



Open Meetings Act Overview and Update

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Opinions



How the Act Furthers Openness

- ▶ Notice of Meetings
- ▶ Procedures to ensure openness during open meetings
- ▶ Procedures to ensure closed meetings are limited to the authorized discussions
- ▶ Broadcasting requirements
- ▶ Record keeping requirements



Notice of Meetings

A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.

Tex. Gov't Code § 551.041.



Example Notice



**BRAZOS COUNTY
BRYAN, TEXAS**

NOTICE OF MEETING AND AGENDA

BRAZOS COUNTY COMMISSIONERS COURT

THE COMMISSIONERS COURT OF BRAZOS COUNTY WILL MEET IN REGULAR SESSION ON SEPTEMBER 24, 2019 AT 10:00 AM IN THE COMMISSIONERS COURTROOM OF THE COUNTY ADMINISTRATION BUILDING, 200 SOUTH TEXAS AVE., SUITE 106, BRYAN, TX 77803

1. Invocation and Pledge of Allegiance
- U.S. and Texas Flag - Judge Peters
2. Call for Citizen input and/or concerns

Consider and take action on agenda items 3-37:

3. [Proclamation 19-035 declaring October 2019 as National Domestic Violence Awareness Month](#)
4. [Resolution 19-025 approving the FY 20 Budget of the Brazos County Emergency Communications District and providing an effective date](#)
5. [Designation of the day of the week and location for Commissioners Court to convene into Regular Session each week during FY 2020](#)
6. [Proposed county holidays for the 2020 calendar year](#)
7. [Appointment of Arthur J. Gallagher & Co., Inc. & All Risks, Ltd. as exclusive insurance broker with respect to Professional Medical Liability Insurance Programs for employees associated with the Health and Wellness Clinic](#)
8. [Approval of the Following Job Descriptions FY 19:](#)
 - [a. Temp Clerk \(1040 Hours\) Archival Fund \(Class Code 1719, Position 1\) for District Clerk](#)
 - [b. Deputy Constable \(Class Code 1617\) Constable Precinct 2](#)
 - [c. Constable \(Class Code 1614\) Constable Precinct 2](#)
 - [d. Chief Deputy Constable \(Class Code 1618\) Constable Precinct 2](#)
 - [e. Administrative Assistant \(Class Code 1605\) for Constable Precinct 2](#)
9. [Approval of the Following Job Descriptions FY 20:](#)
 - [a. Administrative Specialist \(Class Code 0223\) for County Judge](#)
 - [b. Assistant District Attorney I \(Class Code 415\) for District Attorney](#)
 - [c. Audio Visual Specialist \(Class Code 1235\) for Information Technology](#)
 - [d. Court Reporter \(Class Code 2513\) for 85th District Court](#)
 - [e. Crime Analyst \(Class Code 1418\) for Sheriff's Office](#)
 - [f. Special Projects Administrator \(Class Code 0224\) for County Judge](#)
 - [g. Scanner Clerk \(Class Code 8109\) for Records Management](#)
 - [h. Shop Foreman \(Class Code 2609\) for Fleet Services](#)
10. [Acceptance of donated or unclaimed property left by inmates leaving the Brazos County Jail](#)



Providing Information on the Subject

- ▶ Notice must apprise the general public of subjects the governmental body will consider at a meeting.
- ▶ If uncertain, err on the side of providing more detail.
- ▶ Example:

City Council

COUNCIL AGENDA

August 28, 2019

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51. 19-706 Authorize a five-year master agreement for solar powered school flasher assemblies, solar powered 24-hour warning flasher assemblies, solar powered radar feedback signs, and solar powered rectangular rapid flashing beacons for the Department of Transportation - J. Q. & G., Inc. Company dba OB Traffic in an estimated amount of \$528,589.87, Traffic Logix Corporation in an estimated amount of \$162,875.00, Consolidated Traffic Control, Inc. in an estimated amount of \$162,700.00, K & K Systems, Inc. in an estimated amount of \$117,985.00, and Iteris Inc. in an estimated amount of \$111,220.00, lowest responsible bidders of seven - Estimated total amount of \$1,083,369.87 - Financing: General Fund



Timing of Posting

- ▶ Most governmental bodies with statewide jurisdiction must post notice at least seven days before the date of the meeting.
- ▶ Political subdivisions must post at least 72 hours before the scheduled time of the meeting.
- ▶ All governmental bodies must post notice at least 1 hour before a meeting to address an emergency.



Location of Notice – Political Subdivisions

- ▶ Counties – on a bulletin board at a place convenient to the public in the county courthouse
- ▶ Municipal governmental bodies – on a bulletin board at a place convenient to the public in city hall
- ▶ School districts – on a bulletin board at a place convenient to the public in the central administrative office of the district
- ▶ Special districts extending into fewer than 4 counties – (1) at a place convenient to the public in the administrative office of the district, and (2) either on a bulletin board at the courthouse of each county in the district or on the district's website



Location of Notice – Internet Posting

- ▶ Some entities must post notice on the Internet if they maintain a website or have populations over a certain size:
 - Municipalities
 - Counties
 - School districts
 - Junior College Districts
 - Economic development corporations
 - Regional mobility authorities



Logistical Requirements for Open Meetings

- ▶ Hold the meeting in a location accessible to the public
 - In or near the boundaries of the governmental body
 - Without special access requirements that may prevent entry for the public
- ▶ Provide space for the public so that they may attend the meeting
- ▶ Provide reasonable visual or audio accommodations if requested in advance of the meeting



Public Comment

- ▶ State entities may, but are not required to, provide for public comment during their meetings.

- ▶ Political subdivisions must allow members of the public interested in speaking on an item on the agenda to do so before or during the governmental body's discussion of that item.
 - May create reasonable rules

 - May not discriminate based on the position taken

 - May not prohibit criticism of the governmental body



Recordkeeping for Open Meetings

- ▶ Governmental bodies must prepare and keep minutes or make a recording of each open meeting.
- ▶ If keeping minutes, the minutes must state the subject of each deliberation and indicate each vote, order, decision, or other action taken.
- ▶ The minutes and recordings are public records and must be available for public inspection.



Required Training on the Act

- ▶ Each elected or appointed public official who is a member of a governmental body must complete training on the requirements of the Act within 90 days of taking office.
- ▶ The governmental body shall maintain and make available for public inspection the record of its members' completion of the training.



Voidability

- ▶ An action taken by a governmental body in violation of this chapter is voidable.
- ▶ An interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the Act.
- ▶ A court may assess costs and attorney fees to the prevailing party.



Exceptions to the General Rules

- ▶ Closed Meetings
- ▶ Social Gatherings
- ▶ Emergencies
- ▶ Online Message Boards
- ▶ Teleconferencing and Videoconferencing



Closed Meetings or Executive Sessions

- ▶ The Act specifies instances when governmental bodies may conduct closed meetings without allowing public access, including, among others:
 - Consultations with an attorney about pending or contemplated litigation
 - Deliberations regarding the purchase of real property if deliberation in an open meeting would compromise negotiations
 - Deliberation about personnel matters related to a specific employee if the employee does not request a public hearing



Procedures for Closed Meetings

- ▶ Notice requirements still apply.
- ▶ The governmental body must first convene in open session before going into closed session.
- ▶ The governmental body must identify the specific legal provision allowing for the closed session.
- ▶ The subject of discussions in closed meeting must be limited to what the Act authorizes.
- ▶ No final action or vote may be taken in a closed meeting.



Closed Meeting Recordkeeping

- ▶ A governmental body shall either keep a certified agenda or make a recording of proceedings of each closed meeting, except for attorney consultations under section 551.071.

- ▶ If keeping a certified agenda, it must include:
 - A statement of the subject of each deliberation
 - A record of any further action taken
 - An announcement by the presiding officer at the beginning and end of the closed session indicating the date and time
 - Certification by the presiding officer that an agenda kept under subsection (a) is a true and correct record of the proceedings



Emergency Situations

- ▶ An emergency or urgent public necessity exists only if immediate action is required of a governmental body because of:
 - an imminent threat to public health and safety, or
 - a reasonably unforeseeable situation

- ▶ Examples of a reasonably unforeseeable situation include:
 - fire, flood, earthquake, hurricane, tornado, or storm
 - power failure, transportation failure, or interruption of communication facilities
 - epidemic
 - riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence



Addressing Emergencies

- ▶ The Act generally still applies during emergencies, but the timing required for notice of a meeting to address an emergency is shortened.
- ▶ Notice must be posted at least one hour before the meeting is convened.
- ▶ The discussion and action on the matter must be directly related to responding to the emergency.
- ▶ The governmental body must clearly identify the emergency in the notice.
- ▶ The meeting can occur by teleconference if convening a quorum of the governmental body is difficult. The public must still be able to attend at the normal meeting location.



Attempts to Avoid the Act's Requirements

- ▶ A member of a governmental body commits an offense if the member:
 - knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by the Act and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum but the members engaging in the series of communications constitute a quorum of members; and
 - knew at the time the member engaged in the communication that the series of communications:
 - involved or would involve a quorum; and
 - would constitute a deliberation once a quorum of members engaged in the series of communications



Communications by Email

- ▶ Deliberation can occur as either a written or oral exchange between members of a governmental body.
- ▶ A series of emails involving a quorum of a governmental body discussing an issue within the jurisdiction of the governmental body could constitute a deliberation and an unauthorized meeting for purposes of the Act.



Questions?

Open Government Hotline

(512) 478-6736

Toll Free: (877) 673-6839