

Depository Law

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What is a depository?

A place to deposit money



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Basic Question: Where can we keep our money?



- TX LGC Ch. 105
- Must keep money in the city depository, which includes:
 - National and State
 - Banks
 - Savings Associations
 - Credit Unions
- One or more



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Which funds must be kept in the depository?

- “Applies to the funds ... of any municipality or any department or agency of the municipality.”
 - General funds
 - Utility funds and other separate accounts
 - Includes interest and sinking funds
 - Nearly anything you can think of...
- Independent entities responsible for own funds:
 - Economic development corporations
 - Crime control and prevention districts
 - Most independent entities are subject to depository law themselves



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Exception? What about civil asset forfeiture \$?

- Forfeiture?
 - Seizure of assets used to further a specific crime or property that is connected to a crime in some way.
- Code Crim. Proc. § 59.06(c)(2) requires civil asset forfeiture money to be kept in a “special fund in the municipal treasury.”
- Police chief has discretion over expenditures- not banking.



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Special Duties of a Municipal Depository

- The depository must:
 - Provide security for funds no later than five days before commencement of the term of the contract. Loc. Gov't Code, § 105.031(a).
 - Comply with the Public Funds Collateral Act (Subchapter B of Ch. 2257 of TX Gov't Code)
 - Provide 100% security for deposit of public funds (ISDs get 110%!)
 - Security can be provided/offset by FDIC or NCUA insurance



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How do we know our money will be there?



- FDIC or NCUA insures up to \$250,000
- Collateral security
 - Collateral can be securities or corporate surety bonds
 - City must adopt a policy defining adequate collateral
 - Type, valuation, substitution
 - Comptroller oversees depositories under Chapter 2257, receives reports



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Selecting the depository

The city must follow the procedures, but ultimately it is at the discretion of city council



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How do we choose a depository?



- **Request for Applications (“RFA”)**
 - City must request applications from depositories
 - City must publish notice of request for applications
 - Similar to RFP process.
- Application deadline is critical



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RFA: Designated Officer

- Treasurer or other officer so designated by city council
- Receives and reviews the applications
- Must prepare annual report outlining details of city accounts and funds



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RFA: Notice

- Designated officer gives notice of RFA
- The notice must contain:
 - Name and address of designated officer receiving applications
 - Date and time the applications are due
 - Date, time, and place council will consider the applications



(The usual stuff, really...)



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RFA: Notice Publication Requirements

- 21 days or more prior to the deadline
- In a newspaper of general circulation in the city (use official city paper)
 - Internet is not an alternative
- If city want applications from out-of-city depositories, must also publish in a financial publication of general circulation in the state



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Which depository can we pick?

- Council decision – Open Meetings Act
- Only timely applications may be considered
- Consider all factors, including price
- City may reject any or all applications
- Keep an eye on:
 - Depository Location
 - Council Conflicts



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Location, Location, Location

Where is the Place of Business?

- In the city? Yes.
- Not in the city? Maybe
 1. City council has adopted a written policy allowing for out-of-city depository; and
 2. Place of business in Texas
- Credit unions must be **domiciled** in Texas



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Conflict of Interest

- Special statute: Local Government Code Section 131.903
- Does a city official or employee have an interest in the depository?
 - If no, then no problem
 - If yes, does the individual have a duty to select the depository?



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More Conflict of Interest

- 10% Rule
- The city **may not select** a depository in which an **official or employee** with a duty to select owns 10% or more of stock.
- Stricter than the standard city conflict rules of LGC Ch. 171
 - (Affidavit + Non-participation = Cured!)

10%



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Conflict of Interest, Finally

- The city may select a depository if employee/official with duty to select owns less than 10% of stock if:
 - Conflicted individual abstains from participation and files Chapter 171 affidavit;
 - The rest of council still votes to select depository; and
 - Charter or ordinance does not prohibit the selection



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The contract



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Depository Contract Time



- Council must record “by order in minutes” the entity selected as depository
- **Process is not over at depository selection!!**



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Timeline

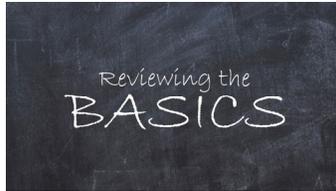
- Not later than five days before the commencement of the contract, the depository must provide security.
- Not later than 60 days after the council designates the depository, the designated officer must transfer funds.
- So there is a clock ticking on negotiations.
- City can still get out of this



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Depository Contract - Basics

- ✓ Must be written
- ✓ Contract term may not exceed five years
- ✓ Contract may contain any provisions approved by city council
- ✓ City council **may contract for additional services**
(put additional services in RFA)



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Depository Contract – Even More Stuff...

- Provisions requiring depository to:
 - Perform all duties under the contract;
 - Keep funds covered by the contract;
 - Provide security;
 - Pay on all checks drawn;
 - Pay all transfers; and
 - Account for all city funds



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Energy & Firearms Sectors Anti-Boycott

- Chapter 809, Government Code; Chapter 2274, Government Code
- **Affected Contracts and Vendors (From 2021 Legislature)**
 - Goods or Services contract with a value of \$100,000 or more
 - Company with more than 10 full-time employees
- **Energy Sector:** Vendor must verify in the contract that vendor:
 - Vendor must verify in the contract that vendor does not boycott energy companies and will not boycott energy companies during contract.
- **Firearms Sector:**
 - Vendor must verify that they do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract.
 - Exceptions: (a) contracts with a sole-source provider, or (b) no complying bids received.



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Signatories

- **City:**
 - Normal practice.
 - Designated Officer?
- **Depository:**
 - Financial Institution Resource and Recovery Enforcement Act (FIRREA) requires:
 - President of bank board or loan committee to sign contract on behalf of depository;
 - Contract must be entered into official depository records by resolution



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Breach of Contract

Failure to Provide Collateral:

- Contract can be cancelled and a new depository selected if collateral is not provided
 - Zero collateral – Automatic breach
 - 80% collateral?? – Recommend cancellation.



Other breaches:

- Other breaches must be “material” to make the contract voidable
- Underline, **bold**, CAPITALIZE, increase font size if it’s important to the city!



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Miscellaneous provisions



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Miscellany: Payment of Checks

- City council may adopt procedures on how checks are paid
- If not, city must follow archaic “warrant system”



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Miscellany: Enforcement

Why the contract is so important:

- Conflict over depository breach must be brought as provided by the contract.
 - i.e., if you want to sue about it, it better be in the contract.
- Must be tried in the county where the city hall is located



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Compliance with Depository Laws

- Misdemeanor for conflict-of-interest violation
- Civil suit from taxpayer
- Audit headaches
- Bond rating issues



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2025 Legislative Session

- TLGC Chapter 105 has not been amended since **1993**
- No changes last session
- Changes on the Horizon??
 - Maybe newspaper notice could be simplified
- TML Legislative and Grassroots Policy Dev.



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Questions?

- TML Legal Department
 - 512-231-7400
 - legalinfo@tml.org
- My contact info
 - 512-231-7460
 - sarah@tml.org
- For further reading on depositories
 - Chapter 105, Loc. Gov't Code
 - [Our legal Q&A](#) on our website: tml.org: Policy>Legal Research>Legal Questions and Answers>Cities—Depositories
 - A sample depository contract: <https://tmlpfia.org/wp-content/uploads/2019/06/Depository-Agreement-SAMPLE.pdf>

