



DRIPPING SPRINGS
Texas

Open Meetings

Laura Mueller, City Attorney
City of Dripping Springs

Ensure Compliance with Open Meetings Act

City Attorney Duties

This Includes:

- Review Meeting Agendas for proper wording especially as to date, time, and place
- Ensure any closed session is done appropriately
- Ensure minutes are taken, separately, for Open Meetings and Closed Meetings
- Ensure that notices and agendas are posted in a timely fashion
- Stopping reply all emails/social media
- Ensuring that all elected and appointed officials who need Open Meetings Act Training get it
- Provide written legal advice to a client if there are questions about any of the above



Who Does TOMA Apply to?

Governing Body Defined: Includes a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a city.

- Check City Ordinances to see which bodies are covered by the OMA (City Council, BOA, and P&Z are always covered)

Quorum

- A quorum is a majority of the governing body - unless otherwise defined by law, rule or charter
- Type A General Law City – Quorum for called meetings or tax imposition meetings require a super majority of 2/3 of aldermen (for example if council is 5 members then 4 are needed to discuss taxes or for called meetings – Mayor is not included)
- A quorum is required for body to exercise its authority

Subcommittees

Caution: Some AG and court opinions have applied OMA to subcommittees comprised of governing body members even though not a quorum

Advisory Boards

- OMA doesn't apply if board is actually advisory and not “rubber stamped” by the city



What: Meetings

“Meeting”:

- Quorum of city council is present or communicating with one another
 - *This includes attendance at other entity’s meetings such as County or Texas Legislature, but would not include a regional training like the Texas Municipal League Annual Conference*
- Includes information related to business or public policy over which the city council has supervision or control
- Phone, video, and email can also cause meetings

Can be caused by Social Media or Email conversations by and among city councilmembers with or without staff

ATTENTION PUBLIC OFFICIALS: A “Reply to All” of this e-mail could lead to violations of the Texas Open Meetings Act. Please reply only to the sender. This e-mail and any attachments are subject to the Public Information Act.



When: Timing of Notices and Meetings

- For Cities - notice must be given 72 hours in advance of the meeting, or one hour in advance for an emergency meeting and must be readily accessible to the public at all times
- Cities must post the Meeting Agenda on a bulletin board or electronic bulletin board at City Hall
- City Internet Posting – In addition to posting on the bulletin board, the OMA requires additional online posting requirements:
 - Any municipality that has a website must publish a meeting NOTICE and AGENDA online on the city’s website which must include the date, time, place and subject of the meeting
- City’s online notices or agendas must be posted for the same time periods as physical postings

Technical issues can occur without jeopardizing the meeting so long as the paper copy is posted.



Location

Accessible to the public and within the state of Texas

Where:

- *Example: Workshop could be in another town, but could not be in Mexico or New York*

Social Gatherings & Conferences

- Doesn't apply to purely social or ceremonial events or press conferences – so long as discussion of municipal business is incidental
- A civic gathering CAN constitute a meeting if a quorum is present and public business of the governing body is discussed
- 2017 Exception: does not apply to a candidate forum, appearance or debate to inform the electorate if no formal action is taken and discussion of public business is incidental



Why can we meet in Closed Session?

Permitted executive session topics:

- Real Property Deliberations
- Economic Development
- Security Measures
- Homeland Security
- Receipt of gifts
- Personnel Matters
- Consultation with Attorney

Consultation with Attorney:

- Pending or contemplated litigation
- A settlement offer
- Administrative hearings; or
- Matters in which the duty of the attorney to the governmental body conflicts with the Open Meetings Act



Personnel Matters

Why can we meet in Closed Session?

- A city may meet in executive session to discuss the appointment, employment, evaluation, reassignment, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against such persons
- May not meet in executive session to discuss an employee if the employee requests a public hearing - except consultation with attorney on pending lawsuit related to charges or complaints
- Appointments to or removal from advisory bodies or commissions generally not applicable



How to Notice for Executive Session

CLOSED SESSION

The City Council has the right to adjourn into closed session on any item on this agenda and at any time during the course of this meeting to discuss any matter as authorized by law or by the Open Meetings Act, Texas Government Code Sections 551.071 (Consultation With Attorney), 551.072 (Deliberation Regarding Real Property), 551.073 (Deliberation Regarding Prospective Gifts), 551.074 (Personnel Matters), 551.076 (Deliberation Regarding Security Devices or Security Audits), and 551.087 (Deliberation Regarding Economic Development Negotiations), and 551.089 (Deliberation Regarding Security Devices or Security Audits). Any final action or vote on any Closed Session item will be taken in Open Session.



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 \$100 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.

(c) It is an affirmative defense to prosecution under Subsection (a) that the member of the governmental body acted in reasonable reliance on a court order or a written interpretation of this chapter contained in an opinion of a court of record, the attorney general, or the attorney for the governmental body.



Enforcement and Penalties

Prosecution by County or District Attorney

Punishment – can be fines or jail time
(551.143-.146)

Ignorance is not a defense

Possible civil liability (551.142-
Mandamus/Injunction)

Actions taken in violation of the OMA are
voidable (551.141)

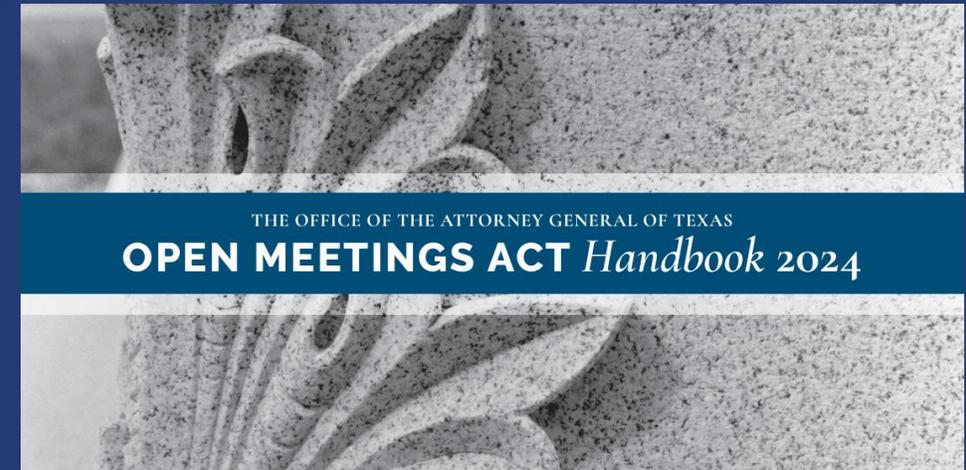


POTENTIAL PITFALLS IN OPEN MEETINGS

- Meeting not posted timely. – **Has to be rescheduled.**
- Items on agenda not sufficiently specific. – **Item is voidable and has to be redone. Termination of employee could require back pay.**
- Incorrect motion to go into closed session. – **Criminal Violation.**
- Elected Officials emailing each other causing a closed meeting. – **Criminal Violation.**
- Not accommodating the size of the audience. -- **Have to reschedule meeting to a bigger venue. Action could be voidable.**
- Allowing individuals in closed session who are not aligned with the City. – **Criminal Violation.**



Questions?



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