



MINUTES
CITY COUNCIL WORKSHOP MEETING
JULY 18, 2023

CALL TO ORDER – Roll Call and Determination of a Quorum

The Parker City Council met in a meeting on the above date at Parker City Hall, 5700 E. Parker Road, Parker, Texas, 75002.

Mayor Lee Pettie called the workshop to order at 5:30 p.m. Mayor Pro Tem Michael Slaughter and Councilmembers Todd Fecht, Terry Lynch, Amanda Noe and Jim Reed were present.

Staff Present: City Administrator Luke Olson and City Attorney Amy J. Stanphill

INDIVIDUAL CONSIDERATION ITEMS

TEXAS OPEN MEETINGS ACT AND ETHICS OVERVIEW

City Attorney Stanphill reviewed the **TEXAS OPEN MEETINGS ACT AND ETHICS OVERVIEW** PowerPoint. *[See Exhibit 1 – “TEXAS OPEN MEETINGS ACT AND ETHICS OVERVIEW PowerPoint”, dated July 18, 2023.]*

Discussion and questions followed.

ADJOURN

Mayor Lee Pettie adjourned the meeting at 5:49 p.m.



APPROVED:

Mayor Lee Pettie

ATTESTED:

Patti Scott Grey, City Secretary

Approved on the 1st day
of August, 2023.



TOMA and Ethics Overview

JULY 18, 2023

Exhibit 1



Outline

- Texas Open Meetings Act
 - General Application
 - Quorum Rules
- Ethics
 - Conflict of Interest/Recusal
 - Gifting issues



Texas Open Meetings Act

TEXAS GOVERNMENT CODE CHAPTER 551

TOMA - General Requirements

- ▶ All regular, special, and called meetings of a governmental body shall be open to the public, except as provided by the Act.
- ▶ Elements:
 - ▶ (1) Governmental Body; and
 - ▶ (2) that body is meeting.

TOMA – “Meeting”

- ▶ A “meeting” requires:
 - ▶ A gathering of a quorum of the governmental body; and either:
 - ▶ Deliberation about the governmental body’s public business or formal action taken by the governmental body; or
 - ▶ An opportunity provided by the governmental body for members to ask about, speak about, or listen to information relating to public business.
- ▶ A gathering of a quorum at a social event, convention, workshop, ceremonial event, or press conference is NOT a meeting provided:
 - ▶ No formal action is taken
 - ▶ Any discussion of public business is incidental to the authorized event.
 - ▶ Where City staff has prior knowledge of one of these events, a notice of potential quorum will still be posted.

TOMA – Quorum Requirements

- ▶ Governmental Body meets through a quorum. For a Type A General Law City, the following provisions of the Texas Local Government Code apply:
 - ▶ Section 22.039: “A majority of the number of aldermen [councilmembers] established by Section 22.031 for the municipality constitutes a quorum. However, at a called meeting or at a meeting to consider the imposition of taxes, two-thirds of the number of aldermen established by that section constitutes a quorum unless provided otherwise.”
 - ▶ Section 22.031 (b): “If the municipality is not divided into wards, the governing body consists of a mayor and five aldermen who are elected by the qualified voters of the municipality, and the provisions of this subchapter relating to proceedings in a ward apply to the whole municipality.”
 - ▶ The Mayor does not count towards a quorum. See Section 22.039 re: aldermen.

TOMA – Quorum Req's Continued

- ▶ The Mayor is the Presiding Officer and the Mayor Pro Tem acts in the Mayor's absence. However, the Mayor Pro Tem retains voting rights.
- ▶ For regular meetings of the Parker City Council:
 - ▶ Mayor plus 3 councilmembers or 4 councilmembers.
- ▶ For special called meetings and a tax meeting of the Parker City Council:
 - ▶ Mayor plus 4 councilmembers or 5 councilmembers.
- ▶ If members leave during the meeting, resulting in a loss of a quorum, the meeting must be recessed until a quorum is again present.
- ▶ A vacancy on council does not affect the above required quorum requirements.

TOMA – Notice Required

- ▶ Shall given written notice of the:
 - ▶ Date
 - ▶ Hour
 - ▶ Place
 - ▶ Subjects to be considered at the meeting
- ▶ Timeframes:
 - ▶ Generally, 72 hours before a meeting
 - ▶ In an emergency (imminent threat or reasonably unforeseeable situation), 2 hours before the meeting
- ▶ Locations:
 - ▶ Bulletin Board with convenient public access
 - ▶ City Website

TOMA – Closed Meetings

- ▶ Section 551.101 states the requirements for holding a closed meeting. It provides:
 - ▶ If a closed meeting is allowed under this chapter, a governmental body may not conduct the closed meeting unless a quorum of the governmental body first convenes in an open meeting for which notice has been given as provided by this chapter and during which the presiding officer publicly:
 - ▶ (1) announces that a closed meeting will be held, and
 - ▶ (2) identifies the section or sections of this chapter under which the closed meeting is held
- ▶ Closed/Executive Session are only allowed where expressly authorized by statute.
 - ▶ TOMA contains more than 25 fact specific exceptions to the general requirement that meetings be open to the public.
 - ▶ Limited only to the purpose of discussion/deliberation; any vote/final action must be conducted in an open meeting.
- ▶ Most commonly used exceptions: Attorney consultations, Deliberations about personnel matters, and deliberations about real property.
- ▶ Must keep a Certified Agenda or recording, which must be preserved for at least 2 years.
- ▶ Council has a right to go into closed session on any item on a posted agenda, so long as one of the exceptions apply and the exception is announced.

TOMA - Consequences

- ▶ Actions taken without proper notice are voidable.
 - ▶ A court may void any action taken in violation of the Act.
 - ▶ Individuals may sue to prevent threatened actions in violation of the Act.
 - ▶ Improperly noticed actions may be ratified at a subsequent meeting where the subject matter has been properly noticed.
- ▶ Knowing violation could lead to individual criminal penalties in the following circumstances:
 - ▶ Failing to keep a certified agenda or recording of closed meeting
 - ▶ Unlawfully disclosing a certified agenda or recording
 - ▶ Holding or participating in an illegal closed meeting
 - ▶ Participating in a Walking Quorum

TOMA – Walking Quorum

§ 551.143 PROHIBITED SERIES OF COMMUNICATIONS; OFFENSE; PENALTY.

(a) A member of a governmental body commits an offense if the member:

(1) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by [TOMA] and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members, and

(2) knew at the time the member engaged in the communication that the series of communications:

- (A) involved or would involve a quorum; and
- (B) would constitute a deliberation once a quorum of members engaged in the series of communications.



§ 551.143 PROHIBITED SERIES OF COMMUNICATIONS; OFFENSE; PENALTY.

- ▶ (b) An offense under Subsection (a) is a misdemeanor punishable by:
 - ▶ (1) a fine of not less than \$100 or more than \$500;
 - ▶ (2) confinement in the county jail for not less than one month or more than six months; or
 - ▶ (3) both the fine and confinement.

TOMA – Walking Quorum Cont.

- ▶ Caution! A walking quorum can be achieved through:
 - ▶ In-person meetings;
 - ▶ Telephone calls;
 - ▶ Texts;
 - ▶ Emails; and
 - ▶ Any combination thereof.



Ethical Considerations

Conflict of Interest

- ▶ State-mandated rules for local officials found in Chapter 171 of the Texas Local Government Code
 - ▶ Governmental Bodies can pass more restrictive policy/rules
- ▶ General Rule: Public Officials are prohibited from participating in and voting on 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 interest on the business that is distinguishable from the effect on the public; or
 - ▶ It is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from the effect on the public.



Conflict of Interest “Substantial Interest”

- ▶ Section 171.002 defines substantial interest as the following:
- ▶ For Businesses [subsection (a)]:
 - ▶ Ownership of 10% or more of the voting stock or shares of the business entity;
 - ▶ Ownership of 10% or more or \$15,000 or more of the fair market value of the business entity; or
 - ▶ Receipt of funds from the business entity that exceed 10% of the person's gross income for the preceding year.
- ▶ For Real Property [subsection (b)]:
 - ▶ An equitable or legal ownership interest with a fair market value of \$2,500 or more.



Conflict of Interest

Substantial Interest of Family Member

- ▶ Section 171.002(c) extends “substantial interest” to the family members of the public official within the first degree of:
- ▶ Consanguinity (blood)
 - ▶ Parents, children
- ▶ Affinity (marriage)
 - ▶ Spouse, parent-in-law, child-in-law, step-children



Conflict Procedure

- ▶ Where a conflict arises, must file an affidavit with the City Secretary stating the nature and extent of the interest *prior* to the vote or decision on the matter.
- ▶ Must abstain from further participation in that matter
 - ▶ Includes deliberations



Conflict of Interest Penalty

- ▶ Action itself is not voidable *unless* the action taken would not have passed without the vote of the person who violated the provision.
- ▶ A *knowing* violation of these rules is a Class A misdemeanor.
- ▶ Punishable by a fine up to \$4,000 and/or up to 1 year in a county jail.



Receiving Gifts

Texas Penal Code Chapter 36

- ▶ Section 36.02 defines Bribery and classifies it as a 2nd degree felony.
 - ▶ Cannot *intentionally or knowingly* **offer or accept** *any benefit* as consideration for a decision, vote, etc.
 - ▶ Not a defense that official wasn't qualified or lacked jurisdiction
 - ▶ Not a defense that benefit was not offered or received until after the decision/vote/etc.
- ▶ Section 36.09 makes it an offense to offer such a benefit as defined above and classifies it as a Class A misdemeanor.



Receiving Gifts

Specific Exclusions

- ▶ Section 36.10 provides specific exclusions to the bribery offense:
 - ▶ A gift conferred on account of a personal, professional, or business relationship independent of the official status of recipient;
 - ▶ A political contribution under the Election Code;
 - ▶ A gift derived from a function in honor or appreciation if reported over \$50 and benefit is solely to defray expenses accrued in the performance of duties which are non-reimbursable;
 - ▶ A gift to a member of the legislature required to be reported under the Government Code
- ▶ **An item with a value of less than \$50.00, excluding cash or negotiable instrument**
- ▶ An item issued by a governmental entity that allows use of property or facilities owned/operated by said entity;

Gifts of Public Resources Prohibited

- ▶ Texas Constitution, Article III:

- ▶ Section 44:

The legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; provided that the provisions of this Section shall not be construed so as to prevent the grant of aid in cases of public calamity.

- ▶ Section 52(a):

Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town, or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association, or company.

Gift of Public Resources - Exception

- ▶ An expenditure of public funds for a public purpose is not prohibited.

See Tex. Att'y Gen. Op. GA-0076 (2003).



Gift of Public Funds

Three Part Test

- ▶ Texas Supreme Court established a three-part test to determine whether a payment violates Article III:
 - ▶ (1) The purpose of the payment is to accomplish a public purpose, not benefit a private party;
 - ▶ (2) The governmental entity must retain public control over the funds to ensure the public purpose is accomplished and the public's investment is protected; and
 - ▶ (3) The governmental entity must ensure that it receives a return benefit.
- ▶ *Tex. Mun., League Intergovernmental Risk Pool*, 74 S.W.3d 377, 384 (Tex. 2002).

THE END

RESOURCES

- ▶ **TEXAS ATTORNEY GENERAL ONLINE:**
TEXAS OPEN MEETINGS ACT & PUBLIC INFORMATION ACT TRAINING VIDEOS & HANDBOOKS:
<https://www.texasattorneygeneral.gov/open-government/governmental-bodies/pia-and-oma-training-resources>
- ▶ **TEXAS ETHICS COMMISSION:**
<https://www.ethics.state.tx.us>
<https://www.ethics.state.tx.us/data/resources/guides/Gofficers-employEthics.pdf>
- ▶ **TML: HANDBOOK FOR MAYORS AND COUNCILMEMBERS (2022):**
<https://www.tml.org/186/Handbook-for-Mayors-and-Councilmembers-2>