

Small Cities Problem Solving Clinic: Ethical Considerations & Open Government

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Ethical Considerations for Cities

Conflicts of Interest

Nepotism

Dual Office Holding

Political Advertising

Gifts

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/>

Nepotism

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

Dual Office Holding

Constitutional Prohibition

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

Common-law prohibition

- ▶ Self-appointment
 - ▶ Official responsible for hiring
 - ▶ Exception if unpaid
- ▶ Self-employment
 - ▶ Exception if unpaid
 - ▶ Official responsible for supervising
- ▶ Conflicting loyalties
 - ▶ Duties for one office complicate duties for second office

Political Advertising

- ▶ Sec. 255.003, Elections Code
- ▶ 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

Gifts

- ▶ **Bribery always prohibited**
 - ▶ exchange of benefit for official action
 - ▶ Second degree felony.
- ▶ **Broad prohibition on accepting unsolicited gifts but there are several exceptions**
 - ▶ Item with a value of <\$50
 - ▶ Independent prior relationship
 - ▶ Benefit official is entitled to receive by law (e.g., jury duty fee)
 - ▶ Political contributions defined in the Election Code
 - ▶ Food/entertainment as a guest (donor presence required)
 - ▶ Class A misdemeanor

Open Government



TOMA: Executive
Sessions



TOMA: Notice
Period for
Agendas



TOMA: Public
Comment



PIA:
Councilmember
Access to Records



PIA: Records
Retention

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 For Agendas

- ▶ **Five business days**
- ▶ **Does not include:**
 - ▶ Holidays
 - ▶ Saturday and Sunday
 - ▶ The day the meeting occurs
 - ▶ The day the agenda is posted
 - ▶ Talk to your city attorney

Notice Period For Agendas

Chart 1 – Example Without Holiday

Notice Date	Business Day 1	Business Day 2	Business Day 3	Meeting Date
Tuesday	Wednesday	Thursday	Friday	Monday
Wednesday	Thursday	Friday	Monday	Tuesday
Thursday	Friday	Monday	Tuesday	Wednesday
Friday	Monday	Tuesday	Wednesday	Thursday
Monday	Tuesday	Wednesday	Thursday	Friday

Chart 2 – Example Including Holiday: *Veterans Day, Tuesday, November 11, 2025*

Notice Date	Business Day 1	Business Day 2	Business Day 3	Meeting Date
Wed., 11/5	Thurs., 11/6	Fri., 11/7	Mon., 11/10	Wed., 11/12
Thur., 11/6	Fri., 11/7	Mon., 11/10	Wed., 11/12	Thurs., 11/13
Fri., 11/7	Mon., 11/10	Wed., 11/12	Thurs., 11/13	Fri., 11/14
Mon., 11/10	Wed., 11/12	Thur., 11/13	Fri., 11/14	Mon., 11/17

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

Councilmember Access to City Records

- ▶ Statutorily required
- ▶ Confidentiality agreement
- ▶ AG determination
- ▶ Existing common-law right?

Records Retention

- ▶ City's responsibility (do not rely on third party databases, even social media)
- ▶ Based on content rather than form
 - ▶ Emails, recordings, documents, etc. all may or may not be public information depending on the content
- ▶ Schedule available on TSLAC website

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/>