

**CITY OF SAN ANTONIO
CITY ATTORNEY'S OFFICE
INTERDEPARTMENTAL CORRESPONDENCE**

TO: Mayor and City Council

FROM: Andrew Martin, City Attorney

COPIES TO: Terry M. Brechtel, City Manager

SUBJECT: Amendments to the City of San Antonio Ethics Code

DATE: May 16, 2003

Summary and Recommendation

Ordinance Number 88874, passed and approved on November 19, 1998, adopted a new Code of Ethics for the City of San Antonio. The Code was first amended by Ordinance Number 90313, passed and approved on August 19, 1999. The Code was again amended by Ordinance Number 93998, which was passed and approved on May 24, 2001. This Ordinance adopts proposed amendments and revisions to the Ethics Code as requested by the Mayor's Committee on Integrity and Trust in Local Government, the Ethics Review Board and the City Council Governance Committee. The Ethics Code with the proposed amendments and revisions is attached to the memorandum as Exhibit 1.

Background

On October 23, 2003, Mayor Edward D. Garza convened the Mayor's Committee on Integrity and Trust in Local Government. The Committee was charged with providing specific recommendations to correct weaknesses in the Ethics Code, with the "goal of strengthening a culture of service, integrity, trust and accountability." From October 2002 through January 2003, the Committee interviewed city staff, current and former city officials, members of the business community and citizen groups. On January 29, 2003, the Committee issued its report, which included its specific recommendations for revisions to the Ethics Code. On January 30, 2003, the Committee presented its report to the City Council. On March 19, 2003, Assistant City Attorney Helen Valkavich presented a summary of the proposed revisions to the City Council Governance Committee.

The Ethics Code Review Subcommittee of the Ethics Review Board also convened to consider its recommendations for revisions to the Ethics Code. On April 17, 2003, Ethics Review

Board Chairman Arthur Downey presented the recommendations of the Ethics Review Board to the City Council Governance Committee.

On May 7, 2003, the Governance Committee reviewed the proposed recommendations to the Ethics Code and proposed additional amendments and revisions.

A copy of all of the proposed amendments and revisions is attached to this memorandum. The following is a short summary of the major recommendations from the three committees:

Proposed Revisions and Amendments by the Mayor's Committee on Integrity and Trust in Local Government

Gifts: The Committee recommended that the gift provision be amended to prohibit a city official or employee from soliciting or accepting a gift from an individual or business entity doing seeking to do business with the City, from a registered lobbyist or public relations firm, or from a person advocating on zoning matters before a city body, except for items of nominal value. The Committee further recommended that the term "nominal value" be defined as an item with less than \$10 in market value. This amendment would eliminate the current provision that allows City officials or employees to accept a meal worth up to \$100 at any given occurrence from that list of businesses or individuals.

The Committee also recommended that the exceptions to the gift restrictions include a provision allowing City officials and employees to accept ceremonial and protocol gifts.

Prohibited Interests in Contracts: The prohibited interest in contracts provision prohibits certain City officials and employees from having any direct or indirect financial interest in a contract with the city. An official or employee is deemed to have an interest in the contract if certain family members have an interest in the contract. The Committee recommended amending this provision to include siblings and any family members within the first degree of consanguinity or affinity. The current code does not include siblings in the list of family members.

The Committee also recommended an amendment that would allow a contract in place at the time an officer or individual became subject to the prohibited interest in contracts provision to remain in effect until the contract expires.

Lobbying and the Definition of Municipal Question: Under the Ethics Code, individuals engaged in lobbying activities before the City are required to register. "Lobbying" is defined in part as an effort to influence or persuade an official to take or refrain from official action on any municipal question. The term "municipal question" in the current code is defined to specifically exclude zoning matters. The Committee recommended that the definition of "municipal question" be amended to remove that exclusion.

Lobbying Restrictions on Legislators and Councilmembers: The current code prohibits a state legislator from lobbying before the City during the legislative session and sixty (60) days before or after the session. It also prohibits councilmembers from lobbying the legislature, except on behalf of the City, during the same time frame. The Committee recommended that these restrictions be imposed full-time.

Restricted Lobbying during RFP Evaluation: The Committee recommended a "no-contact" amendment that would prohibit a lobbyist from lobbying City officials and employees during the period of request for proposal (RFP) or source selection evaluation.

Proposed Revisions and Amendments by the Ethics Review Board

"Before the City" Definition: The Board recommended that this definition be amended to exclude representation before a board where members of that board are not wholly appointed by City Council.

"Discretionary Contract" Definition: The Board recommended that this provision be amended to exclude contracts not involving an exercise of judgment or choice.

Unfair Advancement of Private Interests: The Board recommended that this section be amended to state that an official who represents to a person that he or she could provide an advantage to that person based on their official position would violate this rule.

Prohibited Interest in Contracts: The Board recommended that this section be amended to allow the Board to make an assessment on whether an official or employee subject to this section has an actual interest in the contract at issue.

Lobbying Exception: The current code excludes "mobilizing entity constituents" from the lobbyist registration requirement. This proposed amendment would add "not-for-profit" organizations to that exception.

Lobbying Contacts: The current code requires a lobbyist to advise an official upon the official's request to identify himself or herself as a registered lobbyist. This proposed amendment would require the lobbyist to identify himself or herself as a registered lobbyist at the time of the contact.

Financial Disclosure Statements: The Board recommended an amendment allowing officials or employees who file financial disclosure statement to extend their deadline for filing the statements in the event of an unforeseen circumstance such as military service abroad or acute illness.

The Board also proposed an amendment allowing a person who inadvertently files an incorrect or incomplete financial disclosure statement to file an amended report.

The City Council Governance Committee Consideration of Recommendations

Restricted Lobbying during RFP Evaluation: The Governance Committee considered the recommendation of the Integrity Committee regarding a "no-contact" amendment that would prohibit a lobbyist from lobbying City officials and employees during the period of request for proposal (RFP) or source selection evaluation. The Governance Committee proposed that this section not apply in the case of elected officials and their administrative aides under contract.

Lobbying Restrictions on Legislators and Councilmembers: The Governance Committee considered the Integrity Committee's proposed full-time restriction on legislators lobbying before the City and Councilmembers lobbying before the legislature. Ethics Review Board Chairman Arthur Downey expressed the view of the Board that a full-time restriction may pose constitutional problems. The Governance Committee proposed that the provisions remain as currently written, but amended to state that the City strongly discourages lobbying outside the legislative session and the sixty (60) day period before and after the session.

The Governance Committee also proposed an amendment to exclude application of the provision to a legislator or councilmembers who lobby prior to receiving notice of a special session being called by the Governor of Texas.

Gifts: The Governance Committee also considered the Integrity Committee's proposed amendment to the gift provision. The Committee directed city staff to research federal law on the issue of the solicitation and acceptance of gifts by federal elected officials. That memorandum and its attachments are enclosed with this memorandum for reference as Exhibit 2.

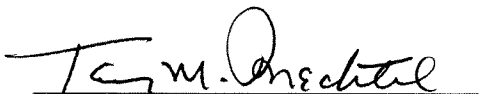
Financial Impact

This Ordinance has no financial impact.



Andrew Martin
City Attorney

APPROVED:



Terry M. Brechtel
City Manager