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CONTACT PERSON: DAVID ESCAMILLA

PHONE NUMBER: 512-854-9415

PRESS RELEASE

TODAY TRAVIS COUNTY ATTORNEY DAVID ESCAMILLA ANNOUNCED THE CONCLUSION OF HIS INVESTIGATION INTO ALLEGATIONS OF AUSTIN CITY COUNCIL MEMBERS' VIOLATION OF THE TEXAS OPEN MEETINGS ACT. THE TRAVIS COUNTY ATTORNEY'S OFFICE ENTERED INTO INDIVIDUAL COMPLIANCE AGREEMENTS THAT PROVIDE FOR DEFERRING PROSECUTION OF SIX CURRENT CITY COUNCIL MEMBERS AND ONE FORMER MEMBER.

THANKS TO THE ORIGINAL COMPLAINANT COMING FORWARD, AND COMBINED WITH OUR INVESTIGATIVE EFFORTS, WE HAVE BEEN ABLE TO BRING ABOUT SIGNIFICANT CHANGE IN THE FUTURE TRANSPARENCY OF OUR CITY GOVERNMENT.

THIS INVESTIGATION WAS ALWAYS ABOUT COMPLIANCE WITH THE TEXAS OPEN MEETINGS ACT (TOMA) AND OTHER LEGAL STANDARDS REQUIRING TRANSPARENCY AT CITY HALL, WHICH ARE CRUCIAL TO ENSURING A GOVERNMENT THAT IS ACCOUNTABLE AND RESPONSIVE TO ITS CITIZENS.

THROUGH ITS COMPREHENSIVE INVESTIGATION, THE TRAVIS COUNTY ATTORNEY'S OFFICE OBTAINED AND REVIEWED COUNCIL MEMBERS' INDIVIDUAL NOTES, CALENDARS, CORRESPONDENCE, PERSONAL CELL PHONE RECORDS, OFFICE AND PERSONAL E-MAIL ACCOUNTS, AND INSTANT MESSAGING LOGS. A TOTAL OF MORE THAN 16,000 DOCUMENTS CONSISTING OF WELL OVER 30,000 PAGES WERE REVIEWED.

"IN ADDITION TO THE SYSTEMATIC ONE-ON-ONE MEETINGS THAT WERE THE SUBJECT OF THE ORIGINAL COMPLAINT, WE FOUND THAT COUNCIL MEMBERS REGULARLY DELIBERATED OUTSIDE OF THE PUBLIC'S PURVIEW BY USE OF ALMOST EVERY MODERN COMMUNICATION MEDIUM THAT EXISTS," SAID DAVID ESCAMILLA.

"AS A RESULT OF OUR INVESTIGATION, WE FOUND PROBABLE CAUSE TO BELIEVE THAT MULTIPLE VIOLATIONS OF THE TEXAS OPEN MEETINGS ACT HAD OCCURRED."

AS TOMA EXPERTS HAVE REPORTED, ACTUAL PROSECUTIONS FOR VIOLATIONS OF TOMA ARE RARE AND DIFFICULT TO PROVE. AN INFORMAL SURVEY OF SIMILAR PAST INVESTIGATIONS REVEALED THAT MANY WERE RESOLVED WITH DEFERRED PROSECUTION AGREEMENTS. IN MAKING THIS DECISION, WE IDENTIFIED SEVERAL MITIGATING FACTORS, INCLUDING THE FACT THAT THE PRACTICE OF SYSTEMATIZED AND SCHEDULED ONE-ON-ONE MEETINGS BETWEEN COUNCIL MEMBERS PRE-EXISTED THEIR TAKING OFFICE. ADDITIONALLY, OUR INVESTIGATION REVEALED THAT THE COUNCIL MEMBERS

WERE NOT WELL-SERVED BY CITY ADMINISTRATION. WE COULD NOT IDENTIFY ANYONE AT THE CITY WITH MEANINGFUL RESPONSIBILITY FOR ENSURING COMPLIANCE WITH THE TEXAS OPEN MEETINGS ACT.

DURING THE COURSE OF OUR INVESTIGATION, IT BECAME APPARENT THAT ADDITIONAL TRANSPARENCY WEAKNESSES BEYOND TOMA EXISTED AT CITY HALL, INCLUDING IN THE AREAS OF THE TEXAS PUBLIC INFORMATION ACT (TPIA), PERSONAL FINANCIAL DISCLOSURE REQUIREMENTS, AND RECORDS RETENTION. THE AGREEMENTS RELEASED TODAY, ALONG WITH NEW INITIATIVES ADOPTED BY THE CITY, INCLUDE PROVISIONS FOR GREATER ATTENTION AND COMPLIANCE WITH ALL OF THESE REQUIREMENTS BY THE COUNCIL MEMBERS INVOLVED.

PURSUANT TO THE AGREEMENTS, AND IN RETURN FOR DEFERRING PROSECUTION AGAINST THEM, THE RESPECTIVE COUNCIL MEMBERS INVOLVED HAVE AGREED TO CERTAIN CHANGES TO THEIR INDIVIDUAL CONDUCT IN ATTENDING TO THEIR CITY DUTIES, INCLUDING:

- 1) COMPLETION OF EDUCATION COURSES BY THE COUNCIL MEMBERS AND THEIR INDIVIDUAL STAFFS CONCERNING TOMA AND RECORDS RETENTION;
- 2) ENFORCEABLE PROMISES TO COMPLY WITH TOMA, TPIA, STATE AND CITY RECORDS RETENTION LAWS AND REGULATIONS;
- 3) ENFORCEABLE PROMISES TO COMPLY WITH CITY COUNCIL RESOLUTION 20110407-014, REQUIRING ALL FUTURE CITY BUSINESS TO BE CONDUCTED ON CITY ACCOUNTS AND REQUIRING THE PROMPT FORWARDING TO CITY ACCOUNTS OF ELECTRONIC COMMUNICATIONS REGARDING CITY BUSINESS RECEIVED ON NON-CITY ACCOUNTS.

IN ADDITION, THE CITY COUNCIL WAS PROMPTED BY THE TRAVIS COUNTY ATTORNEY'S OFFICE INVESTIGATION TO ADOPT CHANGES RELATED TO COMMUNICATIONS BY AND BETWEEN COUNCIL OFFICES INCLUDING:

- IMPLEMENTING PUBLIC WORK SESSIONS:

THE PRACTICE OF SCHEDULING CLOSED ONE-ON-ONE MEETINGS BETWEEN THE MEMBERS OF THE AUSTIN CITY COUNCIL AND THE MAYOR WERE DISCONTINUED. ON FEBRUARY 9, 2011, THE AUSTIN CITY COUNCIL BEGAN HOLDING PUBLIC WORK SESSIONS PRIOR TO CITY COUNCIL MEETINGS.

- LIMITING SUCCESSIVE ONE-ON-ONE MEETINGS WITH COLLEAGUES TO DISCUSS CITY BUSINESS:

INSTEAD, COUNCIL MEMBERS MEET ONLY ON AN "AS NEEDED" BASIS, AND TAKE PRECAUTIONS TO AVOID A QUORUM BY ENSURING THAT THEY DO NOT MEET WITH MORE THAN TWO COUNCIL COLLEAGUES ON A PARTICULAR TOPIC.

- ELIMINATING COUNCIL AIDE AGENDA REVIEW MEETINGS
- IMPLEMENTING NEW RULES REGARDING ELECTRONIC COMMUNICATIONS FROM PERSONAL DEVICES:

IN APRIL 2011, CITY COUNCIL PASSED RESOLUTION 20110407-014 IN WHICH COUNCIL MEMBERS COMMITTED TO PRIMARILY USE CITY EQUIPMENT AND CITY ACCOUNTS WHEN CONDUCTING CITY

BUSINESS. WHEN A COUNCIL MEMBER USES A PERSONAL DEVICE OR PERSONAL ACCOUNT TO CONDUCT CITY BUSINESS, THE RESOLUTION MANDATES THAT THE COUNCIL MEMBER FORWARD THAT COMMUNICATION TO THE CITY SERVER SO THAT THE COMMUNICATION CAN BE PROPERLY CAPTURED AND RETAINED.

- EXPANDING TOMA TRAINING FOR CITY STAFF:

CITY STAFF WILL BE CONDUCTING MORE TRAINING ON OPEN GOVERNMENT FOR ALL CITY EMPLOYEES, INCLUDING THE COUNCIL MEMBERS AND THEIR AIDES. OPEN GOVERNMENT TRAINING WILL BE INCLUDED DURING NEW EMPLOYEE ORIENTATION. IN ADDITION, ANNUAL TRAINING WILL BE PROVIDED FOR ALL DEPARTMENTS.

- STREAMLINING CITY'S RESPONSES TO PUBLIC INFORMATION ACT REQUESTS:

THE CITY'S COMMUNICATION TECHNOLOGY MANAGEMENT OFFICE WILL CONDUCT ALL SEARCHES FOR RESPONSIVE DOCUMENTS. THE CITY'S COMMUNICATION TECHNOLOGY MANAGEMENT OFFICE HAS BEEN NAMED CUSTODIAN OF ALL RECORDS PRODUCED IN RESPONSE TO PUBLIC INFORMATION ACT REQUESTS DIRECTED TO COUNCIL MEMBERS.

- CREATING A SENIOR TEAM TO REVIEW COMPLIANCE WITH COUNCIL MEMBERS' LEGAL AND ETHICAL OBLIGATIONS:

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.

MANY OF THE ABOVE CHANGES, WHILE AN IMPROVEMENT TO PAST PRACTICES, ONLY REQUIRED VOLUNTARY COMPLIANCE. BY ENTERING INTO THESE COMPLIANCE AGREEMENTS, WE HAVE PUT TEETH INTO SEVERAL OF THESE REFORM MEASURES FOR TWO YEARS.

"IF MEMBERS OF THE AUSTIN CITY COUNCIL DO NOT ABIDE BY THE TERMS OF THE COMPLIANCE AGREEMENTS, NOT ONLY WILL MY OFFICE FILE ON ANY NEW VIOLATIONS, WE WILL FILE CRIMINAL CHARGES BASED ON THE ALLEGED VIOLATIONS THAT WERE THE SUBJECT OF THIS INVESTIGATION."

CONVICTIONS OF THESE POSSIBLE VIOLATIONS OF TOMA WOULD INCLUDE PUNISHMENTS RANGING FROM A FINE OF NOT LESS THAN \$100 OR MORE THAN \$500 AND/OR CONFINEMENT OF NOT LESS THAN 30 DAYS OR MORE THAN 180 DAYS.

“I FEEL A RESPONSIBILITY TO STATE, UNEQUIVOCALLY, THAT THIS WAS NEVER AN INVESTIGATION INTO CORRUPT PRACTICES. THERE WAS NEVER EVEN A HINT THAT ANY OF THE CITY COUNCIL MEMBERS WERE INVOLVED IN SELF-DEALING, NOR WAS THERE ANY EVIDENCE THAT ANY COUNCIL MEMBER WAS ENGAGING IN THESE DELIBERATIONS IN ORDER TO BENEFIT A FRIEND OR POLITICAL SUPPORTER.”

“I COMMEND THE MEMBERS OF THE CITY COUNCIL FOR RECOGNIZING THE PROBLEMS IN THEIR PAST PRACTICES OF CONDUCTING CITY BUSINESS OUTSIDE THE PURVIEW OF THE PUBLIC AND WORKING TO RECTIFY THE SITUATION. BY VIRTUE OF ENCOMPASSING THE STATE CAPITAL, TRAVIS COUNTY IS HOME TO MORE GOVERNMENTAL MEETINGS SUBJECT TO TOMA THAN ANY OTHER COUNTY IN THE STATE. IT IS IMPORTANT THAT A CLEAR SIGNAL BE SENT THAT TOMA COMPLIANCE IS EXPECTED AND MANDATORY. THE TEXAS OPEN MEETINGS ACT IS NOT WINDOW DRESSING FOR GOVERNMENTAL TRANSPARENCY, IT’S THE LAW.”