



CITY OF DALLAS

Memorandum

DATE April 4, 2014

TO The Honorable Chair and Members of the Charter Review Commission

SUBJECT Chapter XXII Section 11
Prohibition on Financial Interest in Public Contracts

As requested at the April 1, 2014 meeting, following are suggested amendments to the prohibition on officer and employee financial interests in public contracts.

1. The suggestions are:
 - a. Provide that members of the DART Board appointed by Dallas will be treated as city officials for purposes of this provision.
 - b. Harmonize the prohibition on financial interests in city contracts to apply only to a "substantial interest" in keeping with Dallas City Code Chapter 12A or Texas Local Government Code §171.

2. The current language is:

“SEC. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or services, except on behalf of the city as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer's or employee's office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council.

(b) The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.”

3. The proposed language is:

“SEC. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.

(a) No city official [~~officer~~] or employee shall have a [any] substantial financial interest, direct or indirect, in any contract with the city, or have a substantial financial interest, direct or indirect [~~be financially interested, directly or indirectly~~], in the sale to the city of any land, materials, supplies or services, except on behalf of the city as a city official [~~an officer~~] or employee. Any violation of this section shall constitute malfeasance in office, and any city official [~~officer~~] or employee guilty thereof shall thereby forfeit the city official’s [~~officer’s~~] or employee’s office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council.

(b) The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.

(d) For the purpose of this section, “substantial financial interest” shall mean a substantial interest as described in Section 171.002 of the Texas Local Government Code.

(e) This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund.


(f) This section does not apply to contracts for general services or benefits if the service or benefits are made available to the city official or employee on the same terms that they are made available to the general public.

(g) This section does not apply to a nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a city board or commission, including a city appointee to the Dallas Area Rapid Transit Board, must comply with any applicable conflict of interest or ethics provisions in the state law or the Dallas City Code.

4. The explanation of the amendments is:

- a. The technical amendment to change the term “officer” to “city official” was previously approved by the Charter Review Commission on March 4, 2014.
- b. The new Subsection (d) adds the definition of “substantial financial interest” from Section 171.002 of the Texas Local Government Code. Section 171.002 defines a “substantial interest” as:
 1. owning 10 percent or more of the stock of a company;
 2. owning 10 percent or more or \$15,000 or more of the value of a company;
 3. the person receives 10 percent or more their income for the previous year from the company;
 4. owning \$2,500 or more in real property; or
 5. having a family member in the first degree having a substantial interest.
- c. The new Subsection (e) provides that ownership of stocks or bonds held in a mutual fund does not constitute a substantial financial interest in a contract with the city. This provision is necessary because city employees have an ownership in the pension fund, the 401(k) fund, or the 457 fund, and these should not be considered a financial interest in a city contract. The exception does not apply if the person owns more than 10 percent of the value of the fund.
- d. The new Subsection (f) provides that officers and employees may enter into contracts with the city for general services or benefits, such as water utilities or rental of park facilities, if the contract is made on the same terms as offered to the general public.
- e. The new Subsection (g) provides that the prohibition on having a financial interest in a city contract does not apply to members of boards and commissions, including city appointees to DART. This provision is necessary because the prohibition has prevented citizens from serving on city boards and commissions.

- f. The amendments do not waive or reduce the requirements of Dallas City Code Chapter 12A (Code of Ethics) or Texas Local Government Code Chapter 171 (Conflicts of Interest for Municipal Officers).
- g. It is not necessary to amend this section to address TIF boards and Municipal Management District boards because this is addressed in Dallas City Code Chapter 12A (Code of Ethics). Section 12A-12(c)(1) states that the prohibition on financial interests in city contracts applies to TIF board members if the contract involves TIF funds. Section 12A-12(c)(3) states that the prohibition on financial interests in city contracts does not apply to Municipal Management District boards.



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