The Texas Open Meetings Act at a Glance

Under the Texas Open Meetings Act (the Act), the general rule is that every regular, special, or called meeting of a governmental body, including a city council and most boards and commissions (depending on membership and authority), must be open to the public and comply with all the requirements of the Act. The Act does not apply to purely social gatherings or conventions and workshops, as long as any discussion of city business is incidental to the purpose of the gathering.

There are seven exceptions that generally authorize closed meetings, also known as "executive sessions." The exceptions include discussions involving: (1) purchase or lease of real property; (2) security measures; (3) receipt of gifts; (4) consultation with attorney; (5) personnel matters; (6) economic development; and (7) certain homeland security matters. The governing body must first convene in open session, identify which issues will be discussed in executive session, and cite the time and applicable exception. All final actions, decisions, or votes must be made in an open meeting.

A governmental body must post an agenda that includes the date, hour, place, and subject of each meeting. The agenda must be posted at city hall in a place readily accessible to the public at all times for at least 72 hours before the meeting. In addition, for cities that have an Internet Web site: (1) a city under 48,000 population must post meeting notices on the site; and (2) a city over 48,000 population must post the entire agenda on the site. Emergency meetings to address imminent threats to public health and safety or urgent public necessity may be called with two hours notice that identifies the nature of the emergency. If, at a meeting, someone inquires about a subject not on the agenda, any deliberation or decision about the subject must be limited to: (1) a proposal to place the subject on a future agenda; (2) a statement of factual information; or (3) a recitation of existing policy.

Cities must keep written minutes (or a "certified agenda" for executive sessions) or recordings of all meetings, except for closed consultations with an attorney. The minutes must state the subject and indicate each vote, decision, or other action taken. Minutes do not have to be a verbatim transcript. Minutes of open meetings must be kept forever. Executive session certified agendas or tapes must be kept for at least two years, and longer if litigation is pending.

Penalties for violating the Act range from having the action voided to the imposition of fines and incarceration. Any action taken in violation is voidable and may be reversed in a civil lawsuit. There are four criminal provisions under the Act, including: (1) knowingly conspiring to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations; (2) calling or participating in a closed meeting; (3) participating in an executive session without a certified agenda or tape recording; and (4) disclosure of a certified agenda or tape recording to a member of the public. Upon conviction, fines may be up to $2,000, and incarceration may be up to six months.

An official can be convicted for participating in an illegal closed meeting, even if unaware of the illegality of the meeting. It is an affirmative defense that the member or the official acted in reasonable reliance on a: (1) court order; (2) written opinion of a court of record; (3) written attorney general's opinion; or (4) written opinion of the attorney for the governing body.

This handout is oversimplified for brevity and should never be substituted for the advice of legal counsel. Please contact your city attorney or the Texas Municipal League Legal Services Department at 512-231-7400 or legalinfo@tml.org with questions regarding the application of the Act. For the detailed Open Meetings Act Handbook, please visit the Texas attorney general's Web site at www.oag.state.tx.us or call 877-OPEN TEX.