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Open Meetings Act for Municipalities

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Required Training on the Act

- ▶ Section 551.005 requires each elected or appointed public official who is a member of a governmental body to 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.

Open Meetings Act Resources

Open Meetings Act Basic Training

https://www.youtube.com/watch?v=_OEP_aHI2-Y&t=7s

Texas Open Meetings Act Handbook 2022

https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/openmeetings_hb.pdf

When does the Act Apply?

“Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.”

Tex. Gov't Code § 551.002.

Meeting Defined

- ▶ A quorum of members exchange information about public business or public policy over which the body has supervision or control.
- ▶ The governmental body calls a gathering of a quorum of members to receive or give information to or from a third person about public business or public policy over which the governmental body has supervision or control.

How the Act Furthers Openness

- ▶ Notice of Meetings
- ▶ Procedures to ensure openness during open meetings
- ▶ 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.

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

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

- ▶ Political subdivisions must post at least 72 hours before the scheduled time of the meeting.
- ▶ Generally, all governmental bodies must post notice at least 1 hour before a meeting to address an emergency.

Location of Notice – Municipalities

- ▶ All governmental bodies must post notice in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting.
- ▶ A municipal governmental body must post notice of each meeting on:
 - a physical or electronic bulletin board at a place convenient to the public in city hall
 - a website, if the municipality maintains a website

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

- ▶ Municipalities 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 have one public comment session at the beginning or throughout the meeting as the governmental body addresses topics
 - May create reasonable rules, including reasonable time limits
 - May not discriminate based on the position taken
 - May not prohibit criticism of the governmental body

Internet Broadcasting of Meetings

- ▶ All governmental bodies may broadcast their open meetings over the Internet.
- ▶ Under section 551.128, the governmental body of a home rule municipality that has a population of 50,000 or more *shall* make a video and audio recording of each meeting and make an archived copy available on the Internet.
 - Post on the Internet not later than seven days after the date the recording was made
 - Maintain for at least two years
 - Post a link to the recording on the municipality's Internet website

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.

What happens if we don't obey the rules?

- ▶ 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
- ▶ 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

Criminal Offences Related to Closed Meetings

- ▶ A member of a governmental body commits an offense if:
 - a closed meeting is not permitted under the Act and the member knowingly participates in the closed meeting; or
 - he or she participates in a closed meeting knowing that a certified agenda or recording of the closed meeting is not being made.

Preserving the Certified Agenda

- ▶ A governmental body must maintain the certified agenda or recording of a closed meeting for at least two years from the date of the meeting.
- ▶ If Open Meetings Act litigation arises, the court is entitled to make an in camera inspection of the certified agenda or recording.
- ▶ The certified agenda or recording is only available for public inspection if ordered by a court.
- ▶ It is a class B misdemeanor to disclose a certified agenda or recording to a member of the public without a court order. The disclosing person can be liable to a person injured or damaged by the disclosure for actual damages, attorney fees, and exemplary damages.

Social Gatherings

- ▶ As long as no formal action is taken and any discussion of public business is incidental to the event, a governmental body does not “meet” when a quorum gathers at a:
 - social function
 - regional, state, or national convention or workshop
 - ceremonial event
 - press conference
 - candidate forum, appearance, or debate to inform the electorate

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 generally 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.

Teleconferencing

- ▶ A governmental body may use a telephone conference call to conduct a meeting:
 - in consultation with its attorney
 - to address an emergency situation if convening a quorum in one location is difficult

- ▶ Each part of the open meeting must be audible to the public at the location specified in the notice of the meeting.

Videoconferencing

- ▶ Section 551.127 allows some members of governmental bodies to use videoconferencing to attend meetings.
- ▶ Municipalities must have a quorum of the governmental body physically present at the location that is open to the public.
- ▶ Members of the public and employees may participate remotely if the governmental body chooses to allow it.

Videoconferencing Minimum Standards

- ▶ Subsection 551.127(i) requires the Department of Information Resources to specify minimum standards for audio and video signals.
- ▶ New standards adopted in 2021:
<https://dir.texas.gov/sites/default/files/2021-09/Videoconferencing%20Standards.pdf>

Walking Quorums

- ▶ 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