



Key Legal Requirements for Texas City Officials

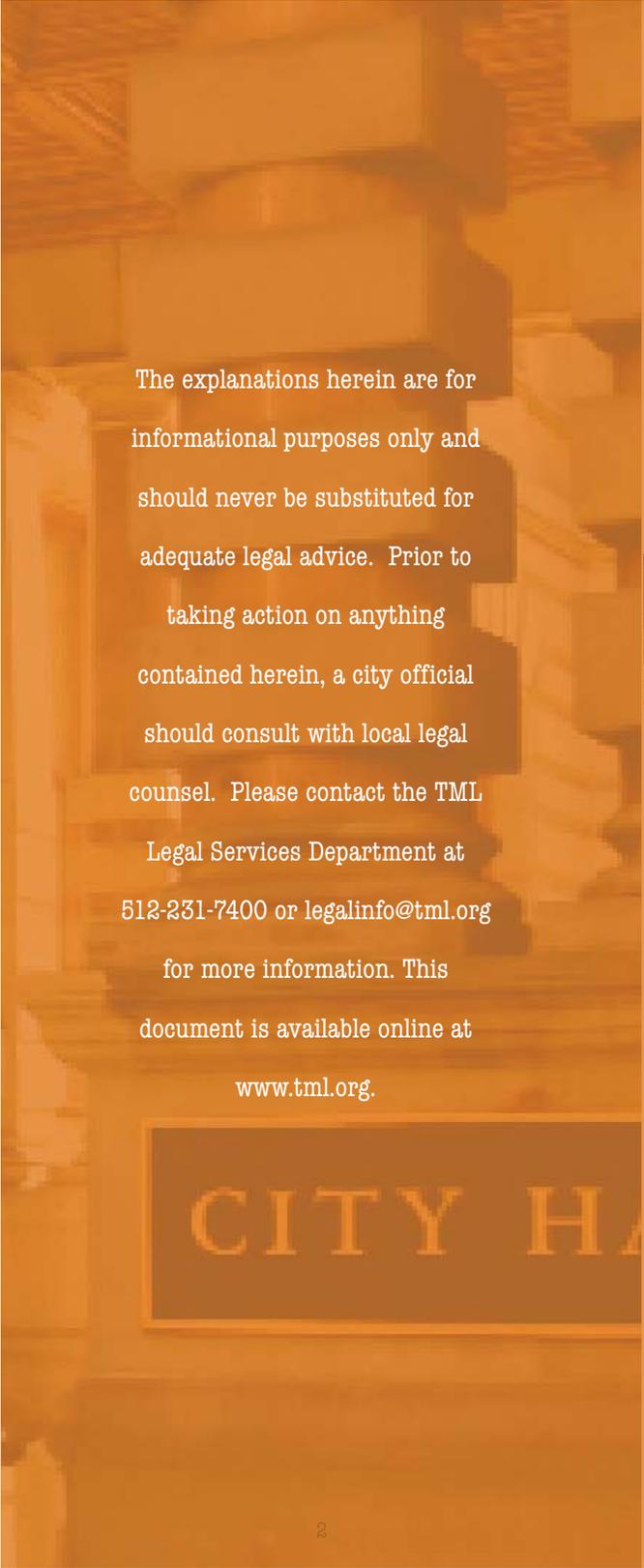
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CITY HALL



TEXAS MUNICIPAL LEAGUE



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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 Web site at www.oag.state.tx.us.

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, e-mail).

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, or press conferences, so long as any discussion of city business is incidental to the purpose of the gathering.

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; and (5) certain homeland 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 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 Web site: (1) a city

under 48,000 population must post meeting notices on its Web site; and (2) a city over 48,000 population must post the entire agenda on its Web site.

Records of meetings: Cities must keep written minutes or recordings of all meetings, except for closed consultations with an attorney. The minutes must state the subject and indicate each vote, decision, or other action taken.

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 conspiring to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations;
- (2) Calling or participating in a closed meeting;
- (3) Participating in an executive session without a certified agenda or tape recording; and
- (4) Disclosure of a certified agenda or tape 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, regardless of the format.

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

Exceptions: Specific statutory exceptions allow certain information, such as that subject to the attorney client privilege, to be withheld from the public. Because there are numerous exceptions, city officials should consult with local counsel immediately on receipt of a 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) Improperly destroying government information.

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, city managers or administrators, and certain other city officials, must file a "conflicts disclosure statement" with a city's records administrator within seven days of becoming aware of either 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 with a person who has contracted with the city or with whom the city is considering doing business.
- A city officer or the officer's family member receives and accepts one or more gifts with an aggregate value of \$250 in the preceding 12 months from a person who conducts business or is being considered for business with the officer's city.

The bill also requires a vendor who wishes to conduct business or be considered for business with a city 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, or has given a gift to either. The conflicts disclosure statement and the conflict of interest questionnaire were 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 a class C misdemeanor, which is punishable by a fine of up to \$500.

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, the reverse applies. In other words, a person may not be elected to the city council if a close relative is employed by the city, unless the relative first resigns.

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

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.




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