



Sachse, Texas

Sachse City Hall
3815-B Sachse Road
Sachse, Texas 75048

Meeting Agenda City Council Workshop

Monday, April 20, 2015

6:30 PM

Council Chambers

1. The City Council of the City of Sachse will hold a Workshop Session on Monday, April 20, 2015, at 6:30 p.m. in the Council Chambers at the Sachse City Hall, 3815 Sachse Road, Building B, Sachse, Texas to discuss the following items of business:
2. **Discuss All City Council Meeting Agenda items.**
3. **City Manager Update Report: Briefing on current activities of staff including engineering, economic development, parks, public works, fire and police departments.**
4. **Discussion Items.**
5. *Please note: These items are for discussion purposes only and no Council action will be taken. The workshop session is for City Council and staff discussion, citizen input is not permitted on this agenda.*

[15-2764](#)

Discuss City Council Orientation with City Attorney.

Executive Summary

City Attorney Pete Smith will be here to provide the City Council his annual orientation including the roles and responsibilities of Council Members.

Attachments: [2015 City Council Orientation.pdf](#)

6. **Adjournment.**

State law prohibits the introduction or discussion of any item of business not posted at least seventy-two (72) hours prior to the meeting time.

Posted: April 17, 2015; 5:00 p.m. Terry Smith, City Secretary _____



Legislation Details (With Text)

File #: 15-2764 **Version:** 1 **Name:** Discuss City Council Orientation with City Attorney.
Type: Discussion Item **Status:** Agenda Ready
File created: 4/9/2015 **In control:** City Council Workshop
On agenda: 4/20/2015 **Final action:**
Title: Discuss City Council Orientation with City Attorney.

Executive Summary
City Attorney Pete Smith will be here to provide the City Council his annual orientation including the roles and responsibilities of Council Members.

Sponsors:

Indexes:

Code sections:

Attachments: [2015 City Council Orientation.pdf](#)

Date	Ver.	Action By	Action	Result
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Title
Discuss City Council Orientation with City Attorney.

Executive Summary
City Attorney Pete Smith will be here to provide the City Council his annual orientation including the roles and responsibilities of Council Members.

Background
Pete Smith, City Attorney, will be present to present his annual orientation to Council Members- reviewing open meetings, open records, Council Members duties and responsibilities, liability, Council-Manager form of government, immunity, conflicts of interest, ethics, libel and slander, emails, etc.

Policy Considerations
None.

Budgetary Considerations
None.

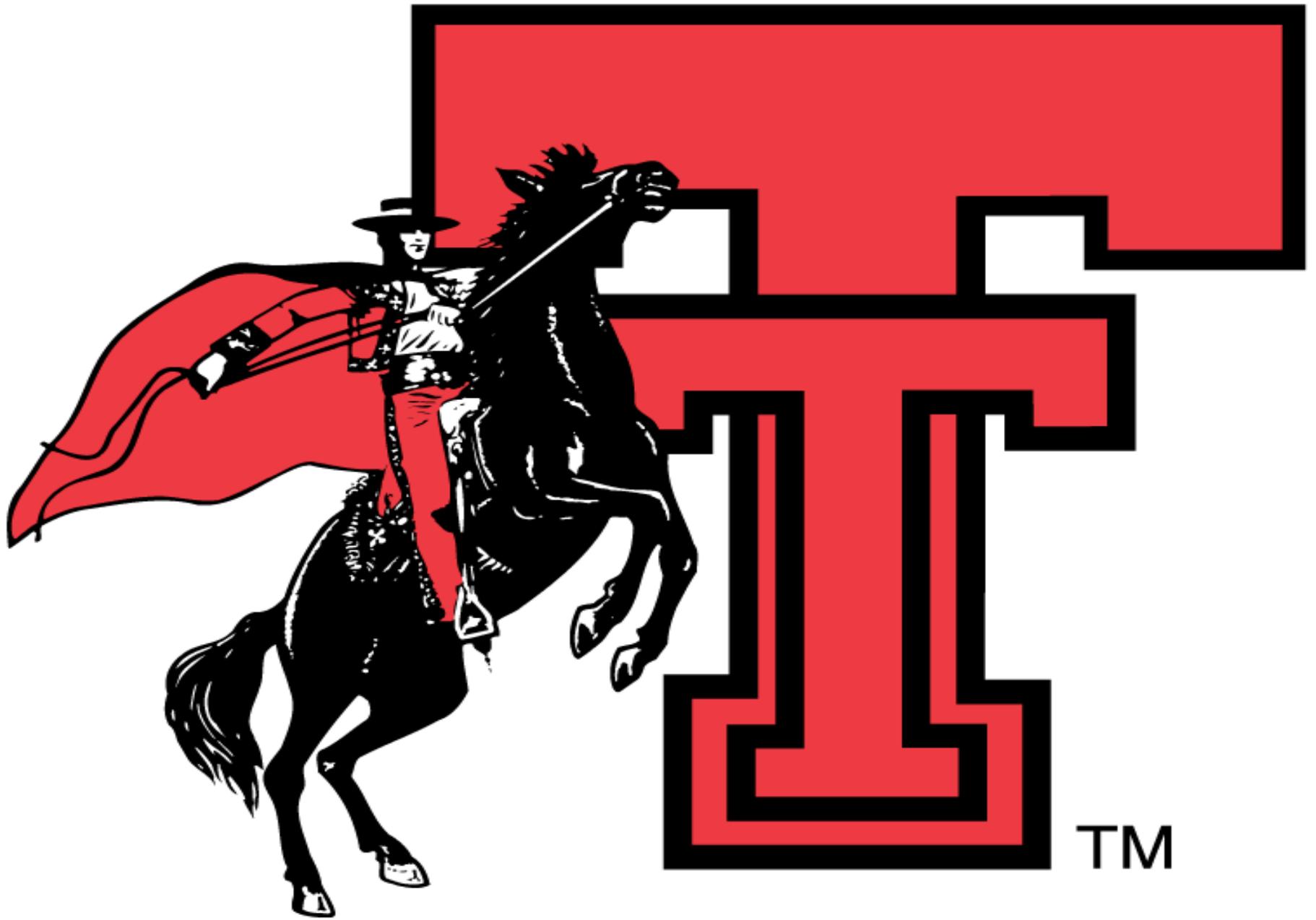
Staff Recommendations
Discuss City Council orientation with City Attorney Pete Smith.

2015 CITY COUNCIL ORIENTATION



Peter G. Smith

Nichols, Jackson, Dillard, Hager & Smith





COUNCIL-MANAGER FORM OF GOVERNMENT

City Council:

- **legislative body;**
- **approves the budget;**
- **sets the tax rate;**
- **policy maker which determines the scope and functions of the city government.**



COUNCIL-MANAGER FORM OF GOVERNMENT

- **Council, board and commissions have no administrative duties.**
- **Administrative duties are vested in the City Manager who directs the workforce and manages the programs of the City in accordance with City ordinances, rules and regulations adopted by the Council.**

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COUNCIL-MANAGER FORM OF GOVERNMENT

- **Individual Council members should not direct the work force including the City Manager.**
- **May inquire of staff.**



CITY SECRETARY

- **Employee appointed by the Council.**
- **Performs administrative and legislative duties for the City Council.**
- **Prepares, keeps and maintains minutes of Council meetings and serves as the records custodian for the City.**

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CITY MANAGER

- **Employee appointed by Council.**
- **Chief Executive Officer.**
- **Directs the work force and carries out the day to day operation of the City.**

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CITY ATTORNEY

- **Appointed by the Council.**
- **Provides legal advice to the City Council, City Manager and staff.**
- **Receives direction from the City Manager and staff.**

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MEETINGS

- **Mayor presides and maintains decorum.**
- **Follow adopted rules.**
- **Don't allow adopted rules to get in the way of making a decision.**
- **May only discuss and take action on items on the agenda, except to discuss whether to place item on future agenda.**

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MEETINGS

- **Not required to make motion to open or close public hearing, but may do.**
- **May impose limit time for speakers during public hearing.**
- **May allow citizen to speak on agenda item even if not listed as public hearing but others will want to speak also.**

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MEETINGS

- **Motions should be clear.**
- **No particular form or style unless local policy.**
- **Do not include any discretionary items left to staff to be worked out.**
- **Zoning - discretionary.**
- **Platting – ministerial.**

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OPEN MEETINGS ACT

- **Every regular, special or called meeting of a governing body is open to the public unless a closed meeting is authorized by the Act.**
- **Governing body includes quasi-judicial boards and commissions but not advisory board.**
- **Act requires 72-hour posted notice of meeting.**

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BODIES SUBJECT TO THE ACT

- **City Council, P & Z, Board of Adjustment, Building and Standards Commission and SEDC.**
- **Advisory board, commission or committee, such as the Library Board which has no authority over public business or policy is not subject to the Act.**

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BODIES SUBJECT TO THE ACT

- **Committees consisting of council members even though less than a quorum are subject to the Act when the committee meets to discuss public business or receive information from 3rd parties**
- **By local City policy all boards and commissions be required to follow the Act.**

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MEETING SUBJECT TO THE ACT

- **Any discussion or deliberation between a quorum (majority), or between a quorum and another person, about public business or policy which the Board/Commission controls or supervises, or during which formal action is taken.**
- **Deliberation is defined as a verbal exchange during a meeting between a quorum, or between a quorum and another person concerning public business or policy.**

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NOTICE

- **72 hours prior written notice of the date, hour, place, and subject of each meeting, including authorized closed meetings with the exception of a closed meeting for consultation with an attorney.**
- **Notice must be sufficient to inform the public of the subject matter that will be considered in an open or closed meeting.**
- **More critical the topic, the more specific the notice.**
- **General descriptions are insufficient.**

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INTERNET WEB SITE NOTICE

- **City and economic development corporation that maintains an Internet Web site is required to post **notice of its meetings** on its Web site.**
- **An alternative to posting notice on a physical bulletin board the notice of each meeting may be posted on electronic bulletin board at place convenient to the public in the City Hall; perpetually illuminated screen on which City can post viewable notices or messages that can not be manipulated by the public.**

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EMERGENCY MEETINGS

- **Must be imminent threat to the public health or safety or reasonably unforeseen situations requiring immediate attention.**
- **Notice posted at least two (2) hours before the scheduled meeting and clearly state the urgent public necessity or emergency.**
- **Notice given by telephone or telegraph to news media previously requesting notice and agreeing to pay cost of providing the notice.**

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OPEN MEETINGS ACT DOES NOT APPLY

- **Purely social meetings unrelated to public business;**
- **Conventions, seminars or workshops if no formal action is taken and any discussion of public business is incidental; and**
- **Testimony before legislature and agencies.**

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SECRET DELIBERATIONS

- **May not contact members by telephone/ email/text for the purpose to arrive at a decision or consensus concerning public business.**
- **May not use email/voice mail to arrive at a May not meet in numbers less than a quorum for the purpose of secret deliberations.**
- **May not meet or conspire to meet in numbers that do not physically constitute a quorum at any one time but through successive gatherings secretly discuss a public matter with a quorum.**



Can I count on your
Vote?

If the public is being deprived of the opportunity to see and hear your deliberation, avoid it.



VIDEOCONFERENCE CALL

- **May hold an open or closed meeting by videoconference call.**
- **Quorum must be present at one location.**
- **Certain notice requirements.**
- **Each location is open to the public during the open portions of the meeting.**

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CONSULTATION WITH ATTORNEY

May use a telephone conference call, videoconference call, or internet communications to consult with an attorney in open or closed meeting, if the attorney is not an employee of the City .

Pete and his crew are not employees of the City so contact us anytime since we do not need to be physically present.

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FINAL ACTION

- **Decision must be made in public; no secret ballots.**
- **No voting in closed session.**
- **May disclose what was discussed in closed session, but may not disclose certified agenda or tape from closed meeting.**

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MINUTES

- **Must prepare and retain minutes or a tape of each of its meetings – staff function.**
- **Minutes state date, time and persons present, the subject matter of each deliberation, vote, order, decision, or other action and are available to the public.**

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CLOSED MEETINGS

- **Limited to specific purposes.**
- **Notice must be posted listing the specific Section of the Texas Gov Code and give brief description.**
- **Common examples: seek the advice of attorney, discuss real estate, discuss personnel and economic development.**

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PROCEDURE FOR CLOSED SESSIONS

- **Quorum convenes in open meeting for which proper posted notice is given.**
- **Presiding officer announces a closed meeting will be held and states the applicable sections of the Gov Code and the subject matter.**
- **Not necessary to make a motion to go into closed session or to return to open session.**



PROCEDURE FOR CLOSED SESSIONS

- **Certified agenda or tape recording must be kept.**
- **Certified agenda must include: announcement at the beginning and end of meeting stating the date and time; and subject matter and any action taken.**
- **Attendance should be limited to persons necessary for purpose of executive session and whose interest is not adverse to the City.**

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CONSULTATION WITH ATTORNEY

- **Seek the advice of attorney about pending or contemplated litigation or a settlement offer, the agenda notice should describe the lawsuit.**
- **If during the course of a meeting, a situation arises in which the City Council seeks legal advice and in order to preserve the attorney/client privileged communication, the City Council may convene a closed meeting to seek legal advice even though not listed on the meeting agenda.**



DELIBERATION REGARDING REAL PROPERTY

Governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental affect on the position of the governmental body in negotiations with third person.

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PERSONNEL MATTERS

- **May conduct a closed meeting to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear a complaint or charge against an officer or employee.**
- **If the officer or employee who is the subject of the deliberation or hearing requests a public hearing, it must be open.**

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PERSONNEL MATTERS

- **Public officers are members of quasi-judicial boards or boards that perform more than advisory duties or governmental functions largely independent of the control of others.**
- **Includes members of the P & Z, Board of Adjustment, Building and Standards Commission, DART Board, NTMWD and SEDC.**

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DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS

To discuss or deliberate commercial or financial information that the City has received from a business prospect with which the City has conducted negotiations, and to deliberate the offer of incentives to such business prospect.

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VIDEOTAPING, ETC.

The public has a right, subject to reasonable access, to tape or videotape open meetings.





CITIZEN APPEARANCE

- **Open Meetings Act does not grant the public the right to speak at or to control public meetings.**
- **If the City Council allows the public to speak, it must do so in a nondiscriminatory matter.**
- **Citizen's presentation time may be limited but not the content.**

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**COMPLAINT
DEPARTMENT**
PLEASE TAKE A NUMBER



Council Meetings

CITIZEN APPEARANCE

Should not discuss the matters presented by the citizen except to:

- **Discuss whether to place the matter on a subsequent agenda or referral to proper department or agency;**
- **A statement of factual information in response;**
- **Statement of existing policy in response;**
- **Mayor and/or City Manager usually responds that appropriate staff will respond back to the citizen.**



SOCIAL MEDIA

- **Facebook, etc.**
- **Avoid appearance that members are deliberating by posting comments about public business.**
- **Posting comments may be construed as a meeting or EVEN WORSE.**



VIOLATIONS

- **Action taken in violation of the Act is voidable.**
- **Action may be set aside by a court/but can be cured by subsequent meeting.**
- **Members who knowingly conspire to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of the Act, commit a misdemeanor offense.**
- **Knowingly call or aid in calling or organizing an illegal closed meeting or participate in an illegal closed meeting; close or aid in closing the meeting to the public - misdemeanor offense.**

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VIOLATIONS

- **Disclosure of the certified agenda or tape recording of a closed meeting is a misdemeanor.**
- **An offense if participated in a closed meeting knowing that a certified agenda or a tape recording of the closed meeting is not being made.**
- **Liable for damages for personal injury, lost wages, defamation, mental or emotional distress, reasonable attorney's fees, and court costs if slandering a person during closed meeting.**

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CONFIDENTIALITY

- **Act does not prohibit members from making public statements about the subject matter of closed session **but!...****
- **Each member should respect the privilege afforded to the Board to conduct a closed meeting.**
- **If those in attendance do not intend to keep the matter privileged and confidential, then do not hold a closed meeting.**

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ETHICS

- **Conduct of public officials is governed by the City Charter, any local ethics policy and State Law.**
- **Members of the City Council and all boards and commissions appointed or confirmed by the City Council must be knowledgeable of the City Charter, any local ethics policy and State Law when participating in and making decisions.**

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ETHICS

- **Charter**
- **State law - Chapter 171 Loc Gov. Code.**
- **State Law Chapter 176 Loc Gov. Code**

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**Have confidence when making
the tough decisions.**

WHAT MATTERS MOST
IS HOW YOU SEE YOURSELF.

Ethics





CHAPTER 171 LOC GOV CODE CONFLICTS OF INTEREST

Rule:

- **A member commits an offense if the official knowingly participates in a vote or decision on any matter involving a business entity or real property in which the official has a “substantial interest.”**

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REQUIRED FILING OF AFFIDAVIT & ABSTAINING

- **File an affidavit revealing the nature and extent of the interest with the governing body.**
- **Abstain from further participation on the matter.**
- **Affidavit is to be filed with the Board Secretary.**

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SHOW ME THE MONEY



SUBSTANTIAL INTEREST?

- **Section 171.002 of the Loc Gov Code defines “substantial interest” in a Business Entity as:**
 - ❖ **the official owns at least 10% share of the voting stock or shares of the business entity, or at least \$15,000 of the fair market value of the business entity; or**
 - ❖ **funds received by the official from the business entity exceeds 10% of the official’s gross income for the previous year.**

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SUBSTANTIAL INTEREST?

- **Alternatively, a person has “substantial interest” in Real Property if:**
 - ❖ **It is reasonably foreseeable that an action on the matter will have special economic effect distinguishable from its effect in the public; and**
 - ❖ **The official’s interest is an equitable or legal ownership with a fair market value of \$2,500 or more.**

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SUBSTANTIAL INTEREST – RELATIVES IN FIRST DEGREE

- **Also considered to have “substantial interest” if a relative in the first degree, by either consanguinity or affinity, would have a substantial interest in a business entity or real property under these tests.**

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RELATIVES IN THE FIRST DEGREE

Consanguinity

Parents

Children

Affinity

**Spouse of those
under consanguinity**

Spouse

Spouse's parents

Spouse's children

**Stepparents or
stepchildren**

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ACTIONS NOT VOIDED BY MEMBER'S PARTICIPATION - PENALTY

- **An action will be void because of official's participation in a decision ONLY if that participation is determinative.**
- **Failure to file the affidavit and to abstain constitutes a Class A Misdemeanor, punishable by a fine of up to \$4,000 and a one-year jail sentence.**

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PUBLIC INFORMATION ACT



PUBLIC INFORMATION

- **Similar to the Federal Freedom of Information Act.**
- **Applies to information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official City business.**
- **Includes information that the City owns or has a right of access - every form of information.**

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PUBLIC INFORMATION

- **Information in existence.**
- **Not required to conduct research, collect data or create new records.**
- **A citizen may request copies of information or to inspect information on-site.**
- **City may not inquire into the requestor's motives but may require the request to be in writing.**

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PUBLIC INFORMATION

- **Public information must be made available to the public during normal business hours within ten (10) business days after the request is made.**
- **If the City is unable to provide the information within ten (10) business days, it must notify the requestor and establish a reasonable date for production.**

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PUBLIC INFORMATION

- **Requestor must complete examination within 10 business days after made available, or it is deemed withdrawn, unless extension requested.**
- **Request is deemed withdrawn if requestor fails to make deposit or bond for previous request within 10 business days of due date.**



PUBLIC INFORMATION

- **City may request clarification and, if response provided, a new 10 days applies to the clarified request.**
- **If clarification/modification made in response to City request for bond or deposit a new 10 day period applies after City receipt of modification.**



PUBLIC INFORMATION

- **Requestor and City must comply with copyright laws.**
- **Some information is protected by statute or other law and may not be disclosed to the public.**
- **Other information may be withheld from disclosure but the City must, within ten (10) business days, request an opinion from the Texas Attorney General as to whether the requested information should be disclosed.**

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PUBLIC INFORMATION

- **City must submit comments and sample materials within fifteen (15) business days and notify the requestor that an Attorney General Opinion has been requested.**
- **Information is not released until the Attorney General issues a written opinion requiring the disclosure of the requested information.**
- **May file suit if City disagrees.**

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INFORMATION THAT MAY BE WITHHELD

- **Confidential informant.**
- **Information relating to litigation in which the City is, or may be, a party, or to which a public official or employee of the City is or may be a party.**
- **Trade secrets and certain commercial or financial information.**
- **Social Security numbers, DL, license plates certain motor vehicle information (credit card, debit card, charge card and access number).**

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INFORMATION THAT MAY BE WITHHELD

- **Information relating to economic development negotiations between the City and business prospects.**
- **Home address, email address, cell phone numbers and telephone number of elected official and City employees.**
- **E-mail address of member of the public unless consent to disclosure; audit working papers.**
- **Certain law enforcement records.**

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INFORMATION THAT MAY BE WITHHELD

- **Current and former employee or official may choose whether to allow access to emergency contact information.**
- **A photocopy or other copy of an identification badge issued to employee or official.**

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PUBLIC INFORMATION

- **Name of each official and the final record of voting.**
- **Bill for attorney's fees.**
- **A settlement agreement to which City is a party.**
- **A completed report, audit, evaluation, or investigation made.**

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PUBLIC INFORMATION

- **Name, sex, ethnicity, salary, title, and dates of employment of each employee or officer of a governmental body.**
- **Information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body.**

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EMAILS

- **E-mail communications of City staff and Council, personal notes of City staff and Council members.**
- **Home emails on personal computers are public records if City employee or official transacts City business in such manner.**
- **Home email address is excepted from public disclosure if elected to keep home telephone number confidential.**

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One Puppies Opinion!





EMAILS

- **To the extent an email has been deleted from the “trash bin” and thus the location of the file on the hard drive has been deleted from the FAT, the email is no longer being “maintained” and is no longer public information.**
- **Records retention policy – zero if worthless or 2 years or longer depending.**

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"On the Internet, nobody knows you're a dog"



OPEN GOVERNMENT TRAINING

Each elected or appointed member of a governmental body (City Council, P & Z, Board of Adjustment, Building and Standards Commission, and SEDC) shall complete an open meetings and public information training course of not less than one hour or more than two hours.

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OPEN GOVERNMENT TRAINING

- **Training must be completed not later than 90 days after the member takes the oath of office or assumes the responsibilities of the office.**
- **Entity providing training shall provide a certificate of course completion, and City maintains the certificates.**
- **Take course one time although representative of Attorney General has stated that it should be repeated if lapse of public service but AG keeps no records.**

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OPEN GOVERNMENT TRAINING

- **Failure to complete training does not affect the action taken by the governmental body.**
- **Course completion may not later be used in a criminal proceeding as prima facie evidence of a “knowing” violation of the Open Meetings Act.**

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OPEN GOVERNMENT TRAINING

- **City designating a public information coordinator satisfies the open records training requirement.**
- **City Secretary has satisfied this requirement.**

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CONFLICTS DISCLOSURE CHAPTER 176

- **Council member must file conflict disclosure statement if business entity of the member or close relative is, or intends to do business with the City.**
- **7 days to file the disclosure form.**
- **Class C Misdemeanor.**



LIABILITY AND IMMUNITY ISSUES

- Lawsuits for damages are remote.
- City has insurance.
- When sued in “official capacity” is the same as suit against the City.
- Sued in “personal capacity”, is a claim that the individual has taken illegal actions under color of law for which they should be personally liable- **be concerned!**

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CIVIL RIGHTS

- **Majority of lawsuits against individuals in their individual capacity are brought under 42 USC §1983.**

Example:

**Council denies zoning based on religion:
Violation of First Amendment, freedom of
speech and association.**

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IMMUNITY

- **Qualified immunity and official immunity.**
- **Qualified and official immunity are one and the same, the difference being qualified immunity shields officials from liability or civil damages under federal law, while official immunity is a state common law defense that provides immunity for state law claims.**

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IMMUNITY

- **Immunity protects officials for the consequences of their actions taken to carry out duties if there is no violation of a well established law.**
- **Provides freedom from suit and liability to those officials performing discretionary functions, unless their conduct violated clearly established statutory or constitutional rights of which a reasonable person would have known.**

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QUALIFIED IMMUNITY

- **Members are protected if their actions are reasonable and do not violate clearly established statutory laws.**
- **Protects all but “the plainly incompetent or those who knowingly violate the law.”**

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IMMUNITY

- **Do not have to be studied in current constitutional law in order to be protected.**
- **Members will have qualified immunity from suit and liability, unless all reasonable members would have known that the actions in question were illegal.**

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SLANDER AND LIBEL

- **Members may be exposed to personal liability for communications that infringe on others.**
- **Written communications that may defame another individual –libel.**
- **Slander - verbal defamation.**

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Hatch and Raider say guns up Raiders



Hatch



Raider