GUIDE FOR DESOTO PUBLIC OFFICIALS



A GUIDE FOR CITIZENS WHO ARE ELECTED OR APPOINTED TO SERVE THE CITY OF DESOTO

APPROVED BY CITY COUNCIL ON 06-04-13 COUNCIL RESOLUTION #13-08

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GUIDE FOR DESOTO PUBLIC OFFICIALS

The following is intended to be a guide to citizens who are elected to City Council or appointed to any board, commission, corporation or committee of the City of DeSoto sometimes collectively referred to in this Guide as "boards and commissions." Members of the City Council and City boards and commissions are sometimes referred to in this Guide as "public officials" or "officers." If you have any questions or concerns regarding these matters, please contact the City Secretary's Office or City Attorney for further assistance.

SERVING ON A BOARD OR COMMISSION

The City of DeSoto boards and commissions consist of concerned citizens who volunteer their time and knowledge to make a difference in their community. Some of these groups serve as advisory boards, examining issues in depth, such as park development or planning and zoning, and making recommendations to the City Council. Other groups hear requests from citizens on variances to City ordinances and make decisions as to whether the variances should be allowed.

The work of these citizens assists the City Council and directly contributes to the quality of life in DeSoto. Each board or

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¹ City Council and/or Council shall mean the legislative and governing body of the City of DeSoto, consisting of the Mayor and City Councilmembers.

² Officer or official is also defined as the Mayor, any member of City Council, any appointed or confirmed member of any City board or commission, corporation, or committee established by ordinance, Charter, State Law or otherwise, on a temporary or permanent basis, operating either under the direct or indirect authority or subject to either the direct or indirect control of the City Council. Such term(s) shall include the City Manager, City Secretary, Municipal Judge, and Health Officer.

commission member is selected by the City Council after applications are reviewed.

Service on a board or commission is voluntary. DeSoto board and commission members are not paid or compensated.

DeSoto Boards and Commissions

<u>Planning and Zoning Commission</u>: This Commission makes recommendations regarding land use, public improvements, planning and zoning, the thoroughfare plan, the Comprehensive Plan, subdivision plats, site plans and zoning changes.

Zoning Board of Adjustment: This Board is a quasi-judicial body that hears citizen requests for variances to the Comprehensive Zoning Ordinance. For example, the Board may hear a request from a property owner to reduce the minimum size of the side yard under the Comprehensive Zoning Ordinance to allow a building to be located in the area normally required for the side yard.

<u>Civil Service Commission</u>: This Commission provides oversight to the municipal Civil Service system for the Police and Fire Departments, and when necessary hears appeals of police officer and firefighter disciplinary actions. For example, the Civil Service Commission may hold a hearing for an appeal when the Chief of Police terminates the employment of a police officer for a violation of Police Department rules and regulations.

<u>Buildings and Standards Commission</u>: This Commission hears requests for variances to the International Codes³ and other trade codes adopted by the City. When necessary, the Commission hears requests by City Code Enforcement officials relating to repair, removal and demolition of substandard buildings and structures. For example, the Commission will make

³ The International Codes (or I Codes) include the Residential Code, Building Code, Fire Code, Plumbing Code, Mechanical Code, Fuel/Gas Code, Energy Code, and any other related International or National code.

recommendations to the City Council as to amendments or changes to be made to the City Building Code, or may be requested to order a property owner to demolish or repair a substandard building.

<u>Arts Commission</u>: This Commission acts as advisory board to the City Council recommending funding from local Hotel/Motel Occupancy Taxes to support and promote the cultural arts.

<u>Library Board</u>: This Board acts as advisory board to the City Council and makes recommendations concerning Library policies and regulations, provides a conduit for citizen input on Library related matters and may serve as a lay representative to library system cooperatives and committees in the North Texas area..

<u>Tri-City Regional Animal Shelter Advisory Board</u>: This Board consists of citizens appointed by the Cities of DeSoto, Duncanville and Cedar Hill and acts as advisory board to the City Councils for the Cities of DeSoto, Duncanville, and Cedar Hill and makes recommendations concerning policies governing the regional animal shelter operated by the three cities. The Board assists City staff in complying with applicable State Law and considers animal shelter policies.

<u>DeSoto Economic Development Corporation Board</u>: Though established by the City, this is a separate non-profit corporation whose Board of Directors is appointed by the City Council. This Board is responsible for promoting economic development through grants and incentives, which are funded from local sales tax proceeds, to encourage business expansion and relocation to the City.

<u>Park Development Corporation Board</u>: Established by the City, this is a separate non-profit corporation whose Board of Directors is appointed by the City Council. This Board serves as an advisory body to the City Council for parks and recreation matters, and is responsible for the acquisition and promotion of park and

recreation facilities through the use of local sales tax proceeds in the City.

<u>DeSoto</u>, <u>Texas Historical Foundation Board</u>: Established by the City, this is a non-profit corporation whose Board of Directors is appointed by the City Council and also includes two ex-officio members from the community. The Board serves as an advisory body to the City Council for historical restoration, historical document archiving and education.

<u>DeSoto Housing Finance Corporation Board</u>: Established by the City, this is a separate non-profit corporation whose Board of Directors is appointed by the City Council. This Board is responsible for providing the means to finance the cost of residential ownership and development that will provide decent, safe and sanitary housing at affordable prices.

<u>Keep DeSoto Beautiful Corporation Board</u>: This is a separate non-profit corporation established by the City. Its Board of Directors is appointed by the City Council. This Board is responsible for promoting and conducting various beautification activities for the City.

<u>DeSoto Health Facilities Corporation Board</u>: This is a separate non-profit corporation established by the City. Its Board of Directors is appointed by the City Council. This Board is responsible for financing, promoting and establishing affordable healthcare facilities in the City.

TERM LIMITS

In order to provide diversity and to encourage participation by all DeSoto citizens, individuals may not serve for more than six (6) consecutive years, served as full terms, not including appointments to unexpired terms, on the same board or commission, with the exception of the Civil Service Commission. (The term of office for Civil Service Commissioners is articulated in the Texas Local

Government Code).⁴ This requirement does not prevent a person appointed to a board, commission, or corporation from being appointed to a different board, commission, or corporation, after the term of office on the previous board/commission is complete. In addition, a person may be appointed to the same board, commission, or corporation after one (1) year has elapsed from the expiration of such person's previous term of office on such board, commission or corporation.

<u>Example</u>: If a board member is appointed for one year to fill an unexpired term two year term, that member is eligible to be appointed for three additional two-year terms. Thus the member would serve a total of seven years.

ATTENDANCE

Any member of a board or commission should be able to attend all required meetings. Any person absent from three (3) or more consecutive regular meetings of such board, commission or corporation without approval of the City Council may be removed from such board or commission by the City Council after a notice and a public hearing. Also, any member of a board or commission who is absent from thirty percent (30%) or more of the regularly scheduled meetings within each of any two (2) consecutive six (6) month periods may be removed from such board or commission by the City Council after a notice and a public hearing.

TERM OF OFFICE

Except for the Keep DeSoto Beautiful Corporation and the DeSoto Economic Development Corporation, and as otherwise provided by State Law, City Charter or City ordinance, the term of office of a member of any board or commission expires on September 30th of the year in which such person's term of office expires. The term of

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⁴ Texas Local Government Code, Section 143.006 "Implementation: Commission"

office for a member of the Board of Directors for the Keep DeSoto Beautiful Corporation expires March 31st of the year in which such person's term of office expires. The term of office for a member of the DeSoto Economic Development Corporation Board expires December 31st of the year in which such person's term of office expires. A person will continue to serve on the board or commission until a successor is appointed. Any vacancy on a board or commission is filled by an appointment for the remainder of the unexpired term.

APPLICATIONS/INTERVIEWS

Citizens interested in serving on any board or commission may make application to the City Council, on a form provided by the City. The City Council reviews the applications and then may conduct interviews of available applicants for board and commission vacancies.

The City Council reserves the right to conduct background investigations on all applicants.⁵

ETHICS AND DECISION MAKING FOR DESOTO PUBLIC OFFICIALS

Ethical considerations in the decision-making process of DeSoto public officials are at the forefront of public scrutiny. Even the mere appearance of impropriety impacts the effectiveness of DeSoto public officials. Public confidence and respect can best be promoted if DeSoto public officials, whether paid or unpaid, whether elected or appointed, uniformly treat all citizens with courtesy, impartiality, fairness and equality under the law and avoid both actual and potential conflicts between their private self-interest and the public trust.

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⁵ Code of Conduct Ordinance, Section 1.1415 "Criminal History Checks on Board or Commission Applicants"

Ethics is often defined as the principle of right and good conduct; a system of moral turpitude; the study of the general nature of morals and the specific moral choices to be made by the individual in his or her relationship with others.

The conduct of DeSoto public officials is governed by the City Charter⁶, the Code of Conduct Ordinance⁷ and State Law. Members of the City Council and the members of all boards and commissions appointed or confirmed by the City Council must be knowledgeable of the City Charter, the Code of Conduct and State Law regarding ethics when participating in and making decisions while serving on a board or commission.

The City Charter expressly prohibits certain conduct by DeSoto public officials which is covered by State Law. For example, the Charter prohibits any City Councilmember or any board or commission member of the City from having a direct or indirect interest in any contract⁸ with the City. For example, a business owned or controlled by a City Councilmember or board and commission member may not have a contract with the City to provide goods, materials or services. Similarly, the Code of Conduct which adopts the State Law governing conflicts of interests by local public officials also contains similar or more stringent prohibitions. Thus a DeSoto public official should be familiar with the City Charter, the Code of Conduct and applicable State and Federal Law to ensure there are no provisions which govern the official's conduct.

⁶ City of DeSoto Home Rule Charter

⁷ DeSoto Code of Ordinances, Article 1.1400 Code of Conduct Ordinance

⁸ Contract means any lease, claim, account or demand against or agreement with any person, whether expressed or implied, executed or executor, oral or written.

CODE OF CONDUCT

These ethical standards are in the form of an Ordinance⁹ codified in the City Code of Ordinances, and apply to the Mayor, any member of the City Council, any appointed or confirmed member of any City board, commission, corporation, or committee established by ordinance, City Charter¹⁰, State Law or otherwise, on a temporary or permanent basis, operating either under the direct or indirect authority or subject to either the direct or indirect control of the City Council. The Code of Conduct applies to the City Manager, City Secretary, Municipal Judge, Health Officer, members of the Planning and Zoning Commission, the Zoning Board of Adjustment, the Civil Service Commission, the Building Standards Commission, the Library Board, the Commission, Tri-City Regional Animal Shelter Advisory Board, the DeSoto, Texas Historical Foundation Board, the Board of Directors of the DeSoto Economic Development Corporation, the DeSoto Park Development Corporation Board, the Keep DeSoto Beautiful Corporation Board, the DeSoto Housing Finance Corporation Board, and the DeSoto Health Facilities Corporation Board.

The Code of Conduct does not apply to employees¹¹, including those individuals employed on a full-time, part-time or internship basis or to independent contractors of the City. The ethical standards of conduct for employees are governed by the DeSoto Personnel Policies and Procedure Manual. Any complaint that an employee has violated these standards is referred to the Director of

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⁹ DeSoto Code of Ordinances, Article 1.1400 Code of Conduct Ordinance

¹⁰ City of DeSoto Home Rule Charter

Employee means any person employed by the City, including those individuals on a full-time, part-time or internship basis, but does not include independent contractors.

Human Resources or to the City Manager. The Code of Conduct adopts the State Law governing conflicts of interest for local public officials under Chapter 171 of the Texas Local Government Code and contains additional and stricter standards than found in State Law or the City Charter¹². For your convenience, the ethical standards under the State Law are discussed below.

PURPOSE OF THE CODE OF CONDUCT

The purpose of the Code of Conduct is to ensure that DeSoto public officials are independent, impartial and responsible only to the citizens of the City; to prevent any interest, financial or otherwise, direct or indirect, or engagement in any business, transaction or professional activity of a DeSoto public official to conflict with the proper discharge of their duties in the public interest; to prevent public office from being used for personal gain; and to ensure that the DeSoto boards and commissions are at all times maintained as nonpartisan bodies. The Code of Conduct serves not only as a guide for the conduct of the City's boards and commission members, but also as a basis for discipline for those who refuse to comply by its terms, the overriding interest being that officers of the City shall at all times strive to avoid even the appearance of impropriety. In addition, the Code of Conduct standards apply if a close relative (spouse, parent, child) of the DeSoto public official has a conflict or has a prohibited situation or business relationship¹³.

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¹² DeSoto Home Rule Charter, Section 2 "Conflict of Interest"

¹³ Code of Conduct Ordinance, Section 1.1403 "Definitions"

SPECIFIC CODE OF CONDUCT STANDARDS

No DeSoto public official or a relative 14 thereof shall

- 1. Have a financial interest, direct or indirect, in any contract with the City nor shall such person be financially interested, directly or indirectly, in the sale to the City of any land, or rights or interest in any land, materials, supplies or service. An actual financial benefit¹⁵ from the transaction shall not include
 - (a) An ownership in the entity transacting business with the City where the ownership interest is less than one (1%) percent¹⁶; or
 - (b) Compensation as an employee, officer or director of the entity transacting business with the City where such compensation is not affected by the entity's transaction with the City. ¹⁷For example: a board or commission member or spouse of such board or commission member may not have a contract to sell goods, materials or services to the City, nor may such persons purchase property sold by the City including property sold at an auction.

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¹⁴ *Relative* means any person related to an officer within the first degree by consanguinity or affinity. This relationship includes the spouse, parents, children, stepchildren, father- and mother-in-law, or son- and daughter-in-law of the officer.

¹⁵ *Benefit* means anything reasonably regarded as pecuniary or economic gain or pecuniary or economic advantage, including benefit to any other person in whose welfare the beneficiary has a Substantial Interest.

¹⁶ Code of Conduct Ordinance, Section 1.1404 "Standards of Conduct for Officers", Subsection a.1

Code of Conduct Ordinance, Section 1.1404 "Standards of Conduct for Officers", Subsection a.2

2. Participate in a vote or decision on any matter in which the officer has a Substantial Interest, which is defined as follows.

A Substantial Interest in a business entity¹⁸ occurs when

- (a) The DeSoto public official owns at least a ten percent (10%) share of the voting stock or shares of the business entity, or owns either at least ten percent (10%) or at least \$15,000 of the fair market value of the business entity¹⁹; or
- (b) Funds received by the DeSoto public official from the business entity exceed ten percent (10%) of the DeSoto public official's gross income for the previous year²⁰.

Alternatively, a DeSoto public official has a Substantial Interest in real property if

- (a) It is reasonably foreseeable that an action on the matter will have a specific economic effect distinguishable from its effect on the public²¹; and
- (b) The DeSoto public official's interest is an equitable or legal ownership with a fair market value of \$2,500 or more²².

¹⁹ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 1

²¹ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 2

¹⁸ Business entity means any person, entity, joint venture, unincorporated association or firm, institution, foundation, sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law, whether profit or non-profit.

²⁰ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 1

²² Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 2

Note that *Specific Economic Effect* is not defined by the statute; therefore, DeSoto public officials should file an affidavit and abstain from participation if any economic effect is foreseeable.²³

Examples: (1) a board or commission member may not vote on a matter affecting or concerning such person's residence or real property; (2) a Planning and Zoning Commissioner or City Councilmember may not vote on a zoning change or on plat approval for property owned by such person, or which is owned by a business that is owned by the City Council or Planning and Zoning Commissioner; (3) a Planning and Zoning Commissioner or City Councilmember may not vote on a zoning case or on plat approval for property owned by a person or entity if funds received by the public official from such person or entity are more than ten percent (10%) of the public official's gross income during the previous 12 months.

3. Represent or appear on behalf of private interests of others before the City Council, or any agency, board, commission, corporation, or committee of the City, nor represent any private interests of others in any action or proceeding involving the City, nor voluntarily participate on behalf of others in any litigation to which the City is a party or to which there is a substantial likelihood that the City will be a party.²⁴

<u>Examples</u>: A board or commission member may not represent a property owner before the Zoning Board of Adjustment, or police officer or firefighter in a disciplinary hearing before the Civil Service Commission.

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²³ Specific Economic Effect is an economic effect on a business entity that is distinguishable from the effect on the public.

²⁴ Code of Conduct Ordinance, Section 1.1404 "Standards of Conduct for Officers", Subsection c

- 4. Accept any gift²⁵ from any person that might reasonably tend to influence such officer in the discharge of official duties, or that the officer knows or should know is being offered with the intent to influence the officer's official conduct. The prohibition against gifts shall not apply to
 - (a) A lawful political contribution as defined by the Texas Election Code;
 - (b) An honorarium in consideration for services unless the officer would not have been asked to provide the services but for the Officer's position;
 - (c) Meals, lodging, transportation in connection with services rendered by the officer at a conference, seminar or similar event that is more than merely perfunctory;
 - (d) Complimentary copies of trade publications and other related materials;
 - (e) Attendance at hospitality functions at local, regional, state or national association meetings and/or conferences;
 - (f) An item with a value less than fifty dollars (\$50);
 - (g) Tee shirts, caps, mementos and other similar promotional material or items with a value less than fifty dollars (\$50);
 - (h) Gifts on account of kinship or a personal, or professional, or business relationship independent of the officer's status;

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²⁵ Gift means anything of value, regardless of form, including a favor offered or given in the absence of adequate and lawful consideration.

- (i) Complimentary attendance at political or charitable fund raising events; or
- (j) Meals, lodging, transportation, or entertainment furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public events.²⁶

Examples: (1) a board or commission member may accept a campaign contribution if a candidate for elective public office; (2) a board or commission member may not accept a cash payment for attendance or participation as a speaker at a seminar or conference if such person is invited to speak or participate because of such person's service or position on a DeSoto board or commission.

5. Use such person's official position to secure special privileges or benefits for such person or others.²⁷

<u>Example</u>: A board or commission member should not secure additional consideration of a matter because such public official is a member of the same service organization, church or other organization.

- 6. Grant any special consideration, treatment or advantage to any citizen, individual, business organization or group beyond that which is normally available to every other citizen, individual, business organization or group.
- 7. Disclose confidential information. ²⁸

²⁶ Code of Conduct Ordinance, Section 1.1404 "Standards of Conduct for Officers", Subsections d.1 through d.11

 $^{^{\}rm 27}$ Code of Conduct Ordinance, Section 1.1404 "Standards of Conduct for Officers", Subsection e

<u>Example</u>: A board or commission member should not disclose or release to the public confidential City records or documents.

8. Use City supplies, personnel, property, equipment or facilities (whether tangible or intangible) for any purpose other than the conduct of official City business, unless otherwise provided for by law, ordinance or City policy.²⁹

<u>Example</u>: A City Councilmember or member of the Planning and Zoning Commission may not use City property (computers, vehicles, stationary, office supplies) or personnel for personal use.

9. Act as a surety on any official bond required of any officer or employee of the City, or for a business that has a contract with the City.³⁰

ADDITIONAL STANDARDS

There are additional standards applicable to some boards and commission members and former officials:

1. No member of the City Council, the Planning and Zoning Commission, or Board of Adjustment shall participate in, or vote on, any land use matter (e.g. zoning, variances, plats, permits) in which such officer has a Substantial Interest in any

²⁸ Confidential information means any information, to which an official has access in such person's official capacity, which may not be disclosed to the public except pursuant to State and/or Federal Law and which is not otherwise a matter of public record or public knowledge.

²⁹ Code of Conduct Ordinance, Section 1.1404 "Standards of Conduct for Officers", Subsection h

 $^{^{30}}$ Code of Conduct Ordinance, Section 1.1404 "Standards of Conduct for Officers", Subsection i

real property within 200 feet of the real property, the subject of the land use matter.³¹

<u>Example</u>: A City Councilmember or Planning and Zoning Commissioner may not vote on a zoning case or on plat approval for property located within 200 feet of real property owned by such DeSoto public official.

2 No member of the City Council who is on the governing body of a nonprofit organization shall vote on any funding request by that nonprofit organization other than for membership or subscription dues or fees, or as part of the City's annual budget, unless the nonprofit organization has a governing body appointed in whole or in part by the City Council.³²

Example: A member of the City Council who is a director of the Chamber of Commerce or a member of the governing body of a church or performing arts organization may not vote on a request for public funds unless, the funding request is for membership dues (City membership in the Chamber of Commerce) or a part of the City's annual budget (hotel/motel tax revenue allocated in the City budget to fund authorized activities such as the Chamber of Commerce, promotion of the arts or historical preservation).

3. With the exception of those proceedings allowed under this Code of Conduct, City Councilmembers shall not personally appear in their own behalf before the City Council, or any City board, commission, corporation or committee but may

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³¹ Code of Conduct Ordinance, Section 1.1405 "Additional Standards", Subsection a

³² Code of Conduct Ordinance, Section 1.1405 "Additional Standards", Subsection b

designate and be represented by a person of their choice in any such personal matter.³³

Example: A City Councilmember should not personally appear on such person's own behalf before the City Council or Planning and Zoning Commission to request a zoning change or plat approval, or before the Zoning Board of Adjustment to request a variance, or before the Board of Directors of the DeSoto Economic Development Corporation to request funding an economic development grant for such person's business or property.

4. No past officer of the City shall, for a period of one (1) year after the date of termination of such relationship with the City, appear before the City Council, or any City board, commission, corporation, or committee, to represent the interests of another on any matter.³⁴

<u>For example</u>: A former member of the City Council or Planning and Zoning Commission may not appear before the City Council or the Planning and Zoning Commission to request a zoning change or plat approval for the property of another unless a year has elapsed since such person served on the City Council or Planning and Zoning Commission.

DISCLOSURE OF INTERESTS

If a DeSoto public official has a Substantial Interest in a matter pending before the body of which the DeSoto public official is a member, the person must, before a vote or decision on such matter, file an affidavit on a form provided by the City, disclosing the interest, abstain from further participation in such matter, and not

³⁴ Code of Conduct Ordinance, Section 1.1406 "Appearance by Past Officer"

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³³ Code of Conduct Ordinance, Section 1.1405 "Additional Standards", Subsection c

be physically present when such matter is discussed, or when action is taken.³⁵

REAL PROPERTY DISCLOSURE

Additionally, a DeSoto public official must upon the election, appointment, or confirmation of appointment, and on or before January first of each calendar year, disclose on a form provided by the City, the existence and location of any real property in the City in which the official or relative of the official, has any equitable or ownership interest, including any interest of one (1) percent or more in any entity which has an equitable or ownership interest in any real property in the City. Said disclosure shall also include the entity and location of all real property within the City in which the officer has acquired or conveyed any interest since the filing of the last report required by this Code of Conduct. If any officer has an interest in an entity that will not disclose to the officer whether or not the entity has a financial interest in real property in the City, the officer may satisfy this disclosure requirement by stating such fact in writing to the City Secretary.³⁶

CODE OF CONDUCT COMPLAINTS

The Code of Conduct permits any person to file a complaint that a DeSoto public official has violated the Code of Conduct. All complaints must be made in writing on a form provided by the City, sworn to before a notary public and filed with the City Secretary. The complaint must describe in detail the act or acts complained of and the specific section(s) of the Code of Conduct

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³⁵ Code of Conduct Ordinance, Section 1.1407 "Disclosure of Substantial Interest; Affidavit"

³⁶ Code of Conduct Ordinance, Section 1.1408 "Disclosure of Real Property Interest"

alleged to have been violated. A general complaint lacking detail and anonymous complaints will not be considered.³⁷

CODE OF CONDUCT COMPLAINT PROCESS

Code of Conduct complaints concerning employees, except the City Manager, will be referred to the Director of Human Resources or the City Manager. Complaints concerning a DeSoto public official will be referred to the City Attorney to initially review the complaint to determine factual and legal sufficiency.³⁸

Refer to the Code of Conduct Ordinance for the process for receiving, examining, and reporting to the City Council the complaint.³⁹

STATE LAW

As previously stated, the Code of Conduct adopts the State Law governing conflicts of interests of local public officials. 40

Chapter 171 of the TEXAS LOCAL GOVERNMENT CODE also governs the conflicts of interest of DeSoto public officials. The purpose of Chapter 171 is to prevent local public officials from using their positions for hidden personal financial gain. Texas Law governing conflicts of interest applies to all local public officials, whether appointed, elected, paid, or unpaid, who exercise more than advisory responsibilities, including the City Council,

³⁸ Code of Conduct Ordinance, Section 1.1409 "Complaints Against Officers", Subsection a

³⁷ Code of Conduct Ordinance, Section 1.1409 "Complaints Against Officers", Subsection a

³⁹ Code of Conduct Ordinance, Section 1.1409 "Complaints Against Officers", Subsections a through d, and Section 1.1410 "Violations", Subsections 1 through 6, and Section 1.1412 "Limitations"

⁴⁰ Code of Conduct Ordinance, Section 1.1411 "Adoption of State Statute"

Planning and Zoning Commission, Civil Service Commission, Zoning Board of Adjustment, and the Building and Standards Commission. However, these statutory provisions are minimum standards for ethical conduct. State Law governing conflicts of interest normally does not apply to boards that are purely advisory, such as the Arts Commission, Library Board or the Boards of Directors of the DeSoto Economic Development Corporation, the DeSoto Park Development Corporation, the DeSoto Housing Finance Corporation, the DeSoto Health Facilities Corporation, the DeSoto, Texas Historical Foundation, and the Keep DeSoto Beautiful Corporation. However, the City Council has determined that the law governing conflicts of interest of local public officials should apply to all board and commission members even though the State Law provisions normally apply only to members of boards and commissions that perform more than advisory functions. The Code of Conduct requires members of all boards, commissions, corporations and committees of the City to comply with the following rules of Chapter 171 of the Texas Local Government Code which are summarized below.

ECONOMIC CONFLICTS OF INTEREST

Rule: A DeSoto public official commits a criminal offense if the DeSoto public official knowingly participates in a vote or decision on any matter involving a business entity or real property in which the DeSoto public official has a "Substantial Interest."

1. Requirement to file an affidavit and abstain

A DeSoto public official who has a Substantial Interest in a business entity or real property must

- (a) File an affidavit with the City Secretary revealing the nature and extent of the interest with the governing body⁴¹; and
- (b) Abstain from further participation in the matter⁴².

Also, State Law requires a separate budget vote on matters in which a DeSoto City Councilmember has a Substantial Interest.

2. What constitutes a Substantial Interest?

A Substantial Interest in a business entity (sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law) occurs when

- (a) The DeSoto public official owns at least a ten percent (10%) share of the voting stock or shares of the business entity, or owns either at least ten percent (10%) or at least \$15,000 of the fair market value of the business entity⁴³; or
- (b) Funds received by the DeSoto public official from the business entity exceed ten percent (10%) of the DeSoto public official's gross income for the previous year. 44

⁴¹ Code of Conduct Ordinance, Section 1.1407 "Disclosure of Substantial Interest; Affidavit"

⁴³ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 1

⁴² Code of Conduct Ordinance, Section 1.1407 "Disclosure of Substantial Interest; Affidavit"

⁴⁴ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 1

Alternatively, a DeSoto public official has a Substantial Interest in **real property** if

- It is reasonably foreseeable that an action on the matter (a) will have a specific economic effect distinguishable from its effect on the public 45; and
- The DeSoto public official's interest is an equitable or (b) legal ownership with a fair market value of \$2,500 or more.46

"Specific Economic Effect" is not defined by the statute; therefore, DeSoto public officials should file an affidavit and abstain from participation if any economic effect is foreseeable

3. Substantial Interest also extends to relatives in the first degree.

A DeSoto public official is considered to have a Substantial Interest if a relative in the first degree to the DeSoto public official, by either consanguinity (blood) or affinity (marriage), would have a Substantial Interest in a business entity or real property under the above tests.⁴⁷

Moreover, the affinity relationship continues after death or divorce if there is a living child of that marriage.⁴⁸

Relatives in the First Degree (a)

⁴⁵ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 2

⁴⁶ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 2

⁴⁷ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 3

⁴⁸ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Relative"

Consanguinity: Affinity:

Parents Spouse of those listed Children under consanguinity

Sisters & brothers Spouse

Spouse's parents Spouse's children

Stepparents or stepchildren

(b) Relatives in the Second Degree

Consanguinity: Affinity:

Grandparents Spouse of those listed Grandchildren under consanguinity

Spouse's grandparents
Spouse's grandchildren

Spouse's siblings

c) Relatives in the Third Degree

Consanguinity:

Great grandparents Great grandchildren Aunts & uncles Nieces & nephews

4. Acting as a Surety Prohibited

A DeSoto public official is prohibited from acting as surety for

(a) Any business entity contracting with the governmental entity; or

- (b) Any official bond. 49
- 5. Majority of DeSoto board or commission members Substantially Interested

When a majority of the members of the board or commission have a Substantial Interest or conflict, and are required to file and do file affidavits, then all of the members of such board or commission, including those substantially interested, may participate and vote on the matter.

6. Actions not voided by a board or commission member's participation

An action will be voided (as if the action never took place or occurred) because of a DeSoto public official's participation in a decision **only** if that participation is determinative.

7. Penalty for failure of a DeSoto public official to file an affidavit or for participation

Failure to file the affidavit and to abstain constitutes a Class A Misdemeanor, and if convicted may be punishable by a fine of up to \$4,000 and one-year confinement.

ADDITIONAL STATUTORY REQUIREMENTS FOR MUNICIPAL AUTHORITY RESPONSIBLE FOR APPROVING PLATS

Members of the City Council and the Planning and Zoning Commission must also be aware of the further requirements of Section 212.017 of the TEXAS LOCAL GOVERNMENT CODE. These provisions are similar to those of Chapter 171 discussed above. Although under the DeSoto Subdivision and Development

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⁴⁹ Code of Conduct Ordinance, Section 1.1404 "Standards of Conduct for Officers", Subsection i

Ordinance codified in Chapter 9 of the Code of Ordinances, the Planning and Zoning Commission is the final approving authority of subdivision plats. Both City Council and Planning and Zoning Commission must comply with the following standards. A member of the City Council and Planning and Zoning Commission are held to have a Substantial Interest in a subdivided tract if such person:

- (1) Has an equitable or legal ownership interest with a fair market value of \$2,500 or more⁵⁰; or
- (2) Acts as developer of the tract; or
- (3) Owns ten percent (10%) or more of the voting stock or shares or ten percent (10%) or more or \$5,000 or more of a business entity which
 - (a) Has equitable or legal interest with a fair market value of \$2,500 or more⁵¹; or
 - (b) Acts as developer; or
- (4) Receives funds equal to ten percent (10%) or more of annual gross income from a business entity meeting (3), above⁵²; or
- (5) Is related in the first degree by consanguinity or affinity to someone who has Substantial Interest.⁵³

⁵⁰ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 2

⁵¹ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 2

⁵² Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 1

Members of the City Council and the Planning and Zoning Commission are required to (1) file an affidavit disclosing their Substantial Interest with the record-keeper clerk; and (2) abstain from participating in the discussion or vote. Failure to do so is a Class A Misdemeanor punishable by a maximum fine of \$4,000 and/or up to one year in prison.

NEPOTISM

The City Charter, the Code of Conduct and State Law contain nepotism provisions (the employment or appointment of relatives of public officials).

State Law provides that DeSoto public officials may not appoint, confirm the appointment of, or vote for appointment or confirmation of appointment of an individual to a position which will be directly or indirectly compensated from public funds if that individual is related to the public official within the third degree by consanguinity or second degree by affinity. State Law applies only to paid or compensated positions. State Law provides a continuous employment exception for a relative who was previously and continuously employed for a period of 30 days if the DeSoto public official is appointed or for a period of 6 months if the DeSoto public official is elected.

<u>Example</u>: City Councilmember may not vote to confirm the appointment by the City Manager of a relative of the City Councilmember to the position of Chief of Police or Fire Chief.

City Charter Article XII, Section 3 contains a similar provision. The City Charter provides that a person related within the second degree by affinity or third degree of consanguinity to the Mayor or

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⁵³ Code of Conduct Ordinance, Section 1.1403 "Definitions", "Substantial Interest", Subsection 3

City Councilmember may not be appointed to any paid office, position, or clerkship of the City.⁵⁴

Example: The spouse or child of the Mayor or City Councilmember may not be employed by the City unless such relative was employed for 6 months prior to the election of the Mayor or affected Councilmember.

MISUSE OF OFFICIAL INFORMATION

DeSoto public officials may have access to confidential information that is not available to the public or that has not been made public. 55 Members of the City Council, Planning & Zoning Commission, boards of directors of City corporations, and other boards and commissions routinely have access to confidential official information, which would be valuable to land spectators and investors. DeSoto public officials should not use such information to assist another person or entity to acquire any property or enterprise or aid another to speculate on the basis of such information. It is a crime for a DeSoto public official to profit, or help someone else profit, from inside information acquired by the DeSoto public official by virtue of the official position on a board or commission.

INCOMPATIBILITY

Often times citizens may serve on boards and commissions at different levels of government or have employment positions which overlaps or conflicts with their duties as a member of a DeSoto board or commission. The Doctrine of Incompatibility⁵⁶

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⁵⁴ DeSoto Home Rule Charter

⁵⁵ Code of Conduct, Section 1.1404 "Standards of Conduct for Officers", Subsection g

⁵⁶ Refer to "2012 Texas Dual Office Holding Laws Made Easy", Texas Secretary of State website https://www.oag.state.tx.us/AG_Publications/pdfs/dualoffice-easy.pdf

prohibits an individual from serving on two boards or commissions of conflicting loyalties. An individual may not promote the interest of one office to the detriment of the interests represented by the other office. The Doctrine prohibits one individual from occupying two offices where one office might impose its policies on the other or subject it to control in some way.

<u>Example</u>: An individual may not simultaneously serve as the Dallas County Auditor and as a DeSoto City Councilmember.

The Doctrine of Incompatibility also applies to situations of self-appointment or self-employment. Generally, it is incompatible to be both a member of a body making the appointment and an appointee of that body.

<u>Example</u>: The DeSoto City Council may not appoint one of its own members as the City Manager.

CITY CHARTER

WHO IS SUBJECT TO THE CHARTER

The City Charter was adopted by popular vote of the citizens of DeSoto. It is the constitution and framework for the DeSoto City government. The City Charter prohibits certain conduct by DeSoto public officials that is not covered by State Law. The City Charter prohibitions apply to officers and employees of the City.

The City Charter can be accessed via the City website (www.desototexas.gov)⁵⁷ or by submission of a request to the City Secretary's Office.⁵⁸

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DeSoto Home Rule Charter, City of DeSoto website http://www.ci.desoto.tx.us/documentcenter/view/5560

⁵⁸ City of DeSoto, City Secretary's Office, Office Phone 972.230.9646 or City of DeSoto website http://www.ci.desoto.tx.us/index.aspx?nid=40

OPEN GOVERNMENT

Open government is inherent in a democracy. In Texas, citizens have the right to observe their government in action. Every regular, special, or called meeting of boards and commissions that have *rule making authority* or *quasi-judicial authority* must be open to the public and are subject to the Open Meetings Act. Citizens also have the right of access to including the right to examine and copy information and records collected, maintained and prepared by the City including the boards and commission. It is essential that persons appointed to DeSoto boards and commissions of the City are aware of citizens' rights to access to open government and public information.

OPEN MEETINGS ACT

The Open Meetings Act codified at Chapter 551 of the Texas Government Code⁵⁹ is designed to provide citizen access to meetings of the City Council and boards and commissions, except in certain limited instances. Every regular, special or called meeting of the City Council and certain DeSoto boards and commissions is open to the public unless a closed meeting is authorized by the Act. For authorized closed meetings please consult the City Secretary or City Attorney.

The Open Meetings Act applies to the DeSoto City Council, as well as any DeSoto board or commission that has rule making or quasi-judicial power.

All regular, special or called meetings of the City Council and the DeSoto boards and commissions must be open to the public. Notice of the date, time, place and subject of each meeting must be posted 72 hours prior to the scheduled meeting. The board and

⁵⁹ Texas Local Government Code, State website http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.551.htm

commission members may only discuss or take action on the items described in the posted notice.

The Open Meetings Act applies to any discussion or verbal exchange between a quorum of the City Council or a board or commission, or between a quorum of a City Council or a board or commission and another person about public business or policy which the City Council or a board or commission controls or supervises, or during which formal action is taken.

SOCIAL MEETINGS

Social meetings (purely social in nature) unrelated to public business, conventions and seminars are not subject to the Open Meetings Act and the notice requirements, if no formal action is taken and any discussion of public business is incidental.

COMMITTEES

Committees consisting of members of a board or commission even though less than a quorum are subject to the Open Meetings Act when the committee meets to discuss public business. Although a committee less than a quorum may not bind the board or commission, the public is deprived of access to the decision making process if the board or commission becomes "the rubberstamp" of the committee if the meeting notice is not posted.

VIDEO CONFERENCE MEETINGS

Members of the City Council and DeSoto boards and commissions may participate in an open or closed meeting via video conference when a quorum of such body is present at one meeting place. There are, however, special notice, recordkeeping, and two-way communication requirements. Citizens have the right to attend the meeting at the remote location and the meeting place where a

quorum is present. For further information, please contact the City Secretary or City Attorney.

EMERGENCY MEETINGS

DeSoto boards and commissions may conduct emergency meetings subject to different time and notice requirements.

- It must be an emergency an imminent threat to the public health or safety or a reasonably unforeseen situation requiring immediate attention. Destruction of the City by a tornado would qualify as an emergency, while consideration of a settlement offer relating to litigation would not constitute an emergency. Failure to post notice on time or the board's or commission's prior delay in taking necessary action does not constitute an emergency.
- 2. Notice must be posted at least two (2) hours before the scheduled emergency meeting and must clearly describe the urgent public necessity or emergency.
- 3. Emergency item can be added to the agenda of a previously-scheduled meeting by posting a supplemental notice, but non-emergency items cannot be added to an emergency meeting agenda with less than the seventy-two (72) hours' notice.
- 4. Must give notice of an emergency meeting by telephone or via electronic media to any news media that have previously requested notice of public meetings and agreeing to pay cost of providing the notice.

ACTION/VOTING

The board or commission must make a decision or vote in a public meeting. No voting by secret written ballot.

CLOSED MEETINGS

If a closed meeting is authorized, the board or commission must first convene in an open meeting with a quorum present for which proper notice has been given.

PROCEDURE FOR CLOSED MEETINGS

The Chairperson must publicly announce that a closed meeting will be held and identify the section or sections of the Open Meetings Act under which the closed meeting is to be conducted. The board or commission must keep either a certified agenda or make a tape recording of the closed meeting, except for private consultation with its attorney. The certified agenda is a written statement of the subject matter of the closed meeting, any action taken, and the date and time of the beginning and at the end of the meeting. A decision or vote on a matter discussed in a closed meeting must be made in an open meeting.

VIOLATION OF OPEN MEETINGS ACT

Any action taken by a board or commission in violation of the Open Meetings Act may be set aside by the Court.

Any board or commission member, who knowingly ⁶⁰ conspires to circumvent the Open Meetings Act by meeting in numbers less than a quorum for the purpose of secret deliberations, commits a misdemeanor punishable by a fine of not less than \$100 or more than \$500, and/or confinement for not less than one month or more than six months.

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⁶⁰ Knowingly means a person acts knowingly, or with knowledge, with respect to the nature of the person's conduct or to circumstances surrounding the conduct when the person is aware of the nature of the contact or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of the person's conduct whether the person is aware that the conduct is reasonably certain to cause the result.

A member of a board or commission who knowingly calls or aids in calling an unauthorized closed meeting commits a misdemeanor offense punishable by a fine of not less than \$100 nor more than \$500 and/or confinement for not less than one month or more than six months.

A member of a board or commission commits a Class C Misdemeanor if the member participates in a closed meeting of the board or commission knowing that a certified agenda of the closed meeting is not being kept or that a tape recording of the closed meeting is not being made.

A member of a board or commission or any individual who without lawful authority knowingly provides to a member of the public the certified agenda or tape recording of a meeting that was lawfully closed to the public under the Open Meetings Act commits a Class C Misdemeanor and is liable to the person who was injured or damaged by the disclosure for damages, lost wages, defamation, mental or emotional distress, reasonable attorneys' fees and court costs.

Although a board or commission member may not give the public the certified agenda or the tape recording of a closed meeting, a member may make public statements about the subject matter of the closed meeting. Board and commission members should avoid making public statements about the subject matter of a closed meeting so as not to injure or damage any person affected. Further, each member of the board or commission should respect the privilege afforded to the board or commission to conduct a closed meeting. If members of the board or commission do not intend to keep the matter confidential, then the board or commission should not conduct a closed meeting.

<u>CITIZEN RIGHT TO SPEAK AT OPEN MEETINGS</u>

The citizens have a right to see its government and public officials in action. This means the right to prior notice of meetings, right to attend, and the right to record or videotape the meeting. The public does not have the right to speak at or to control public meetings. If a board or commission allows the public to speak, it must do so in a nondiscriminatory manner. A citizen may have a right to speak on a particular item if a statute explicitly provides such a right. For example, citizens may speak at public hearings on requested zoning changes.

PUBLIC INFORMATION ACT

Texas has adopted a Public Information Act to secure public access to the records and information held by state and local government. It is similar to the Federal Freedom of Information Act. Public Information Act applies to information that is collected, assembled, or maintained under a law or ordinance or connection with the transaction of official City business. It includes information that the City owns or has a right of access. The general forms in which public information exists may include a book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, Photostat, sound recording, map, drawing, voice, data, video held in computer memory and includes e-mail or other electronic communication. Even a draft is public information if it is collected, assembled, or maintained by or for the City under a law or ordinance or in connection with the transaction of official City business.

REQUEST FOR ACCESS

A citizen may request copies of information or to inspect information on-site.⁶¹ The City may not inquire into the requestor's motives but may require the request to be in writing. Public information must be made available to the public during normal business hours within ten (10) business days after the request is made. If the City is unable to provide the information

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⁶¹ Refer to the Texas Local Government Code, Section 552 "Public Information"

within ten (10) days, it must notify the requestor and establish a reasonable date for production.

Some information is protected by statute or other law and may not be disclosed to the public. Other information may be withheld from disclosure but the City must within ten days request an opinion from the Texas Attorney General as to whether the requested information should be disclosed. The City must also submit comments and responsive materials within fifteen (15) days to the Attorney General and notify the requestor that an Attorney General opinion has been requested. The information is not released to the requestor until the Texas Attorney General issues a written opinion requiring the disclosure of the requested information.

Some common types of information that may be withheld are

- 1. The identity of a person (confidential informant) who reports an ordinance or other criminal violation;
- 2. Information relating to litigation in which the City is, or may be, a party, or to which a DeSoto public official or employee of the City is or may be a party;
- 3. Trade secrets and certain commercial or financial information; and/or
- 4. Information relating to economic development negotiations between the City and business prospects.

CONCLUSION

Public service on a DeSoto board and commission is an honor. Your voluntary service directly contributes to the quality of life in DeSoto. Although this public service is not paid or compensated the contributions and benefits to the DeSoto community and its citizens are invaluable. Citizens fortunate enough to serve on

boards and commissions do so with pride, integrity and with the highest of ethical standards.

REFERENCE MATERIALS

- DeSoto Home Rule Charter, 2012 or as amended, may be obtained from http://www.ci.desoto.tx.us/document center/view/5560
- DeSoto Code of Conduct Ordinance, amended 06-04-13, may be obtained through the DeSoto Code of Ordinances, Chapter 1 "General Provisions", Article 1.1400 "Code of Conduct", from http://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=desotoset
- Public Information Handbook, Texas Office of the Attorney General, may be obtained from https://www.oag.state.tx.us/ag_publications/pdfs/publicinfo_hb.pdf
- Texas Open Meetings Handbook, Texas Office of the Attorney General, may be obtained from https://www.oag.state.tx.us/AG_Publications/pdfs/openmeeting_hb.pdf
- Texas Local Government Code, may be obtained from http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.501.