



KEN PAXTON
ATTORNEY GENERAL *of* TEXAS

Open Meetings Act Basic Training

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Opinion Committee

Office of the Texas Attorney General



Background

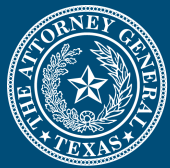
Why do we have an
Open Meetings Act?



Knowing the Workings of Government

“The Act is intended to safeguard the public’s interest in knowing the workings of its governmental bodies. A public body’s willingness to comply with the Open Meetings Act should be such that the citizens of Texas will not be compelled to resort to the courts to assure that a public body has complied with its statutory duty.”

Cox Enterprises, Inc. v. Bd. of Trs. of Austin Indep. Sch. Dist., 706 S.W.2d 956, 960 (Tex. 1986).



Presumption of Openness

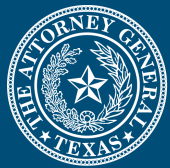
The provisions of the Open Meetings Act “should be liberally construed to effect its purpose.”

Finlan v. City of Dallas, 888 F. Supp. 779, 782 (N.D. Tex. 1995).



Applicability of the Open Meetings Act

Which governmental bodies are subject to the Open Meetings Act?



State Entities Subject to the Act

- ▶ A board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members

- ▶ Examples:
 - Texas Alcoholic Beverage Commission
 - Texas Higher Education Coordinating Board
 - Texas Parks and Wildlife Commission



Political Subdivisions Subject to the Act

- ▶ County commissioners courts
- ▶ Municipal governing bodies
- ▶ Deliberative bodies with rulemaking authority or quasi-judicial power that are classified as departments, agencies, or political subdivisions of a county or a municipality
- ▶ School district boards of trustees
- ▶ Governing boards of special districts created by law



Examples of Other Entities Subject to the Act

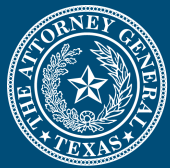
- ▶ Local workforce development boards
- ▶ Nonprofits eligible to receive federal funds under the federal community services block grant program
- ▶ Certain property owners' associations in Harris County and the adjacent counties
- ▶ Entities made subject to the Act by their enabling legislation or their own rules or ordinances



What Prompts the Application of the Act?

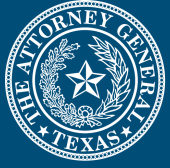
“Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.”

Tex. Gov't Code § 551.002.



Two Types of Meetings

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



Quorum

“[A] majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body.”

Tex. Gov't Code § 551.001(6).



Requirements of the Act

How does the Act protect the public's interest in knowing the workings of its governmental bodies?



How the Act Furthers Openness

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



Notice of Meetings

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

Tex. Gov't Code § 551.041.



Example Notice



POSTED
April 7, 2022
Janet Parker
County Clerk, Burnet County, Texas
By *[Signature]* Deputy

BURNET COUNTY COMMISSIONERS COURT

Jim Luther, Jr
Precinct 1

Damon Beierle
Precinct 2

James Oakley
County Judge

Billy Wall
Precinct 3

Joe Don Dockery
Precinct 4

An agenda packet containing detailed information on the items listed below is distributed to the County Judge, Commissioners, and County Clerk the Friday preceding the meeting. The agenda packet is also posted on the county website at www.burnetcountytexas.org, under Public Meetings. A hard copy of the agenda packet is available in the County Clerk's office. Our Mission Statement: The mission of Burnet County is to maintain overall efficient and effective management of county resources while providing the services mandated by state and federal law and desired by the citizens of Burnet County.

REGULAR MEETING DATE: Tuesday, April 12, 2022

MEETING TIME: 9:00 a.m.

MEETING PLACE: 2nd Floor Courtroom located at 220 S. Pierce, Burnet, Texas

1. Call to Order
2. Invocation and Pledge of Allegiance to the flags.
3. Public Comments. Any person with business before the Commissioner's Court not scheduled on the agenda may speak to the Court. No formal action can be taken on these items at this meeting. Comments regarding specific agenda items should occur when the item is called. There is a 2 minute speaking limit.
4. Presentation of a Proclamation acknowledging April as Child Abuse Awareness Month (Oakley)



Providing Information on the Subject

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

5-e. Approve the Painting of Seventeen (17) Carousel Horses and the Exterior of the Antique Carousel in Fireman's Park by CR Systems, Inc., Through The Interlocal Purchasing System (TIPS) Contract No. 18110 in the Amount of \$57,950.00 and Authorize the Mayor to Execute Any Necessary Documentation



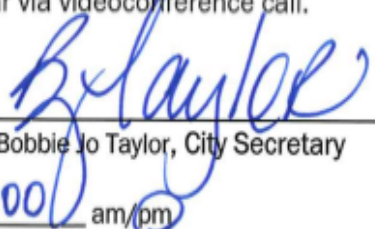
Timing of Posting

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



Best Practice: Certify Timing of Posting

THIS IS TO CERTIFY THAT A COPY OF THE NOTICE OF August 18, 2022, Regular City Council Agenda was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, and to the City's website, www.cityofvilla.org, on the 15th day of August 2022, prior to 6:00 p.m., in compliance with Chapter 551, Texas Government Code. A quorum of the governmental body will be physically present at the location noticed above. Pursuant to Tex. Gov't Code 551.127, one or more members of the governing body may appear via videoconference call.


Bobbie Jo Taylor, City Secretary



DATE OF POSTING:
DATE TAKEN DOWN:

8/15/22 TIME: 2:00 am/pm
TIME: _____ am/pm



Location of Notice – State Entities

- ▶ A state governmental body shall provide notice of each meeting to the Secretary of State, who shall post notice on the Internet.
- ▶ Search meeting agendas of state governmental bodies:
[https://texreg.sos.state.tx.us/public/pubomquery\\$.startup](https://texreg.sos.state.tx.us/public/pubomquery$.startup)
- ▶ Example:

Agency Name:	Texas Water Development Board
Date of Meeting:	08/18/2022
Time of Meeting:	10:30 AM (Local Time)
Board:	Texas Water Development Board
Committee:	Council Meeting
Status:	Accepted
Street Location:	3700 Lake Austin Blvd. Austin, TX 78703
City Location:	Austin
Meeting State:	TX
TRD:	2022004764
Submit Date:	08/11/2022
Emergency Meeting?:	No

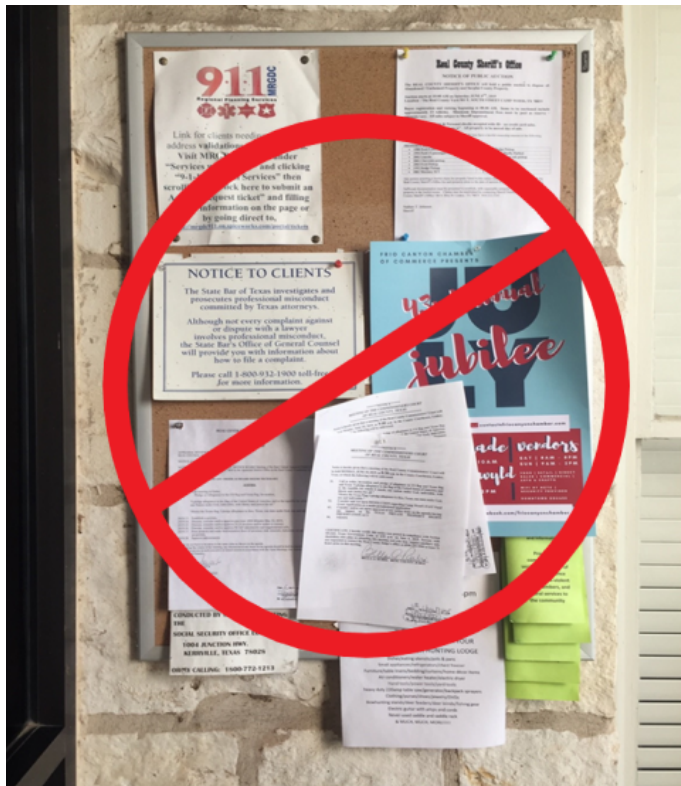


Location of Notice – Political Subdivisions

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



Best Practice: Protect Your Notice





Location of Notice – Internet Posting

- ▶ Some entities must post notice on the Internet if they maintain a website or have populations over a certain size:
 - Municipalities
 - Counties
 - School Districts
 - Junior College Districts
 - Economic Development Corporations
 - Regional Mobility Authorities



Logistic Requirements for Open Meetings

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



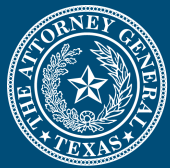
Public Comment

- ▶ State entities may, but are not required to, provide for public comment during their meetings.
- ▶ Political subdivisions must allow members of the public interested in speaking on an item on the agenda to do so before or during the governmental body's discussion of that item.
 - May create reasonable rules
 - May not discriminate based on the position taken
 - May not prohibit criticism of the governmental body



Broadcasting Meetings

- ▶ All governmental bodies may broadcast their open meetings over the Internet.
- ▶ Some entities must make video and audio recording and post on the Internet, including cities, counties, and school districts of a certain size.
- ▶ The governing boards of general academic teaching institutions, university systems, and junior college districts must broadcast their meetings over the Internet.



Recordkeeping for Open Meetings

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



Example Entry From Minutes

**MEETING MINUTES
SPECIAL EVENTS COMMITTEE REGULAR MEETING
CITY OF SOUTH PADRE ISLAND**

THURSDAY, JULY 14, 2022

V. REGULAR AGENDA

- 5.1. Discussion and possible action to approve the funding request for Sandcastle Days in October 2022. Special Events Manager April Brown introduced event promoter Clayton Brashier who presented at the podium and answered questions regarding the event. Vice Chairwoman Lisa Graves made a motion to approve \$40,000 in funding, with \$16,000 to be used towards operations and \$24,000 towards marketing, seconded by Committee Member Meg Clifton. Motion carried unanimously.



Members of the Public May Record

- ▶ A person in attendance at an open meeting may record all or any part of the meeting.
- ▶ A governmental body may adopt reasonable rules to maintain order at the meeting as long as the rules do not unreasonably impair a person from recording.



Required Training on the Act

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



Voidability

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



Exceptions to the General Rules

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



Closed Meetings or Executive Sessions

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



Procedures for Closed Meetings

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



Criminal Penalties for Unauthorized Closed Meetings

- ▶ A member of a governmental body commits an offense if a closed meeting is not permitted under the Act and the member knowingly participates in the closed meeting.
- ▶ The offense is a misdemeanor punishable by a fine of between \$100-\$500, confinement in county jail for between 1-6 months, or both.



Closed Meeting Recordkeeping

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

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



Criminal Penalties for Failure to Keep a Certified Agenda or Recording

- ▶ It is a Class C misdemeanor to participate in a closed meeting knowing that a certified agenda or recording of the closed meeting is not being made.
- ▶ Penal Code section 12.23 generally provides that a Class C misdemeanor is punishable by a fine not to exceed \$500.



Preserving the Certified Agenda

- ▶ A governmental body must maintain the certified agenda or recording of a closed meeting for at least two years from the date of the meeting.
- ▶ If Open Meetings Act litigation arises, the court is entitled to make an in camera inspection of the certified agenda or recording.
- ▶ The certified agenda or recording is only available for public inspection if ordered by a court.



Criminal Penalties for Disclosing a Certified Agenda or Recording

- ▶ It is a Class B misdemeanor to disclose a certified agenda or recording to a member of the public without a court order.
- ▶ The disclosing person can be liable to a person injured or damaged by the disclosure for actual damages, attorney fees, and exemplary damages.
- ▶ Penal Code section 12.22 generally provides that a Class B misdemeanor is punishable by a fine not to exceed \$2,000, confinement in jail for a term not to exceed 180 days, or both.



Social Gatherings

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



Emergency Situations

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

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



Addressing Emergencies

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



Sample Emergency Notice

NOTICE OF EMERGENCY MEETING

OF THE COMMISSIONERS' COURT OF TAYLOR COUNTY

Notice is hereby given that an emergency meeting of the Commissioners' Court of Taylor County is scheduled for Thursday, February 10, 2022 at 1:00 p.m. in the Commissioners' Courtroom, Taylor County Plaza Building, 400 Oak Street (3rd Floor), Abilene, Texas.

Taylor County Commissioners have found that dry conditions along with heavy fuel accumulations in the unincorporated areas of Taylor County create a public safety hazard that would that would be exacerbated by outdoor burning; and whereas such a finding authorizes the issuance of an order which prohibits or restricts outdoor burning.

1. Call meeting to order and adopt Agenda
2. Consider drought conditions on outdoor burning and possible burn ban and any appropriate action
3. Adjourn



Online Message Boards

- ▶ The Act allows written communications or exchanges of information between members of a governmental body if the writing is posted to an online message board, viewable and searchable by the public.
- ▶ The message board must be prominently displayed on the home page of the governmental body's website.
- ▶ The communication must be displayed in real time and displayed for at least 30 days.
- ▶ Communications must be archived for 6 years.
- ▶ No vote or final action may be taken on the message board.



Example



MESSAGE BOARD

Share your question or concern with the entire Network of Care community by posting it now on the public Message Boards. A message you post in your county will be readable in all counties with a Network of Care site. To post a message, please click "Post New Message" below, at right.

Neither the Network of Care nor its sponsoring agencies assume any responsibility for the accuracy of information posted on these public Message Boards.

[Post a message](#)



Topics

[Hospice Volunteers](#)

Posted: 05/05/2022 @ 1:12 pm

[Diabetes Meds that are not covered by Insurance](#)

Posted: 04/24/2019 @ 8:53 am

[Elementary School STEM Education](#)

Posted: 10/18/2017 @ 5:38 pm

[Clinical Site and Mentor](#)

Posted: 08/01/2017 @ 4:25 pm

Replies

0 Social Network of Care

1 Tarrant Cares

0 City of Youngstown

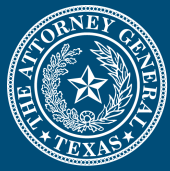
0 Social Network of Care



Teleconferencing

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

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



Videoconferencing

- ▶ Governmental bodies may use videoconferencing to ensure members can attend the meetings.
- ▶ The requirements for a quorum present at the physical meeting location vary depending on the type of governmental body.
- ▶ Technological requirements exist to ensure members of the public can observe the full discussions occurring by videoconference.



Attempts to Avoid the Act's Requirements

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

Tex. Gov't Code § 551.143(a).



Penalty for Avoiding the Act's Requirements

- ▶ An offense under section 551.143 “is a misdemeanor punishable by:
 - (1) a fine of not less than \$100 or more than \$500;
 - (2) confinement in the county jail for not less than one month or more than six months; or
 - (3) both the fine and confinement.”

Tex. Gov't Code § 551.143(b).



Communications by Email

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



Certificate of Training

CERTIFICATE *of* COURSE COMPLETION

Open Meetings Act

I, **Charlotte Harper**, certify that I have completed a course of training on the Texas Open Meetings Act that satisfies the legal requirements of Government Code, Section 551.005.

Certificate is issued effective this 30th day of November, 2022.



NOTICE TO CERTIFICATE HOLDER: You are responsible for the safekeeping of this document as evidence that you have completed this open government training course. The Office of the Attorney General does not maintain a record of course completion for you and is unable to issue duplicate certificates. Government Code Section 551.005(c) requires the governmental body with which you serve to maintain this Certificate of Course Completion and make it available for public inspection.

Certificate No.: XX-XXXXXXXX



How to Obtain the Training Certificate

- ▶ <https://www.texasattorneygeneral.gov/open-government/open-meetings-act-training-confirmation-and-certificate>
- ▶ Enter the following information:

Have you viewed one of the Open Government Training videos or attended the OAG's Open Government Conference?

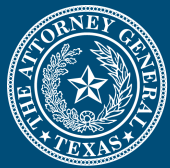
Yes | No

Please enter the Access Code:

Date of Training:

Month: Day: Year:

- ▶ Click next, enter your name as you would like it to appear on your certificate, and click submit.
- ▶ Generate and print your certificate.



Questions?

Open Government Hotline

(512) 478-6736

Toll Free: (877) 673-6839