Upcoming Contract Disclosure Requirements: League Asks Texas Ethics Commission for Clarification

House Bill 1295, passed during the recent legislative session, imposes new disclosure requirements on city contracts. All of the consequences for cities are currently unknown, but the League has asked the Texas Ethics Commission (TEC) to address some of these issues in its impending rulemaking process.

House Bill 1295 provides that: (1) certain governmental entities, including cities, are prohibited from entering into a contract with a business entity unless the business entity submits a disclosure of interested parties (i.e., discloses a person who has a controlling interest in the business or who actively participates in facilitating the contract for the business) if the contract: (a) requires an action or vote by the governing body before the contract may be signed; or (b) the contract has a value of at least $1 million; (2) the disclosure must be on a form prescribed by the TEC; and (3) a governmental entity must, not later than 30 days after receiving a disclosure, submit a copy to the TEC.

These new requirements apply only to city contracts entered into on or after January 1, 2016. However, the TEC is charged with adopting rules to implement the bill’s requirements no later than December 1, 2015. The League has sent the TEC a letter prior to the beginning of the formal rulemaking process. The hope is that the TEC will consider the following questions prior to publishing the rules for formal comments:
• What are the consequences if a city fails to submit a copy of the disclosure to the TEC? Or fails to timely submit a copy of the disclosure to the TEC?
• Does the disclosure requirement apply to a contract that is renewed on or after January 1, 2016, but that was initially executed prior to that date?
• What does it mean to “enter into a contract” with a business entity? Does that phrase include any action that requires the signatures of all the parties to the contract (e.g., renewal of a contract, amendment of a contract)?
• Does the disclosure requirement apply when the city council has delegated authority to execute a contract to an employee such as the city manager?
• Must/may a disclosure be updated or corrected by a business entity? If so, under what circumstances and within what timeframe?
• Will the TEC publish or otherwise release a disclosure to the public? If so, will the TEC give a business entity the chance to protect any confidential or proprietary information before releasing a disclosure to the public?

Each city should consult its local legal counsel to determine how these new requirements may impact the city’s contracting and procurement process. Member cities are also urged to: (1) file comments and participate in the TEC rulemaking process (the League will publicize that comment period, which should be towards the end of 2015); and (2) communicate issues and concerns to Christy Drake-Adams, TML legal counsel, at Christy@tml.org so that she can coordinate efforts in the rulemaking process.

HUD Issues Final Fair Housing Rule

The U.S. Department of Housing and Urban Development (HUD) has released its final Affirmatively Furthering Fair Housing (AFFH) Rule. Essentially, the AFFH Rule creates additional procedures and requirements for cities that receive HUD funding, including Community Development Block Grant funds.

Adopted pursuant to the Fair Housing Act of 1968, the AFFH Rule directs HUD and its program participants (e.g., cities, public housing authorities, and others) to affirmatively further the Act’s goals of promoting fair housing and equal opportunity. HUD claims the rule “clarifies and simplifies existing fair housing obligations for HUD grantees to analyze their fair housing landscape and set locally-determined fair housing priorities and goals through an Assessment of Fair Housing (AFH).” To aid communities in this work, HUD will provide open data (such as notated maps) to grantees and the public on patterns related to low-income housing.

A city that receives HUD funding will use the data to prepare a report called an assessment of fair housing (AFH). The AFH must contain information related to disparity of access to community assets, segregation, racially-concentrated area of poverty, and disproportionate housing needs. A city will have to prepare and submit the report to HUD in order to receive funding. HUD will provide an AFH assessment tool, which consists of a series of questions
designed to help HUS fund recipients identify how best to use HUD funds to promote fair housing.

The AFFH Rule and other information are available on HUD’s website. The final rule adoption comes on the heels of the recent U.S. Supreme Court opinion in Texas Department of Housing and Community Affairs v. Inclusive Communities Project. In that opinion, the Court held that “disparate impact” claims may be brought under the Fair Housing Act. In a disparate impact case, a plaintiff does not claim that a practice is intentionally discriminatory. Instead, he claims that the practice has a disproportionately adverse impact on a protected class.

In the case, the Inclusive Communities Project (ICP) sued the Texas Department of Housing and Community Affairs (TDHCA), claiming that TDHCA’s selection criteria for federal low-income tax credits in the City of Dallas had a disparate impact on minorities. Specifically, ICP claimed that TDHCA was giving too many tax credits to low-income housing in predominately black inner-city areas compared to predominately white suburban neighborhoods. The case will now continue based on the Court’s ruling.

City officials may need to consult with local legal counsel relating to their affordable housing activities in light of the opinion and the AFFH Rule.

**Resolutions for the 2015 TML Annual Conference**

The legislative efforts of TML are guided by its members. That guidance comes in the form of resolutions that are submitted by member cities, TML regions, TML affiliates, and TML committees. If your city has a legislative issue that it would like TML to consider, please submit it in accordance with the following instructions.

The TML Constitution states that resolutions for consideration at the Annual Conference must be submitted to the TML headquarters 45 calendar days prior to the first day of the Annual Conference. For 2015, this provision means that resolutions from any member city, TML region, or TML affiliate must arrive at the TML headquarters no later than 5:00 p.m. on August 10, 2015.

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 by the TML Resolutions Committee 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. Please feel free to make as many copies of this cover sheet as you desire.
The cover sheet must be attached to the resolution throughout each step of the resolutions process.

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.**

Please see the [2015-2016 TML Legislative Policy Development Process](#) for more information.

4. Resolutions submitted will be thoroughly discussed at the TML Annual Conference. The Resolutions Committee is appointed by the TML President and is made up of city officials from TML member cities across the state.

5. The city, region, or affiliate that submits a resolution is encouraged to send a representative to the Resolutions Committee meeting to explain the resolution. The Resolutions Committee will meet at **2:00 p.m. on Tuesday, September 22, 2015**, at the **Henry B. Gonzalez Center** in **San Antonio**.

If the procedures described above are not followed for any given resolution, that resolution is likely to be referred to some other TML committee for further study. In that case, the resolution would not be adopted during the 2015 conference.

Under the TML Constitution, resolutions received after the deadline of August 10, 2015, must not only have the attached cover sheet, but also must “state the reason precluding timely submission.” These late resolutions may be considered by the TML Resolutions Committee at the Annual Conference only if two-thirds of the Committee members present and voting agree to suspend the submission rule and consider the resolution.

Resolutions may be submitted by mail, fax, or email to Scott Houston, Deputy Executive Director and General Counsel, at:

1821 Rutherford Lane, Suite 400  
Austin, Texas  78754  
Fax: 512-231-7490  
Email:  shouston@tml.org

If you have any questions or would like any assistance, please call 512-231-7400 at any time.
TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.