

HOW TO BE AN ETHICAL PLANNING AND ZONING COMMISSIONER AKA HOW TO STAY OUT OF TROUBLE

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Based on *Ethical Principles in Planning*, American Planning Association, "Ethics and Planning Commissioner", *A Guide to Urban Planning in Texas Communities*, American Planning Association Texas Chapter, and APA Ethics Toolkit.

MORALS VERSUS ETHICS

Moral Decision...

Judgment of the goodness or badness of human action and character—a value judgment.

Ethical Decision...

Principles of conduct based on system of rules/standards governing members of profession or group.

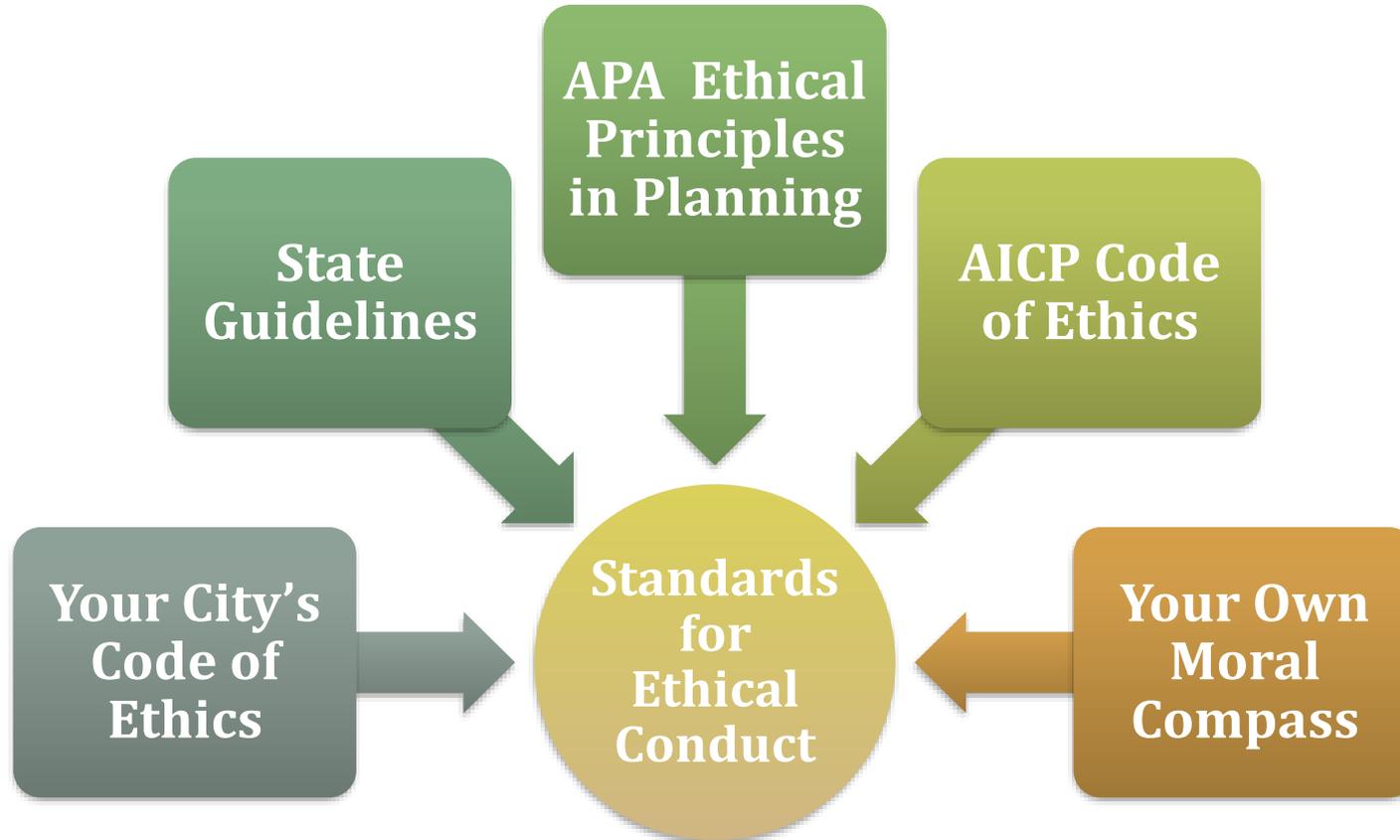
Ethics Code...

A formal system of rules explicitly adopted by group.

GUIDES FOR ETHICS

Ethics: the principles of conduct governing an individual or a group –*Merriam Webster*

“Ethics are what you do when no one is looking.”
–George Bernard Shaw



Ethical behavior is not always easy to achieve,
but the *Statement of Ethical Principles* is a good place to start.

ETHICS ORDINANCES IN GENERAL

Prohibited conduct:

- Solicitation/acceptance of gifts
- Misuse of position
- Conflict of interest (generally financial)
- Ex Parte communications
- Serial meetings
- Open Meetings violation

Disclosure:

- Forms and/or procedure provided by the City -does not have to be very detailed

ETHICAL PRINCIPLES IN PLANNING

The American Planning Association has guidelines for ethics: *Ethical Principles in Planning**.

The **planning process** must continuously pursue and faithfully serve the **public interest**.

Planning process participants continuously strive to achieve **high standards of integrity and proficiency** so that **public respect** for the planning process will be maintained.

WHAT DO WE MEAN WHEN WE SAY...

“The **planning process** must continuously pursue and faithfully serve the **public interest**? (Part One of *Ethical Principles in Planning*)

1. Recognize the rights of citizens to participate in planning decisions.
2. Give citizens full, clear, and accurate information.
3. Expand choice and opportunity for all persons.
4. Assist in the clarification of community goals.
5. Ensure that information available to decision makers is also available to the public.
6. Pay special attention to the interrelatedness of decisions and the long-range consequences of present actions.”

REMEMBER THAT...

The planning process exists:

- To serve the public interest
- Requires a conscientiously held view of the policies
- Requires actions that best serve the community.

*Whether a professional
or a volunteer, we are all
planners.*

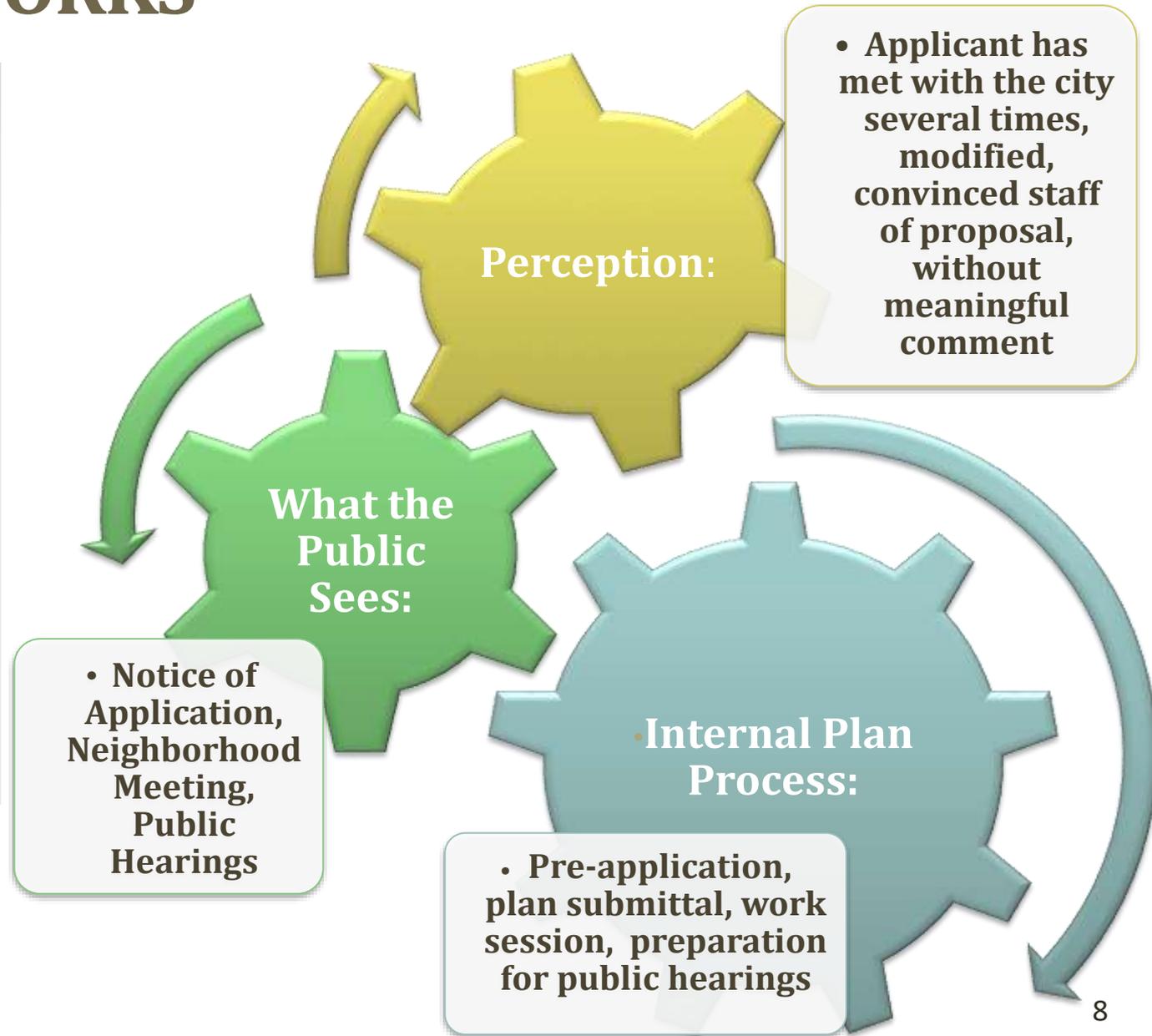
Planning issues and decision commonly involve:

- Large interests at stake
- Potential conflict of values
- Interpretation of plans, ordinances and codes
- Use of the Comprehensive Plan



HOW IT WORKS

The planning process is aimed at implementing the comprehensive plan and/or achieving the desired vision of the community.



WHAT IS YOUR ROLE AS A PLANNING COMMISSIONER?

A Planning Commission may be defined as:

A group of citizens appointed by the legislative body that performs both required and discretionary functions in land use matters. *

This can include:

- Develop and update the comprehensive plan
- Implement land use patterns
- Monitor current zoning ordinance
- Make recommendations on zoning changes
- Recommend approval of (or approve) subdivisions
- Make recommendations for annexation
- Interface with public on community vision through public meetings, focus groups, and neighborhood organizations

TO BE FAIR--QUESTIONS TO ASK:

Zoning

- What is the applicant asking for?
- What effect will it have on the site?
- What effect will it have on surrounding land uses?
- In accordance with the Comprehensive Plan?

Subdivisions

- Does it meet the requirements of the Regulations?

What should NOT play a part in the decision

- Illegal considerations
- Identity of applicant
- Financial capability of applicant*
- What the structures will look like**

* More of a City Council concern **Unless there are architectural controls in the ordinances

THE OPEN MEETINGS ACT*

General Rule: Every regular, special, or called meeting of a governmental body **MUST** be open to the public, and the public must be given adequate notice of the topics to be discussed.

There are **NO** informal meetings!



The screenshot shows the website for Ken Paxton, The Attorney General of Texas. The page is titled "OPEN GOVERNMENT TRAINING" and features a large image of the Texas State Capitol dome. Below the image, there are social media icons for Facebook, Twitter, Google+, and YouTube. The main content area is titled "Open Government Training" and includes a brief description of the training courses. At the bottom, there are three buttons: "Open Meetings Act Training", "Public Information Act Training", and "Course Completion Certificate".

<https://www.texasattorneygeneral.gov/og/oma-training>

YOU HAVE TO LET PEOPLE KNOW!

The City should:

- send Notice by mail to property owners in the notification area usually within 200 or more feet of subject property;
- put Notice in a newspaper in general distribution;
- post Notice at City Hall where it can be easily read, usually on window or outside public access bulletin board;
- have Notices on Commission and City's official websites;
- and more recently, but unofficially and sometimes controversially, put Notices on social media—**without any comments**; and
- also, have the case materials available for view at City Hall.

WHAT IS EX PARTE?

A discussion where only one side is presented

Ex Parte is any oral or written communication outside the record of the hearing with either proponents or opponents of a pending proceeding:

Why are we concerned about Ex Parte?

- The decision maker may be inaccurately informed.
- The perception that the commission can be susceptible to improper influence.
- Improper Ex Parte communications can invalidate the actions of the commission.

Note: This might happen if you might talk to the applicant or the opposition.

Save It for the Public Meeting!

POTENTIAL TROUBLE?

▪ A *serial meeting (also call a walking quorum)* can be a series of communications (direct communication, technological methods such as email, telephone calls, or social media.

Continuing the discussion after the meeting is adjourned is another kind of serial meeting.

Replying all to case related emails. All your correspondence could be subject to discovery if there is legal action.

Failure to forward all applicable correspondence to designated staff for distribution and file.

CONFLICTS OF INTEREST

The authorities for conflicts of interest is the **Texas Local Government Code Chapter 171** and your city's **City Charter and Ordinances**.

It requires that you, before a vote or decision on any matter must state that you have a conflict and abstain from further participation in the matter.

That means you should:

- Publicly disclose any personal interests. *

- Define personal interest broadly.

- Abstain from participation in a matter if a personal interest and leave the chamber when the matter is being deliberated.

* You need to be aware of your business, financial, and personal/family interests.

HAVE A CONFLICT OF INTEREST?

You have a potential a conflict of interest if you...

live in the notification area.

or close family member has a financial interest (determined by your city).

have oversight of client (applicant) accounts.

sit on another Board connected to the case.

CONFLICT OF INTEREST CONTINUED

What to do...

Recognize that you might have a conflict.

Get advice from staff or city attorney, if not sure.

State at the meeting that you have a conflict.

Recuse yourself and **LEAVE THE ROOM.**

The Chair should state for the record that you have left and when you return.

Fill out the appropriate form.

Do not engage in **any** discussion or action on the case in or outside the meeting.

WHAT IS A FINANCIAL CONFLICT OF INTEREST?

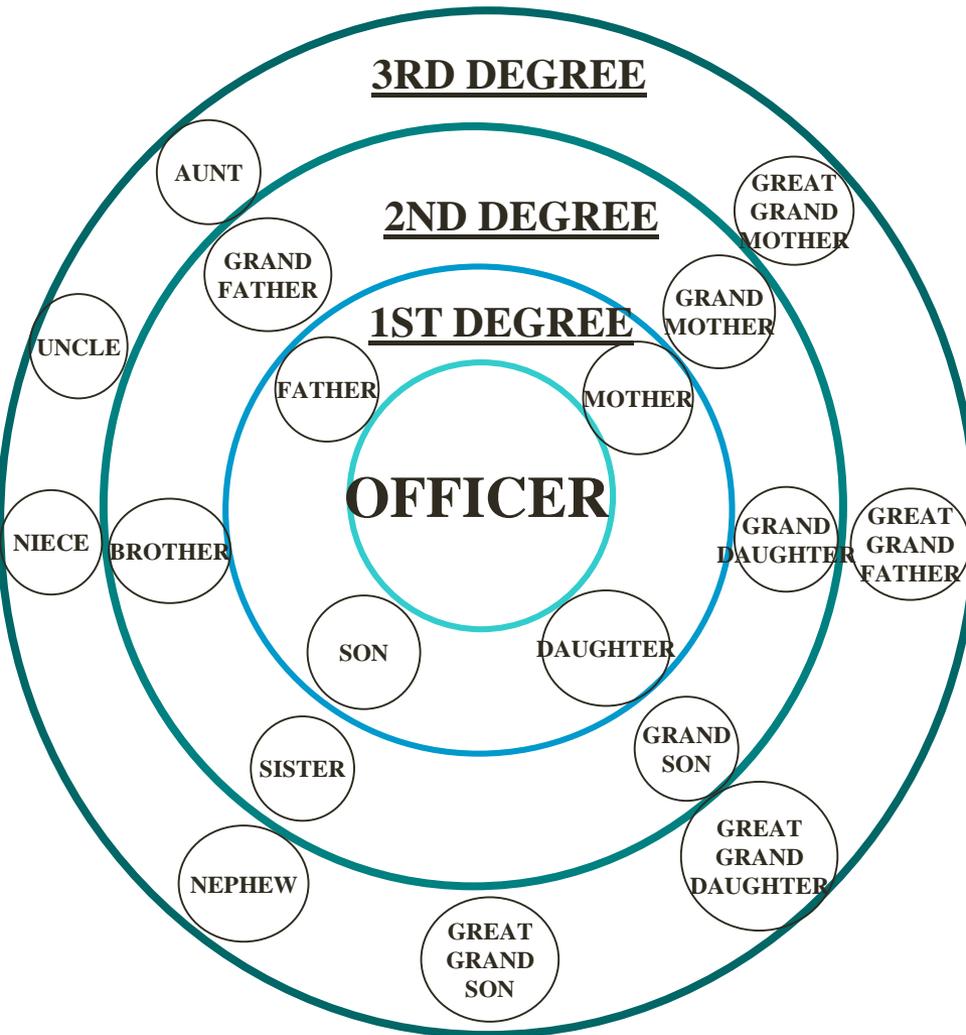
In general, conflicts of interest are conflicts due to an official's substantial interest in a "business entity" that has an issue before the City.

- Have financial interest in real estate involvement case.
- Have financial investments that exceed the local cap.
- Work for someone that has financial involvement in the case.

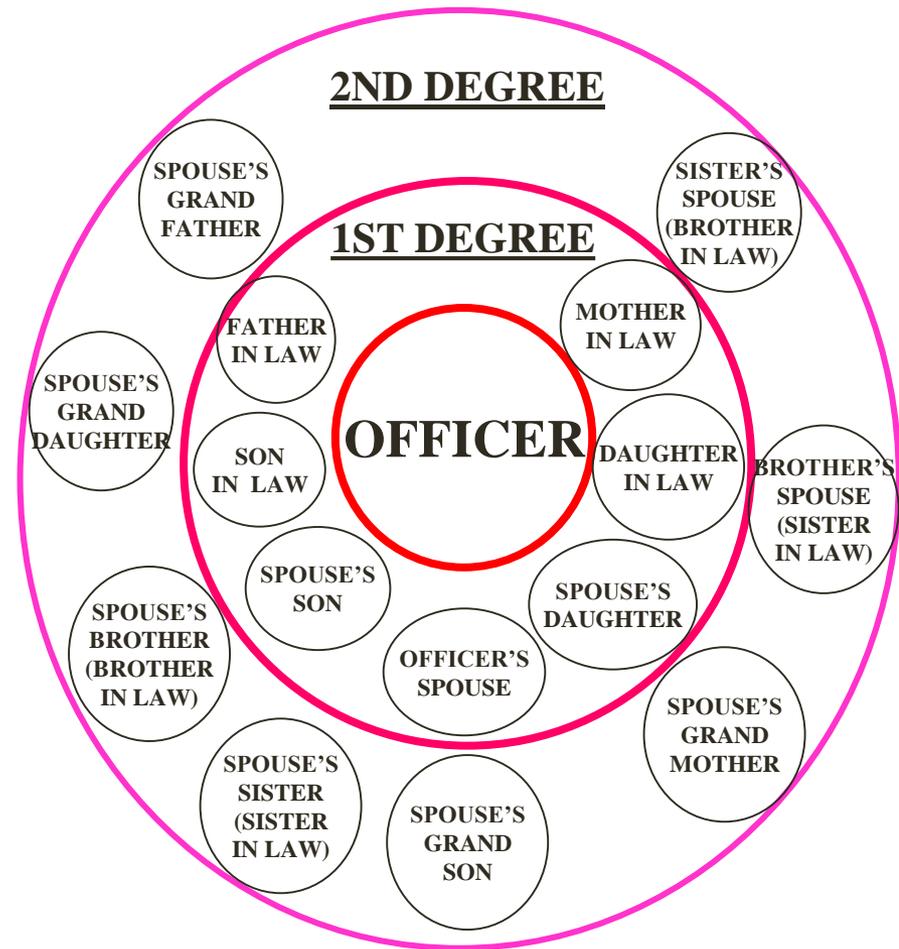
Financial Interest also Include:

- Stock Interest
- Business Ownership
- Interest Income
- Real Property
- Close *Family Member* or *Relatives* with any above Interests

Consanguinity Kinship Chart (Relationship by Blood)



Affinity Kinship Chart (Relationship by Marriage)



Charts credit: Alan D. Lathrom, Brown & Hofmeister, LLP

WHAT TO DO?

- When there is a social event where a quorum may be present, it is generally OK as long as cases or issues are not discussed.
- Do not use position title to request special treatment by city employees or private interests.
- Have a designated separate email for your commission correspondence. Why?
- Follow the relationship to the Comprehensive Plan!

TO THINK ABOUT...

- You have a friend who owns and large tract of land he wants to develop and wants your help. How can you help him?
- A local church has approached you about rezoning a tract for expansion of their activities. What is your advice?
- You are asked to recommend someone to represent a case. What do you do?
- How do you respond to a citizen that want to tell you about a case.

Out to dinner, the grocery store, the soccer game: don't discuss cases or activities related to work on the Commission.

You don't know who is at the next table.

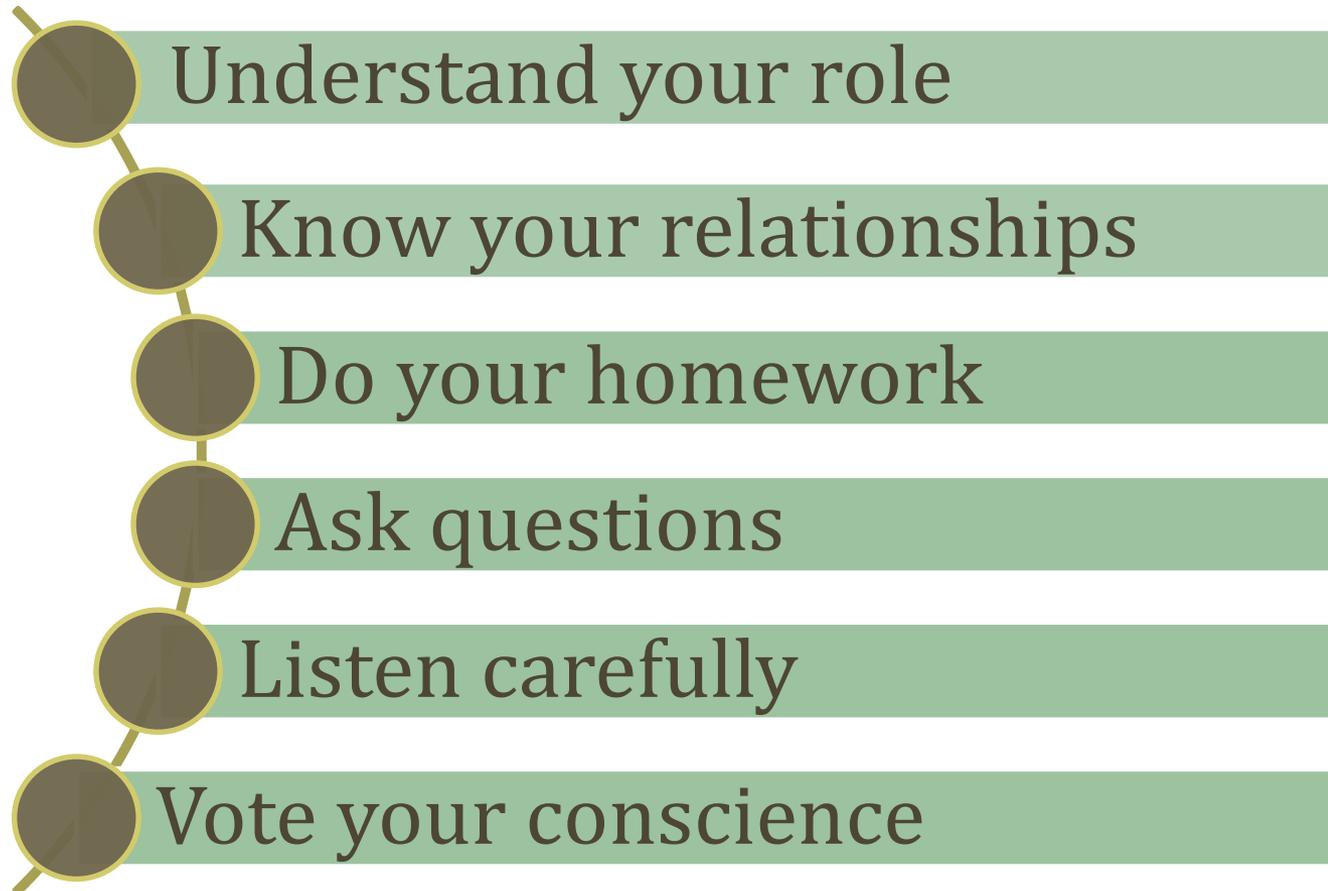
SHOULD YOU SEEK /ACCEPT GIFTS OR FAVORS?

It is up to your city to determine a policy on gifts
and you to interpret it,
but remember it is the

PERCEPTION

that may matter more.

So...HOW CAN YOU STRIVE TO ACHIEVE HIGH STANDARDS OF INTEGRITY AND PROFICIENCY?

- 
- Understand your role
 - Know your relationships
 - Do your homework
 - Ask questions
 - Listen carefully
 - Vote your conscience

TRAINING AND RESOURCES

Your planning staff

City orientation and training for new Commissioners

APA Texas and East Texas Section

<https://www.txplanning.org/>

Regional Workshops

Annual APA Texas state conference

American Planning Association

Planning Magazine including a section for Commissioners

National Planning Conference

<https://www.planning.org/> Lots of information

Secretary of State of Texas

Texas Municipal League



Take the high road—there is less traffic!

QUESTIONS?

