



City of Portland
Elected & Appointed Officials
Handbook

March 17, 2020



Contents

What it Means to be an Appointed or Elected Official	3
Council-Manager Form of Government	4
Elected Officials – Frequently Asked Questions.....	6
Appointed Board Members & Commissioners – Frequently Asked Questions	9
Meeting Basics and Robert’s Rules of Order.....	12
Texas Open Meetings Act	17
Public Information Act	22
Ethics and Conflict of Interest.....	24
Media Interactions and Social Media Guidelines	27
Conclusion and Resources	30



What it Means to be an Appointed or Elected Official



The Benefits of Office

The benefits of service on city council or a Community Board or Commission are many and include:

- Making a difference in your community
- Developing and enhancing leadership capabilities
- Having a voice
- Expanding networks
- Learning new skills

The individuals who serve on the City of Portland’s city council and Boards and Commissions are among the most respected and appreciated volunteers in the community.

The Responsibilities of Office

Council members and Board and Commission members perform a variety of tasks and are responsible for staying informed, complying with established policies and regulations and providing high-quality service to the community.

Some of the duties you will be expected to perform as an appointed or elected include:

- Attending meetings regularly.
- Understanding the function of the commission on which you serve.
- Familiarizing yourself and ensuring compliance with regulatory statutes such as the Texas Open Meetings Act and the Public Records Act (covered in this Handbook).
- Acting responsibly and efficiently when using City assets, including personnel, time, property, equipment and funds.
- Maintaining the highest ethical standards.
- Respecting the voice and spirit of your appointed or elected peers and the community you serve.



Council-Manager Form of Government



Overview and History

The council-manager form is the most popular structure of government in the United States among municipalities with populations of 2,500 or more. It is one of several ways U.S. municipalities and counties can organize. Under this form, residents elect a governing body—including a chief elected official, such as a mayor or board chairperson—to adopt legislation and set policy. The governing body then hires a manager or administrator with broad executive authority to carry out those policies and oversee the local government’s day-to-day operations.

Born out of the U.S. progressive reform movement at the turn of the 20th century, the council manager form was created to combat corruption and unethical activity within local government by promoting nonpolitical management that is effective, transparent, responsive, and accountable. The council-manager form of government recognizes the critical role of elected officials as policymakers, who focus on mapping out a collective vision for the community and establishing the policies that govern it. The form also recognizes the need for a highly qualified individual who is devoted exclusively to the delivery of services to residents. Think about the structure used by many corporations, in which the board of directors hires an experienced CEO who is granted broad, executive authority to run the organization. While these boards establish the company’s overall policy direction, the CEO oversees implementation of that policy.

Role of the Mayor

In Portland, as in 69 percent of council-manager communities, the mayor is a voting member of the governing body who is directly elected by the citizens. The mayor is the public face of the community who presides at meetings, assigns agenda items to committees, facilitates communication and understanding between elected and appointed officials, and assists the governing body in setting goals and advocating policy decisions.

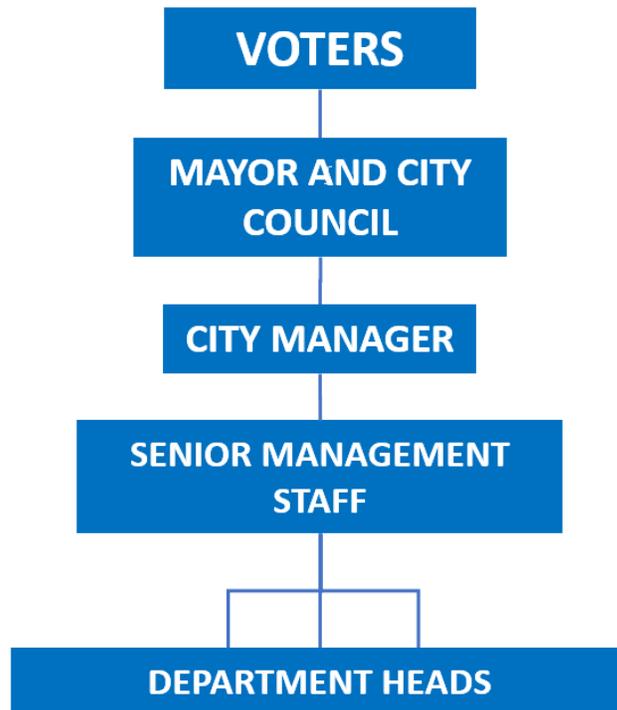
Role of the Council

Under the council-manager form, the council is the legislative body and the community’s policy maker. Power is centralized in the council, which approves the budget and adopts local laws and regulations. The elected officials on the council also focus on the community’s big-picture goals, such as community growth and sustainability. The council hires a professional city manager based on that person’s education, experience, skills, and abilities and NOT on their political allegiances. The council supervises the manager’s performance, and if that person is not responsive and effective in their role, the council has the authority to remove her or him at any time.

Role of the Manager

Oversight of the day-to-day operations of the local government organization is the responsibility of the city manager, allowing the mayor and council members to devote time to policy making. The city manager is an at-will employee who, subject to any employment agreement, can be removed by a majority of the elected officials. This person:

- Prepares a budget for the governing body's consideration.
- Recruits, hires, supervises, and terminates city staff.
- Serves as the governing body's chief advisor by providing complete and objective information about local operations, discussing options, offering an assessment of the long-term consequences of decisions, and making policy recommendations.
- Carries out the policies established by the governing body.





City Council – Frequently Asked Questions



General Information

Am I eligible to run for City Council?

To run for city council in Portland, you must: be a citizen of the United States; be at least 21 years old on the date of the election; and have lived in the State of Texas for at least 12 consecutive months prior to the filing date for the election, and in Portland for at least 12 months prior to the filing date for the election.

In determining whether a person has complied with the twelve (12) month city residency requirement, residence in an area while the area was not part of Portland shall be treated as residence within Portland if such area was annexed by Portland less than twelve (12) months prior to the council election for which a person seeks to qualify for office.

If any member of the council shall come to not possess any of the above qualifications or be convicted of a felony or cease to reside in the city limits of Portland, the member's office shall immediately become vacant. If any member is absent from three consecutive regular meetings without explanation acceptable to a majority of the other members, the member's office shall be declared vacant at the next regular meeting of the council. (City Charter, Section 2.04)

When are Council meetings held?

Per our City Charter (Section 2.14) the City of Portland holds meetings of the council twice per month. The time and place are set by ordinance. Current ordinance states that city council meetings take place on the first and third Tuesdays of each month at 7:00 p.m.

Do the Mayor and Councilmembers receive compensation?

Each member of the council receives twenty-five dollars (\$25.00) for each regular or special meeting attended by the member, and the mayor receives fifty dollars (\$50.00) for each regular or special meeting attended. Further, actual expenses may be allowed when on official business. On each September 30th, compensation for council members and the mayor shall be adjusted based upon changes to the Consumer Price Index for All Urban Consumers (CPI-U), but not more than five percent (5%) in any one year.

Chain of Command

Staff Reporting Relationships

The city manager is the chief administrative officer and is appointed by and reports to the city council. The manager is responsible for all administrative affairs within the City. The city council determines the salary and duties of the manager.

Per Charter, the city attorney is also appointed by the council. Currently, the responsibilities of city attorney are contracted by an outside entity rather than an in-house staff person.

The presiding judge and all associate judges of the municipal court are appointed by the city council. In Texas, municipal judges are appointed by a city's governing body, but they are considered a member of the state judiciary. This arrangement keeps judges free of political influence. Judges serve a two-year term and may not be removed during their term except for incompetence, corruption, misconduct, or malfeasance in office.

The city prosecutor is appointed by the city manager.

The deputy city manager, assistant city manager, and all other city employees are appointed by and are responsible to the city manager. The city manager may delegate the responsibility for selection, separation and day-to-day supervision of employees to department heads.

What role does the Mayor and Council have in administrative matters within the City organization?

Except for the purpose of investigations, the city council or its members are expressly prohibited from interference with administrative matters per City Charter (Section 2.11c). According to the Charter, "...the council shall deal with city officers and employees who are subject to the direction and supervision of the manager solely through the manager. Neither the council nor its members shall give orders to any such officer or employee, either publicly or privately."

Any concerns or requests regarding city operations, or personnel, from council members should be addressed directly with the city manager.

Who is Responsible – Council or Manager?

Who creates the annual city budget?

On or before the 15th day of August each year, the city manager shall submit to the city council a proposed budget and message for the ensuing fiscal year and (City Charter, Section 5.02).

What is Council's role in the annual city budget?

The council shall adopt the budget by ordinance on or before the 30th day of September (City Charter, Section 5.08). Prior to the budget adoption, the council typically receives multiple presentations from the city manager and staff regarding the contents of the proposed budget.

At the city manager's discretion, staff will often schedule a special council meeting to discuss annual priorities and receive city council members' direction regarding their budget preferences.

Who leads Council meetings?

Per Charter, the mayor presides at the meetings of the council and is recognized as the head of the city government for all ceremonial purposes and for receiving service of civil process and by the Texas governor for purposes of military law or other emergencies. The council elects from among its members a mayor pro tempore at the first meeting after the general election, to serve one year or until the mayor's successor has been duly elected and qualified. The mayor pro tempore serves for the mayor in the mayor's absence (City Charter, Section 2.03).

Who hires or fires department heads?

Per Charter, the city manager appoints and, when he/she deems it necessary, suspends or removes any city employees or appointive administrative officers.

Who is in charge during an emergency?

The mayor is the head of city government during times of emergency and is recognized as such by the governor for the purposes of military law or other emergencies.in accordance with state law. The powers of the mayor include the authority to declare a state of disaster, but such action may be subject to confirmation by the city council at its next meeting. These duties also include direction and control of actual disaster operations of the Portland Emergency Management Organization as well as the training of emergency management personnel.

In practice, City operations during an emergency are typically delegated to the City's emergency management coordinator who implements the City's Emergency Management Plan. Under the plan, specific duties and responsibilities are assigned to various department heads.

For more information, please see our City Charter, Section 5-1, Emergency management director.

Appointed Board Members & Commissioners – Frequently Asked Questions



General Information

What is the purpose of a Board or Commission and how does it integrate with City Council decisions?

Boards and Commissions are established with the goal of providing the city council with a technical review of information prior to a city council decision. Board members and commissioners are expected to be knowledgeable of the rules, regulations and City objectives that bear on the matters brought before them. Boards and commissions provide a first review and recommendation, from a technical standpoint, of cases which will likely go before the city council.

The city council reviews cases, including the technical recommendation from the board or commission, and any staff recommendations. The city council also weighs the overarching goals of the City, budgetary impacts, and/or political considerations when making final decisions.

The reasoning behind a board or commission's recommendation is a critical part of the body of information the city council must ultimately consider when approving or disapproving an application or request. Board and commission members are encouraged to explain their rationale for voting for or against a request or application so that those facts can be properly considered by the city council. Board and commission members should explain the rationale for their vote prior to tendering a vote on an issue, but most critically when voting against a request or application.

Ultimately, the city council may not agree with a recommendation of a board or commission, or, apply other facts and considerations to an issue that are outside the scope of the board or commission's deliberations. In such cases, the city council may set aside or reverse a board or commission's finding.

Am I eligible to be appointed to a Board or a Commission?

Regular board, commission and committee members must be at least 21 years of age, have resided within the City of Portland for at least 12 months, be registered to vote, not be in financial arrears to the city and be able to attend at least one regular evening meeting a month.

Do board members or commissioners receive compensation?

Board members and commissioners serve on a volunteer basis and do not receive compensation.

What boards and commissions exist in the City of Portland?

Planning and Zoning Commission (P&Z) – The city council appoints seven (7) qualified voters of the city to function as the planning and zoning commission. The P&Z advises and assists the council in the following ways:

- Master plan – The commission provides oversight of the City’s master plan for the physical development of the city.
- The commission assists City staff and makes recommendations as to capital improvements
- Platting of property – If a landowner desires to divide the same in two or more parts for the purpose of laying out any subdivision or addition to the city, the City may regulate the manner in which this is done.
- Cost of development – No expenditure of public funds shall be authorized for the development of privately-owned property situated within or beyond the city limits except for extensions of utilities or services to such areas. The planning and zoning commission adopts rules and regulations to provide for the development of proposed additions to the city, so they coincide with existing utilities, streets, grades and drainage.
- Zoning – The City has the power to divide the community into zones or districts for the purpose of regulating and controlling the height, size, bulk and use of buildings and property within such zones or districts.
- Minimum standards – Minimum standards for the construction and use of housing accommodations and other structures.

Planning and Zoning Commission regular meetings are held every second Tuesday of the month. Special meetings may be called by the chairperson.

Board of Adjustment

The city council appoints five (5) qualified voters to function as the board of adjustment. In addition to the above number, they [the council] appoint two (2) additional members to serve in the absence of any absent member of the board. The board of adjustment hears appeals of interested citizens and in appropriate cases and subject to appropriate principles, standards, rules and conditions and safeguards can make special exceptions to the terms of zoning regulations. The board may authorize variances from the strict application of the regulations if lawful under the laws of the State of Texas. Board of adjustment meetings and construction board of adjustment and appeals meetings are held on an as-needed basis.

Construction Board of Adjustment and Appeals

The construction board of adjustments and appeals hears appeals of decisions and interpretations of the building official and considers variances to the construction codes. This Board also serves as a building standards board which hears cases concerning unsafe or dangerous buildings or service systems. The city council appoints nine members to make up the board, two of which serve as alternates. The construction board of adjustment meets when called upon.

The Veterans Memorial Commission

The veterans memorial commission was created to oversee and make recommendations regarding the use and operation of the Portland Veterans Memorial. The commission consists of six members

appointed by the city council for two-year terms. The commission meets at the call of the chairperson.

Chain of Command & Staff Relationships

To whom do board members and commissioners report?

Board members and commissioners are appointed by, and are responsible to, the city council. During the course of a meeting of the body, members should defer to the chairperson for any issues related to business before the body.

What role do board members and commissioners have in administrative matters within the City organization?

Board members and commissioners should communicate solely through the city manager, or a designated staff liaison, to ask questions or share any concerns regarding city operations or personnel. Board members and commissioners have no authority to give orders to any city officer or employee, either publicly or privately.

Meeting Basics and Robert's Rules of Order



General Information

What is a Quorum?

A quorum is the minimum number of members needed to officially conduct business. The quorum may be set by state law, the City Charter, the board's by-laws, or Robert's Rules of Order. Generally, a quorum is a majority of the members of a board or committee unless a different quorum is fixed by by-laws or by rule of the parent body. Approval of an action, except as otherwise provided by law, rule or regulation, requires a majority vote of persons legally entitled to vote, excluding abstentions, at a meeting at which a quorum is present.

General Purpose of Rules of Order

For meetings of the City's boards and governing bodies to function properly and in a fair and orderly manner, certain rules and procedures must be followed. Rules of Procedure (Rules of Order) refer to written rules of parliamentary procedure formally adopted by an organization that relate to the orderly transaction of business in meetings and to the duties of officers.

Public Participation

All council, boards and commissions meetings include opportunities for public comment on agenda items and public hearings. Members of the public may sign up to speak on regular agenda items by signing up with the recording secretary. Members of the public are also able to speak on items posted as a public hearing. At the discretion of the mayor or chairperson, speakers generally have four minutes to address the board regarding the specific item. In all public meetings the overriding goal of the City is to encourage participation and free expression by members of the public.

Role of Chairperson

- As group leader, the chair influences group direction and options for setting goals.
- The chair provides a supportive environment for process, content, and group members.
- The chair coordinates activities of subcommittees.
- The chair sets the tone and pace for the group.
- If there is no appointed facilitator, the chair serves as facilitator and while in that role, remains neutral on content and focuses on process.
- The chair leads meetings by introducing items on the agenda, moving agenda items through the voting process, and ensuring that Robert's Rules of Order are followed.

Robert's Rules of Order

NOTE: While this review of parliamentary procedures has been designed to cover the most common situations a board member may encounter during a meeting, these procedures may not always apply. They may be superseded because of legal constraints if the meeting is a public hearing. However, these basic procedures are usually acceptable during most meetings. Answers to complicated procedural questions can be found in *Robert's Rules of Order*.

1. **Making a motion** – Before discussion of an issue by board members, a motion should be made and seconded. The making of a motion normally occurs following a presentation or description of the issue by a staff member or chairperson. After the motion is made and seconded, debate can be conducted. Example of the proper form of a motion is: “Mr./Madam Chairperson, I move the following...”
2. **Amending a motion** – Any motion may be amended as follows: “Mr./Madam Chairperson, I move that we amend the motion by adding, deleting, etc. the following...” The amendment must be seconded before discussion can ensue. When discussion ends, the amendment is voted on first. If the amendment passes, the original motion is then put to vote as amended. If the amendment fails, the original motion is put to a vote.
3. **Change by a Substitute Motion** – Another way to change an original motion is by use of the substitute motion. A substitute motion is simply an amendment that changes an entire sentence or paragraph. It must be seconded before discussion can take place. It may be amended and differs only from an amendment in that if the substitute motion passes, it eliminates the original motion.
4. **Table a Motion** – This motion is used to lay something aside temporarily to take care of a more urgent matter. It should not be used to prevent debate or to kill a question. To table an item requires a motion and a second. A vote is immediately taken without discussion. Once it has been decided to table an item, such item cannot be brought up again until the board votes to do so by a motion to “Take from the Table”, which must receive an affirmative vote. At that point, the item can be discussed and voted upon. A question laid on the table remains there until taken from the table or until the close of the next regular meeting; if not taken up that time, the question dies.
5. **Postpone a Motion** – Another method of delaying a decision on a matter is to postpone to a certain day, time, or to a certain event with a reasonably definable date, the consideration of a motion. This is accomplished by simply making a motion to postpone consideration of the motion until a definite future date or event and having it seconded. The motion to postpone is then open for discussion. Following discussion, a vote is taken. A motion to postpone indefinitely is a parliamentary strategy which allows members to dispose of a question without making a decision for or against.
6. **Point of Order** – Any time a member feels an incorrect procedure is being used, the member can interrupt with a point of order request which requires the chairperson to decide the correct procedure. The decision of the chairperson is final.
7. **Suspension of the Rules** – Occasionally, board members may want to discuss a business item without the constraints of any rules. Unless the by-laws require otherwise, two thirds (2/3)

vote of the members is needed to suspend the rules. This motion is not debatable and must be voted on upon being seconded.

Basic Format for Agenda Items

Boards or Commission meetings are required to have a written published agenda. The meeting is governed by the agenda and the agenda constitutes the body's agreed-upon road map. Each agenda item can be handled by the chair in the following basic format:

- **First**, the chair should clearly announce the agenda item number and should clearly state the subject. The chair should then announce the agenda format that will be followed.
- **Second**, following that agenda format, the chair should invite the appropriate people to report on the item, including any recommendation they might have. The appropriate person may be the chair, a member of the governing body, a staff person, or a committee chair charged with providing information about the agenda item. In most cases, a City staff member will present the agenda item and make a recommendation to the body.
- **Third**, the chair should ask members of the body if they have any technical questions for clarification. At this point, members of the governing body may ask clarifying questions to the people who reported on the item, and they should be given time to respond.
- **Fourth**, when appropriate, the chair may invite public comments or open the meeting to public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of each public speaker. At the conclusion of the public comments, the chair should announce that public input has concluded (or that the public hearing, as the case may be, is closed).
- **Fifth**, the chair should invite a motion from the governing body members. The chair should announce the name of the member who makes the motion.
- **Sixth**, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member who seconds the motion. It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach.
- **Seventh**, if the motion is made and seconded, the chair should make sure everyone understands the motion. This is done in one of three ways:
 1. The chair can ask the maker of the motion to repeat it;
 2. The chair can repeat the motion; or
 3. The chair can ask the secretary or the clerk of the body to repeat the motion.
- **Eighth**, the chair should now invite discussion of the motion by the members of the governing body. If there is no desired discussion or the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or a very brief discussion, the vote should proceed immediately, and there is no need to repeat the motion. If there has

been substantial discussion, it is normally best to make sure everyone understands the motion by repeating it.

- **Ninth**, the chair takes a vote. Each voting member should vote “For” or “Against,” the motion, or “Abstain” from the vote. Unless the rules of the body provide otherwise or unless a super-majority is required (as delineated later in these rules), a simple majority determines whether the motion passes or is defeated. While no member of a voting body can be forced to vote, members of an elected or appointed governing body should not abstain from a vote unless the member has a conflict of interest. When one is a part of a governing body, one has an implied responsibility to take a position on all matters before the body, even when the position may be personally uncomfortable or politically inconvenient. Similarly, members should not abstain because the member does not feel he/she has enough information to about the topic.
- **Tenth**, the chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this governing body.”

Motions

In most cases, City Agenda Bills include a staff recommendation and the proper action or motion that achieves the goal of the recommendation. If there is no recommendation, a member can offer motions, resolutions or ordinances using the following forms:

MAIN MOTION

- 1) I MOVE _____

AMENDMENTS

- 2) I MOVE to amend the motion by inserting ____ between ____ and ____.
- 3) I MOVE to amend the motion by adding ____ after ____.
- 4) I MOVE to amend the motion by striking out _____.
- 5) I MOVE to amend the motion by striking out ____ and inserting ____.
- 6) I MOVE to amend by striking out the motion and substituting the following _____.
- 7) I MOVE that this motion be referred to the ____ committee (commission).

PREVIOUS QUESTION

- 8) I MOVE the previous question (2/3 vote) (stops debate; orders immediate vote).

RECONSIDER

- (In order same day motion is made or at next regular meeting)
- (Mover must have voted with majority)
- (Not permitted in committee of the whole)

- 9) I MOVE to reconsider the vote by which ____ was voted. I voted with the majority.

AWARD OF CONTRACTS

- 10) I MOVE that the bid of ____ be approved for award, pending the signing of the contract and furnishing of required bonds, and that the city manager be authorized and directed to sign and the clerk to countersign the contract for and on behalf of the city.

INTRODUCTION OF ORDINANCE (FIRST READING)

- 11) I MOVE the introduction of an ordinance entitled (read from the agenda).

ADOPTION OF ORDINANCE (SECOND READING)

- 12) I MOVE the adoption of an ordinance entitled (read from the agenda).

ADOPTION OF RESOLUTION

- 13) I MOVE the adoption of a resolution entitled (read from the agenda).

PLANNING

- 14) I MOVE that the (council) adopt the findings of the planning commission made in Resolution No. ____ and further move the introduction of an ordinance entitled (read from the agenda).
- 15) I MOVE that the (council) disapprove the findings of the planning commission made in Resolution No. ____ and deny the application for change of classification of ____.



Texas Open Meetings Act



NOTE: The following is an abbreviated overview of the Texas Open Meetings Act. For more in depth review, please reference the Texas Municipal League’s, [“Texas Open Meetings Act Laws Made Easy.”](#)

Required Training

Elected or appointed governmental officials must have a minimum of one hour of training that has been prepared or approved by the OAG. Officials have 90 days after their election or appointment to complete the required training. In Portland, the city secretary coordinates training for all elected and appointed officials.

Conduct Governed by State Law

Texas Open Meetings Act (Ch. 551, Tex. Gov’t Code). Texas law requires that meetings of the city council be open to the public. In Portland, this requirement is extended to include all boards and commissions as well.

(a) Notices. A posted notice and an agenda of each city council and board or commission meeting is required to be posted on the City’s official bulletin board (in front of City Hall) at least 72 hours preceding the scheduled time of the meeting. Only those matters posted can be discussed and acted on by the governmental body. Agendas are also posted on the City’s website and can be downloaded at will or sent automatically upon request by any interested person.

(b) Minutes. Written minutes are required, or, in the alternative, a tape recording made of each open meeting. Minutes must state the subject of each deliberation and indicate each vote, order, decision or other action taken, and include a record of the votes cast for and against by each member. The City of Portland video records all public meetings. In most cases, the meetings are live-streamed online and on the City’s Public Access cable TV channel. Minutes are available to the public on the City’s website.

(c) Texas Open Meetings Act. The Act allows for closed or executive session meetings on a few limited subjects. Generally, boards and commissions will not have occasion or legal basis to meet in closed or executive session. Closed meetings are allowed only for the purpose of discussing pending litigation, consultation with an attorney, certain personnel matters, and the lease, sale or acquisition of land. Specific state law procedures control such closed meetings.

(d) Penalties. State law provides penalties for violations of the Open Meetings Act (Sec. 551.143 – 551.146). Conspiring to circumvent the provisions of the Open Meetings Act by meeting or

communicating in numbers less than a quorum or serially for the purpose of secret deliberations is a violation of the act.

When Does the Act Apply?

The Open Meetings Act (hereinafter “the Act”) generally applies when:

1. a quorum of a governmental body is present and discusses public business, or,
2. a quorum of a governmental body is present, and the governmental body is receiving information from or providing information to a third party.

When Does the Act NOT Apply?

1. A social gathering that is unrelated to the body’s public business, regional, state, or national conventions or workshops, ceremonial events, or press conferences, or the attendance by a quorum of a governmental body at a candidate forum, appearance, or debate to inform the electorate, as long as no formal actions are taken and the discussion of public business is only incidental to the event;
2. Attendance at a legislative committee or state agency meeting if the deliberations at the meeting by the members of the governing body consist only of:
 - a. Publicly testifying at the meeting,
 - b. Publicly commenting at the meeting, and
 - c. Publicly responding at the meeting to questions asked by a member of the legislative committee or agency;
3. When the staff or a member of the governing body of a city or county makes a report about items of community interest during a meeting of the governing body without giving notice of the subject of the report if no action is taken and possible action is not discussed regarding the information provided in the report. Items of community interest include:
 - a. Expressions of thanks, congratulations or condolence;
 - b. Information regarding holiday schedules;
 - c. An honorary or salutary recognition of a public official, public employee or other citizen, except that a discussion regarding a change in the status of a person’s public office or public employment is not an honorary or salutary recognition for purpose of this subdivision;
 - d. Reminder about an event organized or sponsored by the governing body;
 - e. Information regarding a social, ceremonial or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and
 - f. Announcement involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posing of the agenda.

Permissible Closed Meetings

There are a few exceptions listed within the Act, whereby a board may deliberate in a closed meeting. Before a closed meeting may be conducted, a quorum of the board must convene in open session, and the presiding officer must announce that a closed meeting will be held and then identify the section(s) of the Act under which the closed meeting will be held. The posted agenda must also state the specific provisions of the Act under which any closed meeting will be held and a general statement as to the topic to be discussed.

Provisions Authorizing Closed Meetings

Section 551.071: Consultations with Attorney – This section allows a board to consult with its attorney in a closed meeting to seek his or her advice on legal matters.

Section 551.072: Deliberations about Real Property – This section permits a board to deliberate the purchase, exchange, lease, or value of real property in closed meeting. However, this will only be allowed in closed meeting when public discussion of the subject would have a detrimental effect on the board's negotiation position with respect to a third party.

Section 551.073: Deliberations about Gifts and Donations – This section permits a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the governmental body. However, this is only allowed if deliberation in an open meeting would have a detrimental effect on the position of the board with a third party as explained above.

Section 551.074: Personnel Matters – This section permits a closed meeting to deliberate about officers and employees of the City. It is important to note the primary interest protected by this section is the protection of the reputation of the individual officer or employee under consideration. Moreover, this section only permits deliberation in closed meeting on individual officers or employees. Discussion about a class of employees must be conducted in open session.

Section 551.075: Deliberation about Security Devices – This section permits a closed meeting to deliberate the deployment, or specific occasions for implementation of security personnel or devices.

Section 551.087: Deliberation about Economic Development Negotiations This section permits a closed meeting to deliberate commercial or financial information the board has received from a business prospect that it seeks to have locate, stay, or expand in or near the territory of the board and with which it is conducting economic negotiations, or deliberating about an offer of an incentive to such a business prospect.

Other Circumstances

Gatherings of Less than a Quorum

Is a gathering of less than a quorum of a governing body subject to the Act? A gathering of less than a quorum of the governing body is not generally subject to the Act. However, if a standing

committee or subgroup of the governmental body meets and a discussion of public business occurs, it is advisable that such gatherings also be posted and conducted as open meetings.

Prohibited Series of Conversations

A member of a governing body commits a crime if that member knowingly engages in at least one communication among a series of communications that each occur outside of an authorized meeting that concerns an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than quorum of members but the members engaging in the series of communications constitute a quorum of the governing body. The member must know at the time of the communications that all the communications taken together would involve a quorum of the members and would constitute a deliberation once all members engaged in the series of communications.¹

Phone Conversations

May less than a quorum of members of the governing body talk over the phone without violating the Act? The mere fact that less than a quorum of members of a governing body talk over the phone does not in itself constitute a violation of the Act. However, if members are using telephone conversations to conduct their deliberations about public business, there may be potential violations. Physical presence in one place is not necessary to violate the Act. It remains a fact issue whether certain phone conversations between less than a quorum of members would be a violation of the Act.

Social Gatherings

It is common for several members to be present at a private or public gathering that is sponsored by another entity. The Act does not require that the gathering be treated as an open meeting if less than a quorum of members is present. However, as noted above, an official faces potential prosecution if such gatherings are used with the intent of circumventing a discussion of public business at an open meeting.

Social Media

For questions regarding potential violations of the Act through social media, see Chapter Nine, “Media Interactions and Social Media Guidelines.”

Penalties for Violating the Open Meetings Act

A member of a board commits an offense if a closed meeting is not permitted by the Act and the member knowingly: (1) calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting; (2) closes or aids in closing the meeting to the public, if it is a regular meeting; or (3) participates in the closed meeting, whether it is a regular, special, or called meeting.

¹ Texas Government Code. § 551.143(a) (as amended by S.B. 1640 of 86th Leg., R.S. Effective June 10, 2019.)

Also, a member of a board commits an offense if the member participates in a closed meeting knowing that a certified agenda of the closed meeting is not being kept or a tape recording of the meeting is not being made.

All violations of the Open Meetings Act are misdemeanors. Meeting in numbers less than a quorum with the intent to violate the law and participating in an illegal closed meeting are misdemeanors punishable by a fine between \$100 and \$500, confinement between one month and six months, or both a fine and confinement.² Meeting in an executive session knowing that a certified agenda or a recording is not being kept is a Class C misdemeanor punishable by a fine not to exceed \$500.³ Improperly disclosing the recording or certified agenda of an executive session is a Class B misdemeanor punishable by a fine not to exceed \$2,000, confinement for up to 180 days, or both a fine and confinement.⁴

² Id. § 551.143(b).

³ Id. § 551.154(b). See Tex. Pen. Code § 12.23 (Class C Misdemeanor punishment).

⁴ Id. § 551.146(b). See Tex. Pen. Code § 12.22 (Class B Misdemeanor punishment).

Public Information Act



NOTE: The following is an abbreviated overview of the Texas Public Information Act. For more in depth review, please reference the Texas Attorney General's website, <https://www.texasattorneygeneral.gov/open-government>.

General Information

Texas law provides that virtually all information held by a governmental body is subject to the Texas Public Information Act. If a request for information or copies of documents is received by city council, a commissioner, or a board member, the City Secretary should be notified for the proper procedure. Requests for public records can be made orally or in writing.

Required Training

Elected and appointed officials must have a minimum of one hour but no more than two hours of training. Newly elected or appointed officials have 90 days to complete the required training. In Portland, the city secretary coordinates training for all elected and appointed officials.

What is a Public Record?

- Any writings containing information relating to the conduct of the public's business that are prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
- Reports and files of city council, boards, commissions are open to the public under the Public Records Act.
- Materials distributed to the city council, board or commission, except privileged items, are public records and must be made available for inspection and copying "without delay."
- Assume that e-mail sent among members of the city council, Board or Commission, and staff are public information. (Don't send anything you don't want to read in the newspaper.)

Data on Mobile Devices

Information kept on a home computer or PDA or "smart phone" related to government business is subject to disclosure unless exempt. This includes e-mail and appointment calendars.

Personal information is not subject to disclosure and may be redacted to protect privacy interests.

What is NOT a Public Record?

- There are a wide variety of specific exemptions where records may be withheld and not disclosed to the public. The most often specific exemptions include:
 - Some preliminary drafts that are not retained in the ordinary course of business.
 - Pending litigation records.

- Some private personal information if disclosure would constitute unwarranted invasion of personal privacy (e.g., social security number, medical information, tax information).
- Some law enforcement records.

Penalties for Violating the Public Information Act

There are three provisions of the Public Information Act that have criminal penalties if violated: Failure to Give Access to Public Information; Release of Confidential Information; Illegal Destruction or Alteration of Public Information. Each carry fines and potential jail sentences of up to three or six months. Additional information may be found in Texas Government Code Section 552.307, 552.313, 552.314.



Ethics and Conflict of Interest



Core Concept

To ensure a fair and open government, as a board or commission member, you are subject to certain laws and regulations concerning your conduct. If your experience has been in the private sector, the rules that apply to you as a board or commission member may be new to you. Many situations considered ordinary business practices in the private sector are not allowed in the public sector.

Ethics laws are basically a “code of conduct” for public servants. When we think about “government ethics,” we generally think about laws that support one of the following five principles of good government.

Transparent and Impartial Government - the public has the right to know what its government is doing.

Decision-Making Free from Personal Interests - duty is to the people, not one’s own interests.

Decision-Making Free from Gifts, Bribes, or Intimidation - citizens expect decisions to be made fairly with the best interest of the community and not swayed by bribes or intimidation.

Public Confidence in the Use of Government Resources - resources are used wisely and in the best interest of the city.

Public Faith in the Fair Administration of their City - an open, transparent government that uses its resources wisely and centers all decisions in the best interest of the public inspires the public’s faith that its government is administered fairly.

The laws that regulate your conduct as a public servant are generally referred to as “Ethics Laws.” These laws signify the seriousness of the work you are about to undertake. Violating the laws that govern your conduct as a public servant can result in more than public embarrassment – it can result in criminal liability.

Texas Penal Code – Abuse of Office

The Texas Penal Code, Abuse of Office ([Ch. 39](#)), prohibits several kinds of conduct by a public official involving intent to obtain a benefit for oneself or to harm another. It prohibits a public official from intentionally or knowingly engaging in any of the following:

- (a) An unauthorized exercise of official power;
- (b) An act that exceeds his or her power;
- (c) A failure to perform his or her duty;

- (d) A violation of a law relating to his or her office; or
- (e) Theft or misapplication of anything of value belonging to the governmental body.

Texas Penal Code – Offenses Against Public Administration

Provisions of Title 8, Texas Penal Code ([Offenses Against Public Administration](#)), concern such topics as bribery, gifts to public servants, tampering with governmental records, misuse of official information, disrupting meeting or procession, official oppression, official misconduct, nepotism, disclosure of interest in property and abuse of office, also apply to city council and Board and Commission members.

Texas Penal Code – Conflicts of Interest

Texas law governing conflicts of interest of local government officials applies to officers of the City, and is found in [Chapter 171, Texas Local Government Code](#). The City of Portland applies these standards to members of our boards and commissions. However, the penal provisions of Chapter 171 are not applicable to advisory commissioners and board members.

To help you determine if you have a conflict of interest, ask yourself:

- Do I stand to lose or gain anything because of my decision?
- Do I have a close personal or financial relationship with an interested party?
- Have I received a gift or hospitality from anyone who stands to gain or lose from this decision?
- Will this affect my future employment opportunities?
- How would I feel if I saw a story about my connection with this issue on the news or read about it in the paper?

Requirement to File an Affidavit

Chapter 171 requires a board member with substantial interest in a business entity or real property to file an affidavit with the staff liaison and abstain prior to a vote or decision on any matter involving the business entity or real property if the action on the matter will have a special economic effect on the business entity distinguishable from the effect on the public, or if it is foreseeable that the action on the matter will have a special economic effect on the value of the real property, distinguishable from its effect on the public. A violation of Chapter 171 is a Class A misdemeanor.

Defining Substantial Interest in a Business Entity or Real Property

You have a substantial interest in a business entity (non-profit or government entity excluded) if:

- You own 10 percent or more of the voting shares of the business entity or own either 10 percent or more or \$15,000 or more of its fair market value; or
- You received funds from the business entity exceeding 10 percent of your gross income for the previous year.

You have 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. You have a substantial interest if your close relative (within the first degree of consanguinity and affinity) has a substantial interest.

The Attorney General has opined that a special economic effect on the value of real property distinguishable from the effect on the public exists when a P&Z board member has an interest in real property located within 200 feet of property being rezoned. However, the AG made it clear that these evaluations are highly fact intensive. Ask yourself the question, will this action before my board affect the value of my real property in a manner that is different from public at large?

Representing the City as a Public Official

Thomas Jefferson opined that, “when a man assumes a public trust, he should consider himself as public property.” Over the years, that sentiment has been summarized as “public service is a public trust.” Everyone is entitled to some level of privacy. But when a person goes into public life and accepts an appointed position or runs for public office, he or she must understand that certain issues and activities that might be considered private for a typical citizen can become matters of reasonable public interest. Becoming a public servant means putting the public's interest ahead of your own.

As an appointed or elected official, whether you know it or not, citizens are watching and taking note of (and sometimes recording) your behavior in public. Most citizens, certainly the media, regard you as an official first and a private citizen second. An official's position or office, not their personal identity, makes their behavior newsworthy. John Smith being disorderly in public won't make the news; but Councilmember Smith's bad behavior will. Whether at a local public function or traveling to functions outside the city, each official must strive to represent the City in such a way that will engender respect for government.

Additional resources on various ethics topics may be found on TML's webpage: <https://www.tml.org/284/Ethics>.

Media Interactions and Social Media Guidelines



Media Interactions

In general, staff will handle media interactions and requests regarding City business. The Mayor often addresses the media on issues of public policy. There may be times, however, when you are approached for a comment or interview. A good rule of thumb is to ask the reporter to first coordinate through the city manager's office. This will allow you time to prepare speaking points and get information so that you are not caught unawares. For those times when this isn't possible, we have compiled the below guidelines.

Tips for Effective Interactions with the Media

Form good relationships. Maintaining a professional, honest, relationship helps keep information flowing in both directions. However, the relationship a reporter has with you is secondary to their job. Your relationship with them should be founded on the same principles with the City of Portland's interests being your first priority.

Go "off-the-record" when necessary. When you and a reporter agree to go "off the record," the reporter agrees not to use the information you provide until you say it is okay or he verifies the information independently and does not attribute it to you. You and the journalist must agree to be "off the record" **BEFORE** giving any information. You cannot ask a reporter, after the fact, not to use things you have already said. You must also consider that the journalistic principle which protects off-the-record comments may not be respected by all reporters. You should, therefore, carefully consider whether off-the-record remarks are appropriate at all.

Use press releases. We use press releases as a good way to get information out in an organized, timely manner. Press releases should be coordinated through and written by staff. They will typically be reviewed by a member of the city manager's office prior to release.

General Dos and Don'ts When Dealing with the Media

Do

- Do your homework and have a clear message in mind.
- Make eye contact when answering questions.
- Use talking points rather than a word-for-word script whenever possible.
- Use visuals and handouts to emphasize important points.
- Prepare for the interview by asking questions about the interviewer, context, subjects, duration, and format. Examples: who will conduct the interview, subjects to be covered, context of the story, what is the format for the interview, and what is the duration of the interview.

- Offer to get information you don't have or don't know.
- With television media, enthusiasm is good. Smiling translates well on camera but the camera tends to mute excitement, so being a little more enthusiastic than normal during an interview is okay.

Don't

- Never lie — ever.
- Do not lose your temper or argue publicly with the media.
- Avoid jargon and don't overwhelm your audience or media with too many facts and statistics.
- Be succinct. Reporters are looking for a 5-10 second sound bite. Your interesting 15-30 second story probably won't make the cut.
- Never give “no comment” as an answer. If you don't know or can't say the answer, state that.⁵
- Never allow an interviewer to force you to provide an answer when you do not have the facts.

Social Media Posts - *Public Information Act and Open Meetings Act*

Social media can provide opportunities to engage with our citizens and constituents in new and interesting ways. While it comes with tremendous benefits, it is important to remember that social media posts can be subject to open records laws and cities cannot block users or delete posts as that may be seen as violations of open records laws and even the First Amendment. There are no “bright lines” distinguishing a personal social media account versus a government account when that account is being used by a municipal official.

The Public Information Act and the Open Meetings Act both apply to social media posts. It is essentially impossible for a Facebook post, tweet, or snapchat message to meet the Open Meetings Act's notice requirements. Legislation allows for some discussion between officials over the Internet, providing that communication between councilmembers about public business or public policy over which the council has supervision or control does not constitute a meeting if certain conditions are met. Those conditions include that communication must be:

- a) in writing;
- b) posted to an online message board that is viewable and searchable by the public; and
- c) displayed in real time and displayed on the message board for no less than 30 days after the communication is first posted.⁶

Informal communication with constituents is generally acceptable, but discussion of public business is risky, especially if it involves other elected officials. The dynamic nature of social media and the

⁵ “Tips for Working with the News Media as an Elected Official.” Southern Women in Public Service. October 15, 2018. <https://www.southernwomeninpublicservice.com/tips-for-working-with-the-news-media-as-an-elected-official/>

⁶ Lockhart, Heather M. “Violating the Open Meetings Act Using Snapchat: Social Media and Electronic Communications.” State Bar of Texas. 2016.

sheer volume of posts may make it difficult to track who is involved in the discussion and detect when the open meetings line has been crossed.

When using your personal social media accounts to communicate with constituents or other elected officials in your official capacity, please consider the following:

- Official use of social media to discuss public business may violate the open meetings law and be open to public record.
- When using social media to communicate with constituents, you may wish to include a link back to the city's official website for detailed information.
- Elected officials who use social media for campaigning are recommended to establish separate social media for that purpose and not access that social media through government technology.

Conclusion and Resources



We hope that you have found this handbook useful. If you have any questions that are not addressed here, please direct your questions to the city manager's Office. They will be able to assist you. Thank you for your service to our City. Our community is better for the input and engagement that you will provide.

Further Reading and Resources

30 Tips for Newly Elected Mayors and Councilmembers – This two-page document provides real-world advice in thirty, brief, and powerful, suggestions.

30 Tips for Newly Elected Mayors and Councilmembers. Texas Town & City. February 2018. www.tml.org/DocumentCenter/View/112/30-Tips-for-Newly-Elected-Mayors-and-Councilmembers-PDF

Handbook for Mayors and Council Members – The Handbook presents an overview of the functions, powers, and responsibilities of mayors and councilmembers in home rule and general law cities. Topics covered include policy development, budgeting and financial administration, council meetings, conflicts of interest, personal liability, and media relations.

Handbook for Mayors and Council Members. Texas Municipal League. 2019. www.tml.org/186/Handbook-for-Mayors-and-Councilmembers-2

How Cities Work – The January 2019 issue of the Texas Town & City features city operations. The special How Cities Work edition is a collection of articles covering the important functions and vital services cities provide.

How Cities Work. Texas Town & City. Vol. CVI. Number 1. January 2019. Texas Municipal League. www.tml.org/DocumentCenter/View/986/jan2019ttc

Key Legal Requirements – This handy reference guide covers key legal requirements that all city officials should know. From open meetings to ethics to dual office holding, this publication has you covered.

Key Legal Requirements. Texas Town & City. Texas Municipal League. 2018. www.tml.org/DocumentCenter/View/1231/Final_Key-Legal-Requirements-for-Texas-City-Officials---2019

Robert's Rules of Order – This book is the standard for facilitating discussions and group decision-making. Copies are available at most bookstores.

Texas Public Information Act Laws Made Easy - The Open Meeting Act Made Easy is a handbook in a question and answer format that covers the most frequently asked questions about the Texas Public Information Act.

Thomas, Zindia et al. *Texas Public Information Act Laws Made Easy*. Texas Municipal League. 2018. <https://www.tml.org/DocumentCenter/View/430/Texas-Public-Information-Act-Laws-Made-Easy---2018-PDF>

Texas Open Meetings Act Laws Made Easy The Open Meeting Act Made Easy is a handbook in a question and answer format that covers the most frequently asked questions about the Texas Open Meetings Act.

Thomas, Zindia. *Texas Open Meetings Act Laws Made Easy*. Texas Municipal League. 2018. <https://www.tml.org/DocumentCenter/View/420/Texas-Open-Meetings-Act-Laws-Made-Easy-PDF>