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**Summary of Montgomery County Code of Ethics**  
**Adopted January 24, 2017 and Effective February 1, 2017**

This summary is designed to provide an overview of the Ethics Code approved by Commissioners Court on January 24, 2017. The Ethics Code (hereinafter the “Code”) meets the current requirements for the TxDOT Internal Compliance Program and will allow County grant recipients to certify that Montgomery County has an internal ethics and compliance program that satisfies the requirement of 43 Texas Administrative Code § 10.51. Implementing procedures must still be devised and adopted; however, the Code provides one or more mechanisms in order to timely create the implementing procedures.

In reviewing this summary and the Code it is important to understand the limitations on creating and implementing an ethics policy and enforcement. A county is a limited form of government in Texas. A county has only the powers granted to it by the state Constitution and laws passed by the Legislature. Our office reviewed many current county ethics policies. The Ethics Code is patterned after the El Paso County Ethics Commission. A comparison of the Code with the El Paso Ethics Commission policies will reveal significant differences, however. The El Paso Ethics Commission has a specific enabling law in the Local Government Code that allows for broad expanse of power (including some enforcement provisions with civil penalties up to \$4,000) to that Commission. The enabling law for the El Paso Commission does not apply to Montgomery County. The Code lacks any stated enforcement because there is no law that allows Montgomery County to create an Ethics Commission or gives a county ethics committee any enforcement powers. Nonetheless, our office believes that the proposed Ethics Code allows for as much transparency and public access as the law currently allows.

**Who is covered by the Code?:** The Code applies to County Public Servants as defined in the Code. The definition makes most elected officials (excluding judges) and “high level” county employees subject to the Code. A high level county employee generally means department heads and includes other county employees when those non-department head employees are involved in the procurement of goods or services for the county. It also applies

to assistant DA's and judicial employees when performing a county governmental function, i.e. when they are not acting as prosecutors or court officials (normally when acting in administrative duties). It also applies to persons appointed to County committees even if those persons are not county employees

**Ethics Advisory Committee:** The Code provides for the creation of the Ethics Advisory Committee (the "Committee"). The Code creates a five member committee of public (non-county employees) with two (2) members appointed by the Commissioners Court and one member nominated from each of HR, Auditor and Purchasing. The Code requires the Commissioners Court to appoint one member from three persons as nominated by HR, Auditor and Purchasing. In other words, HR, the Auditor and Purchasing will each nominate three (3) persons. Commissioners will then appoint one (1) person from the three (3) nominated from HR, one person from the three persons nominated by the Auditor and one person from the three persons nominated by Purchasing. The committee members serve two (2) year terms. The procedures to be adopted can provide for staggered terms. A County Attorney serves on the Committee in an advisory capacity only.

**Lobbyist Activity, Registration and Reporting:** The Code provides for local registration of lobbyists and the requirement of County officers and department heads to maintain a log of contacts with lobbyists.

**Conflicts of Interests in Procurement:** The Code provides covered persons to be disqualified from participating in procurement of goods and service when the respective official or department head has a financial interest in an entity or vendor involved in the procurement or a family member has a financial interest in an entity or vendor involved in the procurement. A covered person is also disqualified from participating in a transaction in which the person has an interest in real estate involved in the transaction.

**Prohibition of communications with vendors after procurement is started:** The Code contains a provision that a covered official/employee may not have "private communications" (as defined) with a potential vendor about a good or service after the date the bid, RFP or RFQ is released until the procurement process is complete and PO is granted or a contract is finalized.

**Disclosure of relationships and gifts:** The Code requires disclosure and filing of the same of business and family relationships and gifts regarding prospective vendors. The "business relationship" and "investment income" use the definitions contained in Chapt. 176 of the Local Government Code.

County Officers are subject to a broader disclosure requirement with regard to business relationships. County Officers are required to disclose all employment or other business relationships with (a) a Vendor or prospective Vendor and/or (b) an employee of a Vendor or prospective Vendor regardless of the amount or type of income.

**Gifts & Benefits:** Gifts are limited to a value of \$50 or less. Meals, beverages and tickets to sporting and cultural events with a face value of \$250 or less are not considered gifts. There are also exclusions for campaign contributions, gifts from family and friends, "commercially reasonable" loans in the ordinary course of business, awards, invitations and gifts to fundraising dinners or charitable benefits including golf tournaments, and items such as

meals, lodging, travel and related matters when the official is attending or appearing in their official capacity.

**Nepotism & Employment:** In addition to prohibiting discrimination in hiring, the Code provides that County elected officials and department heads will not advocate the employment, appointment, promotion, transfer or advancement to a paid County position of a family member and will not supervise or manage a family member, unless the employee was employed prior to the election or appointment of the County elected official or department head.

**Post-Employment Restrictions:** The Code currently includes a provision prohibiting County contracting with a former elected official or department head for a period of two (2) years after separation on those business matters “in which the former elected official or department head was either personally involved or that was within the former elected official or department head’s responsibility while an elected official or department head.”

The Code also provides that “non-elected department heads should not knowingly hire any person who has served as a Montgomery County elected official in the previous year.”

**Statement of Financial Interest:** The Code provides for the filing of personal financial statement similar to those required of most elected officials. The elected officials who are required to file by Chapter 159 of the Local Government Code and the DA are exempt from filing the local statement of financial interest.

**Training:** Training in the Ethics Code is mandatory for all employees and must be reviewed every two (2) years. All new employees will receive training at their orientation. The Code provides for HR to design and conduct the training which may include web based training.

**Complaints and complaint procedures:** Any person may file a complaint. The Code provides that the rules of the Committee governing the procedures and forms for filing and processing a sworn complaint will be designed by HR and published on the county website.

**Advisory Opinions:** The Code provides that any person covered by the Code may request a written advisory opinion from the Committee based upon a hypothetical. The name of the requestor is kept confidential and the Committee can not release the name of anyone who may be affected by the opinion.