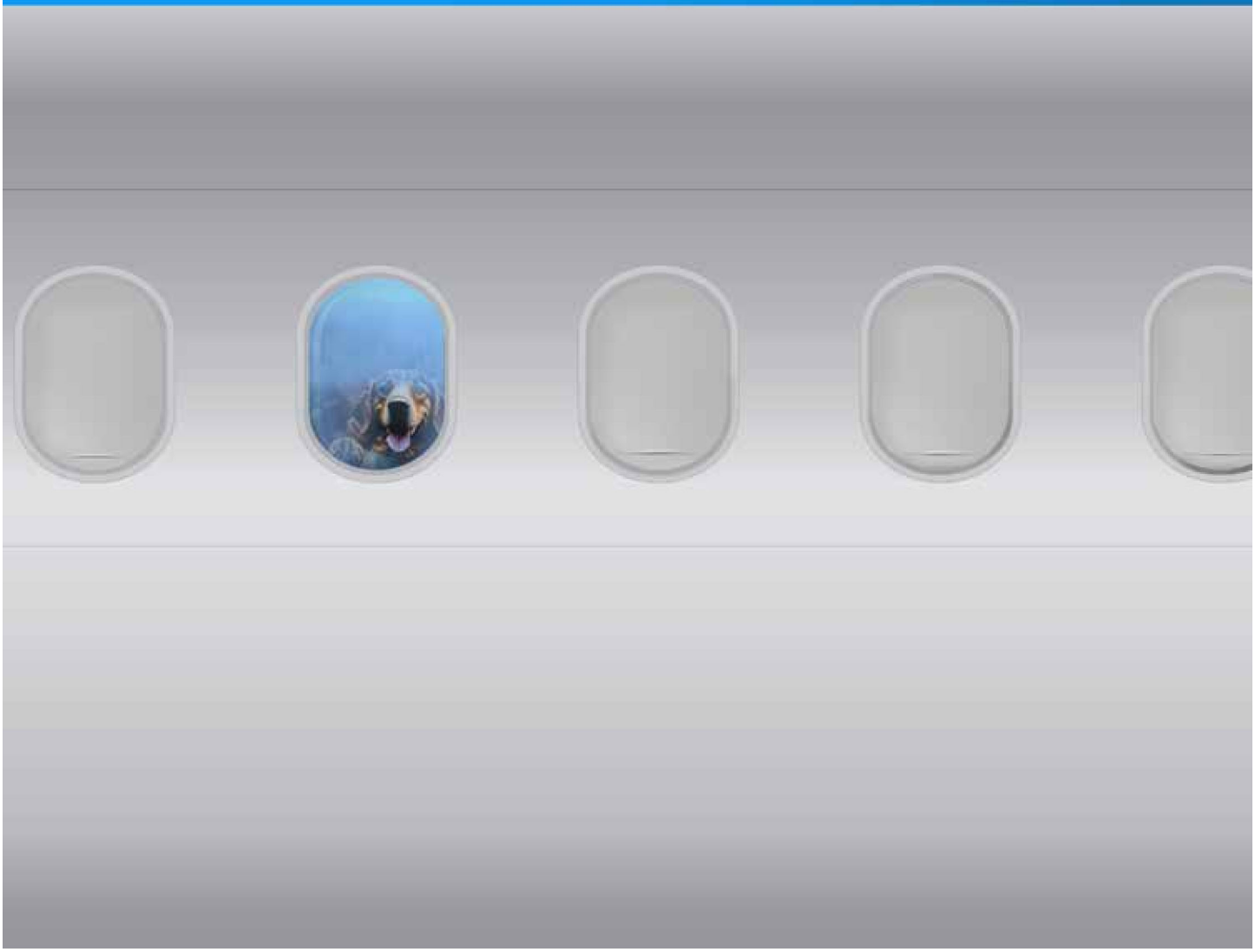
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Flying With Fido: A Brief Survey of Federal Service Animal Law



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FLYING WITH FIDO: A BRIEF SURVEY OF FEDERAL SERVICE ANIMAL LAW

By: Michelle Villareal, Deputy City Attorney, League City, Texas

Every year it seems that more of us are relying on the benefits of "emotional support" creatures, bringing them into previously animal-free environments. While these companions, four-legged or otherwise, undoubtedly provide great benefits, many are not "service animals" for purposes of federal law. Our author explains the regulations governing animals on airlines and related statutory nuances.

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THE PREROGATIVE TO UNSEAT: REMOVING COUNCILMEMBERS FROM COUNCIL COMMITTEES

By: Stephen K. Postema, City Attorney Ret., Ann Arbor, Michigan and Jennifer A. Richards, Assistant City Attorney, Ann Arbor, Michigan

Most city councilmembers comport themselves in a productive and cooperative manner. Occasionally, however, the city or county attorney will be called upon to evaluate the prospects for redressing unprofessional or unethical behavior by a councilmember. One such action may be to remove the member from a committee post. A thorough understanding of the rules and ramifications is required.

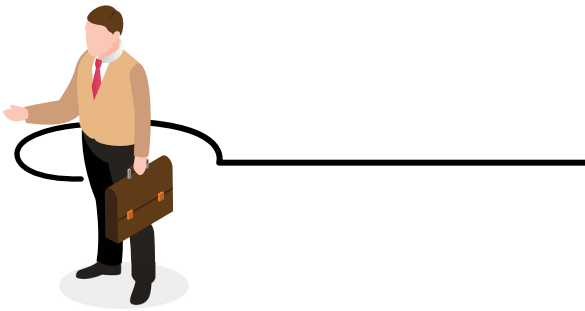
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"WE'RE HIRING, WE JUST NEED YOUR SOCIAL MEDIA LOGINS AND PASSWORDS"

By: Laura S. Burton, Police Attorney, Gastonia, North Carolina

Checking a job applicant's social media activity can provide a wealth of information, potentially revealing troublesome behavior and helping to avoid future problems. But such an inquiry triggers statutory and even constitutional issues, and many jurisdictions prohibit searching through a job seeker's non-public online activity.

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PRACTICE TIPS

By: KAREN L. HORNER,
City Attorney, Friendswood, Texas

New Councilmembers: Things They Wish They Knew Before Running for Office

INTRODUCTION

Each year, many of us have the possibility of training new members of the city council, who have volunteered to serve. The new members may have anticipated the long council meetings, the phone calls from constituents at all hours of the day and night, and the criticisms from those needing to be more informed. However, did they realize that with such noble volunteerism, they also signed up for potential criminal penalties? Yes, that is right, as city attorneys, we have the distinct privilege not only to welcome the new members but also to inform them of the various traps of which they need to be aware. The following are some of these traps, of which new councilmembers should become aware.

1. Open Meetings Act.
The Texas Open Meetings Act (zOMA) ensures government is transparent, open, and accountable to its citizens by requiring every regular, special, or called meeting of the city council be open to the public.[1] The definition of "meeting" is also broadly defined as:

(A) deliberation between a quorum of a governing body, or between a quorum of governing body and another person, during which public business or policy is discussed or considered or acted upon; or
(B) except as otherwise provided by this subdivision, a gathering:
(i) that is conducted by the governing body or for which the governmental body is responsible;
(ii) at which a quorum of members of the governmental body is present;
(iii) that has been called by the governmental body; and
(iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third person about the public business or policy over which the governmental body has supervision or control.[2]

The OMA, however, does not prohibit a councilmember from attending social gatherings, conventions, workshops, ceremonial events, or candidate forums if there is no formal action of the city council and any discussion of public business incidental to the event.[3] Additionally, there are a few limited exceptions to the requirement that all meetings must be open to the public, which are known as executive sessions and include consultations with attorneys as well as deliberations regarding real property, personnel matters, security devices, and disasters.[4]

Pursuant to the OMA, the city must post notice of the date, time, place, and subject of each meeting with sufficient detail to alert the public what will be discussed.[5] Notice of each meeting must be posted at least 72 hours[6] before the meeting on the city's website, in a place readily accessible to the general public in city hall.[7] The public must be afforded the opportunity to speak on an item on the agenda before or during the city council's consideration of the item.[8] The OMA allows councilmembers to make reports about items of community interest[9] without the necessity of posting such items on the agenda.[10] Violations of the OMA could result in civil and/or criminal penalties, including fines and/or onfinement, and including those in the table below:[11]

2. Public Information Act.
The policy behind the Texas Public Information Act ("PIA") is that "each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees."[12] The definition of "public information" is also broad and includes any information collected, assembled, or maintained by or for a governmental body, regardless of its format. It includes information that is maintained in paper, tape, microfilm, video, electronic data held in computer memory, as well as other mediums specified under the PIA.[13] Similarly, the definition of "governmental body" is very broad so as to encompass not only the city council but also the boards and commissions of the city.[14] As such, the city council and its boards and commissions are subject to the PIA and must comply with its provisions.

The PIA is only activated by a written request for public information.[15] While the city has developed a form for the public to use to request public information, the city cannot require that requestors use such form. The PIA requires that the public direct its open records requests to the "applicable officer," who is the city secretary or a person designated by the

Violation	Fine	Confinement
Engaging in a prohibited series of communications	$100 – $500	1 month – 6 months
Participating in an unauthorized closed meeting	$100 -- $500	1 month – 6 months
Participating in a closed meeting without a certified agenda or a recording	Up to $500	N/A
Disclosure of certified agenda or recording	Up to $2,000	Up to 180 days

city secretary.[16] Additionally, the city cannot ask the requestor for the purpose of or motive behind the request but may only ask the requestor for proper identification and clarification of the type of information being requested.[17] Cities are not required to, and, in fact, most do not honor standing requests for information. Once a request is received, there are specific time frames to which the city must adhere, including when to provide the information, give notice of when the information will be available, and request an Attorney General opinion if the city seeks to withhold some of the requested information.[18] These deadlines are essential and must be followed in order for the city to be able to preserve privileged information. If an Attorney General opinion is requested, the Attorney General has 45 business days from the date the request was received from the governmental body to render an opinion unless the Attorney General gives notice that an additional ten-day period will be necessary.[19]

In providing the requested information, for inspection, by copy, or by referral to the exact internet location or URL address maintained on the city's website, the city is not generally required to create records that do not exist at the time of the request. Furthermore, if copies are requested, the city may charge for the copies made pursuant to a schedule adopted by the city, which schedule is in conformance with the rules governing the PIA.[20]

Violations of the PIA could result in civil and/or criminal penalties. The failure to give access to public information or the release of confidential information is punishable by a fine of up to $1,000, a possible six- month jail term, or both.[21] Illegal destruction, removal, or alteration of public information is punishable by a fine between $25 and $4,000, three days to three months of jail time, or both.[22]

3. Conflicts of Interest.

Chapter 171 of the Local Government Code provides the statutory authority which regulates conflicts of interest of local public officials who exercise responsibilities beyond those that are merely advisory in nature.[23] Such authority applies to members of the city council and governs the extent members of the council may participate in decisions on matters in which a member may have a special interest.[24]

A conflict under Chapter 171 is measured by the interest a public official or certain relatives of the public official[25] ("covered relatives") have in a business entity or in real property. Such an interest must be substantial. A substantial interest pertaining to a business entity exists if a public official or a covered relative of a public official:

(1) owns 10 percent or more of the voting stock or shares of a business entity;
(2) owns 10 percent or more of the fair market value of a business entity;
(3) owns $15,000 or more of the fair market value of a business entity; or
(4) receives funds from a business entity, which exceed 10 percent of the person's gross income received in the previous year.[26]

Likewise, a public official or his covered relative has a substantial interest in real property "if the interest is an equitable or legal ownership with a fair market value of $2,500 or more."[27]

If a substantial interest exists, the public official shall not only "file [with the city secretary], before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest" but also abstain from further participation in the matter if:

(1) in the case of a substantial interest in a business entity, the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
(1) in the case of a substantial interest in real property, 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.[28]

However, if a public official files an affidavit and if a majority of the public officials of the city council likewise files affidavits of similar interests on the same matter, none of the public officials are required to abstain from further participation.[29] On the other hand, it is a class A misdemeanor if an official fails to file an affidavit or fails to refrain from participating in the discussion of matter in which the official has filed an affidavit.[30]

In summary, once a public official becomes aware that he has a conflict of interest, the official should immediately[31] file an affidavit and abstain from any discussion, deliberation, decision, and vote on the matter since there are criminal penalties associated with knowingly violating the provisions of Chapter 171.[32]

4. Conflicts Disclosure.

Chapter 176 of the Texas Local Government Code creates a filing requirement for local government officers, including the members of the city council, and certain persons, who enter or seek to enter into a contract with a city or other local government entity[33] ("vendor").[34] Under this law, a councilmember must file a conflicts disclosure statement if:

(1) a vendor enters into a contract with the city or the city is considering entering into a contract with a vendor; and
(2) during the 12-month period preceding the date that the councilmember becomes aware of such a contract or possible contract,
  (A) such vendor has an employment or other business relationship with a councilmember or a family member of the councilmember[35] that results in the councilmember or family member receiving taxable income, other than investment income, that exceeds $2,500;
  (B) such vendor has given to the councilmember or their family member one or more gifts that have an aggregate value of more than $100[36]; or
  (C) such vendor has a family relationship[37] with the councilmember.[38]

Continued on page 24



Karen Horner joined the City of Friendswood, Texas, as its City Attorney in 2022. Previously, she was the City Attorney of the City of Baytown, where she started her municipal career over 30 years ago as an Assistant City Attorney. She is a member of the International Municipal Lawyers Association and a member and past president of the Texas City Attorneys Association (TCAA). She has a Merit Certification in Municipal Law from TCAA and is a member of the College of the State Bar of Texas. In her practice, she advises the City Council, the City Manager, and City boards and departments on the various aspects of municipal law.

The conflicts disclosure statement, which has been adopted by the Texas Ethics Commission, requires disclosure of the above-referenced business relationships and gifts together with an acknowledgment that the disclosure applies to the councilmember's family and the statement covers the 12-month period described hereinabove.[39] The form must be signed and filed with the city secretary not later than 5:00 p.m. on the seventh business day after the date the councilmember either (i) becomes aware of the facts that require the filing of a conflicts disclosure statement or (ii) receives notice from the city of the alleged violation.[40] Failure to complete and file a statement when required is a criminal offense.[41] An offense is a Class C misdemeanor if the contract amount is less than $1,000,000; a Class B misdemeanor if the contract amount is more than $1,000,000 but less than $5,000,000; and a Class A misdemeanor if the contract amount is at least $5,000,000.[42]

Additionally, vendors must complete and file with the city secretary conflict of interest questionnaires developed by the Texas Ethics Commission and attached hereto, to disclose the above-referenced business relationships and gifts.[43] These questionnaires must be timely filed and updated not later than seven business days after the date of an event that would make a statement in the questionnaire incomplete or inaccurate.[44] Criminal penalties can also be assessed against these vendors.[45]

Summary

While these laws and their penalties may be daunting for new councilmembers, the provisions are overwhelmingly important: they ensure that city councils--a form of government closest to the people--remain transparent and accountable to their constituents

Notes

1. Tex. Gov't Code Ann. § 551.002.
2. Id. § 551.001.
3. *Id.*
4. *Id.* §§ 551.071, *et seq.*
5. *Id.* § 551.041.
6. Emergency meetings must be posted and given to the news media at least one hour before the meeting is convened. *Id.* § 551.0415.
7. *Id.* § 551.050.
8. *Id.* § 551.007.
9. Items of community interest are limited to the following:
   1. Expressions of thanks congratulations or condolences;
   2. Information regarding holiday schedules;
   3. An honorary recognition of a public official, employee or citizen;
   4. A reminder about an upcoming city event;
   5. Information regarding a social, ceremonial or community event that was or is scheduled to be attended by a councilmember; and
   6. Announcements involving an imminent threat to the public health and safety of the citizens.

   Id. § 551.0415.
10. *Id.* § 551.0415.
11. *Id.* §§ 551.143 – 551.146.
12. Tex. Gov't Code Ann. §552.001.
13. *Id.* §552.002.
14. *Id.* § 552.003.
15. *Id.* § 552.301.
16. *Id.* § 552.234.
17. *Id.* § 552.222.
18. *Id.* §§ 552.301, *et seq.*
19. *Id.* § 552.306.
20. *Id.* §§ 552.261, *et. seq.*
21. *Id.* §§ 552.352, 552.353.
22. *Id.* §552.351.
23. Tex. Loc. Gov't Code Ann. §171.001(1).
24. *Id.* § 171.004.
25. Only those relatives who are related within the first degree of consanguinity or affinity can cause a public official to have a conflict of interest under Chapter 171 of the Texas Local Government Code. Such persons include, in general, a spouse, parent, child, parent-in-law, daughter-in-law, and son-in-law. *Id.* § 171.002 (c).
26. *Id.* §171.002 (a).
27. *Id.* §171.002 (b).
28. *Id.* §171.004(a), (b).
29. *Id.* 171.004(c).
30. *Id.* 171.003.
31. While no statutory or case law exists regarding the timing of the filing of an affidavit, it is the position of both the Texas Municipal League and the Texas Attorney General's Office that an affidavit should be filed immediately once the public official becomes aware of a conflict, or else risk criminal prosecution.
32. An offense for violating the statute is punishable by a fine not to exceed $4,000, confinement in jail for a term not to exceed one year; or both such fine and confinement. *Id.* §171.003(b); Tex. Penal Code §12.21.
33. Tex. Loc. Gov't Code Ann. § 176.003.
34. Note that if a vendor is the state, a political subdivision of the state, or the federal or a foreign government, neither such government nor its employees, when acting in their official capacities, are subject to the disclosure requirements. Tex. Loc. Gov't Code Ann. § 176.002 (b).
35. A "family member" includes a father, mother, son, daughter, spouse, father-in-law, mother-in-law, son-in-law, and daughter-in-law. *Id.* §176.001(2). Also, please note that an ex-spouse is also considered a family member as long as a child of the marriage is living. Tex. Gov't Code Ann. § 573.024(b).
36. Note that conflicts disclosure statements are not required for gifts that are given (i) as a political contribution, or (ii) as food, lodging, transportation or entertainment accepted as a guest of a vendor. Tex. Loc. Gov't Code Ann. § 176.003 (a-1). Similarly, conflict disclosure statements are not required if the vendor is an administrative agency. *Id.* § 176.003 (a-2).
37. A "family relationship" includes a "family member" as well as a grandfather, brother, sister, grandson, granddaughter, grandmother, uncle, niece, nephew, great-grandson, great-granddaughter, great-grandfather, great-grandmother, spouse's grandfather, spouse's granddaughter, brother-in-law, sister-in-law, spouse's grandson, and spouse's grandmother. *Id.* § 176.001.
38. *Id.* § 176.003 (a).
39. *Id.*, § 176.003 (e).
40. *Id.* § 176.003 (b).
41. *Id.* § 176.013.
42. Tex. Loc. Gov't Code Ann. §176.013 (c).
43. *Id.* § 176.006 (a).
44. *Id.* §176.006 (d).
45. *Id.* § 176.013.