



Conflict of Interest/Disclosure Laws Applicable to City Officials, Employees, and Vendors

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.

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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.¹ 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.²

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.³ 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.⁴

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."⁵ This term includes a member of a planning and zoning commission.⁶

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

¹ TEX. LOC. GOV'T CODE §§ 171.001–.010.

² *Id.* § 171.004.

³ *Id.* An example (not a model) affidavit is available here: <https://www.tml.org/DocumentCenter/View/276/Chapter-171-Conflict-of-Interest-Affidavit-Sample-PDF>.

⁴ TEX. LOC. GOV'T CODE § 171.004.

⁵ *Id.* § 171.001(1).

⁶ 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.⁷

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.⁸

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.⁹ 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.¹⁰

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."¹¹ A nonprofit corporation is considered a business entity.¹² The term also includes a business entity that represents an entity or person with an interest in a matter before the city council.¹³ Public entities such as a city, state university or school district, are not business entities.¹⁴

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.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸ Additionally, the issue of whether a vote or decision has a special economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property.¹⁹

⁷ TEX. LOC. GOV'T CODE § 171.002(a).

⁸ *Id.* § 171.002(b).

⁹ *Id.* § 171.002(c).

¹⁰ Tex. Att'y Gen. Op. No. JC-0063 (1999).

¹¹ TEX. LOC. GOV'T CODE § 171.001(2).

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

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

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

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

¹⁶ *Id.*

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

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

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

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.²⁰ 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.”²¹

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.²² The affected member may not generally participate in consideration of that item.²³

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.²⁴ A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.²⁵

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 the receipt of gifts from and 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.²⁶ 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.²⁷

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

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

²⁰ Tex. Att’y Gen. LO-96-049.

²¹ *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.

²² TEX. LOC. GOV’T CODE § 171.005.

²³ *Id.*

²⁴ *Id.* § 171.006.

²⁵ *Id.* § 171.003; *see also Marra v. State*, 399 S.W.3d 664 (2013) (overturning a conviction under Local Government Code Section 171.003).

²⁶ TEX. LOC. GOV’T CODE § 176.001.

²⁷ *Id.*

²⁸ *Id.*

1. An officer must file a statement if the officer or officer's family member²⁹ 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.³⁰ 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.³¹
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.³² 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.³³
3. An officer is required to file a statement if the officer has a family relationship with the vendor.³⁴

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.³⁵

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.³⁶

A "vendor" includes any person that enters or seeks to enter into a contract with a city.³⁷ The term also includes: (1) an agent of a vendor; (2) an officer or employee of a state agency when that individual is acting in a private capacity; and (3) Texas Correctional Industries (but no other state agency).³⁸

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

³⁰ *Id.* § 176.003(a)(2)(A).

³¹ *Id.* § 176.001.

³² *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.

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

³⁴ *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.

³⁵ *Id.* § 176.003(a-2).

³⁶ *Id.* § 176.003(b).

³⁷ *Id.* § 176.001.

³⁸ *Id.*

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

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.⁴¹

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.⁴²

The statements and disclosures must be filed with the records administrator of the city.⁴³ 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 176.⁴⁴

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 176.⁴⁵ However, a city that does not have a Web site is not required to create or maintain one.⁴⁶

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.⁴⁷ 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.⁴⁸ The validity of a contract between a city and a vendor is not affected solely because a vendor fails to file a questionnaire.⁴⁹

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/forms/conflict/>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* §176.006(a).

⁴² *Id.* §176.006(a-1).

⁴³ *Id.* §§176.003(b), 176.006(a-1).

⁴⁴ *Id.* §176.001(5).

⁴⁵ *Id.* § 176.009.

⁴⁶ *Id.*

⁴⁷ *Id.* §§ 176.013.

⁴⁸ *Id.*

⁴⁹ *Id.* § 176.006(i).

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.”⁵⁰

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.⁵¹

The term “public funds” is defined to “include[] only funds collected by or through a government.”⁵² 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.⁵³

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.⁵⁴ 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.⁵⁵

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 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.⁵⁶ An affidavit example is available on our Web site at: <https://www.tml.org/DocumentCenter/View/275/Chapter-553-Property-Affidavit-Sample-PDF>.

⁵⁰ TEX. GOV’T CODE § 553.002(a).

⁵¹ *Id.* § 553.001(2).

⁵² *Id.* § 553.001(1).

⁵³ *Id.* § 553.002.

⁵⁴ TEX. GOV’T CODE § 553.002(a).

⁵⁵ *Id.* § 553.002(c).

⁵⁶ *Id.* § 553.002(b).

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.⁵⁷

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*.⁵⁸ 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 filled by election to file an annual financial statement with the city clerk or secretary;⁵⁹
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; and⁶⁰
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.⁶¹

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.⁶² Annually, the mayor, city councilmembers, the city manager, and the city attorney⁶³ must file a financial disclosure statement for the preceding year by April 30.⁶⁴ A new city manager or a new city

⁵⁷ *Id.* § 553.003.

⁵⁸ TEX. LOC. GOV'T CODE § 145.001.

⁵⁹ *Id.* §§ 145.002–.003.

⁶⁰ TEX. LOC. GOV'T CODE § 145.003(b)(2), TEX. GOV'T CODE § 572.023(a).

⁶¹ TEX. LOC. GOV'T CODE § 145.003(b)(2), TEX. GOV'T CODE § 572.023(b).

⁶² TEX. LOC. GOV'T CODE § 145.004(c).

⁶³ 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).

⁶⁴ TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(a).

attorney must file a financial disclosure statement within forty-five days of assuming the duties of office.⁶⁵

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/forms/QuickFindAForm.php>.⁶⁶ 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.⁶⁷

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

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.⁷⁰ 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.⁷¹ Extensions shall not be granted to candidates for elected city office.⁷²

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

⁶⁵ TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(c).

⁶⁶ TEX. LOC. GOV'T CODE § 145.005(a).

⁶⁷ *Id.* §§ 145.002, 145.005(b)

⁶⁸ *Id.* § 145.003(b).

⁶⁹ *Id.* § 145.007(a). On the written request of the municipal court judge or a candidate for municipal court judge, the residence address of the judge, the judge's spouse, or the candidate for judge shall be removed or redacted before the financial statement is made available to the public. *Id.* § 145.007(d). (Note: A municipal court judge appears to be subject to Chapter 145 only if the office is filled by election.)

⁷⁰ *Id.* § 145.009.

⁷¹ *Id.* § 145.004(e).

⁷² *Id.* § 145.004(f).

⁷³ *Id.* § 145.008.

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

Government Code Section 2252.908 is a governmental transparency law originally enacted by H.B. 1295 in 2015. It prohibits a governmental entity (defined to include a city⁷⁴) 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.⁷⁵

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; (2) have a value of at least \$1 million; or (3) are for services that would require a person to register as a lobbyist under Chapter 305.⁷⁶ 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.⁷⁷

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

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."⁸⁰ The Commission's rules clarify that the term "business entity" includes nonprofits, but does not include a governmental entity.⁸¹ That means, for instance, if a city executes an interlocal agreement with another city the disclosure requirements of Section 2252.908 are not triggered.

⁷⁴ 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).

⁷⁵ *Id.* § 2252.908(g).

⁷⁶ *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).

⁷⁷ 1 T.A.C. § 46.1(c).

⁷⁸ *Id.* § 46.3(a).

⁷⁹ *Id.* § 46.4.

⁸⁰ TEX. GOV'T CODE § 2252.908(a)(1).

⁸¹ 1 T.A.C. § 46.3(b).

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.⁸² 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.⁸³

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 1295.⁸⁴
2. The completed Form 1295 must be filed with the city “at the time the business entity submits the signed contract” to the city.⁸⁵
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.⁸⁶

To further explain the process, the Commission has prepared instructional videos and a “FAQ” document, available here: <https://www.ethics.state.tx.us/filinginfo/QuickFileAREport.php> (under “Filing a 1295 Certificate”).

⁸² *Id.* § 46.3(d).

⁸³ *Id.* § 46.3(c),(e).

⁸⁴ *Id.* § 46.5.

⁸⁵ TEX. GOV’T CODE § 2252.908(d).

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

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."⁸⁷ 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.⁸⁸ 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 2252.908.⁸⁹ 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."⁹⁰

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.⁹¹ 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.⁹²

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

1. has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more;

⁸⁷ 1 T.A.C. § 46.5(a)(4).

⁸⁸ TEX. GOV'T CODE § 2252.908(g), 1 T.A.C. § 46.5(d).

⁸⁹ *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).

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

⁹¹ TEX. LOC. GOV'T CODE § 212.017(d).

⁹² *Id.* § 212.017(a).

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.⁹³

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.⁹⁴ 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.⁹⁵

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.⁹⁶ 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.⁹⁷

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.⁹⁸ That being said, TML attorneys advise that any local public official with a "substantial interest" in a bank, as that term 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

⁹³ *Id.* § 212.017(b).

⁹⁴ *Id.* § 212.017(e).

⁹⁵ *Id.* § 212.017(f).

⁹⁶ *Id.* § 131.903(a)(2).

⁹⁷ *Id.*

⁹⁸ Tex. Att'y Gen. LO-97-093.

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).⁹⁹ In addition, certain city officers may be required to execute a bond in conjunction with their office.¹⁰⁰

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.¹⁰¹ 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."¹⁰²

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>.

⁹⁹ *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).

¹⁰⁰ *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).

¹⁰¹ 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).

¹⁰² TEX. LOC. GOV'T CODE § 171.001(1).