


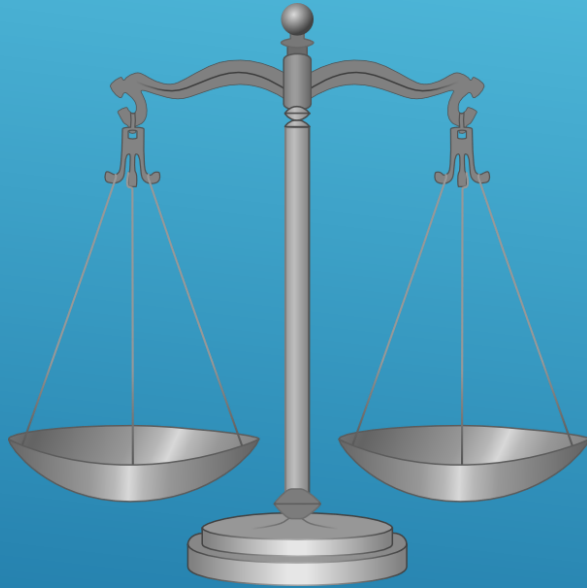
IMPROVING THE ETHICS CODE

A presentation for Councilwoman
Carolyn Vaughn

By Jon Mureen

OVERVIEW

- ▶ Goals for Ethics Codes
 - ▶ Hallmarks of Good Codes
 - ▶ Analysis of Corpus Christi Code, Loopholes
 - ▶ Comparison to Other Cities
 - ▶ Recommendations and Conclusions
- 
- A decorative graphic consisting of several parallel white lines of varying lengths and thicknesses, arranged in a diagonal pattern from the bottom right towards the top right of the slide.



WHY AN ETHICS CODE?

- Ensure good government (no corruption)
- Inspire confidence (no appearance of corruption)
- Give clear guidance to officials

HALLMARKS

- ▶ Clear Standards For:
 - ▶ Conflicts of Interest (Economic Benefits)
 - ▶ Gifts
 - ▶ Favoritism and Special Privileges
 - ▶ Undue Influence (advancing private interests)
 - ▶ Disclosure Requirements to Facilitate Enforcement
 - ▶ Enforcement Tools
 - ▶ Independent Commission
 - ▶ Empowered Commission
 - ▶ Transparent and Fair Complaint Process
 - ▶ Rules that are Suited to Context
- 

CONFLICTS OF INTEREST

Improper Economic Benefits



CONFLICTS OF INTEREST RULES

- ▶ When official and personal interests collide
- ▶ Clearly define what is forbidden
 - ▶ Official action
 - ▶ That could give economic benefit
 - ▶ To the official or others in his sphere
 - ▶ Distinct from general public
- ▶ Prescribe how to handle conflict



CORPUS CHRISTI CONFLICT OF INTEREST STANDARD: **THE GOOD**

Sec. 2-311(8)

(A) If a contract or business transaction involving the city, in which you or one of your relatives have a conflict of interest or potential conflict of interest comes before you in the performance of your official duties, **you shall take the following actions:**

- (i) Immediately **make a written disclosure** of your interest in the matter to the city secretary and city manager.
- (ii) **Abstain** from any vote or decision.
- (iii) **Not participate** in any discussion on the matter with members of the council, the city manager, or city employees.

▶ ***Solid instruction on how to address conflict.***



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(iii) Not participate in any discussion on the matter with members of the council, the city manager, or city employees.

▶ ***Could be a little clearer***

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- (iii) Not **be present for or** participate in any discussion on the matter with members of the council, the city manager, or city employees.

- ▶ ***Could be a little clearer***
- ▶ ***And a little stronger.***

CORPUS CHRISTI CONFLICT OF INTEREST STANDARD: **AREAS FOR IMPROVEMENT**

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- ▶ What is a “conflict of interest”?
 - ▶ Sec. 2-312: **Any interest**, reasonable expectation of an economic benefit, substantial interest, or anticipated substantial interest in a matter or business transaction involving the city **that could influence an individual's ability to make an impartial decision.**
- ▶ What “could influence an individual’s ability to make an impartial decision”?
 - ▶ **Not defined.**

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- ▶ What about financial interests of business partners? Clients? Employers?

LAREDO AND SAN ANTONIO: AN OBJECTIVE DEFINITION

General rule. To avoid the appearance and risk of impropriety, a City official or employee shall not take any official action that he or she **knows is likely to affect the economic interests** of:

- (1) The official or employee;
- (2) His or her parent, child, spouse, or other family member within the second degree of consanguinity or affinity;
- (3) His or her outside client;
- (4) A member of his or her household;
- (5) The outside employer of the official or employee or of his or her parent, child (unless the child is a minor), spouse, or member of the household (unless member of household is a minor);
- (6) An entity in which the official or employee knows that any of the persons listed in Subsections (a)(1) or (a)(2) holds an economic interest as that term is defined in Section 2-42

...

SA Ethics Code Sec. 2-43 (2013); see also Laredo Code of Ethics Sec. 2.01 (nearly identical).

- ▶ “Economic interest” is broadly and objectively defined.
 - ▶ Applies to any benefit
 - ▶ No guessing about what could “influence”
 - ▶ Limited exceptions for charities and small holdings in public corporations.

LAREDO AND SAN ANTONIO RECOGNIZE WIDER CIRCLE OF INFLUENCE

Whose economic interests create a conflict:

- (1) The official or employee;
- (2) His or her parent, child, spouse, or other family member within the second degree of consanguinity or affinity;
- (3) His or her outside client;
- (4) A member of his or her household;
- (5) The outside employer of the official or employee or of his or her parent, child (unless the child is a minor), spouse, or member of the household (unless member of household is a minor);
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- (7) An entity which the official or employee knows is an affiliated or partner of an entity in which any of the persons listed in Subsections (a)(1) or (a)(2) holds an economic interest as defined in Section 2-42
- ... [(8) – (9)]

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... [(8) – (9)]

▶ These are the only economic interests that Corpus Christi addresses

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▶ Corpus Christi's definition of family is narrower than other cities.'

▶ Does not include:

▶ Grandparents

▶ Cousins

▶ Nephews/Nieces

▶ Aunts/Uncles

▶ Laredo goes even further (*third degree*) and reaches second cousins, great aunts, etc.

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► Official's employer

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► Employers of immediate family

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- ▶ Any entity in which the above people have a financial interest

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- ▶ Any entity in which the above people have a financial interest
- ▶ And partners with those entities

LAREDO AND SAN ANTONIO RECOGNIZE WIDER CIRCLE OF INFLUENCE

Whose economic interests create a conflict?

(8) a. An entity for which the City official or employee serves as an officer or director or in any other policy making position; or

b. A non-profit board to which the official or employee is appointed by the City Council or City management to represent the best interests of the City, if the action by the City official or employee as a member of the board is related to an item pertaining to the City, and the City official or employee would be involved in the negotiation, development or implementation of that item on behalf of the City; or

(9) A person or entity with whom, within the past twelve (12) months:

a. The official or employee, or his or her spouse, directly or indirectly has:

1. Solicited an offer of employment for which the application is still pending;
2. Received an offer of employment which has not been rejected; or
3. Accepted an offer of employment; or

b. The official or employee, or his or her spouse, directly or indirectly engaged in negotiations pertaining to business opportunities, where such negotiations are pending or not terminated.

- ▶ Entity for which you serve on a board or in in high-level management

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- ▶ Includes non-profits

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► Prospective employers

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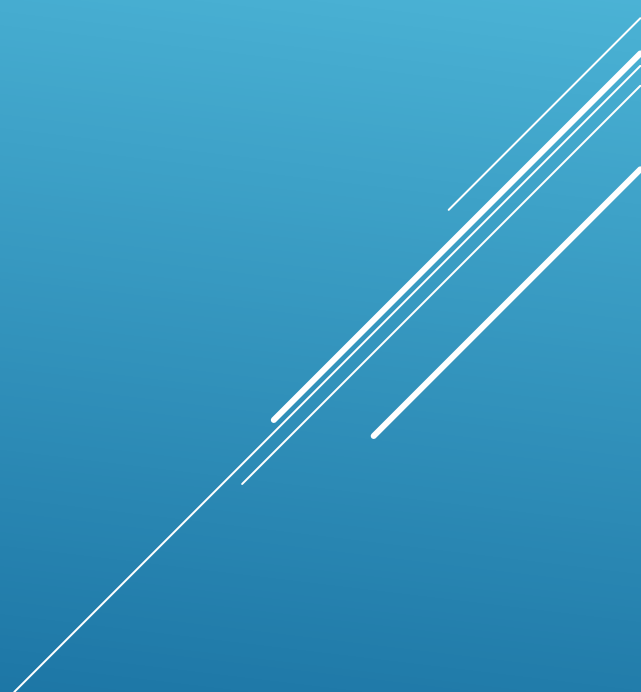
► Prospective business partners

RECOMMENDATIONS REGARDING CONFLICTS

- ▶ Clearly and objectively define what is a “Conflict”
 - ▶ Any economic benefit
 - ▶ Narrow exceptions
- ▶ Expand the covered “circle of influence”
 - ▶ Use San Antonio and Laredo as a guide

GIFTS

Avoiding appearance of impropriety



GIFT RULES: OBJECTIVES

- ▶ Gift ethics rules are primarily about preventing *appearance* of corruption
- ▶ Actual corruption (bribery, gratuities) is already a crime
 - ▶ Based on *intent* to relate gift to official action
- ▶ Gift ethics rules are usually broader
 - ▶ Prohibit gifts even with “innocent” intent
 - ▶ Designed to strengthen public confidence
 - ▶ But ethics can rules also make corruption harder
 - ▶ No guessing about state of mind
- ▶ Best rules have:
 - ▶ Broad prohibition against any transfer of material value
 - ▶ Specific exemptions for inoffensive conduct.



CORPUS CHRISTI'S SUBJECTIVE GIFT STANDARD IS INADEQUATE

General Rule

(6) **You shall not accept or solicit any** money, property, service or other **thing of value** by way of gift, favor, loan or otherwise **that might reasonably tend to influence you** in the discharge of your official duties or which you know or should have known was offered with the intent to influence or reward your official conduct.

- ▶ **What could influence you?**
 - ▶ **Open to interpretation.**

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- ▶ **What could influence you?**
 - ▶ **Open to interpretation.**
- ▶ **Rule targets only actual corruption**

OBJECTIVE GIFT STANDARD OF OTHER CITIES

Same broad prohibitions against actual corruption, plus --

“A City official or employee shall not solicit, accept, or agree to accept **any** gift or benefit, from:

- a. Any individual or entity doing or **seeking to do business** with the City; or
- b. Any **registered lobbyist** or public relations firm; or
- c. Any person or entity seeking action or **advocating on zoning or platting matters** before a City.”

Except items of nominal value* and meals valued less than \$50 (no more than \$500 a year)

*Less than \$50 in S.A.; less than \$250 in Laredo

▶ ***Intent to influence not necessary.***


▶ Note: El Paso prohibits gifts from *anyone* that exceed \$75 (may be too strict).

CORPUS CHRISTI'S SPECIAL APPLICATIONS (EXCEPTIONS)

Special applications = acceptable gifts

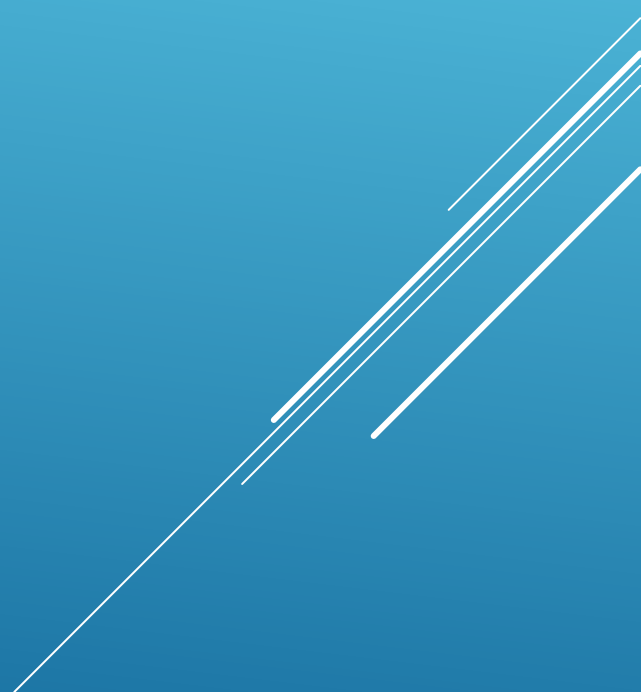
- Reasonable public awards for meritorious services
 - Ceremonial and protocol gifts
 - Admission to events as a public official
 - Loans and scholarships given on same terms as to general public
 - Disclosed travel expenses paid by third parties, within limits
 - Gifts on special occasions provided the value is “fairly commensurate with the occasion and the relationship”
 - “Any solicitation for civic or charitable causes.”
- ▶ **Other cities make these exceptions**
 - ▶ **San Antonio and Laredo make the “special occasion” exception but El Paso does not**
 - ▶ **Potential for abuse**
 - ▶ **Consider limiting it to people without business before the city**
 - ▶ **Charity solicitation subject to abuse.**
 - ▶ **Consider forbidding solicitation from subordinates (see Laredo) or people with business before the city.**

RECOMMENDATIONS FOR GIFT RULES

- ▶ Forbid *any* gift from people with business before the city, regardless of intent, unless it has only nominal or token value.
 - ▶ Consider narrowing the exceptions for special occasions and solicitations from people with city business.
 - ▶ Require officials to encourage family members not to accept inappropriate gifts (see San Antonio, Laredo).
- 

SPECIAL PRIVILEGES

a/k/a “Unfair Advancement of Private Interests” and “Favoritism”



CORPUS CHRISTI RULES AGAINST SPECIAL PRIVILEGES

General Rules

(1) You shall not use your office for private advancement or gain or to secure special privileges or exemptions for yourself or others.

(2) You shall not grant any special consideration, treatment or advantage to any person or group beyond that which is available to others generally.

- ▶ ***No showing favoritism to others or using your position to get special privileges***
- ▶ ***Consistent with the prevailing standard***

CORPUS CHRISTI “SPECIAL APPLICATION” PROVISIONS

- The special applications provisions explain how the general rules apply to particular circumstances:
 - Do not use city equipment/personnel/ resources for non-city business
 - Do not use public money for political ads
 - Unless a Council member, do not use the prestige of your position on behalf of any cause
 - Do not use city position to engage in inappropriate personal relationships
- ***These are good applications; not found in many codes.***

ADDITIONAL SPECIAL APPLICATIONS OF OTHER CITIES

- Do not acquire any interest that you have reason to believe could be affected by city action (e.g., land affected by zoning proposal).
 - ***This is recommended***
 - Consider coupling with provision for recusal and disclosure
 - E.g., Where member was already planning to buy property before proposed zoning change
- Do not hire or supervise family members
 - ***Recommended***
- Do not agree to reciprocal favors
 - *Politics?*
 - *If adopted, make clear this does not affect legislative negotiations in the public interest*

REPRESENTATION OF PRIVATE INTERESTS

Preventing undue influence and the appearance of it



WHAT IS THE CONCERN ABOUT PRIVATE INTERESTS?

- ▶ Advocating for a private citizen can give appearance of favoritism, special advantage, or corruption.
- ▶ Other city employees or other officials might feel pressured to favor the private citizen.



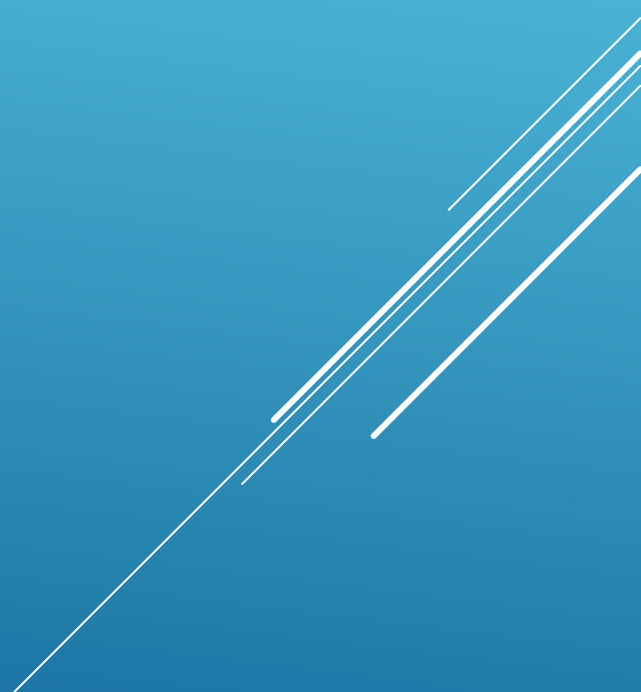
CORPUS CHRISTI'S PROHIBITIONS

- You may not represent any other person or entity in an *action adverse* to the city (a common prohibition)
- Do not use the prestige of your position on behalf of any cause (a common prohibition)
- Council members should not speak to *any* boards or commissions except on behalf of their own (disclosed) financial interest.
 - This is a good rule *not* found in other codes.

ADDITIONAL PROHIBITIONS OF OTHER CITIES

- Do not represent *anyone* before the body you sit on (or its staff or reviewers)
 - Rationale: You carry too much influence there.
- Do not represent anyone for compensation *anywhere* before the City.
 - Rationale: You should not represent private interests for pay when your duty is to the whole city. Gives appearance of being “for sale.”
 - Exception made for volunteer board members
- These prohibitions probably make sense for Corpus Christi.

MISCELLANEOUS RULES



Corpus General Rule

- ▶ No outside employment that is incompatible with your official duties or could impair judgment. (CC Sec. 2-311(9))

Other Cities

- ▶ Same general rule
- ▶ Plus a special application to consider:
 - ▶ “A city official or employee shall not provide services to an outside employer related to the official’s or employee’s duties.” (SA Sec. 2-48(b)).
 - ▶ Depending on context, this could be impracticable.

OUTSIDE EMPLOYMENT

Corpus Christi

- ▶ *Employees may not violate privacy or confidentiality of individuals.* (CC Sec. 2-311(26))
- ▶ There is **no rule** governing how council and board members may use city business information.

Other Cities Prohibit

- ▶ *Improper access:* Do not use official position to obtain information about a person other than for performing official duties. (SA Sec. 2-46; Laredo Sec. 2.04(a)).
- ▶ *Improper Disclosure:* Do not disclose confidential information relating to City affairs that you obtain through your position. (SA Sec. 2-46; Laredo Sec. 2.04(a); El Paso Sec. 2.92.050(E)).
- ▶ **Similar prohibitions are recommended for Corpus Christi**
 - ▶ “Confidential information” should be carefully defined.

CONFIDENTIAL INFORMATION

Corpus Christi

- ▶ **No** restrictions on former officials and employees

Other Cities

- ▶ Continuing duty of confidentiality
 - ▶ **Recommended**
- ▶ Do not take economic interest in contracts that you participated in awarding.
 - ▶ **Recommended**
- ▶ Temporary restrictions on ability to represent private interests before the City (e.g., lobbying).
 - ▶ First Amendment concern?
- ▶ No economic interest in *any* discretionary contract with City for 1 year after leaving office.
 - ▶ (Exception for returning to former employer)
- ▶ Forbidden to take adverse position to City that is related to official's duties
- ▶ Forbidden to brag about special influence

FORMER OFFICIALS

Corpus Christi

- ▶ Lobbyists are required to register

Other Cities

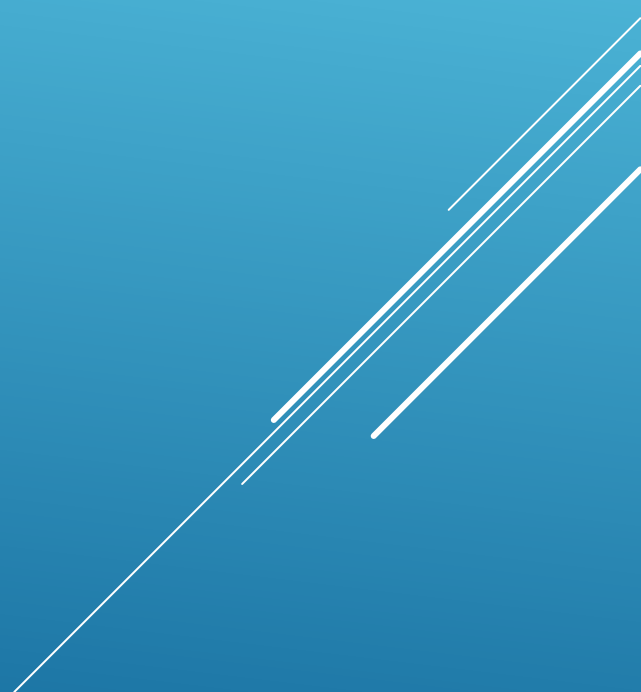
- ▶ Some cities require registration and others do not
- ▶ San Antonio and Laredo have more detailed requirements and restrictions.
 - ▶ These may be more heavy-handed than Corpus Christi needs.
- ▶ If lobbying is an issue in Corpus Christi, a closer analysis of these provisions is recommended.

(SA Div. 5; Laredo Div. 5)

LOBBYING

FINANCIAL DISCLOSURE

Facilitating Enforcement



GUIDELINES FOR DISCLOSURE RULES

- ▶ Information needed to enable enforcement
 - ▶ E.g., Identify where are the official's "economic interests" to help know when recusal is required.
- ▶ Mirror conflict and gift rules
 - ▶ E.g., If your relatives' financial interests create a conflict, name your relatives.
- ▶ Balance benefits and burdens of disclosure
 - ▶ For example, Corpus Christi limits disclosure requirements to high level employees and officials. Good.
 - ▶ You do not want so much burden that it discourages qualified office-seekers.
 - ▶ But all public officials should expect some intrusion.



CORPUS CHRISTI'S REQUIRED DISCLOSURES

- Basic personal and professional information
- Businesses in which you are “actively engaged or associated.”
 - **“Actively” is open to interpretation.**
 - **Change to: “businesses with which you are associated or hold any kind of position.”**
- Income sources exceeding: 10%, or \$5k salary, or \$20k payment for goods and services.
 - **Thresholds reduce reporting burden but create loophole.**
 - **To close loophole, official should also disclose –**
 - **Any entity (plus its affiliates) in which she holds an economic interest.**
 - **Significant economic interests of immediate family**
 - **And consider lowering the thresholds**
- Significant stock holdings -- value exceeding \$5k or 10% ownership

CORPUS CHRISTI REQUIRED DISCLOSURES

- Real estate
- Material debts (exceeding \$10k).
- Contracts with the City
- Boards of directors
- Gifts exceeding \$200.
 - ***This should mirror the “gift” rules.***
 - Currently, Corpus has no limit on gifts (except those intended to influence).
 - Other cities set different value limits for gifts (e.g., \$50, \$75, or \$250). See slide 35.
 - Thresholds can vary depending on the type of gift.
- Like other cities, Corpus has disclosure rules for outside contractors, but they lack enforcement tools (e.g., business ban or voidability).

GENERAL RECOMMENDATION

After revising the ethical standards, revise the disclosure requirements to match.



ETHICS COMMISSION

Enforcing the Rules




HALLMARKS OF EFFECTIVE ETHICS COMMISSIONS


- Independence
- Resources
- Authority
- Transparency
- Fair Procedures



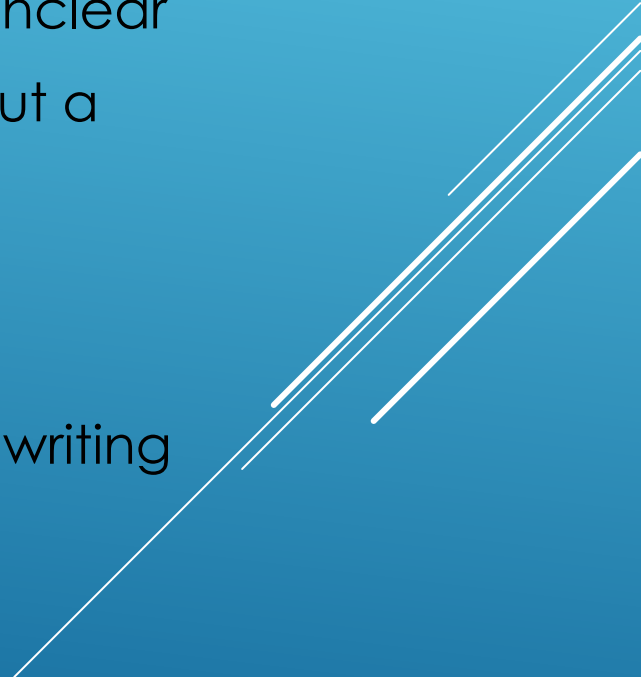
OVERVIEW OF CORPUS CHRISTI ETHICS COMMISSION

- Composition
 - Nine members loosely nominated by general public and approved by 2/3 majority of Council
 - Three-year terms
 - Removal by majority of Council “for cause.”
 - Role
 - Advise on ethical issues
 - Adjudicate ethics complaints
 - Resources
 - Assigned city staff and independent counsel; may seek advice from City Attorney.
- 

WAYS TO IMPROVE INDEPENDENCE

- Formalize nomination and appointment process
 - Prescribe Qualifications for Commissioners
 - Corpus Christi prescribes no minimum qualifications
 - Laredo, El Paso, and S.A. codes have several minimum qualifications. (E.g., relatives of councilmembers cannot serve.)
 - But the normal appointment process may be sufficient
 - Make it harder to remove commissioners from office
 - Public hearing
 - 2/3 majority vote
 - Add special provision for recusal of commissioner where she has a conflict of interest.
 - Make it an ethical violation for any employee or official to *attempt* to communicate with Commissioners about pending matters.
- 

OVERVIEW OF COMPLAINT RESOLUTION PROCESS

- Complaints must be filed under oath
 - Anecdotal evidence suggests that complaints are quite rare.
 - Commission has discretion whether to hold a hearing.
 - The standards and procedures governing its analysis are unclear
 - If commission determines complaint is “groundless” (without a hearing), the complainant must pay attorney fees.
 - If a hearing is granted, it must be expeditious
 - There are no formal rules of procedure or evidence.
 - If a violation is found, the Commission must state its findings in writing
 - Commissioners may not have Ex Parte communications
- 

IMPROVING THE COMPLAINT PROCESS

- Make it less risky for a member of the public to come forward
 - How does the Commission decide that a complaint is “groundless” make the complainant pay fees?
 - Clearer standards help potential complainants know the risk of filing
 - Other cities:
 - Prescribe several factors and/or incorporate Texas law
 - Make it harder to punish filer: complaint must be “groundless and brought in bad faith or for purposes of harassment”
 - Before finding a complaint “groundless,” give the filer a chance to explain himself (i.e., at “show cause” hearing).
 - Make lesser sanctions available for groundlessness (e.g., a fine).
 - Consider a financial reward to winners to offset the risk of paying fees in a loss.

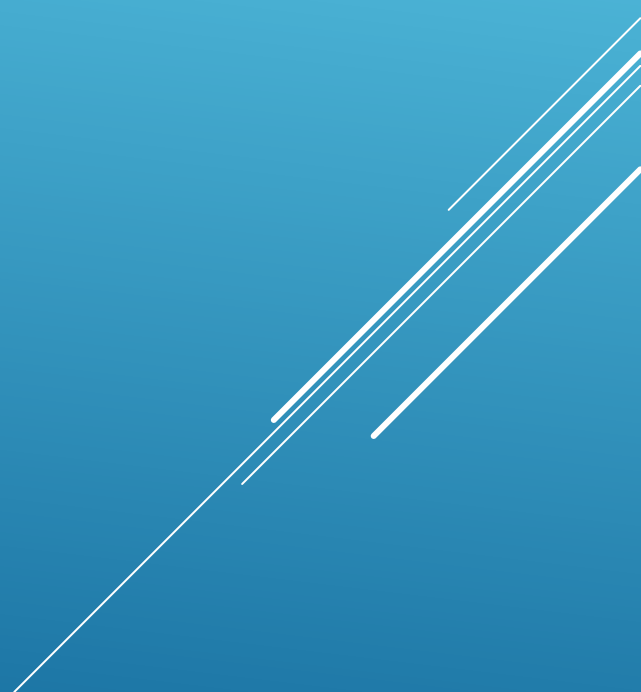
IMPROVING THE COMPLAINT PROCESS

- Establish a standard for judging the merits of a complaint
 - E.g., What is the commission looking for in deciding whether to hold a hearing? Other cities use a “just cause” standard.
- Give commission power to investigate and compel evidence.
- Consider more detailed procedures
 - Maybe not necessary yet given low volume of complaints in Corpus Christi
 - And this could make the process more expensive by requiring lawyers.
- Require a written decision explaining why no violation was found.
- To protect the accused, consider keeping the complaint confidential until a decision is made (see San Antonio, Laredo).
 - Balance against public interest in open government

SANCTIONS

- Majority of commission must vote to find an ethical violation
- Majority of commission must recommend a sanction
- While commission *recommends* sanctions, Council (or City Manager) exercises its “own judgment.”
 - Potential sanctions include “reprimand, temporary suspension, removal or any other sanction within the power of the city council, or recall by the citizens.”
 - City Manager has the power over lower level employees.
- Contract voidable only if it “would not have been approved without the vote” of the offender.
 - *Vague*. Does this mean a majority of disinterested voters approved it? What about the effect of offender’s participation in deliberations? How can the public be confident he did not influence the process?


IMPROVING THE SANCTION DETERRENT

- ▶ Give Commission the power to warn or reprimand directly, while leaving removal to the Council
 - ▶ Prescribe clearer standards for when different types of sanctions are appropriate (see other codes)
 - ▶ Add language to encourage civil suits that redress violations.
- 
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IMPROVING THE SANCTION DETERRENT

- ▶ Consider making all offending contracts voidable.
 - ▶ Pros:
 - ▶ Stronger deterrent
 - ▶ Encourages recusal from *discussions*
 - ▶ Con: Uncertain contracts could discourage potential city contractors from bidding.
- ▶ Alternatively, address vagueness of current provision on voidable contracts (compare corporate law).
- ▶ Require an *affirmative* vote on whether to void offending contract so issue is not “swept under the rug.”

CONCLUSIONS

- Corpus Christi's ethics code is a good start, but it has significant gaps that allow at *least* an appearance of impropriety.
 - The prohibition against conflicts of interest is much too narrowly drawn, allowing significant opportunities for abuse.
 - Inadequate gift rules make corruption easier and allow at least an appearance of it.
 - Financial disclosures fail to reveal potential conflicts.
 - Corpus Christi's rules regarding special privileges, representation of private interests, confidentiality, and conduct of former officials can be improved.
 - A stronger ethics commission and better complaint process would facilitate oversight and enforcement.
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CONCLUSIONS

- Consider a comprehensive review to modernize and improve Code.
 - The Code been revised many times over the years and can be revised again.
 - Or consider replacing it with a new one modeled after San Antonio/Laredo.
 - Long term benefit: better organized, integrated, clearer, more comprehensive, and stronger foundation to build on.
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