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PARK

HANDBOOK FOR
PARKS, ARTS & COMMUNITY ENRICHMENT
(PACE) BOARD MEMBERS

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PACE BOARD ORIENTATION
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WELCOME

Congratulations on your appointment to the Parks, Arts and Community Enrichment (PACE) Board of the City of Cedar Park, Texas. This handout is intended to provide a quick overview of basic legal considerations facing the Board, as well as explain several key staff roles and resources. If you have any questions concerning legal matters relating to your role or the business affairs of the City, please do not hesitate to contact the Legal Department.

City Charter

The City of Cedar Park is a home-rule municipal corporation and holds the full power of self-government, subject to any restrictions provided by federal and State law. The Cedar Park City Charter was adopted in 1987 and may be amended by the majority vote of the registered voters of the City of Cedar Park. The City Charter is best described as the City's constitution; it has the force of law and directs the City Council and City staff on how the City is to be operated. The current Charter is available via the City's website and this link: <http://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=cedarparkset>.

Cedar Park Code of Ordinances

The Cedar Park Code of Ordinances, along with adopted policies, rules, and resolutions, are the written embodiment of City policy. The Code of Ordinances has the force of law, and its regulations are binding upon every person within the City's corporate limits and extraterritorial jurisdiction. The Code of Ordinances may be amended by Council action after two (2) public readings. The current Code of Ordinances is available via the City's website and this link: <http://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=cedarparkset>.

Mayor

The Mayor presides at all meetings and shall vote on all issues. The Mayor is the official spokesperson for the City. The Mayor has no power of veto over the actions of the majority of the City Council. The Mayor's role is like a chairman of a corporate board of directors.

City Council

The City Charter provides for governance under the "Council-Manager" form of government, whereby the Council enacts local laws, adopts budgets, determine policies, and appoints the City Manager, who is then responsible for day-to-day City operations and administration. The City Council, by ordinance or resolution, may pass laws and establish policy for the City. Usually this requires only a simple majority vote of four (4) members, however, there are circumstances for which a supermajority is required or in which action may be effected by less than four (4) votes.

PACE Board

The PACE Board is established by Article 1.10 of the Code of Ordinances. The Board serves in an advisory role to the City Council and is responsible for developing and promoting cultural and recreational enrichment programs for the City. The Board is tasked with evaluating programs and facilities related to parks and recreation, art, and community enrichment, as well as assisting in the development and implementation of Parks and Arts Master Plans.

An affirmative vote of four (4) members of the Board is required for the Board to take action on any item. A copy of the PACE Board Rules and Procedures is available on the City's website and at this link: <http://www.cedarparktexas.gov/home/showdocument?id=5351>. Action taken by the PACE Board recommending the adoption of a particular project or the expenditure of funds must be ratified by the City Council before it becomes final. The City Council is ultimately responsible for determining the overall policy and vision for the City's cultural and recreational programs.

Sources of Funding

The PACE Board budget is composed of funds from a variety of sources, each with unique expenditure requirements and limitations. These may include funds apportioned in the annual budget process, capital improvement project allocations, utility customer donations, hotel/motel occupancy tax revenue ("HOT funds"), Type B tax revenue, parkland cash contributions, and donations from the public.

HOT fund expenditures are governed by Chapter 351 of the Texas Tax Code. Expenditures must directly promote the tourism and convention and hotel industry and additionally must fit into one of the following categories:

- Construction, operation, and maintenance of convention center facilities or visitor information centers;
- Furnishing of facilities, personnel, and materials for registration of convention delegates or registrants;
- Tourism advertising;
- Promotion of the arts;
- Historic restoration and preservation projects;
- Certain costs for holding sporting events and upgrading sports facilities;
- Certain transportation costs for taking tourists from hotels to various locations; or
- Signage directing tourists to sights and attractions frequently visited by hotel guests.

Type B tax revenues may be used for eligible PACE Board projects with approval by the City's Community Development Corporation (Type B) Board. Eligible expenditures include land, buildings, equipment, facilities, targeted infrastructure and improvements for:

- Professional and amateur sports and athletic facilities, tourism and entertainment facilities, convention facilities and public parks; and
- Related store, restaurant, concession, parking and transportation facilities.

City Employee Relations

By the City Charter, the City Council and individual Council members are prohibited from dictating the appointment or removal of a City employee or dealing directly with a City employee who is subject to the direction and supervision of the City Manager. All inquiries of and requests for staff action shall be directed through the Designated Staff Liaison(s) or City Manager (or if relating to legal matters, the City Attorney, as stated below).

Designated Staff Liaison

One or more City staff persons are assigned as the Designated Staff Liaison(s) for each Board or Commission. The designated staff liaison(s) are responsible for implementing policies, carrying out projects, and executing contracts recommended by the Boards and Commissions with approval of the City Council. The Designated Staff Liaisons for the PACE Board are the Director of Parks and Recreation and the City Project Manager. Board Members may direct project-related questions and requests for agenda items to the Designated Staff Liaisons.

City Manager

The City Manager is responsible for day-to-day City administration of City operations, much like the president of a corporation. The City Manager assigns one or more Designated Staff Liaison(s) to each Board and Commission.

City Attorney

The City Attorney represents the City of Cedar Park and is responsible for providing legal advice and representation to the City Council, Boards and Commissions and the City staff in all matters affecting City business, handling of all proceedings in the City's Municipal Court, including the prosecution of Class C Misdemeanor criminal matters, and supervising the City's Legal Department staff and all retained outside legal counsel. The City Attorney does not represent the Council, Boards, Commissions, and staff members in their individual capacities or regarding non-City business.

City Secretary

The City Secretary is responsible for administration of elections, public information (including archiving and retention), and open meetings. Because these areas are highly governed by State law, the City Secretary works under the direct supervision of the City Attorney.

Attorney-Client Privilege

The Legal Department represents the City of Cedar Park via its City Council and Boards & Commissions regarding legal matters within their respective subject areas and authorities. Communications between Board & Commission members and the Legal Department for the purpose of soliciting and providing legal advice are generally privileged and confidential, except where the Legal Department's keeping of information in confidence would result in illegal

activity or harm to the City. In the event of a conflict between a Board or Commission and the City, the Legal Department represents the City, would recuse itself from further representation of the Board or Commission on that matter, and would recommend the appointment of independent outside legal counsel for that matter.

Public Information

State law requires that all records of “official City business” kept by or on behalf of PACE Board Members or City employees be public information and must be disclosed to the public when requested. The term “official City business” is construed broadly and pertains to anything undertaken by or relating to any City activity. Therefore, all communications relating to City matters, regardless of the medium and even if on your personal computer, mobile device, or notes, are subject to public disclosure if they exist at the time a public information request is received. Deletion or destruction of such information after a request is received has serious criminal consequences far more serious than any consequences of disclosure.

Open Meetings

State law requires that all regular, special and emergency meetings of the PACE Board shall be open to the public and all final decisions made by the Board shall be made in an open meeting. The law is strongly construed in favor of transparency, and in most instances, public notice of PACE Board meetings must be posted seventy-two (72) hours in advance, otherwise they are illegal. Whenever a quorum of Board Members is gathered and PACE Board business is discussed, a meeting exists, regardless of whether a “meeting” was intended. This means that a meeting can take place merely by a quorum of Board Members discussing PACE Board business over the internet or at a social event. It is against the law to attempt to circumvent the Open Meetings law by discussing PACE Board business in piecemeal via several groups each consisting of less than a quorum of Board Members. This is called a “walking quorum” and is strictly prohibited. There are criminal penalties for violations of the Open Meetings Act and Attorney General has obtained criminal indictments for open meetings violations. All meetings are required to have minutes prepared by the Board Secretary, approved by the PACE Board, and filed with the City Secretary.

Executive Session

By State law, discussion of certain matters may be held in a closed executive session. These discussions are generally limited to litigation, real estate transactions, personnel issues, security, economic development negotiations, and issues subject to the City Attorney’s requirements under the State Bar of Texas Disciplinary Rules of Professional Conduct. Such meetings are “closed” in that they are not open to the public and may include only the PACE Board and necessary staff, consultants, and advisors. The policy underlying this limited authorization recognizes and protects the City’s sensitive legal and financial interests, and Board Members should therefore refrain from communicating confidential information received in closed executive sessions. Additionally, disclosure of sensitive legal and financial interests received in executive session could implicate Texas Penal Code Section 39.06, summarized herein. There are no minutes for executive sessions, only a certified agenda, which by State law may not be

disclosed. By State law, any action of the PACE Board, including any regarding matters discussed in closed executive session, must take place in a public, open meeting.

Conflicts of Interest

PACE Board Members are generally required to subordinate their personal interest to the interest of the City. Important provisions of state law, the City Charter, and the Code of Ordinances governing conflicts of interest are summarized below.

Texas Penal Code:

- (a) *Section 36.02 Bribery:* This Section prohibits a Board Member from offering or accepting a benefit as consideration for the member's vote or recommendation or other exercise of discretion as a Board Member, or any benefit as consideration for a violation of legal duty imposed on a member. An offense under this Section is a second degree felony.
- (b) *Section 36.03 Coercion of Public Servant or Voter:* This Section prohibits a Board Member from influencing a public servant to violate the public servant's known legal duty or influences a voter not to vote or to vote in a particular manner. An offense under this Section is a Class A misdemeanor.
- (c) *Section 36.07 Acceptance of an Honorarium:* This Section prohibits a Board Member from accepting an honorarium for services that the Board Member would not have been requested to provide but for the Board Member's official position. For example, receipt of a payment for giving a speech is a prohibited honorarium if the Board Member would not have been asked to speak but for the Board Member's official status. An offense under this Section is a Class A misdemeanor.
- (d) *Section 36.08 Gift to Public Servant by Person Subject to His Jurisdiction:* This Section prohibits a Board Member from soliciting or accepting a benefit from a person subject to regulation, inspection, or investigation by the PACE Board or the City.

This Section also prohibits a Board Member from receiving a benefit from a person the Board Member knows is interested in or could be interested in a contract or pecuniary transaction if the Board Member exercises discretion in connection with a contract or other pecuniary transaction of the City.

An offense under this Section is a Class A misdemeanor.

Exemptions: *Section 36.10 Non-Applicable* includes exemptions to Section 36.08, which include:

- (1) A benefit that is a fee prescribed by law to be received by the Board Member or any other benefit that the Board Member is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a Board Member;
 - (2) A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
 - (3) Political contributions;
 - (4) An item with a value of less than \$50, excluding cash or other negotiable instrument;
 - (5) An item used by the City that allows use of the property or facilities owned, leased, operated by the City;
 - (6) Transportation, lodging, and meals in connection with a conference or similar event in which the Board Member renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory; and
 - (7) Food, lodging, transportation, or entertainment accepted as a guest, and if the Board Member is required to report those items, reported by the Board Member in accordance with that law;
- (e) *Section 39.02 Abuse of Official Capacity* – This Section prohibits a Board Member from intentionally violating a law relating to the Board Member’s office or misusing City property, services, personnel, or any other thing of value belonging to the City that is in the Board Member’s possession by virtue of the Board Member’s office. An offense under this Section is either a Class A, B, or C misdemeanor depending on specifics of the violation.
- *Note that this statute was held unconstitutional by *Ex parte Perry*, 483 S.W.3d 884 (Tex. Crim. App. 2016), but only to the extent that the statute conflicts with the Separation of Powers Clause of the U.S. Constitution.
- (f) *Section 39.06 Misuse of Official Information*: This Section prohibits a Board Member from using information that the Board Member has by virtue of the Board Member’s office and that has not been made public: (1) to acquire or aid in acquiring an interest in any property, transaction, or enterprise that may be affected by the information; or (2) to speculate on the basis of the information. This Section also prohibits a Board Member from using nonpublic information for a nongovernmental purpose that the Board Member has access to by means of their office to intentionally obtain a benefit or harm or defraud another. An offense under this Section is a Class C Misdemeanor.

Cedar Park City Charter:

- (a) *Section 11.08 Prohibitions:* This Section prohibits (a) Board Members from directly or indirectly giving anything of value to anyone in connection with the appointment; and (b) Board Members from soliciting any contribution for any political purpose from a City official or City employee.

- (b) *Section 11.09 Conflicts of Interest Prohibited:* This Section prohibits: (a) Board Members from acting in any way which places personal interest in conflict with the City's interest; (b) accepting a gift, favor, privilege, or employment from a person or business entity that does business with the City; having a pecuniary interest in a contract with the city or having an interest in the sale of land, tangibles, or intangibles to the City; and (c) serving as surety for the performance of a person doing business with the City or serving as a surety for a City officer or employee required by the Charter to make a surety bond.

PACE Board Rules and Procedures, Rule 3.7 Applicant Discussions

PACE Board Members may not meet with or discuss with any applicant issues subject to authority of the Board outside of an open meeting.