

TML LEGISLATIVE UPDATE



August 4, 2023
Number 31

Post-Session Update: Open Government Updates

The Legislature adopted three pertinent bills related to the Open Meetings Act (OMA) and the Public Information Act (PIA), all effective on September 1, 2023.

H.B. 3440

[H.B. 3440](#) makes changes to the requirement for posting an agenda of a meeting under the OMA. Beginning September 1, all cities and economic development corporations (EDC) will be required to concurrently post their governing bodies' notice of a meeting and agenda of the meeting on their applicable websites if the city or EDC has a website. Currently, only cities and EDCs in cities with a population of 48,000 or more are required to concurrently post their notice of a meeting and agenda of the meeting on their websites.

H.B. 30

[H.B. 30](#) was adopted to eliminate the so-called "dead suspect" loophole which has allowed public entities to withhold information in criminal cases that did not result in a conviction or deferred adjudication even when the suspect was dead. Beginning on September 1, records that are held by

a law enforcement agency or prosecutor that deal with the detection, investigation or prosecution of a crime that does not result in a conviction or deferred adjudication may not be withheld from public disclosure under the law enforcement exception of the PIA if: (1) a person who is described by or depicted in the information, record, or notation, other than a peace officer, is deceased or incapacitated; or (2) each person who is described by or depicted in the information, record, or notation, other than a person who is deceased or incapacitated, consents to the release of the information, record, or notation. A city may still use other applicable exceptions to disclosure under the PIA to withhold such information.

H.B. 3033

[H.B. 3033](#) is an omnibus PIA bill that addresses the following pertinent issues:

Business Days. The bill re-defines the term “business day” for purposes of calculating deadlines under the PIA. A business day means any day other than: (1) a Saturday or Sunday; (2) a national holiday or state holiday; (3) days on which Rosh Hashanah, Yom Kippur or Good Friday falls if the city’s officer for public information observes the day; (4) the Friday before or Monday after a national holiday or state holiday if the holiday occurs on a Saturday or Sunday and the city observes the holiday on that Friday or Monday; and (5) a day designated by the city’s chief administrative officer as a day on which the city’s administrative offices are closed or operating with minimum staffing not to exceed ten days each calendar year.

Litigation Exception. The bill provides that the litigation exception under the PIA will not apply to information held by the city if the information is related to a general, primary or special election.

E-Requests for Attorney General Opinions. The bill will require requests for attorney general decisions under the PIA, other than those that are hand delivered to the attorney general, be submitted through the attorney general’s designated electronic filing system. Cities that have fewer than 16 full-time employees or located in a county with a population of less than 150,000 will not be required to submit their requests through the electronic filing system. Additionally, a city will not be required to submit its request for a decision through the attorney general’s electronic filing system if the amount or format of responsive information at issue in a particular request makes use of the system impractical or impossible.

Release of Public Information After Receiving an Attorney General Ruling. The bill creates a detailed process that a city must follow after receiving a ruling from the attorney general to ensure timely release of public information. As soon as practicable and within a reasonable time, but not later than the 30th day after the date the attorney general issues an opinion regarding the requested information, a city shall:

1. provide an itemized estimate of charges for the production of the requested information if an estimate is required;
2. produce the information if it is required to be produced;

3. if the information to be released is voluminous and can be released in a single batch:
 - a. provide written certified notice to the requestor and attorney general that it is impractical or impossible to produce the information within a reasonable time;
 - b. include in the notice the date and hour that the city will disclose the information to the requestor, which may not be later than the 15th business day after the city provides the notice; and
 - c. produce the information at the date and time described in the notice.
4. if the information to be released is voluminous and cannot be released in a single batch:
 - a. provide written certified notice to the requestor and the attorney general that it is impractical or impossible to produce the information within a reasonable time and in a single batch;
 - b. provide a written certified notice to the requestor and the attorney general when each subsequent batch of information is disclosed to the requestor of the date and hour that the city will disclose the next batch of information to the requestor, which may not be later than the 15th business day after the city provides the notice; and
 - c. produce the requested information at each date and time described in the notice.
5. notify the requestor in writing that the city is withholding the information as authorized by the attorney general opinion; or
6. notify the requestor in writing that the city has filed suit against the attorney general regarding the requested information.

Open Records Training. The bill provides that the attorney general may require each city public official complete PIA training if the attorney general determines that the city has failed to comply with the requirements of the PIA.

Release of Basic Arrest Information. The bill requires a city promptly release basic arrest information that is responsive to a request unless the city seeks to withhold the information under the PIA and regardless of whether the city requests an attorney general decision regarding other information subject to the request.

Voluminous Requests. The bill made some changes related to dealing with vexatious requestors. This [memo](#) describes the changes.

Post-Session Update: Building Permit and Subdivision Public Infrastructure Project-Related Fee Changes

Building Permit Fees

[H.B. 1922](#) is effective on January 1, 2024. Currently, a city's governing body must hold a public hearing and vote to reauthorize any city fee charged as a condition of constructing, renovating, or remodeling a residential or commercial structure at least once every ten years. Under the bill, if a city fails to do so by the tenth anniversary of the fee being adopted or reauthorized, the fee will be automatically abolished by law.

How should cities proceed?

All cities should determine when they adopted or reauthorized their building permit fee schedules to determine if or when they must act to preserve their current fees. Many cities reauthorize their city permit fee schedules as part of their annual budget process. Such reauthorization or approval may comply with H.B. 1922.

Please consult with your city attorney to determine which fees may be impacted by H.B. 1922 and when they may expire without reauthorization.

Subdivision Public Infrastructure Project-Related Fees

[H.B. 3492](#) is effective on September 1, 2023. Currently, cities may no longer base any application, review, inspection, or other related fees for constructing or improving public infrastructure for a subdivision lot on the cost or value of the infrastructure project. Additionally, cities may no longer require an applicant to disclose information related to the cost or value of a public infrastructure project for city acceptance of the subdivision or infrastructure project, except as required by the Federal Emergency Agency for participating in the National Flood Insurance Program.

Instead, beginning on September 1, 2023, cities may only determine such fees by considering the city's actual review, processing, and inspection costs related to the public infrastructure project. A city must also publish such fee amounts, and the city employee hourly rates and estimated times used to determine such amounts on the city's website, or if the city does not have a website, a newspaper of general circulation in the county where the city is located.

What types of projects does H.B. 3492 apply to?

H.B. 3492 only applies to projects involving constructing or improving public infrastructure as part of a subdivision, lot, or related property development.

What factors may a city consider when determining its actual costs?

Under the bill, when determining its actual costs, a city may consider several factors:

- The fee that a qualified independent third-party entity would charge to review, process, and inspect such applications and construction;
- The hourly rate for the estimated actual direct time of a city employee to review, process, and inspect such applications and construction; or
- The actual costs that a third-party charged the city to provide such services.

How should cities proceed?

Cities must revise all impacted fees by making a good-faith effort to determine their actual costs in reviewing and processing subdivision public infrastructure-related fees and inspection costs.

Cities can make a good-faith effort to determine their actual costs by:

- 1) researching the fees charged by qualified, independent third-party engineering and construction companies to perform such services;
- 2) determining common review, processing, and inspection task timeframes and the typical hourly rate of city employees who perform such services; or
- 3) reviewing how much a city has paid a third-party entity to perform such services.

Please consult with your city attorney to determine what fees may be impacted and how best to calculate the city's actual costs to ensure compliance with H.B. 3492.

Reminder: Mandated Cybersecurity Training Due August 31

Texas Government Code Section 2054.5191 mandates cybersecurity training for city employees, elected officials, and appointed officials who have access to a local government computer system or database and use a computer to perform *at least 25 percent* of their duties.

The training must be certified by the Texas Department of Information Resources (DIR). Cities must certify their compliance by **August 31, 2023** by using the [Cybersecurity Training Certification for State and Local Governments](#) form.

The Texas Municipal League Intergovernmental Risk Pool (TMLIRP) has three DIR-certified options available free of charge. TMLIRP's free cybersecurity training program can be assessed [here](#). Other DIR-certified training programs are listed on the agency's [website](#).

DIR has developed an optional tool, Texas by Texas (TxT), for cities to track compliance of individual employees and officials training compliance. For any city using TxT, employees will report their training completion and DIR will send reporting from the TxT application to each city to verify compliance. Interested cities must submit the [Texas by Texas Self Reporting Form](#).

More information on training requirements can be found [here](#).

Don't Forget: Resolutions for the 2023 TML Annual Conference

Resolutions for consideration at the Annual Conference are due no later than **5:00 p.m. on August 21, 2023**. The TML Constitution provides that resolutions must be submitted by any member city, TML region, or TML affiliate to the TML headquarters 45 calendar days prior to the first day of the Annual Conference.

The TML Board of Directors has adopted several procedures governing the resolutions process. Please review the following items carefully and thoroughly.

1. No resolution may be considered at the annual TML business meeting unless it has prior approval of: (a) the governing body of a TML member city; (b) the governing body or membership of a TML affiliate, or (c) the membership of a TML region at a regional meeting.
2. TML member cities, regions, and affiliates that wish to submit a resolution **must** complete a resolution cover sheet. The cover sheet is available [here](#).
3. It is recommended that any resolution state one of four categories to better direct League staff. Those categories are:
 - **Seek Introduction and Passage** means that the League will attempt to find a sponsor, will provide testimony, and will otherwise actively pursue passage. Bills in this category are known as “TML bills.”
 - **Support** means the League will attempt to obtain passage of the initiative if it is introduced by a city or some other entity.
 - **Oppose.**
 - **Take No Position.**
4. Resolutions submitted will be thoroughly discussed at the TML Annual Conference. Each city is asked to provide one delegate to serve as its liaison at the annual business meeting at which resolutions will be considered. The delegate isn't required to have any special expertise, and an elected official representative is encouraged but not required. The delegate must sign up electronically [here](#) prior to the meeting or can sign up in person at a table outside of the meeting room. Cities are encouraged to sign up their delegate early.
5. The city, region, or affiliate that submits a resolution is encouraged to send a representative to the business meeting to explain the resolution. The business meeting will meet at 3:30

p.m. on Thursday, October 5, 2023, at the Kay Bailey Hutchison Convention Center in Dallas.

If your city is interested in submitting a resolution, details can be found [here](#). Resolutions can be emailed to JJ Rocha, TML Grassroots and Legislative Services Manager at jj@tml.org.

Interested city officials can learn how the resolutions process fits within the League's Legislative Policy Process [here](#).

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