

LOCAL GOVERNMENT TRAINING



WHAT EVERY DIRECTOR SHOULD KNOW

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**NORTH TEXAS MUNICIPAL WATER DISTRICT
BOARD OF DIRECTORS**

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TOPICS OF DISCUSSION

- **Director's Role and Responsibilities** – Enabling Act, Board Policies Manual
- **Open Meetings Act** – Chapter 551, Government Code
- **Public Information Act** – Chapter 552, Government Code
- **Conflicts of Interest** – Chapters 171 and 176, Local Government Code (Abstaining from Board Action and Disclosure Forms)
- **Ethics** – Chapter 573, Government Code; Chapters 36 and 39, Penal Code (Nepotism Prohibitions; Bribery and Corrupt Influence; Abuse of Office)



Director's Role and Responsibilities Enabling Act, Board Policy Manual

Director's Role and Responsibilities

- Directors are appointed by Member Cities
- Public officials of NTMWD subject to open government and ethics laws
- Duty to serve the interests of NTMWD, its members and customers (Board Manual VIII.8.3.D, AG Opinions (KP-0117, JM-1239))
- Communication with appointing Member City
 - Briefings to city staff and city councils
 - Convey input from Member City during Board deliberations
 - Facility tours, assist in informing Member City about NTMWD plans and programs
- Refer specific requests for assistance to staff; avoid appearance of special treatment



Texas Open Meetings Act
Chapter 551, Government Code

OPEN MEETINGS BASICS

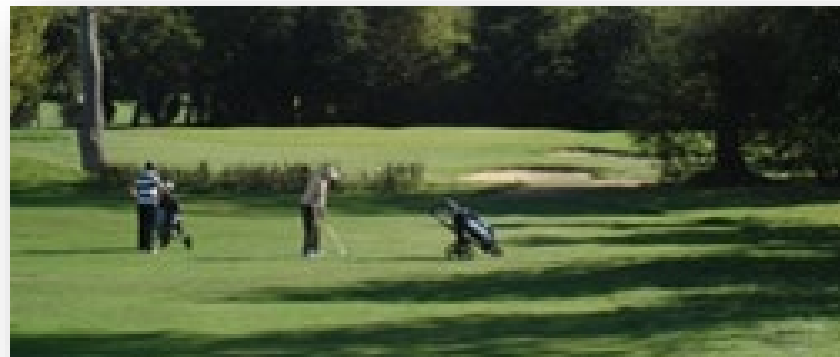
- Every meeting of the District must be open and accessible to the public
- Post notice of all meetings
 - Includes regular or special meetings
- The District may only act on posted items
- Public may address the Board on any agenda item noticed for an open meeting
- Board members must undergo open meetings training within 90 days of taking office

QUORUM

- A quorum is a majority of the Board
- When a quorum deliberates, you have a “meeting” and are subject to the Open Meetings Act
 - Email deliberations count! (**avoid “Reply All”**)
 - Texts and conference calls also count!
- No walking quorums

“MEETING” EXCEPTIONS

- A meeting does *not* include:
 - Social functions
 - A convention or workshop
 - A ceremonial event
 - A press conference
 - A candidate appearance or debate
- These exceptions apply *only* if no formal action is taken, and any discussion of the public business of the District is incidental to the event



EXECUTIVE SESSIONS

- Executive session is a meeting of the Board not open to the public
- Allowable only in limited circumstances:
 - Attorney consultations
 - Deliberations about property, gifts, and donations
 - Personnel matters
 - Technology security meetings
- Only parties necessary to the item may attend executive session where allowed

PENALTIES – OPEN MEETINGS

- Civil
 - A court must void any action taken at a meeting held in violation of the Act
 - The District could face damages and fines
- Criminal
 - Misdemeanor
 - Fines ranging from \$100-\$500
 - One to six months in state jail



Public Information Act
Chapter 552, Government Code

PUBLIC INFORMATION

- Information written, produced, collected, assembled, or maintained in connection with business of the District
- All employees and officers (current and former) with public information on a private device must forward it to the District to be properly preserved
- Presumption: open to the public
- May exist in many forms (e.g., paper, email, metadata, audio, video)
- May be withheld only with specific exceptions



PUBLIC INFORMATION REQUESTS

- Must be in writing
 - If you can reasonably tell it is a request, it counts
 - No magic language required
 - No need to cite the PIA
 - OK on paper, in an email, on a napkin
- Obligation to provide information already in existence
- District may not ask why the information is being requested or how it will be used

PUBLIC INFORMATION REQUESTS

- The District must respond no later than 10 business days from the date of the request and provide the information reasonably promptly
- The District can charge for copies
- The District must ask for a ruling from the Attorney General to withhold requested information

REQUESTING AN AG RULING

- Within 10 business days:
 - Ask the AG for a ruling
 - Notify the requestor and third parties that you seek an AG ruling
- Within 15 business days:
 - Submit full brief to AG demonstrating why the information should be withheld
 - Submit redacted documents to third parties



COMMON EXCEPTIONS

- Trade secrets; certain commercial or financial information
- Litigation or settlement matters
- Information related to competitive bidding
- Information related to technological or network security
- Attorney-client privilege
- Personnel information

THE ATTORNEY GENERAL'S RULING

- Generally made within 45 business days
- Requests for reconsideration prohibited, although factual mistakes may be remedied
- If the District disagrees with the Attorney General's legal interpretation, it must file suit in Travis County challenging the determination

- If the District violates the PIA, a requestor may:
 - File a complaint with the Attorney General
 - Seek relief from a court
 - Declaratory judgment
 - Injunctive relief
 - Writ of Mandamus
 - Petition local county attorney for relief

CRIMINAL PENALTIES

- Misdemeanors
- Board members or employees can be charged
- Fines from \$1,000-\$4,000
- Jail up to six months
- Possible violations include:
 - Failure to provide access to public information
 - Unauthorized and willful destruction, removal, or alteration of public information
 - Distribution or misuse of confidential information

Conflicts of Interest

Chapter 171, Local Government Code
Abstaining from Board Action

CHAPTER 171: ABSTENTION

- Board members should evaluate whether they or any family members have a **substantial interest** in a business entity or real property affected by a decision or vote
- A conflict requires that the Board member file an affidavit disclosing the interest and abstain from the vote
- Conflicts should be addressed prior to any consideration of the issue by the Board

SUBSTANTIAL INTEREST

- **Business Entity:**
 - Owning at least 10 percent of the voting stock or shares of the business entity;
 - Owning at least 10 percent or \$15,000 of the fair market value of the business entity; or
 - Receiving funds from the business entity in excess of 10 percent of the person's gross income for the previous year.
- **Real Property:**
 - Equitable or legal ownership with a fair market value of \$2,500 or more

HOW THE INTEREST APPLIES

- A Board member holds the interest
- A Board member's family member holds the interest:
 - Parents
 - Children
 - Spouse
 - Spouse's parents
 - Spouse's children

AFFIDAVIT AND ABSTENTION

- If substantial interest applies, the Board member must:
 - File an affidavit with the Board Secretary disclosing the interest **before a vote or decision**
 - Abstain from further participation in the matter

PENALTIES

- Board's action is voidable only if the measure would not have passed without the conflicted Board member's vote
- Class A misdemeanors
 - Fines up to \$4,000
 - Up to one year in jail

Conflicts of Interest

Chapter 176, Local Government Code
Disclosure Forms

- Requires Board member to file Conflicts Disclosure Statement if a person (vendor) enters into (or seeks to enter into) a contract with the District
AND:
 - 1. The Board member has an employment or business relationship with the person where the Board member received more than \$2,500 in the previous year;
 - Or
 - 2. The person has given the Board member or family member gift(s) with an aggregate value of more than \$100 in the previous 12 months.

- Must be filed with the District's records administrator within seven business days of becoming aware of conflict
- A "gift" does not include:
 - Food accepted as a guest (meaning donor must be present)
 - A gift given by a family member of the person accepting the gift
 - A political contribution

CONFLICT OF INTEREST QUESTIONNAIRE

- To be filed by “Vendors”
 - Consultants
 - Contractors
 - Includes phone company, electric company, etc.



- If a Board member is unsure about whether a conflict exists or whether to abstain from a vote....
- Imagine how the Board member's vote could be perceived if reported in *The Dallas Morning News*

Ethics Laws

Chapter 551, Government Code

Chapter 573, Government Code – Nepotism

Chapter 36, Penal Code – Bribery

Chapter 36, Penal Code – Acceptance of Gifts

Chapter 39, Penal Code – Abuse of Office

NEPOTISM

- The Board may not appoint, confirm the appointment of, or vote to place an individual in a position that is to be compensated from public funds or fees of office if the individual is related to any Board member (see next slide for list of relatives)
- If the requisite close relationship exists for Board Member A, Board Member B is also subject to the nepotism prohibition
- In other words, the relationship “infects” the other members’ ability to vote on the related person

NEPOTISM

Nepotism covers:

- Parents
- Children
- Siblings
- Grandparents, grandchildren
- Great-grandparents, great-grandchildren
- Nieces, nephews
- Aunts, uncles
- Spouse
- Spouse's parents
- Spouse's children

NEPOTISM - EXCEPTIONS

- Does not apply if the employee was employed by the District for at least 30 consecutive days before the related Board member was appointed to the Board
- If the employee continues to work for the District based on the exception, the related Board member may not participate in any deliberation or vote regarding the related employee

BRIBERY

- A Board member commits a second degree felony if he or she solicits, accepts, or agrees to accept any “benefit” as consideration for:
 - An exercise of his or her discretion as a Board member; or
 - A violation of a duty imposed by law



ACCEPTANCE OF GIFTS

- A Board member may not solicit, accept, or agree to accept any “benefit” from a person he or she knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of discretion
- A “benefit” means anything reasonably regarded as pecuniary gain or advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest

ACCEPTANCE OF GIFTS – CONT.

- Exceptions
 - Non-cash gifts worth under \$50
 - Food, lodging, transportation, or entertainment if accepted as a guest (donor must be present)
 - A benefit from a friend, relative, or business associate if an independent relationship exists
- Consider appearances
 - Accepting a \$20 bottle of wine is legal. But how will it look if you accept it from a contractor on the day you vote on his contract?



ABUSE OF OFFICE

- Official Capacity
- Oppression
- Official Information
- Don't use the office for personal benefit

FINAL “GUT CHECK” THOUGHT

How would your actions look if reported on the homepage of *The Dallas Morning News*?