

Memorandum



DATE January 29, 2010

TO Members of the Economic Development Committee: Ron Natinsky (Chair), Tennell Atkins (Vice Chair), Jerry R. Allen, Dwaine Caraway, Sheffie Kadane, Ann Margolin, Linda Koop, and Steve Salazar

SUBJECT **Discussion on February 1, 2010, of potential Code of Ethics Amendments for Municipal Management Districts**

On January 19, 2009, Economic Development staff briefed the Economic Development Committee on Municipal Management Districts (MMDs) and described a proposed exemption of MMD Board members from the City's Code of Ethics in order to fulfill the purposes of the MMDs as authorized by state law. Due to concerns raised during the briefing, the City Attorney's Office has reviewed the Code of Ethics requirements, including disclosure and lobbying provisions, and will present a matrix of the Code of Ethics provisions, summarizing those provisions that may need to be amended to facilitate the operation of the MMDs under state law and those Code of Ethics provisions that may or may not be amended.

After discussion of the Code of Ethics provisions and direction from the Committee, staff will be able to draft the appropriate code amendments for Council consideration.

Should you have any questions, please contact me at (214) 670-3314.



A.C. Gonzalez
Assistant City Manager

C: The Honorable Mayor and Members of the City Council
Mary K. Suhm, City Manager
Deborah Watkins, City Secretary
Tom Perkins, City Attorney
Craig Kinton, City Auditor
Judge C. Victor Lander, Administrative Judge Municipal Court
Ryan S. Evans, First Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Forest Turner, Assistant City Manager
Dave Cook, Chief Financial Officer
Jeanne Chipperfield, Director, Office of Financial Services
Karl Zavitkovsky, Director, Office of Economic Development
Hammond Perot, Assistant Director, Office of Economic Development
Helena Stevens-Thompson, Assistant to the City Manager
Barbara Martinez, Assistant City Attorney

Application of the City's Code of Ethics Provisions to MMD Board Members

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APPLICATION OF CITY'S CODE OF ETHICS TO MMD BOARD MEMBERS

I. Chapter 12A City Code Provisions that may be Amended to Accommodate Operation of the MMDs under State Law:

| CITY ETHICS POLICIES: | POTENTIAL PROBLEM FOR MMD: | RESOLUTION/ACTION: |
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| <p>1. Improper Economic Benefit/Sec. 12A-3 City officials/employees cannot take any official action that will affect, directly or indirectly, his/her economic interests or the economic interests of his/her employer, clients, family, business entities.</p> <p><u>Recusal/Disclosure</u>: Prevents the officer from participating in any discussions or voting on the matter if economic interests are affected.</p> | <p>MMD Directors will be financially interested in most matters affecting the district since state law qualifications for MMD Directors require the board to be property owners or other stakeholders in the district or agents or employees of such persons.</p> <p>Recusal requirements would prevent property owners/stakeholders from voting or negotiating with the City.</p> | <p>Exempt MMD Directors from Section 12A-3 entirely including recusal requirements so that MMD Directors may serve on the board and participate and take official action that they know will affect their economic interests.</p> |
| <p>2. Representation of Private Interests Sec. 12A-7 City officials/employees who are a member of a board shall not represent any person before that board or before city staff responsible for making recommendations or represent for compensation any person before the city.</p> | <p>MMD Board members will represent themselves as stakeholders and property owners in the District, and employees, and agents of such property owners will represent such stakeholders for compensation before the MMD board and the City and city staff.</p> | <p>Exempt MMD Directors from Sections 12A-7(a) and (b)(1) so that they may represent themselves on the MMD Board, represent themselves before the City and city staff or represent their employers before the MMD Board and the City.</p> |
| <p>3. Unfair Advancement of Private Interests Sec. 12A-4(a) City officials/employees may not use his position to unfairly advance personal interest by granting or securing for any person any form of special consideration, treatment, advantage.</p> | <p>MMD Board members will advance their personal interests in the district.</p> | <p>Exempt MMD Directors from Section 12A-4(a) so that they may use their position on the board to advance their interests in the district.</p> |

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| <p>4. Acquisition of an interest in impending or decided matters. Sec. 12A-4(b)(1), (2) City officials/employees cannot acquire an interest in pending/decided matters that will be affected by official action of the city.</p> | <p>Such a restriction would prevent MMD Board members/developers from expanding their property interests in the district in accordance with their actions as a board member.</p> | <p>Exempt MMD Directors from Section 12A-4(b)(1) and (2) and recusal requirements for such acquisitions but not provisions of Sec. 12A-4 pertaining to reciprocal favors and nepotism.</p> |
| <p>5. Conflicting Outside Employment - Sec. 12A-8 City officials/employees shall not solicit, or engage in concurrent outside employment that could impair independence of judgment in official duties or provide services for compensation to a person requesting approval or determination from the body of which the official is a member.</p> | <p>Outside employment may be directly related to duties in representing an employer before the MMD Board or their livelihood as a developer.</p> | <p>Exempt MMD Directors from Section 12A-8 so that MMD Board members may serve as developers or serve their employers in developing the district.</p> |
| <p>6. Prohibited Interests in Contracts – Section 12A-12 City officials/employees cannot have a financial interest, direct or indirect, in any contract with the City or submit applications or bids for city contracts.</p> | <p>MMD Board members who own property in the district will apply for contracts for public funds to develop such property.</p> <p>MMD Board members may have other contracts with the City unrelated to the MMD (indirect financial interests) that would prevent them or related parties or employees from serving on the MMD Board.</p> | <p>Exempt MMD Directors from Section 12A-12 so that MMD Directors may submit applications for funding from the district on which they serve, and MMD Directors may have other contracts with the City unrelated to the MMD.</p> |

II. Unless otherwise noted – all other City Code of Ethics provisions including Lobbying Restrictions will apply to MMD Board members including:

| CITY ETHICS POLICIES: | ACTION: |
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| <p>1. Travel Reporting Requirements – Sec. 12A-21</p> | <p>No change to City Code of Ethics.</p> |
| <p>2. Unfair Advancement of Private Interests Sec. 12A-4(b)(3)-(5) Reciprocal favors and appointment or employment of relatives or domestic partners prohibited.</p> | <p>No change to City Code of Ethics except as noted above for 12A-4(a) and 12A-4(b)(1) and (2).</p> |
| <p>3. Representation of Private Interests - Litigation Sec.12A-7(b)(3) and (c) City appointees shall not represent anyone in any litigation adverse to the city or practice law in municipal court; assert or imply improper influence of city action.</p> | <p>No change to City Code of Ethics Sections 12A-7(b)(3) or (c).</p> |
| <p>4. Gifts – General provision in Sec. 12A-5(a) will apply City officials shall not solicit, accept, or agree to accept any gift or benefit that reasonably tends to influence or reward official conduct or that the official knows is intended to influence or reward the discharge of official duties.</p> | <p>No change to City Code of Ethics.</p> <p>Disclosure requirements for gifts over \$250 do not apply since MMD board members are not required to file a financial disclosure statement under Section 12A-19.</p> <p>Further, MMD board members will be subject to City gift policy for board and commission members.</p> |
| <p>5. Confidential Information –Sec. 12A-6 City officials/employees may not use position to secure official information for any purpose other than the performance of official responsibilities.</p> | <p>No change to City Code of Ethics proposed. (MMD not privy to confidential info of City.)</p> |
| <p>6. Political Activity – Sec. 12A-10 City officials shall not use the prestige of office on behalf of a candidate, political party or political committee.</p> | <p>No change to City Code of Ethics. MMD Directors cannot assert the prestige or title as an MMD Director on behalf of political candidates or serve as a designated campaign treasurer for a candidate or solicit or receive contributions for a candidate, political party, or political committee.</p> |

III. Lobbying Restrictions

| CITY ETHICS POLICIES: | | RESOLUTION/ACTION: |
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| <p>1. Lobbyist Registration and Recordkeeping Program – Sec 12A-15</p> <p>MMD Board members are “City Officials” under the lobbying ordinance.</p> | <p>Anyone lobbying an MMD Board member would be subject to registration and recordkeeping requirements.</p> | <p>No change to City Code of Ethics proposed.</p> |
| <p>MMD Board members lobbying the City Council or the TIF Board.</p> | <p>MMD board members and MMD employees acting on behalf of the MMD would not be required to register or file an activity report if the communications relate solely to subjects of governmental interest concerning the governmental entity and the city.</p> <p>Further, lobbying does not include a communication made by a public official or employee acting in his or her official capacity.</p> | <p>No change to City Code of Ethics proposed.</p> |

***NOTE: Qualifications for consideration in appointment to City Boards in Chapter 8 of the Dallas City Code do not apply to MMD Boards since the MMD Board is established by state law and not by ordinance or Charter of the City. Such City Board qualifications relating to residency, voting, criminal record, litigation or claims against the City, or having obligations owed the City, however, will be disclosed to the Council prior to consideration of an appointment to the MMD Board.**

IV. Summary of State Law Provisions Applicable to MMD board members:

| State Law Provision: | Application to MMD: |
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| <p>1. MMDs are special districts created under Section 59, Article XVI, Texas Constitution. Such special districts are considered political subdivisions of the State, performing governmental functions, and standing on the same footing as counties and other political subdivisions established by law.</p> | <p>Although the City consented to them, MMDs are self governed entities with some checks and balances imposed by state law at the request of the city. <i>E.g.</i> Council approval required for board appointments, issuing/creating debt, 380 grant programs and projects, boundary amendments and MMD must have operating and development agreement with the City.</p> |
| <p>2. Penal Code – A public servant commits an offense if he solicits, accepts or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.</p> | <p>MMD board members are “public servants” as defined in the penal code who will exercise discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government. <i>E.g.</i> Bribery and corruption provisions apply.</p> |
| <p>3. Chapter 171.004 of the Local Govt Code (Disclosure and Abstention Requirements) – If a public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter.</p> | <p>Chapter 171.004 abstention requirements do not apply if a majority of board members are required to file such disclosure affidavits and do disclose such substantial interests in the matter.</p> |
| <p>4. Chapter 176 of the Local Govt Code – Disclosure of Certain Relationships with Local Government Officers; Providing Public Access to Certain Information.</p> | |