

Friday, November 19, 2021

An Open Letter Regarding Mayor Joe Zimmerman's Ethical Misconduct

To the Houston-Galveston Area Council (H-GAC) Transportation Policy Council, Mayor Joe Zimmerman, and all interested parties,

A federal policy board like the Transportation Policy Council (TPC) is responsible for providing policy guidance, distribution of infrastructure funds, and overall coordination of the transportation planning activities within the region. We expect that the elected officials on this board would hold themselves to a high ethical standard, including sharing conflicts of interest.

It is with this expectation in mind that we present the following information. **Through his connections to his private employer, Halff Associates, Inc., Mayor Joe Zimmerman of Sugar Land has maintained conflicts of interest that violate multiple codes of ethics and undermine the TPC's necessary impartiality in managing federal transportation funds.** For these reasons, we call on Mayor Zimmerman to resign from his position on the Transportation Policy Council and ask H-GAC staff to conduct a review of Mayor Zimmerman's conduct during his time serving as a TPC member.

Following being elected Mayor of Sugar Land in 2016, Zimmerman began his employment with Halff in 2017 and continues to represent them in an official capacity.^{1,2,34} Maintaining these two concurrent jobs may not constitute any sort of conflict of interest, and we are not commenting on this dual role today (although, it is worth noting that Halff has contracted on a number of infrastructure projects in the City of Sugar Land and Fort Bend County since 2016). Where this crosses a deeply unethical line is in Zimmerman's third role as voting member of the Houston-Galveston Area Council's Transportation Policy Council.

Zimmerman has been a primary, voting member on the TPC since 2016, having served prior as an alternate member. It is disconcerting that until now no parties have taken issue with the fact that Mayor Zimmerman, only able to serve on the TPC by virtue of his elected office, can personally affect and vote on funding for massive infrastructure projects which directly create profits for organizations such as his private employer, Halff. Zimmerman's presence and participation on the TPC is a clear violation of multiple codes of ethics, including those within H-GAC's TPC Bylaws.

Notably, Zimmerman has used his power and influence on this committee to advance one of the most controversial infrastructure projects in our city's history: the North Houston Highway

¹ North Houston Association Development Committee Meeting Minutes, May 19, 2021

² The Wilderness Golf Tee Timetable, October 19, 2020

³ Minutes of the Board of Directors Meeting of Westchase District, April 12, 2019

⁴ <https://www.sugarlandtx.gov/172/Mayor>

Improvement Project (NHHIP). Since 2018, Halff has contracted for several million dollars on this project and may continue profiting from it if it were to move forward.

Zimmerman's role in advocating for and advancing the NHHIP constitutes a gross misuse of his position on the TPC. At the *bare* minimum, Zimmerman should have repeatedly made known his potential conflicts of interest every time the NHHIP was discussed in his presence and recused himself from any vote on a project that his employer might bid on. Not only did he fail to do that, he has commanded an outsized role in advocating for the project.

In addition to the ethical quandary of his role on the TPC, his actions constitute multiple violations of the National Society of Professional Engineers' Code of Ethics. We have outlined Mayor Zimmerman's explicit violations of multiple codes of ethics below. According to the National Society of Professional Engineers' Code of Ethics⁵:

Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.

...

Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.

Zimmerman appears to be in violation of these clauses. In addition to voting on NHHIP-specific items (see: *Approval of Resolution Affirming Funding Partnership for Segment 2 of North Houston Highway Improvement Program (NHHIP) and the Mitigation of Adverse Community Impacts* - July 26, 2019; *Approval of Resolution 2021-17* - May 21, 2021), every Transportation Improvement Program (TIP) and Regional Transportation Plan (RTP) update that included funding for the NHHIP would constitute a breach.

The Texas Board of Professional Engineers' Practice and Rules manual also addresses potential conflicts of interest⁶:

§137.57

(c)The engineer shall disclose a potential conflict of interest to a potential or current client or employer upon discovery of the possible conflict.

⁵ National Society of Professional Engineers' Code of Ethics. Also attached as Exhibit A

⁶ Texas Board of Professional Engineers' Practice and Rules manual. Also attached as Exhibit B

(d) A potential conflict of interest exists when an engineer accepts employment when a reasonable probability exists that the engineer's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer. An engineer may accept such an employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing. An engineer in a potential conflict of interest employment shall maintain the interests of the client and other parties as provided by §137.61 of this title (relating to Engineers Shall Maintain Confidentiality of Clients) and other rules and statutes.”

It's possible that both Halff Associates, Inc. and the H-GAC knew of and acknowledged Zimmerman's potential conflict of interest. **If this were the case, this highly relevant piece of information should have been disclosed to the public explicitly and repeatedly, anytime Zimmerman took a vote on a project or policy that his employer might profit from.**

H-GAC's Bylaws and Operating Procedures also clearly address Mayor Zimmerman's situation⁷:

H. Ethics: Members of the Transportation Policy Council and employees of the MPO shall not accept or solicit gifts or favors that might reasonably tend to influence them in the discharge of their official duties. Additionally, members of the Transportation Policy Council and employees of the MPO shall not accept other employment or compensation that could reasonably be expected to impair their independence of judgment in the performance of their official duties. Neither a member of the Transportation Policy Council nor an employee of the MPO shall make personal investments that could reasonably be expected to create a conflict between the member's or employee's private interest and the public interest.

The "Ethics Policy" document, which each TPC member must sign to maintain membership on the TPC, states:

No policy board member or employee of the MPO may accept other employment or engage in a business or professional activity that the member or employee might reasonably expect would require or induce the member or employee to disclose confidential information acquired by reason of the official position...No policy board member or employee of the MPO may accept other employment or compensation that

⁷ Ethics Policy, Transportation Policy Council for the Houston-Galveston Transportation Management Area. Also attached as Exhibit C

could reasonably be expected to impair the member's or employee's independence of judgment in the performance of official duties.

Mayor Zimmerman's employer Halff Associates, Inc. has contracted, either as prime or sub, for \$17 million on Houston district TxDOT projects alone since 2017. Halff offers services on construction, transportation, structural engineering, surveying, Right of Way, and intelligent transportation systems (ITS), to name a few; nearly every funded project that the TPC approves needs these services, and Halff is active on such projects. Work authorizations show that Halff Associates has been paid just over \$559,000 for work on eight separate projects approved in the H-GAC's 2021-2024 TIP (see: work authorizations under contract No. 10228; 2021-2024 TIP). Mayor Zimmerman has voted to approve the 2021-2024 TIP twice (see: June 2020 TPC meeting minutes, January 2021 TPC minutes).

This brings us to our next concern: why has Mayor Zimmerman shown such ardent desire to move TxDOT's NHHIP forward over the past several years, a project so far from his constituency in Sugar Land? In addition to voting to move forward aspects of this project several times over the past years, Zimmerman has repeatedly gone on record vocally supporting the project. The Houston Chronicle's Dug Begley has quoted Zimmerman on his support at least four times over the past two years. Zimmerman also traveled to Austin this past August to provide testimony to the Texas Transportation Commission, urging them to move the project forward despite an ongoing civil rights investigation. Zimmerman did not disclose his connections to Halff at this time.

On its own, Zimmerman's sustained interest in the NHHIP is curious; contextualized with his employer's current work on the project and express interest in bidding on future related contracts, it becomes suspect. In 2018, Halff Associates, Inc. contracted with TxDOT for \$5 million to perform utility coordination work on the NHHIP (see: TxDOT contract #8315; IH45 Subsurface Utility Data reports). According to Requests for Qualifications documents related to the NHHIP, Halff has requested a determination from TxDOT to be approved to bid on the project in the future. Earlier this year, Halff Associates Vice President Tony Sartori signed onto a letter from highway interest group North Houston Association, urging the H-GAC to advance NHHIP funds into the 2045 RTP (see: NHA comments on 2045 RTP). A few days after Sartori signed onto this letter of support, Zimmerman voted to advance the NHHIP funds; Zimmerman did not disclose that his company was actively supporting this vote. In May of this year, Halff employees attended a NHHIP Segment 3 Pre-Request for Proposals meeting.⁸ **Put simply, Halff Associates has already profited substantially from work on the NHHIP and has shown clear intent to continue working on it. Since Halff took on their NHHIP contract in May**

⁸ NHHIP Seg 3 Pre-RFP Attendance List May 2021. It is worth noting that TxDOT hosting this meeting was in violation of the 'pause' order given by the Federal Highway Administration related to the ongoing civil rights investigation.

2018, their employee Mayor Zimmerman has voted to advance the NHHIP several times and has zealously advocated for this project.

In early 2020, the City of Houston concluded a year-long public engagement process on the NHHIP. Feedback they received from residents, stakeholders, and elected officials indicated overwhelming support for a redesign of TxDOT's original proposal, drastically altering major aspects of the project including reducing ROW usage and shifting the focus to transit. Based on this public engagement, Mayor Sylvester Turner requested TxDOT work with the City of Houston to implement this redesign, or else lose the City's support for the project.

Immediately following this request, Zimmerman escalated his advocacy, using his position on the TPC to propose the creation of an H-GAC working group to broker a Memorandum of Understanding (MOU) between the two sides. He accepted a vice-chair position in this working group. Zimmerman and TPC Chair Ken Clark were [heavily criticized for stacking the group with suburban and rural members](#), giving TxDOT allies a voting majority. TPC members will recall that these negotiations broke down after TxDOT's legal team gutted agreed-upon language, arguing TxDOT would not alter project design outside of what was presented in the Final Environmental Impact Statement (FEIS).

During the MOU negotiations referenced above, Mayor Zimmerman was quoted in the Houston Chronicle blaming City of Houston officials for not portraying the NHHIP "in a positive light" and lamenting, "The intent was to keep politics out of this." According to TxDOT's FEIS, the NHHIP as designed will displace over 1000 homes and over 300 businesses. The project corridor stretches from downtown Houston north to Greenspoint for 24 miles. The project does not impact the Sugar Land suburb.

Considering his significant conflicts of interest and breach of multiple codes of ethics, we call on Mayor Joe Zimmerman to immediately resign from the H-GAC's Transportation Policy Council. We ask H-GAC staff to conduct an internal review of Zimmerman's actions while serving on the TPC, and request that H-GAC staff review and update its bylaws on conflicts of interest to ensure the utmost transparency in its operations. Finally, for the sake of transparency, we would like to pose the following questions to Mayor Zimmerman. He may answer at his discretion.

- Do you own any stock in Halff Associates, Inc?
- Is your compensation package from Halff based on the company's financial performance in any way?
- Will you disclose your salary from Halff?
- Have you ever discussed the NHHIP with your bosses at Halff?
- While serving on the TPC, have you ever recused yourself from a vote to avoid a potential conflict of interest? If so, which vote(s)?

- Will you release your Personal Financial Statements (PFS) filed either with the Texas Ethics Commission or the City of Sugar Land?

Thank you for your time and consideration.

Signed,

Stop TxDOT I-45



Code of Ethics for Engineers

Preamble

Engineering is an important and learned profession. As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity. Engineering has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness, and equity, and must be dedicated to the protection of the public health, safety, and welfare. Engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct.

I. Fundamental Canons

Engineers, in the fulfillment of their professional duties, shall:

1. Hold paramount the safety, health, and welfare of the public.
2. Perform services only in areas of their competence.
3. Issue public statements only in an objective and truthful manner.
4. Act for each employer or client as faithful agents or trustees.
5. Avoid deceptive acts.
6. Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.

II. Rules of Practice

1. Engineers shall hold paramount the safety, health, and welfare of the public.

- a. If engineers' judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.
- b. Engineers shall approve only those engineering documents that are in conformity with applicable standards.
- c. Engineers shall not reveal facts, data, or information without the prior consent of the client or employer except as authorized or required by law or this Code.
- d. Engineers shall not permit the use of their name or associate in business ventures with any person or firm that they believe is engaged in fraudulent or dishonest enterprise.
- e. Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.
- f. Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.

2. Engineers shall perform services only in the areas of their competence.

- a. Engineers shall undertake assignments only when qualified by education or experience in the specific technical fields involved.
- b. Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which

they lack competence, nor to any plan or document not prepared under their direction and control.

- c. Engineers may accept assignments and assume responsibility for coordination of an entire project and sign and seal the engineering documents for the entire project, provided that each technical segment is signed and sealed only by the qualified engineers who prepared the segment.

3. Engineers shall issue public statements only in an objective and truthful manner.

- a. Engineers shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony, which should bear the date indicating when it was current.
- b. Engineers may express publicly technical opinions that are founded upon knowledge of the facts and competence in the subject matter.
- c. Engineers shall issue no statements, criticisms, or arguments on technical matters that are inspired or paid for by interested parties, unless they have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking, and by revealing the existence of any interest the engineers may have in the matters.

4. Engineers shall act for each employer or client as faithful agents or trustees.

- a. Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.
- b. Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.
- c. Engineers shall not solicit or accept financial or other valuable consideration, directly or indirectly, from outside agents in connection with the work for which they are responsible.
- d. Engineers in public service as members, advisors, or employees of a governmental or quasi-governmental body or department shall not participate in decisions with respect to services solicited or provided by them or their organizations in private or public engineering practice.
- e. Engineers shall not solicit or accept a contract from a governmental body on which a principal or officer of their organization serves as a member.

5. Engineers shall avoid deceptive acts.

- a. Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident

to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.

- b. Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract. They shall not offer any gift or other valuable consideration in order to secure work. They shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a bona fide employee or bona fide established commercial or marketing agencies retained by them.

III. Professional Obligations

1. Engineers shall be guided in all their relations by the highest standards of honesty and integrity.

- a. Engineers shall acknowledge their errors and shall not distort or alter the facts.
- b. Engineers shall advise their clients or employers when they believe a project will not be successful.
- c. Engineers shall not accept outside employment to the detriment of their regular work or interest. Before accepting any outside engineering employment, they will notify their employers.
- d. Engineers shall not attempt to attract an engineer from another employer by false or misleading pretenses.
- e. Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.
- f. Engineers shall treat all persons with dignity, respect, fairness, and without discrimination.

2. Engineers shall at all times strive to serve the public interest.

- a. Engineers are encouraged to participate in civic affairs; career guidance for youths; and work for the advancement of the safety, health, and well-being of their community.
- b. Engineers shall not complete, sign, or seal plans and/or specifications that are not in conformity with applicable engineering standards. If the client or employer insists on such unprofessional conduct, they shall notify the proper authorities and withdraw from further service on the project.
- c. Engineers are encouraged to extend public knowledge and appreciation of engineering and its achievements.
- d. Engineers are encouraged to adhere to the principles of sustainable development¹ in order to protect the environment for future generations.
- e. Engineers shall continue their professional development throughout their careers and should keep current in their specialty fields by engaging in professional practice, participating in continuing education courses, reading in the technical literature, and attending professional meetings and seminars.

Exhibit B

§137.55 ENGINEERS SHALL PROTECT THE PUBLIC

(a) Engineers shall be entrusted to protect the health, safety, property, and welfare of the public in the practice of their profession. The public as used in this section and other rules is defined as any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with the engineering work of the license holder.

(b) Engineers shall not perform any engineering function which, when measured by generally accepted engineering standards or procedures, is reasonably likely to result in the endangerment of lives, health, safety, property, or welfare of the public. Any act or conduct which constitutes incompetence or gross negligence, or a criminal violation of law, constitutes misconduct and shall be censurable by the board.

(c) Engineers shall first notify involved parties of any engineering decisions or practices that might endanger the health, safety, property or welfare of the public. When, in an engineer's judgment, any risk to the public remains unresolved, that engineer shall report any fraud, gross negligence, incompetence, misconduct, unethical or illegal conduct to the board or to proper civil or criminal authorities.

(d) Engineers should strive to adequately examine the environmental impact of their actions and projects, including the prudent use and conservation of resources and energy, in order to make informed recommendations and decisions.

Source Note: The provisions of this §137.55 adopted to be effective May 20, 2004, 29 TexReg 4878

§137.57 ENGINEERS SHALL BE OBJECTIVE AND TRUTHFUL

(a) Engineers shall issue statements only in an objective and truthful manner. The issuance of oral or written assertions in the practice of engineering shall not be:

- (1) fraudulent;
- (2) deceitful; or
- (3) misleading or shall not in any manner whatsoever tend to create a misleading impression.

(b) Engineers should strive to make affected parties aware of the engineers' professional concerns regarding particular actions or projects, and of the consequences of engineering decisions or judgments that are overruled or disregarded.

TBPELS Acts and Rules

Page **83** of **109**

Updated April 1, 2021

(c) The engineer shall disclose a potential conflict of interest to a potential or current client or employer upon discovery of the possible conflict.

(d) A potential conflict of interest exists when an engineer accepts employment when a reasonable probability exists that the engineer's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer. An engineer may accept such an employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing. An engineer in a potential conflict of interest employment shall maintain the interests of the client and other parties as provided by §137.61 of this title (relating to Engineers Shall Maintain Confidentiality of Clients) and other rules and statutes.

Source Note: The provisions of this §137.57 adopted to be effective May 20, 2004, 29 TexReg 4878; amended to be effective September 4, 2006, 31 TexReg 7124; amended to be effective December 21, 2008, 33 TexReg 10176; amended to be effective March 15, 2018, 43 TexReg 1441

Exhibit C

Transportation Policy Council for the Houston-Galveston Transportation Management Area

ETHICS POLICY

The Transportation Policy Council is committed to conducting its business in an ethical and open manner. To ensure ethical conduct by members of the Transportation Policy Council and its employees, the following rules have been adopted:

Transportation Code Requirements

- No policy board member or employee of the MPO may accept or solicit any gift, favor or service that might reasonably tend to influence the member or employee in the discharge of official duties or that the member or employee knows or should know is being offered with the intent to influence the member's or employee's official conduct.
- No policy board member or employee of the MPO may accept other employment or engage in a business or professional activity that the member or employee might reasonably expect would require or induce the member or employee to disclose confidential information acquired by reason of the official position.
- No policy board member or employee of the MPO may accept other employment or compensation that could reasonably be expected to impair the member's or employee's independence of judgment in the performance of official duties.
- No policy board member or employee of the MPO may make personal investments that could reasonably be expected to create a conflict between the member's or employee's private interest and the public interest.
- No policy board member or employee of the MPO may intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or performed the official duties in favor of another.