

OPEN MEETINGS ACT TRAINING



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Open Meetings Topics

- I. Background
- II. Application and Terms
- III. Requirements
- IV. Procedures
- V. Penalties and Consequences



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Open Meetings Act

- LAW: Chapter 551, Texas Government Code
- REQUIRED TRAINING: Public officials that are members of a governmental body subject to the Act are Required to have Attorney General-Approved Training
- RESOURCES:
 - Open Meetings Handbook
 - https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/openmeetings_hb.pdf
 - OAG Hotline: 877-OPEN-TEX (877-673-6839)



Purpose

- The Open Meetings Act was adopted in 1967 to help make governmental decision-making accessible to the public.
- A governmental body must hold a meeting to exercise its powers
 - Gives each member of the body an opportunity to state their views to other board members.
 - Gives board members the benefit of others' judgment.
 - Allows for a composite judgment of the body as a whole.



Fundamental Requirements

- Tex. Gov't Code § 551.002 (2024) provides that “[e]very regular, special, or called meeting of a government body shall be open to the public, except as provided by this chapter.”
- The provisions of the Act are mandatory and are to be liberally construed in favor of open government. See *City of Laredo v. Escamilla*, 219 S.W.3d 14, 19 (Tex.App.—San Antonio 2006, pet. denied).



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APPLICATION AND TERMS



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Governmental Body

- (A) 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;
- (B) a county commissioners court in the state;
- (C) a municipal governing body in the state;
- (D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
- (E) a school district board of trustees;
- (F) a county board of school trustees;
- (G) a county board of education;
- (H) the governing board of a special district created by law;**



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Governmental Body

- (I) a local workforce development board created under Section 2308.253;
- (J) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and
- (K) a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;
- (L) a joint board created under Section 22.074, Transportation Code; and
- (M) a board of directors of a reinvestment zone created under Chapter 311, Tax Code.



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Deliberation

- “Deliberation” means 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.
- “Deliberation” and “discussion” are synonymous for purposes of the Act.
- Since 2019, the definition of “deliberation” includes written materials.



Meeting

The Act defines meeting as:

- A deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or



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Meeting

- a gathering that is conducted by the governmental body or for which the governmental body is responsible at which a quorum of members of the governmental body is present; that has been called by the governmental body; and at which the 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 governmental body has supervision or control.



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Not a Meeting

1. a gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body;
2. the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference; or
3. the attendance by a quorum of a governmental body at a candidate forum, appearance, or debate to inform the electorate,

IF formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, press conference, forum, appearance, or debate.



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Interested Person

- any person who shares an injury in common with the general public.
- interested person can include:
 - a member of the news media
 - the Attorney General
 - a government league
 - an environmental group
 - the president of a local homeowners group
 - a city challenging the closure of a hospital by the county hospital district
 - a town challenging annexation ordinances
 - a city manager regarding a meeting he attended
 - a suspended police officer and a police officers' association



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REQUIREMENTS



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Basic Elements

- Notice
- Quorum
- Public Participation
- Record keeping



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Notice of Meetings

- Written Notice of:
 - Date
 - Hour
 - Place
 - Subject



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Wording for Notice

- The posting must be sufficient to alert the public, in general terms, of the subject that will be considered in the meeting.
 - Descriptions such as “old business,” “new business,” “other business,” “personal,” and “litigation matters” are usually not sufficiently detailed to meet the requirements of the Act.



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Wording for Notice

- The more important a particular issue is to the community, the more specific the posted notice must be.
 - the phrase “employment of personnel” was held to be a sufficient posting for hiring a schoolteacher.
 - the same court found that this phrase was not sufficient when the school was considering hiring a key supervisor such as a principal.
 - another Texas court ruled that a posting that said “personnel” was not specific enough to allow a city council to discuss the firing of a police chief.



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Wording for Notice

- Must be sure that postings are consistent with prior practice.
 - A Texas court has ruled that a notice calling for “discussion” of a certain item was not sufficient to allow a board to take action on that item when the board’s previous notices had always explicitly stated when an action might be taken.



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Notice Regarding Executive Session

- The Act does **NOT** require the agenda to specifically state which items will be discussed in closed session.
- **BUT**, if a governing body consistently distinguishes between subjects for public deliberation and subjects for executive session, an abrupt departure from this practice could deceive the public and thereby render the notice inadequate.



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Notice Regarding Public Comment

- “Public comment” generally provides sufficient notice where members of the general public address a governing body about their concerns.
- But might be insufficient notice, if the governing body is aware or should be aware of the specific topics that may be discussed at the meeting before the meeting.



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Notice Indicating Employee Briefing Session

- Simply indicating “employee briefing session” or “staff briefing session” does not provide the public with sufficient notice as to the subject that will be discussed at a public meeting.
- A governing body should be able to ascertain from its employees or officers in advance what subjects will be addressed in a briefing session.



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Posting Notice of Meetings

- Posting notice is mandatory, and actions taken at a meeting for which notice was posted incorrectly will be voidable.



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Where to Post Notice

- District or Political Subdivision Extending into fewer than Four Counties: Notice to Public and County Clerks; Place of Posting Notice.
 - The governing body of a water district or other district or political subdivision that extends into fewer than four counties shall:
 - (1) post notice of each meeting at a place convenient to the public in the administrative office of the district or political subdivision; and
 - (2) either provide notice of each meeting to the county clerk of each county in which the district or political subdivision is located or post notice of each meeting on the district's or political subdivision's Internet website.
- A county clerk shall post the notice on a bulletin board at a place convenient to the public in the county courthouse.



Time of Posting

- Regular and Special Called Meetings: Notice must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting.
- Emergency meetings: Notice must be posted at least one hour before the meeting is convened.



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Quorum Required

- The authority vested in the government body may be exercised only at a meeting of a quorum, or majority, of its members.
- A person who has been elected to serve as a member of a government body but whose election has not yet been certified and has not yet taken the oath of office is not yet a member of the governmental body.



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Quorum

- Generally, meetings of less than a quorum of a governmental body are not subject to the Act.
- BUT, when a governmental body appoints a committee that includes less than a quorum of the parent body and grants it authority to supervise or control public policy, the committee may itself be a “governmental body.”



Quorum Found in a Committee Meeting

- If a quorum of a governmental body attends a meeting of a committee of the governmental body at which a deliberation as defined by the Act takes place, the committee meeting will constitute a meeting of the governmental body.
- When facts are that a subcommittee actually makes final decisions and the governing body merely “rubber stamps” those acts, the subcommittee can be subject to the Act.



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Walking Quorum

- Series of deliberations of members in numbers less than a quorum:
 - After meeting discussions;
 - Social settings;
 - Telephone calls;
 - Emails, texts, social media, etc.



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Public Participation

- A meeting that is “open to the public” under the Act is one that the public is permitted to attend.
- Any member of the public may address the governmental body of a taxing unit on any item on the agenda before or during the body’s consideration of that item.
- Public may raise subject not on the agenda. Discussion limited to:
 - Statement of factual information,
 - Recitation of existing policy, or
 - Proposal to place subject on future agenda.



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Public Participation

- Governmental body may institute “reasonable” rules for public comments.
- Governmental bodies may not prohibit criticism of the body, including criticism of any act, omission, policy, procedure, program or service, except criticism otherwise prohibited by law.
- Public is allowed to record open meetings with recorder or video camera. This includes cell phones.
- Governmental Body may adopt reasonable rules to maintain order
 - Location of the recording equipment and
 - Manner in which recording is conducted



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Records of Open Meeting

- A governmental body shall prepare and keep minutes or make a recording of each open meeting of the body.
- The minutes must:
 - (1) state the subject of each deliberation; and
 - (2) indicate each vote, order, decision, or other action taken.



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Records of Open Meeting

- Minutes and Recordings of Open Meeting; Public Record
 - The minutes and recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee.



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Records of Closed Meeting

- Requires either a certified agenda or a recording of each executive session.
- The certified agenda must include:
 1. a statement of the subject matter of each deliberation,
 2. a record of any further action taken, and
 3. an announcement by the presiding officer at the beginning and the end of the closed meeting indicating the date and time.
- Exception: executive session to consult with its attorney in accordance with section 551.071 of the Government Code.



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Records of Closed Meetings

- Certified Agenda or Tape; Preservation; Disclosure
 - Preserve the certified agenda or tape recording for at least two years after the date of the meeting.
 - If an action involving the meeting is brought within that period, preserve the certified agenda or tape while the action is pending.



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Records of Closed Meetings

- Certified Agenda or Tape; Preservation; Disclosure (cont.)
 - In litigation in a district court involving an alleged violation of this chapter:
 - Court may inspect the certified agenda or tape *in camera*;
 - Court may admit all or part of the certified agenda or tape as evidence, on entry of a final judgment; and
 - Court may grant legal or equitable relief it considers appropriate, including an order that the governmental body make available to the public the certified agenda or tape of any part of a meeting that was required to be open under this chapter.



Records of Closed Meetings

- Certified Agenda or Tape; Preservation; Disclosure (cont.)
 - The certified agenda or tape of a closed meeting is available for public inspection and copying **ONLY** under a court order.



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CONDUCTING OPEN MEETINGS



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Conducting an Open Meeting

- Quorum (Roll Call)
- Call to Order
 - Time
 - Date
 - Place
- Agenda Topics (Notice)
- Record keeping
- Adjourn
 - Time



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Emergency Meetings

- One-Hour Notice
- President must notify the media if previously requested
- Emergency or urgent public necessity
 - imminent threat to public health and safety
 - reasonably unforeseeable situation
- Notice must identify the emergency or urgent public necessity



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CONDUCTING CLOSED MEETINGS



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Closed Meetings

- Only under specific statutory authority
- Examples:
 - Consult with District's Attorney
 - Deliberations about Real Property
 - Gifts to District
 - Personnel Matters
 - Security Devices or Security Audits



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Conducting a Closed Meeting

- Must convene an open meeting first!
- Announce Closed (aka Executive) Session
 - Time
 - Reason (announce statutory cite or explain basis)
- Topic must be on Notice of Meeting (aka Agenda)
- Conduct Closed Session
- No Action can be taken during Closed Session
- Recordkeeping – must keep certified agenda, unless attorney advice
- Reconvene in Open Session
 - Time
 - Take action, if required.



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PENALTIES AND CONSEQUENCES



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Enforcement And Remedies; Criminal Violations

- An action taken by a governmental body in violation of the Act is voidable.
- A governmental body cannot give retroactive effect to a prior action taken in violation of the Act, but it may ratify the invalid act in a meeting held in compliance with the Act.
- The ratification will be effective only from the date of the meeting at which the valid action is taken.



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Enforcement And Remedies; Criminal Violations

- 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 by members of a governmental body.
 - The court may assess costs of litigation and reasonable attorney fees incurred by a plaintiff or defendant who substantially prevails in an action.
 - In exercising its discretion, the court shall consider whether the action was brought in good faith and whether the conduct of the governmental body had a reasonable basis in law.
 - Cannot assert a claim for monetary damages for violation of the Act.



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Enforcement And Remedies; Criminal Violations

- Generally, the Open Meetings Act is enforced by the local district attorney, criminal district attorney or county attorney as a misdemeanor involving official misconduct.
- May request the attorney general's assistance in prosecuting a criminal case.
- The attorney general may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of Section 551.045(a-1) by members of a governmental body.
- A suit filed by the attorney general must be filed in a district court in Travis County.



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Enforcement And Remedies; Criminal Violations

- A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.
- An offense is a misdemeanor punishable by:
 - a fine of not less than \$100 or more than \$500;
 - confinement in the county jail for not less than one month or more than six months; or
 - both the fine and confinement.



Enforcement And Remedies; Criminal Violations

- Walking Quorum
 - knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by this chapter 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 of members but the members engaging in the series of communications constitute a quorum of members; and
 - knew at the time the member engaged in the communication that the series of communications: (A) involved or would involve a quorum; and (B) would constitute a deliberation once a quorum of members engaged in the series of communications.



Enforcement And Remedies; Criminal Violations

- Closed Meeting Not Permitted
 - if a closed meeting is not permitted under this chapter and the member knowingly:
 1. calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting;
 2. closes or aids in closing the meeting to the public, if it is a regular meeting; or
 3. participates in the closed meeting, whether it is a regular, special, or called meeting.



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Enforcement And Remedies; Criminal Violations

- Closed Meeting Not Permitted
 - An offense is a misdemeanor punishable by:
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 3. both the fine and confinement.



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Enforcement And Remedies; Criminal Violations

- Closed Meeting Not Permitted
 - It is an affirmative defense to prosecution that the member of the governmental body acted in reasonable reliance on a court order or a written interpretation of this chapter contained in an opinion of a court of record, the attorney general, or the attorney for the governmental body.



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Enforcement And Remedies; Criminal Violations

- Closed Meeting Without Certified Agenda or Tape Recording; Offense; Penalty
 - A member of a governmental body commits an offense if the member participates in a closed meeting of the governmental body knowing that a certified agenda of the closed meeting is not being kept or that a tape recording of the meeting is not being made.
 - This is a Class C misdemeanor punishable by a fine of up to \$500.



Enforcement And Remedies; Criminal Violations

- Disclosure of Certified Agenda or Tape Recording of Closed Meeting; Offense; Penalty; Civil Liability
 - An individual, corporation, or partnership that without lawful authority knowingly discloses to a member of the public the certified agenda or tape recording of a meeting that was lawfully closed to the public under this chapter:
 - commits an offense; and
 - is liable to a person injured or damaged by the disclosure for:
 - actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress;
 - reasonable attorney fees and court costs; and
 - at the discretion of the trier of fact, exemplary damages.



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Enforcement And Remedies; Criminal Violations

- Disclosure of Certified Agenda or Tape Recording of Closed Meeting; Offense; Penalty; Civil Liability
 - An unauthorized disclosure is a Class C misdemeanor (fine of up to \$500).
 - It is a defense to prosecution that:
 - the defendant had good reason to believe the disclosure was lawful; or
 - the disclosure was the result of a mistake of fact concerning the nature or content of the certified agenda or tape recording.



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QUESTIONS?



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