



**The City of San Antonio Ethics Code Manual**  
**for Former Officials and Employees**

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# **The City of San Antonio Ethics Code Manual** **for Former Officials and Employees**

## **I. Introduction**

In November 1998, the City Council enacted the City of San Antonio Ethics Code. The purpose of the code was to establish standards of conduct to promote the public's confidence in the integrity, independence and impartiality of those who act on behalf of the government. The public's confidence in the government is affected not only by the conduct of those currently working for the city, but also by the actions of those who have left public service. For this reason, the code imposes standards of conduct on former officials and employees.

This manual will first discuss the provisions of the Ethics Code that apply to former officials and employees. The manual then provides examples on the application of these provisions.

## **II. The Ethics Code**

### **A. Who are Former Officials and Former Employees of the City?**

#### **1. Officials**

Under the Ethics Code, "officials" are:

- The Mayor;
- Members of the City Council;
- The City Manager;
- Deputy City Manager;
- Assistant City Managers;
- Assistants to the City Manager;
- City Clerk;
- Deputy City Clerk;
- Assistant City Clerk;
- Municipal Court Presiding Judge;
- Municipal Court Judges and Magistrates;
- Municipal Court Clerk;
- Senior Deputy Court Clerk;
- Deputy Court Clerk;
- Chief Financial Officer;
- City Attorney;
- First Assistant City Attorney;
- All department directors and assistant/deputy department directors;
- Chief Executive Officer – Pre-K 4 SA;

Chief Executive Officer – Tricentennial;  
Assistant to the Director;  
Internal Auditor and all Assistant Internal Auditors;  
Information Technology Auditor;  
Compliance Auditor;  
Assistant to City Council;  
Assistant to Mayor;  
Mayor Chief of Staff;  
Fire Chief;  
Deputy Fire Chief;  
District Fire Chief;  
Police Chief;  
Deputy Police Chief;  
Assistant Police Director;  
Police Captain;  
Chief Equity Officer;  
Grants Administrator;  
Senior Executive Secretary;  
Executive Secretary; and

Members of all boards, commissions (except the Youth Commission whose members are minors), committees, and other bodies created by the City Council pursuant to federal or state law or City ordinance, including entities that may be advisory only in nature, who are appointed by the Mayor, the City Council, or who are designated in the by-laws or organization papers of the entity to serve on behalf of the City; and board members of any entity who are appointed by the Mayor or City Council to such board membership.

This list is updated annually by the Human Resources Department. All updates are incorporated into this Code without further action by the City Council. The Human Resources staff shall provide the list annually to the City Clerk. The City Clerk shall promptly post it on the City's ethics webpage.

## **2. Employees**

The term "employee" is defined as "any person listed on the City of San Antonio payroll as an employee, whether full-time or part-time."

### **B. Standards of Conduct for Former Officials and Employees**

The Code lists the standards of conduct to which a former city official or employee must abide. Those standards of conduct concern:

- (1) continuing confidentiality;

- (2) subsequent representation of private interests before the city;
- (3) prior participation in negotiating or awarding contracts; and
- (4) prohibited interests in discretionary contracts.

This manual will first list the four standards as set out in the Code, followed by a discussion of each of these standards and how they may apply to a former city official or employee.

The Ethics Code states the following:

### **Section 2-55 - Continuing Confidentiality**

A former city official or employee shall not use or disclose confidential government information acquired during service as a city official or employee. This rule does not prohibit:

- (a) any disclosure that is no longer confidential by law; or
- (b) the confidential reporting of illegal or unethical conduct to authorities designated by law.

### **Section 2-56 - Subsequent Representation**

**(a) Representation by a Former Board Member.** A person who was a member of a board or other city body shall not represent any person, group, or entity for a period of two (2) years after the termination of his or her official duties:

- (1) before that board or body;
- (2) before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
- (3) before a board or other city body which has appellate jurisdiction over the board or body of which the former city official or employee was a member, if any issue relates to his or her former duties.

**(b) Representation of Private Interests Before the City by Former City Officials and Employees.** A former city official or employee shall not represent for compensation any person, group, or entity, other than himself or herself, or his or her spouse or minor children, before the city for a period of two (2) years after termination of his or

**her official duties.** This subsection does not apply to a person who was classified as a city official only because he or she was an appointed member of a board or other city body. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.

(c) **Improper Representation of Influence.** In connection with the representation of private interests before the city, a former city official or employee shall not state or imply that he or she is able to influence city action on any basis other than the merits.

(d) **Representation in Litigation Adverse to the City.** A former city official or employee shall not, absent consent from the city, represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to the interests of the city and the matter is one in which the former city official or employee personally and substantially participated prior to termination of his or her official duties.

Representation is defined in Section 2-42(cc) as “a presentation of fact – either by words or by conduct – made to induce someone to act. “Representation” does not include appearance as a witness in litigation or other official proceedings”.

### **Section 2-57 - Prior Participation in Negotiation, Award or Administration of Contracts**

A **former city official or employee shall not, within two (2) years** of the termination of official duties for the city, **perform work on a compensated basis relating to a discretionary contract, if he or she personally and substantially participated in the negotiation, award or administration of the contract.**

A former city official or employee, within two (2) years of termination of official duties, must disclose to the City Clerk immediately upon knowing that he or she will perform work on a compensated basis relating to a discretionary contract for which he or she did not personally and substantially participate in its negotiation or award.

The following section, Section 2-58, applies only to the former city officers<sup>1</sup> and former employees who were required to submit a yearly financial disclosure statement while

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<sup>1</sup> For purposes of this section only, city “officers” are defined as the Mayor and Members of Council, Municipal Court Judges and Magistrates and members of Boards that are more than advisory in nature.

working with the city. If you were not an officer or an employee required to submit a financial disclosure statement, Section 2-58 does not apply to you.<sup>2</sup>

### **Section 2-58 - Discretionary Contracts**

(a) **Impermissible Interest in Discretionary Contract or Sale**. This Subsection applies only to contracts or sales made on a discretionary basis, and does not apply to contracts or sales made on a competitive bid basis. **Within one (1) year of the termination of official duties, a former city officer or employee shall neither have a financial interest, direct or indirect, in any discretionary contract with the City, nor have a financial interest, direct or indirect, in the sale to the City of any land, materials, supplies, or service.** Any violation of this Section, with the knowledge, expressed or implied, of the individual or entity contracting with the Council shall render the contract involved voidable by the City Manager or the Council. **A former city officer or employee has a prohibited "financial interest" in a discretionary contract with the city, or in the sale to the city of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:**

- (1) the former officer or employee;
- (2) his or her parent, child, or spouse;
- (3) an entity in which the former officer or employee, or his or her parent, child or spouse, directly or indirectly owns:
  - a. ten (10) percent or more of the voting stock or shares of the entity, or
  - b. ten (10) percent or more of the fair market value of the entity; or
- (4) an entity of which any individual or entity listed in Subsection (1), (2) or (3) is:
  - a. a subcontractor on a city contract;
  - b. a partner; or
  - c. a parent or subsidiary entity.

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<sup>2</sup> Employees who are required to file the one-page annual gift report pursuant to Section 2-78 are not included as employees who file financial disclosure reports. Therefore, former employees who were required to file the one-page gift reports are not subject to Section 2-58 regarding the prohibition against an interest in discretionary contracts.

**(b) Exception: Prior Employment or Status.** Notwithstanding subsection (a) of this Section 2-58 (Discretionary Contracts) and Section 2-57 (Prior Participation in Negotiation or Awarding of Contracts), a former city official or employee may upon leaving official duties return to employment or other status enjoyed immediately prior to commencing official city duties.

**(c) Definitions.** For purposes of this Section:

(1) A “former city employee” is any person who, prior to termination of employee status, was required to file a financial disclosure statement pursuant to Section 2-73(a) of Division 7 (Financial Disclosure Report).

(2) A “former city officer” is any person who, immediately prior to termination of official duties, was:

a. the Mayor or a member of City Council;

b. a Municipal Court judge or Magistrate; or

c. a member of any board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the city.

(3) The term “contract” means any discretionary contract other than a contract for the personal services of the former city official or employee.

(4) The term “service” means any services other than the personal services of the former official or employee.

### **III. Application of the Standards of Conduct for Former Officials and Employees**

#### **A. Confidentiality**

Section 2-55 imposes a duty of continuing confidentiality. There is no time limit for the application of this section. Any confidential information learned during the course of your work for the city must remain confidential. You may not disclose confidential information nor use such information to further the private interests of yourself or another person, organization or entity.

If the information has been made public by another source, you would no longer be bound to protect the information. Also, you may disclose confidential information if it is

necessary to do so to reveal illegal or unethical conduct to the authorities designated by law. This second exception is specifically limited to the reporting of misconduct to designated authorities.

Note: If records are made confidential by state or federal law, you must review the requirements of that law regarding the disclosure of records. You may be subject to laws or regulations on confidentiality beyond that imposed by the City's Ethics Code.

**Example.** A public health nurse has access to and is familiar with the health records of patients receiving treatment for tuberculosis. He believes in a particular case, a fellow city employee has improperly altered records in order to help the patient obtain unauthorized prescription medicine. Even though the nurse is required by law to protect the confidentiality of the patient's records, he may report the suspected misconduct to the appropriate authorities, such as the police or medical review board. The appropriate authorities would not include the media.

**Example.** Joe Smith has just retired after working 27 years in the Planning Department. Joe's best friend, Ivan, has read in the paper that the city is considering building a youth sports complex for community recreation. Ivan is thinking about buying property right next to the lot under consideration for this project. Ivan envisions opening an ice cream parlor and coffee shop and hopes to get the business of the kids and parents who use the sports center.

Joe is aware from his work at the Planning Department that the city is having second thoughts about putting the complex at that location because a preliminary inspection of the property showed that there may be some old gasoline storage tanks buried there. This information is not yet public. Ivan is thinking about putting in an offer tomorrow morning on the lot next door. Joe can say nothing to his best friend Ivan about the city's concerns about putting the complex at that location.

## **B. Subsequent Representation**

### **1. Former Board Members**

Section 2-56 addresses the subsequent representation of interests before the city by former board members. Under this provision, former board members cannot represent any private interest **before their former board** for a period of **two years** after leaving the board. This restriction extends to contacts with city staff that worked with that board, if the board was more than advisory in nature.

**Example.** A member of the Zoning Commission leaves the commission and goes to work for an architectural firm. The firm has a client who hopes to rezone some property from a single-family zone to a commercial zone. The former zoning commissioner cannot represent that client before the Zoning Commission for a

period of two years after leaving his position with the commission. He may, however, represent that client before other boards, such as the Planning Commission or the Historic Design and Review Commission. After the two years has elapsed, he may then also represent clients before the Zoning Commission.

## **2. Former City Officials and Employees**

### **a. Representation of Private Interests**

Section 2-56 also addresses subsequent representation of interests before the city by former city officials and employees. Specifically, **Section 2-56(b) prohibits a former official or employee from representing for compensation** any person, group, or entity other than himself, or his family before the city **for two years** from the date of his termination of employment.

**Example.** An engineer with the Planning Department retires after 20 years with the city and goes to work for a homebuilder contractor. His new employer seeks his advice on how to apply for zoning variance for a new development. The engineer explains the process. The contractor asks the engineer if he would mind going to the city and speaking with city staff about the proposed variance and to represent the company at any Zoning Commission hearings that might be necessary.

As a paid employee of the contractor, the engineer cannot contact city staff or appear before the Zoning Commission for two years after leaving city service. He may, though, provide information and advice to his employer about city procedures and processes.

**Example.** This same engineer volunteers on weekends with a non-profit organization that builds homes for low-income families. The staff of this organization asks the engineer if he can help fill out building permit forms and whether he can work with the city in processing the necessary paperwork. The engineer, as a volunteer, receives no compensation for this work. Because he is not compensated, the Ethics Code would not prohibit the engineer from representing the interests of the non-profit organization before city staff or the city's decision-making bodies.

**Example.** A former employee wishes to appear before City Council to present his personal opinion against a pending ordinance. The Ethics Code would not preclude him from doing so. He may express his personal opinion to the city.

However, if the former employee were being paid by an organization to present this opinion, he would be prohibited from doing so for two years after leaving employment.

### **b. Litigation against the City**

Section 2-56(d) proscribes a former employee from representing third parties in litigation if the former employee had substantially participated in the litigation before leaving city service and the litigation is against the city's interests.

**Example.** A former Assistant City Attorney goes to work for a private law firm. The law firm represents a client who is suing the city for an injury he alleges was caused by inadequate sidewalk maintenance. The attorney had worked as a prosecutor in Municipal Court and had no contact with the sidewalk litigation. The attorney cannot represent any private interest before the city for a period of two-years if he is being paid for that work. However, after the two-year period has passed, the attorney may represent that client against the city because of her lack of prior involvement in the matter.

**Example.** Another former Assistant City Attorney also accepts employment with the firm. This attorney had previously worked for the litigation department and had participated in taking depositions in the sidewalk matter. This attorney would be barred from this assignment because of his substantial and personal involvement with the case while working for the city, regardless of the length of time since the attorney left public service.

## **C. Discretionary Contracts**

### **1. Working for Employers in the Private Sector after Leaving City Service**

Section 2-57 may affect former officials or employees that accept employment with entities that do business with the city. A former city official or employee is not prohibited from working for a business that has a contract with the city. However, that person could not work for his new employer:

- 1) for **compensation**;
- 2) in connection with a **discretionary** contract;
- 3) for **two years**;
- 4) if that person had **personally and substantially** had some involvement with that contract while working for the city.

**Example.** An engineer with the Public Works Department participated in negotiating a contract with a large architectural firm on an historic building restoration project. The engineer is considering leaving city service to go to work for this architectural firm. He may accept employment with the firm, but could not perform work under the contract between the firm and the city until two years after leaving city service. The engineer, though, could work as a volunteer

on the project as soon as he left city service, since he would not be compensated for that work.

If the engineer had not had any involvement with the contract before leaving the city, he could not only accept employment with the firm, but also accept an assignment to perform work in connection with the contract with the city for compensation. However, under this circumstance, the employee must disclose any work on the city contract under Section 2-57. That section states in part:

A former city official or employee, within **two (2) years** of termination of official duties, must disclose to the City Clerk immediately **upon knowing that he or she will perform work on a compensated basis relating to a discretionary contract** for which he or she did not personally and substantially participate in its negotiation or award.

Note, also, that he would still be **prohibited from representing** the firm or other private client before the city for **two years** after leaving the city.

**Example.** While still working for the city, the ITSD employee assisted in negotiating a contract for the city with a large computer manufacturer to supply PC's to the city. During negotiations, the manufacturer asked the employee whether she would be interested in leaving city employment and coming to work for the company to help in carrying out the contract.

The Ethics Code would preclude this employee from working on this contract for this company for two years after leaving city service. The employee, though, could accept employment with the city and work on other assignments with which she did not have any involvement while working for the city.

**Example.** The ITSD employee tells the manufacturer that she is interested in working for the company but explains that she cannot participate in working on the contract to supply the PC's for two years. The manufacturer asks the employee if she could assist in a contract with the city to supply toner for photocopying machines. The employee has not participated in any way with the contract regarding toner. Under the Ethics Code, the former employee may accept employment with the manufacturer and accept the assignment to work on the toner contract with the city.

As with the example above, the former employee must file notice with the City Clerk's Office for two years disclosing her work in connection with the city contract.

**Example.** A retired Parks and Recreation employee went to work for a landscaping company after leaving city service. The company has a contract with the city to supply landscaping equipment. That contract was awarded on a competitive-bid basis, i.e. it is not a discretionary contract. The retired employee

may go to work for the company after retiring and may perform work in connection with the supply contract. This is true even if the employee participated in the awarding of the contract because this rule applies only to **discretionary** contracts.

Also, because it is not a **discretionary** contract, he is not required to file notice with the City Clerk that he is working on a contract with the city.

## **2. Working for the City on a Contract Basis after Leaving City Service**

Section 2-57 also addresses the issue of officials and employees who are considering working for the city on a contract basis after leaving city service. If an official or employee were to negotiate a discretionary services contract with the city while still employed by the city, that person could not later work on a compensated basis under that contract for two years.

On the other hand, if that individual left city employment without negotiating a post-termination employment contract, and subsequently negotiated a contract for services with the city, then Section 2-57 would not apply. Contract employment under those circumstances would be permissible.

**Example.** A former ITSD employee developed an expertise in training city staff on computer technology. After retirement, her former department found that it could use occasional assistance in providing computer classes to new employees. The former employee could, after leaving city service, negotiate and enter into a contract with the city to teach these classes.

On the other hand, if the employee negotiated a contract to provide occasional classes for the city before leaving city service, she would be precluded from performing work under that contract for a period of two years.

### **D. Prohibited Interests in Contracts**

Section 2-58 applies only to former city officers<sup>3</sup> and to former city employees who, prior to termination of employee status, were required to file financial disclosure statements under Section 2-73.

This section prohibits a former city officer or one of the designated employees from having a financial interest, direct or indirect, in any discretionary<sup>4</sup> contract with the city for a period of **one year** from the date of termination. If the former city officer or employee, a close family member of that person, or a business in which that person or close family members own more than 10% of the stock or fair market value became a **party to a discretionary contract** with the city within a year of leaving the city, that

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<sup>3</sup> The list of city officers is on page 5 of this document.

<sup>4</sup> Current city officers are prohibited from having an interest in **any** contract with the city, not just discretionary contracts, and with entities to which they have appointment authority. See Ethics Code Section 2-52.

former officer or employee would have a prohibited interest in that contract. If it is determined that the former officer or employee has a prohibited interest in a discretionary contract, that contract can be voided.

Section 2-58 uses a unique definition for the term "contract" which is applicable only to this section. It defines a "contract" as being any discretionary contract other than a contract for personal services. Therefore, an agreement or contract by which a former City official provides personal services to the City would not constitute a contract. This section, therefore, would not prohibit a former City official from negotiating with and being compensated by the City under a post-termination retainer contract for personal services.

Also, Section 2-58 does not apply where the person returns to the same employment or other status that person held before coming to work for the City.

**Example.** A former executive secretary starts a free-lance court reporter business after leaving her City position. The former secretary sees a request for proposal for stenography services for an upcoming series of hearings before the Plumbing Appeals and Advisory Board. Even if two years have not passed since she left City employment, she may submit a proposal and seek the contract with the City, because the services are personal in nature.

**Example.** A former executive secretary leaves her City position and begins working for her father's office supply business. She had worked for her father before she had worked for the City. Her father would like to seek a low-bid contract with the City to provide label makers. She had no involvement with the negotiation with the contract before leaving City employment, nor does she intend to have any involvement with the contract should her father be successful in being awarded the contract.

This contract would not create a prohibited interest for her for two reasons. First, the Ethics Code permits her to return to the same employment she enjoyed before working for the City. Second, it is a low-bid contract, i.e. not a discretionary contract. Because it is not a discretionary contract, this section does not apply.

**Example.** Assume her father has a contract with the City to supply training in the use of label makers and other office equipment. This contract would also not create a prohibited interest for her because it is a contract for personal services.

**Example.** Assume that the former executive secretary's father seeks a discretionary contract with the City to supply fax machine equipment to the Planning Department.

Despite the fact that the secretary had no personal involvement in the contract while working for the City, she would have a prohibited interest in this contract if the contract were awarded within a year of her leaving the City. She would have

a prohibited interest because her father or his business is a party to the contract. Even though she no longer works for the City, her prohibited interest in this contract could potentially subject her to sanctions under the Ethics Code and would render her father's contract with the City voidable.

**Example.** For this same executive secretary, assume that her father owns only 9 percent of this business. The rest of the business is owned by a group of her father's friends. None of the father's friends are related to the family. Because her family member owns less than 10% of the business, the business could seek the discretionary contract to sell fax machine equipment to the City without creating a prohibited interest for the former executive secretary.

**Example.** The executive secretary leaves City service and goes to work for a large retail office supply business. The secretary is asked to place orders for paper and envelopes in connection with a contract that the company has with the City. The company received this contract from the City while the former executive secretary still worked for the City, though she had no personal involvement in that contract award.

The secretary does not have a prohibited interest in this contract since neither she nor any family members are parties to the contract and because neither she nor her family members have an ownership interest in the company.

She is not prohibited from working on the contract even though two years have not passed since she left City employment, because she did not participate in the awarding of the contract. She is, though, required to disclose in writing to the City Clerk's Office that she is doing work for her new employer in connection with the City contract. And she could not represent her new employer's interests before the City for two years after leaving public service.

#### **IV. Advisory Opinions**

If a City official or employee is concerned whether anticipated employment, a potential business opportunity or other activity before or in connection with the City might present problems under the City's Ethics Code, those individuals may contact the City Attorney's Office for a formal advisory opinion, so long as the individual is still in City service.

Former officials and employees must request advisory opinions from the Ethics Review Board.

A person cannot obtain an advisory opinion regarding the application of the Code to a third person. If a former official or employee has a concern that a third person may have violated the Ethics Code, that person may consider whether they wish to file an ethics complaint.

The City Attorney's Office and the Ethics Review Board's advisory opinions are posted on the City's Web page, in a manner that does not reveal the identity of the person making the inquiry.

For a copy of the Ethics Code, to view advisory opinions by the City Attorney's Office or the Ethics Review Board, or to learn how to request advisory opinions, look for the link on the City of San Antonio homepage at [www.sanantonio.gov](http://www.sanantonio.gov) to "Ethics, Campaign Finance and Lobbyists." You may also call the Compliance Auditor at 210-207-0080, the City Clerk's Office at 210-207-7021 or the City Attorney's Office at 210-207-5602 if you have questions or need additional information.