

Texas Open Meetings Act

Chapter 551 of the Texas Government Code

**What's on Your Horizon Seminar
Richardson, Texas
June 19, 2009**

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1. When does the Open Meetings Act generally apply?

The Texas Open Meetings Act (hereinafter referred to as “the Act”), contained in Chapter 551 of the Texas Government Code, generally applies when a quorum of a governmental body is present and is discussing public business. However, it does not apply to purely social gatherings of the governmental body that are “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, workshop, ceremonial events, or press conferences, 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.”¹

Agenda

2. Where and for how long must an open meeting notice be posted?

The Act requires that the notice for each city council meeting must be posted “on a bulletin board at a place convenient to the public in the city hall.”² Generally, the agenda “must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting.”³ The Act also requires certain governmental bodies and economic development corporations that maintain an Internet website to post notice of a meeting on the Internet website of the governmental body or economic development corporation. The validity of a posted agenda by a governmental body or economic development corporation that made a good faith attempt to comply with the Act is not affected by a failure to comply with the requirement of the Act due to a technical problem beyond the control of the governmental body or economic development corporation.⁴

3. How specific must the wording be for each agenda item?

The Open Meetings Act requires that the agenda of an open meeting contain “the date, hour, place, and subject of each meeting held by the governmental body.”⁵ Texas courts reviewing agenda have noted the agenda must be sufficient enough to alert the public, in general terms, of the subjects that will be considered in the meeting. Descriptions such as “old business,” “new business,” “other business,” “personnel,” and “litigation matters” are usually not sufficiently detailed to meet the requirements of the Act.⁶ The courts have also ruled that the more important a particular issue is to the community, the more specific the posted notice must be. Thus, the phrase “employment of personnel” was held to be a sufficient posting for hiring a school teacher. However, the same court found that this phrase was not sufficient when the school was considering hiring a key supervisor such as a principal.⁷

¹ TEX. GOV'T CODE ANN. § 551.001(4)(B)(iv).

² TEX. GOV'T CODE ANN. § 551.050.

³ TEX. GOV'T CODE ANN. § 551.043(a).

⁴ TEX. GOV'T CODE ANN. § 551.056.

⁵ TEX. GOV'T CODE ANN. § 551.041.

⁶ See, *Cox Enterprises, Inc. v. Board of Trustees*, 706 S.W.2d 956, 959 (Tex. 1986). See also, Op. Tex. Att’y Gen. No. H-662 (1975) at 3.

⁷ See, *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176, 182 (Tex. App. – Corpus Christi 1990).

4. Is an agenda posting indicating “Public Comment” adequate notice?

The Attorney General has concluded “public comment” provides sufficient notice under the Open Meetings Act of the subject matter of “public comment” sessions where the general public addresses the governmental body about its concerns.⁸

5. Is an agenda posting indicating “City Manager’s Report” adequate notice?

In a recent Texas Attorney General opinion, the Attorney General concluded agenda postings such as “City Manager’s Report,” “Mayor’s Update,” and “Council and Other Reports” were inadequate as a matter of law.⁹ The Attorney General noted “[t]he general and generic nature of the notice does not sufficiently notify a reader, as a member of the interested public, of the subjects of the update and reports to be discussed at any particular meeting.”¹⁰

6. Can you change the date or time of an open meeting without posting a corrected notice for 72 hours?

The Texas Open Meetings Act requires the agenda to be posted for 72 continuous hours before the scheduled time of the meeting. If the governmental body changes the date or time of the meeting an agenda indicating the new date and time is required to be posted for 72 continuous hours.

7. Can you change the location of an open meeting without posting a corrected agenda for 72 hours indicating the new location?

The Texas Open Meetings Act requires the agenda indicating the date, hour, place, and subject to be posted for 72 continuous hours before the scheduled time of the meeting. Accordingly, a governmental body desiring to change the location of the meeting would generally be required to post a new agenda indicating the changed location for 72 continuous hours. Nonetheless, on the day of the meeting, the governmental body may be able to move to a bigger room within the same building to accommodate a large crowd.

8. Can a governmental body continue a meeting to the immediate next day without reposting an agenda?

A governmental body can recess an open meeting to the following regular business day provided the action is taken in good faith and not to circumvent the Open Meetings Act.¹¹ If an open meeting is continued to the following regular business day and, on that following day, the governmental body continues the meeting to another day, the governmental body must give

⁸ Op. Tex. Att’y Gen. No. JC-0169 (2000).

⁹ Op. Tex. Att’y Gen. No. GA-0668 (2008).

¹⁰ *Id.* at 4.

¹¹ TEX. GOV’T CODE ANN. § 551.0411.

written notice as required by this subchapter of the meeting continued to that other day.

Meeting

9. What can governmental body members do if an unposted issue is raised at an open meeting?

Members of the governmental body may not deliberate or make any decision about an unposted issue at a meeting of the governmental body. If an unposted item is raised by members or the general public, the governmental body has four (4) options:¹²

- (1) may respond with a statement of specific factual information or recite the governmental body's existing policy on that issue;
- (2) may direct the person making the inquiry to visit with staff about the issue;
- (3) may offer to place the item on a future agenda; or
- (4) may offer to post the matter as an emergency item if it meets the criteria for an emergency meeting.

10. What right does the public have to speak on a particular agenda item?

The Open Meetings Act allows the public to observe the open portion of a meeting. The Open Meetings Act does not give members of the public a right to speak on items considered at an open meeting, unless it is a public hearing.¹³

11. What is the general distinction between a public hearing and an open meeting?

A governmental body is generally not required by the Open Meetings Act to allow members of the public to speak on regular agenda items at an open meeting. However, during a public hearing, members of the public must be given a reasonable opportunity to speak for or against the subject matter.

Minutes

12. What duty does a governmental body have to produce minutes of open meetings?

The Act requires a governmental body to prepare and keep minutes or make a tape recording of

¹² TEX. GOV'T CODE ANN. § 551.042.

¹³ See, Op. Tex. Att'y Gen. No. JC-0169 (2000) at 1 ("The Act does not give the public a right to speak at such meetings.")

each open meeting of the body. The minutes must: (1) state the subject of each deliberation; and (2) indicate each vote, order, decision, or other action taken.¹⁴

13. How long is a governmental body required to keep minutes or a tape recording of an open meeting?

The Open Meetings Act does not specifically address how long a governmental body must maintain approved minutes or tape recordings of an open meeting. Nonetheless, the Texas State Library and Archives Commission has established a records retention schedule which provides that approved minutes of a meeting must be maintained permanently by the municipality. If a tape recording of a meeting is made for the purposes of preparing written minutes, the tape recording must be maintained for 90 days following the approval of the written minutes by the governmental body.¹⁵

Executive Session

14. What are the general subjects for which a governmental body may hold an executive session?

Under the Act, a city council may generally hold an executive session for one or more of the following eight (8) reasons: 1) consideration of personnel matters; 2) consultations with an attorney; 3) discussions about the value or transfer of real property; 4) discussions about security personnel or devices; 5) discussions about a prospective gift or donation to the city; 6) discussions by a governing body of potential items on tests that the governing body conducts for purposes of licensing individuals to engage in an activity; 7) discussions of certain economic development matters; and 8) discussions of certain competitive matters relating to a city-owned electric or gas utility for which the city council is the governing body.

15. What are the procedures to convene into an executive session?

When authorized to convene a closed meeting the presiding officer must take the following steps:

- (1) the presiding officer shall state a closed meeting will be held and must identify the exception or exceptions of the Open Meetings Act which authorize the executive session;
- (2) in the executive session, the presiding officer states the date and time;
- (3) discuss the executive session matter within the confines of the statutory exception (no voting can occur in the executive session);

¹⁴ TEX. GOV'T CODE ANN. § 551.021.

¹⁵ 13 Tex. Admin Code § 7.125(b)(1) (Local Schedule GR, 3rd Edition, Retention Schedule for Records Common to All Local Governments) (effective November 1, 1995). *See also*, <http://www.tsl.state.tx.us/slrmlgschedules/pdf/GRv01.pdf> (proposed new rules – 4th Edition).

- (4) at the conclusion of the executive session, the presiding officer states the date and time; and
- (5) reconvene into open session. Voting on the subject matter must occur in open session.¹⁶

16. When can a governmental body have an executive session using the exception for consultations with an attorney?

The Act provides that a governmental body may meet with its attorney to receive legal advice about pending or contemplated litigation or about settlement offers. The governmental body may also meet with its attorney to receive legal advice on any matter.¹⁷

17. Can a governmental body discuss potential business incentives and other economic development issues in executive session?

The Act provides a governmental body may go into executive session “(1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).”¹⁸

18. Can a governmental body discuss real property matters in executive session?

The Act provides that a governmental body may convene a closed executive session to discuss certain real property matters. A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with third parties.¹⁹

19. Can a governmental body discuss personnel matters in executive session?

The Act provides that a governmental body may convene a closed executive session to discuss certain personnel matters. A governmental body can discuss in executive session “the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public

¹⁶ TEX. GOV'T CODE ANN. §§ 551.101(1) and (2), 551.102, and 551.103.

¹⁷ TEX. GOV'T CODE ANN. § 551.071.

¹⁸ TEX. GOV'T CODE ANN. § 551.087.

¹⁹ TEX. GOV'T CODE ANN. § 551.072.

officer or employee;” or “to hear a complaint or charge against an officer or employee.”²⁰ If the officer or employee who is the subject of the deliberation or hearing requests the matter be heard in public, the governmental body must conduct the matter in open session.²¹

20. Who is permitted to attend an executive session?

The Act does not specifically address who may attend an executive session. Nonetheless, the Attorney General has concluded the governmental body has discretion to determine who may attend executive sessions. However, the governmental body may not admit those whose attendance is contrary to the legal basis for the executive session.²² Further, the Texas Attorney General concluded in a recent opinion, a school board could not admit selected members of the public into an executive session to discuss the school superintendent.²³

21. Can a governmental body approve items or take a straw poll in an executive session?

The Act states that “a final action, decision, or vote on a matter deliberated in a closed meeting . . . may only be made in an open meeting.”²⁴ Nonetheless, a court has held that a member of the governmental body may indicate during an executive session how he or she plans to vote on an item. However, the governing body may not conduct a straw vote or a formal vote during such a session.²⁵

Certified Agenda or Tape of Executive Session

22. Is a governmental body required to record or create a certified agenda of discussions held in executive session?

The Act requires a governmental body to produce a “certified agenda” or make a tape recording of every executive session, unless the closed session is being held under the exception for consultation with an attorney. A governmental body may turn off the tape or stop taking notes during the portion of a closed meeting that involves consultations with an attorney.²⁶

23. What is required in a certified agenda?

The Act requires the certified agenda of a closed meeting to contain the following information:

²⁰ TEX. GOV'T CODE ANN. § 551.074. *See*, Op. Tex. Att’y Gen. No. GA-0511 (2007) at 4-6 (governmental body cannot admit members of the public into the executive session to discuss an employee or officer).

²¹ TEX. GOV'T CODE ANN. § 551.074(b).

²² Op. Tex. Att’y Gen. No. JC-0375 (2001).

²³ Op. Tex. Att’y Gen. No. GA-0511 (2007).

²⁴ TEX. GOV'T CODE ANN. § 551.102.

²⁵ *Board of Trustees v. Cox Enterprises*, 679 S.W.2d 86, 89 (Tex. App. – Texarkana 1984), *aff’d in part, rev’d in part on other grounds*, 706 S.W.2d 956 (Tex. 1986).

²⁶ TEX. GOV'T CODE ANN. § 551.103.

- (1) a statement of the subject matter of each deliberation;
- (2) a record of any further action taken;
- (3) an announcement by the presiding officer at the beginning and the end of the meeting indicating the date and time; and
- (4) a certification by the presiding officer that the certified agenda kept is a true and correct record of the proceeding.²⁷

24. Can a member of the governmental body or staff release a copy of a certified agenda to the public?

A certified agenda or tape kept during an executive session may only be disclosed to a member of the public under a court order.²⁸ Releasing a copy of the certified agenda to the public without a court order is a class B misdemeanor.²⁹

25. How long must a city maintain a certified agenda or tape from an executive session?

The Act provides that a “governmental body shall preserve the certified agenda or tape recording of a closed meeting for at least two years after the date of the meeting. If an action involving the meeting is brought within that period, the governmental body shall preserve the certified agenda or tape while the action is pending.”³⁰

Training

26. Who must attend the mandatory Open Meetings Act Training?

Each elected or appointed public official who is a member of a governmental body shall complete the mandatory Open Meetings Act training not later than ninety (90) days after the member takes the oath of office or assumes the responsibilities of the office.

Civil and Criminal Penalties

27. Can less than a quorum of a governmental body visit over the phone without violating the Act?

The mere fact that two (2) members visit over the phone does not in itself constitute a violation of state law. However, if the members are using individual telephone conversations to poll members or are making such telephone calls to conduct their deliberations about public business, there may be a potential criminal violation. Physical presence in one place is not necessary to

²⁷ TEX. GOV'T CODE ANN. § 551.103.

²⁸ TEX. GOV'T CODE ANN. § 551.104(c).

²⁹ TEX. GOV'T CODE ANN. § 551.146.

³⁰ TEX. GOV'T CODE ANN. § 551.104(a).

violate the Act.³¹

28. What are the civil and criminal penalties for noncompliance with the Open Meetings Act?

- (1) Section 551.141 - void any action taken
- (2) Section 551.142 - mandamus or injunctive relief
- (3) Section 551.143 - Conspiracy to circumvent the act by meeting in numbers less than a quorum - fine \$100 to \$500 and /or one month to six months confinement in the county jail
- (4) Section 551.144 - Unauthorized closed meeting - fine \$100 to \$500 and /or one month to six months confinement in the county jail
- (5) Section 551.145 - Fail to keep a certified agenda or tape recording of a closed meeting -class C misdemeanor
- (6) Section 551.146 - Release of a certified agenda or tape of a closed meeting - class B misdemeanor.

³¹ See *Harris County Emerg. Srvs Dist. #1 v. Harris County Emerg. Corps*, 999 S.W.2d 163 (Tex. App. – Houston [14th Dist.] 1999,no pet.) and Tex. Att’y Gen. Op. No. GA-0326 (2005).