

Council Orientation



Texas Open Meetings Act (TOMA)

- To trigger the TOMA provisions, there must be:
 - A quorum of members of a governmental body; AND
 - Public business or public policy that the governmental body has authority to supervise or oversee is deliberated or discussed or during which the governmental body takes formal action;
 - A “meeting” may not be convened unless a quorum of the governmental body is present. Tex. Gov’t Code § 551.001(4).
 - “Deliberate” or “discuss” includes:
 - Receiving information from; or
 - Giving information to; or
 - Asking questions of; or
 - Receiving questions from any 3rd party, including gov’t employees
Tex. Gov’t Code § 551.001(4)(B)(iv).

Texas Open Meetings Act (TOMA)

Governmental body includes:

- the Town Council;
- a deliberative body with rulemaking or quasi-judicial power that is classified as a department, agency or political subdivision of a municipality (e.g., housing authority); and
- The governing board of a special district created by law
- The TOMA does not apply to a purely advisory body
 - Examples of exceptions:
 - Planning & Zoning Commissions (Tex. Loc. Gov't Code § 211.0075)
 - State Nursing Advisory Committee (Tex. Health & Safety Code § 104.0155(e))

Tex. Gov't Code § 551.001(3); Tex. Att'y Gen. Op. No. GA-0232 (2004)

A Quorum

- Quorum: A majority of a governmental body. Tex. Gov't Code § 551.001
- A quorum can be established in person or via video conference call. Tex. Gov't Code § 551.127
- A meeting held by telephone conference call is allowed only in certain circumstances: (1) emergency or public necessity exists under Section 551.045 and convening at one location is difficult or impossible; or (2) meeting is held by an advisory board. Tex. Gov't Code § 551.125.

General Exclusions

- TOMA generally excludes:
 - Purely Social Gatherings;
 - Ceremonial events;
 - Press conferences;
 - Conventions; and
 - Regional, state or national workshops/training sessions.

Tex. Gov't Code § 551.001(4)(B)(iv)

- When no formal action is taken and any discussion of public business is incidental to a social gathering, there is no “meeting” for the purposes of TOMA. Tex. Gov't Code § 551.001(4)(A)

Notice Requirements

- Written notice of the date, hour, place and subject of each meeting must be given at least 72 hours before the meeting and placed on the city's physical or electronic bulletin board at a place convenient to the public.
 - This notice must also be posted on website, if the governmental entity maintains a website.
 - Notice is required to be readily available during normal business hours.

Tex. Gov't Code § 551.043, § 551.050

- Notice must be sufficient to inform the public of the subject matter to be addressed during the meeting. (Agendas)
 - Cannot simply be categories like "litigation" or "personnel"
- Tex. Att'y Gen. Op. No. H-662 (1975) and No. GA-668 (2008)

Emergency Meetings

- Emergency meeting or supplemental posting: Where there is an imminent threat to public health and safety or a reasonably unforeseeable situation, a meeting on an emergency matter may be held after a two hour posted notice. Tex. Gov't Code § 551.045.
 - The agenda must clearly identify and sufficiently describe the emergency situation.
 - Forgetting to post an agenda item is not an emergency

Recordkeeping

- Must keep minutes or tape recording of the open meeting.
- Minutes must:
 - State subject of each deliberation; and
 - Indicate the vote, order, decision, or other act taken.

Tex. Gov't Code § 551.021.
- The minutes and recordings of a meeting are public records that are available for public inspection and copying on request by the public.

Tex. Gov't Code § 551.022.
- Public is allowed to make audio/visual record all or any part of the open meeting, but governmental body may adopt reasonable rules to maintain order at the meeting, including location of the recording equipment.

Tex. Gov't Code § 551.023.

Action Items

- Governmental body is limited to taking action on items posted on the agenda.
- Governmental body may in response to a public inquiry about a subject not on the agenda, discuss items not on agenda, but discussion is limited to:
 - A proposal to place the subject on a future agenda;
 - statements of factual information in response to a question; or
 - recitation of existing policy in response to a question.

Tex. Gov't Code § 551.042.

Public Right To Speak

- At a public hearing, the public has a right to speak and be heard.
 - Governmental body may reasonably limit speaking time.

Tex. Att’y Gen. Op. No. JC-169 (2000), Tex. Att’y Gen. LO 96-111 (1996)
- At a public meeting, the public has a right to attend, but has no right to speak. Tex. Gov’t Code § 551.002, . Att’y Gen. Op. No. H-188 (1973)

Open Sessions

- The governmental body must vote in public.

Tex. Gov't Code §§ 551.021, 551.102.

- No secret ballots.

Tex. Att'y. Gen. Op. No. H-1163 (1978).

Open Sessions: Video Conferencing

- A member of a governmental body or its employee will be allowed to remotely participate in an open meeting via videoconferencing, the gov't body member may vote, and his/her attendance is counted towards a quorum. Tex. Gov't Code § 551.127.
- The following general requirements must be met:
 - The video and audio feed is broadcast live at the meeting;
 - There is at least one physical space located at or near the gov't body meeting place that is equipped with videoconference equipment providing a two-way audio and visual display so that members of the public can participate with the remote gov't body member or employee;
 - The presiding officer of the meeting is present in the physical space of the meeting;
 - Any member of the public present in the physical space of the meeting has the same opportunity to participate in the open meeting as if it were not conducted with a videoconference.

Executive Session (Closed Meeting)

- A quorum in a meeting must be established before calling executive session.
 - Presiding officer announces a closed meeting will be held under a TOMA section.
 - Must keep a certified agenda or recording of closed meeting proceedings, except for attorney consultations. Tex. Gov't Code §§ 551.101; 551.103.
- Executive session may be called for such matters as:
 - Attorney-Client Communication on various topics. Tex. Gov't Code § 551.071.
 - Economic Development (offer from or incentive to a business prospect)(commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay or expand in or near the city when conducting economic development negotiations). Tex. Gov't Code § 551.087.
 - Personnel Matters (appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee). Tex. Gov't Code § 551.074.
 - Real Property (purchase, exchange, lease or value when open deliberation would have a detrimental effect on negotiations). Tex. Gov't Code § 551.072.
- Any vote regarding the executive session must occur in open session. Tex. Gov't Code § 551.102.

Executive Session (Closed Meeting)

Who may attend an executive session?

Only a governmental body's members have a right to attend a closed meeting. Although a governmental body may include others in a closed meeting, it may not admit a person whose presence is against the interests of the governmental body that the closed meeting is designed to protect.

Tex. Gov't Code § 551.001(1); Op. Tex. Att'y Gen. No. JM-238 (1984); Op. Tex. Att'y Gen. No. MW-417 (1981).

Role of Mayor

- The Mayor is the Chief Executive Officer of the municipality. Tex. Loc. Gov't Code § 22.042.
- The Mayor serves as the presiding officer during open meetings, but the Mayor pro tem shall perform the Mayor's duties if the Mayor fails, is unable or refuses to act. If Mayor and the Mayor pro tem are absent, any councilmember may be appointed to preside. Tex. Loc. Gov't Code § 22.037.
- For Type A General Law cities, the Mayor may vote only in the case of a tie (except in elections). Tex. Loc. Gov't Code § 22.037(a).
- The Mayor may call a special meeting on his own motion and shall call a special meeting on the application of three aldermen, and each member of the governing body, its secretary, and the city attorney must be notified of the special meeting. Tex. Loc. Gov't Code § 22.038.
- The Mayor shall ensure laws and ordinances are properly carried out, can inspect conduct of subordinate municipal officers, and in the event of a riot, unlawful assembly or to preserve the peace and good order, close public facilities. Tex. Loc. Gov't Code 22.042.
- The Mayor shall give to the governing body information or recommendations relating to improving finances, police, health, security, cleanliness, comfort, ornament, or good government of the city. Tex. Loc. Gov't Code § 22.042.

Role of Aldermen Members

- The quorum requirement for General Law Type A cities is:
 - Regular Meetings: a majority of the aldermen (3)
 - Special or taxation meetings: 2/3 of the aldermen (4)

Tex. Loc. Gov't Code §§ 22.039; 22.031.

- The governing body can determine the rules of its proceedings. Tex. Loc. Gov't Code § 22.038(c)
- Aldermen are entitled to vote or abstain on every question at a council meeting, and have the right to speak and make motions, and to introduce new ordinances or amendments to existing ones. TML, Roles and Responsibilities of Officers in General Law Cities, Ch. 2, 2015.
- Council shall be responsible for the duties of any Planning and Zoning Commission and Board of Adjustment, including all powers granted by state law to decide all matters pertaining to the regulation of the use and development of land. Tex. Loc. Gov't Code § 211.007 and § 211.008 et seq.

Role of Town Secretary

- An officer of the municipality. Tex. Loc. Gov't Code § 22.071(a).
- Must attend each meeting of the governing body and keep accurate minutes of its proceedings. Tex. Loc. Gov't Code § 22.073.
- Engross and enroll laws, keep the corporate seal, maintain records, (is usually the records management officer of the city), countersign commissions and licenses, and prepares notices. Tex. Loc. Gov't Code § 22.073.
- Keeps all contracts of the town. Tex. Loc. Gov't Code § 22.073.
- Secretaries serve as general accountant of the city and keeps regular accounts of receipts and disbursements, as well as a register of bonds and bills issued by the city. Tex. Loc. Gov't Code § 22.073.
- Performs other duties by order of the governing body. Tex. Loc. Gov't Code § 22.073.

Role of Town Attorney

- The client is the Town as a whole. Tex. Disp. R. of Prof'l Conduct, 1.12.
- The Attorney takes direction from authorized constituents of the local government entity, such as the Town Council, Administrator, or Mayor. Tex. Disp. R. of Prof'l Conduct, 1.12.
- The Attorney performs various functions including advisor (providing the Town with an informed understanding of its legal rights and responsibilities), advocate (zealously asserting the Town's position under the rules of the adversary system), negotiator (seeking results advantageous for Town but consistent with requirement to honestly deal with others), intermediary (reconciling divergent interests as an advisor), and evaluator (examining Town's affairs and reporting about them to the Town or to others). Tex. Disp. R. of Prof'l Conduct, Preamble, Section 2.
- Council may communicate in closed session with the attorney (who is not an employee of the town) by telephone conference call, video conference call or communications over the internet. Tex. Gov't Code § 551.129.