




1. A brief rant...
2. What I mean by town hall meeting.
3. Three ways you might post one that comply with TOMA.
4. What's the harm if you screw it up?

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Texas Municipal League
General Counsel
Texas City Attorneys Association



TOMA's Elusive "Yes" or "No"...


- Candidate forums?
- "Walking quorums?"
- Town hall meetings

Asgiersson v. Abbott, 696 F.3d 454 C.A. 5 (Tex.) 2012: Footnote 15 in the opinion cites the *amicus curiae* brief submitted by TML, the South Dakota Municipal League, the National League of Cities, and the International Municipal Lawyers Association:

In its brief as amicus curiae, the Texas Municipal League offers other situations in which TOMA arguably could prohibit constitutionally-protected speech.

For example, amicus mentions a situation in which a city council member is prohibited from attending a civic event at which a fellow member who is running for re-election will be speaking about public-policy issues. Amicus argues that that is prohibited, because it is a quorum discussing government policy at an event not open to the general public.



The potential situations listed, however, are not from actual cases but are only examples of advice attorneys have given to local government officials. Furthermore, such broad interpretations of the law are suspect, given that TOMA appears to exclude such gatherings from its definition of "meeting":

["Meeting"] does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, or the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, or press conference.



**Complaint filed in XXXXXXXX council race:
[Candidate's] backer accuses opponent [incumbent]
of violating state open meetings law at campaign
event**

By XXXXXX XXXXXX
AMERICAN-STATESMAN STAFF
Wednesday, May 06, 2009

A supporter of XXXXXXXX City Council candidate XXXXXXXX filed a complaint with prosecutors Tuesday alleging that incumbent XXXXXXXX may have violated the state's Open Meetings Act at a campaign event.

The complaint filed by XXXXXXXX accuses XXXXXX of attending and possibly organizing a private, invitation-only meeting in XXXXX to promote his campaign and raise money on April 15.



Walking Quorum


Question: *Can I talk to another councilmember outside of a posted meeting?*

Answer = **20 page memo**

Still *can't say yes or no!*



What *isn't* a town hall meeting?



City Center/Central Library Town Hall Meeting
Hosted by Council Member Lana Wolff

WHEN: Wednesday, May 21, 2014
WHERE: Council Briefing Room
Arlington City Hall, 3rd Floor
101 W. Abram Street
TIME: 6:00 pm - 7:00 pm

Please join Council Member Lana Wolff and representatives from City Staff to learn more about the City Center/Central Library project proposed for downtown Arlington.

We invite you to attend and ask questions.

For more information, please contact the Council Office at 817-499-6141.



What *is* a town hall meeting?

- A gathering of a quorum of a city council where citizens are invited to a city or other facility to share their concerns with, and ask questions of, the city council and city staff



Real East Texas
CITY OF LONGVIEW
Channel 5 Television

Town Meeting



CITY COUNCIL MEETING
FRIDAY, JUNE 20, 2014
CITY HALL
123 MAKESMORESENSE ROAD, CITY, TX 12345
3:45 P.M.

JOIN THE MAYOR AND CITY COUNCIL FOR A TOWN HALL MEETING WITH PUBLIC COMMENT ENCOURAGED

COME VISIT WITH YOUR MAYOR AND CITY COUNCIL ON ITEMS OF IMPORTANCE TO YOU AND HEAR FROM THEM BASED ON YOUR INPUT!

*There will be no votes or any formal actions taken on subjects discussed during this meeting as this town hall meeting will only allow members of the public to present ideas and information to city officials and staff.



Inadequate Notice?

- **GA-0668 (2008):** Postings such as “City Manager’s Report,” “Mayor’s Update,” or “Council and Other Reports” provide insufficient notice to the public.
- **Cox Enters., Inc. v. Bd. of Trs. of Austin Indep. Sch. Dist., 706 S.W.2d 956 (Tex. 1986):** the *Austin American-Statesman* sued claimed that AISD – by posting an agenda listing only general terms such as “personnel,” “litigation,” and “real estate matters” – failed to give adequate notice



Inadequate Notice?

- *Hays County Water Planning Partnership v. Hays County, Texas*, 41 S.W.3d 174 (Tex. App.—Austin 2001, pet. Denied): County commissioner addressed the commissioners court from the citizens’ comment microphone pursuant to an agenda posting that read: “Presentation by Commissioner Molenaar.”
- Of particular interest, the court addressed the issue of the requirements of the Act as they relate to an elected official’s freedom of speech. Specifically, the court concluded that requiring advance notice in compliance with the Act does not restrict the constitutional right of free speech when the official seeks to exercise that right at a meeting of the public body of which he is a member. “In the context in which they were made, Molenaar’s remarks were not those of a private citizen but of an elected official. In these circumstances, requiring compliance with the Open Meetings Act does not violate the First Amendment.”
- In response to GA-0668, the legislature enacted 551.0415 – BUT a town hall meeting ain’t no ceremonial event.



Public comment?

Sec. 551.042. INQUIRY MADE AT MEETING. (a) If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply to:

- (1) a statement of specific factual information given in response to the inquiry; or
- (2) a recitation of existing policy in response to the inquiry.

(b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

JC-0169 at 4: Threw in the idea that a posting of “public comment” will “not provide adequate notice if the governmental body is, prior to the meeting, aware, or reasonably should have been aware, of specific topics to be raised.” The opinion cites to “See *Cox Enterprises*, 706 S.W.2d 956” for that proposition.




NOTICE

CITY COUNCIL MEETING
 FRIDAY, JUNE 20, 2014
 CITY HALL
 123 NONSENSE ROAD, CITY, TX 12345
 3:45 P.M.


COME VISIT WITH YOUR MAYOR AND CITY COUNCIL ON ITEMS OF IMPORTANCE TO YOU AND HEAR THEIR THOUGHTS AND IDEAS ON MAKING IMPROVEMENTS BASED ON YOUR INPUT!

1. Call to order.
2. "Town Hall Meeting" moderated by the mayor to include discussion on any and all types of city business, including:


WAIT FOR IT!!!!!!!




- Animal Control
- Beautification of City
- County Flood Control
- Watershed Projects
- Building-related Permits
- Business Development
- Churches
- City Agendas and Minutes
- City Beautification
- City Budget
- City Code of Ordinances
- City Committees
- City Communications
- City Contracts
- City Engineer
- City Events
- City Facilities
- City Finances
- City Library
- City Manager
- City Meetings
- City Water System
- City Website
- Code Enforcement
- Community and Conference Centers



- Community Development
- Curfew Ordinance
- Drug Enforcement
- Economic Development
- Elections
- Federal Stimulus Plan
- Finance Department
- Fire Department
- Future Development
- Flooding & Drainage Issues
- Garbage and Recycling
- Grants
- Graffiti Ordinance
- Growth, taxes, vision
- Home Rule Charter
- Human Resources
- Interlocal Agreements
- Intergovernmental Relations
- Interrelationship w/County Government
- Interrelationship w/University
- Interrelationship between City Govt & Fed Govt
- Junked Vehicle Ordinance
- Law Enforcement Programs
- EDC




Elections
 Federal Stimulus Plan
 Finance Department
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 Future Development
 Flooding & Drainage Issues
 Garbage and Recycling
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 Interrelationship between City Govt & Fed Govt
 Junked Vehicle Ordinance
 Law Enforcement Programs
 EDC
 Lighting
 Litigation
 Master Plan
 Master Redevelopment Plan
 Municipal Court



Nuisances
 Parks and Recreation
 Personnel Issues
 Police Department
 Property Taxes
 Public Works Projects and Operations
 Recreation Facilities
 Sales Taxes
 Signage/Signs
 Staffing
 Strategic Planning
 Street Maintenance Sales tax
 Streets and Roads
 Stormwater Management
 Sustainability Overlay
 Swimming Pools
 Taxes
 Texas Municipal League
 Trade and Market Days
 Traffic & Traffic Control
 Trails
 Trees and Tree Challenge
 Vector Control
 Waste Management
 Zoning


There will be no votes or any formal actions taken on subjects discussed during this meeting as this town hall meeting will only present an exchange of ideas and information among city officials and members of the public.

3. **Adjourn.**



Adequate Notice?

- **City of San Antonio v. Fourth Court of Appeals, 820 S.W.2d 762 (Tex. 1991):** the condemnation notice complied with the Act, because the notice **apprised the public at large in general terms** that the city would consider the condemnation of certain property in a specific area for purposes of the project.
- **Tex. Turnpike Auth. v. City of Fort Worth, 554 S.W.2d 675 (Tex. 1977):** the notice **need not have stated all the consequences that might result from the proposed action.**
- **Lower Colorado River Auth. v. City of San Marcos, 523 S.W.2d 641 (Tex. 1975):** “Although conceding that the notice was ‘not as clear as it might be,’” the Court held that it complied with the Act “because ‘it would alert a reader to the fact that some action would be considered with respect to charges for electric power sold in San Marcos.’”



What's the Harm?

- The Act provides that a closed meeting involving a quorum of members is a misdemeanor offense:

Sec. 551.144. CLOSED MEETING; OFFENSE; PENALTY. (a) 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.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

(1) a fine of not less than \$500 or more than \$500;

(2) confinement in the county jail for not less than one month or more than six months; or

(3) both the fine and confinement.

- Conducting a town hall meeting after simply posting "town hall meeting" on an agenda probably wouldn't rise to the criminal level under the provision above.
- The likely remedy would be a civil lawsuit filed by a disgruntled citizen or group seeking mandamus or an injunction to stop, prevent, or reverse a violation of the Act under Sections 551.141 or 551.142.



The Best Way?

Just before posting this article, the Austin-American Statesman issued a story about the City of Austin having a town hall meeting. How did Austin handle the agenda posting? **That city required speakers to sign up in advance with their topic listed, and specifically posted them on the agenda.**

Brilliance!



One more thing...



- "I have not failed. I've just found 10,000 ways that won't work."
— Thomas Edison