

**GUIDE FOR
ALLEN PUBLIC OFFICIALS**



**A GUIDE FOR CITIZENS
WHO ARE APPOINTED AND ELECTED
TO SERVE THE CITY OF ALLEN**

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GUIDE FOR ALLEN PUBLIC OFFICIALS

The following is intended to be a guide to citizens who are elected to City Council and appointed to any board, commission, corporation or committee of the City of Allen 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 Allen 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 Allen. Each Board or Commission member is selected by the City Council after applications are reviewed and candidates are interviewed. Service on a board or commission is voluntary. Allen board and commission members are not paid or compensated.

ALLEN BOARDS AND COMMISSIONS

Animal Shelter Advisory Committee: This Board assists the Animal Control Unit of the city in complying with requirements of Chapter 823, Health and Safety Code, V.T.C.A. and other applicable state and local laws, by submitting recommendations to the Animal Control Unit.

Board of Adjustment: This Board is a quasi-judicial body that hears citizen requests for variances to the Comprehensive Zoning Ordinance and appeals of interpretations of the Building Officials and 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.

Building and Standards Commission: This Commission hears requests for variances to the building code, electrical code, fire code 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 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.

Central Business District Design Review Committee: This Committee assists the City Council in activities within the Central Business District such as review of design plans for new construction, reconstruction, addition or alteration of structures or buildings in the Central Business District to

ensure Central Business District standards have been met. Additionally the Committee reviews Historic Structure designation requests and carries out such other tasks as designated.

Community Development Corporation: This is a separate non-profit corporation established by the City, whose Board of Directors is appointed by the City Council. The 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.

Community Engagement Advisory Board: This Board advises the City Council and city staff on matters related to community engagement, outreach programs, and special events.

Convention and Visitors Bureau Advisory Board: This Board advises the City Council and City Staff on the sales and marketing of Allen, Texas to the convention, tourism, meeting and leisure travel markets using funding generated from the Local Hotel Occupancy Tax.

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

Keep Allen Beautiful Corporation: This is a separate non-profit corporation established by the City whose Board of Directors is appointed by the City Council. This board is responsible for promoting and conducting various beautification activities for the City.

Library Board: 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 the Northeast Texas Library System.

Planning and Zoning Commission: 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.

Public Art Committee: This Committee recommends annual Public Art Work Plans; participates in the CIP planning process; discovers partnerships and resources for funds; serves on Artist Selection Panels; develops programs to inform and engage citizens in projects; and fosters private developers' involvement in the commission and selection of public art for their facilities.

Sign Control Board: This Board acts as advisory board to the City Council and reviews and approves required signs and makes decisions on requests for variances to the City sign regulations of the Allen Land Development Code.

ATTENDANCE

Any member of a board or commission should be able to attend all required meetings. Any person who misses three (3) meetings or more than 25% of the board's meetings held during a rolling 12-

month period may not be considered for another term. Special exceptions on the removal of members for absences may be made by the (Nominating) Committee when the absences are due to limited extenuating circumstances and the absences do not affect the ability of the board to maintain a quorum.

APPLICATIONS/INTERVIEW

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 interviews available applicants for board and commission appointments.

ETHICS AND DECISION MAKING FOR ALLEN PUBLIC OFFICIALS

Ethical considerations in the decision making process of Allen public officials are at the forefront of public scrutiny. Even the mere appearance of impropriety impacts the effectiveness of Allen public officials. Public confidence and respect can best be promoted if Allen 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.

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 Allen public officials is governed by the City Charter, the Code of Conduct 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 Allen 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 contract 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 an Allen public official should be familiar with the City Charter, the Code of Conduct and State Law to ensure there are no provisions which govern the official's conduct.

CODE OF CONDUCT

These ethical standards are in the form of Ordinance No. 2030-2-02, as amended by Ordinance No. 3892-2-22, and as 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, 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 who exercises responsibilities beyond those that are advisory in nature, including the members of the Planning and Zoning Commission, Board of Adjustment, Building and Standards Commission, members of the board of directors of the Allen Economic Development Corporation and the Allen Community Development Corporation.

The Code of Conduct does not apply to employees, 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 Allen Personnel Policies and Procedure Manual. Any complaint that an employee has violated these standards is referred to the Director of Human Resources or to the City Manager. The Code of Conduct does not apply to members of City boards, committees, or commissions who do not exercise quasi-judicial responsibilities or responsibilities beyond those that are advisory in nature.

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 Charter. For your convenience, the ethical standards under State Law are discussed below.

PURPOSE OF THE CODE OF CONDUCT

The purpose of the Code of Conduct is to ensure that Allen 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 an Allen 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 Allen 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 Allen public official has a conflict or has a prohibited situation or business relationship.

SPECIFIC CODE OF CONDUCT STANDARDS

No Allen public official or a relative 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 benefit from the transaction shall not include:
 - (a) An ownership in the entity transacting business with the City where the ownership interest is less than ten percent (10%); 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.

For example: A Board of Adjustment member or spouse of such board 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.

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

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 Allen public official owns at least a ten percent (10%) share of the voting stock or shares of the business entity; or
- (b) the Allen public official owns either at least ten percent (10%) or at least \$15,000 of the fair market value of the business entity; or
- (c) funds received by the Allen public official from the business entity exceed ten percent (10%) of the Allen public official's gross income for the previous year; and action on the matter involving the business entity will have a special economic effect on the business entity that is distinguishable from the effect on the public.

Alternatively, an Allen 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 public; and
- (b) the Allen public official's interest is an equitable or legal ownership with a fair market value of \$2,500 or more. (Ownership includes any partnership, joint or corporate ownership or any equitable or beneficial interest as a beneficiary of a trust); and
- (c) an Allen public official is considered to have a substantial interest under this Code of Conduct if a person related to the officer in the second degree of consanguinity or affinity has a substantial interest under this Code of Conduct.

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

For example: (1) A Planning and Zoning Commission or City Councilmember may not vote on a matter affecting or concerning such person's residence or real property; (2) A Planning and Zoning Commission 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 Councilmember or Planning and Zoning Commission member; (3) A Planning and

Zoning Commission member 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 or might be a party.

For example: A member of the City Council or the Planning and Zoning Commission may not represent a property owner before the Board of Adjustment.

4. Accept any gift from any person that might reasonably tend to influence such Officer in the discharge of official duties. The prohibition against gifts does 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 occasional item with a value less than fifty dollars (\$50);
 - (g) tee shirts, caps and other similar promotional material;
 - (h) meals, transportation and lodging in connection with a seminar or conference at which the Officer is providing services;
 - (i) gifts on account of kinship or a personal, professional, or business relationship independent of the Officer's status;
 - (j) complimentary attendance at political or charitable fund raising events; and
 - (k) 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.

For example: (1) A member of the City Council or the Planning and Zoning Commission may accept a campaign contribution if a candidate for elective public office; (2) A member of the City Council or the Planning and Zoning Commission 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 an Allen board or commission.

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

For example: A member of the City Council or the Planning and Zoning Commission 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.

For example: A member of the City Council or the Planning and Zoning Commission 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.

For example: A City Councilmember or member of the Planning and Zoning Commission may not use City property (computers, vehicles, stationery, 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.
10. Engage in any outside activities which will conflict with or will be incompatible with such person's official position or duties as an officer of the City.

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

For example: A City Councilmember or Planning and Zoning Commission member may not vote on a zoning case or on plat approval for property located within 200 feet of real property owned by such Allen public official.

2. No member of the City Council, the board of directors of the Allen Economic Development Corporation and the Allen Community Development Corporation who is on the governing body of a nonprofit organization shall vote on any funding request by that nonprofit organization, unless the nonprofit organization has a governing body appointed in whole or in part by the City Council.
3. With the exception of those proceedings allowed under the Code of Conduct, City Councilmembers shall not personally appear on their own behalf before the City Council, or any City board, commission, corporation or committee but may designate and be represented by a person of their choice in any such personal matter.

For 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 Allen Economic Development Corporation to request funding an economic development grant for such person's business or property.

DISCLOSURE OF SUBSTANTIAL INTERESTS

If an Allen public official has a substantial interest in a matter pending before the body of which the Allen 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 and abstain from further participation in such matter. Note that Code of Conduct complaints concerning employees, except the City Manager, will be referred to the Director of Human Resources or the City Manager.

CODE OF CONDUCT COMPLAINTS

The Code of Conduct permits any person to file a complaint that an Allen 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 alleged to have been violated. A general complaint lacking in detail shall not be sufficient to invoke the investigation procedures contained herein, and anonymous complaints will not be considered.

CODE OF CONDUCT COMPLAINT PROCESS

The City Secretary shall provide a copy of the complaint to the affected officer, City Council and immediately refer the complaint to the City Attorney, who shall initially review the complaint to determine if the complaint contains sufficient detail and alleges a violation of the Code of Conduct. The affected officer may file a written response to the complaint within seven (7) business days

after the complaint is filed with the City Secretary, who shall forward the response, if any, to the City Attorney.

The City Attorney shall submit a written report to the council as soon as possible but not later than fifteen (15) business days after the receipt of the complaint unless an extension is granted by a majority of the non-implicated Councilmembers. The City Attorney may contact the complainant, interview witnesses, and examine any documents necessary for the report. Such report shall be comprehensive and explain in detail all facts, findings, and conclusions in support of the City Attorney's opinion as to whether a violation of this Code of Conduct occurred. When the City Attorney receives a vague complaint or one lacking in detail, the City Attorney shall contact the complainant to request a written clarification. If the complainant fails to provide the City Attorney with written clarification, or if after written clarification is provided, it is the opinion of the City Attorney that the complaint is insufficient in detail and/or fails to allege a prima facie violation of the Code of Conduct, a written report to that effect shall be submitted to the City Council. If the City Attorney determines that a criminal violation may exist, the City Attorney shall refer the matter to the appropriate law enforcement agency.

If it is determined by the City Attorney that the facts as alleged could constitute a violation of this Code of Conduct, then the City Attorney shall, within fifteen (15) business days after receipt of the complaint, notify the Mayor and Councilmembers of the existence and nature of the complaint. The Mayor or any two (2) members of the City Council may cause a meeting of the City Council to convene, whether regular or special, within fifteen (15) business days after being so notified by the City Attorney to further consider said complaint in Executive Session. In any event, the City Attorney shall immediately proceed to fully investigate the alleged improprieties. For purposes of this investigation, the City Attorney shall have all of the powers of investigation as are given to the City Council by reason of the City Charter and shall report back to the City Council as soon as possible but in no event more than fifteen (15) business days from the date of notification of the City Council unless an extension is granted by the City Council. Said report shall be comprehensive and explain in detail all facts, findings, and conclusions in support of the City Attorney's opinion as to whether a violation of this Code of Conduct occurred. The City Attorney has the same power to subpoena witnesses and the production of documents, books, records, and other evidence as are given the City Council under the City Charter when acting pursuant to this subsection.

The City Council shall consider the complaint and the City Attorney's report at an Executive Session of the City Council. The affected officer may request that the complaint be considered in a public meeting. At such meeting, the City Attorney shall present a written report to the City Council describing in detail the nature of the complaint and the City Attorney's findings and conclusions as to a possible violation of this Code of Conduct. The affected officer shall have the right to a full and complete hearing before the City Council with the opportunity to call and cross-examine witnesses and present evidence in such person's behalf. The non-implicated Councilmembers in attendance shall conduct a hearing and review the complaint. The City Council may reject the complaint or take action authorized by section 2-222.

No action or decision with regard to the complaint shall be made except in a meeting which is open to the public.

The City Council may appoint outside legal counsel or may direct the City Attorney to appoint outside legal counsel, or the City Attorney in the City Attorney's discretion, may appoint outside legal counsel, to perform the duties and responsibilities of the City Attorney under subsections this section. The outside legal counsel shall have the same power to subpoena witnesses and the production of documents, books, records, and other evidence as the City Attorney under this section when acting pursuant to this section.”

A complaint or allegation of a violation of this Code of Conduct may only be made against an officer while such person holds such position or office. A complaint made against an officer pursuant to this section shall be processed and resolved unless such person resigns from, or ceases to hold such position or office, prior to resolution of the complaint.”

ACTION TAKEN ON CODE OF CONDUCT VIOLATIONS

The City Council may take any one or more of the following actions in an open meeting concerning a Code of Conduct complaint:

1. Issue a statement finding the complaint is totally without merit, brought for the purpose of harassment, or brought in bad faith.
2. Issue a letter of notification when the violation is unintentional. A letter of notification shall advise the Officer of any steps to be taken to avoid future violations.
3. Issue a letter of admonition when the violation is minor or may have been unintentional, but calls for a more substantial response than a letter of notification.
4. Issue a reprimand when a violation has been committed knowingly or intentionally.
5. Remove from office an Allen public official, other than a City Councilmember, for a serious or repeated violation of this Code of Conduct.
6. Pass a resolution of censure or a recommendation of recall when the City Council finds that a serious or repeated violation of this Code of Conduct has been committed intentionally by a member of the City Council.

A complaint that an officer has violated a provision(s) of the Code of Conduct shall be filed not later than six (6) months after the date the complained act(s) occurred or it is barred.

Any officer may request and the City Attorney shall issue, a verbal or written opinion (as deemed appropriate) concerning the meaning or effect of any section, word, or requirement of this Code of Conduct as it affects such person.

STATE LAW

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

Chapter 171 of the TEXAS LOCAL GOVERNMENT CODE also governs the conflicts of interest of Allen public officials. The purpose of Chapter 171 is to prevent local public officials from using their positions for hidden personal financial gain. The 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, Planning and Zoning Commission, Board of Adjustment, and the Building and Standards Commission. However, these statutory provisions are minimum standards for ethical conduct. The State Law governing conflicts of interest normally does not apply to boards that are purely advisory, such as the Library Board.

ECONOMIC CONFLICTS OF INTEREST:

Rule: An Allen public official commits a criminal offense if the Allen public official knowingly participates in a vote or decision on any matter involving a business entity or real property in which the Allen public official has a “*substantial interest*.”

1. Required Filing Affidavit and Abstaining

An Allen 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 body; and
- (b) abstain from further participation in the matter.

Also, State Law requires a separate budget vote on matters in which an Allen 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 Allen 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 entity; or
- (b) funds received by the Allen public official from the business entity exceed ten percent (10%) of the Allen public official’s gross income for the previous year.

Alternatively, an Allen 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 public; and

- (b) the Allen public official’s interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

“*Specific economic effect*” is not defined by the statute; therefore, Allen 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

An Allen public official is considered to have a substantial interest if a relative in the first degree to the Allen 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.

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

(a) Relatives in the First Degree

Consanguinity:	Affinity:
Parents	Spouse of those listed
Children	under consanguinity
Sisters and 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 and uncles
- Nieces and nephews

4. Acting as a Surety Prohibited

An Allen public official is prohibited from acting as surety for:

- (a) any business entity contracting with the governmental entity; or
- (b) any official bond.

5. Majority of Allen 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 Void by a Board or Commission Member's Participation

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

7. Penalty for Failure of Allen public official to file an Affidavit or for Participation

Failure to file the affidavit and to abstain constitutes a Class A Misdemeanor, 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 Allen Development Code, 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 more; or
- (2) acts as developer of the tract; or
- (3) owns 10-percent or more of the voting stock or shares or ten-percent or more or \$5,000 or more of a business entity which:
 - (a) has equitable or legal interest with a fair market value of \$2500 or more; or
 - (b) acts as developer
- (4) receives funds equal to ten-percent or more of annual gross income from a business entity meeting (3), above; or

(5) is related in the first degree by consanguinity or affinity to someone who has substantial interest.

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 keeping 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 Allen 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 Allen public official is appointed or for a period of 6 months if the Allen public official is elected.

For Example: A 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.

MISUSE OF OFFICIAL INFORMATION

Allen public officials may have access to information that is not available to the public or that has not been made public. Members of the City Council, Planning and 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 speculators and investors. Allen 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 an Allen public official to profit, or help someone else profit, from inside information acquired by the Allen 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 an Allen board or commission. The doctrine of incompatibility 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.

For example: An individual may not simultaneously serve as the Dallas County Auditor and as an Allen 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.

For example: the Allen 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 Allen. It is the constitution and framework for the Allen City government. The City Charter prohibits certain conduct by Allen public officials that is not covered by State Law. The City Charter prohibitions apply to officers and employees of the City. An “officer” of the City is a person who holds an appointed or elected position that exercises responsibilities beyond those that are merely advisory in nature. Officers include the Mayor, City Councilmembers, members of the Planning and Zoning Commission, the Board of Adjustment, the Building and Standards Commission, City Manager, City Secretary, and Municipal Court Judge. Members of the Board of Directors of the Community Development Corporation, the Allen Development Corporation, and the Keep Allen Beautiful Corporation are not considered to be City officers under the City Charter because they serve as directors of non-profit corporations which are legal entities separate from the City. Such members are subject to the Code of Conduct.

PERSONAL CONTRACTS

City Charter Article X Section 10.05 expands the Texas statute governing conflicts of interest by prohibiting any officer or employee of the City from having a direct or indirect interest in any contract with the City, or be financially interested directly or indirectly in the sale of any land, services, or materials to the City except on behalf of the City as an officer or employee. Any knowing violation of this section constitutes malfeasance and is grounds for removal from office or employment as the case may be. A contract entered in violation of this section is void at the discretion of the City Council.

For example, no member of the City Council or member of any board or commission or employee of the City that exercises responsibilities beyond those merely advisory in nature may enter into any written or oral contract with the City for land, materials or services; this includes the bidding at a City auction.

NEPOTISM

City Charter Article X Section 10.04 governs nepotism and prohibits the appointment of a person related within the second degree by affinity or within the third degree by consanguinity to the Mayor or any member of the City Council from appointment to any paid position, office or

employment with the City unless such person was employed or appointed to such position for at least six (6) months prior to the election of the related Councilmember.

For 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.

GIFTS

City Charter Article X Section 10.01 prohibits any officer or employee from accepting any gift, favor, privilege or employment during the term of office of such officer or during such employment of such employee, except as may be allowed by State law or the Code of Conduct.

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 Allen 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 Code 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 Allen 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 Allen City Council, including any Allen board or commission that has rule making or quasi-judicial power and includes the meetings of the following Allen boards and commissions:

- Board of Adjustment
- Board of Directors of the Allen Economic Development Corporation
- Board of Directors of the Allen Community Development Corporation
- Building and Standards Commission
- Planning and Zoning Commission

The Allen City Council sets the expectation that advisory boards and committees comply with the Open Meetings Act as well.

All regular, special or called meetings of the City Council and the 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 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 rubber-stamp of the committee if the meeting notice is not posted.

TELEPHONE MEETINGS

Generally, the Open Meetings Act prohibits a meeting of a board or commission by telephone. Members of a board or commission may not deliberate by telephone (contact other members by telephone for the purpose to arrive at a decision or consensus concerning public business). However, an advisory board may conduct a meeting by telephone conference call if an emergency or public necessity exists, and if all meeting at one location a quorum is difficult or impossible.

VIDEO CONFERENCE MEETINGS

Members of the City Council and Allen 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, record keeping, 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

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

1. It must be an emergency - 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 while consideration of a settlement offer relating to litigation would not constitute an emergency.

Failure to post notice on time or the board or commission's prior delay in taking necessary action does not constitute an emergency.

2. Notice must be posted at least one (1) hour 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 at least one (1) hour notice of an emergency meeting by telephone, facsimile transmission or electronic mail 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 is allowed.

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 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.

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 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 Misdemeanor and is liable to the person who 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.

CITIZEN RIGHT TO SPEAK AT OPEN MEETINGS

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. The Public Information Act applies to information that is collected, assembled, or maintained under a law or ordinance or in 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 exist, 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. 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. 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 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 (10) business 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 sample materials within fifteen (15) business days 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:

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 an Allen public official or employee of the City is or may be a party.
3. Trade secrets and certain commercial or financial information.
4. Information relating to economic development negotiations between the City and business prospects.

CONCLUSION

Public service on an Allen board and commission is an honor. Your voluntary service directly contributes to the quality of life in Allen. Although this public service is not paid or compensated the contributions and benefits to the Allen 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.