

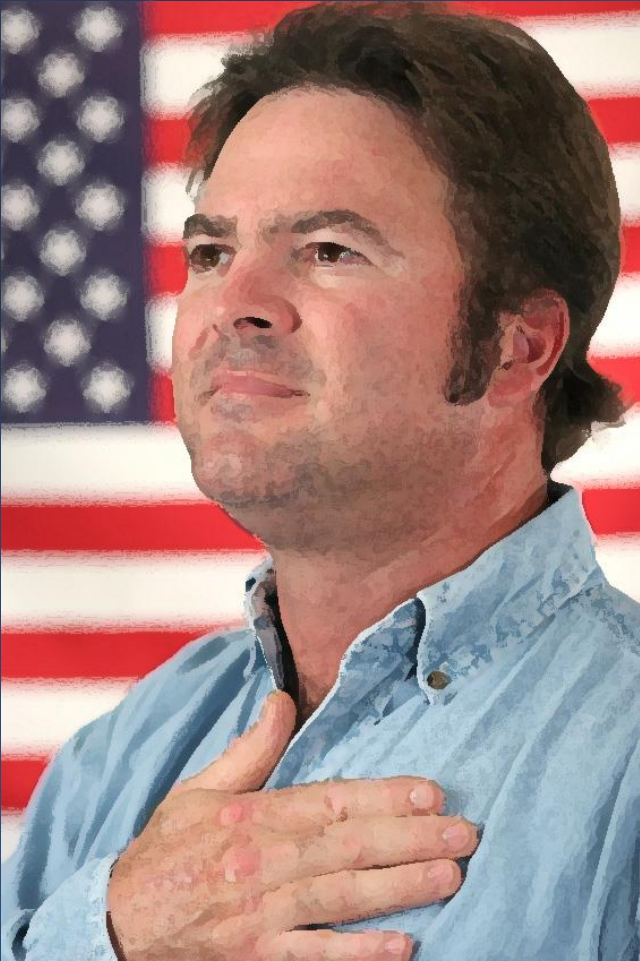
McKinney Community Development Corporation

**City of McKinney
October 27, 2016**

**Presented By:
Jeff Moore**

**Brown & Hofmeister, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
(214) 747-6100
www.bhlaw.net**

Overview of Topics



1. **Open Meetings Act**
2. **Development Corporation Act**
3. **Conflicts of Interest Issues**

Open Meetings Act

**Chapter 551 of the
Texas Government Code**

When Does the Open Meetings Act Generally Apply?

- **A quorum is present and discusses public business.**
- **Applies to city councils, city boards and commissions and Type A/B Corporation.**
- **Does not apply to purely social gatherings, attendance of public officials at conferences or training, ceremonial events, or press conferences.**



What constitutes a “quorum”?

- “Quorum” means “a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body.” Texas Government Code § 551.001(6).
- In addition, a quorum must be present to convene a meeting.
- City Council – 4 members of City Council. Section 23 of Home-Rule Charter.

What constitutes a “quorum”?

(cont’d)

- Planning and Zoning Commission – 4 of the 7 members. Section 157 of Home-Rule Charter.
- Zoning Board of Adjustment – 5 members required to hear all cases. Section 161 of Home-Rule Charter.
- MEDC – 4 of the 7 member board. Chapter 504 of Texas Local Government Code.
- MCDC – 4 of the 7 member board. Chapter 505 of Texas Local Government Code.

What constitutes a meeting?

- Section 551.001(4) – definition of “meeting”
 - a deliberation between a quorum of a governmental body, or
 - between a quorum of a governmental body and another person,
 - during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or

What constitutes a meeting? (cont'd)

- a gathering:
 - conducted by the governmental body or for which the governmental body is responsible;
 - a quorum of members is present;
 - called by the governmental body; and
 - members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about public business or public policy over which the governmental body has supervision or control.

What constitutes a meeting? (cont'd)

- The term does not include the gathering of a quorum of a governmental body at
 - a social function unrelated to the public business that is conducted by the body,
 - the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference,
 - if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, or press conference.
- The term includes a session of a governmental body.

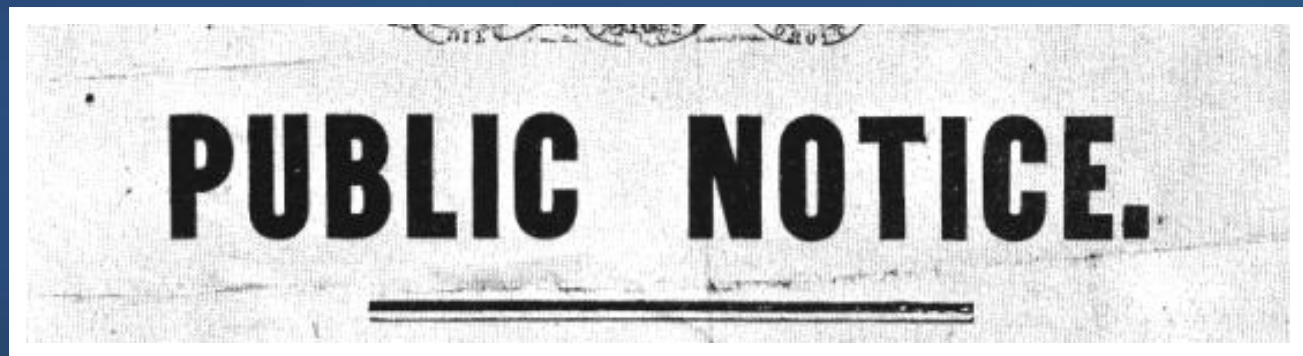
Where can a meeting be held?

- A meeting must be held in a location accessible to the general public.
 - See, Op. Tex. Att’y Gen. No. JC-0487 (2002) (Board of Regents for University of Texas System could not hold a meeting in Mexico).
- Type A and Type B corporations must conduct their meetings within the City limits pursuant to the Development Corporation Act.
 - Sections 504.054 and 505.055 of Texas Local Government Code.

Where and how long must an agenda be posted?

“The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for *at least 72 hours before the scheduled time of the meeting. . . .*”

--Section 551.043



Must an agenda be posted on the City's website?

- Section 551.056 of Texas Government Code
- Applies to the City or economic development corporation that maintains an Internet website or for which an Internet website is maintained.
- In addition to posting at City Hall must also currently post notice of a meeting on the Internet website.

Must an agenda be posted on the City's website? (cont'd)

- In addition, City and Type A and Type B economic development corporations in a city with a population of 48,000 or more must post the agenda for the meeting on the Internet website.
- There is a good faith exception if the failure to post on the Internet “is due to a technical problem beyond the control of the governmental body or economic development corporation.”

Can You Change the Date/Time of an Open Meeting Without Posting a Corrected Notice for 72 hours?

No.

The Texas Open Meetings Act requires literal compliance. A governmental body generally does not have authority to change the date/time of its meeting without posting the new date for at least 72 hours in advance of the meeting.



Can We Change the Location of an Open Meeting Without Posting a Corrected Notice for 72 hours?

No.

On the day of the meeting, you may be able to move to a bigger room within the same building to accommodate a large crowd. However, it is not clear whether such a change would constitute literal compliance with the Act.



Can We Continue a Meeting to the Immediate Next Day Without Reposting?

- A governmental body can recess an open meeting to the following regular business day provided the action is taken in good faith and not to circumvent the Open Meetings Act.
- § 551.0411.



What if an Unposted Issue is Raised at an Open Meeting?

You may not deliberate or make any decision about an unposted issue at the meeting. If an unposted item is raised, you have four options:

- 1) respond with a statement of specific factual information or recite the governmental body's existing policy on the issue
- 2) direct the person making the inquiry to visit with staff
- 3) offer to place the item on the agenda at a future meeting
- 4) post the matter as an emergency item if it meets the criteria



What Duty Does a Governmental Body Have to Produce Minutes of Open Meetings?

- Section 551.021: a governmental body shall prepare and keep minutes or make a recording of each open meeting of the body.
 - The minutes must:
 - (1) state the subject of each deliberation; and
 - (2) indicate each vote, order, decision, or other action taken.

How long is the city required to keep minutes or a tape of a meeting?

- Approved minutes must be maintained permanently by the city.
- A tape of a meeting for the purpose of preparing minutes must be maintained for 90 days following the approval of the minutes by the governmental body.



What are the General Subjects for which a Governmental Body may Hold an Executive Session?

- Common exceptions are:
 - personnel matters;
 - certain consultations with an attorney;
 - discussions about the value or transfer of real property; and
 - discussion of certain economic development matters.

What are the procedures to convene into an executive session?

- When authorized to convene a closed meeting the presiding officer must take the following steps:
- (1) In open session state that a closed meeting will be held and identify the exceptions of the Open Meetings Act which authorize the executive session.
- (2) In the executive session, the presiding officer states the date and time.
- (3) Discuss the executive session matter within the confines of the statutory exception. (No voting can occur in the executive session).
- (4) At the conclusion of the executive session, the presiding officer states the date and time.
- (5) Reconvene in open session. Voting on the subject matter must occur in open session.

When can a governmental body hold an executive session using the exception for consultation with an attorney?

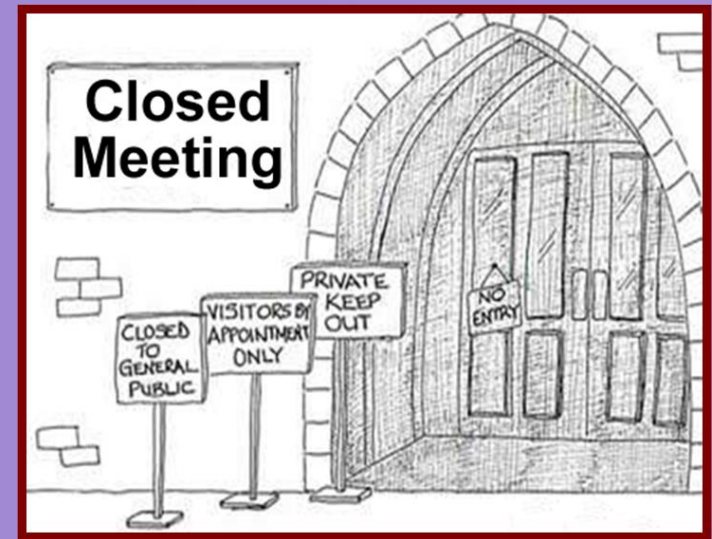
- Section 551.071: allows a governmental body to meet with its attorney to receive legal advice about pending or contemplated litigation or about settlement offers.
 - may also meet with its attorney to receive legal advice on any matter on the agenda.

Can a City Council discuss potential business incentives and other economic development issues in executive session?

- Can hold an executive session:
 - to discuss or deliberate commercial or financial information the governmental body received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the city and with which the governmental body is conducting economic development negotiations; *or*
 - to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).

Can the city discuss real property in executive session?

- A governmental body may deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with third parties. TEX. GOV'T CODE ANN. § 551.072.



Can a governmental body discuss personnel matters in executive session?

- Section 551.074 of the Government Code authorizes an executive session to discuss “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.”
 - GA-0511(2007) (school district could not admit select members of the public into an executive session to discuss school superintendent).

Who is Permitted to Attend an Executive Session?

- The Open Meetings Act does not specify who may or may not attend an executive session.
- **Texas Attorney General Opinion JC-0375 (2001):**
 - concluded the governmental body has discretion to determine who may attend executive sessions. However, the governmental body may not admit those whose attendance is contrary to the legal basis for the executive session.
- **Texas Attorney General Opinion GA-0511 (2007):**
 - citizens could not be invited into an executive session to discuss the school superintendent. Would cause the meeting to be an unauthorized closed meeting.



Can a governmental body approve items or vote in an executive session?

- Can you vote in executive session?
- No. “a final action, decision, or vote on a matter deliberated in a closed meeting . . . may only be made in an open meeting.”

– § 551.102



Is a governmental body required to record or create a certified agenda of discussions held in executive session?

Section 551.103: requires a governmental body to produce a “certified agenda” or make a tape recording of every executive session, unless the closed session is being held under the exception for consultation with an attorney. A governmental body may turn off the tape or stop taking notes during the portion of a closed meeting that involves consultations with an attorney.



Civil and Criminal Penalties

- 551.141** : Void any action taken.
- 551.142** : Mandamus or injunctive relief.
- 551.143** : Conspiracy to circumvent the act by meeting in numbers less than a quorum - fine \$100 to \$500 and/or one month to six months confinement in the county jail.
- 551.144** : Unauthorized closed meeting - fine \$100 to \$500 and/or one month to six months confinement in the county jail.
- 551.145** : Fail to keep a certified agenda or tape recording of a closed meeting -class C misdemeanor.
- 551.146** : Release of a certified agenda or tape of a closed meeting - class B misdemeanor.

Development Corporation Act

**Chapters 501 and 505 of the
Texas Local Government Code**

What are Permissible Type B Projects?

- Projects which must create or retain primary jobs:
 - manufacturing and industrial facilities;
 - research and development facilities;
 - military facilities, including closed or realigned military bases;
 - transportation facilities;
 - Sewage or solid waste disposal facilities;
 - recycling facilities;
 - air or water pollution control facilities;
 - distribution centers;
 - small warehouse facilities;
 - primary job training facilities for use by institutions of higher education;
 - regional or national corporate headquarters facilities; and
 - projects which promote or develop new or expanded business enterprises including a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, or general municipally owned improvements.
 - **Tex. Loc. Gov't Code §§ 501.101 and 505.155.**

What are Permissible Type B Projects? (cont'd)

- Projects which need not create or retain primary jobs:
 - job training classes;
 - certain targeted infrastructure which promotes or develops new or expanded business enterprises.
 - limited to streets and roads, rail spurs, water and sewer utilities, and electric utilities, gas utilities, drainage, site improvements, and related improvements, telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico;
 - land buildings, equipment, facilities, improvements, and expenditures required or suitable for a career center, provided the area benefited is not located in the taxing jurisdiction of a junior college district;
 - professional and amateur sports, athletic facilities; entertainment, tourist, convention facilities; public parks and related open space improvements;
 - affordable housing;

Sec. 501.103. CERTAIN INFRASTRUCTURE IMPROVEMENT PROJECTS

- In this subtitle, “project” includes expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to:
 - (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements;
 - (2) telecommunications and Internet improvements; or
 - (3) beach remediation along the Gulf of Mexico.

Tex. Loc. Gov’t Code § 501.103.

WHAT ARE PERMISSIBLE TYPE B PROJECTS? (CONT'D)

○ **Projects which need not create or retain jobs (cont'd):**

- certain water supply facilities and water conservation programs with voter approval;
- development, improvement, expansion, or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses;
- Certain airport or railport facilities; and
- Development or construction of housing facilities for public state college. (Expires 9/1/2017).

What is a “Primary Job”?

- In 2003, the Texas Legislature required most Type A or Type B projects create or retain primary jobs.
- The term primary job means
 - a job that is ... available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and
 - is included in one of nearly sixteen (16) NAICS sector codes

WHAT IS A “PRIMARY JOB”?

- The NAICS sector code categories include:
 - crop production;
 - animal production;
 - forestry and logging;
 - commercial fishing;
 - support activities for agriculture and forestry;
 - mining;
 - utilities;
 - manufacturing;
 - wholesale trade;
 - transportation and warehousing;
 - information
 - securities, commodity contracts, and other financial investments and related activities;
 - scientific research and development services;
 - management of companies and enterprises;
 - Telephone call centers;
 - correctional institutions; and
 - A job included within National Security sector number 928110.

Sales Tax Proceeds for Promotional Purposes?

- Both Type A and Type B corporations may spend no more than ten percent (10%) of the corporate revenues for promotional purposes.
- Texas Attorney General Opinion GA-0086 (2003)
 - promotional purpose is a question of fact for the board of directors to resolve in the first instance;
 - the City Council could approve or disapprove of a particular promotional expenditure;
 - the Attorney General noted a corporation may not spend more than ten percent (10%) of its current annual revenues for promotional purposes in any given year. Yet, unexpended revenues specifically set aside for promotional purposes in past years may be expended for such purposes.

Can Type B Corporations Expend Sales Tax Proceeds for Job Training Classes?

- A corporation may spend tax revenue received under this Act for job training offered through a business enterprise only if the business enterprise has committed in writing to:
 - create new jobs that pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area; or
 - increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area.
- **Tex. Loc. Gov't Code Ann. § 501.162.**

Conflicts of Interest Statute

**Chapter 171 of the
Texas Local Government Code**

What conflict of interest laws apply to elected Texas city officials?

- The general conflict of interest law for Texas city officials is found in Chapter 171 of the Texas Local Government Code.
- Chapter 171 establishes the standard for determining when a city official has a conflict of interest that would affect his ability to discuss or vote on a particular item.
- Chapter 171 conflict of interest provisions apply to all local public officials. Within a city, “local public officials” are defined to include:
 - 1) elected city officials such as the members of the city council (whether paid or unpaid); and
 - 2) appointed city officials (paid or unpaid) who exercise responsibilities that are more than advisory in nature.

The Texas conflict of interest statute addresses two types of conflicts:

- **Business Entity Conflicts**: conflicts due to a city official's substantial interest in a "business entity" that has an issue before the city; or
- **Real Property Conflicts**: conflicts due to a city official's substantial interest in "real property" that would be affected by a city action.
- If an item is being considered by a city official that does not involve a business entity or real property, then chapter 171 conflict of interest laws would not be applicable.

What is considered a “substantial interest” in a business entity?

- Stock Interest: official owns 10 percent or more of the total voting stock
- Other Ownership Interest: official owns 10 percent or more or \$15,000 or more of the fair market value of the business entity
- Income Interest: official received 10 percent or more of her gross income for the previous year
- Close Family Member with any of the Above Interests: If a close relative of the city official has any of the above types of interest in a business entity. Close relatives are those persons within the first degree by consanguinity (blood) or within the first degree by affinity (marriage).

What is considered a “substantial interest” in real property?

- A person has a substantial interest in real property if he has:
 - A \$2,500 Ownership Interest in the Real Property: If the official has a \$2,500 or more legal or equitable interest in real property that would be affected by the city action.
 - A Close Family Member with a \$2,500 Ownership Interest in the Real Property: Close relatives are those persons within the first degree by consanguinity (blood) or within the first degree by affinity (marriage).



Conflict of Interests: Relatives

Is there a conflict of interest if a city official's close relative has a substantial interest in a business entity or in real property that is before the city council?

Yes, a city official is considered to have the same interest in a business entity or in a piece of real property that his close relatives have in that business entity or real property. In this context, close relatives of a city council member would include persons who are related to the city official within the first degree by consanguinity (blood) or within the first degree by affinity (marriage).

Father

Mother

Sons

Daughters

Spouse

Father-in-law

Mother-in-law

Son-in-law

Daughter-in-law

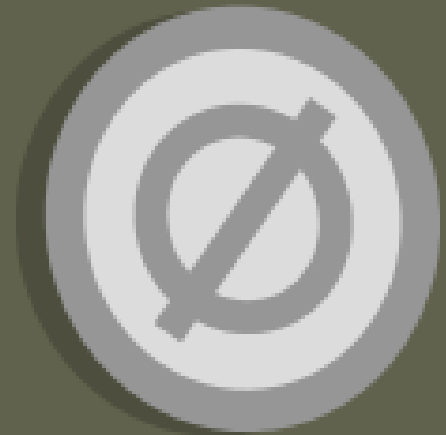
Stepsons

Stepdaughters

Have a Conflict of Interest Under Chapter 171?

If a city official has a conflict of interest he or she must take three (3) actions:

- 1) File an Affidavit
- 2) Abstain from Discussion on the Item
- 3) Abstain from Voting on the Item



May a city official deliberate about an issue for which he has a conflict of interest if he abstains from voting on the issue?

No. A city official may not discuss an issue for which he has a conflict of interest even if he abstains from voting on the item. If a conflict of interest exists, the city official must file the required affidavit, and both abstain from discussing the matter and abstain from voting on the item.



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