

ARTICLE XII

CODE OF ETHICS

Section 12.01 Declaration of Ethical Policy

- A. It is the policy of the City that the proper operation of democratic government requires that public officials be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all City officials is adopted.
- B. This code of ethics has five (5) purposes:
 - 1. To encourage the public service by Arlington citizens;
 - 2. To encourage high ethical standards in official conduct by City officials;
 - 3. To establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the best interests of the City;
 - 4. To require disclosure by such officials of private financial or other interests in matters affecting the City; and
 - 5. To serve as a basis for disciplining those who fail to abide by its terms.
- C. The provisions of this article shall not apply to contributions, loans, expenditures or reports, any of which are made for lawful political purposes.
- D. This Code of Ethics is not intended to be nor shall it be used as a political weapon to intimidate or embarrass persons affected.
- E. In those matters before the City Council where there is a conflict with this Declaration of Ethical Policy, the elected City official must refrain from the deliberations of the Council and abstain from voting.

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Section 12.02 Standards of Conduct Subject to Ethics Commission Review

- A. No City official shall formally appear for compensation before the body of which the official is a member while acting as an advocate for any other person, group or entity.
- B. No City official shall represent, for compensation, any other private person, group or entity before any body on which such City official may be a member.
- C. No elected City official shall interfere with the City Manager's administrative duties of appointment to and removal of persons from employment with the City. Nor shall private directives be made to City staff.
- D. No City official shall represent, directly or indirectly, any other private person, group or entity in any action or proceeding against the interests of the City, or in any litigation in which the City or any department, commission, board or committee thereof is a party.
- E. No City official shall represent, other than himself/herself, directly or indirectly, any private person, group or entity in any action or proceeding in the municipal courts of the City.
- F.
 - 1. No City official shall solicit or accept other employment to be performed or compensation to be received while still a City official, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of City duties.
 - 2. If a City official accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official might reasonably be expected to act, investigate, advise or make a recommendation, the official shall disclose that fact to the board or commission on which he/she serves and shall take no further action on matters regarding the potential future employer.
- G. No City official shall accept remuneration, directly or indirectly, for campaign work relating to another individual's candidacy for and election to Mayor, City Council or other elected office of the City of

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Arlington, or any other item placed on the ballot by the City Council, when such work is to be performed within twelve (12) months of the respective election, if the City official served on the body which exercised authority in the development of the ballot item and participated in the discussion or voted on the item.

- H. A City official may not participate in a vote or decision on any zoning matter which may appear before the body of which the City official is a member if the City official has a substantial interest in any real property within two hundred feet (200') of the property which is the subject of the zoning request.
- I. A City official who serves as a corporate officer or member of the board of directors of a nonprofit entity may not participate in a vote or decision regarding funding by or through the City for the entity, if said official receives any fee, compensation or other monetary payment from the entity, unless the City Council appointed such City official to the board of directors or such corporate office.
- J. A City official shall not disclose any confidential government information gained by reason of the City official's position. This rule does not prohibit:
- a. any disclosure that is no longer confidential government information;
 - b. the confidential reporting of illegal or unethical conduct to authorities designated by law; or
 - c. any disclosure, not otherwise prohibited by law, in furtherance of public safety after first conferring with the City Attorney about any potential liability exposure. (Amend Ord 01-074, 7/10/01)

Section 12.03 Additional Ethical Standards

- A. A City official may not participate in a vote or decision on a matter affecting a person, entity or property in which the official has a conflict of interest. See Chapter 171, Texas Local Government Code, Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments.

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1. A City official shall review the agenda to determine if there are any matters in which he/she has a conflict of interest prior to each meeting of the body to which the City official is a member.
 2. A City official shall file a statement prior to the meeting indicating that he/she has reviewed the agenda and that there are no matters in which he/she has a conflict of interest.
 3. If, upon review of the agenda, it is determined that the City official has a conflict of interest, he/she shall file an affidavit as required by Texas Local Government Code, Chapter 171, and abstain from participation in the discussion and voting on the matter.
- B. No City official shall violate Chapter 37 (Perjury and Other Falsification) of the Texas Penal Code. Nor shall a City official solicit, encourage, direct, aid or attempt to aid another person to commit a violation of Chapter 37 of the Texas Penal Code.
- C. No City official shall use his/her official position to secure confidential information for any purpose other than official responsibilities. See Section 39.06, Texas Penal Code, Misuse of Official Information.
- D. No City official shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are customary, incidental or lawfully available to the public. See Section 39.02, Texas Penal Code, Abuse of Official Capacity.
- E. No City official shall accept or solicit any gift or favor that would tend to influence that individual in the discharge of official duties or that the official knows has been offered with the intent to influence or reward official conduct. See Section 36.02, Texas Penal Code, Bribery. (Amend Ord 01-074, 7/10/01)

Section 12.04 Disclosure of Conflict of Interest

- A. A City official shall disclose the existence of any conflict of interest he/she may have with respect to a person, entity or property which would be affected by a vote or decision of the body of which the City official is a member or that he/she serves as a corporate officer or member of the board of directors of a

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- nonprofit entity for which a vote or decision regarding funding by or through the City is being considered.
- B. To comply with this section, a Council member or City official, prior to the vote or decision, either shall file an affidavit as required by Texas Local Government Code, Chapter 171 (Regulation of Conflicts of Interest of Officers of Municipalities), or if not so required by said statute, shall publicly disclose in the official records of the body the nature and extent of such interest.
- C. Where the interest of a City official in the subject matter of a vote or decision is remote or incidental, the City official may participate in the vote or decision and need not disclose the interest.
1. "Remote interest" means an interest of a person or entity, including a City official, who would be affected in the same way as the general public. The interest of a Council member in the property tax rate, general City fees, City utility charges or a comprehensive zoning ordinance or similar decisions is incidental to the extent that the Council member would be affected in common with the general public.
 2. "Incidental interest" means an interest in a person, entity or property which is not a substantial interest and which has insignificant value, or which would be affected only in a de minimis fashion by a decision. This article does not establish dollar limits on the terms "insignificant value" and "de minimis," which shall have their usual meanings and be subject to interpretation on a case by case basis.
- D. Nothing in this article shall prohibit the City Council from participating in a vote or decision relating to salaries, terms of office or travel budgets of City Council members. (Amend Ord 01-074, 7/10/01)

Section 12.05 Substantial Interest of Relative

- A. A conflict of interest of an immediate family member of a City official shall be deemed to apply to that official for the purposes of Sections 12.02 and 12.03 concerning disclosure and recusal or reassignment.

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B. A City official subject to Texas Local Government Code, Chapter 171, may not participate in a vote or decision affecting a substantial interest of an immediate family member of the official. (Amend Ord 93-06, 1/26/93)

Section 12.06 Disclosure of Interests Regarding Land Use Changes

A. Any person seeking City Council, Zoning Board of Adjustment, Planning and Zoning Commission, or Landmark Preservation Commission consideration or action concerning any application for rezoning, plat approval, certificates of appropriateness, certificates of demolition or relocation, special exception, variance or similar application requiring action by the Planning and Zoning Commission, Landmark Preservation Commission or Zoning Board of Adjustment, shall file a disclosure statement with the City.

1. Said statement shall be filed at the time of filing of such application with the Planning Department, Neighborhood Services Department or Building Inspections.

2. The applicant shall specifically name any member of the above-referenced bodies or City employee believed by the applicant or owner to have a conflict of interest in the matter or the property which is the subject of consideration or action. The applicant shall further state all information upon which he bases the belief that a conflict of interest exists.

3. The applicant is not required to report an interest in property located within two hundred feet (200') of the property that is the subject of consideration or action. (Amend Ord 00-104, 9/12/00)

B. The applicant and the owner shall file statements in those cases where the applicant does not own the property which is the subject of consideration or action. (Amend Ord 93-06, 1/26/93)

Section 12.07 Ethics Review Commission

A. There shall be created an Ethics Review Commission (Commission). It shall have the duty and power, unless otherwise provided, to rule upon the appropriate

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disposition of allegations of violations of Section 12.02 of this Article.

B. Members.

1. The City Council shall appoint a chairperson and eight (8) other members to the Ethics Review Commission.
2. The Mayor and each member of the City Council shall nominate a member to the Commission. These nominations shall be confirmed by majority vote of the City Council. The City Council should appoint as members of the Commission persons of high integrity commensurate with the spirit of this Code of Ethics.
3. Commission members shall be appointed to staggered terms with the terms of four (4) members to expire June 1, 2002, and the terms of the chairperson and four (4) members to expire June 1, 2003. Thereafter, all Commission members shall be appointed to two (2) year terms.
4. All members shall be residents of the City of Arlington. No member shall hold any City elected office, be a candidate for any such office or hold any other City appointed office.
5. The chairperson of the Commission shall appoint three members of the Commission to serve on a Commission panel to preside over preliminary hearings. The chairperson shall appoint a chairperson for each panel and may rotate members of the Commission as necessary for the expeditious hearing of each complaint.
6. Members of the Commission serve at the pleasure of the City Council and may be removed by a majority vote of said Council.

C. Quorum; Meetings; Rules.

1. When the Commission is meeting as a whole, seven or more members of the Commission shall constitute a quorum.
2. When a panel convenes to preside over a preliminary hearing, three members shall constitute a quorum.

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- 3. Every meeting or hearing of the Commission or a panel of the Commission shall be held in accordance with Chapter 551 of the Texas Government Code.
- 4. The Commission may adopt, amend and rescind rules of procedure to carry out the provisions of this Article. Such rules shall be consistent with this Article and other applicable law.

D. Duties. The Commission shall have the following duties:

- 1. To meet as often as necessary to fulfill its responsibilities;
- 2. To review, index, maintain on file, and dispose of sworn complaints;
- 3. To make findings of fact as necessary for the disposition of a complaint;
- 4. To make notifications, extend deadlines, and conduct investigations; and
- 5. Such other duties as are specifically granted by this Article.

E. Staffing.

- 1. The Commission may request from the City Manager the appointment of such staff as is necessary to carry out the duties of the Commission.
- 2. The Commission may be assigned staff by the City Attorney to assist in its duties.
- 3. When complaints are filed against a City official other than a City Council member, independent legal counsel may be utilized at the discretion of the City Attorney to advise the Commission and participate in hearings. When a complaint is filed against a City Council member, the City Attorney shall engage independent legal counsel to advise the Commission, unless the City Attorney determines there are no reasonable grounds to believe that a violation of Section 12.02 has occurred.
- 4. A City official may request the meaning or effect of any section, word or requirement of this

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Article as it affects such official, and the City Attorney's Office shall thereupon confer with the City official. (Amend Ord 01-074, 7/10/01)

Section 12.08 Disposition of Alleged Violations; Hearings

A. Complaint Procedure.

1. Any resident of the City who believes there has been a violation of Section 12.02 may file a sworn complaint, under the penalty of perjury, with the City Secretary.
2. The complaint shall:
 - a. Identify the person or persons who allegedly committed the violation;
 - b. Provide a sufficient statement of the facts which if true would constitute a prima facie violation of Section 12.02;
 - c. Specify the subsection of Section 12.02 which is alleged to have been violated;
 - d. Identify sources of evidence, if any, that the complainant recommends should be considered by the Commission; and
 - e. be filed on a form prescribed by the City Attorney's Office.
3. Not later than seven (7) working days after the City Secretary receives a sworn complaint, the City Secretary shall acknowledge the receipt of the complaint to the complainant and provide a copy of the complaint to the City Attorney, the Ethics Review Commission, the City Council and the person complained against.

B. Review of Complaints by City Attorney.

1. Upon receipt of a complaint, the City Attorney shall review the complaint to determine whether the complaint is sufficient as to form and whether the complaint alleges sufficient facts which if true would constitute a prima facie violation of Section 12.02.

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- 2. If the City Attorney determines that the complaint is defective as to form or does not allege conduct which would violate Section 12.02, the City Attorney shall notify the Commission, the complainant, the City Council and the person complained against of such defect within seven (7) working days after receipt of the complaint from the City Secretary.
- 3. The complaint shall be dismissed upon a finding by the City Attorney that the complaint is insufficient and no further action shall be taken by the Commission.
- 4. Upon a finding by the City Attorney that a prima facie violation has been alleged, the complaint shall be deemed a formally lodged complaint and a preliminary hearing shall be scheduled to be held within twenty (20) working days.

C. Preliminary Hearing.

- 1. A panel consisting of three (3) Commission members shall preside over preliminary hearings.
- 2. The issue at a preliminary hearing shall be the existence of reasonable grounds to believe that a violation of Section 12.02 has occurred.
- 3. The person filing a complaint shall state the alleged violation and shall describe in narrative form the testimony and other evidence which would be presented to prove the alleged violation as stated in the written complaint.
- 4. Statements at a preliminary hearing shall be under oath, but there shall be no cross-examination or requests for persons or evidence issued for the hearing.
- 5. The official may describe in narrative form the testimony and other evidence which would be presented to disprove the alleged violation.
- 6. Members of the panel may question the complainant, complainant's designated representative, legal counsel for the Commission or the City official named in the complaint in order to make the determinations necessary for the preliminary hearing.

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- 7. The City official named in the complaint shall have the opportunity to respond but is not required to attend or make any statement.
- 8. The complainant and the City official named in the complaint shall have the right of representation by counsel.
- 9. At the conclusion of the preliminary hearing, the panel shall decide whether a final hearing should be held.
 - a. If the panel determines that there are reasonable grounds to believe that a violation of Section 12.02 has occurred, a final hearing shall be scheduled.
 - b. If the panel does not determine that there are reasonable grounds to believe that a violation of Section 12.02 has occurred, the complaint shall be dismissed.
 - c. A decision to conduct a final hearing is not a finding that a violation has occurred.
- 10. The panel, at any time during the preliminary hearing, may also dismiss a complaint if the complaint does not allege conduct which would be a violation of Section 12.02.
- 11. The complainant, any member of the Commission, legal counsel for the Commission and the City official named in the complaint may ask the panel at a preliminary hearing to request certain persons and evidence for a final hearing, if one is scheduled.

D. Final hearing.

- 1. The Commission sitting as a whole will preside over all final hearings.
- 2. The issue at a final hearing shall be whether a violation of Section 12.02 has occurred.
- 3. A determination that a violation of Section 12.02 has occurred must be supported by clear and convincing evidence. "Clear and convincing evidence" means that measure or degree of proof that produces in a person's mind a firm belief or

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conviction as to the truth of the allegations sought to be established.

4. All witnesses shall make their statements under oath.
5. If a complaint proceeds to a final hearing, the Commission may request witnesses to attend and testify, administer oaths and affirmations, take evidence and request the production of books, papers, records or other evidence needed for the performance of the Commission's duties or exercise of its powers, including its duties and powers of investigation.
6. If the Commission determines that a violation has occurred, it shall state its findings in writing, shall identify the particular subsection(s) of Section 12.02 which have been violated, and within five (5) working days shall deliver a copy of the findings to the complainant, if any, the person named in the complaint, the City Secretary and the City Attorney.
7. The final hearing shall be held as expeditiously as possible following the determination by the panel that there are reasonable grounds to believe that a violation of Section 12.02 has occurred, but in no event, except if postponed as described below, shall it be held more than thirty (30) days after said determination.
8. The Commission may grant two (2) postponements, not to exceed fifteen (15) days each, upon the request of the City official named in the complaint.

E. Appeal to City Council.

1. Within fourteen (14) calendar days after the Commission has rendered a decision at the final hearing, the person subject to the complaint may file with the City Secretary an appeal to the City Council setting forth the basis for such appeal.
2. A hearing shall be scheduled before the City Council within 30 calendar days.
3. City Council review of a decision by the Ethics Commission shall not be by a de novo hearing where facts are established; rather, the review

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shall be on the record that was before the Ethics Commission.

- 4. A transcript of the proceedings as well as all documentation before the Ethics Commission shall be forwarded to the City Council for its review.
- 5. If at the hearing, the City Council determines that testimony is necessary for the proper disposition of the matter, it may take such evidence.

F. Vote Required.

- 1. Commission Panel. A determination by a panel of the Commission that there are reasonable grounds to believe that a violation of Section 12.02 has occurred shall require the affirmative vote of at least two members of the panel.
- 2. Ethics Commission. A determination that a violation of Section 12.02 has occurred shall require the affirmative vote of at least seven members of the Commission.
- 3. City Council. A determination on an appeal before the City Council shall require the affirmative vote of $\frac{3}{4}$ of the City Council, excluding a Council member who may be the subject of the complaint.

G. Prohibition of Ex Parte Communications. After a complaint has been filed and during the pendency of a complaint before the Commission, a panel of the Commission, or the City Council, a member of the above respective bodies may not communicate directly or indirectly with the complainant, the affected City official or any representative thereof about any issue of fact or law regarding the complaint, except at a meeting of the respective body or through written statement or brief, if requested by the Commission or City Council. A copy of any such written statement or brief shall be promptly filed with the City Secretary and the City Attorney.

H. Legal Representation Relative to Section 12.02 Complaints.

- 1. A City official may employ a private attorney to provide representation before the Ethics Commission and the City Council.

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2. If a City official is found innocent of the alleged charges, the City shall reimburse the reasonable legal fees and expenses incurred in defending a Section 12.02 complaint upon a finding by the City Council that the public interest will be served. The City Attorney shall make a determination as to what constitutes reasonable fees and expenses for the representation of the complaint.

I. Admission of Violation or Plea of No Contest.

1. On or before three (3) business days prior to the scheduled preliminary hearing, a City official subject to an ethics complaint may file a waiver of the hearing process and a written admission or written plea of "no contest" with the City Secretary.

2. The preliminary hearing shall be cancelled and a hearing before the entire Commission shall be scheduled as expeditiously as possible, but in no event shall it be held more than thirty (30) days after the filing of the admission and waiver.

3. At the hearing the City official may explain to the Commission any extenuating circumstances relative to the ethics violation. If at the hearing, the Commission determines that additional testimony is necessary for the proper disposition of the matter, the Commission may take evidence as it deems appropriate.

4. While the Commission shall consider the City official's explanation for the violation, the Commission shall in its sole discretion render the sanction, if any, that it deems appropriate.

J. Disposition. If the Commission determines that a violation of Section 12.02 has occurred, it shall deliver a copy of the findings to the complainant, the person named in the complaint, and the City Council.

K. Sanctions. If the Commission determines that a violation has occurred, it may announce its' intention to impose or recommend the following sanctions. An appeal to the City Council will stay any decision by the Ethics Commission. The Commission may not impose sanctions until the time period for an appeal to the City Council has expired.

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1. Letter of Notification. A letter of notification shall be the appropriate sanction when the violation is clearly unintentional, or when the City official's conduct complained of was made in reasonable reliance on an opinion of the City Attorney.
 - a. A letter of notification shall advise the City official to whom it is directed of any steps to be taken to avoid future violations.
 - b. The Commission may direct a letter of notification to any City official covered by this Article.

2. Letter of Admonition. A letter of admonition shall be the appropriate sanction in those cases in which the Commission finds that the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification. The Commission may admonish any City official covered by this Article.

3. Reprimand. A reprimand shall be the appropriate sanction when the Commission finds that a violation has been committed intentionally or through reckless disregard of this Article.
 - a. The Commission may reprimand any City official covered by this Article.
 - b. A reprimand directed to a City official shall also be sent to the City Council.

4. Removal or Suspension From Office. To the extent allowed by the City Charter, a recommendation of removal from office or, except in the case of an elected City official, a recommendation of suspension from office, as well as a recommendation for length of suspension, shall be the appropriate sanction when the Commission finds that a serious or repeated violation of this Article has been committed intentionally or through reckless disregard of this Article by a non-elected City official.
 - a. A recommendation of removal from office or a recommendation of suspension from office for a City official shall be transmitted to the City Council.

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- b. The final authority to carry out such recommendations to remove from office or suspend from office and the length of the suspension shall be with the City Council.
5. Letter of Censure. A letter of censure shall be the appropriate sanction when the Commission finds that a serious or repeated violation of this Article has been committed intentionally or through reckless disregard of this Article by an elected City official.
- a. A letter of censure directed to an elected City official shall be transmitted to the City Secretary and sent to the City Council.
 - b. The City Council may impose a letter of censure removing the City official from any or all Council committee appointments upon an affirmative vote of the entire Council, excluding the affected City official. (Amend Ord 01-074, 7/10/01)

Section 12.09 Definitions

For the purposes of this article:

"Affected" means reasonably likely to be subject to a direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question in the case of a person, entity or property.

"City employee or employee" means City Manager, Deputy City Manager, City Attorney and all department heads.

"City official or official" means the following:

- The Mayor
- Members of the City Council
- Members of:
 - Arlington Sports Facilities Development Authority, Inc.
 - Building Code Board of Appeals
 - Electrical Code Board of Appeals
 - Ethics Review Commission
 - Emergency Physicians Advisory Board
 - Health Authority
 - Hospital Authority
 - Housing Advisory and Appeals Board
 - Industrial Development Corporation
 - Landmark Preservation Commission

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- License and Amortization Appeals Board
- Mechanical Code Board of Appeals
- North Texas Higher Education Authority
- Park and Recreation Board
- Planning and Zoning Commission
- Supervising Board of Plumbers
- Zoning Board of Adjustment

"Conflict of interest" means action upon any matter which would constitute a violation of this Code of Ethics, Texas Penal Code or Texas Local Government Code, Chapter 171.

"Decision" means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the City Council or other City board or commission, as listed in Section 12.09, the definition of "City official or official," as well as the discussions or deliberations of the council, board or commission which can or may lead to a vote or formal action by that body.

"Discretionary authority" means the power to exercise any judgment in a decision or action.

"Entity" means a sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, joint venture, receivership, trust or any other entity recognized by law through which business may be conducted.

"Immediate family member" means the spouse, parent, parent-in-law, brother, brother-in-law, sister, sister-in-law, child, son-in-law or daughter-in-law or other person living in the same residential dwelling unit of the City official.

"Ministerial act" means an act performed in a prescribed manner and not requiring the exercise of any judgment or discretion.

"Person" means an individual, proprietorship, partnership, corporation, association or other legal entity.

"Substantial interest" means:

A. A person has a substantial interest in a business entity if:

1. The person owns ten percent (10%) or more of the voting stock or shares of the business entity or owns either ten percent (10%) or more or Fifteen Thousand and No/100 Dollars (\$15,000.00) or more

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of the fair market value of the business entity;
or

2. Funds received by the person from the business entity exceed ten percent (10%) of the person's gross income for the previous year.

B. A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) or more. (Amend Ord 01-074, 7/10/01)

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