

Independent Citizens Redistricting Commission

**Texas Open Meetings Act
Public Information Act
City Charter
Ethics**

**Legal Considerations
June 26, 2013**



What is the Texas Open Meetings Act (TOMA)?

The Open Meetings Act is a Texas statute that provides for public access to meetings of governmental bodies

Chapter 551 Texas Government Code



What Does TOMA Compliance Require?

Meeting notice (agenda) be posted...

- 72 hour notice
- Must include what will be discussed
- Comments made under the agenda's "citizen communication" item cannot be discussed

...and discussions of business by a quorum or more occur in public

- Exchanges by email, social media, or during meeting breaks can constitute an inappropriate discussion of official business
- Executive sessions may occur in private, after meeting has convened
- Staff may provide administrative information to officials between meetings



What Does This Mean For Me?

The ICRC currently has 14 members

A quorum is 9 members (per Charter)

A quorum – either at one time or over a series of discussions – may not discuss ICRC business outside of a posted meeting

At a posted meeting, only the topics on the agenda can be discussed; any other topic has to be scheduled for a future meeting



What Is The Public Information Act (PIA)?

The Public Information Act is a Texas statute that gives the public the right to ask for government records

Chapter 552 Texas Government Code



What Does PIA Compliance Require?

The Public Information Act requires that the city and its officials provide certain documents regarding city business upon written request

Documents may be paper or electronic format; any email – including city business on your personal email account – or social media communication regarding city business is subject to the Public Information Act

Records retention guidelines let us know when it is ok to dispose of a document; please allow city staff to determine whether you may dispose of a document



What Does This Mean For Me?

The city is providing you with a city email address to make compliance as easy as possible

Any email sent from or received at your personal email address regarding ICRC business can be requested via a Public Information Act (PIA) request

Any email sent from or received at your city email address can be requested via a PIA request

Any document in your possession regarding ICRC business can be requested via a PIA request



What Are City Charter Guidelines on Discussion Of ICRC Business?

Charter Art. II Sec. 3(K)(3):

- Commission members and commission staff may not communicate with or receive communications about redistricting matters from anyone outside of a public hearing
- Commission members, commission staff (which must exclude council staff), legal counsel, and commission consultants may communicate between meetings, but must comply with the Texas Open Meetings Act



What Does This Mean For Me?

ICRC members cannot discuss redistricting matters with anyone in person, by phone, by email, or by social media, other than each other (keep Texas Open Meetings Act in mind) or the ICRC staff, outside of a public posted meeting

Any communication you receive from the public should be forwarded to the staff liaison or general ICRC email inbox; do not respond. The staff liaison will provide that sender with a reminder about prohibited communications.



What Are City Charter Guidelines on Member Activities?

Charter Art. II Sec. 3(D)(4):

- **During 3 Years From Taking Office**
 - cannot hold appointive public office for the City
 - cannot serve as paid staff for the City, the Council, or any member of Council
 - cannot serve as a paid consultant for the City, the Council, or any member of Council (also applies to all entities in member's control)
 - cannot receive a non-competitively bid City contract (also applies to an entity of which an ICRC member is a 'controlling person')
- **During 10 Years From Taking Office:**
 - cannot hold elective public office for the City of Austin



What Does This Mean For Me?

An ICRC member's contracting and employment options are limited until 2016

An ICRC member may not to run for city council until 2024



What Is City Code and State Law on Ethics?

City Code Chapter 2-7: Code of Ethics

- Conflicts of interest and recusal, 2-7-61, 63, 64, 65,
- Conduct, 2-7-62, 66, 67

State Law Local Gov't Code Ch. 171

- 171: Conflicts of interest and recusal related to business entities and real property; affidavit filed before the meeting; abstain from the agenda item

State Law Texas Penal Code Chapters 36 & 39

- 36.02: Bribery
 - 36.08-10: Gift to public servant
 - 39.02: Abuse of official capacity: use of city resources



What Does This Mean For Me?

City Code & Conflicts

City code prohibits participation in a vote or decision on a matter affecting a natural person, entity, or property in which you have a substantial interest.

“Substantial Interests” may arise from ownership, income, control, debt, family, or doing business

“Affected” means “reasonably likely to be subject to a direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question.”

You must recuse if you have a conflict of interest. Recusal means not participating in the discussion at any time. You cannot appear before the board on this item.



What Does This Mean For Me?

City Code & Conduct

This portion of the City Code includes:

- City gift policy: no city official shall accept or solicit any gift or favor, that might reasonably tend to influence that individual in the discharge of official duties or that the official knows or should know has been offered with the intent to influence or reward official conduct, Sec. 2-7-62(G)
- Revolving door: no city official shall solicit or accept other employment to be performed or compensation to be received while still a City official, if the employment or compensation could reasonably be expected to impair independence, Sec. 2-7-62(H)
- Special privileges: no city official shall use their official position to secure a special privilege or exemption for himself or others, Sec. 2-7-62(I)



What Does This Mean For Me?

State Conflicts Law

State law requires an official to file an affidavit for the following substantial interests and recuse. Assess for family as well.

- You own 10% or more of an entity, and vote will create a distinguishable special economic effect
- You are employed by or receive 10% or more of your gross income from an entity
- You own \$2,500 worth of a property, it is reasonably foreseeable that a vote will have a distinguishable special economic effect



What Does This Mean For Me?

State Criminal Law

Accepting any benefit in return for your official action can be considered bribery, a second degree felony.

The state gift policy has an exemption for items valued at less than \$50, but this exception does not apply under the city code.

Abuse of official capacity can make violation of the city code “with intent to obtain a benefit” a class A misdemeanor

Abuse of official capacity can make misusing government property “with intent to obtain a benefit” at least a class C misdemeanor.



Questions?

Thank you very much for your service!

