

Overview of Mureen City Code of Ethics Report

Council Presentation
July 21, 2015



15-0766

2015-019



Simplify definition for Conflict of Interest

C: “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.”

M: “Any economic benefit”

LDR: OK



Expand “circle of influence”

C: Employee/Official, spouse, parent, child, siblings, in-laws

M: Laredo/San Antonio:

- Grandchildren/grandparents
- Clients & clients of spouse/child
- Employers & Employers of spouse/child
- Entity in which official has policy making position
- Official/spouse offered/sought employment 1 yr
- Official/spouse ongoing business negotiations with entity

LDR: OK, with knowledge requirement – to add predictability



Attendance at meeting

C: If conflict, official must disclose, abstain, not participate in discussion.

M: If conflict, official must also not be present during the discussion.

Unintended consequence: Official may not immediately realize during a meeting that conflict exists during meeting discussion; also impacts consent portion of agenda

LDR: OK only with knowledge requirement.



Gifts-Prohibitions

*C: (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.** (11 Specific exceptions allowed.)*

M: Recommends City forbid any gift from people with business before the city, regardless of intent, unless it only has nominal or token value.

LDR: OK, but nominal value amount should be defined & added as exception to gift provision to provide certainty



Additional Mureen Gift Recommendations

C: Gift Exception---Any solicitation for civic or charitable causes.

M: Mureen suggests forbidding charitable solicitation from subordinates or people with business before the city.

LDR: OK but could limit solicitations for worthy causes

M: Follow San Antonio example: Require covered persons to take “reasonable steps” to persuade family/business associate from accepting/soliciting prohibited gift

LDR: Vague. What is a “reasonable step”?



Avoidance of Special Privileges-acquiring new property interest

M: Add “Do not acquire any interest that you have reason to believe could be affected by city action (e.g. land affected by zoning proposal).”

Unintended consequence: Potentially affects any land acquisition and a wide variety of contractual interests

LDR: Do not adopt-too vague



Avoidance of special privileges - nepotism

C: CCCC § 39-363(d) prohibits supervising relatives

M: Amend code to prohibit official/employee from supervising a family member

LDR: Not required



Avoidance of representing private interests

C: You may not represent any other person or entity in action adverse to the city. Council members may not speak to boards or commissions except on behalf of own financial interest.

M: 1) Do not represent anyone before the body you sit on, or its staff or reviewers

M: 2) Do not represent anyone for compensation anywhere before the City (Exception for volunteer board members)

LDR: OK, expands current CCCC § 2-311 (10-11, 17).



Mureen recommendations: prohibit improper access and improper disclosure of information

C: “You shall not disclose information that could adversely affect the property or affairs of the city, except as required by law.”

M: 1) “Do not use official position to obtain information about a person other than for performing official duties.”

M: 2) “Do not disclose confidential information relating to city affairs that you obtain through your position.”

M: 3) Add provision that there is continued duty of confidentiality.

LDR: OK with limitation to confidential information. Otherwise innocent questioning of staff could lead to alleged violation.



Mureen Recommendations re Former Officials

C: Employees may not represent others concerning project on which they worked within 12 months of leaving city employment

M: To prohibit former official/employee from having economic interest in contracts they participated in awarding.

LDR: Need a time limitation for predictability. Currently, one year. Additional time period would add monitoring burden for City.



Financial Disclosure

C: Requires disclosure of income sources which exceed 10% of gross income, or \$5,000 in salary, bonuses, commissions or fees, or \$20,000 in payment for goods, products or services.

M: Consider lowering the required disclosure amounts.

LDR: OK, but we should consider matching the city ordinance and city required forms with similar state requirements



Financial disclosure

C: Disclose information regarding “any business with which official was actively engaged or associated”

M: Disclose information regarding “any business with which you are associated or hold any kind of position”

LDR: This appears to be a non-substantive change; no reason to adopt



Recommendations regarding Ethics Commission

C: Requires majority vote of Council with cause to remove

M: Require 2/3 vote of the Council to remove Commissioner

LDR: OK, 2/3 vote w'out ref to cause provides more predictability

M: Add specific provision for recusal of a commissioner with a conflict of interest

LDR: Unnecessary. EC procedures contain recusal provision.

M: Violation to communicate with EC re pending item

LDR: Unnecessary. CCCC § 2-331 addresses



Recommendations to improve complaint process, make less risky for complainant

C: After hearing, if groundless, subject to payment of atty costs

M: Make lesser sanctions (fine) available if groundless

LDR: OK

M: Before finding a complaint “groundless” give the filer a chance to explain himself at a “show cause” hearing.

LDR: Unnecessary because EC recently developed procedures to address, and fee shifting only occurs after hrg



Recommendations to improve the complaint process

M: Consider a financial reward to winners to offset the risk of paying fees in a loss.

LDR: Strongly recommend against adoption; paying fact witnesses would damage their credibility and could increase number of frivolous complaints. No cities we rev'd do this.

C: Standard is preponderance of the evidence.

M: Establish a standard for judging the merits of the complaint.

LDR: Unnecessary. Preponderance of the evidence is already the standard. CCCC §2-332(b)



Recommendations to improve the complaint process

C: EC has power to subpoena witnesses and records if a complaint proceeds to a hearing.

M: Give Commission power to investigate and compel evidence.

LDR: Unnecessary. EC already authorized under CCCC §2-333.



Recommendations to improve the complaint process

M: Consider keeping the complaint confidential.

LDR: OK but enforceability of Mureen recommended confidentiality provision is limited by Texas Public Information Act and Open Meetings Act.



Sanctions for violations

C: EC notifies CM of any findings of violations and recommends sanctions.

M: Give EC power to warn or reprimand directly while leaving the removal power to the Council.

LDR: OK

C: Describes types of possible sanctions against Council member or Council appointee/confirmee, none for employee

M: Prescribe clearer standards for when different types of sanctions are appropriate.

LDR: Unnecessarily ties hands of disciplining entity



Sanctions for violations

M: Add language to encourage civil suits to redress violations.

LDR: Not recommended; Civil suits are not available for most violations.

C: Violation does not render action of the city voidable unless action would not have been approved without vote of the person who violated the conduct. CCCC (Section 2-313).

M: Consider making all contracts voidable; require affirmative vote on whether to void offending contract.

LDR: Unnecessary; similar to current ordinance which provides for voidability



Additional Ethics Decision Points

Ethics Commission Recommendations

- Allow unsworn complaints
- Clarify Rules of Conduct are in 2-311, not preamble
- Clarify that complainees have 10 calendar days to respond
- Reduce # of votes to find violation to majority of quorum
- Clarify to whom Ethics Commission provides recommendation

Non EC recommendation: Number of complainants necessary to execute complaint
