



# Legislative UPDATE

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## Important Ethics Law Changes

A number of new state laws take effect on September 1, 2015. (A complete summary of each city-related bill and its effective date is available in the June 5, 2015, edition of the [Legislative Update](#).) Most of those bills don't require any immediate action, but city officials should be aware of changes to two ethics statutes:

- **Local Government Code Chapter 176 – Vendor Relationships:** The Texas Ethics Commission recently adopted new forms (Form CIS and Form CIQ) to implement changes made to Local Government Code Chapter 176 by [H.B. 23](#). Chapter 176 is an ethics law that requires some city officers to disclose certain relationships with vendors who conduct business with the city. The newly-adopted forms are available at [https://www.ethics.state.tx.us/filinginfo/conflict\\_forms.htm](https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm).

Please note that Form CIS does not take into account the new requirement that a local government officer disclose any “family relationship” with a vendor. The League has been in contact with the Commission about amending the form, and will continue to monitor this issue. In the meantime, officers who have a family relationship with a vendor should work closely with their local legal counsel in deciding how to disclose that information.

- **Local Government Code Chapter 145 – Financial Disclosure in Cities over 100,000 Population:** Certain city officials and candidates in cities with a population of 100,000 or more must complete and file personal financial statements under Chapter 145 of the Local Government Code. H.B. 1246 permits the city clerk or secretary in such a city to deliver a personal financial statement form by mail, personal delivery, electronic mail, or any other means of electronic transfer to an officer or candidate who is required to file the form.

In addition, at its August 7, 2015, meeting the Texas Ethics Commission indicated that it will soon implement a web-based program to file personal financial statements. The statements are filed with the city, not the Commission. Thus, city officials and candidates will be able to complete the form on the Commission’s website, but will have to print a hard copy to be filed with the city. Please note that the Commission has indicated a potential willingness to share (via interlocal agreement) its software source code with cities that have created their own electronic filing systems.

The TML Legal Department has prepared an updated “[Understanding Your Personal Liability as a City Official: A Primer](#)” paper online. The paper includes information on the laws above, as well as many others. In addition, memos on individual ethics issues, including those above, are available on the [Ethics page](#) of the Legal section of the League’s website.

## **TML Webinar:** **Handgun Carry Laws Effective January 1, 2016**

During the 2015 Legislative Session, the Texas Legislature passed House Bill 910 and Senate Bill 11. House Bill 910 allows a license holder to “open carry” a handgun in a holster beginning on January 1, 2016, and S.B. 11 allows a license holder to, with exceptions, carry a concealed handgun on a college campus beginning on August 1, 2016.

A city has very limited authority to prohibit a license holder from carrying in city facilities to which the general public has access. State law prohibits a license holder from carrying a handgun on the premises of: (1) a polling place on the day of an election or while early voting is in progress; and (2) any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court. (Note: Attorney general opinion request [RQ-0040-KP](#) (July 24, 2015) asks numerous questions about the “court or offices utilized by the court” provision.)

In addition, a city has the option of posting a specific notice to prohibit a license holder from carrying in the room or rooms where a meeting of a governmental entity is held if the meeting is by a body that is subject to the Open Meetings Act. (The Texas Penal Code requires that the signs giving the notice contain certain language that is printed in a certain size.)

The League has prepared a detailed Q&A titled [Cities and Firearms](#), which explains the laws governing cities and their residents. In addition, the League will conduct a [webinar](#) on the subject on September 10, 2015.

## **City of Austin Challenges Property Tax Appraisal System**

Last Monday, the City of Austin sued the State of Texas, the Travis County Appraisal District, and certain property owners within Travis County. The [lawsuit](#) seeks to have the current tax appraisal system declared unconstitutional and to request permanent injunctions to ensure compliance. The basis of the lawsuit is to challenge a perceived tax loophole known as “equity appeals,” which has facilitated commercial property owners’ ability to appeal – and ultimately lower – their property valuations. This, argues the city, shifts a disproportionate share of the property tax burden to residential homeowners. The city’s estimation is that commercial and vacant property values in Austin have been historically undervalued by 47 percent due to equity appeals.

The city’s position is that Article VIII, Section 1, of the Texas Constitution requires all property to be taxed “in proportion to its value” and that taxation must be “equal and uniform.” It argues that certain state statutes open the door for the unequal (and therefore unconstitutional) appraisal of commercial property. More specifically, Tax Code Sections 41.43(b)(3) and 42.26(a)(3) require an appraisal district to set the value of a property to the median level of appraisal based on comparable properties, often with no regard for the market value of the subject property or the comparable properties. When homeowners appeal their appraisals, they often cite market value and argue that they cannot sell their house for the appraised amount. Commercial property owners, on the other hand, generally use the Tax Code provisions above to argue that they are not being taxed “equally and uniformly” based upon the valuation of other comparable properties (some of which may not be located in the same city or regions of the state).

When commercial property owners challenge appraised values using these statutes, appraisal districts generally settle the cases due to a lack of resources and the threat of having to pay the legal fees incurred by the challenging property owner. The result is that the commercial property value is lowered, and then later the property is used as a comparable property to drive down the value of another commercial property. As commercial property owners continue to challenge appraised values using this method, their values spiral downward, and the proportion of the property tax burden borne by commercial properties shifts to homeowners.

The City of Austin is seeking to have a district court declare that: (1) the current tax appraisal system violates the Constitution because it fails to provide appraisal districts with the tools to assess properties at market value and provide for equal and uniform taxation; (2) mandatory sales price disclosure is necessary for appraisal districts to comply with the statutory and constitutional requirements; and (3) that Sections 41.43(b)(3) and 42.26(a)(3) of the Tax Code are unconstitutional because they lead to property valuations that are not “equal and uniform.” The city further seeks a permanent injunction prohibiting appraisal districts from giving any force and effect to the two contested provisions of the Tax Code.

Given the remedies sought by the city in this case, the outcome could have very significant ramifications for all Texas cities. League staff will monitor and report on the case as it develops.

## **U.S. Department of Labor Proposes Increased Salary Rule for Exempt Employees**

The United States Department of Labor has proposed rule changes to the Fair Labor Standards Act (FLSA) that would raise the salary requirement for employees to be exempt from overtime. Currently, an employee must meet certain “duties” tests and receive a salary of at least \$23,660 to be exempt from overtime. The proposed regulations would increase the minimum salary from \$23,660 to \$47,892. This could mandate overtime pay to many city workers who are currently making less than \$47,892 but otherwise meet the exempt duties tests requirements.

The proposed change would require cities with such employees to either: (1) raise the salaries of employees who the city wishes to remain exempt from overtime; or (2) pay those employees overtime pay or compensatory time off for any hours worked over 40 in a seven day period. The National League of Cities plans to file comments to the proposed changes.

In Texas, the number of workers who would be affected by the proposal would be 400,000 according to a [White House Fact Sheet](#). For additional information about the proposed rule from the Department of Labor, click [here](#). The Department of Labor will be accepting comments on this rulemaking until [September 4, 2015](#).

Please contact the TML Legal Department if you have questions or concerns about these proposed rules at 512-231-7400 or [laura@tml.org](mailto:laura@tml.org).

## **TCEQ Stakeholder Meeting: Sanitary Sewer Overflows**

Senate Bill 912, effective September 1, 2015, exempts a city from notifying the Texas Commission on Environmental Quality (TCEQ) of certain accidental discharges of treated or untreated domestic wastewater. However, the bill requires a city to submit to the TCEQ at least once a month a summary of discharges that occurred during the previous month.

The TCEQ is responsible for: (1) developing rules and establishing standard methods for calculating the volume of an accidental discharge; and (2) establishing procedures for submitting a summary of accidental discharges that includes the location, volume, and content of each accidental discharge or spill.

The TCEQ will hold a stakeholder meeting for anyone interested in participating in the development of the rules. The meeting will be held September 15, 2015, from 10:00 a.m. – Noon at 12100 Park 35 Circle, Bldg. E, Room 201S, in Austin.

For additional information, contact Macy Beauchamp at 512-239-0437 or Small Business and Local Government Assistance at 800-447-2827.

## **TCEQ Proposes New Contested Case Hearing Rules**

On August 5, 2015, the Texas Commission on Environmental Quality (TCEQ) proposed rules implementing Senate Bills 709 and 1267. The bills change the process for contested case hearings and motions for rehearing at the State Office of Administrative Hearings (SOAH). The changes will apply to applications filed with TCEQ on or after Sept. 1, 2015, and that later proceed to a contested case hearing. Some of the proposed rule changes include the following:

- The applicant must submit a copy of the permit application to the SOAH Chief Clerk's Office before the hearing.
- The administrative law judge must wait until the TCEQ executive director responds to public comments about the application before scheduling a preliminary hearing.
- An application will now automatically be considered to meet state and federal requirements until proven otherwise by the protesting parties.
- After the preliminary hearing, the administrative law judge has 180 days (or more, in certain situations) to submit a decision to the TCEQ.

The proposed rules also provide that persons submitting hearing requests must base their request only on their own comments, instead of adopting comments made by others. Groups or associations contesting a permit must timely provide the name and physical address of their members who would be affected persons in their own right.

The TCEQ will hold a public hearing on this proposal on September 15, 2015, at 2:00 p.m. at 12100 Park 35 Circle, Bldg. E, Room 201S, in Austin. To obtain a copy of the proposed rule, visit the TCEQ website at <https://www.tceq.texas.gov/rules/prop.html>. The comment period ends on September 21, 2015, and information on submitting comments is available at <https://www.tceq.texas.gov/rules/howtocomment.html>.

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