

Overview of the Texas Open Meetings Act Texas Government Code, Chapter 551

1. What is the Open Meetings Act?

Under the Texas Open Meetings Act (the Act), the general rule is that every regular, special, or called meeting of a governmental body, including a city council and most boards and commissions, must be open to the public and comply with all the requirements of the Act. The Act does not apply to purely social gatherings or conventions and workshops, as long as any discussion of public business is only incidental and no vote or action is taken.

2. What kind of notice of meetings does the Open Meetings Act require?

The Act provides that the public must be given notice of the time, place, and subject matter of meetings of governmental bodies. The agenda/notice must be posted at the Government Center in a place readily accessible to the public at all times for at least 72 hours before the meeting.

3. Is there an Emergency Meeting provision?

Emergency meetings to address imminent threats to public health and safety or urgent public necessity may be called two hours in advance with a notice that identifies the nature of the emergency.

4. What is a quorum and what is its significance?

The Act defines a quorum as a majority of the governing body unless otherwise defined by applicable law, rule, or charter. A quorum of a governmental body's members must be present in order for the governmental body to exercise the authority delegated to it.

5. May a governing body hold a meeting if, for any reason, there is not a quorum present?

A meeting may not be convened unless a quorum is present in the meeting room. 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 case, the body could not take any action during a meeting if a quorum were not present.

6. May a member of a governmental body vote by proxy?

No. A common law rule prevents a member of a governmental body from submitting a written vote without attending the meeting of the body.

7. Is a governmental body required to let citizens speak at their meetings?

No. The purpose of the Act is to ensure the public's access to meetings of governmental bodies so that they have the opportunity to be informed concerning the transactions of public business. It does not provide a public forum for every citizen wishing to express an opinion on a matter. However, if the governmental body decides to allow citizens to speak up, it must not unfairly discriminate, but may establish reasonable restraints on the number, length, and frequency of presentations.

8. What may members of a governing body do if an unposted issue is raised at an open meeting?

Members of the governmental body may not deliberate or make any decision about an unposted issue at a meeting of the governmental body. If, at a meeting, someone inquires about a subject not on the agenda, any deliberation or decision about the subject must be limited to: (1) a proposal to place the subject on a future agenda; (2) a statement of factual information; or (3) a recitation of existing policy.

9. When would a closed meeting be authorized?

There are seven exceptions that generally authorize closed meetings, also known as “executive sessions.” The exceptions include discussions involving: (1) purchase or lease of real property; (2) security measures; (3) receipt of gifts; (4) consultation with attorney; (5) personnel matters; (6) economic development; and (7) certain homeland security matters. The governing body must first convene in open session, identify which issues will be discussed in executive session, and cite the time and applicable exception. All final actions, decisions, or votes must be made in an open meeting.

10. What are the regulations regarding meeting minutes?

Cities must keep written minutes or recordings of all meetings, except for closed consultations with an attorney. The minutes must state the subject and indicate each vote, decision, or other action taken. Minutes do not have to be a verbatim transcript.

11. May less than a quorum of members of the governing body visit over the phone without violating the Act?

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

12. How does the Act impact email communication?

If an email is sent by staff to all members of the governmental body, a “Reply to All” of the e-mail could be a violation of the Act because the email ultimately involves a quorum of the members. Please reply only to the sender in this instance. In October of 2004, a member of the city council in Alpine, Texas, sent an e-mail to other council members asking if they wanted to place a particular item on a future council agenda. The following day, one of the other council members responded to recipients of the first e-mail, stating that she agreed that the item should be discussed. The local district attorney decided that this e-mail exchange violated the Act because the e-mails ultimately involved a quorum of the city council. As a result, two of the council members were criminally indicted by a grand jury.

13. What are the penalties for violating the Act?

Penalties for violating the Act range from having the action voided to the imposition of fines and incarceration. Any action taken in violation is voidable and may be reversed in a civil lawsuit. There are four criminal provisions under the Act, including: (1) knowingly conspiring to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations; (2) calling or participating in a closed meeting; (3) participating in an executive session without a certified agenda or tape recording; and (4) disclosure of a certified agenda or tape recording to a member of the public. Upon conviction, fines may be up to \$2,000, and incarceration may be up to six months. An official can be convicted for participating in an illegal closed meeting, even if unaware of the illegality of the meeting. It is an affirmative defense that the member or the official acted in reasonable reliance on a: (1) court order; (2) written opinion of a court of record; (3) written attorney general’s opinion; or (4) written opinion of the attorney for the governing body.

For more information on the Open Meetings Act, please see the *Open Meetings 2010 Handbook* from the Attorney General of Texas: http://www.oag.state.tx.us/AG_Publications/pdfs/openmeeting_hb.pdf.