



Prepared By:

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1.0 DECLARATION OF POLICY

- 1.1 It is essential to the proper administration and effective operation of the Metropolitan Transit Authority ("METRO") that its Board Members be, and give the appearance of being, independent and impartial; that service to METRO not be used for private benefit; and that there be confidence in METRO's integrity as a public agency. The public interest therefore requires that METRO protect against conflicts of interest by establishing ethical standards with respect to the conduct of its Board Members.
- 1.2 It is also essential that qualified persons be encouraged to serve METRO. Accordingly, the standards established by the Code should be interpreted and understood so as not to unreasonably frustrate or impede the recruitment and retention by METRO of those persons best qualified to serve it. To that end, METRO's Board Members, who are essentially uncompensated volunteers, should not be denied the opportunity available to all other citizens to acquire and maintain private economic interests, except in circumstances in which a conflict of interest would reasonably result. The purpose of this Code, therefore, is not to establish the standards of ethical conduct that are applicable to METRO's Board Members in the discharge of their official duties, but to prescribe only such essential restrictions against conflict of interest as will not impose unreasonable restrictions on METRO's Board Members.
- 1.3 A conflict of interest exists whenever a Board Member is in a position in which any official act or action taken by him or her is, may be, or appears to be, influenced by considerations of personal gain, rather than the general public interest. The fundamental principle underlying conflict of interest rules is that a public servant occupies a position of public trust and confidence and that he or she should therefore conscientiously avoid not only actual breaches of the public trust, but also the appearance of a conflict of interest. A Board Member should err on the side of disclosure and/or abstention when his or her participation in a matter could reasonably create the impression that any Person or group can improperly influence the Board Member or unduly enjoy his or her favor in the performance of official acts or actions, or that he or she is affected unduly by the kinship, rank, position or association with any Person or group.

- 1.4 No Board Member can disassociate himself so completely from the private sector as to preclude the possibility of a conflict of interest arising. Accordingly, this Code considers the intentions and motives in addition to the external actions of the Person concerned. Although exterior appearances and actions often are an accurate manifestation of interior motivation, intent and motive become particularly relevant whenever the acts themselves fall into a gray area.
- 1.5 The principal responsibility for adherence to the provisions of this Code rests with the Persons to whom the Code applies. Thus, the Code gives no consideration to any claim of lack of knowledge or understanding of the provisions of this Code. Whenever a question arises with respect to the applicability of the Code to a particular course of conduct, the Person concerned should consult with his or her own counsel or make application to METRO's General Counsel for an advisory opinion. Board Members are expected to err on the side of disclosure of any potential conflicts of interest.
- 1.6 Any comments and examples herein do not have the force and effect of the section of the Code that they follow, but serve as an aid interpreting the Code.

2.0 DEFINITIONS

- 2.1 "Board Member" means a member of the Board of Directors of METRO. A Board Member is a local Public Official, as defined in Tex. Loc. Gov't Code Ann. § 171.001 (1) (West 2016).
- 2.2 "Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other Person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law. This definition of benefit includes any gift in excess of fifty dollars.

Source:¹ Tex. Penal Code Ann. § 36.01 (3) (West 2011).

¹ Reference to a statutory source in the Code is not intended to imply incorporation into the Code of the referenced statute. Specifically, criminal penalties or civil remedies provided by such statutes are independent of the Code. Further, procedural processes required by such statutes, including evidentiary standards, are not incorporated into the Code. The source reference is intended only to advise the persons to whom the Code is applicable of substantially similar statutes which provide other penalties and remedies in the event of violation.

Comment: A nonmonetary award publicly presented in recognition of public service, such as a plaque or a framed certificate, is not, under ordinary circumstances, a Benefit.

- 2.3 "Business Entity" means a sole proprietorship, firm, holding company, joint stock company, corporation, receivership, trust, partnership, or any other entity recognized by law.
- 2.4 "Confidential Information" means any information concerning METRO (i) that is not a matter of public knowledge or available to the public on request or (ii) that METRO, its Board Members and officers are legally required to keep confidential.
- 2.5 "Contract" means any lease, claim, account or demand against or agreement with any Person, whether express or implied, executed or executory, verbal or in writing.
- 2.6 "Employment" means any rendering of services for pay.
- 2.7 "First Degree Relation" means the Board Member's spouse, parents and children, as well as the spouse of each of these relatives.
- 2.8 "Fraud" means wrongful or criminal deception intended to result in financial or personal gain.
- 2.9 "METRO" means the Metropolitan Transit Authority of Harris County, Texas.
- 2.10 "Participate" means to take part in official acts or actions or proceedings as a Board Member through approval, disapproval, decision, recommendation, investigation, the rendering of advice or the failure to act or perform a duty.
- 2.11 "Person" means an individual, business, labor organization, representative, fiduciary, trust or association.
- 2.12 "Public Official" means any elected official of the State of Texas; the Counties of Fort Bend, Harris, Montgomery, or Waller; any of the cities, towns or villages included within METRO's service area; or the federal government.
- 2.13 "Remote Interest" means any interest not defined as a "Substantial Interest" under the terms of this Code.
- 2.14 "Second Degree by Affinity Relation" means the Board Member's spouse and the spouse's parents, children, grandparents, grandchildren and

siblings, as well as the spouse of each of those relatives and the spouses of the Board Member's children.

2.15 "Substantial Interest" means any economic interest of a Board Member if:

- The Board Member owns 10 percent or more of the voting stock or shares of the Business Entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the Business Entity;
- Funds received by the Board Member from a Business Entity exceed 10 percent of his or her gross income for the previous year;
- The Board Member has an equitable or legal ownership interest in real property with a fair market value of \$2,500 or more; or
- A Person related in the first degree by consanguinity or affinity to the Board Member has a Substantial Interest in a business, contract or real property as defined in numbers 1-3 above.

Source: Tex. Loc. Gov't Code Ann. § 171.002 (West 2016).

2.16 "Third Degree by Consanguinity Relation" means the Board Member's parents, grandparents, great grandparents, children, grandchildren, great grandchildren, siblings, uncles, aunts, nieces and nephews, but does not include the spouse of each of these and only includes aunts and uncles who are the siblings of the Board Member's parents.

2.17 "Vendor" means a Person or Business Entity that enters or seeks to enter into a Contract with METRO. The term includes an officer or employee of a state agency when that individual is acting in a private capacity, but does not include governmental entities.

3.0 STANDARDS OF CONDUCT

3.1 Prohibitions Applicable to all Board Members

No Board Member shall:

- 3.1.1 Participate in a matter involving a business, Contract or real property in which the Board Member has a Substantial Interest as defined herein (including if a First Degree Relation has a Substantial Interest) if it will have, or is reasonably foreseeable that an action on the matter would have, a special economic effect, distinguishable from the effect on the public, on the business, Contract or real property involved.

Source: Tex. Loc. Gov't. Code Ann. § 171.004 (West 2016) (This is the general state statute that establishes standards of conduct for local government officials.)

Comment: If a situation arises whereby a majority of Board Members have a Substantial Interest in the matter under consideration, the individual members of that group shall not be required to abstain from voting as long as the proper disclosure statement, as provided by Section 3.3.1 below, has been filed. This statutory exception insures that METRO will always be able to take action on a matter, even if a majority of the decision-makers have a conflict. Tex. Loc. Gov't. Code Ann. § 171.004 (West 2016).

- 3.1.2 Solicit, accept, or agree to accept any gift or Benefit of any kind as consideration for the Board Member's decision, opinion, recommendation, vote or other exercise of discretion as a public servant.

Comment: Board Members should be keenly aware and suspect of accepting any gift or Benefit from anyone who may be considered as trying to influence or reward official conduct and are reminded that the term Benefit as used in this Code includes anything of pecuniary gain or advantage to a Person in whose welfare the Board Member has an interest.

Source: Texas Penal Code Ann. § 36.02(a)(1) (West 2011). An offense under this section is a second degree felony. It is no defense to prosecution under this section that the Benefit is not offered or conferred, solicited or accepted until after the exercise of discretion has occurred or the Board Member has ceased to hold that position of authority. Tex. Penal Code Ann. § 36.02(c), (e) (West 2011).

- 3.1.3 Solicit, accept or agree to accept any gift or Benefit of any kind as consideration for a violation of a duty imposed by law on the Board Member.

Source: Texas Penal Code Ann. § 36.02(a)(3) (West 2011). An offense under this section is a second degree felony. It is no defense to prosecution under this section that the Benefit is not offered or conferred, solicited, or accepted until after the exercise of discretion has occurred or the Board Member has ceased to hold that position of authority. Tex. Penal Code Ann. § 36.02(c), (e) (West 2011).

- 3.1.4 Solicit, accept, or agree to accept an honorarium in consideration for services requested in the capacity of, and as a result of, the Board

Member's position. This provision does not apply to transportation, lodging or meal expenses in connection with a conference or similar event at which the Board Member speaks, to the extent that those services are more than merely perfunctory, or to appearances by a Board Member in a capacity other than his or her role as a Board Member. Texas Penal Code Ann. § 36.07 (West Supp. 2016).

- 3.1.5 Solicit, accept, or agree to accept any Benefit from a Person the Board Member knows is interested in or likely to become interested in any METRO Contract or transaction.

Source: Tex. Penal Code Ann § 36.08(d), (h) (West 2011). An offense under this section is a Class A misdemeanor.

Comment: The purpose of this section, and the preceding four sections, is to prohibit the solicitation or acceptance of anything of Benefit, whether in the form of money, services, loans or promises, under circumstances in which it reasonably could be inferred that the Benefit solicited or accepted was intended to influence the recipient, or reasonably could be expected to influence him, in the performance of his official duties. These provisions should not, however, be construed to preclude the payment of lawful compensation and reimbursement for necessary expenses incurred by a Board Member in the course of performing the duties of his office. Further, this section should be considered in connection with the provisions of Section 3.6, which exclude the acceptance of certain Benefits from the application of this section.

Example: W, a Board Member, requests X, president of a company that is seeking to secure a Contract with METRO, to find Employment for W's brother-in-law in X's company. W's request constitutes a violation of this section.

- 3.1.6 Act as surety for a business that has work, business, or a Contract with METRO, or act as surety on any official bond required of an officer of METRO.

Source: Tex. Loc. Gov't. Code Ann. § 171.003 (West 2011).

- 3.1.7 Disclose Confidential Information; use Confidential Information for the purpose of securing a Benefit for the Board Member; accept Employment, or engage in professional activity that would require, or that the Board Member should reasonably expect would require, the Board Member to disclose Confidential Information.

Board Members are prohibited from disclosing matters discussed in executive session to anyone who is not a Board Member and who was not present in the executive session at which the matters were discussed.

Comment: This provision is based on the principle that Board Members should not use "inside" information to which they have access solely because of their association with METRO, and which is not available to the public, for their, or another Person's, financial gain. The unauthorized divulgence or premature release of Confidential Information to a relative, friend or business associate tends to undermine public confidence in METRO.

Example: Y, a Board Member, advises his brother to invest in the securities of a company which is about to be awarded a highly profitable Contract with METRO. Y's advice constitutes a violation of this section.

3.1.8 Use his or her official position, or METRO's facilities, equipment, or supplies to obtain, or attempt to obtain, private gain or advantage.

3.1.9 Represent, for compensation, any Person in any action or proceeding involving the interests of METRO.

3.1.10 Engage in any activity or transaction that is prohibited by any law, now existing or hereafter enacted, which is applicable to the Board Member by virtue of his or her association with METRO.

Comment: This subsection is intended to make clear that it is the individual responsibility of METRO Board Members to acquaint themselves and comply with all laws made applicable to them because of their official positions.

3.1.11 Commit Fraud against METRO, including the misapplication of METRO funds or property or any other such act injurious to METRO.

3.2 Prohibition Applicable to City of Houston Appointees

3.2.1 No City of Houston Appointee shall solicit campaign contributions for any candidate for office with the City of Houston in violation of Chapter 18 of the City of Houston Code of Ordinances.

3.3 Disclosure Requirements

3.3.1 A Board Member cannot vote, participate in the decision, or confer on a matter if that vote, conference or decision provides a special

economic effect, (distinguishable from its effect on the public), on that Board Member's Substantial Interest in a business, Contract or real property. In addition, the Board Member shall file with the Assistant Secretary of the METRO Board, before a vote or decision occurs, an affidavit stating the nature and extent of his or her interest.

Source: Tex. Loc. Gov't. Code Ann. § 171.004 (West 2016).

Comment: A disclosure requirement is a fundamental step in the process of monitoring potential conflicts of interest that may arise and is a means of maintaining public confidence in the good faith and impartiality of official acts or actions taken by METRO. It is to be noted, however, that the burden of making such disclosures rests on the individuals concerned, who accordingly should be held to a high standard of care and good faith to insure that no conflicts of interest they may have go undisclosed. Any Board Member may request METRO's General Counsel to render an advisory opinion as to whether a particular personal or financial relationship warrants public disclosure under this section.

Example: W, a Board Member, owns an insurance company that writes policies for contractors likely to do business with METRO. W should disclose his interest.

- 3.3.2 Within 30 days of their appointment, Board Members shall disclose in writing to METRO General Counsel the location by address and approximate acreage of real property located along or adjacent to a METRO route or facility in which they own a Substantial Interest, as defined in Section 2.15. Board Members shall notify METRO General Counsel of the acquisition of a Substantial Interest in additional property located along or adjacent to a METRO route or facility and the sale of any such property within 30 days of such transaction. METRO General Counsel shall prepare and maintain a map denoting the location of any such property for each Board Member.
- 3.3.3 A Board Member who has a legal or equitable interest in property that is to be acquired with METRO funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation. The affidavit must (1) state the name of the Board Member; (2) state that he or she is a member of the METRO Board of Directors; (3) fully describe the property; (4) fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest; (5) state the date when the Board Member acquired an interest in the property; (6)

include a verification as follows: "I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code"; and (7) contain an acknowledgement of the same type required for recording a deed in the deed records of the county. The affidavit must be filed with: (1) the county clerk of the county in which the public servant resides; and (2) the county clerk of each county in which the property is located.

Source: Tex. Gov't Code Ann. § 553.002 (West 2012).

3.3.4 A Board Member shall file the conflicts disclosure statement available at <https://www.ethics.state.tx.us/forms/CIS.pdf> with respect to a Vendor if: (1) the Vendor enters into a Contract with METRO or METRO is considering entering into a Contract with the Vendor; and (2) the Vendor:

(A) has an Employment or other business relationship with the Board Member or a family member related to the Board Member in the first degree by consanguinity or affinity that results in the Board Member or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the Board Member becomes aware that: (i) a Contract between METRO and the Vendor has been executed; or (ii) METRO is considering entering into a Contract with the Vendor;

(B) has given to the Board Member or a family member related to the Board Member within the first degree by consanguinity or affinity one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the Board Member becomes aware that: (i) a Contract between METRO and the Vendor has been executed; or (ii) METRO is considering entering into a Contract with the Vendor; or

(C) has a family relationship with the Board Member within the Third Degree by Consanguinity or the Second Degree by Affinity.

A Board Member is not required to file a conflicts disclosure statement in relation to a gift accepted by the Board Member or a family member related to the Board Member within the first degree by consanguinity or affinity if the gift is: (1) a political contribution as defined by Title 15, Texas Election Code; or (2) food accepted as a guest.

A Board Member is not required to file a conflicts disclosure statement if the Vendor is an administrative agency created under Section 791.013, Government Code.

The Board Member shall file the conflicts disclosure statement with the records administrator of METRO not later than 5 p.m. on the seventh business day after the date on which the Board Member becomes aware of the facts that require the filing of the statement.

Source: Tex. Loc. Gov't Code Ann. § 176.001, .003 (West 2016).

3.3.5 Any Board Member serving on any evaluation committee must sign the Certifications of Confidentiality and No Conflict of Interest forms.

3.4 Nepotism

No Board Member of METRO with the authority to appoint, elect or hire METRO personnel, whether such authority is granted by statute or delegated by the Board or by the President & CEO, shall exercise that authority in favor of persons who are related to any METRO Board Member exercising such authority within the second degree by affinity or within the third degree by consanguinity. This provision shall not prevent the retention or advancement of any Person who has been continuously employed in his or her position for at least 30 days prior to the appointment of the Board Member related to such Person; provided, however, that the Board Member related to that Person shall not participate in any deliberation, voting or appointment process relating to that Person.

Source: Tex. Gov't Code Ann. §§ 573.041, .062 (West 2012). An offense under this provision is a misdemeanor involving official misconduct and may result in a significant fine.

Example: X, a Board Member, participates in the approval of the hiring of his niece to work in the Real Estate department. X has violated this provision.

3.5 Contracts with Former METRO Board Members

METRO may not enter into any Contract (other than a Contract subject to competitive bids) with a former Board Member or other former official of METRO for a period of one year following the Board Member's or official's departure from METRO, unless waived by the Board.

3.6 Exceptions

The prohibitions above in Section 3.1 on receiving gifts or Benefits do not apply to the following Benefits, which may be accepted by a Board Member:

- 3.6.1 A fee prescribed by law to be received by the Board Member or any other Benefit to which the Board Member is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a Board Member;
- 3.6.2 A gift or other Benefit conferred on account of kinship or on account of a personal, professional or business relationship independent of the Board Member's relationship with METRO;
- 3.6.3 A political contribution as defined by Title 15, Election Code;
- 3.6.4 An item with a value of less than \$50, excluding cash, or a negotiable instrument;
- 3.6.5 An item issued by a governmental entity that allows the use of property or facilities owned, leased or operated by the governmental entity;
- 3.6.6 Food, lodging, transportation or entertainment accepted as a guest while in the company of the offeror.

Comment: A Board Member's employment by a METRO vendor is not considered a gift. However, the Board member may be required to follow the abstention and disclosure processes established by Chapters 171 and 176 of the Local Gov. Code.

Source: Texas Penal Code Ann. § 36.10 (West Supp. 2016).

Example: X, a Board Member, is invited on a hunting trip by Y, the representative of an engineering firm which X knows is interested, or is likely to become interested, in METRO matters. Y or Y's firm owns the lease to the hunting site. X may not accept the invitation under such circumstances because the opportunity to hunt free of charge on land that is being leased to another at some charge is not an exception to the general prohibition under this provision.

3.7 Ethics Advisory Opinions

Board Members desiring further interpretation of the Code as it applies to particular factual situations may seek advisory opinions from the General Counsel for METRO. The General Counsel's opinion shall be advisory only,

but a Board Member who acts in reliance on such opinion shall be deemed to be in compliance with the Code. On request of the Board Member, advisory opinions sought pursuant to this provision will not be released to the public. However, the General Counsel shall under no circumstances owe a professional duty of loyalty or confidentiality to the individual Board Member seeking such an opinion. The issuance of advisory opinions does not establish an attorney-client relationship between the General Counsel and the METRO Board Member with regard to the subject matter of the request.

4.0 ANNUAL REVIEW AND ACKNOWLEDGMENT

4.1 Annual Review by Board Members

Board Members shall review the Code of Ethics annually. Also, Board Members may engage in annual ethics/open governance training. Once a year, upon completion of a review of the Code of Ethics or completion of ethics/open government training, Board Members shall execute a written acknowledgment of same.

4.2 Acknowledgment by Bidders

All Persons and entities that seek to obtain a Contract with METRO shall be required to acknowledge review of this Code of Ethics as part of any proposal or bid. This acknowledgment recognizes that violations of this Code or participation in violations are grounds for disqualification of a bidder or termination of a contract with METRO.

5.0 PENALTIES FOR VIOLATION OF STANDARDS OF CONDUCT

5.1 Board Members

A Board Member who is found by the Board to have violated this Code is subject to official reprimand by vote of a majority of a quorum of the Board. In the event that the Board determines that the violation constitutes inefficiency, nonfeasance or malfeasance in office, or a violation of Chapter 171 of the Texas Local Government Code, the Board Member may be removed from office by an affirmative vote of the majority of the other Members of the Board, provided that the procedural requirements of Section 451.511 of the Texas Transportation Code are followed.

5.2 Contractors

METRO may disqualify a bidder, terminate existing Contracts, and/or may exclude any business from future business with METRO for a timeframe determined by the METRO Board, if that business offers, confers or agrees to confer any Benefit as consideration for a Board Member's decision, opinion, recommendation, vote or other exercise of discretion as a public servant. This includes any Benefit for consideration in exchange for the Board Member's having exercised his official powers or performed his official duties or which participates in the violation of any provision of this Code. The Board of Directors of METRO, or its designee, shall make these determinations.

6.0 CONSTRUCTION, APPLICABILITY AND SEVERABILITY

6.1 METRO construes this Code liberally to ensure enactment of its purposes and policies and to supplement such existing laws as may relate to the conduct of Board Members.

6.2 The enactment of this Code shall not affect the propriety of any official act or action taken by, or transaction involving, any Board Member prior to the effective date of this Code.

REVISION HISTORY TABLE			
REVISION LEVEL	CHANGE(S) INCORPORATED BY:	CHANGE(S) APPROVED ON:	SECTIONS IMPACTED – DESCRIPTION OF CHANGES
1.0	Board of Directors	11/21/1988 Resolution 88-171	All Sections – Initial Release
1.0	Board of Directors	07/23/1992 Resolution 92-100	Amendment
1.0	Board of Directors	07/24/2014 Resolution 2014-87	Approved and adopted METRO's Procurement Manual
1.0	Board of Directors	07/27/2017 Resolution 2017-56	Changes to the Code of Ethics. Amendment to the Procurement Manual, enforcement of employee policies and guidelines

Related Forms:

Conflict of Interest Disclosure Form-CIS

Conflict of Interest Questionnaire Form-CIQ

Conflict of Interest Affidavit-Section 176 of the Local Government Code