

TEXAS OPEN MEETINGS ACT MADE EASY



Updated October 2023

Acknowledgments

The 2023 editor of this publication is Evelyn Njuguna, Director of TML Legal Services. A number of individuals also made this publication possible by contributing their time, expertise, and support. Specifically, Zindia Thomas originally prepared much of the material in this publication.

The Texas Open Meetings Act Made Easy

The Open Meeting Act Made Easy is a handbook in a question-and-answer format that covers the most frequently asked questions about the Texas Open Meetings Act (“the Act”). The handbook addresses when the Act applies, what constitutes reasonable notice and the application of the Act to informal gatherings. Additionally, the handbook covers permissible subjects for closed meetings/executive sessions, who may attend a closed meeting/executive session, and the appropriate handling of a certified agenda. Finally, the handbook addresses the ability to “ratify” an action, civil enforcement of the Act, and criminal penalties for certain violations.

This “made easy” handbook provides answers in an easy-to-understand language to the most frequently asked questions regarding the Act. The Act does apply to a variety of governmental entities, but the information in this handbook is geared towards the Act’s application to cities. TML is available to answer questions about this handbook from member city officials, who should nonetheless consult with their local legal counsel regarding the application of the law to the facts of each particular situation.

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I. Application of the Open Meetings Act

1. *When does the Open Meetings Act generally apply?*

The Open Meetings Act (hereinafter “the Act”) generally applies when:

1. a quorum¹ of a governmental body² is present and discusses public business;³ or
2. a quorum of a governmental body is present, and the governmental body is receiving information from or providing information to a third party.⁴

2. *Are there different quorum requirements for different types of cities?*

Under the Act, a quorum is “a majority of a governmental body, unless defined differently by applicable law or rule or charter of the governmental body.”⁵ Cities have different quorum requirements depending on the type of city :

- **Home Rule:** Generally, the charter expressly states the quorum requirements for city council meetings.
- **General Law Type A:**
 - *Regular meetings:* majority of the councilmembers (3)
 - *Special meetings or meetings to impose taxes:* two-thirds (2/3rd) of the council members (4)⁶
- **General Law Type B:** The mayor and three aldermen or four aldermen if the mayor is absent.⁷
- **General Law Type C:** A majority of the board of commissioners (2).

3. *Does the Open Meetings Act always apply when a quorum of a governmental body is present?*

In certain situations, the Act does not apply even when a quorum of the governmental body is present. These situations are:

1. A social gathering that is unrelated to the council’s public business, regional, state, or national conventions or workshops, ceremonial events, or press

¹ See Tex. Gov’t Code § 551.001(6) (definition of “quorum”).

² See *id.* § 551.001(3) (definition of “governmental body”).

³ *Id.* § 551.001(4)(A).

⁴ *Id.* § 551.001(4)(B).

⁵ *Id.* § 551.001(6).

⁶ Tex. Loc. Gov’t Code § 22.039.

⁷ *Id.* § 23.028.

conferences, or the attendance by a quorum of city council at a candidate forum, appearance, or debate to inform the electorate, as long as no formal actions are taken, and the discussion of public business is only incidental to the event;⁸

2. Attendance by a quorum at a legislative committee or state agency meeting if the deliberations at the meeting by the members of the city council consist only of:
 - a. Publicly testifying at the meeting,
 - b. Publicly commenting at the meeting, and
 - c. Publicly responding at the meeting to questions asked by a member of the legislative committee or agency;⁹ or
3. When the staff or a member of the city council makes a report about items of community interest during a meeting of the council without giving notice of the subject of the report if no action is taken and possible action is not discussed regarding the information provided in the report. Items of community interest include:
 - a. Expressions of thanks, congratulations or condolence;
 - b. Information regarding holiday schedules;
 - c. An honorary or salutary recognition of a public official, public employee or other citizen, except that a discussion regarding a change in the status of a person's public office or public employment is not an honorary or salutary recognition for purpose of this subdivision;
 - d. A reminder about an upcoming event organized or sponsored by the governing body;
 - e. Information regarding a social, ceremonial or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and

⁸ Tex. Gov't Code § 551.001(4). See Tex. Att'y Gen. Op. No. H-785 (1976) at 2 (breakfast meetings of governing body must be purely social without any discussion of public business).

⁹ Tex. Gov't Code § 551.0035.

- f. Announcement involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posing of the agenda.¹⁰

4. *May a quorum of the members of a city council receive a briefing from city staff without violating the Open Meetings Act?*

A quorum of members of city council is subject to the Act when it receives a briefing from staff.¹¹ Under the Act, a meeting occurs when a quorum of a governmental body is present, and the governmental body is receiving information from or providing information to a third party.¹²

5. *Are city boards, commissions or committees subject to the Open Meetings Act?*

A board, commission, or committee created by a city is not subject to the Act if it is purely advisory in nature.¹³ However, if the board, commission or committee has the power to make final decisions or the power to adopt rules regarding public business, then the board, commission or committee is subject to the Act. Also, if the board, commission or committee issues recommendations that are usually approved in full without discussion by council or it routinely “rubber-stamps” the board’s, commission’s or committee’s recommendations, then the board, commission or committee is subject to the Act.¹⁴

A city would need to review the authority of the board, commission, or committee and how it treats its actions to determine whether the Act applies. One factor may be the presence of members of the city council on the board, commission or committee, because even though the members may constitute less than a quorum of the council, they may lack only the consent of one or more members of the council to pass the board, commission or committee’s decision.¹⁵ Also, a city should review the board’s, commission’s or committee’s bylaws, the city charter, ordinances or orders to see if there is a special provision requiring the board, commission or committee to follow the Act. If such local requirement exists, the Act would apply even if the Act would not otherwise

¹⁰ *Id.* § 551.0415. See Tex. Att’y Gen. Op. No. GA-668 (2008).

¹¹ Tex. Gov’t Code § 551.001(4)(B).

¹² *Id.*

¹³ Tex. Atty Gen. Op. Nos. H-994 (1977), H-772 (1976).

¹⁴ *Willmann v. City of San Antonio*, 123 S.W.3d 469, 480 (Tex. App. — San Antonio 2003, pet. denied); Tex. Att’y Gen. Op. Nos. JC-60 at 3-5 (1999), H-438 (1974).

¹⁵ Tex. Att’y Gen. Op. Nos. JC-60 (1999), Tex. Att’y Gen. Op. No. JC-160 (1999) (ad hoc tax foreclosure committee that does not include members of the governing bodies that the committee serves is not subject to Act), JM-1072 (1989). See also *Tarrant Regional Water Dist. v. Bennett*, 453 S.W.3d 51 (Tex. App. — Fort Worth 2014, pet. denied) (meetings of water district’s board committees in which less than a quorum of the board were present were not subject to TOMA’s open-meeting requirements.).

require compliance. However, the city council cannot waive the requirements of the Act through an ordinance or an order.

Further, a meeting of a board, commission or committee could be subject to the Act if a quorum of the appointing governing body attends the meeting and deliberates with the board, commission or committee about public business or public policy.¹⁶ The presence of a quorum of the appointing governing body and deliberation about the appointing body's public business would also constitute a meeting of that body, and that body would be subject to the Act, as well as the committee.

6. *Are private or nonprofit entities that receive public funding subject to the Open Meetings Act?*

A private or nonprofit entity is not subject to the Act merely because it receives public funds.¹⁷ For instance, the attorney general concluded that a local chamber of commerce was not subject to the Act even though it received and administered local hotel occupancy tax funds.¹⁸ Additionally, the attorney general has concluded that an economic development corporation formed under the Texas Non-Profit Corporation Act and not the Development Corporation Act (Local Government Code Chapters 501-507) is not subject to the Act.¹⁹

Of course, a non-governmental entity may be made subject to the Act by the entity's own bylaws, by special state legislation pertaining to that entity, or by a contractual commitment by that entity to comply with the Act. Therefore, private or nonprofit entities will want to consult their legal counsel about whether their bylaws, state law or a particular contractual commitment subjects them to the Act.

7. *What is the relationship between the Open Meetings Act and the Public Information Act?*

The Open Meetings Act and the Public Information Act are both intended to make government more accessible to the public. However, the two are completely separate statutes and operate independently of each other. The mere fact that a city may be able

¹⁶ Tex. Att'y Gen. Op. No. JC-313 (2000). (A component committee of the Board of the Edwards Aquifer Authority is subject to the Open Meetings Act when a majority of the voting members of the Authority's Board, including the committee members, is present at a meeting of the committee, and the Board members "Receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy" over which the Edwards Aquifer Authority has authority, regardless of whether the committee members or any Board members engage in a deliberation as defined by Texas Government Code section 551.001(2).)

¹⁷ Tex. Att'y Gen. LO-98-40 at 2, LO-93-55, LO-96-113. See Tex. Att'y Gen. Op. No. JM-1072 (1989) at 2 (local-level entity must fall within definition of "governmental body" to be covered by Act). See also Tex. Gov't Code § 551.001(3) (definition of "governmental body").

¹⁸ Tex. Att'y Gen. LO-93-55, LO-96-113.

¹⁹ Tex. Att'y Gen. Op. No. JC-327 (2001). See also Tex. Att'y Gen. Op. No. GA-206 (2004).

to withhold a document from the public under the Public Information Act does not mean that the city council has the authority to meet in a closed meeting regarding the subject covered in that document.²⁰ Likewise, the fact that the Open Meetings Act allows a city council to have a closed meeting about a particular topic does not mean that related documents reviewed in the closed meeting may be withheld from the public.²¹

II. Notice Provisions under the Act

8. ***What notice is required by the Open Meetings Act?***

The Act requires written notice of all meetings. The notice must contain the date, hour, place and subject of each open or closed meeting.²² The notice of an emergency meeting must also state the reason for the emergency meeting.²³ (See Section VI for additional discussion on emergency meetings).

9. ***How long must the notice be posted?***

The notice for each meeting must be posted at least 72 hours before the scheduled time of the meeting.²⁴ However, the notice for an emergency meeting need only be posted at least one hour before the time of the emergency meeting.²⁵

10. ***Where must the notice of a meeting be posted?***

The Act requires the notice of a meeting be posted in a place readily accessible to the general public at all times for the prescribed time period.²⁶ Specifically, a city must post its notice of a meeting on a physical or electronic bulletin board at a place convenient to the public in the city hall.²⁷

A city in a county with 25,000 or more population, and a city with a population of 5,000 or more in a county with less than 25,000 population, that maintains a publicly accessible Internet website is required to post each notice of an open meeting on its Internet website if the city had the authority to impose a tax at any time on or after January 1, 2019.²⁸

²⁰ Tex. Att'y Gen. Op. No. JM-595 (1986).

²¹ *City of Garland v. The Dallas Morning News*, 22 S.W.3d 351, 366-67 (Tex. 2000); Tex. Att'y Gen. ORD-605 (1992) (names of applicants discussed in executive session are not confidential under Public Information Act); ORD-485 (1987) (investigative report considered in executive session may not be withheld).

²² Tex. Gov't Code § 551.041.

²³ *Id.* § 551.045.

²⁴ *Id.* § 551.043(a).

²⁵ *Id.* § 551.045.

²⁶ *Id.* § 551.043.

²⁷ *Id.* § 551.050. See *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 768 (Tex. 1991) (posting in a kiosk immediately outside city hall is also permissible).

²⁸ *Id.* § 2051.151, .152(a)(5) (as added by H.B. 305 of the 86th Leg., R.S. Effective September 1, 2019).

Additionally, effective September 1, 2023, all cities, as well as economic development corporations (EDCs), that maintain an Internet website are required to concurrently post notice of the meeting and the agenda of the meeting on the applicable entity's Internet website.²⁹ The validity of an Internet posting of the notice and agenda made by a city or economic development corporation that is made in good faith to comply with the requirements of posting the notice and agenda is not affected by the failure to comply due to technical problems beyond the control of the city or EDC.³⁰

Once the city or EDC makes a good-faith attempt to post their notice on the Internet for the required time, the city or EDC satisfies the requirement of having the physical posting accessible to the public at all times, and the physical posting only has to be readily accessible to the public during the city's or EDC's normal business hours.³¹

11. Is a city required to publish notice of its meetings in a newspaper?

The Act does not require a city to publish notice of its meetings in a newspaper.

12. How specific does the subject of the notice need to be?

The subject of the notice has to be sufficient to alert the public, in general terms, of the subjects that will be considered at the meeting.³² Descriptions such as “old business,” “new business,” “other business,”³³ “personnel”³⁴ and “litigation matters”³⁵ are not sufficiently detailed to meet the requirements of the Act.³⁶

The more important the particular subject is to the community, the more specific the posted notice must be. Thus, the phrase “employment of personnel” was held to be sufficient notice for hiring a schoolteacher.³⁷ However, the same court found that this

²⁹ *Id.* § 551.056(a)-(b) (as amended by H.B. 3440 of the 88th Leg., R.S. Effective September 1, 2023). (Note: “Agenda” is not defined by the Act, but Black’s Law Dictionary defines “agenda” as “a list of things to be done, as items to be considered at a meeting.” “Agenda” and “notice” are often used interchangeably in discussing the Act because of the practice of posting agenda as the notice of a meeting or as an appendix to the notice.)

³⁰ *Id.* § 551.056(d).

³¹ *Id.* § 551.043(b)(1)-(3).

³² Tex. Att’y Gen. Op. No. H-662 (1975).

³³ *Id.*

³⁴ *Cox Enters., Inc. v. Bd. of Trustees*, 706 S.W.2d 956 (Tex. 1986). See also *Mayes v. City of DeLeon*, 922 S.W.2d 200 (Tex. App. — Eastland 1996, writ denied); *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App — Corpus Christi 1990, writ denied).

³⁵ *Cox Enters., Inc. v. Bd. of Trustees*, 706 S.W.2d 956 (Tex. 1986).

³⁶ See Tex. Att’y Gen. Op. No. GA-668 (2008). (The city of Corpus Christi’s notice “does not sufficiently notify a reader, as a member of the interested public, of the subjects to be addressed at a meeting subject to the Open Meetings Act”.)

³⁷ *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App. — Corpus Christi 1990, writ denied).

phrase was not sufficient when the school was considering hiring a key supervisor such as a principal.³⁸

Finally, a city must make sure that its notices are consistent with prior practice. For example, a Texas court has ruled that a notice that called for “discussion” of a certain item was not sufficient to allow a board to act on that item when the board’s previous notices had always explicitly stated when an action might be taken.³⁹

13. Is a notice indicating “public comment” sufficient notice of the subject to be discussed?

The attorney general has concluded that “public comment” generally provides sufficient notice under the Act of the subject matter of sessions where members of the public will be addressing a governing body about their concerns.⁴⁰

14. Does a notice indicating “employee briefing session” or “staff briefing session” provide sufficient notice of the subjects to be discussed?

A posting simply indicating “employee briefing session” or “staff briefing session” does not provide the public with sufficient notice as to the subjects that will be discussed at a meeting.⁴¹ Unlike sessions involving “public comment” by members of the public, which was discussed in Question 14, above, a city is in a better position to ascertain from its employees or officers in advance what subjects will be addressed in an employee or staff briefing session.

15. Must a notice indicate which subjects will be discussed in a closed meeting?

The Act does not require a notice state which items in the notice will be discussed in a closed meeting.⁴² Nonetheless, some entities indicate in their notices which items will be discussed in open session and which ones shall or may be discussed in a closed or executive session. Should a city consistently distinguish between subjects for public deliberation and subjects for a closed meeting, an abrupt departure from this practice could deceive the public and thereby render the notice inadequate.⁴³

³⁸ *Id.*

³⁹ *River Rd. Neighborhood Ass’n v. S. Tex. Sports*, 720 S.W.2d 551, 557 (Tex. App. — San Antonio 1986, writ dismissed w.o.j.).

⁴⁰ Tex. Att’y Gen. Op. No. JC-169 (2000). See Tex. Gov’t Code § 551.007 (as added by H.B. 2840 of the 86th Leg., R.S. Effective September 1, 2019) (the public has the right to speak on items on the agenda.).

⁴¹ Tex. Att’y Gen. Op. No. JC-169 (2000) at 6. See *Hays County Water Planning P’ship v. Hays County*, 41 S.W.3d 174, 181 (Tex. App. — Austin 2001, pet. denied) (agenda that provided “presentation by Commissioner” considered to be insufficient notice, as nothing in agenda posting indicated subject matter of presentation); Tex. Att’y Gen. Op. No. GA-668 (2008).

⁴² Tex. Att’y Gen. Op. No. JC-57 (1999) at 5. See also Tex. Att’y Gen. LO-90-27.

⁴³ Tex. Att’y Gen. Op. No. JC-57 (1999) at 5.

16. What may members of the city council do if an unposted issue is raised at an open meeting?

Members of the governing body may not deliberate or make any decision about an unposted issue at a meeting of the governing body. If an unposted item is raised by members of the public, the governing body has four options. First, an official may respond with a statement of specific factual information or recite the governmental body's existing policy on that issue.⁴⁴ Second, an official may direct the person making the inquiry to visit with staff about the issue.⁴⁵ Third, any deliberation of the subject of the unposted issue must be limited to a proposal to place the item on the agenda for discussion at a future meeting.⁴⁶ Finally, the governing body may offer to post the matter as an emergency item if it meets the criteria for an emergency posting. (See Section VI for a discussion on emergency meetings.)

17. May a city change the date of its meeting without posting a corrected notice?

The Act requires literal compliance.⁴⁷ For this reason, a city does not have the authority to change the date of its meeting without posting a new notice with the correct date for at least 72 hours before the meeting.⁴⁸ If the city council is presented with an emergency, it could utilize its power to call an emergency meeting which only requires one hour notice. (See Section VI for a discussion on emergency meetings.)

18. May a city change the time of its city council meeting without posting a corrected notice?

The Act requires literal compliance.⁴⁹ For this reason, a city does not have the authority to change the time of city council's meeting without posting a new notice with the correct time for at least 72 hours before the meeting.⁵⁰ Nonetheless, it is not necessarily a violation of the Act if the city council or one of its committees starts its meeting a little later than the scheduled time. At what point the change in time would present a legal problem would be a fact issue. Cities should consult their city attorney if they decide to change the meeting time.

⁴⁴ Tex. Gov't Code § 551.042(a)(1)-(2).

⁴⁵ *Id.*

⁴⁶ *Id.* § 551.042(b).

⁴⁷ *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299 (Tex. 1990).

⁴⁸ See Tex. Gov't Code §§ 551.041, .043 (notice must be posted for 72 hours in advance of meeting and notice must include place of meeting).

⁴⁹ *Acker*, 790 S.W.2d 299.

⁵⁰ See Tex. Gov't Code §§ 551.041, .043 (notice must be posted for 72 hours in advance of meeting and notice must include place of meeting).

19. May a city change the location of its city council meeting without posting a corrected notice?

The Act requires literal compliance.⁵¹ For this reason, a city has no authority to change the location of its meeting without posting a new notice with the new location for at least 72 hours before the meeting.⁵² However, on the day of the meeting, the city may change the meeting location to a bigger room within the same building to accommodate a large crowd. A city should consult its city attorney if it decides to change the location of a meeting.

20. May a city council continue its properly posted meeting to the next day without reposting?

A city council may continue a meeting to the next regular business day without reposting notice if the action is taken in good faith and not to circumvent the Act. If a meeting must be continued again, the city council must give at least 72 hours notice.⁵³ Additionally, the attorney general has concluded that an executive session of a public meeting may be continued to the immediate next day if certain procedures are followed.⁵⁴

21. What is required to cancel a posted meeting?

The Act does not set forth any particular requirements for canceling a posted meeting. The Act requires notice of meetings to be properly posted, but it does not require that a meeting actually be held once the notice of the meeting has been posted. As a result, the Act does not expressly prohibit the city council from canceling a posted meeting at any time unless doing so would violate some other provision of law (e.g., a city charter requirement). It is important to note that once a meeting is canceled or the posted notice is taken down, the city must post a new notice and follow all the requirements of the Act for the rescheduled meeting.

III. Effect of Quorum on Issues Concerning the Act

General Quorum Provisions

22. What constitutes a quorum for purposes of the Act?

Generally, a quorum is a simple majority of the members of the governmental body.⁵⁵ However, statutes, city rules or city charters may provide for specific quorum

⁵¹ *Acker*, 790 S.W.2d 299.

⁵² See Tex. Gov't Code §§ 551.041, .043 (notice must be posted for 72 hours in advance of meeting and notice must include place of meeting).

⁵³ *Id.* § 551.0411(a). See also *Rivera v. City of Laredo*, 948 S.W.2d 787 (Tex. App. — San Antonio 1989, writ denied); Tex. Att'y Gen. Op. No. DM-482 (1998) (Section 551.0411 codified the opinion set forth in DM-482 and the *Rivera* case.)

⁵⁴ Tex. Att'y Gen. Op. No. JC-285 (2000).

⁵⁵ Tex. Gov't Code § 551.001(6).

requirements. For example, different types of cities have differing quorum requirements (See Question 2 for a discussion of quorum requirements for different types of cities).

23. *May city council hold a meeting if, for any reason, a quorum is not present?*

A meeting subject to the Act likely cannot be convened unless a quorum is present in the meeting room. In fact, the Texas Supreme Court ruled that a school board of trustees could not convene its meeting until a quorum was physically present in the same room.⁵⁶ However, Texas case law and attorney general opinions have not addressed whether a properly convened meeting could continue if a quorum is lost due to the later departure or temporary absence of a member of the governing body. In any event, the governing body could not take any action during a meeting if a quorum was not present.

Application of the Act if Quorum of Governing Body is Present

24. *Does the Act apply if a quorum of the city council meets but takes no action or vote on public business?*

The Act applies to a gathering of a quorum of the city council if the quorum discusses public business, regardless of whether there is any action or vote taken.⁵⁷ All requirements under the Act must be followed for such gatherings unless otherwise provided under state law. As noted earlier, in certain enumerated situations, the Act does not apply even when a quorum of the city council is present (Refer to Section I for the list of the exceptions).

25. *May a quorum of a city council serve on a board or commission whose members are appointed by the council?*

Nothing in the Act prohibits a quorum of a city council from serving on a city board or commission. However, the meetings of such board or commission would have to meet all the requirements of the Act. Also, such action would probably constitute a meeting of the city council as well.

Additionally, under the common law doctrine of incompatibility, a city council is prohibited in some circumstances from appointing one of its own members to a public office or position.⁵⁸ However, in certain situations, Texas statutes or a city charter can specifically allow a governing body to appoint its own members to a board or commission. For example, the Development Corporation Act provides that a city council may appoint as

⁵⁶ *Cox Enters.*, 706 S.W.2d 956.

⁵⁷ See *Bexar Medina Atascosa Water Dist. v. Bexar Medina Atascosa Landowners' Ass'n*, 2 S.W.3d 459, 462 (Tex. App.—San Antonio 1999, pet. denied) (deliberations took place at informational gathering of water district board with landowners in board member's barn, where one board member asked question and another board member answered questions, even though board members did not discuss business among themselves).

⁵⁸ See *Ehlinger v. Clark*, 8 S.W.2d 666 (Tex. 1928)

many as four city council members to serve as board members of a Type B economic development corporation board.⁵⁹ A city should discuss this issue with its city attorney before appointing one of its own members to a city board or commission.

26. *May a quorum of members of city council sign a group letter or other document without violating the Act?*

If a quorum of the city council meets without following open meetings procedures to discuss, create, and/or sign a group letter or document concerning public business, they would likely violate the Act.⁶⁰ The attorney general has determined that it is a violation of the Act to circulate a claim, bill or invoice among members for approval of payment in writing without discussion at a properly posted meeting.⁶¹ Such communications are best considered at properly posted open meetings, and any signatures should be executed in response to a vote at the meeting on the issue.

27. *May a quorum of members of city council attend a committee meeting made up of some members of council without violating the Act?*

A quorum of council may attend a committee meeting made up of some members of the council. However, the attendance of a quorum of council would constitute a meeting of the council that would require compliance with the Act. The attorney general has concluded that if enough members of a governmental body attend a meeting of a component committee on which some members of the governmental body sit so that a quorum of the governmental body is present, then the committee would be subject to the Act, regardless of whether the committee members or any members of the governmental body speak or otherwise engage in deliberations.⁶² It is advisable that if a standing committee or subgroup of the council meets and a discussion of public business occurs, such gatherings be posted and conducted as open meetings. Moreover, if council routinely approves decisions of a subcommittee consisting of less than a quorum of the governing body, the subcommittee must comply with the Act.⁶³

28. *May a quorum of members of city council attend a state legislative committee meeting without violating the Act?*

The attendance of a quorum of the city council at a meeting of a state legislative committee or agency does not constitute a meeting of the council, provided deliberations at the meeting by the members of council consist only of publicly testifying at the meeting,

⁵⁹ See Tex. Loc. Gov't Code § 505.052(c).

⁶⁰ Tex. Att'y Gen. Op. No. DM-95 (1992).

⁶¹ Tex. Att'y Gen. Op. No. JC-307 (2000).

⁶² Tex. Att'y Gen. Op. No. JC-313 (2000).

⁶³ *Willmann*, 123 S.W.3d at 480.

publicly commenting at the meeting, or publicly responding at the meeting to questions asked by a member of the state legislative committee or agency.⁶⁴

Application of the Act to Gatherings of Less Than a Quorum

29. Is a gathering of less than a quorum of the city council subject to the Act?

Generally, a gathering of less than a quorum of city council is not subject to the Act. However, discussions about public business outside a meeting through a series of communications is prohibited.⁶⁵ Specifically, if members of council in numbers less than a quorum engage in a series of communications between the members, those members could violate the Act if they knew at the time they engaged in the communications that the communications will eventually involve a quorum of the members and would constitute a deliberation once a quorum of members engage in the series of communications.⁶⁶

Similarly, members of council in numbers less than a quorum may violate the Act if they communicate by phone, memo, email or social media about public business knowing that those communications will eventually involve a quorum of the members of council and will constitute a deliberation once a quorum of members engage in the series of communications. For a discussion on how city council can discuss public business without it counting as a meeting on an online message board, see Question 46.

30. May members of the city council in numbers less than a quorum meet with public or private groups without violating the Act?

It is common for several members of council to be present at a private or public gathering that is sponsored by another entity. The Act does not require that such gatherings be treated as a meeting if less than a quorum of members is present. However, as noted above in Question 30, a member of council faces potential criminal penalties if such gatherings are considered a series of communications that members know will eventually involve a quorum of the members and would constitute a deliberation once a quorum of members engage in the series of communications.⁶⁷

⁶⁴ Tex. Gov't Code § 551.0035.

⁶⁵ *Id.* § 551.143 (as amended by S.B. 1640 of the 86th Leg., R.S. Effective June 10, 2019); *See id.* § 551.001(2) (as amended by S.B. 1640 of the 86th Leg., R.S. Effective June 10, 2019.) (definition of "deliberation" was amended and means the following "a verbal or written exchange between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body.").

⁶⁶ Tex. Gov't Code § 551.143.

⁶⁷ *Id.*

31. May members of the city council in numbers less than a quorum talk over the phone without violating the Act?

The mere fact that less than a quorum of members of council talk over the phone does not in itself constitute a violation of the Act. However, if the members are using telephone conversations to conduct their deliberations about public business, there may be potential criminal violations if such communications result in a prohibited series of communication.⁶⁸ Physical presence in one place is not necessary to violate the Act.⁶⁹ It remains a fact issue whether certain phone conversations between less than a quorum of members would be a violation of the Act.⁷⁰

32. May members of the city council in numbers less than a quorum sign a group letter or other document without violating the Act?

It is a fact issue whether the presence of less than a quorum of the governmental body's members' signatures on a group letter or other document constitutes a violation of the Act. For example, if the members at some time knowingly met in numbers less than a quorum to discuss signing the document or otherwise communicate by phone, memo or email in order to engage in prohibited communications, a violation of the Act would have occurred.⁷¹

33. Do members of city council who have been elected, but not sworn in, count towards a quorum of the council?

No. The members of the city council who have been elected, but not sworn in, would not count toward a quorum of the council under the Act.⁷²

⁶⁸ See *Id.*

⁶⁹ Tex. Att'y Gen. Op. No. DM-95 (1992).

⁷⁰ See *Hitt v. Mabry*, 687 S.W.2d 791 (Tex. App. — San Antonio 1985, no writ) (school trustees violated Act by telephone conferencing). *But see Harris County Emergency Serv, Dist. #1 v. Harris County Emergency Corps*, 999 S.W.2d 163 (Tex. App. — Houston [14th Dist.] 1999, no writ) (evidence that one board member of a five-member county emergency service district occasionally used telephone to discuss agenda for future meetings with one other board member did not amount to Act violation).

⁷¹ See *Willmann*, 123 S.W.3d at 480; Tex. Att'y Gen. Op. Nos. JC-307 (2000), DM-95 (1992). See also *Esperanza Peace and Justice Center v. City of San Antonio*, 316 F. Supp. 2d 433 (W.D. Tex. 2001) (discussion of an illegal "walking quorum" facilitated by mayor and city manager). Also see Tex. Gov't Code § 551.143 (as amended by S.B. 1640 of the 86th Leg. R.S., Effective June 10, 2019.)

⁷² Tex. Att'y Gen. Op. No. GA-0355 (2005).

IV. Regular Open Meetings

Adoption of Procedural Guidelines to Administer the Act

34. Does the Act set out procedural rules for conducting a meeting?

The Act provides relatively few procedural rules for conducting city council meetings. The Act provides that all meetings must be properly posted, and limits how members of council can respond to inquiries on items that are not listed on the meeting notice. Additionally, the city council must keep minutes of an open meeting and follow certain procedures when holding a closed meeting.

However, state law does not impose parliamentary procedural rules for council meetings. For example, the Act does not specify how many readings of an ordinance are required, who may make a motion, or whether a motion must be seconded. To answer these questions, the city council must consult any applicable state laws, charter provisions, and any rules of procedure that it has adopted.⁷³

35. Do individual members of city council have a right to place items on a meeting agenda?

The Act does not specifically address the authority of individual members to place items on the agenda of a meeting. However, the attorney general determined that the City of Dallas, a home rule city, may adopt a local provision that requires the consensus of several council members to place an item on the agenda.⁷⁴ Similarly, the attorney general concluded that individual county commissioners have a right to place items on the agenda for a county commissioner's court meeting.⁷⁵ A city that has not adopted a procedure to place items on a meeting agenda should consult its city attorney regarding this issue.⁷⁶

⁷³ Tex. Att'y Gen. Op. No. GA-412 (2006) (stating that a governmental body may adopt Robert's Rules of Order if the adopted provisions are consistent with the Act and other applicable statutes). See Tex. Loc. Gov't Code § 22.038(c) (the governing body of a Type A general law may determine the rules of its proceedings); Tex. Att'y Gen. Op. No. DM-473 (1998) (home rule city is authorized to adopt reasonable rules of procedure as long as they are not inconsistent with the constitution, statutes or city charter provisions).

⁷⁴ Tex. Att'y Gen. Op. No. DM-473 (1998).

⁷⁵ Tex. Att'y Gen. Op. No. DM-228 (1993).

⁷⁶ See Tex. Att'y Gen. Op. No. JM-63 (1983).

36. What is the role or authority of the mayor during an open meeting?

The mayor serves as the presiding officer during an open meeting.⁷⁷ However, the Act itself does not define any specific powers of a mayor regarding the open portion of a meeting.

37. May a mayor vote on items or second motions that are made at a meeting?

The Act does not address whether a mayor may vote on an item during a meeting. However, state law provides the following:

- **Home Rule Cities:** the power of the mayor to cast a vote is generally addressed in the city charter.
- **General Law Type A Cities:** state law specifies that the mayor may vote only in the case of a tie.⁷⁸
- **General Law Type B Cities:** State law does not address whether a mayor in a Type B general law city may vote on items. Some legal analysts have concluded that the mayor of a Type B city may vote on all items, even when there is not a tie.⁷⁹
- **General Law Type C Cities:** State law does not address whether a mayor in a Type C general law city may vote on items. Whether the mayor of a Type C city may vote on all items, might depend on the population of the Type C city.⁸⁰
- Also, the Act does not address who can or cannot make a second motion. As to who may make second motions, the answer will depend on the rules of parliamentary procedure, if any, that have been adopted by the city council.

⁷⁷ See Tex. Const. Art. V, § 18(b) (county judge is the presiding officer of the county commissioners court); Tex. Loc. Gov't Code §§ 22.037 (mayor is presiding officer, in a Type A general law city), 23.027 (mayor is president of a Type B general law city), 51.051(a) (Type C general law city with population between 501 through 4,999 has the powers of a Type A general law city), 51.051(b) (Type C general law city with population of 201 through 500 has the powers of a Type B general law city); 81.001(b) (If present, county judge is the presiding officer of the commissioners court).

⁷⁸ Tex. Loc. Gov't Code § 22.037(a).

⁷⁹ Alan J. Bojorquez, *Texas Municipal Law and Procedure Manual* § 1.23(2) (6th ed. 2015).

⁸⁰ See Tex. Loc. Gov't Code §§ 51.051, .052.

38. May members of a city council cast their votes by proxy on an item without attending the meeting?

Although the Act does not address voting by proxy, the attorney general has opined that a member of a governing body may not vote by proxy.⁸¹ As such, a member of the city council must be present at a meeting in order to deliberate and to vote.⁸²

39. When may an open meeting be held by telephone conference call?

A meeting may be held by telephone conference call only if:

1. An emergency or public necessity exists; and
2. It is difficult or impossible to convene a quorum at one location; or
3. The meeting is held by an advisory board.⁸³

The following procedural requirements must be met when holding a meeting by telephone conference call:

1. The meeting must be posted and open to the public in the same manner as a regular meeting.⁸⁴ The city is not required to state in the agenda that the meeting will be held by telephone conference call.⁸⁵
2. The meeting must be held in the same place where meetings of the governing body are usually held.⁸⁶
3. The identity of each speaker must be clearly stated prior to that person speaking.⁸⁷
4. The meeting must be set up to provide two-way communications throughout the entire meeting.
5. All portions of the meeting (other than executive sessions) must be audible to the public, including the entire conference call.⁸⁸
6. The meeting must be recorded and a copy of the recording must be made available to the public.

⁸¹ Tex. Att'y Gen. LO-94-028.

⁸² Tex. Att'y Gen. Op. Nos. DM-207 (1993); JM-584 (1986).

⁸³ Tex. Gov't Code § 551.125(b). (Note: There are specific governing bodies that have specific statutes within the Act regarding teleconferencing. The governing body will want to check with its legal counsel to make sure the right statute is being used for your governing body. See Tex. Gov't Code §§ 551.121, .122, .123, .124.).

⁸⁴ *Id.* § 551.125(c).

⁸⁵ Tex. Att'y Gen. Op. No. JC-352 (2001).

⁸⁶ Tex. Gov't Code § 551.125(d).

⁸⁷ *Id.* § 551.125(f).

⁸⁸ *Id.* § 551.125(e).

Because extraordinary circumstances are needed to hold a meeting by telephone conference call, a city council cannot have an open meeting by teleconference merely because attending a meeting on short notice would inconvenience members of council. If a quorum of the city council convenes at the meeting location, absent members are not allowed to participate from other locations by telephone conference call.⁸⁹ Further, it would be questionable to allow participation, at a meeting, of a third party by telephone conference call due to the strict requirements in this section. Legal counsel should be consulted if such a situation arises.

40. Does the Act allow a member of city council or a city employee to participate in the city council’s meeting via videoconference call?⁹⁰

The Act allows a member of council or a city employee to participate remotely in a meeting of the council by means of a videoconference call provided certain conditions are met.⁹¹

41. What procedures must a city that lies in either one or two counties follow when a member of council or city employee participates in a meeting via videoconference call?

1. A quorum of the city council must be present at one physical location.⁹²
2. The video and audio feed of the member’s or employee’s participation, as applicable, must be broadcast live at the meeting.⁹³
3. The meeting notice must specify where the quorum of the city council will be physically present and the intent to have a quorum present.⁹⁴
4. Each portion of the meeting held by videoconference call that is required to be open to the public must be visible and audible to the public at the location where the quorum is present.⁹⁵
5. The city council must make at least an audio recording of the meeting and the recording must be made available to the public.⁹⁶
6. The location where the quorum is present, and each remote location from which a member of the city council participates, must have two-way audio and video

⁸⁹ Tex. Att’y Gen. Op. No. JC-352 (2001) at 4.

⁹⁰ See Tex. Gov’t Code § 551.001(8) (definition of “videoconference call”).

⁹¹ *Id.* § 551.127(a-1); see also *id.* § 551.127(a) (providing that the Act does not prohibit a governmental body from holding an open or closed meeting by videoconference call, except as provided by Section 551.127).

⁹² *Id.* § 551.127(b).

⁹³ *Id.* § 551.127(a-1).

⁹⁴ *Id.* § 551.127(e).

⁹⁵ *Id.* § 551.127(f).

⁹⁶ *Id.* § 551.127(g).

communication with each other location during the entire meeting. Each participant's face in the videoconference call, while speaking, must be clearly visible and audible to each other participant, and during the open portion of the meeting, to the members of the public in attendance at the location where a quorum is present, and at any other location of the meeting that is open to the public.⁹⁷

7. The audio and video signals perceptible by members of the public at each location of the meeting must meet or exceed minimum standards established by Texas Department of Information Resources (DIR) rules.⁹⁸
8. The audio and video signals perceptible by members of the public at the location where the quorum is present, and any remote location must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.⁹⁹

The requirements set out above are in addition to requirements that otherwise apply to meetings under the Act.¹⁰⁰

42. *What happens in a city that lies in either one or two counties if the audio or video communication is disconnected or another problem occurs that causes the meeting to no longer be visible and audible to the public?*

The Act provides that if a member of the city council participates by videoconference and the audio or video communication is lost or disconnected, that member could simply be counted absent for the portion of the meeting during which the communication is lost but that the meeting could continue so long as a quorum of the city council remains present at the meeting location.¹⁰¹ Section 551.127(f) arguably gives the city council the alternative option of recessing the meeting for up to six hours in order to fix the problem. Recessing the meeting appears to be the only option if an employee, rather than a member, is participating by videoconference.

⁹⁷ *Id.* § 551.127(h).

⁹⁸ *Id.* § 551.127(i).

⁹⁹ *Id.* § 551.127(j).

¹⁰⁰ *See, e.g., id.* § 551.127(d).

¹⁰¹ *Id.* § 551.127(a-3).

43. What procedures must a city that lies in three or more counties follow when a member of council or city employee participates in a meeting via videoconference call?

1. The member of the city council presiding over the meeting must be physically present at one location of the meeting that is open to the public during the open portions of the meeting.¹⁰²
2. The meeting notice must specify the location and the intent to have the presiding officer physically present at the physical space described in 1, above.¹⁰³
3. Each portion of the meeting held by videoconference call that is required to be open to the public must be visible and audible to the public at the location where the presiding officer is physically present.¹⁰⁴
4. The city must make at least an audio recording of the meeting and the recording must be made available to the public.¹⁰⁵
5. The location where the presiding officer is physically present and each remote location from which a member of council participates shall have two-way audio and video communication with each other location during the entire meeting. Each participant's face in the videoconference call, while speaking, must be clearly visible and audible to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the location where the presiding officer is present, and at any other location of the meeting that is open to the public.¹⁰⁶
6. The audio and video signals perceptible by members of the public at each location of the meeting must meet or exceed minimum standards established by Texas Department of Information Resources (DIR) rules.¹⁰⁷
7. The audio and video signals perceptible by members of the public at the location where the presiding officer is physically present and any remote location must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.¹⁰⁸

¹⁰² *Id.* § 551.127(c), (e).

¹⁰³ *Id.* § 551.127(e).

¹⁰⁴ *Id.* § 551.127(f).

¹⁰⁵ *Id.* § 551.127(g).

¹⁰⁶ *Id.* § 551.127(h).

¹⁰⁷ *Id.* § 551.127(i).

¹⁰⁸ *Id.* § 551.127(j).

The requirements set out above are in addition to requirements that otherwise apply to meetings under the Act.¹⁰⁹

44. May a city council broadcast its meetings over the Internet or television?

A city council may broadcast its open meetings over the Internet.¹¹⁰ If it chooses to broadcast its meetings in this manner, the council must establish an Internet site and provide access to the broadcast from that site. In addition, the Internet site must provide the same 72-hour notice of any meeting as is required by the Act.¹¹¹ Finally, a home-rule city with a population of 50,000 or more can broadcast its regularly scheduled city council open meetings on television.¹¹²

45. Is a city required to make an audio and video recording of its open meetings?

A home-rule city with population of 50,000 or more is required to make an audio and video recording of each regularly scheduled open meeting and make available an archived copy of the audio and video recording of such meetings on the Internet.¹¹³ This does not include work sessions or special called meetings.¹¹⁴ The city is not required to establish a separate internet site and it may make the recordings available on an existing internet site, including a publicly available video-sharing or social network site.¹¹⁵ However, if the city maintains an internet site, then it shall make the archived recordings available on that internet site or an accessible link to the archived recording.¹¹⁶ The archived recordings shall be made available on the internet not later than seven days after the date the recordings were made.¹¹⁷ The archived recordings shall be maintained on the internet for not less than two years after the date the recordings were made first available.¹¹⁸

If there is a catastrophe¹¹⁹ or technical breakdown, the city is exempt from having the recordings up no later than seven days and maintaining the recordings up on the internet for two years.¹²⁰ Once the catastrophe or technical breakdown is over, the city must make all reasonable efforts to make the required recordings available in a timely manner.

¹⁰⁹ See, e.g., *id.* § 551.127(d).

¹¹⁰ *Id.* § 551.128(b). See *id.* § 551.128(a) (definition of “Internet” in this section).

¹¹¹ *Id.* § 551.128(c).

¹¹² *Id.* § 551.128(b-6).

¹¹³ *Id.* § 551.128(b-1)(1)(A) and (b-1)(2).

¹¹⁴ *Id.*

¹¹⁵ *Id.* § 551.128(b-2).

¹¹⁶ *Id.* § 551.128(b-3).

¹¹⁷ *Id.* § 551.128(b-4)(1).

¹¹⁸ *Id.* § 551.128(b-4)(2).

¹¹⁹ See *id.* § 551.0411 for definition of “catastrophe” in this section.

¹²⁰ *Id.* § 551.128(b-5).

46. May a city council discuss public business using an online message board?

Members of a city council can use an online message board to communicate or exchange information concerning public business or public policy under their supervision or control without violating the Act if certain conditions are met:¹²¹

1. The communication is in writing.
2. The writings have to be posted on an online message board or a similar internet application and viewable and searchable by the public.
3. The communications have to be displayed in real time and for no less than 30 days after it is first posted.
4. The city can only have one online message board that is displayed on its website and can only be one click away from the city's primary internet web page.¹²²
5. Only members of city council or authorized city employees can post on the online message board. If a city employee posts a message, then the employee must post their name and title along with the message.¹²³
6. If city removes a post that has been up for 30 days, the city must maintain the posting for six years and the posting is considered public information.¹²⁴
7. The city council may not vote or take any action by posting a communication to the online message board and a communication cannot be construed to be an action by the council.¹²⁵

A city should consult with its city attorney when setting up an online message board.

47. May a city use telephone conferencing, video conferencing or communications over the Internet to consult with its attorney?

The Act allows a city council to use telephone conferencing, video conferencing or communications over the Internet to consult with its attorney. The city council can consult with its attorney in an open meeting or in a closed meeting. The public consultation with the city council's attorney must be audible to the public at the location specified in the notice of the meeting. Keep in mind that this provision does not allow the city council to consult with an attorney who is an employee of the city.¹²⁶

¹²¹ *Id.* § 551.006(a).

¹²² *Id.* § 551.006(b).

¹²³ *Id.* § 551.006(c).

¹²⁴ *Id.* § 551.006(d).

¹²⁵ *Id.* § 551.006(e).

¹²⁶ *Id.* § 551.129.

48. What accommodations must the city provide at its meetings for an attendee who has a disability?

Generally, a governing body must make its meetings accessible to individuals with disabilities. Title II of the Americans with Disabilities Act (ADA) provides that activities of the city, including meetings, are subject to the ADA.¹²⁷ In most cases, such a requirement means that the facility at which the meeting is held must be physically accessible to individuals with disabilities. A city may ask an individual with disabilities to provide the city with reasonable notice of any accommodations they may need to attend the meeting. Also, a city must be ready to provide an accessible meeting site and provide alternative forms of communications that address the needs of individuals with disabilities. This may involve providing sign language interpreters, readers, or large print or Braille documents upon request.

Managing Discussions at an Open Meeting

49. Does the public have the right to speak at a meeting?

The Act gives the public the right to speak on each item on the agenda at an open meeting of certain governmental bodies, including a city council and a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department or agency of a city (e.g., probably a city's board of adjustment).¹²⁸

A governmental body must allow the public to speak on agenda items either at the beginning of the meeting or during the meeting when the agenda item is being considered by the governmental body.¹²⁹

50. May a city adopt reasonable rules on the public's right to speak?

Yes. A city may adopt reasonable rules concerning the public's right to speak at an open meeting.¹³⁰ The rules may include how long the person can address the city on a given item. If the person addressing the city council needs a translator, the council is required to allow at least twice the normal amount of time for the non-English speaker to address the body.¹³¹

51. May a city council allow the public to speak on or ask questions about items not on the agenda?

A city council may allow the public to speak on or ask questions about items not on the agenda. If the city council allows the public to do so, it may apply reasonable rules regarding the number, frequency, and length of the presentation, but it cannot

¹²⁷ 42 U.S.C.A. §§ 12131 – 12165.

¹²⁸ Tex. Gov't Code § 551.007(a)

¹²⁹ *Id.* § 551.007(b).

¹³⁰ *Id.* § 551.007(c).

¹³¹ *Id.* § 551.007(d).

discriminate against speakers. The city council shall not deliberate on any item that is not on the agenda, and for such an item, members of council may either: (1) make a statement of fact regarding the item; (2) make a statement concerning the policy regarding the item; or (3) propose that the item be placed on a future agenda.¹³²

52. *May a city council prevent the public from criticizing the council or its actions?*

A city council may not prohibit a member of the public from criticizing the council, including criticizing any act, omission, policy, procedure, program, or services. However, this “does not apply to public criticism that is otherwise prohibited by law.”¹³³ What public criticism is prohibited by law remains to be seen. Defamation would probably fall under that prohibition. In any case, a city council should be able to enforce a decorum policy for public speakers, so long as it doesn’t prohibit criticism.

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

During both an open meeting and a public hearing, members of the public must be given a reasonable opportunity to speak. However, there are special notice requirements for certain statutorily required public hearings in addition to the Act’s notice requirements. For instance, when a city council is going to have an annexation hearing, it must publish notice of the hearing in a newspaper at some time between 10 and 20 days before the hearing. On the other hand, the only notice generally required for an open meeting is a 72-hour notice. The city will need to review the statute that requires a public hearing for those specific notice requirements.

54. *May a city council limit its members to a set amount of time for their testimony or remarks at an open meeting?*

The Act does not address whether a city council may set time limits on the remarks of its members at an open meeting. However, the council may adopt procedural rules for its meetings that are not inconsistent with the state or federal constitution, state or federal statutes, or with a home rule city charter.¹³⁴ Within these parameters, a city council may arguably set reasonable time limits for its members’ remarks at an open meeting.¹³⁵

55. *May city council remove members of the public from an open meeting for causing a disturbance?*

The Act does not address the removal of a member of the public from an open meeting for causing a disturbance. However, the presiding officer or the governing body may ask that individual members of the public be removed if they are causing a disturbance at an

¹³² *Id.* § 551.042.

¹³³ *Id.* § 551.007(e) (as added by H.B. 2480 of the 86th Leg., R.S. Effective September 1, 2019.)

¹³⁴ Tex. Att’y Gen. Op. Nos. DM-473 (1998), H-188 (1973).

¹³⁵ Tex. Att’y Gen. LO-96-111; Tex. Att’y Gen. Op. No. H-188 (1973).

open meeting.¹³⁶ What constitutes conduct that rises to the level of disorderly conduct is a fact issue for the governing body to consider. A city should consult its city attorney for guidance on what actions may constitute “disorderly conduct” and adopt policies to put the public on notice.

56. *May a city council remove its members from an open meeting for causing a disturbance?*

The Act does not specifically address removal of a member of city council from an open meeting for causing a disturbance. Nonetheless, a city council may have the power to take actions to promote an orderly meeting. Accordingly, if a member’s conduct were to constitute disorderly conduct, the member could be warned and then, if necessary, the presiding officer or the city council could require that the member be removed.¹³⁷ A city should consult with its city attorney if it wants to adopt rules of conduct for its members.

Keeping a Record of Open Meetings

57. *What record of an open meeting must the city council maintain?*

A city council must either keep minutes or make a recording¹³⁸ of every open meeting.¹³⁹ If the council chooses to keep minutes rather than make a recording, the Act requires that the minutes indicate the subject of each deliberation and indicate every action that is taken.¹⁴⁰

58. *What access does the public have to the minutes or recording of an open meeting?*

The minutes or recording of an open meeting are open to the public and must be available for inspection or copying.¹⁴¹ The city must also permanently retain copies of the minutes or recordings of its city council meetings.

A city in a county with a population of 25,000 or more and a city with a population of 5,000 or more in a county with a population of less than 25,000 is required to post the minutes of its open meetings on the city’s website provided that the city has the authority to impose

¹³⁶ See Tex. Penal Code § 42.05 (disrupting meeting or procession); *State v. Markovich*, 77 S.W.3d 274 (Tex. Crim. App. 2002) (the best way to ensure that the rights of all individuals are protected is to determine whether the actor’s behavior substantially impaired the conduct of the meeting before his or her actions could be criminalized).

¹³⁷ *Id.*

¹³⁸ See Tex. Gov’t Code § 551.001(7) (definition of “recording”).

¹³⁹ *Id.* § 551.021(a).

¹⁴⁰ *Id.* § 551.021(b).

¹⁴¹ *Id.* § 551.022. See also Tex. Att’y Gen. ORD-225 (1979) (tapes of meetings used to assist in writing minutes are open records).

a tax and has maintained a publicly accessible website at any time on or after January 1, 2019.¹⁴²

59. Does the public have a right to record an open meeting?

The Act gives any member of the public a legal right to make a video or audio recording of an open meeting.¹⁴³ However, the Act also gives the city the right to adopt reasonable rules that are necessary to maintain order. Thus, a city may regulate the location of recording equipment and the manner in which the recording is conducted. However, the city may not adopt any rule that would unreasonably impair a person's right to record an open meeting.

V. Closed Meetings/Executive Sessions¹⁴⁴

60. What are the general subjects for which a governing body may hold a closed meeting?

Under the Act, a city may generally hold a closed meeting for one or more of the following nine reasons:

1. consideration of specific personnel matters;¹⁴⁵
2. certain consultations with its attorney;¹⁴⁶
3. discussions about the value or transfer of real property;¹⁴⁷
4. discussions about security personnel, security devices, or a security audit;¹⁴⁸
5. discussions about a prospective gift or donation to a city;¹⁴⁹
6. discussions by a city council of potential items on tests that the council conducts for purposes of licensing individuals to engage in an activity;¹⁵⁰
7. discussions of certain economic development matters;¹⁵¹

¹⁴² Tex. Gov't Code § 2051.251.

¹⁴³ *Id.* § 551.023.

¹⁴⁴ Texas Government Code § 551.001(1) defines *closed meeting* as "a meeting to which the public does not have access." The Act does not define *executive session*. Black's Law Dictionary defines *executive session* as "a meeting, usually held in secret that only the members and invited nonmembers may attend." These terms are widely used interchangeably. This publication will primarily use *closed meeting* because it is defined by the Act.

¹⁴⁵ Tex. Gov't Code § 551.074.

¹⁴⁶ *Id.* § 551.071.

¹⁴⁷ *Id.* § 551.072.

¹⁴⁸ *Id.* § 551.076.

¹⁴⁹ *Id.* § 551.073.

¹⁵⁰ *Id.* § 551.088.

¹⁵¹ *Id.* § 551.087.

8. discussions of certain competitive matters relating to a city-owned electric or gas utility for which the city council is the governing body;¹⁵² and,
9. certain information relating to the subject of emergencies and disasters.¹⁵³

Closed Meetings to Discuss Personnel Issues

61. When may a city council meet in a closed meeting to discuss personnel issues?

The Act allows a city council to hold a closed meeting to discuss the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee.¹⁵⁴ Also, a city council may hear a complaint or charge against such officer or employee in a closed meeting. However, the council is not allowed to meet in a closed meeting about an employee or official if the subject of the deliberation requests that the item be heard in a public hearing. Also, any final action by the city council on a personnel matter must be taken in an open meeting.¹⁵⁵

It is important to note that a city council may meet in a closed meeting under the personnel exception only if the person being discussed is an officer or employee of the city. Neither the appointment of advisory committee members¹⁵⁶ nor the hiring of independent contractors¹⁵⁷ is a proper subject for closed meetings under the personnel exception. In addition, the personnel exception allows only the discussion of a particular person or persons in a closed meeting. A city council may not discuss general policies regarding an entire class of employees in a closed meeting held under the personnel exception.¹⁵⁸ Such general policies must be addressed during the open portion of a meeting.

62. Is a city council permitted to conduct personnel interviews for new hires or potential officers in a closed meeting?

A city council is permitted to conduct personnel interviews for new hires or potential officers in a closed meeting under the personnel exception of the OMA. According to case

¹⁵² *Id.* § 551.086.

¹⁵³ *Id.* § 418.183(f).

¹⁵⁴ *Id.* § 551.074.

¹⁵⁵ *Id.* § 551.102.

¹⁵⁶ Tex. Att'y Gen. Op. No. DM-149 (1992).

¹⁵⁷ *Swate v. Medina Cmty. Hosp.*, 966 S.W.2d 693, 699 (Tex. App. — San Antonio 1998, pet. denied); Tex. Att'y Gen. Op. No. MW-129 (1980).

¹⁵⁸ *Gardner v. Herring*, 21 S.W.3d 767, 777 (Tex. App. — Amarillo 2000, no pet.); Op. Tex. Att'y Gen. No. H-496 (1975).

law, the Act does not restrict the personnel exception only to actions affecting a current employee of the city.¹⁵⁹

63. Does a city council have to post the name of an individual who is to be discussed in a closed meeting?

A city is not required to post the name of the specific individual to be discussed in a closed meeting.¹⁶⁰ However, the more important the position being discussed, the more specific the posting will need to be in describing that position.¹⁶¹ Thus, the phrase “possible dismissal of a police officer” would normally be a sufficient posting for a city to consider firing a police officer of low rank, unless unusual circumstances made the item particularly newsworthy. On the other hand, if a city is considering the dismissal of the police chief, for example, the city should indicate “possible personnel action regarding police chief” so that the public is clearly informed as to which high-level position is under discussion.¹⁶²

64. Does a city have to give individual notice to the person who will be discussed in a closed meeting?

The Act does not require that an employee or officer be given individual notice of a closed meeting in which that person will be discussed.¹⁶³ However, it is possible that other sources, such as constitutional due process, state statutes, a contractual agreement, a city charter, or a city ordinance may require that certain staff employees or officers be given individual notice and a hearing before any disciplinary action is taken.¹⁶⁴ A city should consult its city attorney regarding the applicable laws in such a situation.

65. Does a person have a right to attend a closed meeting if the person is the subject of the discussion?

When a city council discusses an employee or officer in a closed meeting under the personnel exception, the person being discussed does not have an inherent right to attend the closed meeting. The governing body decides who the necessary parties are

¹⁵⁹ *Hispanic Educ. Committee v. Houston Independent School Dist.*, 886 F.Supp. 606, 611 (S.D. Tex. 1994). (Though there is an attorney general letter opinion, LO 88-52 (1988), that states a governmental entity cannot do interviews of non-employees in a closed meeting under the personnel exception of the Open Meetings Act, this case would control over that attorney general opinion.)

¹⁶⁰ See *City of San Antonio*, 820 S.W.2d 762 (the Act does not raise due process implications; individual notice is not required).

¹⁶¹ See, e.g., *Point Isabel*, 797 S.W.2d 176.

¹⁶² See *Mayes*, 922 S.W.2d 200.

¹⁶³ *City of San Antonio*, 820 S.W.2d 762 (Act does not raise due process implications; individual notice is not required); *Retzberg v. Tex. Dep't of Health*, 873 S.W.2d 408 (Tex. App. — Austin 1994, no writ). (state agency executive secretary not entitled to individual notice); *Stockdale v. Meno*, 867 S.W.2d 123 (Tex. App. — Austin 1993, writ denied) (teacher not entitled to individual notice).

¹⁶⁴ See e.g., Tex. Loc. Gov't Code § 22.077 (hearing for removal of certain municipal officers in Type A city).

for attendance at the closed meeting. The governing body chooses whether to allow the attendance of the employee at the closed meeting.¹⁶⁵

66. Does an employee or officer have a right to compel the city council to hear a personnel matter regarding that employee or officer in an open meeting instead of in a closed meeting?

The employee or officer who is to be discussed under the personnel exception has a right to compel that the discussion be conducted in an open meeting instead of at a closed meeting.¹⁶⁶ However, the Act does not give the employee or officer the right to compel that the personnel matter be discussed only at a closed meeting.¹⁶⁷

67. May a city council admit members of the public selectively to a closed meeting to give feedback on an employee or official being evaluated in the meeting?

No. A closed meeting is for the benefit of the governing body to meet away from public scrutiny under limited exceptions. This purpose would be defeated by selectively admitting members of the public.¹⁶⁸

Closed Meetings for Consultations with an Attorney

68. When may a city council have a closed meeting under the exception for consultations with an attorney?

The Act allows a city council to meet with its attorney to receive legal advice about:

1. pending or contemplated litigation;
2. settlement offers; or
3. a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this [Act].¹⁶⁹

Also, the attorney general has concluded that a city may meet with its attorney to receive legal advice on any matter.¹⁷⁰ However, the attorney general has warned that discussions in a closed meeting under the attorney consultation exception must relate solely to legal

¹⁶⁵ Tex. Att'y Gen. Op. No. JM-6 (1983).

¹⁶⁶ Tex. Gov't Code § 551.074(b).

¹⁶⁷ Tex. Att'y Gen. Op. No. JM-1191 (1990).

¹⁶⁸ Tex. Att'y Gen. Op. GA-0511 (2007).

¹⁶⁹ Tex. Gov't Code § 551.071.

¹⁷⁰ Tex. Att'y Gen. Op. No. JM-100 (1983). See also Tex. Att'y Gen. Op. No. JM-238 (1984) (governing body may admit to executive session persons aligned with governing body and necessary to governing body's full communication with its attorney) (modified by Tex. Att'y Gen. Op. No. JC-506 (2002) to require in addition that presence of person must not waive attorney-client privilege if person is admitted under attorney consultation exception).

matters.¹⁷¹ The city council may not discuss general policy matters that are unrelated to receiving legal advice from the attorney while in closed meeting under this exception.¹⁷²

69. *May a city council meet in a closed meeting for consultations with an attorney if the attorney is not physically present?*

A city council may use a telephone conference call, video conference call, or Internet communications to consult with certain attorneys in a closed meeting. If the attorney is an employee of the city, such consultations via the Internet, telephone or video conference are not permitted.¹⁷³ An attorney who receives compensation for legal services from which employment taxes are deducted by the entity is considered to be an employee of the entity.¹⁷⁴

70. *May a city council meet in a closed meeting with its attorney to discuss a proposed contract?*

A city council may consult with its attorney in a closed meeting to receive advice on legal issues raised by a proposed contract. However, the council may not discuss the merits of a proposed contract, financial considerations, or other non-legal matters related to the contract simply because its attorney is present.¹⁷⁵ General discussion of policy unrelated to legal matters is not permitted in a closed meeting under the Act merely because an attorney is present.

Other Types of Closed Meetings

71. *May a city council discuss the acquisition of real estate in a closed meeting?*

The Act allows a city council to hold a closed meeting to discuss the purchase, exchange, lease or value of real estate.¹⁷⁶ However, such a closed meeting is allowed only if discussion of the real estate in an open meeting would have a detrimental effect on the ability of the city council to negotiate with a third party.¹⁷⁷ For example, a closed meeting may in certain cases be permitted to discuss what the city is willing to pay for real property that it plans to acquire. There is no comparable authority for a city council to go into a closed meeting to discuss the acquisition of items of personal property, such as the purchase of a new computer system.

¹⁷¹ Tex. Att'y Gen. Op. No. JM-100 (1983) at 2.

¹⁷² *Id.*

¹⁷³ Tex. Gov't Code § 551.129(d).

¹⁷⁴ *Id.* § 551.129(e).

¹⁷⁵ *Olympic Waste Servs. v. City of Grand Saline*, 204 S.W.3d 496, 503-04 (Tex. App. — Tyler 2006, no pet.); Tex. Att'y Gen. Op. No. JC-233 (2000) at 3. See also *Finlan v. City of Dallas*, 888 F. Supp. 779, 782 n.9 (N.D. Tex. 1995).

¹⁷⁶ Tex. Gov't Code § 551.072.

¹⁷⁷ *City of Laredo v. Escamilla*, 219 S.W.3d 14, 20 (Tex. App. — San Antonio 2006, pet. denied). See Tex. Att'y Gen. Op. No. MW-417 (1981).

72. May a city council discuss security personnel, security devices, or a security audit in a closed meeting?

The Act permits a city council to discuss the deployment, or specific occasions for implementation, of security personnel or security devices in a closed meeting. Also, the Act allows discussion of security audits in a closed meeting.¹⁷⁸ A city council can also discuss security assessments or deployments relating to information resources technology; certain network security information¹⁷⁹; or the deployment, or specific occasions for implementation of critical infrastructure.¹⁸⁰

73. May a city council discuss a contract involving a prospective gift or donation in a closed meeting?

A city council may meet in a closed meeting to discuss the negotiations for a contract for a prospective gift or donation.¹⁸¹ Such a contract must relate to a gift to be given to the city. However, like the real estate exception, the city council may meet in a closed meeting only if its negotiating position with a third person would be negatively affected by the council's discussion of the contract in an open meeting.

74. May a city council discuss a test item in a closed meeting?

A city council may discuss a test item or information related to a test item in a closed meeting if the item may be included in a test that the city council administers to individuals who seek to obtain or renew a license or certificate that is necessary to engage in an activity.¹⁸²

75. May the governing body of a public power utility discuss competitive matters in a closed meeting?

The governing body of a public power utility (electric or gas utility)¹⁸³ is allowed to deliberate, vote or take final action in a closed meeting on any competitive matter.¹⁸⁴ The term "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors.¹⁸⁵ Also, the notice of the subject matter of an item that may be considered as a competitive matter is required to contain more than a general representation of the subject matter to be considered, such

¹⁷⁸ Tex. Gov't Code §§ 551.076, .089.

¹⁷⁹ See Tex. Gov't Code § 2059.055(b)(network security information that is confidential).

¹⁸⁰ Tex. Gov't Code § 551.089.

¹⁸¹ *Id.* § 551.073.

¹⁸² *Id.* § 551.088.

¹⁸³ See *id.* § 551.086(b)(1) (definition of "public power utility").

¹⁸⁴ *Id.* § 551.086(c).

¹⁸⁵ *Id.* § 552.133 (definition of "competitive matter").

that the competitive activity of the public power utility with respect to the issue in question is not compromised or disclosed.¹⁸⁶

76. *May a city council discuss potential business incentives and other economic development negotiations in a closed meeting?*

A city council may meet in a closed meeting to discuss certain matters related to economic development.¹⁸⁷ It may discuss commercial or financial information that the council has received from certain business prospects. The business prospect must be one that the city council is negotiating with for economic development purposes to locate, stay or expand in or near the territory of the local entity. Also, under this exception, a city council may hold a closed meeting to discuss a potential offer of financial or other incentives to the business prospect.

Need for Statutory Authority to Hold Closed Meetings

77. *May a city council hold a workshop or retreat in a closed meeting?*

There is no specific provision that allows a city council to hold a workshop or retreat in a closed meeting unless an issue to be discussed fits within one of the specific statutory categories that allows for closed meetings. The Act would apply to a city council workshop or retreat if a quorum of the council is present and deliberates about public business.¹⁸⁸

78. *Does the Public Information Act provide a basis for meeting in a closed meeting?*

The Open Meetings Act and the Public Information Act are entirely independent in their operation.¹⁸⁹ (See Section I concerning the relationship between the Open Meetings Act and the Public Information Act.)

A city council may not use the fact that the council will discuss documents that may be confidential under the Public Information Act, Chapter 552 of the Government Code, to justify a closed meeting. Instead, the city council must specifically rely on one of the specific exceptions to the Open Meetings Act to meet in a closed meeting. Procedural Requirements for Meeting in Closed Meetings

¹⁸⁶ *Id.* § 551.086(d).

¹⁸⁷ *Id.* § 551.087.

¹⁸⁸ See *Bexar Medina Atascosa Water Dist.*, 2 S.W.3d at 462.

¹⁸⁹Tex. Att'y. Gen. Op. No. GA-0019 (2003) at 6.

79. Is there a difference between the terms “executive session,” “closed meeting” and “closed session”?

No. All of these terms are used interchangeably. What is important to remember is that a city council may not exclude the public from attending a meeting unless the Act specifically authorizes the council to close the meeting to the public.¹⁹⁰

80. May a city council meet in a closed meeting if a city charter provision requires that all city council meetings be conducted as open meetings?

A city council may not hold a closed meeting if the city charter specifically requires that all meetings or the type of meeting in question be held as an open meeting.¹⁹¹

81. What notice must be posted for an item to be considered in a closed meeting?

The rules for posting closed meeting items are the same as the general rules for posting items that will be considered in an open meeting.¹⁹² This means that notice of the items to be discussed in a closed or open meeting must be provided. However, the Act does not require the notice to distinguish which items will be specifically discussed in a closed meeting and which ones will be discussed in a closed session. Additionally, the Act does not require the notice of a closed meeting to cite the section or subsection numbers of provisions authorizing the closed meeting.¹⁹³ Nonetheless, most cities indicate on the notice that the city council may be going into closed meeting on a particular topic and the statutory section that allows such an item to be considered in a closed meeting. Should a governing body consistently distinguish between subjects for public deliberation and subjects for a closed session, an abrupt departure from this practice could render the notice inadequate.¹⁹⁴

82. What procedure must a city council follow to go into a closed meeting?

If a city council chooses to discuss an item in a closed meeting, it must follow the statutory procedures required for such a meeting. The city council must first convene in a properly posted open meeting. During that open meeting, the presiding officer must announce that a closed meeting will be held and identify the section(s) of the Act authorizing such a closed meeting.¹⁹⁵ A city council should consider having a prior written opinion from its

¹⁹⁰ Tex. Gov't Code § 551.002. See n. 150.

¹⁹¹ Tex. Gov't Code § 551.004. See *Shackelford v. City of Abilene*, 585 S.W.2d 665 (Tex. 1979).

¹⁹² See generally Tex. Gov't Code §§ 551.041, .043. See Tex. Att'y Gen. Op. No. GA-511 (2007) at 4. (notice does not have to cite the section or subsection numbers of the provision authorizing the closed session.)

¹⁹³ See *Rettberg v. Tex. Dep't of Health*, 873 S.W.2d 408, 411–12 (Tex. App.—Austin 1994, no writ); Tex. Att'y Gen. Op. No. GA-0511 (2007) at 4.

¹⁹⁴ Tex. Att'y Gen. Op. No. JC-57 (1999).

¹⁹⁵ Tex. Gov't Code § 551.101. See *Lone Star Greyhound Park v. Tex. Racing Comm'n*, 863 S.W.2d 742, 747-48 (Tex. App — Austin 1993, writ denied) (presiding officer's announcement of content of applicable section, but not section number, gives sufficient notice).

attorney setting forth a reasonable basis for holding the closed meeting for the item in questions if the matter is in dispute. Once a closed meeting has begun, the presiding officer must announce the date and time the session started.¹⁹⁶ At the end of the closed meeting, the presiding officer must again announce the date and time the session ended. In most instances, a certified agenda or recording must be made.¹⁹⁷ Also, no action or vote on an agenda item may be taken in a closed meeting and such action may only take place at an open meeting.¹⁹⁸

83. *May a city council continue a closed meeting to the immediate next day?*

A closed session may be continued to the immediate next day so long as before convening the second-day closed meeting, a quorum of the city council first convenes in an open meeting. The presiding officer must publicly announce that a closed meeting will be held and identify the section or sections of the Act under which the closed meeting is authorized.¹⁹⁹

84. *If a member of the city council is not certain that a closed meeting is permitted what actions should the official take if a closed meeting is called?*

If a member of council is not certain that a closed meeting is permitted on a particular issue, the member may refuse to attend the meeting or ask for a formal written interpretation from the city attorney as to the legality of the meeting. Knowingly participating in an unauthorized closed meeting is a criminal offense.²⁰⁰ However, if a member reasonably relies on a written opinion concerning whether a closed meeting is permitted from the city attorney, the attorney general or a court, then the member has an affirmative defense to any criminal prosecution for violation of the Act.²⁰¹ Simply objecting or not speaking during an illegal closed meeting will not relieve the member of potential criminal liability for participating in the meeting.

85. *Who is permitted to attend a closed meeting?*

The Act does not specify who may or may not attend a closed meeting.²⁰² Generally, a city council has discretion to determine who may attend closed meetings. Members of the public may not be selectively admitted to an executive session.²⁰³ Additionally, when a city council holds a closed meeting to discuss a lawsuit under the attorney consultation exception, section 551.071 of the Government Code, the city's attorney must be present,

¹⁹⁶ Tex. Gov't Code § 551.103 (c)(3) & (d).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* § 551.102.

¹⁹⁹ *Id.* § 551.101; Tex. Att'y Gen. Op. No. JC-285 (2000). *See also* Tex. Gov't Code § 551.0411(a).

²⁰⁰ Tex. Gov't Code § 551.144.

²⁰¹ *Id.*

²⁰² Tex. Att'y Gen. Op. No. JC-375 (2001).

²⁰³ Tex. Att'y Gen. Op. No. GA-0511 (2007).

but an opposing party may not be present.²⁰⁴ In considering whether to admit any nonmember to a closed meeting held under this section, a city council should consider:

1. whether the person's interests are adverse to the city;
2. whether the person's presence is necessary to the issues to be discussed; and,
3. whether the city council may waive the attorney-client privilege by including the nonmember.²⁰⁵

With respect to closed meetings held under other exceptions of the Act, a governmental body has the right to determine which nonmembers may attend and may include a nonmember if the person's interests are not adverse to the governmental body's and the person's participation is necessary to the anticipated deliberation.²⁰⁶

86. *May a city council prevent one of its members from attending a closed meeting?*

A city council can prevent one of its members from attending a closed meeting when that member is suing the council or the city.²⁰⁷ In Attorney General Opinion JM-1004, a school board had been sued by one of its own members and wanted to discuss the lawsuit with its attorney in an executive session. The attorney general concluded that the school board could exclude the member who had sued the district. Because the purpose of the exception for consultations with an attorney is, in part, to allow a governmental body to receive legal advice from its attorney without revealing attorney-client confidences to the opposing side, admitting a member of a governing body who is on the opposing side of litigation to such an executive session would defeat the purpose of holding it.

87. *May a city council prevent city staff from attending a closed meeting?*

As mentioned above, a city council may exclude all nonmembers from attending a closed meeting.²⁰⁸ Thus, a city council may exclude city staff from attending a closed meeting. Two attorney general opinions have concluded that the county commissioners' court could exclude the county clerk from an executive session of the commissioners' court where no statute required the presence of the county clerk.²⁰⁹ Another opinion concluded that a contractual provision requiring a superintendent of schools to attend all executive sessions of the school board of trustees was valid under the Act but would not preclude

²⁰⁴ See Tex. Att'y Gen. Op. Nos. JC-506 (2002), JC-375 (2001), JM-238 (1984).

²⁰⁵ Tex. Att'y Gen. Op. No. JC-506 (2002).

²⁰⁶ *Id.*

²⁰⁷ Tex. Att'y Gen. Op. No. JM-1004 (1989).

²⁰⁸ See Tex. Att'y Gen. Op. Nos. JM-6 (1983), JC-506 (2002); Tex. Att'y Gen. LO-97-017.

²⁰⁹ Tex. Att'y Gen. Op. Nos. JM-6 (1983), GA-277 (2004).

her exclusion by the board.²¹⁰ However, some city charters and certain statutory provisions require the city secretary attend all city council meetings.²¹¹

88. *May a city council approve items or take a straw poll in a closed meeting?*

The members of city council may not conduct a straw vote or take a formal vote during a closed session.²¹² One court has held that a member of a governing body may indicate during an executive session how the member may vote.²¹³ However, the Act requires that any final action, decision or vote be made in an open session.²¹⁴

Production and Handling of Certified Agenda or Recording for Closed Meetings

89. *Is a city council required to create a certified agenda or recording of discussions held in a closed meeting?*

A city council must create a certified agenda or make a recording²¹⁵ of every closed meeting unless the closed meeting is being held for the purpose of consulting with an attorney.²¹⁶ The city council may stop taking notes or turn off the recording during the portion of a closed meeting that involves consultations with an attorney.

The presiding officer shall certify that the agenda or recording of the closed meeting is true and correct record of the proceeding.²¹⁷ The certified agenda must state the subject matter of each deliberation and record any further action taken.²¹⁸ The certified agenda does not have to be a verbatim transcript of what happened in the closed meeting, but it must summarize what was discussed on each topic.²¹⁹ In addition, the certified agenda or recording must include an announcement by the presiding officer of the date and time that the closed meeting began and ended.²²⁰

²¹⁰ Tex. Att’y Gen. Op. No. JC-375 (2001).

²¹¹ See Tex. Loc. Gov’t Code § 22.073 (requires a city secretary in Type A city to attend all meetings and keep required minutes).

²¹² *Id.*

²¹³ *Bd. of Trustees v. Cox Enters., Inc.*, 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); *Nash v. Civil Serv. Comm’n*, 864 S.W.2d 163, 166 (Tex. App. — Tyler 1993, no writ).

²¹⁴ Tex. Gov’t Code § 551.102.

²¹⁵ See *id.* § 551.001(7) (definition of “recording”).

²¹⁶ *Id.* § 551.103(a).

²¹⁷ *Id.* § 551.103(b).

²¹⁸ *Id.* § 551.103(c)(1)-(2).

²¹⁹ Tex. Att’y Gen. Op. No. JM-840 (1988) at 4-7.

²²⁰ Tex. Gov’t Code § 551.103(c)(3), (d).

90. Who is responsible for creating a certified agenda or recording of a closed meeting?

The Act does not specify who is responsible for producing the certified agenda or making the recording of a closed meeting. However, the presiding officer is responsible for certifying that the certified agenda or recording is a true and correct record of the proceedings.²²¹ It is important to note that a member of a city council commits a Class C misdemeanor if he/she participates in a closed meeting knowing that a certified agenda or recording is not being made.²²²

91. May a member of a city council or city employee release a copy of a certified agenda or recording to the public?

A certified agenda or recording kept during a closed meeting may be disclosed to a member of the public only under a court order.²²³ There are criminal penalties for releasing a copy of the certified agenda to the public without a court order.²²⁴

92. May a member of a city council record a closed meeting for the member's own use?

A member of a city council may not record a closed meeting over the objection of a majority of the governmental body's members.²²⁵

93. May a member of the city council review a copy of a certified agenda or recording of a closed meeting?

A member of a city council who attended a closed meeting may later review the certified agenda or recording of that closed meeting.²²⁶ Also, a member who was absent during a closed meeting may review the certified agenda or recording. The city council could adopt procedures for reviewing a certified agenda or recording to preserve the evidentiary integrity, the council may not absolutely prohibit the review by a member.

A former member of council who is no longer in office does not have the right to review certified agendas or recordings of closed meetings.²²⁷ Also, the city council may not provide the former member with a copy of the certified agenda or recording of the closed meeting.²²⁸

²²¹ *Id.* § 551.103(b).

²²² *Id.* § 551.145.

²²³ *Id.* § 551.104(c).

²²⁴ *Id.* § 551.146.

²²⁵ *Zamora v. Edgewood Indep. Sch. Dist.*, 592 S.W.2d 649 (Tex. Civ. App. — Beaumont 1979, writ ref'd n.r.e.); Tex. Att'y Gen. Op. No. JM-351 (1985) at 2.

²²⁶ Tex. Att'y Gen. Op. No. DM-227 (1993).

²²⁷ Tex. Att'y Gen. Op. No. JC-120 (1999).

²²⁸ Tex. Att'y Gen. LO-98-033.

94. How should a city handle a certified agenda or recording once it has been prepared?

The Act contains two requirements on how a certified agenda or recording of closed meetings is to be handled once created:

1. the certified agenda or recording may not be disclosed to the public without a court order, and
2. the certified agenda or recording must be preserved for a period of at least two years after the date of the closed meeting.²²⁹

If any legal action involving the closed meeting is brought within this time period, the certified agenda or recording must be preserved until the action is finished. The city council is the proper custodian for the certified agenda or recording, not the city secretary or county clerk; however the council may delegate its duty to these individuals.²³⁰

95. May members of the city council publicly discuss what was considered in a closed meeting?

The Act does not prohibit a member from discussing or making statements about what occurred in a closed meeting.²³¹ However, the fact that a member may legally discuss what occurred in a closed meeting does not mean that it is advisable to do so. For instance, it is possible that such a discussion could waive the city council's claim of attorney-client privilege if a member revealed attorney-client communications that occurred during a closed meeting. Other statutes and professional obligations as well as possible civil rights violations, individual privacy concerns, and the best interest of the city and the citizens the member represents might counsel against such a course of action. A member will want to carefully review this issue with the city attorney before publicly discussing what was considered in an opening meeting.

96. Is the certified agenda or recording of the closed meeting confidential under the Public Information Act?

The certified agenda and recording of a closed meeting are considered confidential under the Public Information Act.²³²

²²⁹ Tex. Gov't Code § 551.104.

²³⁰ Tex. Att'y Gen. Op. No. GA-0277 (2004) at 3.

²³¹ *Hardy v. Carthage Indep. Sch. Dist.*, No. 2:19-CV-00277, 2022 WL 609151 (E.D. Tex. Mar. 1, 2022) (The court stated that section 551.146 "is not a blanket prohibition against testifying about conversations occurring in a closed meeting, it merely penalizes disclosure of the certified agenda or recording—nothing more."); Tex. Att'y Gen. Op. No. JM-1071 (1989). See Tex. Att'y Gen. Op. No. MW-563 (1980) at 5 (city ordinance attempting to prohibit public discussion of the contents of an executive session may raise First Amendment concerns, but does not violate the Public Information Act).

²³² Tex. Att'y Gen. ORD-495 (1988).

97. Are notes made by an official in a closed meeting confidential under the Open Meetings Act or the Public Information Act?

The Open Meetings Act does not specifically address whether notes made by an official during a closed meeting are confidential. Whether the notes made by an official in a closed meeting are confidential under the Public Information Act (PIA) depends on whether an exception to disclosure under the PIA would apply to the information. Whether the PIA would protect the notes would depend in part on their content and the facts surrounding their creation.²³³ Some factors that should be considered are:

1. who prepared the notes,
2. who possesses and controls the notes,
3. who has access to the notes,
4. whether the notes were used in conducting public business, and
5. whether public funds were expended in creating or maintaining the notes.

If there is a public information request for any such notes, the city should confer with its city attorney.

VI. Emergency Meetings

98. What is sufficient cause for a city to have an emergency meeting?

Under the Act, an emergency exists only if immediate action is required of a governmental body because of (1) “an imminent threat to public health and safety” or (2) “a reasonably unforeseeable situation.”²³⁴ A reasonably unforeseeable situation includes:

1. Fire, flood, earthquakes, hurricane, tornado, or wind, rain or snow storm;
2. Power failure, transportation failure, or interruption of communication facilities;
3. Epidemic; or
4. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.²³⁵

²³³ See, e.g., Tex. Att’y Gen. ORD-635 (1995); ORD-574 (1990) (inter-agency and intra-agency written memoranda containing advice, recommendations and opinion can be withheld); ORD-462 (1987).

²³⁴ Tex. Gov’t Code § 551.045(b) (as amended by S.B. 494 of the 86th Leg., R.S. Effective September 1, 2019.)

²³⁵ *Id.* § 551.045(b)(2) (as amended by S.B. 494 of the 86th Leg., R.S. Effective September 1, 2019.)

Additionally, an “imminent threat to public health and safety,” shall include a threat described above, if imminent.²³⁶ The sudden relocation of a large number of residents from the area of a declared disaster to a governmental body’s jurisdiction is also considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation.²³⁷

The courts and the attorney general have traditionally construed the emergency posting exception strictly.²³⁸ As a general rule, the members of a governmental body should ask themselves two questions when considering whether an emergency exists:

1. What would happen if the meeting on the “emergency” issue were postponed for 72 hours?
2. How long has the governing body known about the “emergency” issue?

If the city has known about the matter for more than 72 hours or it cannot point to an imminent threat to public health or safety that would occur if action were not taken within 72 hours, then it would be difficult to argue that an emergency exists. Also, a situation is not “unforeseeable” merely because a deadline is less than 72 hours away. If the city knew about or should have known about the deadline in advance, then it may be difficult to argue that the situation was “reasonably unforeseeable”.²³⁹

99. What notice must a city provide for an emergency meeting or item?

A city must post notice of an emergency meeting, or the supplemental notice to add an emergency item to an already existing agenda of a properly posted meeting, at least one hour before the meeting is convened.²⁴⁰ The notice of an emergency meeting must “clearly identify the emergency or urgent public necessity.”²⁴¹ The emergency is “clearly identified” when the governing body states the reason for the emergency.²⁴² Notice of an emergency meeting must be posted in the same places that the city posts its notice of a regular or special meeting. (See Section II for a discussion on notice.)

100. What action or deliberation may take place at a properly posted emergency meeting?

A city council may only deliberate or take action on a matter at an emergency meeting that: (1) directly relates to responding to the emergency or urgent public necessity

²³⁶ *Id.* § 551.045(b)(1) (as amended by S.B. 494 of the 86th Leg., R.S. Effective September 1, 2019.)

²³⁷ *Id.* § 551.045(e).

²³⁸ See Tex. Att’y Gen. Op. Nos. JM-985 (1988), JM-1037 (1989) at 2-5, JC-57 (1999) at 4; *Markowski v. City of Martin*, 940 S.W.2d 720, 725 (Tex. App. — Waco 1997, writ denied).

²³⁹ See *River Rd. Neighborhood Ass’n*, 720 S.W.2d at 557-58.

²⁴⁰ Tex. Gov’t Code § 551.045(a) (as amended by S.B. 494 of the 86th Leg., R.S. Effective September 1, 2019.)

²⁴¹ Tex. Gov’t Code § 551.045(c).

²⁴² *Piazza v. City of Granger*, 909 S.W.2d 529 (Tex. App. — Austin 1995, no writ).

identified in the notice of the meeting; or (2) an agenda item listed on a notice of the meeting before the supplemental emergency notice was posted.²⁴³

101. Is a quorum required to conduct an emergency meeting?

A quorum is generally required at an emergency meeting before a city council can conduct any official business. However, a quorum is not required if: (1) the city is wholly or partly located in the area of a disaster declared by the president of the United States or the governor; and (2) a majority of the members of the city council are unable to be present at a meeting of the council as a result of the disaster.²⁴⁴

102. May a city council add non-emergency items onto an agenda that was otherwise validly posted for one hour as an emergency?

The Act does not allow a city to add non-emergency items to the agenda for an emergency meeting unless the non-emergency items have been posted for sufficient time.²⁴⁵ The city must post the non-emergency items for at least 72 hours for the items to be considered.

103. Does the news media have a right to specific notice of an emergency meeting or emergency items added to an agenda of a meeting?

Members of the news media are entitled to specific notice of an emergency meeting or items that are to be considered on an emergency basis if they do certain things.²⁴⁶ First, they must file a request to be notified of an emergency meeting or emergency addition of items to an agenda. This request must be filed at the headquarters of the city and include information on how to contact the member of the news media. The presiding officer or member of the city council must notify the members of the news media by telephone, facsimile transmission, or electronic mail at least one hour before the meeting is convened. Second, the member of media must agree to reimburse the local entity for the cost of providing the special notice. Members of the media are not entitled to a special notice of an emergency meeting or emergency item unless they meet the above criteria.²⁴⁷

104. What if a disaster prevents a city council from holding a meeting that was otherwise properly posted?

If a catastrophe prevents a city council from holding an otherwise properly posted meeting, the city council may convene at a convenient location within 72 hours of a

²⁴³ Tex. Gov't Code § 551.045(a-1) (as added by S.B. 494 of the 86th Leg., R.S., Effective September 1, 2019.)

²⁴⁴ *Id.* § 418.1102.

²⁴⁵ See *id.* § 551.045(a-1) (as added by S.B. 494 of the 86th Leg., R.S., Effective September 1, 2019.)

²⁴⁶ Tex. Gov't Code § 551.047 (as amended by S.B. 494 of the 86th Leg., R.S. Effective 1, 2019.)

²⁴⁷ *McConnell v. Alamo Heights Indep. Sch. Dist.*, 576 S.W.2d 470 (Tex. Civ. App. — San Antonio 1978, writ ref'd n.r.e.) (media is not entitled to notice unless they request it).

properly posted meeting if the action is taken in good faith and not done to circumvent the Act.²⁴⁸ A catastrophe is defined as a condition or occurrence that interferes physically with the ability of a city council to conduct a meeting, including:

- (1) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
- (2) power failure, transportation failure, or interruption of communication facilities;
- (3) epidemic; or
- (4) civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.²⁴⁹

If the city council is unable to convene the meeting within those 72 hours, it may subsequently convene the meeting if it provides 72-hour notice of the meeting.²⁵⁰

VII. Enforcement of the Act's Requirements

Civil Enforcement of the Act

105. What civil remedies does an individual have if the Act is violated?

An individual may sue to prevent, stop, or reverse a violation of the Act.²⁵¹ Standing for bringing such an action has been very liberally construed, even in areas like annexation challenges that normally require an action to be brought by the state's attorney.²⁵² If a court finds that there will be or has been a violation of the Act, the court has at least four options:

1. The court may order a city or an official to stop violations of the Act, to avoid future violations of the Act or to perform a duty required by the Act.²⁵³
2. The court may invalidate any action that a city has taken in violation of the Act.²⁵⁴

²⁴⁸ Tex. Gov't Code § 551.0411(b).

²⁴⁹ *Id.* § 551.0411(c).

²⁵⁰ *Id.* § 551.0411(b).

²⁵¹ Tex. Gov't Code § 551.142(a).

²⁵² See *City of Port Isabel v. Pinnell*, 161 S.W.3d 233, 241 (Tex. App. — Corpus Christi 2005, no pet.).

²⁵³ See, e.g., *Forney Messenger, Inc. v. Tennon*, 959 F. Supp. 389 (N.D. Texas 1997) (injunctive relief available for violations of Act); *Cox Enters. Inc.* 679 S.W.2d 86 (declaratory judgment available for violations of Act).

²⁵⁴ Tex. Gov't Code § 551.141.

3. The courts may order the city to provide back pay to the employee in cases where the Act was violated in the course of firing an employee.²⁵⁵
4. The court, at its own discretion, may make the losing side in such a case pay cost of litigation and reasonable attorney fees.²⁵⁶

Also, the Act provides that an individual, corporation, or partnership that releases a certified agenda or recording of a closed meeting to the public may be held liable in a civil lawsuit.²⁵⁷ In such a suit, the person or entity that is harmed may get damages, attorney fees and court costs.

106. *Is an action automatically void if it was accomplished without compliance with the Act?*

Actions that violate the Act are not automatically void; rather they are voidable.²⁵⁸ Whether a particular action is void is determined by the court. In fact, it is possible that a court may not void an action even if the court finds that the action was taken in violation of the Act.²⁵⁹ Nonetheless, it is always the safer course to attempt to achieve full compliance with the Act to avoid the likelihood of court challenges.

107. *May a city council later “ratify” an action that was voted on in a meeting that did not comply with the requirements of the Act?*

If a city council has taken an action at a meeting that may not have fully complied with the requirements of the Act, the city council may at a later meeting reauthorize the same action. If the second meeting is held in accordance with all the requirements of law, including the Act, then the action under certain circumstances may be considered valid from the date of the second meeting.²⁶⁰ For example, if a city council fires an employee at a meeting that does not meet the requirements of the Act, it may then vote to fire the same employee at a later meeting that meets the requirements of the Act. However, the governing body may owe back pay to the employee for the time period between the first meeting and second meeting if a court voids the action taken at the first meeting to terminate the employee.²⁶¹

²⁵⁵ *Ferris v. Bd. of Chiropractic Exam’rs*, 808 S.W.2d 514 (Tex. App. — Austin 1991, writ denied).

²⁵⁶ Tex. Gov’t Code § 551.142(b).

²⁵⁷ *Id.* § 551.146(a)(2).

²⁵⁸ *Id.* § 551.141. See *City of Point Isabel*, 161 S.W.3d 233 (actions violating notice provisions voidable).

²⁵⁹ *Collin County v. Homeowners Ass’n*, 716 F. Supp. 953, 960 n.12 (N.D. Tex. 1989); *TOMA Integrity, Inc. and John Dial v. Windermere Oaks Water Supply Corp.*, No. 06-19-00005-CV, 2019 WL 2553300, at *2 (Tex. App.— Texarkana June 21, 2019, no pet. h.)(mem. op., not designated for publication) (action voidable because of violation of the Act, but not void because challenge was not immediate).

²⁶⁰ *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975) (increase in electric rates effective only from date reauthorized at lawful meeting).

²⁶¹ *Ferris*, 808 S.W.2d 514.

Criminal Enforcement of the Act

108. What are the criminal penalties for noncompliance with the Act?

There are four provisions of the Act that provide criminal penalties for violation of the Act:

1. **Unauthorized Closed Meeting.** A member of a city council commits a crime if he or she calls or aids in calling an unauthorized closed meeting; closes or aids in closing such a meeting; or participates in an unauthorized closed meeting.²⁶² This violation is a misdemeanor punishable by a fine of between \$100 and \$500, one to six months in jail, or both.²⁶³ However, if the member relied on official written advice from a court, the attorney general, or the city attorney regarding the legality of a closed meeting, the member has an affirmative defense to prosecution.²⁶⁴ A city council may want to ask its legal counsel to provide, in advance, a written opinion noting the legal authority for a closed meeting when doubt exists about the authority for calling or participating in the closed meeting.
2. **Prohibited Series of Communications.**²⁶⁵ A member of city council commits a crime if that member knowingly engages in at least one communication among a series of communications that each occur outside of an authorized meeting that concerns an issue within the jurisdiction of the city in which the members engaging in the individual communications constitute fewer than quorum of members but the members engaging is the series of communications constitute a quorum of the council. The member must know at the time of the communications that all the communications taken together would involve a quorum of the members and would constitute a deliberation once all members engaged in the series of communications.²⁶⁶ This violation is a misdemeanor punishable by a fine of between \$100 and \$500, one to six months in jail, or both.²⁶⁷
3. **Failure to Keep a Certified Agenda or Recording.** A member of a city council commits a crime if he or she participates in a closed meeting knowing that a certified agenda or recording of the closed meeting is not

²⁶² Tex. Gov't Code § 551.144(a).

²⁶³ *Id.* § 551.144(b).

²⁶⁴ *Id.* § 551.144(c).

²⁶⁵ The criminal violation of circumventing the Act by meeting in numbers less than a quorum was found unconstitutionally vague on its face by the Texas Court of Criminal Appeals in *State of Texas v Doyal*, No. PD-0254-18, 2019 WL 944022, at *1 (Tex. Crim. App. Feb. 27, 2019).

²⁶⁶ *Id.* § 551.143(a) (as amended by S.B. 1640 of 86th Leg., R.S. Effective June 10, 2019.)

²⁶⁷ *Id.* § 551.143(b).

being made.²⁶⁸ This violation is a Class C misdemeanor and is punishable by a fine of up to \$500.²⁶⁹

4. **Disclosure of Copy of Certified Agenda or Recording.** An individual, corporation, or partnership commits a crime if it releases to the public a copy of the certified agenda or recording of a lawfully closed meeting.²⁷⁰ This violation is a Class B misdemeanor and is punishable by a fine of up to \$2,000, a jail term of up to 180 days, or both.²⁷¹ Also, the person or entity that is harmed by the release of the certified agenda or recording may get damages, attorney fees and, court costs.²⁷² However, if the defendant had good reason to believe releasing the certified agenda or recording was lawful, or was mistaken as to the nature or the content of the certified agenda or recording, the member has a defense to prosecution and an affirmative defense to any civil suit.²⁷³

109. *May a private citizen violate the Act by urging members of the city council to place an item on the agenda or by informing some members how other members intend to vote on a particular item?*

A private citizen who acts independently to urge individual members to place an item on the agenda or to vote a certain way on an agenda item does not violate the Act, even if he or she informs members of other members' views on the matter. However, a person who is not a member of the city council may be criminally charged with aiding or assisting a member in violating Section 551.144 of the Act, related to illegal closed meetings, but only if the person acts with intent to aid or assist a member or members who knowingly violate the Act.²⁷⁴

110. *What is the role of the district attorney or prosecuting criminal county attorney regarding violations of the Act?*

The district attorney or prosecuting criminal county attorney (depending on the county) has the authority to prosecute criminal violations of the Act. As with other alleged crimes, the local prosecutor retains the discretion to determine which alleged violations he or she will prosecute.

²⁶⁸ *Id.* § 551.145(a).

²⁶⁹ *Id.* § 551.154(b). See Tex. Pen. Code § 12.23 (Class C Misdemeanor punishment).

²⁷⁰ Tex. Gov't Code § 551.146(a).

²⁷¹ *Id.* § 551.146(b). See Tex. Pen. Code § 12.22 (Class B Misdemeanor punishment).

²⁷² Tex. Gov't Code § 511.146(a)(2).

²⁷³ *Id.* § 551.146(c).

²⁷⁴ Tex. Att'y Gen. Op. No. JC-0307 (2000).

111. What is the role of the Office of the Attorney General regarding issues concerning the Act?

The Office of the Attorney General (OAG) may issue an official opinion answering questions regarding the legal interpretation of the Act.²⁷⁵ Only certain public officials are authorized to request an opinion. The OAG will only make legal interpretations of the Act and cannot rule as to whether a specific person violated the Act on a specific occasion if the ruling would require a determination of the applicable facts.²⁷⁶

The OAG does not have enforcement authority with regard to the Act. The prosecution of criminal violations of the Act remains within the discretion and authority of the district attorney or prosecuting criminal county attorney. However, a local prosecutor may request assistance from the OAG in prosecuting a violation of the Act.²⁷⁷ It is within the discretion of that local prosecutor to determine whether to request such assistance from the OAG, and it is within the discretion of the OAG whether the interest of the State of Texas makes such assistance proper.

112. Can the city council pay attorney fees incurred to defend its members charged with violating the Act?

The Act does not specifically address this issue. However, a city council may spend public funds to reimburse a member of council for legal expenses incurred defending against an unjustified prosecution of violations under the Act, but the council may not pay for such legal expenses until it knows the outcome of the criminal prosecution. If the member is found guilty, the city council may not pay legal expenses for the member. Additionally, the member under prosecution is disqualified from voting on a resolution to pay his or her own legal fees or the legal fees of another member indicted on the same facts for the same offense.²⁷⁸

VIII. Additional Information on the Act

113. Who is required to complete training on the Act?

Each elected or appointed public official who is a member of a governmental body subject to the Act must complete a minimum of one hour of training addressing the member's responsibilities under the Act. The training course must have been prepared or approved by the OAG. Public officials have 90 days after their election or appointment to complete the required training.²⁷⁹ The official should receive a certificate of course completion, and the governmental body shall maintain the official's certificate. The certificate must be

²⁷⁵ Tex. Gov't Code §§ 402.041 - .045.

²⁷⁶ Tex. Att'y Gen. Op. Nos. DM-95 (1992); JM-840 (1988); H-772 (1976).

²⁷⁷ Tex. Gov't Code § 402.028.

²⁷⁸ Tex. Att'y Gen. Op. No. JC-294 (2000).

²⁷⁹ Tex. Gov't Code § 551.005.

available for public inspection at any time. A training video is available online at <https://www.oag.state.tx.us/open-government/governmental-bodies/pia-and-oma-training-resources/open-meetings-act-training>.

114. *Where can cities get more information about the Act?*

The Texas Municipal League (TML) has information on the Act on its website at <https://www.tml.org/343/Open-Meetings-Act>. Also, member cities of TML can email or call the TML Legal Staff with any questions concerning the Act. Additionally, the OAG produces the Open Meetings Handbook, an in-depth publication about the Act and its interpretation by attorney general opinions and court cases. That publication is available in a downloadable PDF format on the Attorney General's website at https://www.oag.state.tx.us/sites/default/files/files/divisions/open-government/openmeetings_hb.pdf. Finally, the OAG sponsors an Open Government Hotline where public officials and concerned citizens can get answers to basic questions about the Act. The Open Government Hotline number is (512) 478-6736 or (877) 673-6839 (OPEN-TEX).