

# Rules of Procedure for the City Council and Boards & Commissions of the City of Bastrop, Texas



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## **ARTICLE 1.**

### **AUTHORITY, APPLICABILITY, AMENDMENT, AND ANNUAL REVIEW**

#### **1.1 Authority.**

Article III, Section 3.13 of the City Charter of the City of Bastrop, Texas grants the City Council the right to determine its own rules of procedure. The following rules are enumerated under and by the authority of said provision.

#### **1.2 Applicability.**

The rules of procedure adopted by the City Council are applicable not only to the City Council, but also to all boards, commissions, and committees of the City of Bastrop. When applied to boards, commissions, and committees, the term Mayor means the chairperson and the terms City Council or Council Members means the members of the board, commission, or committee.

#### **1.3 Amendment.**

These rules may be amended, or new rules adopted by a minimum of three (3) of the five (5) voting members of the City Council present.

#### **1.4 Annual Review.**

Following the municipal elections each year, the Council will review these rules of procedure annually, make changes as appropriate, and adopt their own rules of procedure in accordance with the Charter at the first scheduled meeting in July. In the event no annual review occurs, the standing rules of procedure continue in effect. This does not limit the Council's right and ability to amend the rules at any other time during the year, in accordance with the Charter.

## **ARTICLE 2.**

### **GENERAL RULES OF PROCEDURE AND POLICIES**

#### **2.1 Construction of Authority.**

The construction of authority in all matters associated with the meetings and activities of the City Council, including the agenda, shall be (1) the U.S. Constitution and Statutes of the United States of America; (2) the Texas Constitution and Statutes of the State of Texas; (3) the City Charter; (4) the Code of Ordinances of the City of Bastrop, Texas; and (5) these rules. Rosenberg's Rules of Order are a preferred source of guidance for matters not addressed herein.

#### **2.2 Meetings Shall Be in Compliance.**

All meetings of the City Council shall be in compliance with the Texas Government Code, Chapter 551, Open Meetings Act including the Act's prohibition of discussions about an item of public business among a quorum through a series of communications. Except in the case of an emergency meeting, notice of all meetings shall be given 72 hours before the time set for any meeting.

If meetings are held at Bastrop City Hall, they may be televised live on the City's television channel via the appropriate cable providers and/or live streamed via social media. If unable to televise meetings live due to technical difficulties, the meeting shall be recorded for a later broadcast. The Council meetings shall be rebroadcast as a part of the City's on-going channel programming.

The Bastrop City Hall is wheelchair accessible and special parking is available on the west side of the building. If special accommodations are required, please contact the City Secretary a minimum of 24 hours in advance at 512-332-8800.

### **2.3 Conduct of Meetings.**

Meetings of the City Council shall be conducted according to the rules adopted by the City Council. For additional guidance (non-binding), the City Council may refer to Rosenberg's Rules of Order as amended herein and when not inconsistent with these rules.

### **2.4 Regular Meetings.**

Regular meetings of the City Council shall be on the second and fourth Tuesday of each month at 6:30 p.m. and end no later than 10:00 p.m. The Council may, by majority vote at a regular meeting, change the days or times of meetings as circumstances may necessitate. Per the City Charter, the Council shall meet regularly and at least once each month.

### **2.5 Special Meetings.**

The City Council may hold as many additional, special meetings as may be necessary for the transaction of the business of the City. Special meetings of the City Council may be called as necessary upon written notice to the City Secretary by the Mayor or by any three (3) members of the City Council unless made at a regular meeting at which a quorum of Council Members is present. The City Manager and all Council Members shall be notified of all special meetings.

### **2.6 Emergency Meetings.**

In case of an emergency or urgent public necessity, which shall be expressed in the meeting notice, it shall be sufficient if members receive, and notice is posted one (1) hour before the meeting is convened. Notice shall be provided also to the media as requested in accordance with the Texas Government Code, Section 551.047.

### **2.7 Workshops (Work Session).**

Workshops are special meetings called for the purpose of conducting a detailed and thorough exploration of matters that may properly come before the City Council. Citizen comments on agenda items listed for open portions of the workshop can be addressed to the City Council (i.e., not executive session) before or during the City Council's consideration of the item.

### **2.8 Executive Sessions.**

Executive sessions are meetings closed to the public. These sessions are only permitted for the purpose of discussing matters enumerated in Texas Government Code Chapter 551, the Open Meetings Act. Disclosure of topics to be discussed shall be made to the public in accordance with the requirements of the Open Meetings Act.

The City Council can retire into an executive session during a regular or special meeting as stated on

a posted agenda or when deemed necessary by the presiding officer or a majority of the City Council. However, before said session begins, the presiding officer shall announce that the executive session is commencing, the items to be discussed, and the section of the Open Meetings Act that justifies the executive session(s). The order in which an executive session may appear on the agenda is subject to the discretion of the mayor. A certified record of the meeting will be created by the presiding officer or their designee, sealed and permanently kept, subject to opening by court order. No voting or action shall be taken by the City Council during an executive session. No other subject but that posted on the agenda is to be considered. Adjournment of the executive session and any vote needed shall be made during the open public meeting.

## **2.9 Recessed Meetings.**

No meeting shall be recessed for a longer period of time than until the next regular meeting except when required information has not been received, or, in the case of work sessions or special meetings, to a date certain by motion duly passed.

## **2.10 Quorum.**

Four (4) members of the Council shall constitute a quorum to do business. Three (3) or more members of the Council should not meet to deliberate city business outside an open meeting unless:

- (a) They are placed on a sub-committee by Council; or
- (b) They are calling a city council meeting.

## **2.11 Conflict of Interest.**

A Council Member prevented from voting by a conflict of interest shall file a conflict-of-interest affidavit with the City Secretary as soon as possible after the posting of an agenda, which contains a conflict unless an applicable conflict-of-interest affidavit has already been filed.

A Council Member prevented from voting by a conflict of interest shall step down from the dais and leave the Council Chambers, shall not vote on the matter, shall not participate in discussions regarding the matter or attempt to influence the Council's deliberation of the matter in any way (during meetings or outside of meetings), shall not attend Executive Sessions regarding the matter, and shall otherwise comply with the state law and City ordinances concerning conflicts of interest including Chapter 171 of the Texas Local Government Code.

## **2.12 Presiding Officer.**

The mayor shall serve as the Presiding Officer for all meetings of the City Council. In the absence of the Mayor, the Mayor Pro Tempore shall serve as the Presiding Officer. In the absence of the Mayor and Mayor Pro Tempore, the City Manager shall call the meeting to order, if a quorum of the Council is present, and the first order of business shall be for the Council to elect by majority vote, a temporary presiding officer from the members then seated and in attendance. The temporary presiding officer shall serve in such capacity until the meeting is adjourned. The Presiding Officer shall serve as the chair of all meetings and shall make final rulings on all questions pertaining to these rules. All decisions of the presiding officer are final unless overruled by the City Council through a motion to appeal as described in Article 3.9 – Courtesy, Decorum and Order of these rules.

The mayor, as Presiding Officer, is entitled to participate in the discussion and debate, but may not vote, except in elections, to break a tie, and as otherwise provided in the City's Charter. Because

the Presiding Officer conducts the meeting, it is common courtesy for the chair to take a less active role than other members of the Council in debates and discussions. This practice in no way precludes the presiding officer from participating in the meeting fully and freely.

The presiding officer of boards and commissions shall be the person selected by the board or commission as the chair, co-chair, or vice chair. If these persons are not in attendance, the board or commission shall choose a temporary presiding officer from among the members in attendance.

### **2.13 Minutes of Meetings.**

The City Secretary shall keep minutes of all proceedings of the City Council, and they shall be open to public inspection in accordance with the laws of the State of Texas. Staff Liaisons will take minutes of proceedings of the various Boards & Commissions and provide them to the City Secretary as Records Custodian.

### **2.14 Suspension and Amendment of Rules.**

Any provisions of these rules not governed by federal, or state law or the City Charter may be temporarily suspended by a supermajority vote (see Article 3.7 of these rules) of the City Council. Any provisions of these rules may be amended by majority vote if such amendment is appropriately posted on an agenda of a regular meeting of the City Council and receives approval of the majority of the City Council at such meeting.

### **2.15 Rules for the Press and Media.**

The use of media equipment, such as lights, cameras, and/or microphones must be coordinated with the City Manager prior to the meeting to ensure that the equipment does not disturb or otherwise conflict with or disrupt the meeting or the Council's activities.

## **ARTICLE 3.**

### **PARLIAMENTARY PROCEDURE**

#### **3.1 Purpose.**

The purpose of these rules of parliamentary procedure is to establish orderly conduct of the meetings. Simple rules lead to a wider understanding and participation. Complex rules create two classes: (1) those who understand the rules, and (2) those who do not fully understand, and those who do not fully participate. The ultimate purpose of these rules of parliamentary procedure is to encourage and facilitate decision-making by the City Council. In a democracy, the majority opinion carries the day.

These rules enable the majority to express their opinion and fashion a result while permitting the minority to also express itself (but not dominate) and fully participate in the process.

#### **3.2 Model Format for an Agenda Item Discussion.**

The following ten (10) steps may be used as a model or guidebook by the Presiding Officer. The meeting is governed by the agenda and the agenda constitutes the only items to be discussed. Each agenda item can be handled by the Presiding Officer (Mayor) in the following basic format:

1. *Announce the Item.* The mayor should clearly announce the agenda item number. The Mayor or the Mayor's designee shall clearly state the subject matter of the agenda item by reading the caption for the item being considered.
2. *Receive a Report.* The mayor should invite the appropriate people to report on the item, including any recommendations they might have.
3. *Ask Clarifying Questions.* The mayor should ask the Council Members if they have any technical questions for clarification. At this point, members of the City Council may ask clarifying questions to the people who reported on the item, and they should be given time to respond.
4. *Seek Citizen Input.* The mayor should invite citizen comments – or if a public hearing, open the public hearing. Upon conclusion, the mayor should announce that public input is closed, or if a public hearing, close the public hearing.
5. *Motion First.* The mayor should invite a motion from the City Council before debate is given on the merits of the item. The mayor should announce the name of the member who makes the motion.
6. *Motion Second.* The mayor should determine if any member of the City Council wishes to second the motion. The mayor should announce the name of the member who seconds the motion. If no member of the City Council wishes to second the motion, then the motion fails and should be so stated by the mayor.
7. *Repeat Motion.* If the motion is made and seconded, the mayor should make certain that everyone (including the audience) understands the motion. This is done in three ways:
  - a. The mayor can ask the maker of the motion to repeat it;
  - b. The mayor can repeat the motion; or
  - c. The mayor can ask the City Secretary to repeat the motion.
8. *Discuss the Motion.* The mayor should now invite the members of the City Council to discuss the motion. If there is no desired discussion, the mayor may call for a vote. If there has been no discussion or a brief discussion, then there is no need to repeat the motion before taking a vote. If the discussion has been lengthy, it is a good idea to repeat the motion before calling for a vote.
9. *Vote.* The mayor may ask the City Secretary to call the roll. Unless a super-majority is required for passage of the motion, a simple majority vote determines whether the motion passes or fails. Unless a member of the Council seeks recusal from voting on any question where the vote would constitute a conflict of interest, and that recusal is consented to by a majority of the remainder of the Council, all members of the Council shall vote upon every question, ordinance, or resolution. Action items require a vote.
10. *Announce the Outcome.* The mayor announces the results of the vote and should also state what action (if any) the Council has taken. The mayor should announce the name of



any member who voted in the minority on the motion.

### **3.3 The Basic Motions.**

The basic motion is the one that puts forward a decision for consideration. A basic motion might be: “I move for approval of the ordinance as submitted,” or “I make a motion that we deny the resolution.” Multiple motions may be made on the same agenda item provided they are made and voted on sequentially.

A failed motion to approve shall be construed as a successful motion to deny. This shall be the case with or without conditions. However, the Mayor may call for additional motions to clarify what (if any action) the Council wishes to take.

### **3.4 The Motion to Amend.**

If a member wants to change a basic motion, the member will have to motion to amend the original or previously amended motion. A motion to amend might be: “I move that we amend the motion to include the changes we discussed to the ordinance.” A motion to amend seeks to retain the basic motion on the floor (a motion made and seconded) but to modify it in some way. A motion to amend requires the agreement of the person making the original motion. If the basic motion has already been seconded, the motion to amend must be acknowledged and accepted by the member who seconded the basic motion.

### **3.5 Discussion and Debate.**

The basic rule of motions is that they are subject to discussion and debate. Accordingly, the basic motion and the motion to amend are all eligible, each in their turn for full discussion by and before the City Council. Once the motion is made, the length of individual statements by the mayor and members is limited to five minutes unless the City Council votes to extend the time allotted. Discussion and debate can continue until the mayor, or any member decides that it is time to move on and call a vote on the motion once all council members have had the opportunity to discuss the motion.

### **3.6 Other Motions.**

There are exceptions to the general rule of free and open debate on motions. The exceptions apply when there is a desire of the Council to move on. The following motions are not debatable, and the mayor must immediately call a vote on the motion if seconded by another member.

- *Motion to Adjourn.* This motion, if passed, requires the Council to immediately adjourn to its next regularly scheduled meeting. This motion requires a simple majority vote.
- *Motion to Recess.* This motion, if passed, requires the Council to immediately take a recess. Normally the Mayor will determine the length of the recess which could last for a few minutes to several hours. It requires a simple majority vote.
- *Motion to Fix the Time to Adjourn.* This motion, if passed, requires the Council to adjourn the meeting at the specific time set in the motion. For example, “I move we adjourn this meeting at Midnight.” It requires a simple majority vote.
- *Motion to Table.* This motion, if passed, requires discussion of the agenda item to be halted immediately, and the agenda to be placed on hold. The motion may contain a specific time to bring the item up again, or it may not specify a time. If no time is specified, the item shall

be placed on the agenda at the following Council meeting.

- *Motion to Remove from Table.* This motion, if passed, allows the Council to remove an item previously placed on hold. A vote in favor of removing an item from the table must be made before the Council can take action on an item that was tabled.

### **3.7 Motions Requiring a Supermajority Vote to Pass.**

A supermajority vote consists of a majority plus one (i.e., To pass a motion under this section requires affirmative votes of a majority, plus one more).

- *Motion to Limit Debate.* This motion is sometimes referred to as, “moving the question” or, “calling the question.” When a member of the Council makes such a motion, the member is saying, “I have had enough discussion, let’s vote on the issue.” When such a motion is made, the mayor should ask for a second, stop the discussion, and vote on the motion to limit debate. The motion requires a supermajority vote to pass. Meaning, that the number of council members voting for the motion must equal four or more.
- *Motion to Object to the Consideration of an Item.* This motion, if passed, precludes the City Council from even considering the item on the agenda. It does not preclude the item from appearing on a future agenda. The motion requires a supermajority vote to pass. (Normally, this motion is unnecessary, because the objectionable item can be defeated outright or tabled.)
- *Motion to Suspend the Rules.* This motion is debatable but requires a supermajority vote to pass. This motion allows the Council to suspend its own rules for a particular purpose. For example, the Council may desire to give a particular speaker more time than normally allowed. A “motion to suspend the rules and give the speaker ten additional minutes,” accomplishes this desire.

### **3.8 Motion to Reconsider.**

There is a special motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. As such, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made.

A motion to reconsider requires a simple majority vote to pass, but two special rules apply only to the motion to reconsider.

The first issue involves timing. A motion to reconsider must be made at the meeting where the item was first voted upon at the very next regular meeting or at a special meeting called for that specific item (if properly noticed and on the posted agenda). A motion to reconsider made at a later time is considered untimely and it may not be considered unless the Council suspends the rules to consider it.

Secondly, the motion to reconsider can only be made by a member of the Council who voted in the majority on the original motion. The motion to reconsider may be seconded by any member of

the City Council regardless of how they voted on the original motion. If a member of the Council who voted in the minority on the original motion seeks to make a motion to reconsider, it **MUST** be ruled out of order by the mayor. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, then the item could be brought back again and again, which would defeat the purpose of finality.

If a motion to reconsider passes, then the original matter is back before the Council, and a new original motion is in order. The matter may be discussed as if it were on the floor for the first time.

The City Attorney should be consulted prior to making a motion to reconsider so that potential legal implications can be evaluated in advance.

### **3.9 Courtesy, Decorum, and Order.**

These rules of order are meant to promote an atmosphere of courtesy and decorum appropriate for the efficient discussion of business. It is the responsibility of the mayor (and the members of the City Council) to maintain that atmosphere of courtesy and decorum. The mayor should always ensure that debate and discussion focus on the item and the policy in question, not on the personalities of the participants of the discussion. Debate on policy is healthy; debate on personalities is not. In order to assist in the creation and maintenance of that atmosphere, the following rules shall govern all meetings:

1. *Request to Speak.* Before a Council Member, staff member, or an audience member may speak on open session agenda items, they must first be recognized by the mayor. Upon recognition, the person requesting to speak shall hold the floor and shall make their point clearly and succinctly. Public comments must be kept relevant to agenda items or other matters over which the city council has jurisdiction. The mayor shall rule on the relevance of comments. Persons making irrelevant, impertinent, overly redundant or slanderous remarks may be barred by the mayor from further comment before the Council during the meeting. Audience members may criticize the city council, including criticism of any act, omission, policy, procedure, program, or service. The mayor has the right to cut a speaker off if the discussion becomes too personal to an individual, loud, crude, irrelevant, impertinent, redundant, or slanderous.
2. *Order.* While the Council is in session, all Council Members must preserve order and decorum. If a person fails to request to speak before speaking, the mayor shall rule them 'out of order' and remind them that they do not have the floor. A person shall neither, by conversation or otherwise, delay or interrupt the proceedings or the peace of the meeting, nor disturb any other person while speaking or refuse to obey the orders of the mayor. Members of the City Council should not leave their seats during a meeting without first recusing themselves, obtaining permission of the mayor, or making a motion to recess.
3. *Improper References Prohibited.* Every person desiring to speak shall address the entire Council and shall not single out a member of the Council, the audience or a staff member. Speakers shall confine themselves to the question under debate, avoiding all personal attacks and indecorous language.
4. *Interruptions.* A Council Member, once recognized, shall not be interrupted when

speaking unless it is to call the member to order, or other such interruption expressed below. If the Council Member, while speaking, is called to order, the member shall cease speaking until the question of order is determined, and if the Council Member is found to be in order, the member shall be permitted to proceed speaking. Allowable interruptions or points of order are as follows:

- a. *Point of Privilege.* The proper interruption would be: "Point of Privilege." The mayor would then ask the interrupter to, "state your point." Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room might be too hot or cold, or a fan motor might interfere with a Council member's ability to hear.
- b. *Point of Order.* The proper interruption would be: "Point of Order." The mayor would then ask the interrupter to, "state your point." Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the mayor called for a vote on a motion that permits debate without allowing any discussion.
- c. *Motion to Appeal.* If the Mayor makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the mayor by stating, "motion to appeal." If the motion is seconded and after the debate, if it passes by a simple majority vote, the ruling of the mayor is reversed.
- d. *Call for orders of the day.* If a council member believes the discussion has strayed from the agenda, the member may say, "Let's return to the agenda." The motion does not require a vote. If the Mayor discovers that the discussion has strayed from the agenda, the mayor simply returns to the business of the day.
- e. *Withdraw a Motion.* During the debate and discussion of a motion, the original maker of the motion on the floor, at any time, may interrupt the speaker to withdraw his or her motion. The motion is immediately deemed withdrawn and discussion on the motion shall cease. Council members are free to make the same motion or another motion.

### **3.3 City Council and Board Member Disruptions.**

As stated in Resolution R-2017-20, when members of the City Council or other Board Members become engaged in heated discussions that could be construed as not following parliamentary procedures. It will be the responsibility of the Presiding Officer (Mayor or Board Chair) to restore order to the meeting. In the event that order cannot be immediately restored, the Presiding Officer should call for a recess. When the recess is called, a sufficient number of the City Council or Board Members should depart the room so that a quorum is no longer present. Information Technology personnel will ensure that the microphones and audio for the television channel are turned off. The Presiding Officer will determine what action to take and will resume the meeting, when appropriate. Law enforcement personnel will not become involved unless a crime (i.e. assault, terroristic threat, etc.) is committed.

### **3.4 Audience Disruptions.**

It is against the laws of the State of Texas for anyone to intentionally or recklessly disrupt official

proceedings. As stated in Resolution R-2017-20, if a member of the audience (gallery) becomes disruptive, the Presiding Officer will inform that person that their conduct is not permissible and to cease. If that person receives a second warning, the Chief of Police or the Chief's designee will position themselves in proximity to that person. On the third warning (when appropriate), the Presiding Officer will inform the person that their actions are disrupting this lawful meeting, and they must depart immediately. The Chief of Police or the Chief's designee has the discretion to escort the person out of the chambers and off of City property. In the event the person does not leave the chambers, the person may be subject to being arrested under Section 42.05 of the Texas Penal Code (TPC) and/or Section 38.13 of TPC or punished as provided in an ordinance enacted under Section 217.003 of the Texas Local Government Code. The person will be subject to arrest under Section 30.05 TPC if the person does not leave the property. In the event the same person comes to a subsequent meeting and disrupts that meeting to the point they are requested to leave again, a criminal trespass warning can be issued.

### **3.5 Council May Discipline its Own Members.**

In the event a Council Member violates the Charter, these rules, or any other ordinance of the city, or acts in a manner that causes embarrassment or disgrace to the City of Bastrop, the City Council on a supermajority vote may discipline the offending member. To consider such an action, the mayor or two Council Members may place the item on an agenda.

Such action may only take place after an executive session is held to discuss the offense. The offending member shall be present at the executive session to answer any questions asked by members of the City Council or make other statements as the member may desire to make in their defense. If the offending member refuses to attend the executive session, the remaining members of the City Council may proceed in their absence.

The outcome of the executive session may be as follows and shall be made publicly in open session in accordance with the Texas Open Meetings Act:

1. *No Action.* The City Council chooses to take no action.
2. *Private Censure.* The City Council may choose to privately censure the offending member, leaving their comments to the offending member left in the confines of the executive session.
3. *Public Censure.* The City Council may choose to publicly censure the offending member through a resolution passed by supermajority vote and entered into the public record.

## **ARTICLE 4.**

### **AGENDA ORDER**

The Mayor, City Manager, or an appropriate designee shall prepare a draft agenda and deliver it to the City Council via electronic transmission on the Monday prior to the final agenda posting. The City Manager or

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an appropriate designee shall prepare an agenda and cause the same to be posted in accordance with the Texas Open Meetings Act. Agendas and packet material shall be delivered to the City Council via electronic format and uploaded into a cloud storage service. City Council shall be notified via email that the agenda and packet have been uploaded and available for review 72 hours prior to a regularly scheduled Council Meeting. The goal would be to upload the agenda and packet on Thursday prior to a regularly scheduled Council Meeting. In the event of an emergency meeting of the City Council, this provision shall be suspended when not inconsistent with the provisions of federal or state law or the City Charter.

In order to facilitate the agenda process, the Mayor, two Council Members, or the City Manager may place an item on the agenda. Staff assistance, if required, should be requested through the City Manager (City Charter, Article III, Section 3.05 Prohibitions). Agenda items must be provided to the City Manager's Office at City Hall by 12:00 noon on the 7<sup>th</sup> calendar day preceding the date of the regular meeting. If the agenda topic does not allow for staff to adequately prepare information for Council's consideration, the item may be postponed until the next regular meeting.

#### **4.1 Call to Order.**

The mayor shall call the meeting to order. The mayor shall announce that a quorum of the City Council is present and shall state for the record the names of all members of the City Council that are absent.

#### **4.2 Pledges of Allegiance to the United States & Texas Flags.**

The Council shall recite the Pledge of Allegiance, first to the United States Flag, and then to the state Flag of Texas. The Council welcomes individuals and organizations, young and old, to lead the Pledges.

#### **4.3 Invocation.**

All regular meetings of the City Council shall include an invocation.

#### **4.4 Presentations.**

Presentations may be made by the Mayor, City Council, or Staff. The Mayor may deliver any proclamation as may be required from time to time. Outside entities and organizations granted permission to make a presentation shall be placed in this section.

Proposed proclamations and resolutions will not be placed on an agenda or brought before the City Council for discussion or action that:

- a. Take a position on a matter of religious or spiritual values or principles, including ones that advance one religion, denomination, or article of faith over another;
- b. Promote political partisanship favoring one party over another;
- c. Advocate outcomes in legal matters in which the City of Bastrop is not a party and are pending before a court or administrative law body (e.g., State Office of Hearings Examiners);
- d. Is contrary to a policy position stated in an ordinance previously adopted by the Council (unless the Council is in the process of amending or repealing the prior ordinance).



#### **4.5 Work Session/Briefings.**

Items may be included in this section for the purpose of conducting a detailed and thorough exploration of matters that may subsequently come before City Council as an item for individual consideration. All questions of a technical nature, which require a detailed explanation for understanding, may be considered in a work session. Council may, through the City Manager, request the attendance of such staff members or outside experts as may be required to answer such questions. No formal action may be taken on items. The council may provide staff direction on the matter being considered. Citizen comments and questions will be considered at the end of the prepared presentation and after the Council has asked questions.

#### **4.6 Staff and Board Briefings.**

Items that are provided to the Council on a routine basis, such as monthly financial statements and quarterly investment reports, should be included in this section. Appointed boards of the city, who have been requested to provide periodic updates, such as the Bastrop Economic Development Corporation and Visit Bastrop, will be included in this section.

#### **4.7 Citizen Comments .**

Every agenda must include the following language for purposes of open and transparency to inform the public of how to appropriately address the City Council:

*At this time, three (3) minute comments will be taken from the audience on any topic. Anyone in attendance wishing to address the Council must complete a citizen comment form and give the completed form to the City Secretary prior to the start of the Citizen Comments. Alternatively, if you are unable to attend the council meeting, you may complete a citizen comment form with your comments at [www.cityofbastrop.org/citizencommentform](http://www.cityofbastrop.org/citizencommentform) at least two hours before the meeting starts on the requested date. Comments submitted electronically by this time will be given to the City Council during the meeting and included in the public record, but not read aloud. In accordance with the Texas Open Meetings Act, if a citizen discusses any item not on the agenda, the City Council cannot discuss issues raised or make any decision at this time. Instead, the City Council is limited to making a statement of specific factual information or a recitation of existing policy in response to the inquiry. Issues may be referred to the City Manager for research and possible future action.*

*It is not the intention of the City of Bastrop to provide a public forum for the embarrassment or demeaning of any individual or group. Neither is it the intention of the Council to allow a member of the public to slur the performance, honesty, and/or integrity of the Council, as a body, or any member or members of the Council individually or collectively, or members of the City's staff. Accordingly, profane, insulting, or threatening language directed toward the Council and/or any person in the Council's presence will not be tolerated.*

#### **4.8 (A) Approval of the Minutes.**

The Council shall consider the minutes of any meeting presented for their review since the last regular meeting. This heading will only be used when there are no other items listed on a consent agenda; otherwise, this heading may take the form of one item among others on the Consent Agenda.

#### **4.8 (B) Consent Agenda Items.**

There is hereby established, as a part of every agenda for regular and/or special meetings of the City Council, a portion of said agenda that shall be labeled "consent agenda." Said consent agenda may

consist of any and all business regularly coming before the City Council including approval of the minutes of previous meetings.

Any member of the City Council or a citizen may request that any item be removed from the consent agenda and considered separately prior to the City Secretary reading the caption of each item. If any item was removed from the consent agenda, it will be considered immediately following approval of the remainder of the consent agenda.

The City Secretary shall read the caption of each item and/or ordinance prior to a motion being made to approve the Consent Agenda. Once a second is received on the motion, the Council shall vote.

All items set out in the consent agenda shall be deemed passed upon passage of an affirmative motion, by a vote of the majority of the members of the City Council, that the consent agenda be adopted. No further action shall be deemed necessary, and all such items appearing on the consent agenda, upon passage of such motion, shall be deemed adopted as if voted upon separately.

#### **4.9 Items for Individual Consideration.**

Items for individual consideration shall be considered by the City Council individually and approved by either a simple majority vote or a supermajority vote as the case may be.

Public hearings, which are statutorily required, shall be included in this section. The mayor shall first request staff comments. The mayor shall open the public hearing and receive citizen input. While the public hearing is open, the Council may ask questions of the speakers but may not deliberate or argue with the public on the matter at hand. Those speaking at a public hearing are required to follow the rules established herein for citizen comments. Upon conclusion of citizen comments, the Mayor shall close the public hearing. Council may deliberate or take action on the matter at hand upon the closing of the public hearing.

Unless a majority of the City Council votes to proceed with consideration, items listed for individual consideration shall be removed at the request of one of the following:

- a. the mayor,
- b. the item's sponsor(s),
- c. the city manager,
- d. the council liaison to the board or commission giving rise to the item, or
- e. the applicant seeking approval from the Council.

#### **4.10 Executive Session Items.**

This section is only used when it is known in advance that it is necessary for the Council to convene in executive session. Executive sessions are sessions closed to the public. They are only permitted for the purpose of discussing matters enumerated in Chapter 551, Open Meetings Act of the Texas Government Code. Disclosure of topics to be discussed shall be made to the public in accordance with the requirements of the Open Meetings Act.

If the subject of the executive session warrants, the executive session may be held prior to the regular session. Council may agree in Executive Session what can be shared in public prior to concluding the Executive Session. Nothing herein shall limit the ability of the Council to adjourn



into Executive Session at any time during a meeting to discuss any agenda item.

#### **4.11 Action on Executive Session Items.**

This section is only used if the Council conducts an executive session. As a general rule, action on executive session items must be taken during public/open sessions of the Council, unless authorized by law. Action may include the taking of no action at all.

#### **4.12 Adjournment.**

The mayor shall adjourn the meeting upon passage of the appropriate motion.

## **ARTICLE 5.**

### **RULES GOVERNING CITIZEN COMMENTS**

#### **5.1 Purpose.**

It is the desire of the City Council to hear from the citizens of Bastrop to stimulate discussion and offer a forum for a cordial and meaningful public debate on matters that are properly a concern of the City Council. The following rules shall control and govern audience comments.

#### **5.2 Rules for Audience Comments.**

Immediately preceding the opening of a public hearing, the mayor may direct the City Secretary to read the rules governing citizen comments during a Public Hearing. Generally, the rules for a Public Hearing are the same as for Citizen Comments (below); however, the rules for Public Hearings may be altered by the mayor in advance of the hearing if reasonably necessary to facilitate audience input, Council deliberations, and an efficient meeting.

#### **5.3 Rules Governing Citizen Comments.**

1. Citizen comments are limited to those speakers who have been acknowledged by the Presiding Officer and who speak from the designated microphone.
2. Each speaker is limited to a maximum time limit of three minutes on any item except for a public hearing item for which the Presiding Officer has announced a longer time is allowed. Speakers cannot pool or donate their time allotment to other speakers.
3. No individual may address the Council without submitting a speaker card, which may be done online or in person. The card must clearly state the subject or issue on which the citizen wishes to speak. If the subject matter does not pertain to city business, the mayor shall advise the individual and/or make recommendations as to how they may get the issue addressed.
4. No individual may address the Council without submitting a speaker card, which may be done online or in person. The card must clearly state the subject or issue on which the citizen wishes to speak. If the subject matter does not pertain to city business, the mayor shall advise the individual and/or make recommendations as to how they may get the issue addressed.

5. Citizens speaking on agenda items shall restrict their comments to the subject matter listed. Citizens speaking on agenda items may make comments either during the Citizen Comment portion of the agenda or when the City Council takes up that particular agenda item.
6. Citizens speaking on non-agenda items shall only speak during the Citizens Comment portion of the agenda.
7. Council may not act upon or discuss any issue brought forth as a non-agenda item, except to:
  - a. Make a statement of specific factual information given in response to the inquiry, or
  - b. A recitation of existing policy in response to the inquiry.

Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

8. Proper respect, decorum, and conduct shall prevail at all times. Impertinent, slanderous, or personal attacks are strictly prohibited, and violators may be removed from the Council Chambers.
9. No placards, banners, or signs may be displayed in the Council Chambers or City Hall. Exhibits relating to a presentation are acceptable provided that copies are given to the City Attorney for reference, and to the City Secretary to be included in the official records of the meeting.
10. Because of cyber-security concerns, citizens are not allowed to utilize the City's audio-visual equipment for electronic multi-media presentations unless permission is granted by the City Secretary at least 24 hours in advance (at the City Secretary's sole discretion). Hard copies must be provided to the City Secretary to be included in the official records of the meeting.
11. Arguing loudly or forcefully, efforts at intimidation of speakers or attendees, or other disruptive behavior is prohibited. Civil discussion and/or debate are acceptable on items specifically listed on the agenda.
12. Unauthorized remarks from the audience, stomping of feet, applauding, whistles, yells, or any type of disruptive behavior is prohibited. Applause of appreciation may be acceptable when recognizing a significant event or achievement.
13. Council meetings are the workplace to carry out the business of the City of Bastrop; therefore, any conduct that could constitute harassment in the workplace is prohibited.

#### **5.4 Preservation of Order.**

As referenced in Article 3.11 above, the mayor shall preserve order and decorum and, if necessary,

shall cause to be silenced or removed from the Council Chambers any non-Council Member speaking out of order or disrupting the order of the meeting.

### **5.5 Applicants.**

An applicant appearing before the Council seeking approval for items such as contracts or development authorizations is limited to a maximum time of ten minutes. An applicant who has made a presentation to the Council must again be recognized before being allowed to return to the podium to make additional comments or answer questions.

## **ARTICLE 6.**

### **COUNCIL LIAISONS TO BOARDS AND COMMISSIONS**

One Council Member will be appointed as the council liaison to each of the city's boards and commissions annually as a part of the Board & Commission Member appointment process, except for the Ethics Commission, Bastrop Housing Authority, Zoning Board of Adjustments, and the Hunters Crossing Local Government Corporation (Council Members are appointed to this board). The mayor will appoint council liaisons with consideration given to applicable expertise. Council liaisons are asked to make every effort to attend the meetings of the boards or commissions to which they have been appointed as liaisons. Board and commission members may contact their council liaison concerning items of concern or interest with regard to their appointed board.

## **ARTICLE 7.**

### **TABLE OF MOTIONS AND POINTS OF ORDER**

<b>MOTION/ORDER</b>	<b>REQUIRES SECOND</b>	<b>DEBATABLE</b>	<b>AMENDABLE</b>	<b>VOTE TYPE</b>
Basic Motion	Yes	Yes	Yes	Simple
Motion to Amend	*	No	Yes	N/A
Motion to Adjourn	Yes	No	No	Simple
Motion to Recess	Yes	No	Yes	Simple
Motion to Fix the Time to Adjourn	Yes	No	No	Simple
Motion to Table	Yes	No	No	Simple
Motion to Limit Debate	Yes	No	No	Super
Motion to Object to the Consideration of an Item	Yes	No	No	Super
Motion to Suspend Rules	Yes	No	No	Super
Motion to Reconsider	Yes	Yes	Yes	Simple
Point of Privilege	No	No	No	N/A

Point of Order	No	No	No	N/A
Motion to Appeal	Yes	Yes	No	Simple
Call for Orders of the Day	No	No	No	N/A
Withdraw a Motion	No	No	No	N/A
Motion to Enforce	Yes	No	No	Simple

**NOTE:\*** For the purposes of these rules, Amendments are not debatable and only require the approval of the member who made the original motion. An amendment to an amendment requires first the approval of the member who made the original amendment and secondly the approval of the member who made the original motion.

# ELECTED AND APPOINTED OFFICIAL FORMS

## CONGRATULATIONS



*Thank you for serving as an Elected Official or as a member of a City of Bastrop Board or Commission. It is our privilege to extend to you our congratulations and appreciation for serving the Citizens of Bastrop, Texas. Your willingness to donate your valuable time to this commitment is especially appreciated. You will make a positive difference by sharing your experience and perspective to benefit our community. For any questions, please contact the Office of the City Secretary.*

## OVERVIEW



*Secretary of State Form #23-2 Rev. 09/2023*

The Statement of Officer form, commonly referred to as the “Anti-Bribery Statement,” must be executed and filed with the Office of the City Secretary. Article XVI, Section 1 of the Texas Constitution requires all elected or appointed state and local officers to subscribe to the anti-bribery statement in section 1(b) before entering upon the duties of their offices.



*Secretary of State Form #23-2 Rev. 09/2023*

The Oath of Office form must be executed and filed with the Office of the City Secretary. Article XVI, Section 1 of the Texas Constitution requires all elected or appointed state and local officers to take the official oath of office found in section 1(a). The Oath of Office may be administered by anyone authorized under the provisions of Chapter 602 of the Texas Government Code. Commonly used officials include notaries public and judges.



*City of Bastrop NOTICE TO ALL BOARD MEMBERS*

The Texas Open Records Act was amended to allow a board member of a governmental body to choose whether to allow public access to the information in the custody of the city that relates to the home address, home phone number, social security number, or that reveals whether the board members have family members. The Notice to All Board Members must be executed and filed with the Office of the City Secretary.



#### *City of Bastrop PUBLIC ACCESS OPTION FORM*

The Public Information Act allows employees, public officials, and former employees and officials to elect whether to keep certain information about them confidential. This Public Access Option Form must be executed and filed with the Human Resources Director no later than the 14<sup>th</sup> day after the date the employee/elected official begins employment. Unless you choose to keep your home address, home phone number, social security number, or information that reveals whether you have family members private this information is subject to public release.



#### *City of Bastrop CONFLICT OF INTEREST STATEMENT*

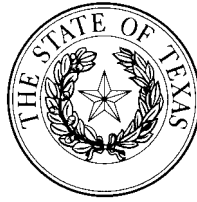
A local government official shall complete this affidavit before a meeting in which an agenda item is discussed in which they may have a 'substantial interest' as defined in Chapter 171 (TLGC) or to avoid the appearance of impropriety. The form is filed with the records administrator (city secretary or board secretary). A notice shall be included in the minutes that the member has filed a Conflict-of-Interest Statement and a copy of the form attached to the minutes. A city that maintains a website is required to post on that site statements and disclosures that are required to be filed under Chapter 176.



#### *Texas Ethics Commission LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT FORM CIS*

Section 176.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. This form is required to be filed with the records administrator of the local governmental entity not later than 5 pm on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of this statement.

**Form #23-3 Rev. 09/2023**  
**Submit to:**  
**SECRETARY OF STATE**  
**Government Filings**  
**Section P O Box 12887**  
**Austin, TX 78711-2887**  
**512-463-6334**  
**512-463-5569 - Fax**  
**Filing Fee: None**



**STATEMENT OF OFFICER**

**Statement**

I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

Title of Position to Which Elected/Appointed: \_\_\_\_\_

**Execution**

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated therein are true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Officer

## Form 23-3 - Statement of Officer (General Information)

The attached form is designed to meet minimal constitutional filing requirements pursuant to the relevant provisions. *This form and the information provided are not substitutes for the advice and services of an attorney.*

### **Execution and Delivery Instructions**

A Statement of Officer required to be filed with the Office of the Secretary of State is considered filed once it has been received by this office.

**Mail:** P.O. Box 12887, Austin, Texas 78711-2887.

**Overnight mail or hand deliveries:** James Earl Rudder Officer Building, 1019 Brazos, Austin, Texas 78701.

**Fax:** (512) 463-5569.

**Email:** Scanned copies of the executed Statement may be sent to [register@sos.texas.gov](mailto:register@sos.texas.gov)

*NOTE: The Statement of Officer form, commonly referred to as the “Anti-Bribery Statement,” must be executed and filed with the Office of the Secretary of State before taking the Oath of Office (Form 2204).*

### **Commentary**

Article XVI, section 1 of the Texas Constitution requires all elected or appointed state and local officers to take the official oath of office found in section 1(a) and to subscribe to the anti-bribery statement found in section 1(b) before entering upon the duties of their offices.

Elected and appointed state-level officers required to file the anti-bribery statement with the Office of the Secretary of State include members of the Legislature, the Secretary of State, and all other officers whose jurisdiction is coextensive with the boundaries of the state or who immediately belong to one of the three branches of state government. Questions about whether a particular officer is a state-level officer may be resolved by consulting relevant statutes, constitutional provisions, judicial decisions, and attorney general opinions. For more information, see Op. Tex. Att’y Gen. No. JC-0575 (2002) (determining the meaning of “state officer” as it is used in Article XVI).

Effective September 1, 2017, Senate Bill 1329, which was enacted by the 85<sup>th</sup> Legislature, Regular Session, amended chapter 602 of the Government Code to require the following judicial officers and judicial appointees to file their oath and statement of officer with the secretary of state:

Officers appointed by the supreme court, the court of criminal appeals, or the State Bar of Texas; and  
Associate judges appointed under Subchapter B or C, Chapter 201, Family Code.

Local officers must retain the signed anti-bribery statement with the official records of the office. *As a general rule, city and county officials do not file their oath of office with the Secretary of State—these officials file at the local level. The Legislature amended the Texas Constitution, Article 16, Section 1, in November 2001 to no longer require local level elected officials to file with our office.* **The Office of the Secretary of State does NOT file Statements or Oaths from the following persons:** Assistant District Attorneys; City Officials, including City Clerks, City Council Members, Municipal Judges, Justices of the Peace, and Police/Peace Officers; Zoning/Planning Commission Members; County Officials, including County Clerks, County Commissioners, County Judges, County Tax Assessors, and District Clerks; and Officials of Regional Entities, such as, Appraisal Review Districts, Emergency Service Districts, and School Districts (ISD’s).

***Questions about this form should be directed to the Government Filings Section at (512) 463-6334 or [register@sos.texas.gov](mailto:register@sos.texas.gov)***

Revised 09/2023



This space reserved for office  
use

**Submit to:**  
**SECRETARY OF STATE**  
**Government Filings Section**  
**P O Box 12887**  
**Austin, TX 78711-2887**  
**512-463-6334**



**OATH OF OFFICE**

**Filing Fee: None**

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS,  
I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully  
execute the duties of the office of \_\_\_\_\_ of  
the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws  
of the United States and of this State, so help me God.

\_\_\_\_\_  
Signature of Officer

State of \_\_\_\_\_)  
County of \_\_\_\_\_)

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(seal)

\_\_\_\_\_  
Signature of Notary Public or Other Officer  
Administering Oath

\_\_\_\_\_  
Printed or Typed Name

## Form 23-2 - Oath of Office (General Information)

The attached form is designed to meet minimal constitutional filing requirements pursuant to the relevant provisions. *This form and the information provided are not substitutes for the advice and services of an attorney.*

### **Execution and Delivery Instructions**

The Oath is considered filed once it has been received by this office.

**Mail:** P.O. Box 12887, Austin, Texas 78711-2887.

**Overnight mail or hand deliveries:** James Earl Rudder Officer Building, 1019 Brazos, Austin, Texas 78701.

**Fax:** (512) 463-5569. If faxed, the original Oath should also be mailed to the appropriate address above.

**Email:** Scanned copies of the executed Oath may be sent to [register@sos.state.tx.us](mailto:register@sos.state.tx.us). If emailed, the original Oath should also be mailed to the appropriate address above.

*NOTE: Do not have the Oath of Office administered to you before executing and filing the Statement of Officer (Form 2201 – commonly referred to as the “Anti-Bribery Statement”) with the Office of the Secretary of State.*

### ***Commentary***

All state or county officers, other than the governor, lieutenant governor, and members of the legislature, who qualify for office, are commissioned by the governor. Tex. Gov’t Code, Section 601.005. The Secretary of State performs ministerial duties to administer the commissions issued by the governor, including confirming that officers are qualified prior to being commissioned. Submission of this oath of office to the Office of the Secretary of State confirms an officer’s qualification so that the commission may be issued.

Pursuant to art. XVI, Section 1 of the Texas Constitution, the Oath of Office *may not* be taken until a Statement of Officer (see Form 2201) has been subscribed to and, as required, filed with the Office of the Secretary of State. Additionally, gubernatorial appointees who are appointed during a legislative session *may not* execute their Oath until after confirmation by the Senate. Tex. Const. art. IV, Section 12. A Statement of Officer form required to be filed with the Office of the Secretary of State is filed upon receipt by the Secretary of State. The Oath of Office may be administered by anyone authorized under the provisions of Chapter 602 of the Texas Government Code. Commonly used officials include notaries public and judges.

#### ***Officers Required to File Oath of Office with the Secretary of State:***

- Gubernatorial appointees, appellate and district court judges, and district attorneys
- Directors of districts operating pursuant to chapter 36 or 49 of the Texas Water Code file a duplicate original of their Oath of Office within 10 days of its execution. Tex. Water Code Ann. Sections 36.055(d); 49.055(d)

#### ***Officers Not Required to File Oath of Office with the Secretary of State:***

- Members of the Legislature elected to a *regular* term of office will have their Oath of Office administered in chambers on the opening day of the session and recorded in the appropriate Journal. Members elected to an *unexpired* term of office should file their Oath of Office with either the Chief Clerk of the House or the Secretary of the Senate, as appropriate.
- All other persons should file their Oaths locally. Please check with the county clerk, city secretary or board/commission secretary for the proper filing location.

*Questions about this form should be directed to the Government Filings Section at (512) 463-6334 or [register@sos.state.tx.us](mailto:register@sos.state.tx.us).*

*Revised 9/2023*



# NOTICE TO ALL BOARD MEMBERS

The Texas Open Records Act was amended to allow a board member of a governmental body to choose whether to allow public access to the information in the custody of the city that relates to the home address, home phone number, social security number, or that reveals whether the board member has family members.

Written notice is necessary to your home address, home address home telephone number, social security number or family member's information. To satisfy the requirement for written notification, complete and return this notice to be retained by the city.

Once notification has been received to close public access to the information, further written notice from you is required before this information can be made public.

## **\*\*§552.024 Electing to Disclose Address & Telephone Number**

**As a board/commission member of the City of Bastrop, I choose to:** (please (✓) check one)

1. Public access to my home address; home phone number; or whether I have family members? ☐ **Allow \*\*** ☐ **Not Allow \*\***
2. Release social security number? ☐ **Allow \*\*** ☐ **Not Allow \*\***

- (a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, or social security number, or that reveals whether the person has family members.
- (b) Each employee and official and each former employee and official shall state that person's choice under Subsection (a) to the main personnel officer of the governmental body and signed in writing not later than the 14<sup>th</sup> day after the date on which: (1) the employee begins employment with the governmental body; and (2) the official is elected or appointed; or (3) the former employee or official ends service with the governmental body.
- (c) If the employee or official or former employee or official chooses not to allow public access to the information, the information is protected Under Subchapter C.
- (d) If an employee official or a former employee or official fails to state the person's choice within the period established by this section, the information is subject to public access.
- (e) An employee or official or former employee or official of a governmental body who wishes to close or open public access to the information may request in writing that the main personnel officer of the governmental body close or open access.
- (f) This section does not apply to a person to whom Section 552.1175 applies.

## **§552.137 CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESS**

- (a) An email address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmative consents to its release.

Email Address(es): \_\_\_\_\_

The above e-mail address(es) may be disclosed to the public per Texas Public Information Act §552137 (a) and (b)

**E-Mail Address:** (please (✓) check one)

Keep e-mail confidential? ☐ **OR** Okay to release e-mail to the public via City Website ☐

Date: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

# City of Bastrop

## Public Access Option Form

(Note: This form should be completed and signed by the employee no later than the 14<sup>th</sup> day after the date the employee begins employment, the public official is elected or appointed, or a former employee or official ends employment or service.)

\_\_\_\_\_  
(Printed Name)

The Public Information Act allows employees, public officials and former employees and officials to elect whether to keep certain information about them confidential. Unless you choose to keep it confidential, the following information about you may be subject to public release if requested under the Texas Public Information Act. Therefore, please indicate whether you wish to allow public release of the information:

Public Release if Requested?

Home Address No \_\_\_\_\_ Yes \_\_\_\_\_

Personal Telephone Number No \_\_\_\_\_ Yes \_\_\_\_\_

Social Security Number No \_\_\_\_\_ Yes \_\_\_\_\_

Information that reveals whether you have family members No \_\_\_\_\_ Yes \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)



# CONFLICT OF INTEREST STATEMENT

I, \_\_\_\_\_, a local public official of the City of Bastrop,  
Texas (the City), make this affidavit and hereby on oath state the following:

Action being contemplated by the (please circle) **City Council** or **Board/Commission** at the \_\_\_\_\_ Meeting, Agenda Item \_\_\_\_\_ may have an effect on a business entity or real property in which I have an interest. Such interest may be a “substantial interest” as that term is defined in Chapter 171 of the Texas Local Government Code. The action being contemplated may have a special economic effect on the business entity or real property distinguishable from the effect on the public.

1. The business entity or real property in which I have an interest is described as follows (**name; address; or lot description**): \_\_\_\_\_

2. The nature and extent of my interest in the business entity or real property is herein described by stating that either I or a person related to me in the first degree by consanguinity (**blood**) or affinity (**marriage**), as determined by Chapter 573 of the Texas Government Code (**check all that apply**):

- \_\_\_\_\_ own 10% or more of the voting stock or shares of the business entity;
- \_\_\_\_\_ own 10% or more of the fair market value of the business entity;
- \_\_\_\_\_ own \$15,000 or more of the fair market value of the business entity; and/or
- \_\_\_\_\_ received funds that exceed 10% of gross income for the previous year;
- \_\_\_\_\_ has an equitable or legal ownership in real property with a fair market value of \$2,500 or more.

3. Alternatively, even if I do not have a “substantial interest” as defined by Chapter 171 of the Texas Local Government Code, I am filing this affidavit so to avoid the appearance of impropriety. My interest may be described as follows:

## \*\*\* AFFIDAVIT \*\*\*

Upon the filing of this affidavit with the City/Board Secretary, I affirm that I shall abstain from any discussion, vote, or decision involving this business entity or real property unless a majority of the members of the governmental entity of which I am a member is likewise required to file and has filed affidavits declaring similar interests on the same official action.

**SIGNED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_  
Signature of Affiant

**SWORN TO AND SUBSCRIBED BEFORE ME** on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

# LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

## FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

### OFFICE USE ONLY

Date Received

1 Name of Local Government Officer

2 Office Held

3 Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code

4 Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.

5 List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100 during the 12-month period described by Section 176.003(a)(2)(B).

Date Gift Accepted \_\_\_\_\_ Description of Gift \_\_\_\_\_

Date Gift Accepted \_\_\_\_\_ Description of Gift \_\_\_\_\_

Date Gift Accepted \_\_\_\_\_ Description of Gift \_\_\_\_\_

(attach additional forms as necessary)

6 SIGNATURE

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to each family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(B), Local Government Code.

\_\_\_\_\_  
Signature of Local Government Officer

**Please complete either option below:**

**(1) Affidavit**

NOTARY STAMP / SEAL

Sworn to and subscribed before me by \_\_\_\_\_ this the \_\_\_\_\_ day of \_\_\_\_\_,  
20 \_\_\_\_\_, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

**OR**

**(2) Unsworn Declaration**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

(street)

(city)

(state)

(zip code)

(country)

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(month)

(year)

\_\_\_\_\_  
Signature of Local Government Officer (Declarant)

## LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

Section 176.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. This form is required to be filed with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of this statement.

A local government officer commits an offense if the officer knowingly violates Section 176.003, Local Government Code. An offense under this section is a misdemeanor.

Refer to chapter 176 of the Local Government Code for detailed information regarding the requirement to file this form.

### INSTRUCTIONS FOR COMPLETING THIS FORM

*The following numbers correspond to the numbered boxes on the other side.*

- 1. Name of Local Government Officer.** Enter the name of the local government officer filing this statement.
- 2. Office Held.** Enter the name of the office held by the local government officer filing this statement.
- 3. Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code.** Enter the name of the vendor described by Section 176.001(7), Local Government Code, if the vendor: a) has an employment or other business relationship with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code; b) has given to the local government officer or a family member of the officer one or more gifts as described by Section 176.003(a)(2)(B), Local Government Code; or c) has a family relationship with the local government officer as defined by Section 176.001(2-a), Local Government Code.
- 4. Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.** Describe the nature and extent of the employment or other business relationship the vendor has with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code, and each family relationship the vendor has with the local government officer as defined by Section 176.001(2-a), Local Government Code.
- 5. List gifts accepted, if the aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100.** List gifts accepted during the 12-month period (described by Section 176.003(a)(2)(B), Local Government Code) by the local government officer or family member of the officer from the vendor named in item 3 that in the aggregate exceed \$100 in value.
- 6. Signature.** Signature of local government officer. Complete this section after you finish the rest of this report. You have the option to either: (1) take the completed form to a notary public where you will sign above the first line that says "Signature of Local Government Officer" (an electronic signature is not acceptable) and your signature will be notarized, or (2) sign above both lines that say "Signature of Local Government Officer (Declarant)" (an electronic signature is not acceptable), and fill out the unsworn declaration section.

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**Local Government Code § 176.001(2-a):** "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code.

**Local Government Code § 176.003(a)(2)(A):**

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.



## Texas Municipal League

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### *Key Legal Requirements for Texas City Officials*

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2024 Edition

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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](mailto:legalinfo@tml.org) for more information. This document is available online at [www.tml.org](http://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 Texas Open Meetings Act and the Texas Public Information Act. Under certain circumstances, the Office of the Attorney General may require a public official to complete additional training on a determination that a city has failed to comply with the Texas Public Information Act. For more information, please visit the attorney general's website at [www.texasattorneygeneral.gov](http://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 notice of its meeting that includes the date, hour, place, and subject of each meeting. The notice 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 a website, the city must concurrently post the notice of the meeting and the city council's agenda on the website at least 72 hours before the meeting.

**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 of TOMA 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 keeping 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 prohibitions carrying criminal penalties 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** - Chapter 176 of the Local Government Code 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](http://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** - Chapter 553 of the Government Code 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, the 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 at the same time.

**Definition of "incompatibility" and general rule** - Texas law prohibits one person from holding two public offices at the same time, 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.



## **Conflict of Interest/Disclosure Laws**

### **Applicable to City Officials, Employees, and Vendors**

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This publication is for educational purposes and meant to provide basic information regarding *state* conflict of interest and disclosure laws applicable to city officials, employees, and vendors. A home rule charter, local policy, or ordinance may provide for more stringent requirements in some circumstances. This paper is neither an exhaustive treatment of the law on this subject nor a substitute for the advice of an attorney. It is important to consult the individual state laws cited for detailed information about the issues discussed here and to consult an attorney in order to apply these legal principles to specific fact situations. You can find additional resources regarding many of the topics discussed in this paper on our Web site at [www.tml.org](http://www.tml.org).

*Updated November 2017*

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A common source of alleged wrongdoing revolves around conflicts of interest. Whether real or perceived, these allegations often arise out of situations involving personal financial gain, employment, or special treatment for family members or business relations. To protect city transactions from the undue influence of such conflicts, various state laws require disclosure of city officer, employee, and vendor interests. In the past decade, the number and type of interests that must be disclosed have increased. Keep in mind that each state law discussed here comes with its own separate legal requirements. Thus, complying with one does not fulfill the obligations imposed by the other. In some circumstances, the same financial interest may require a city officer, employee, or vendor to file more than one disclosure form.

## **I. Local Government Code Chapter 171: Real Property and Business Interests**

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest.<sup>1</sup> It prohibits a local public official from voting on or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public.<sup>2</sup>

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper (usually the city secretary), stating the nature and extent of the interest.<sup>3</sup> In addition, a public official is required to abstain from further participation in the matter except when a majority of the members of the governing body also have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter.<sup>4</sup>

The term "local public official" is defined to mean "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . or other local governmental entity who exercises responsibilities beyond those that are advisory in nature."<sup>5</sup> This term includes a member of a planning and zoning commission.<sup>6</sup>

A public official has a substantial interest in a business entity if the official:

1. owns 10 percent or more of the voting stock or shares of the business entity;
2. owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

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<sup>1</sup> TEX. LOC. GOV'T CODE §§ 171.001–.010.

<sup>2</sup> *Id.* § 171.004.

<sup>3</sup> *Id.* An example (not a model) affidavit is available here: [http://www.tml.org/legal\\_pdf/Chap171-affidavit.pdf](http://www.tml.org/legal_pdf/Chap171-affidavit.pdf).

<sup>4</sup> TEX. LOC. GOV'T CODE § 171.004.

<sup>5</sup> *Id.* § 171.001(1).

<sup>6</sup> Tex. Att'y Gen. Op. Nos. KP-0105 (2016), DM-309 (1994).

3. receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year.<sup>7</sup>

A public official has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of \$2,500 or more.<sup>8</sup>

A public official is also considered to have a substantial interest in a business entity or real property if the official's relative within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the business entity or real property.<sup>9</sup> As such, any "substantial interest" that a public official's spouse, parent, child, step-child, father or mother-in-law, or son or daughter-in-law has is imputed to the public official. For example, a public official has a "substantial interest" in a business that employs the official's daughter if the official's daughter earns a small income, which exceeds ten percent of her gross income.<sup>10</sup>

A business entity is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law."<sup>11</sup> A nonprofit corporation is considered a business entity.<sup>12</sup> The term also includes a business entity that represents an entity or person with an interest in a matter before the city council.<sup>13</sup> Public entities such as a city, state university or school district, are not a business entities.<sup>14</sup>

The limit on "further participation" by a public official who has a conflict does not preclude the public official from attending meetings, including executive session meetings, relevant to the matter in which he has a substantial interest, provided that the official remains silent during the deliberations.<sup>15</sup> Thus, an interested public official does not participate in a matter by merely attending an executive session on the matter and remaining silent during the deliberations.<sup>16</sup>

The question of whether a vote or decision has a "special economic effect" on a business entity or on the value of real property is generally a question of fact.<sup>17</sup> However, a vote or decision will, as a matter of law, have a "special economic effect" if the governing body considers purchasing goods or services from a business entity in which a local public official has a substantial interest.<sup>18</sup> Additionally, the issue of whether a vote or decision has a special

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<sup>7</sup> TEX. LOC. GOV'T CODE § 171.002(a).

<sup>8</sup> *Id.* § 171.002(b).

<sup>9</sup> *Id.* § 171.002(c).

<sup>10</sup> Tex. Att'y Gen. Op. No. JC-0063 (1999).

<sup>11</sup> TEX. LOC. GOV'T CODE § 171.001(2).

<sup>12</sup> Tex. Att'y Gen. Op. No. JM-424 (1986), at 2.

<sup>13</sup> Tex. Att'y Gen. Op. No. DM-309 (1994), at 2.

<sup>14</sup> Tex. Att'y Gen. Op. Nos. GA-0826 (2010), at 1, DM-267 (1993), at 2, JM-852 (1988), at 2.

<sup>15</sup> Tex. Att'y Gen. Op. No. GA-0334 (2005), at 6.

<sup>16</sup> *Id.*

<sup>17</sup> Tex. Att'y Gen. Op. No. GA-0796, at 4 (2010); Tex. Att'y Gen. LO-98-052.

<sup>18</sup> Tex. Att'y Gen. Op. No. GA-0136 (2004), at 3.

economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property.<sup>19</sup>

Whether it is “reasonably foreseeable” that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, is fact specific.<sup>20</sup> In instances where the economic effect is direct and apparent at the time of the action, both a court and the attorney general have concluded that the economic effect was “reasonably foreseeable.”<sup>21</sup>

There are special rules beyond the filing of an affidavit and abstaining from voting that apply to the adoption of a budget. If an item of the budget is specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest, the governing body must vote on that line item separately.<sup>22</sup> The affected member may not generally participate in consideration of that item.<sup>23</sup>

If a public official votes on a matter that he or she has a substantial interest in or fails to abstain from further participation, the action of the governing body on the matter is not voidable, unless the matter that was the subject of the action would not have passed without the vote of the person who had a substantial interest.<sup>24</sup> A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.<sup>25</sup>

## **II. Local Government Code Chapter 176: Income and Gifts from, and Family Relationships with Vendors**

Chapter 176 of the Local Government Code requires certain local government officers to disclose employment, business, and familial relationships with vendors who conduct business, or consider conducting business, with local government entities. The requirements apply to most political subdivisions, including cities.<sup>26</sup> The Chapter also applies to a “local government corporation, a board, commission, district, or authority” whose members are appointed by a mayor or the city council.<sup>27</sup>

A “local government officer” (officer) includes: (1) a mayor or city councilmember; (2) a director, administrator, or other person designated as the executive officer of the city; and (3) an

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<sup>19</sup> Tex. Att’y Gen. Op. No. GA-0796 (2010), at 4 (discussing *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 281-82 (Tex. App.—Dallas 1991, writ denied)).

<sup>20</sup> Tex. Att’y Gen. LO-96-049.

<sup>21</sup> *Dallas Cty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 278 (Tex. App.—Dallas 1991, writ denied); Tex. Att’y Gen. Op. No. GA-0796 (2010), at 6.

<sup>22</sup> TEX. LOC. GOV’T CODE § 171.005.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* § 171.006.

<sup>25</sup> *Id.* § 171.003.

<sup>26</sup> TEX. LOC. GOV’T CODE § 176.001.

<sup>27</sup> *Id.*

agent (including an employee) of the city who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.<sup>28</sup>

An officer is required to file a conflicts disclosure statement in three situations:

1. An officer must file a statement if the officer or officer's family member<sup>29</sup> has an employment or other business relationship with a vendor that results in the officer or officer's family member receiving taxable income of more than \$2,500 in the preceding twelve months.<sup>30</sup> An officer who only receives investment income, regardless of amount, is not required to file a disclosure statement. Investment income includes dividends, capital gains, or interest income gained from a personal or business checking or savings account or other similar account, a personal or business investment, or a personal or business loan.<sup>31</sup>
2. An officer is required to file a statement if the officer or officer's family member accepts one or more gifts (including lodging, transportation, and entertainment accepted as a guest) from a vendor that has an aggregate value of more than \$100 in the preceding twelve months.<sup>32</sup> An officer is not required to file a statement in relation to a gift, regardless of amount, if the gift: (1) is a political contribution; (2) is food accepted as a guest; or (3) is offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.<sup>33</sup>
3. An officer is required to file a statement if the officer has a family relationship with the vendor.<sup>34</sup>

There is at least one exception to the three situations set out above. A local government officer does not have to file a statement if the vendor is an administrative agency supervising the performance of an interlocal agreement.<sup>35</sup>

An officer is required to file a statement no later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of facts that require a filing of the statement.<sup>36</sup>

A "vendor" includes any person that enters or seeks to enter into a contract with a city.<sup>37</sup> The term also includes: (1) an agent of a vendor; (2) an officer or employee of a state agency when

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<sup>28</sup> *Id.*

<sup>29</sup> An officer's "family member" is a person related to the officer within the first degree by consanguinity (blood) or affinity (marriage). *Id.*

<sup>30</sup> *Id.* § 176.003(a)(2)(A).

<sup>31</sup> *Id.* § 176.001.

<sup>32</sup> *Id.* § 176.003(a)(2)(B). It is important to remember that state law prohibits the acceptance of certain gifts. *See, e.g.,* TEX. PENAL CODE §§ 36.02, 36.08.

<sup>33</sup> TEX. LOC. GOV'T CODE §§ 176.001(2-b), 176.003(a-1).

<sup>34</sup> *Id.* § 176.003(a)(2)(C). An officer has a family relationship with a vendor if they are related within the third degree by consanguinity (blood) or second degree by affinity (marriage). *Id.* § 176.001.

<sup>35</sup> *Id.* § 176.003(a-2).

<sup>36</sup> *Id.* § 176.003(b).

<sup>37</sup> *Id.* § 176.001.

that individual is acting in a private capacity; and (3) Texas Correctional Industries (but no other state agency).<sup>38</sup>

Chapter 176 applies to any written contract for the sale or purchase of real property, goods (personal property), or services.<sup>39</sup> A contract for services would include one for skilled or unskilled labor, as well as professional services.<sup>40</sup>

A vendor is required to file a conflict of interest questionnaire if the vendor has a business relationship with the city and has: (1) an employment or other business relationship with an officer or an officer's family member that results in the officer receiving taxable income that is more than \$2,500 in the preceding twelve months; (2) has given an officer or an officer's family member one or more gifts totaling more than \$100 in the preceding twelve months; or (3) has a family relationship with an officer.<sup>41</sup>

A vendor is required to file a questionnaire not later than the seventh business day after the later of the following: (1) the date that the vendor begins discussions or negotiations to enter into a contract with the city or submits an application or response to a bid proposal; or (2) the date that the vendor becomes aware of a relationship or gives a gift to an officer or officer's family member, or becomes aware of a family relationship with an officer.<sup>42</sup>

The statements and disclosures must be filed with the records administrator of the city.<sup>43</sup> A records administrator includes a city secretary, a person responsible for maintaining city records, or a person who is designated by the city to maintain the statements and disclosures filed under Chapter 176.<sup>44</sup>

A city that maintains a Web site is required to post on that site statements and disclosures that are required to be filed under Chapter 176.<sup>45</sup> However, a city that does not have a Web site is not required to create or maintain one.<sup>46</sup>

An officer or vendor who knowingly fails to file a statement or a disclosure when required to do so commits a Class A, B, or C misdemeanor, depending on the amount of the contract.<sup>47</sup> It is an exception to prosecution that an officer/vendor files a statement/questionnaire not later than the seventh day after the date the person receives notice from the city of the alleged violation.<sup>48</sup> The

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* §176.006(a).

<sup>42</sup> *Id.* §176.006(a-1).

<sup>43</sup> *Id.* §§176.003(b), 176.006(a-1).

<sup>44</sup> *Id.* §176.001(5).

<sup>45</sup> *Id.* § 176.009.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* §§ 176.013.

<sup>48</sup> *Id.*

validity of a contract between a city and a vendor is not affected solely because a vendor fails to file a questionnaire.<sup>49</sup>

The Texas Ethics Commission is charged with creating statements and disclosure forms. The forms (Form CIS and Form CIQ) may be found at [https://www.ethics.state.tx.us/filinginfo/conflict\\_forms.htm](https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm).

### **III. Government Code Chapter 553: Property Acquired with Public Funds**

Chapter 553 of the Government Code provides that a “[a] public servant who has a legal or equitable interest in property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation.”<sup>50</sup>

Chapter 553’s affidavit requirement applies to a “public servant,” defined as a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as: (1) a candidate for nomination or election to public office; or (2) an officer of government.<sup>51</sup>

The term “public funds” is defined to “include[] only funds collected by or through a government.”<sup>52</sup> The language of Chapter 553 suggests that a public servant is required to disclose his/her interest in property even when the property is to be acquired by a separate governmental entity with which the public servant is not affiliated. There appears to be no case or attorney general opinion that addresses this issue. Thus, a public servant or official subject to Chapter 553 should consult his/her private legal counsel regarding the application of Chapter 553 in this scenario.

Chapter 553 is not, by its language, limited to real property interests. Thus, if a public servant has a legal or equitable interest in any real (e.g., land) or personal (e.g., a vehicle) property acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant should file a Chapter 553 affidavit.<sup>53</sup>

A Chapter 553 affidavit has to be filed within ten days before the date on which the property is to be acquired by purchase or condemnation.<sup>54</sup> The affidavit is 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.<sup>55</sup>

The affidavit must include: (1) the name of the public servant; (2) the public servant’s office, public title, or job designation; (3) a full description of the property; (4) a full description of the

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<sup>49</sup> *Id.* § 176.006(i).

<sup>50</sup> TEX. GOV’T CODE § 553.002(a).

<sup>51</sup> *Id.* § 553.001(2).

<sup>52</sup> *Id.* § 553.001(1).

<sup>53</sup> *Id.* § 553.002. An example (not a model) affidavit is available on the TML Web site, here: [http://www.tml.org/legal\\_pdf/Chapter553AffidavitSample.pdf](http://www.tml.org/legal_pdf/Chapter553AffidavitSample.pdf)

<sup>54</sup> TEX. GOV’T CODE § 553.002(a).

<sup>55</sup> *Id.* § 553.002(c).

nature, type, and amount of interest in the property, including the percentage of ownership interest; (5) the date the public servant acquired an interest in the property; (6) the following verification: “I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code;” and (7) an acknowledgement of the same type required for recording a deed in the deed records of the county.<sup>56</sup> An affidavit example is available on our Web site at: <http://www.tml.org/example-documents>.

A person who violates Section 553.002 of the Government Code by failing 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 legal or equitable interest in the property.<sup>57</sup>

#### **IV. Local Government Code Chapter 145: Financial Disclosure in Cities with a population of 100,000 or more**

Local Government Code Chapter 145’s financial disclosure requirements apply *only in a city with a population of 100,000 or more*.<sup>58</sup> In general terms, Chapter 145:

1. requires each mayor, each member of a city council, each city attorney, each city manager, and each candidate for city office to file an annual financial statement with the city clerk or secretary;<sup>59</sup>
2. requires that the financial statement include an account of the financial activity of the covered individual and the individual’s spouse and dependent children, if the individual had control over that activity; and<sup>60</sup>
3. requires that the financial statement include all sources of income; shares of stocks owned, acquired, or sold; bonds, notes, or other paper held, acquired, or sold; any interest, dividend, royalty, or rent exceeding \$500; each person or institution to whom a personal debt of \$1,000 or more exists; all beneficial interests in real property or businesses owned, acquired, or sold; certain gifts received; income in excess of \$500 from a trust; and a list of all boards of directors on which the individual serves; and information about certain contracts with a governmental entity.<sup>61</sup>

Candidates for elected city office are required to file the financial disclosure statement not later than the earlier of: (1) the twentieth day after the deadline for filing an application for a place on the ballot in the election; or (2) the fifth day before the date of the election.<sup>62</sup> Annually, the

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<sup>56</sup> *Id.* § 553.002(b).

<sup>57</sup> *Id.* § 553.003.

<sup>58</sup> TEX. LOC. GOV’T CODE § 145.001.

<sup>59</sup> *Id.* §§ 145.002–.003.

<sup>60</sup> TEX. LOC. GOV’T CODE § 145.003(b)(2), TEX. GOV’T CODE § 572.023(a).

<sup>61</sup> TEX. LOC. GOV’T CODE § 145.003(b)(2), TEX. GOV’T CODE § 572.023(b).

<sup>62</sup> TEX. LOC. GOV’T CODE § 145.004(c).

mayor, city councilmembers, the city manager, and the city attorney<sup>63</sup> must file a financial disclosure statement for the preceding year by April 30.<sup>64</sup> A new city manager or a new city attorney must file a financial disclosure statement within forty-five days of assuming the duties of office.<sup>65</sup>

City officers and candidates for elected city office must generally file the financial statement on a form (Form PFS-LOCAL) provided by the Texas Ethics Commission, available here: [https://www.ethics.state.tx.us/filinginfo/pfsforms\\_ins.html](https://www.ethics.state.tx.us/filinginfo/pfsforms_ins.html).<sup>66</sup> A detailed listing of the required contents is found in Section 572.023 of the Texas Government Code. If information in the financial disclosure form is required to be filed by category, Section 572.022 sets forth reporting categories. The city secretary must deliver (by mail, personal delivery, e-mail, or other electronic transfer) copies of the form to city officers and candidates for city office within certain time deadlines.<sup>67</sup>

The completed financial disclosure statement is filed with the city clerk or secretary.<sup>68</sup> Statements are public records and are to be maintained so as to be accessible to the public during regular office hours.<sup>69</sup>

Both criminal and civil penalties may be imposed for failure to file a financial disclosure statement. An offense under Chapter 145 is a class B misdemeanor, which is punishable by a fine up to \$2,000 and/or confinement up to 180 days.<sup>70</sup> Section 145.010 sets forth a process whereby a civil penalty up to \$1,000 may be assessed upon failure to comply after notice is received from the city attorney.

The city secretary shall grant an extension of not more than sixty days for the filing of the financial disclosure statement to a city officer or a person appointed to a city office if: (1) the individual makes an extension request before the filing deadline; or (2) the individual's physical or mental capacity prevents either the filing or the request for an extension before the filing date.<sup>71</sup> Extensions shall not be granted to candidates for elected city office.<sup>72</sup>

The city secretary shall maintain a list of the city officers and candidates required to file a financial disclosure statement. No later than ten days after the filing deadline, the city secretary shall provide a list to the city attorney showing for each city officer and candidate for city office: (1) whether the individual filed a timely statement; (2) whether the individual was granted an

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<sup>63</sup> While there appears to be no case or opinion directly on point, advisory opinions issued by the Texas Ethics Commission suggest that an interim city manager or city attorney that has all the duties and powers of a permanent city manager or attorney would also be subject to this requirement. *See* Ethics Advisory Opinion Nos. 27 (1992), 265 (1995).

<sup>64</sup> TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(a).

<sup>65</sup> TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(c).

<sup>66</sup> TEX. LOC. GOV'T CODE § 145.005(a).

<sup>67</sup> *Id.* §§ 145.002, 145.005(b).

<sup>68</sup> *Id.* § 145.003(b).

<sup>69</sup> *Id.* § 145.007(a).

<sup>70</sup> *Id.* § 145.009.

<sup>71</sup> *Id.* § 145.004(e).

<sup>72</sup> *Id.* § 145.004(f).



extension and the new filing deadline; or (3) whether the individual did not timely file a financial statement or receive an extension of time.<sup>73</sup>

## **V. Government Code Section 2252.908: Vendor Disclosure of Interested Parties**

Government Code Section 2252.908 is a governmental transparency law that was enacted by H.B. 1295 in 2015 and amended by Senate Bill 255 in 2017. It prohibits a governmental entity (defined to include a city<sup>74</sup>) or state agency from entering into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (a Form 1295).

The Texas Ethics Commission (Commission) is charged with adopting rules to implement the statute, developing the disclosure of interested parties form, and posting the form on its Web site.<sup>75</sup>

This new disclosure law applies only to contracts that: (1) require an action or vote by the city council before the contract may be signed; or (2) have a value of at least \$1 million.<sup>76</sup> Pursuant to the Commission's rules, a contract does not require an action or vote by the city council if:

1. The governing body has legal authority to delegate to its staff the authority to execute the contract;
2. The governing body has delegated to its staff the authority to execute the contract; and
3. The governing body does not participate in the selection of the business entity with which the contract is entered into.<sup>77</sup>

It is important to note that the Commission defines the term “contract” to include an amended, extended, or renewed contract.<sup>78</sup> A new rule, effective January 1, 2017, further clarifies when a change to an existing contract triggers the filing of a disclosure form.<sup>79</sup>

The business entities subject to this law are those entities “recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.”<sup>80</sup> The Commission's rules clarify that the term “business entity” includes nonprofits, but does not

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<sup>73</sup> *Id.* § 145.008.

<sup>74</sup> TEX. GOV'T CODE § 2252.908(a)(2) (defining “governmental entity” to include a city, county, public school district, or special-purpose district or authority).

<sup>75</sup> *Id.* § 2252.908(g).

<sup>76</sup> *Id.* § 2252.908(b); *but see id.* § 2252.908(c) (expressly exempting certain contracts including a contract with a publicly traded business entity, a contract with an electric utility, and a contract with a gas utility).

<sup>77</sup> 1 T.A.C. § 46.1(c).

<sup>78</sup> *Id.* § 46.3(a).

<sup>79</sup> *Id.* § 46.4.

<sup>80</sup> TEX. GOV'T CODE § 2252.908(a)(1).

include a governmental entity.<sup>81</sup> That means, for instance, if a city executes an interlocal agreement with another city the disclosure requirements of Section 2252.908 are not triggered.

Exactly what types of interested parties must a business entity disclose? A business entity must disclose: (1) a person who has a controlling interest in the business; and (2) any intermediary.<sup>82</sup> The Commission defines the terms “controlling interest” and “intermediary” as follows:

“Controlling interest” means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

“Intermediary,” . . . means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- (1) receives compensation from the business entity for the person’s participation;
- (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- (3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.<sup>83</sup>

It is quite possible that, although a business entity is subject to Section 2252.908, no interested parties will exist. Thus, a business entity may end up filing a form that has very little information on it.

The process for completing and submitting Form 1295 is as follows:

1. A business entity must use the Commission’s online filing application to enter the required information on Form 1295.<sup>84</sup>
2. The completed Form 1295 must be filed with the city “at the time the business entity submits the signed contract” to the city.<sup>85</sup>
3. The city must notify the Commission, using the Commission’s filing application, of the receipt of the filed Form 1295 and certification of filing not later than the 30th day after the date the city receives the disclosure.<sup>86</sup>

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<sup>81</sup> 1 T.A.C. § 46.3(b).

<sup>82</sup> *Id.* § 46.3(d).

<sup>83</sup> *Id.* § 46.3(c),(e).

<sup>84</sup> *Id.* § 46.5.

<sup>85</sup> TEX. GOV’T CODE § 2252.908(d).

<sup>86</sup> *Id.* § 2252.908(f), 1 T.A.C. § 46.5(c).

To further explain the process, the Commission has prepared instructional videos and a “FAQ” document, available here: <https://www.ethics.state.tx.us/>.

In order for a business entity to complete Form 1295, it will need some information from the city. Although not required by Section 2252.908, the Commission’s rules provide that the business entity must include on the form an “identification number used by the [city] . . . to track or identify the contract for which the form is being filed.”<sup>87</sup> Even though the rules provide for such a number, nothing in the rule requires a city to create a numbering system of any type.

The whole purpose behind this new disclosure requirement is to give the public more information about government contracts. To that end, the Commission is required to post the completed Form 1295 on its Web site within seven business days after receiving notice from the city that the city has received the filed Form 1295 and certification of filing.<sup>88</sup> In addition, cities must provide the completed forms in accordance with the Public Information Act.

The Commission takes the position that it does not have any authority (beyond rulemaking and adoption of the form) to enforce or interpret Government Code Section 2252.908.<sup>89</sup> All the possible ramifications for a city’s failure to comply with Section 2252.908 are unclear at this time. As for a business entity, the statute requires a Form 1295 disclosure contain “a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury.”<sup>90</sup>

## **VI. Miscellaneous Conflicts Provisions**

### **A. Plat Approval**

A provision governing conflicts of interest in the plat approval process was added to state law in 1989. It requires “[a] member of a municipal authority responsible for approving plats [who] has a substantial interest in a subdivided tract” to file an affidavit stating the nature and extent of the interest and abstain from further participation in the matter.<sup>91</sup> The affidavit must be filed with the municipal secretary or clerk before a vote or decision regarding the approval of a plat for the tract.

For purposes of this disclosure requirement, “subdivided tract” means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.<sup>92</sup>

A person has a substantial interest in a subdivided tract if the person:

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<sup>87</sup> 1 T.A.C. § 46.5(a)(4).

<sup>88</sup> TEX. GOV’T CODE § 2252.908(g), 1 T.A.C. § 46.5(d).

<sup>89</sup> *Cf.*, e.g., TEX. GOV’T CODE §§ 571.061 (listing the laws that the Commission administers and enforces), 571.091 (listing the statutes about which the Commission may issue advisory opinions).

<sup>90</sup> *Id.* § 2252.908(e)(2); *see also* TEX. PENAL CODE ch. 37 (providing for offense of perjury).

<sup>91</sup> TEX. LOC. GOV’T CODE § 212.017(d).

<sup>92</sup> *Id.* § 212.017(a).

1. has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more;
2. acts as a developer of the tract;
3. owns 10% or more of the voting stock or shares of or owns either 10% or more or \$5,000 or more of the fair market value of a business entity that:
  - (A) has an equitable or legal ownership interest in the tract with a fair market value of 2,500 or more; or
  - (B) acts as a developer of the tract; or
4. receives in a calendar year funds from a business entity described in (3) that exceed 10% of the person's gross income for the previous year.<sup>93</sup>

A person is also considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity to another person who has a substantial interest in the tract. An offense under this subsection is a Class A misdemeanor.<sup>94</sup> The finding by a court of a violation of this requirement does not render voidable an action of the municipal authority responsible for approving plats, unless the measure would not have passed without the vote of the member who violated the requirement.<sup>95</sup>

## **B. Selection of City Depository**

Local Government Code Section 131.903 regulates conflicts of interest with respect to a city's selection of a depository. A bank is disqualified from serving as the depository of the city if an officer or employee of the city who has a duty to select the depository owns or has a beneficial interest, individually or collectively, in more than 10 percent of the outstanding capital stock of the bank.<sup>96</sup> In other words, a city council may not select a bank as the city's depository if a mayor or councilmember owns more than 10 percent of the bank.

If an officer or employee of the city is a director or officer of the bank, or owns 10 percent or less of the capital stock of the bank, the bank is not disqualified from serving as the city's depository so long as: (1) the interested officer or employee does not vote or take part in the proceedings; and (2) a majority of the other members of the city council vote to select the bank as the depository.<sup>97</sup>

The attorney general has concluded that Section 131.903 is an exception to the general conflicts of interest statute in Chapter 171 of the Local Government Code.<sup>98</sup> That being said, TML attorneys advise that any local public official with a "substantial interest" in a bank, as that term

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<sup>93</sup> *Id.* § 212.017(b).

<sup>94</sup> *Id.* § 212.017(e).

<sup>95</sup> *Id.* § 212.017(f).

<sup>96</sup> *Id.* § 131.903(a)(2).

<sup>97</sup> *Id.*

<sup>98</sup> Tex. Att'y Gen. LO-97-093.

is defined by Chapter 171 of the Local Government Code, comply with the Chapter 171 requirements of (1) filing an affidavit that discloses the potential conflict; and (2) abstaining from participating in the selection of the bank, even if the potential conflict doesn't trigger the specific conflict of interest provision under Local Government Code Section 131.903.

### **C. Prohibition Against Acting as a Surety**

There are various instances in which a city may require an entity with which it contracts to utilize a surety (sometimes referred to as a guarantor or secondary obligor).<sup>99</sup> In addition, certain city officers may be required to execute a bond in conjunction with their office.<sup>100</sup>

A local public official commits a Class A misdemeanor offense if the official knowingly: (1) acts as a surety for a business entity that has work, business, or a contract with the governmental entity or (2) acts as a surety on any official bond required of an officer of the governmental entity.<sup>101</sup> For the purposes of these violations, a "local public official" is defined to mean "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . who exercises responsibilities beyond those that are advisory in nature."<sup>102</sup>

### **D. Profession-Specific Requirements**

While it is beyond the scope of this publication to discuss in detail, it is important to remember that vendors must sometimes comply with disclosure requirements that are specific to their profession. For instance, investment advisers must disclose to their clients (on Form ADV) ownership and other details about their firm through the Securities and Exchange Commission's Investment Adviser Public Disclosure Web site. See <https://www.sec.gov/fast-answers/answerscrdhtm.html>.

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<sup>99</sup> See, e.g., *Wisenbaker v. Johnny Folmar Drilling Co.*, 334 S.W.2d 465, 466 (Tex. Civ. App.—Texarkana 1960, writ dismissed) (describing that the City of Quitman had filed suit against a drilling company and its surety on the company's performance bond for breach of contract).

<sup>100</sup> See, e.g., TEX. LOC. GOV'T CODE § 22.072(c) (authorizing the city council in a type A general law city to require municipal officers to execute a bond payable to the city and conditioned that the officer will faithfully perform the duties of the office).

<sup>101</sup> TEX. LOC. GOV'T CODE § 171.003; see also Tex. Att'y Gen. Op. No. KP-0132 (2017) (concluding that 171.003 does not prohibit a local public official from acting as a surety on a bail bond, i.e., a surety for an individual made to secure the release of an individual defendant from the State's custody).

<sup>102</sup> TEX. LOC. GOV'T CODE § 171.001(1).