Small Cities' Clinic

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Ethical Considerations for Cities

- Conflicts of Interest
- Nepotism
- Dual Office Holding/Incompatibilty
- Political Advertising

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Conflicts of Interest

Chapter 171

- **Substantial interest**
  - business or real property
- **Economic benefit**
  - distinguishable from general public
- **Cure**
  - file affidavit; abstain from voting and deliberation
- **Enforcement**
  - Possibly voidable action
  - Class A misdemeanor

Chapter 176

- **Business relationship with vendor**
  - with official or family member
  - $2,500 taxable income
- **Gifts from vendor**
  - to official or family member
  - $100 or more
- **File Statement**
  - https://www.ethics.state.tx.us/forms/conflict/

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Nepotism

- Appointing, confirming appointment, voting for appointment of close family to paid position
  - Third degree by consanguinity
  - Second degree by affinity
- No cure through abstention or delegation
- Exceptions
  - City under 200 population
  - Election clerk
  - Personal attendant
  - Continuous employment

Dual Office Holding/Incompatibility

Constitutional Prohibition

- Paid
  - No exception for refusing salary of one office
- Public office
  - Exercising independent authority

Common-law prohibition

- Self-appointment
  - Prevents city council from appointing one of its own members to a public office
- Self-employment
  - Prevents a city councilmember from serving as a city employee
- Conflicting loyalties
  - Prevents person from holding two public offices when the interest of two entities may conflict

Political Advertising

- Election Code Sec. 255.003
- City resources cannot be used for political advertising
- Applies to elections for officers and on measures
- Very broad interpretation by Texas Ethics Commission
  - Includes all city resources, staff time, materials, city property
- Exception for purely informational materials

Open Government

- TOMA: Executive Sessions
- TOMA: Notice period for Agendas
- TOMA: Public Comment
- PIA: Councilmember Access to Records

Executive Session

Personnel matters

- Specific officer or employee only
- Notice to the public?
- Notice to the individual?
- Right to compel discussion in open meeting

Attorney consultation

- Pending or anticipated litigation
- Settlement offers
- Professional Conduct Rules
- May be remote
- Certified agenda or recording not required

Notice Period

- Notice of a regular or special meeting must be provided three business days before the scheduled date of the meeting
- Does not include
  - Holidays
  - Saturday and Sunday
  - The day the meeting occurs
  - The day the agenda is posted
- Charts available on tml.org

Public Comment

Open Forum

- Optional
- May limit overall time/number of commentors
- Designated public forum

On Agenda items

- Required
- Before or during agenda item
- Reasonable rules
- No overall limits
- Limited public forum

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Councilmember Access to City Records

- Councilmembers with statutory right of access to city records if requested in their official capacity
- Confidentiality agreement
- AG determination
- Existing common-law right?

Texas Municipal League Legal Department and Other Resources

- legalinfo@tml.org
- 512-231-7400
- tml.org > Policy > Legal Research
- https://statutes.capitol.texas.gov/
- https://www.texasattorneygeneral.gov/open-government
- https://www.ethics.state.tx.us/

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