



Office of the City Attorney

ETHICS ADVISORY OPINION

No. 2018-1

DATE: December 18, 2018
SUBJECT: May a current employee use a specialty license to review construction plans for private commercial projects?

ISSUE

May a current City of Laredo ("City") employee perform outside employment that involves reviewing "privately funded construction projects" for compliance with accessibility standards provided through the Texas Department of Licensing and Regulation (TDLR)?

BACKGROUND

A current City employee requested an advisory opinion addressing the Ethics Code restrictions on current employees and their interactions with the City. The employee works for the Building Department and maintains a special license with the TDLR as a Registered Accessibility Specialist ("RAS"). The employee's current duties at the Building Department involve reviewing plans for public improvements and the "civil part of commercial construction plans" for building permits when the projects require drainage and detention improvements. The employee conducts "engineering reviews" on behalf of the City during the "One Stop Shop" meetings but relayed that reviewing architectural construction plans is not one of the employee's current job duties. The employee anticipates the RAS employment will involve inspecting "privately funded commercial projects" for compliance with TDLR accessibility standards and that such inspections will take place on the employee's own time and not during City business hours. The employee relayed that part of the outside work associated with RAS will require the generation of written reports and/or written communication which will be shared with the owner of the private project. The project owner will compensate the employee for the work on the "privately funded commercial project."

APPLICABLE CITY ETHICS CODE PROVISIONS

Section 2.01 Conflicts of Interest

Section 2.01(a) of the City's Ethics Code provides in relevant part:

To avoid the appearance and/or risk of impropriety, an official or employee shall not take any action that he or she knows is likely to affect the economic interest of (1) the official or employee; or (9) a person or business entity for which the city official or employee serves as an

official or director or in any other policy making position or (9) (A) (iii) a person or business entity with whom, within the past twelve months, the employee directly or indirectly has accepted an offer of employment.

Section 2.02 Unfair Advancement of Private Interests

Section 2.02(b)(1) provides in relevant part:

A city official or employee shall not acquire an interest in, or affected by, any contract, transaction, zoning decision, or other matter, if the official or employee knows or has reason to know, that the interest will be directly or indirectly affected by impending official action by the City.

ANALYSIS

The City's Ethics Code establishes guidelines for ethical standards of conduct for all officials and employees to minimize the risk of any appearance of impropriety (See Section 1.01 Statement of Purpose, page 4). While the employee in this case will be performing the TDLR work during off duty hours, there is the possibility that a TDLR / RAS project that the employee worked on will come before the City for consideration. In other words, it is possible the City employee will review a project in which the employee worked on in the RAS capacity and one in which the employee communicated with the project owner while in the capacity as a TDLR RAS.

The Code of Ethics prohibits an employee from taking any action that he or she knows is likely to affect the economic interest of a business entity in which the employee has accepted an offer of employment. In this case, the employee will be compensated by the owner of the "privately funded commercial project" and it is possible that such project will come before the City for consideration during the City's "One Stop Shop" review. While the employee's duties during the Engineering review part of the One Stop Shop may not overlap, the appearance of impropriety is present as the employee has been or will be compensated by the owner of the "privately funded project" in which the employee will be reviewing on behalf of the City. Both the conflict of interest provision and the unfair advancement of private interests are implicated by the employee's outside employment.

CONCLUSION

Based on the facts presented, the City employee cannot perform employment with TDLR as a Registered Accessibility Specialist while working for the City of Laredo.