.

B.1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.

B.10. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.

B.18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.

B.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.
Private sector planner Diego Dinero, AICP at Entitlements R Us is preparing a comprehensive plan for a Utopia. The mayor, Grande Queso, who has been in office for more than 30 years, has indicated that property owners of an older, inner-town neighborhood want to rezone the property from single-family residential to office use. Planning Director, Penny Planner, indicates the land-use plan should be changed for this neighborhood to reflect office use per Mr. Queso. The mostly renter neighborhood is still stable but abuts the downtown commercial district, and for that reason has been identified in the plan already as a transitional neighborhood. Yet, it is one of the few remaining in the city that provides affordable housing for low-income persons. (Carolin, Gerhart-Fritz, and Weitz 2012)
5 Affordable Housing

A. Change the future land use map from transitional to office.

B. Bring attention to the need for affordable housing for low-income households to Penny and Grande.
A.1.d. We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.

A.1.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.

A.2.a. We shall exercise independent professional judgment on behalf of our clients and employers.

A.2.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.
As the Planning Director of a Utopia, Penny Planner is considering five Request for Proposals to prepare a mid-range utility extension plan for the city. A committee reviews the proposals and finds that all firms score well and are separated by only a few points. There is no requirement to employ minorities, women, or disadvantaged groups in the authority’s procurement rules. Only one of the firms proposes that minority contractors will work on the project.
6 Minority Participation

A. Award the contract to the firm with minority contractors to increase the opportunities for members of underrepresented groups.

B. Award the contract to the firm with the highest number of points and propose to Grande Queso that Utopia adopt an affirmative action policy for future awards to increase the opportunities for members of underrepresented groups.
6 Minority Participation

A.1.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.

A.3.g. We shall increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.
Conclusion

Social Media is an accessible and cost effective method of public participation. However, proceed with caution to ensure full and fair participation for the entire community and meet all legal and ethical requirements.

*When in doubt, seek out … your Ethics Officer and City Attorney.*
Thank You

Sallie Burchett, AICP
sallie@texasmunicipallawyers.com

Jill Hoffman, Municipal Attorney
jill@texasmunicipallawyers.com

(512) 250-0411