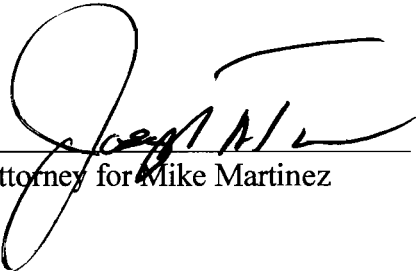


THE STATE OF TEXAS	§	IN THE COUNTY
v.	§	COURT-AT-LAW
MIKE MARTINEZ	§	TRAVIS COUNTY, TEXAS


COMPLIANCE AGREEMENT

The parties to this agreement are the State of Texas, which is represented by the Travis County Attorney or his designated Assistant Travis County Attorney, and **Mike Martinez**.

Mike Martinez agrees to comply with the terms and conditions specified herein. In return, the State of Texas agrees to defer proceedings.



Attorney for Mike Martinez



Mike Martinez

Waiver of Statute of Limitation

Article 12.02 of the Texas Code of Criminal Procedure provides that presentment of an indictment or information for Misdemeanor offenses may be made within two years from the date of any alleged commission of said offense, and not afterward. After consulting with my attorney, I, Mike Martinez, freely, knowingly, and voluntarily waive this right.

For the purposes of this waiver, the relevant date is on or after April 19, 2010 for possible violations under Chapter 551 or 552 of the Texas Government Code for which I am under investigation by the Travis County Attorney's Office.

This waiver is intended to remain in effect for the duration of this agreement. If no charge has been filed against me within 30 days after this agreement ends, this waiver will expire.

I can read and write the English language; I have read this document and discussed it fully with my attorneys; I understand this document completely; and I am aware of the consequences of my waiver. This waiver is not to be considered an admission of guilt to the above-mentioned conduct under investigation. My attorney has discussed with me the law and the facts applicable to this waiver, and I am satisfied that I have been effectively represented.



Attorney for Mike Martinez



Mike Martinez

Acknowledgement of Law

The Austin City Council is a municipal governing body in Austin, Texas and therefore subject to the Texas Open Meetings Act (Tx. Govt. Code Chapter 551)(hereinafter TOMA).

The Austin City Council, as a governmental body, is required by law to have every regular, special or called meeting open to the public, unless a closed meeting is otherwise authorized by the TOMA (Tx. Govt. Code § 551.002).

A quorum of the Austin City Council consists of four (4) or more members.

TOMA defines a meeting as “[a] deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action;...”

TOMA defines deliberation as “a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.”

Tx. Govt. Code § 551.143 states that “A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.” In interpreting this statute, the Federal District Court for the Western District of Texas stated “[t]hus, a meeting of less than a quorum is not a “meeting” within the Act when there is no intent to avoid the Act’s requirements. On the other hand, the Act would apply to meetings of groups of less than a quorum where a quorum or more of the body attempted to avoid the purposes of the Act by deliberately meeting in groups of less than a quorum in closed sessions to discuss and/or deliberate public business, and then ratifying their actions as a quorum in a subsequent public meeting.” *Esperanza Peace & Justice Ctr. V. City of San Antonio*, 316 F. Supp. 2d 433, 472 (W.D. Tex. 2001) and Op. Tex. Att’y Gen. No. GA-0326 (2005). Op. Tex. Att’y Gen. No. GA-0326(2005).

Texas courts and the Attorney General of Texas have ruled that a governmental body can violate TOMA when it "deliberates through a series of closed meetings of members of less than a quorum." Op. Tex. Att’y Gen. No. DM-95 (1992); See also *Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d 433, 472 (W.D. Tex. 2001) and Op. Tex. Att’y Gen. No. GA-0326 (2005).

The Attorney General has ruled that electronic communications can, “depending on the facts of a particular case, constitute a deliberation and a meeting for purposes of the Texas Open Meetings Act.” Op. Tex. Att’y Gen. No. GA-0896 (2011). Courts have stated that Attorney General Opinions are highly persuasive and are entitled to great weight. However, the ultimate determination of a law’s applicability, meaning, or constitutionality is left to the courts.

Tx. Govt. Code § 551.144 states that “A member of a governmental body commits an offense if a closed meeting is not permitted under this chapter 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.”

Affirmations

Mike Martinez affirms that the following statements are true and accurate:

Mike Martinez is a member of the Austin City Council.

In June 2006, when Mike Martinez began his term on Austin City Council, there was an existing practice of systematically scheduling private one-on-one meetings between the six members of the City Council and the Mayor for the purpose of discussing items on that week’s City Council agenda, as well as other city business. By attending three or more of these one-on-one meetings in the days before an Austin City Council meeting, all members of the Austin City Council and the Mayor met with each other City Council member and discussed city business. As an elected member of the City Council Mike Martinez continued this practice. Between June 2006 and August 2010 Mike Martinez met with each other City Council member in a series of one-on-one meetings to discuss city business before City Council meetings. Beginning in August 2010, Mayor Lee Leffingwell modified his practice of one-on-one meetings with Council Members and began meetings with the other Council Members in a series of longer two-on-one meetings. Mayor Lee Leffingwell stated in an e-mail to each council member, “Because we are often rushed in these meetings, and sometimes barely get through even a cursory review of the agenda, I’d like to try moving to 1-hour “2-on-1” meetings with you and another Council member.” The two-on-one meetings continued through February 2011 and were a continuation of the practice of routinely meeting with each other City Council member to discuss city business before City Council meetings.

The aforementioned meetings or one-on-one’s were calendared on the Mayor’s and each Member’s public calendar. A number of these were posted on the internet. There was no attempt to hide them nor keep them a secret.

On May 8, 2010 at 10:54 a.m., Mike Martinez sent an e-mail to Lee Leffingwell and Mark Nathan forwarding a press release that claimed there was a city cover-up of the findings in the Keypoint Government Solutions report. At 11:21 a.m. Martinez called Laura Morrison on her cell phone. At 11:22 a.m. Mike Martinez called Randi Shade on her cell phone. At 11:48 a.m. Martinez sent a text message to Lee Leffingwell. At 11:56 a.m. Lee Leffingwell called Mike Martinez. Martinez also spoke to Randi Shade at 12:28 p.m. At 1:02 p.m. Martinez called Leffingwell and Leffingwell called him back at 1:11 p.m. At 3:42 p.m. Mike Martinez sent another e-mail to Mark Nathan, Lee Leffingwell, and Randi Shade. The e-mail summarized the conversations he had that day about the Keypoint report. He stated, "Spoke to Lee a few times, Spoke to Randi. Left msg for Morrison." Martinez also stated that he wanted to be able to speak to all of the council before making any statements. At 3:45 p.m. Laura Morrison called Mike Martinez back. Martinez called Morrison at 3:59 p.m. At 4:14 p.m. Mark Nathan e-mailed Mike Martinez a statement from Lee Leffingwell about the incident. At 4:18 p.m. Mike Martinez responded to Mark Nathan with suggestions and cc'ed Lee Leffingwell and Randi Shade. At 4:38 p.m. Martinez sent a text message to Laura Morrison, she responded, and he responded back to her. At 4:40 p.m. Mike Martinez forwarded the Mayor's statement to Laura Morrison. Lee Leffingwell sent an e-mail on May 8, 2010 at 6:28 p.m. to Randi Shade and Mike Martinez saying "I called Spelman and Morrison to update them and advise of the upcoming press statement. Talked with Sheryl twice earlier, so that's everyone except Riley, who is out of town." Leffingwell was referring to the release of the Keypoint Government Solutions report regarding the shooting of Nathaniel Sanders. All e-mail exchanges were exclusively over non-city e-mail accounts and all phone calls and text messages were via cell phone.

On June 17, 2010, City Manager Marc Ott selected three finalists for the position of General Manager at Austin Energy (AE), to replace retiring General Manager, Roger Duncan. On June 20, 2010, Roger Duncan e-mailed Marc Ott and cc'ed the Mayor and all Austin City Council members. In that e-mail, Duncan asked Ott to consider adding one other individual as a finalist for the GM position. Ott e-mailed Duncan back and said, among other things, that he felt that Duncan was pressuring him and that he was "very disappointed ." On June 21, 2010, Mike Martinez forwarded Ott's e-mail reply to Roger Duncan to Lee Leffingwell's and Randi Shade's non-city e-mail accounts. In the e-mail to Leffingwell and Shade, Martinez pointed out that Marc Ott's e-mail to Duncan was an example of the kind of behavior the City Council was concerned about in Marc Ott's recent evaluation. Randi Shade replied to Leffingwell and Martinez stating that she had spoken to Leffingwell in a one-on-one meeting about following up with Ott after the evaluation and further stating, "I think this e-mail exchange would be a very good example for us to use during that follow-up."

On July 28, 2010, Mike Martinez forwarded an e-mail he had received from Fred Hawkins to Chris Riley, Sheryl Cole, Bill Spelman, Laura Morrison, Lee Leffingwell, and Randi Shade. Mr. Hawkins is a former city attorney and the e-mail was an argument why the city should not settle in *Nathaniel Sanders, Sr., et al. v. Leonardo Quintana and the City of Austin*, No. A09-CA-00426 SS.

In May of 2009 an Austin Police Department officer shot and killed Nathaniel Sanders III. As a result of this shooting, on June 2, 2009, Mr. Sanders' family sued the officer involved in the shooting and the City of Austin. (*Nathaniel Sanders, Sr., et al. v. Leonardo Quintana and the City of Austin*, No. A09-CA-00426 SS, in the United States District Court for the Western District of Texas, Austin Division). The lawsuit was listed on the Austin City Council Agenda numerous times between May of 2009 and its resolution in June of 2011. During the time the case was pending the Austin City Council considered settling with the Sanders family. On September 30, 2010, Randi Shade sent an e-mail from her non-city account to Lee Leffingwell, Chris Riley, and Mike Martinez on their non-city accounts. Her e-mail discussed how the city ought to respond publicly to a settlement offer from the Sanders' attorney. Shade stated that the family's position indicated that he was interested in something other than helping the Sanders family. She went on to suggest that "talk of legal principles, responsibility to taxpayers, etc. seems counterproductive." Lee Leffingwell replied all to the e-mail on September 30th to add that he was in agreement as long as "Dan goes forward with the request for sanction along with his initial request for summary dismissal." Randi Shade replied all to Lee Leffingwell's e-mail on September 30th continuing the discussion. Lee Leffingwell replied all on October 1, 2010 and stated that he agreed with taking the high road, and that he did not believe the city would be wasting money going to trial because the probability of a loss was miniscule. Chris Riley received all of the e-mails debating how the city should respond to the lawsuit.

Mike Martinez, Randi Shade, and Bill Spelman co-sponsored a historic landmark resolution in August of 2010. On August 4, 2010, Mike Martinez met with Bill Spelman and Randi Shade and discussed the terms of the resolution. Mike Martinez received two e-mails from Randi Shade on August 4, 2010 discussing the language of the resolution. Sheryl Cole's agenda notes from the August 5, 2010 City Council Meeting indicated that she talked to Martinez about the resolution.

On September 1, 2010, Randi Shade met with Bill Spelman and Mike Martinez and discussed the Budget for Fiscal Year 2010-2011. In addition, Bill Spelman's Budget Spreadsheet for FY 2010-2011 has handwritten notes indicating that he spoke to Mike Martinez about the budget. Martinez met with Laura Morrison on September 9, 2010 to discuss the Health and Human Services Budget. In addition, Mike Martinez took notes indicating that he met with Sheryl Cole and Laura Morrison and discussed details of the budget.

On November 16th and 17th, 2010, Randi Shade, Mike Martinez, and Mayor Lee Leffingwell participated in an ongoing e-mail exchange in which they discussed the need to talk to Chris Riley and Sheryl Cole in an attempt to prevent a postponement of the vote on the Water Treatment Plant #4 items on the November 18th City Council agenda. This e-mail exchange happened exclusively on non-city e-mail accounts. On November 16, 2010, Randi Shade sent an e-mail to Lee Leffingwell, cc'ing Mike Martinez, and Mark Nathan stating that she would not support a postponement and further stating "we are all working on Sheryl." On November 17th at 9:24 a.m. Randi Shade sent a text message to Mike Martinez. On November 17, 2010 between 9:24 a.m. – 9:31 a.m., Lee Leffingwell sent three text messages to Mike Martinez. Immediately after at 9:31 a.m. Mike Martinez sent a text message to Lee Leffingwell. On the evening of November 17th, there were 3 calls between Mike Martinez and Randi Shade and six calls between Mike Martinez and Lee Leffingwell before 8:25 p.m. At 8:25 p.m. Mike Martinez called Sheryl Cole. After the conversation with Sheryl Cole, Mike Martinez calls Lee Leffingwell at 8:32 p.m. and Randi Shade at 8:38 p.m. and then Lee Leffingwell again at 8:57 p.m. During the City Council Meeting the next day, November 18th, Sheryl Cole and Mike Martinez had an e-mail exchange in which they negotiated adding oversight in the form of quarterly reports on the financial status of Water Treatment Plant #4. Lee Leffingwell was cc'ed on one of these e-mails from Sheryl Cole. At the November 18, 2010 Council Meeting there were public speakers advocating for postponement of that day's WTP4 items. No motion for postponement was offered by anyone on the Council.

On January 23, 2011, Mike Martinez e-mailed Randi Shade, Chris Riley, and Lee Leffingwell and proposed ideas for a Molly Ivins tribute. Randi Shade replied to Mike Martinez, Chris Riley, and Lee Leffingwell that same day and made additional suggestions for a tribute. Mike Martinez replied all to Randi Shade's e-mail. Then Lee Leffingwell replied all with his suggestions. Chris Riley never responded to the e-mail but received the entire chain of e-mails. All emails were sent and received on non-city e-mail accounts.

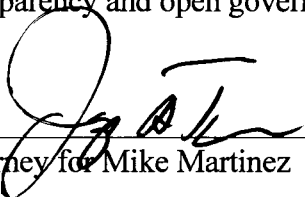
Mike Martinez affirms that he complied fully with the Travis County Attorney's February 2, 2011 Open Records Request.

Mike Martinez affirms that he complied fully with the Grand Jury Subpoena issued by the Travis County Attorney's Office on August 16, 2011.

Mike Martinez affirms that he has completed and filed with the Clerk his personal financial statement for Fiscal Year 2011-2012.

Mike Martinez affirms that he has turned over to the City of Austin all city owned records and documents inclusive of electronic communications conducted on non-city accounts that concern city business.

I hereby affirm that the foregoing statements are true and correct. I maintain that I never violated or conspired to violate the Texas Open Meetings Act. This compliance agreement is the result of an honest disagreement between the County Attorney's Office and Mike Martinez as to both the law governing the Texas Open Meetings Act and facts as applicable to the County Attorney's Office investigation to determine whether any violations of the Act have occurred. It does not constitute an admission of guilt by Mike Martinez to any alleged offense. It is a good faith effort by both parties to resolve the County Attorney's Office investigation, and in consideration of the County Attorney's legitimate effort to enforce the Open Meetings Act and Mike Martinez's efforts to ensure that even the potential for appearance of impropriety is avoided by implementing best practices related to transparency and open government.



Attorney for Mike Martinez



Mike Martinez

Recognition of Facts Considered by the County Attorney's Office

In addition to considering information discovered during the course of the County Attorney's investigation into violations of the Texas Open Meetings Act committed by the City of Austin and individual members of Austin City Council, the County Attorney takes the following into consideration:

The Austin City Council deals with topics of high public interest and engages in numerous hours of public debate and discussion covered by the media. Regularly scheduled City Council meetings are posted and broadcast live.

Mike Martinez completed the Attorney General's Open Meetings Act training video and subsequently filed the certificate of completion with the City Clerk's Office.

Despite the fact that individual one-on-one meetings not otherwise prohibited under TOMA §551.143 are not per se illegal, to avoid any potential appearance of impropriety Mike Martinez discontinued the practice of scheduling one-on-one meetings and on February 9, 2011 the Austin City Council began holding public work sessions prior to City Council meetings.

On April 7, 2011, Mike Martinez voted in favor of Resolution 20110407-014, requiring all future city business to be conducted on city accounts. In addition, the resolution required council members to promptly forward electronic communications regarding city business received on non-city accounts to the city account.

Mike Martinez affirms that he complied fully with the Travis County Attorney's February 2, 2011 Open Records Request.

Mike Martinez affirms that he complied fully with the Grand Jury Subpoena issued by the Travis County Attorney's Office on August 16, 2011.

Mike Martinez affirms that he has completed and filed with the Clerk his personal financial statement for Fiscal Year 2011-2012.

Mike Martinez affirms that he has turned over to the City of Austin all city owned records and documents inclusive of electronic communications conducted on non-city accounts that concern city business.

Over the course of this investigation, it has become a concern that the organizational structure, internal culture, and professional development of the City of Austin's management, including the City Manager's Office and City Legal Department, was not conducive to facilitating proper understanding and adequate training to ensure compliance with the Texas Open Meetings Act by members of the Austin City Council.

The City of Austin's New Initiatives in Open Government

The Austin City Council requested that the City Manager implement a policy similar to Resolution 20110407-014 regarding the use of non-city accounts. Subsequently, the City Manager issued Administrative Bulletin 08-06 requiring all city employees to follow a policy that is substantially similar to the one created by the city council.

The City of Austin created a team of senior advisors to review the City's practices regarding ethical and legal obligations. This team made recommendations that would enhance compliance and oversight, and streamline the process for public information requests. Additionally, the City created a single point of contact in each council member's office on open government issues.

The City of Austin's Ethics and Integrity office became a part of the City's law department with a newly created executive level position to oversee and ensure compliance with the Texas Public Information Act and the Texas Open Meetings Act.

The City of Austin has hired a full time records analyst to work with the Austin City Council on records management.

Duration of Agreement

This agreement begins when this document is executed in its entirety by all parties and this agreement lasts for two (2) years.

Agreement to Specified Terms and Conditions

Mike Martinez must timely provide proof of completion of all terms and conditions, by U.S. postage-prepaid mail, facsimile transmission, email, or hand delivery to:

<i>Street Address</i>	<i>Mailing Address</i>
Travis County Attorney's Office	Travis County Attorney's Office
Ned Granger Admin. Bldg. Austin, Texas 78701	Attn: Mack Martinez, Assistant County Attorney
	Post Office Box 1748
	Austin, Texas 78767-1748

Mike Martinez agrees that he will cooperate with the Travis County Attorney's Office investigation into alleged Texas Open Meetings Act violations by the Austin City Council.

Mike Martinez agrees to testify completely and truthfully before any Grand Jury, the Court and/or Jury at any proceeding, hearing, or trial if called upon to do so by an attorney with the County Attorney's Office regarding alleged violations of the Texas Open Meetings Act by past or present Austin City Council members.

Mike Martinez shall provide proof that he has completed a Texas Open Meetings Act training course and a Public Information Act training course, both available through the Texas State Attorney General's Office, within twelve months of the date this agreement is signed.

Mike Martinez shall direct all members of his staff to complete a Texas Open Meetings Act training course and a Public Information Act training course, both available through the Texas State Attorney General's Office, within twelve months of the date this agreement is signed.

Mike Martinez agrees to continue to comply with the City of Austin's Records Retention Rules under Chapter 2-11 of the Austin City Code and Local Government Code § 203.041.

Mike Martinez agrees to continue to comply with the Public Information Act, Texas Government Code Chapter 552 and the Local Government Records Act, Texas Local

Government Code Chapter 201 by providing the City of Austin any public information that Mike Martinez possesses that the city does not also possess, either immediately or at the time of a relevant public information request.

Mike Martinez agrees to continue to comply with City Council Resolution 20110407-014, requiring all future city business to be conducted on city accounts and requiring council members to promptly forward electronic communications regarding city business received on non-city accounts to the city account.

Mike Martinez agrees to direct his staff to comply with the requirements of City Council Resolution 20110407-014.

**Consequences of Non-Compliance with or Violation of
the Terms and Conditions of This Agreement**

If Mike Martinez fails to comply with, or violates, any of the specified terms and conditions of this agreement, the Travis County Attorney is no longer subject to the agreement and may proceed with charges alleging that Mike Martinez committed a violation under Chapter 551 or 552 of the Texas Government Code and may prosecute the cases to the full extent of the law.

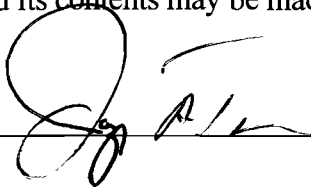
Mike Martinez hereby agrees to the following if the Travis County Attorney files the charges:

Mike Martinez agrees and stipulates that this agreement, including the written affirmations that it contains, is admissible against him in court.

Mike Martinez agrees and stipulates that all business records affidavits, documents, and electronic communications provided to the Travis County Attorney's office by Mike Martinez or by the city of Austin on behalf of Mike Martinez are admissible against Mike Martinez at trial and in court.

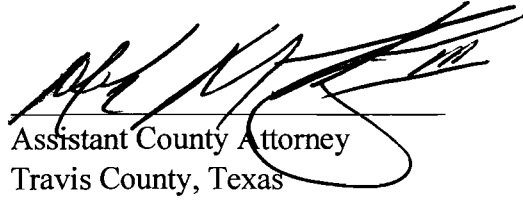
The Travis County Attorney's burden of showing Mike Martinez' non-compliance with this agreement is by a preponderance of the evidence.

I, Mike Martinez, have fully discussed this agreement, the waivers herein, and the allegations against me with my attorney. I am satisfied that he has properly represented me. I have received a copy of this Compliance Agreement and I understand that this agreement and its contents may be made public.





Attorney for Mike Martinez



Assistant County Attorney
Travis County, Texas

Mike Martinez

Date: 10-15-12