

The Texas Open Meetings Act



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Presentation Outline

- General Background
- Applicability of the Act
 - When does the Act apply?
 - What is a governmental body?
 - What is a quorum?
 - What is a meeting?
- Notice Requirements
- Procedures and Requirements for Open Meetings
- Procedures and Requirements for Closed Meetings



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What Is the Purpose of the Act?

- “The Act is intended to safeguard the public’s interest in knowing the workings of its governmental bodies.” *Cox Enterprises, Inc. v. Board of Trustees of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 960 (Tex. 1986).
- The Act was passed on the premise that “citizens are entitled . . . not only to know what government decides but to observe how and why every decision is reached.” *Acker v. Tex. Water Comm’n*, 790 S.W.2d 299, 300 (Tex. 1990).
- 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).



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When Does the Act Apply?

- Every regular, special or called meeting of a governmental body shall be open to the public, except as provided by the Act.
- The Act *generally* applies whenever there is:
 - a quorum of a governmental body; and
 - that body is meeting.



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Which Entities Are Subject to the Act?

- City council
- A department, agency, or subdivision of a city that has authority to promulgate policy-making rules (i.e. rulemaking body) or to decide contested cases (i.e. quasi-judicial).
- Entities *required by other law* to comply with the Act.
 - Economic Development Corporations, Planning and Zoning Commission, TIRZ Board
- A board or committee of an entity that is subject to the Act, depending on the board's or committee's membership and/or the board's or commission's authority (i.e., final decision making authority or "routinely rubber-stamped").



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What Is A Quorum?

- A quorum is a majority of a governmental body unless otherwise defined by law.
- **Home rule city:** Charter generally states the quorum requirement.
- **Type A city:**
 - **Regular meeting** – majority of the councilmembers (3).
 - **Special meeting or meeting to impose taxes** – two-thirds of the councilmembers (4).
- **Type B:** The mayor and three aldermen or four aldermen.
- **Type C:** A majority of the board of commissioners (2).
- **Boards and commissions:** Look to statute, ordinance or resolution creating the board or commission.



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What is a Meeting?

- If a gathering is *called by the governmental body*, or the *governmental body is responsible for* the gathering, a *meeting* occurs when:
 - a **quorum** of a governmental body gathers;
 - **public business** that the governmental body has authority to supervise or oversee is **discussed**; and
 - 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.
- **Examples:** staff briefings, formal meetings, town-hall meetings, workshops, council retreats
- ❖ Develop a habit of asking yourself, “is this a meeting?”



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What is a Meeting?

- A deliberation (a verbal or written exchange) 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.
 - **Examples:** circulating an invoice or letter for signature outside of a formal meeting, attending a P&Z meeting, discussions over e-mail
- ❖ Develop a habit of asking yourself, “is this a meeting?”



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Prohibited Series of Communications

- The Act may apply even when deliberating in numbers less than a quorum.
- An offense is committed is when **a member of a governmental body**:
 - **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:
 - involved or would involve a **quorum**; and
 - **would constitute a deliberation** once a quorum of members engaged in the series of communications.



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Online Message Boards

- Communication between councilmembers about public business or public policy over which the council has supervision or control **does not** constitute a meeting if certain conditions are met. The communication must be:
 - in writing;
 - posted to an **online message board** that is viewable and searchable by the public; and
 - displayed in real time and displayed on the message board for no less than 30 days after the communication is first posted.
- The message board:
 - must be prominently displayed on the city's primary website and no more than one click away from the city's website;
 - may only be used by city councilmembers (or city employees who post their name and title and that have received authorization from the council); and
 - the council may *not* vote or take action by posting on the city's online message board, and if the city removes a posted message, the city ^{must} retain the posting for six years.



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Online Message Boards

austintexas.gov City of Austin Council Message Board
Only City Council members and authorized staff are allowed to post on this message board.


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| TOPICS | REPLIES | VIEWS | LAST POST |
|---|---------|-------|--|
| FY24 Budget Process Outline by Colleen Pate » Fri Jun 30, 2023 2:57 pm » in City of Austin Council Message Board | 0 | 513 | by Colleen Pate » Fri Jun 30, 2023 2:57 pm |
| Requesting an executive session discussion of the HealthSouth ENA by Natalie Deller » Wed Jun 28, 2023 5:20 pm » in City of Austin Council Message Board | 0 | 650 | by Natalie Deller » Wed Jun 28, 2023 5:20 pm |
| City Manager Search Process Timeline by Colleen Pate » Thu Jun 15, 2023 4:47 pm » in City of Austin Council Message Board | 0 | 706 | by Colleen Pate » Thu Jun 15, 2023 4:47 pm |
| Concerns about Overflow of Dogs at the Austin Animal Center and Request for Information by Mackenzie Kelly » Mon Jun 12, 2023 9:58 am » in City of Austin Council Message Board | 1 | 741 | by Leslie Pool » Wed Jun 14, 2023 11:06 am |
| Charter Review Commission by Ryan Alter » Mon Jun 12, 2023 12:00 pm » in City of Austin Council Message Board | 1 | 220 | by Paige Ellis » Mon Jun 12, 2023 12:23 pm |
| Item 84 Amendment by Jose Velasquez » Thu Jun 08, 2023 10:17 am » in City of Austin Council Message Board | 0 | 182 | by Jose Velasquez » Thu Jun 08, 2023 10:17 am |
| Item 58, Fence Code Safety Improvements by Louisa Brinsmade » Wed Jun 07, 2023 8:02 pm » in City of Austin Council Message Board | 1 | 245 | by Paige Ellis » Wed Jun 07, 2023 11:05 pm |
| Agenda Item 45 on Compatibility Reform by Jose Chito Vela » Mon Jun 05, 2023 4:35 pm » in City of Austin Council Message Board | 3 | 511 | by Ryan Alter » Wed Jun 07, 2023 9:42 pm |
| Council Meeting Schedule 6/8/2023 by Colleen Pate » Wed Jun 07, 2023 4:24 pm » in City of Austin Council Message Board | 1 | 215 | by Colleen Pate » Wed Jun 07, 2023 5:05 pm |
| Amendment: Item 40 June 8th Agenda by Colleen Pate » Wed Jun 07, 2023 2:05 pm » in City of Austin Council Message Board | 1 | 188 | by Ryan Alter » Wed Jun 07, 2023 3:27 pm |



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Notice Requirements

MEETING NOTICE



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Contents of Notice

- The Act requires **written notice** of the **date, hour, place, and subject** of each meeting. This applies for **both open and** closed meetings.
- The notice must be **sufficient to apprise the general public** of the subject matter to be discussed – legal sufficiency depends on and can vary based on the facts:
 - Listings like “personnel” or “new business/old business” are generally **insufficient**.
 - The **more important** the issue is to the public, the **more specific** the notice should be.
 - “Public forum” or “public comment” is sufficient notice to hear from residents concerning items **not** on the agenda.



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Timing of Posting

- A city must post its notice of a meeting for at least 72 hours before the meeting is scheduled.
- A city must post notice of an emergency meeting at least one hour before the meeting is scheduled.



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Place of Posting

- A city must post its notice of a meeting in a place that is **“readily accessible to the general public”** (e.g., bulletin board/electronic bulletin board/kiosk outside of city hall or on the door of city hall).
- A city that maintains an internet website must also concurrently post **notice** of its meeting and **agenda** for the meeting on the city’s website.



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Requirements for Open Meetings



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Conducting an Open Meeting

- A meeting may not be convened unless a quorum is present in the meeting room.
- A meeting may recess to following business day if the action is taken in good faith and not to circumvent the Act's requirements.



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Logistical Requirements

- The meeting must be held in a location that is accessible to the public.
- The location of the meeting must have sufficient space for members of the public to attend.
- The meeting must be held in a room that is physically accessible to those with disabilities.



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Public Recording the Meeting

- Members of the public (including the media) have a right to record the meeting by audio or video tape or other comparable means.
- The city council may adopt reasonable rules to maintain order in a meeting, including those relating to the location of recording equipment.



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Public Comments on Agenda Items

- The Act gives the public the right to speak on items on the agenda either *before* or *during* the city council's consideration of the item.
- The city may set reasonable rules regarding the public's right to address the governmental body, including how long the person may speak on the agenda item.
- The city council may not prohibit public criticism of the council unless the public criticism is otherwise prohibited by law.



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Public Comments on Non-Agenda Items

- City council can allow the public to speak on items **not** on the agenda and may set reasonable rules regarding the number, frequency, and length of presentation but may not discriminate against speakers.
- Members of council may not deliberate on non-agenda items, and are limited to responding with:
 - A statement of **fact** regarding the issue.
 - A statement of **policy** regarding the issue.
 - A **proposal** to place the item on a future agenda for deliberation.



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Broadcasting Meetings

- A home rule city with a population of **50,000** or more must:
 - Make a video and audio recording of reasonable quality of each regularly scheduled open meeting;
 - Make available an archived copy of such recording on the internet site that the city maintains not later than 7 days after the recording; and
 - Maintain the archived recording on the Internet for not less than 2 years.



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Recordkeeping for Open Meetings



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"As I read the minutes of our last meeting,
please keep in mind that each minute
actually felt more like an hour."



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Recordkeeping

- A governmental body must **prepare and keep minutes** of a meeting **or a recording** of each open meeting.
- The **minutes must:**
 - State the subject of each deliberation; and
 - Indicate each vote, order, decision, or other action taken
- The **minutes or recording** of the meeting are **public records** and must be made available pursuant to a request.



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Voidability

- An action taken by a city in violation of the Act is **voidable**
 - A voidable action may be redone at a later meeting (ratified), but that action will not be given retroactive effect.
- Any interested person may bring a **civil lawsuit** to force officials to comply with the Act, to **enjoin** officials from acting, or to **void actions taken** in an illegal meeting.
- A court may assess costs and attorneys' fees to the prevailing party.



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Exceptions to the General Rules

- Closed meetings (executive sessions)
- Informal or Social gatherings
- Emergencies
- Online Message Boards
- Teleconference
- Videoconference



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Requirements for Closed Meetings



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Common Exceptions

A governmental body may hold a ***closed meeting*** only when a statute ***expressly authorizes*** it to do so.

Examples:

- Deliberations on the purchase, exchange, lease or value of real property
- Personnel matters
- Economic development matters
- Consultation with attorney on legal matters, pending or contemplated litigation, or settlement offers



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Conducting a Closed Meeting

- The city must provide notice of items to be discussed in a closed meeting.
- Before the city council may conduct a closed meeting, the council must:
 - have a **quorum**;
 - properly **convene** in an open meeting;
 - **announce** that a closed meeting will be held; and
 - **identify** in the open meeting the **section of the law** that allows the closed meeting.



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Who May Attend A Closed Meeting?

- Only members of a governmental body have a right to attend a closed meeting.
- A governmental body may include others in a closed meeting if necessary to the matter under consideration, but it may *not* admit a person whose presence is against the interests of the governmental body that the closed meeting is designed to protect.



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Criminal Penalty – Unauthorized Closed Meeting

- A member of a governmental body commits an offense if a closed meeting is not permitted under the Act and the member knowingly:
 - Calls or aids in calling or organizing the closed meeting;
 - Closes or aids in closing the meeting to the public; or
 - Participates in the closed meeting.
 - **Affirmative defense:** a member acted in reasonable reliance on a court order, attorney general opinion, or the written opinion of the governmental body's attorney.
- The offense is a misdemeanor punishable by a fine of between \$100 - \$500, confinement in county jail for between 1-6 months, or both.



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Recordkeeping Requirements

- A city may either keep a certified agenda *or* a recording of the closed meeting.
- The certified agenda must include a ***statement of the subject of each deliberation*** and a ***record of any further action taken***.
- The certified agenda or recording is ***confidential*** and may not be released absent court action.
- A ***sitting member*** of the governmental body may review the certified agenda or recording.



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Criminal Penalty – Failure to Keep Certified Agenda

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.



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Criminal Penalty – Unauthorized Disclosure

- It is a Class B misdemeanor to disclose a certified agenda or recording to a member of the public without a court order.
- A person injured by the unlawful disclosure of a certified agenda or tape recording of a lawfully closed meeting may sue for damages, attorney fees, and exemplary damages.



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Informal or Social Gatherings

The Act **does not** apply to a gathering of a quorum at:

- social functions,
- regional, state, or national workshops,
- a candidate forum, appearance or debate
- ceremonial events, or
- press conferences
 - **provided that:**
- no action is taken; and
- discussion of public business is incidental to the event.



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Items of Community Interest

A quorum of the city council may receive a report from staff and members of council about items of community interest during a council meeting **without having to give 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.

- Expression of thanks, congratulations, or condolences
- Information regarding holiday schedules
- Honorary or salutary recognition of a public official, public employee or citizen
- Reminder of upcoming event sponsored the governing body
- Information of upcoming events sponsored by other entities if governmental body, public official, or public employee plans to attend
- Announcement involving an imminent threat to the public health and safety of people in the city that has risen after posting of the agenda



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Emergency Meetings

- When there is an imminent threat to public health and safety or a reasonably unforeseeable situation, an emergency meeting may be held after one hour notice is provided.
- A reasonably unforeseeable situation includes:
 - Fire, flood, earthquake, hurricane, tornado, wind, rain, or snow storm;
 - Power failure, transportation failure, or interruption of communication facilities;
 - Epidemic; or
 - Riots, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.
- What if we “forgot to post” an item? This is not an emergency.
- The notice must describe the emergency.



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Telephone Meetings

- An open *or* closed meeting may be held by telephone conference if:
 - an emergency or public necessity exists; **and**
 - convening at one location of a quorum is difficult or impossible;

or

 - the meeting is held by an advisory board.
- City council may use a teleconference call to consult with outside legal counsel.



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Videoconference Meetings

A member or employee of a governmental body may participate remotely in a meeting by videoconference call when certain requirements are met, including among others:

- The video and audio feed of the remote member or employee's participation, as applicable, in the meeting must be broadcast live at the meeting.
- The presiding officer must be present in the physical space that is open to the public.
- A quorum of the city council must be present at one physical location.
- The meeting notice must specify where the quorum of the city council will be physically present and the intent to have a quorum present.
- 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.
- The city council must make at least an audio recording of the meeting and the recording must be made available to the public.



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Resources

TML

www.tml.org

(512) 231-7400

OAG's Open Government Hotline

(877) OPEN TEX

(512) 478-6736

Texas State Library & Archives

Record Management

<https://www.tsl.texas.gov/slrn>

OAG website

<http://www.texasattorneygeneral.gov>

OAG Open Government Training

<https://texasattorneygeneral.gov/og/open-government-training>



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QUESTIONS?

