Texas Municipal League

Key Legal Requirements for Texas City Officials

2019 Edition

The explanations herein are for informational purposes only and should never be substituted for adequate legal advice. Prior to taking action on anything contained herein, a city official should consult with local legal counsel. Please contact the TML Legal Services Department at 512-231-7400 or legalinfo@tml.org for more information. This document is available online at www.tml.org.

Open Government Training

Each elected or appointed member of a governmental body must take at least one hour of training in both the Open Meetings Act and the Public Information Act. For more information, please visit the attorney general's website at www.texasattorneygeneral.gov.

Texas Open Meetings Act (TOMA)

Definition of "meeting": A meeting occurs any time a quorum of the city council discusses public business that is within the city council's jurisdiction, regardless of the location or means of communication (e.g., phone, in person, email).

General rule: Every regular, special, or called meeting of the city council and most boards and commissions (depending on membership and authority) must be open to the public.

Exception: TOMA does not apply to purely social gatherings, conventions and workshops, ceremonial events, press conferences, or candidate forums, so long as any discussion of city business is incidental to the purpose of the gathering, and no action is taken.

Exception: A city may use an online message board that is viewable by the public for city councilmembers to discuss city business. The message board must meet several criteria provided for in TOMA.

Exception: Statutorily authorized executive or "closed" sessions, including deliberations concerning: (1) purchase or lease of real property; (2) consultation with attorney; (3) personnel matters; (4) economic development; (5) certain homeland security matters; and (6) certain cyber-security matters.

To hold an executive session, the governing body must first convene in open session, identify which issues will be discussed in executive session, and cite the applicable exception. All final actions, decisions, or votes must be made in an open meeting.

Agenda: A governmental body must post an agenda that includes the date, hour, place, and subject of each meeting. The agenda must be posted on a bulletin board at city hall in a place readily accessible to the public at all times for at least 72 hours before the meeting. In addition, for cities that have an Internet website, the city must post the city council's agenda 72 hours before the meeting on that website.

Records of meetings: Cities must keep written minutes or recordings of all open meetings, and a certified agenda or recording of executive/closed meetings, except for closed consultations with an attorney. The minutes must state the subject and indicate each vote, decision, or other action taken, and a city that has a website must post the approved minutes on that website.

Minutes and recording of an open meeting are public records, while certified agendas and recording of a closed meeting are confidential and cannot be released to the public except by court order.

Penalties: Penalties for violating the TOMA range from having the action voided to the imposition of fines and incarceration. Any action taken in violation is voidable and may be reversed in a civil lawsuit. There are four criminal provisions under the TOMA, including:

(1) Knowingly engaging in a series of communications of less than a quorum of members discussing city business that will ultimately be deliberated by a quorum of members;
(2) Calling or participating in an impermissible closed meeting;
(3) Participating in an executive session without a certified agenda or recording; and
(4) Disclosing a certified agenda or recording to a member of the public.

Texas Public Information Act (PIA)

Definition of "public information": Public information includes any information that is collected, assembled, or maintained by or for a governmental entity (including information held by an individual officer or employee in the transaction of official business), regardless of the format.

General rule: Most information held by a city (or a city official or employee) is presumed to be public information and must be released pursuant to a written request.

Procedure: Any member of the public may request information in writing. A city official is prohibited from inquiring into the requestor's motives, and is generally limited to:

(1) Releasing the information as quickly as is practicable, but generally not later than ten business days following the request; or
(2) Requesting an opinion from the Texas attorney general's office within ten business days of the request as to whether the information may be withheld.

Penalties: Penalties for violating the PIA range from a civil lawsuit against the city or a city official to the imposition of fines and incarceration.

There are three general criminal provisions under the PIA, including:

(1) Refusing to provide public information;
(2) Providing confidential information; and
(3) Destroying government information improperly.

Ethics

Chapter 171 – Conflicts of Interest

Definition of "conflict of interest": A local public official has a conflict of interest in a matter if any action on the matter would involve a business entity or real property in which the official has a substantial interest, and action on the matter would confer an economic benefit on the official.

General rule: If a local public official has a substantial interest in a business entity or real property, the official must file an affidavit with the city secretary stating the interest and abstain from any participation or vote on the matter. A local public official is considered to have a substantial interest if a close relative has such an interest.

Exception: If a local public official has a conflict of interest and files an affidavit, the official is not required to abstain from further participation or a vote on the matter if a majority of the members of the governing body also have a conflict of interest and file an affidavit.

Penalties: Penalties for violating the conflict of interest provisions range from having the action voided to the imposition of fines and incarceration.

Chapter 176 – Conflicts Disclosure

General rule: Local Government Code Chapter 176 requires that mayors, councilmembers, and certain other executive city officers and agents file a "conflicts disclosure statement" with a city's records administrator within seven days of becoming aware of any of the following situations:

- A city officer or the officer's family member has an employment or business relationship that results in taxable income of more than $2,500 in the preceding 12 months with a person who has contracted with or is considering contracting with the city ("vendor").
- A city officer or the officer's family member receives and accepts one or more gifts with an aggregate value of $100 in the preceding 12 months from a vendor.
- A city officer has a family relationship with a vendor.

The chapter also requires a vendor to file a "conflict of interest questionnaire" if the vendor has a business relationship with the city and an employment or other relationship with an officer or officer's family members, has given a gift to either, or has a family relationship with a city officer. The conflicts disclosure statement and the conflict of interest questionnaire are created by the Texas Ethics Commission and are available online at www.ethics.state.tx.us.

Penalties: An officer who knowingly fails to file the statement commits either a class A, B, or C misdemeanor, depending on the amount of the contract.

Chapter 553 – Conflicts Disclosure

General Rule: Government Code Chapter 553 requires a "public servant" who has a legal or equitable interest in property that is to be acquired with public funds to file an affidavit within ten days before the date on which the property is to be acquired by purchase or condemnation. Chapter 553 applies to the acquisition of both real property (e.g., land) and personal property (e.g., a vehicle). In addition, Chapter 553 seems to apply even when the property is to be acquired by a governmental entity with which the public servant is not affiliated. The affidavit must be filed with the county clerk of the county in which the public servant resides as well as the county clerk of each county in which the property is located.

Penalties: A person who fails to file the required affidavit is presumed to have committed a Class A misdemeanor offense if the person had actual notice of the acquisition or intended acquisition of the property. A Class A misdemeanor is punishable by a fine not to exceed $4,000, confinement in jail for a term not to exceed one year, or both.

Nepotism

Definition of "nepotism": Nepotism is the appointment or employment of a close relative of a city's "final hiring authority (the city council or city manager, depending on the form of government)" to a paid position with the city.

General rule: A public official, acting alone or as a member of a governing body, generally may not appoint a close relative to a paid position, regardless of the relative's merit. In addition, a person may not continue to be employed by a city if a close relative is elected to the city council, unless he or she falls under an exception.

Exception: If the employee has been continuously employed by the city for a certain period of time, an employee may remain employed by the city if a close relative is elected to city council.

Exception: The nepotism statute does not apply to cities with fewer than 200 people.

Penalties: Penalties for violating the nepotism provisions include a fine and immediate removal from office.

Dual Office Holding/ Incompatibility

Definition of "dual office holding" and general rule: The Texas Constitution generally prohibits one person from holding more than one paid public office.

Definition of "incompatibility" and general rule: Texas law prohibits one person from holding two public offices, regardless of whether one or both offices are paid, if one position might impose its policies on the other or subject it to control in some other way. There are three types of incompatibility:

(1) "Self-appointment" incompatibility prohibits a member of a governing body from being appointed to another public office over which the governing body has appointment authority;
(2) "Self-employment" incompatibility prohibits a member of a governing body from being employed in another public office over which the governing body has employment authority; and
(3) "Conflicting loyalties" incompatibility prohibits one person from holding two public offices in which the duties of one office might negatively affect the duties of the other office.

Penalties: A person who accepts a prohibited second office automatically resigns the first office.

Bribery/Gifts

Definition of "bribery": A public official or public employee commits the crime of bribery when he accepts, agrees to accept, or solicits any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion. The fact that a benefit or gift was not offered until after the exercise of official discretion is not considered a defense to a prosecution for bribery.

Bribery penalty: The penalty for violating the bribery law is a second degree felony, punishable by two to twenty years imprisonment and a fine of up to $10,000.

Gifts: Public officials and employees are generally prohibited from accepting gifts from any person subject to their jurisdiction, whether or not the gift is related to a specific official action.

Allowable gifts: Certain exceptions may apply, such as: (1) an item with a value of less than $50 (excluding cash or a negotiable instrument, such as a check or gift card); (2) a gift given by a person with whom the official or employee has a familial, personal, business, or professional relationship, independent of the official or employee's status or work; (3) any benefit that the official or employee is entitled to receive by law or for which the person has performed a duty independent of the person's status as a public service (for example, a jury duty fee); or (4) any political contributions as defined by the Texas Election Code. In addition, a public employee or official may in certain circumstances accept as a guest an unsolicited gift or benefit of food, lodging, transportation, or entertainment, so long as the gift is not related to a specific official action.

Gifts penalty: The penalty for violating the acceptance of gifts prohibition is, with some exceptions, a class A misdemeanor, punishable by a fine of up to $4,000 and/or jail time of up to one year.