

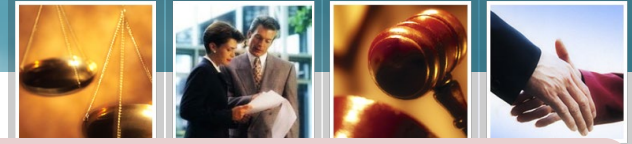


# Ethics in City Government for City Council Members & Staff

April 18, 2024

General Counsel Section  
City of Houston Legal Department

# Agenda



Texas Open Meetings Act/Walking Quorums



Abuse of Office/Misuse of City staff/resources



Conflicts of Interest in City Contracts

# Role of the City Attorney



- The City Attorney shall render opinions and advice to City Council regarding any legal matter affecting municipal affairs. **Sec. 2-258, Code of Ordinances.**
- A lawyer employed or retained by an organization represents the entity. **Rule 1.12, TX Disciplinary Rules of Professional Conduct**
- The City Attorney is not authorized to provide legal advice to City Council Members concerning matters unrelated to legal matters affecting municipal affairs, including but not limited to City Council Members' requests for legal advice in their capacity as candidates for elective office.
- Contact the TX Ethics Commission for candidate-related questions, such as campaign finance compliance, financial statement reporting.



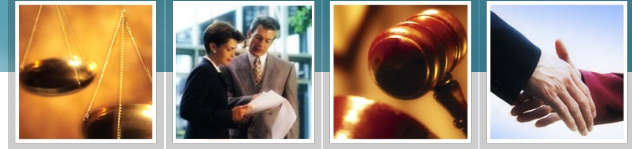
# TEXAS OPEN MEETINGS ACT (TOMA)

# Texas Open Meetings Act (TOMA)



- [Chapter 551 of Texas Gov't Code](#)
- Meetings of City Council must be:
  - Open to public
    - No closed sessions allowed for City Council meetings or committees (City Charter Art. VII, Sec. 3)
  - Preceded by 72-hour public notice of time, place, and subject matter of meeting
- Criminal offense for unauthorized closed meeting - [Sec. 551.144](#)
  - Can occur any time there is a deliberation between a quorum of City Council during which City business is discussed

# Attempts to Avoid TOMA's Requirements in Less Than Quorum



## § 551.143. Prohibited Series of Communications

(a) A member of a governmental body commits an offense if the member:

(1) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by this chapter and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of the members; and

(2) knew at the time the member engaged in the communication that the series of communications:

(A) involved or would involve a quorum; and

(B) would constitute a deliberation once a quorum of members engaged in the series of communications.

# Walking Quorums



## How to Avoid?

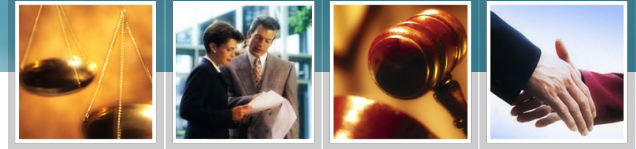
- Stay aware of with whom you have discussed City business.
- Remember that social media, email, and Teams can qualify as deliberations subject to walking quorum considerations.
  - Ex: A series of emails involving a quorum of CC could be an unauthorized meeting
  - Do not reply-all to an email involving a quorum or more of CC
  - Quorum or more of CNL should not submit “Prop A” item together
- Keep quorum discussion and decision making entirely within posted meetings.



# ABUSE OF OFFICE



# Abuse of Office & City Resources



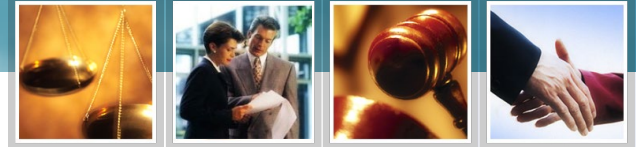
- Don't use City property, services, personnel, or any other thing of value belonging to the City that has come into your possession by virtue of your office for personal or private purposes. - [Texas Penal Code Ch. 39](#)
- Don't spend City funds (including staff or City resources) for political advertising. - [Sec. 255.003, Election Code](#)
  - What is political advertising? [TX Ethics Comm.](#)
  - Guidance on when newsletters become political advertising: [§26.2, TX Ethics Comm. Rules](#)
    - *Discusses size of CM's photos, personally phrased references, if viewed to be promotional rather than informational, etc.*

# Texas Penal Code



- **Bribery:** Don't intentionally or knowingly offer, solicit, or accept from another any “benefit” (money or in-kind gift, to you or family) in exchange for your decision, opinion, recommendation, vote, or other exercise of discretion. - [Penal Code § 36.02](#)
- **Honorarium:** Don't solicit or accept an honorarium in consideration for services that you would not have been requested to provide but for your official position or duties. - [Penal Code § 36.07](#)
  - **EXCEPTION:** You may accept transportation/lodging expenses and meals in connection with rendering services (e.g. addressing an audience or engaging in a seminar) but you should include on financial disclosure and council staff's acceptance must comply with the Mayor's Gift Policy.

# Gifts – Texas Penal Code



- 1) **Penal Code § 36.08:** Acceptance of a gift by public servant from a person subject to his jurisdiction is Class A Misdemeanor.
- 2) Don't accept benefit from a person:

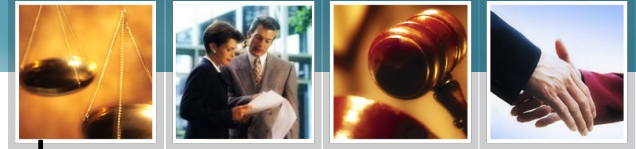
Subject to city regulation	Under criminal investigation
Involved in city litigation	Lobbying before the city
Holding or seeking a city contract, or	In a position to benefit from city activity.

- 3) There are exceptions, BUT even if not violation of state law, could be a violation of Mayor's Gift Policy for council staff.
- 4) Exceptions for CMs include:

Gift from a personal/professional relationship independent of your status as a CM	Political contributions under the Election Code
An item with a value of less than \$50, <u>EXCLUDING</u> cash or a negotiable instrument	Food, entertainment, or travel accepted as a guest (but guest must be present and disclosure may be required if value >\$250)

# Standards of Conduct

## § 18-3



The Don'ts: What not to do as a city official or employee

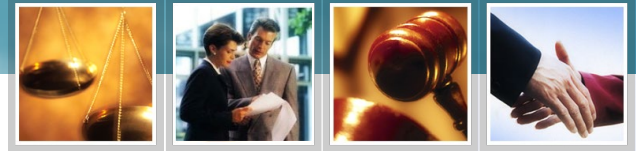
Violation is a Class C Misdemeanor; Examples:

- Don't engage in business or professional activities that might conflict with the discharge of your official duties.
- Don't invest in anything that creates or might create a conflict.
- Don't tell other people confidential information or get into a situation where you might be expected to disclose confidential information.
- Don't use city employees to perform acts or services for private gain or on your personal or campaign business, unless it is voluntary and the employee is acting during off-duty hours.
- Don't try to get special treatment from others because you work for the City.



# CONFLICTS OF INTEREST IN CITY CONTRACTS

# Conflicts of Interest

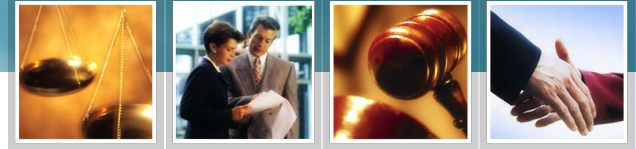


## City Charter

- No member of city council or any officer of the city of Houston, shall have any direct or indirect pecuniary interest in: (1) any contract let by the city; (2) any work done by the city; or (3) any matter wherein the rights or liabilities of the city are or may be involved. [Charter Art. VII, Sec. 4.](#)
- Any such contract or work is null and void.

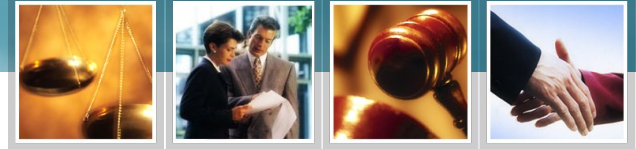
# Interest in City Contracts

## § 15-1



- City contracts may not be awarded to any city employee; employees may not bid on contracts.
- City employees may not have direct or indirect financial interest in any city contract.
- Any firm, partnership, or corporation in which a city employee has an ownership interest in excess of one percent is precluded from bidding on or being awarded any contract.
- Any such contract is null and void.

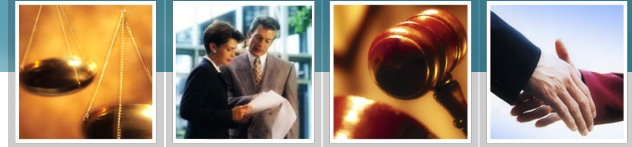
# Conflicts of Interest



- [Ch. 171, LGC](#): Before a vote or decision on any matter involving a business entity or real property, if you have a substantial interest in it, you must file an affidavit with the City Secretary and abstain from further participation in the matter.
  - Substantial Interest = 10% or more of the voting stock or shares; 10% or more or \$15,000 or more of the fair market value of the business entity; or receives funds from the business entity that exceed 10% of your gross income for the preceding year.
  - Substantial Interest in Real Property = Equitable or legal ownership interest with a FMV of \$2,500 or more.
- [Ch. 176, LGC](#): You must file a disclosure statement with respect to a vendor or potential vendor if:
  - You receive taxable income >\$2,500 in the 12 months preceding when you become aware the City has entered into a contract with the vendor or is considering it.
  - You receive gifts from the vendor with aggregate value >\$100 in same 12-month window.
  - You have a family relationship with the vendor.
- These **BOTH** include family members, not just yourself.



# Quiet Period v. No Benefit Period v. Blackout Period



## Quiet Period (contained in procurement terms)

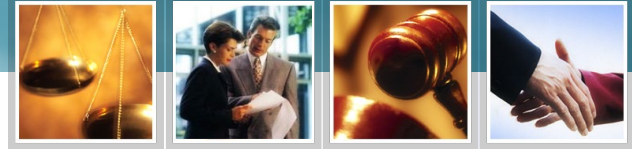
- Respondents to City procurement prohibited from communicating with elected city official, employees or their families in an attempt to influence the outcome of award
- Starts the day a solicitation is issued and ends the day the City Secretary publishes notice of the item on a council agenda

## No Benefit Contract Award Period - § 18-2, 18-3(a)(10)

- Prohibited from soliciting, accepting, or agreeing to accept a benefit from a contractor or subcontractor beginning when the City publishes a request for proposal/bids and ends on 30<sup>th</sup> day after Council vote.

## Contribution Blackout Period - § 18-36

- Prohibited from soliciting or accepting a political contribution from a City contractor during period beginning when Council meeting agenda is posted for award of contract and ends on 30<sup>th</sup> day after Council vote.



## Summary of Relevant Law

Please see list of rules and law referenced in the presentation.

### State Law

- [Penal Code, Chapter 36](#) (Gifts to Public Servants)
- Local Gov't Code, Chapters [171](#), [176](#) (Conflicts of Interest)
- Gov't Code, Chapters [551](#), [552](#) (Open Government)
- [Penal Code, Chapter 39](#) (Abuse of Office)
- [Election Code, Chapter 255](#) (Political Advertising)

### City's Charter

- [Art. VII, Sec. 4](#) (Restrictions upon Members of Council)

### City's Code of Ordinances

- § [18-3](#) (Standards of Conduct)
- § [15-1](#) (Interest in City Contract)
- § [18-2](#), [18-3\(a\)\(10\)](#) (No Benefit Period)
- § [18-36](#) (Prohibited Contractor Contributions)

### City Policy

- [Executive Order 1-28](#) (Mayor's Gift Policy)
- [Administrative Policy 2-22](#) (Conflict of Interest Policy)

# Additional Laws and Rules



In addition to the items discussed here – there are a plethora of additional rules and laws you will want to be aware of that are included in your CM Orientation Notebook, including:

Council Procedural Rules	Council District Service Funds	Outside Employment (for CNL Staff)
Disclosure of Interest in Property	Dual Office Holding	Resign to Run
Public Information Act	Mayor's Gift Policy	Annual Financial Disclosures



# Questions?

**Ethics and Conflict of Interest Inquiries are very fact-specific. If you have questions regarding a specific scenario, you may contact the General Counsel section of the City's Legal Department.**