Notice of Meeting for the
Charter Review Committee
of the City of Georgetown
March 2, 2021 at 3:00 PM
at Virtual Meeting

The City of Georgetown is committed to compliance with the Americans with Disabilities Act (ADA). If you require assistance in participating at a public meeting due to a disability, as defined under the ADA, reasonable assistance, adaptations, or accommodations will be provided upon request. Please contact the City Secretary's Office, at least three (3) days prior to the scheduled meeting date, at (512) 930-3652 or City Hall at 808 Martin Luther King Jr. Street, Georgetown, TX 78626 for additional information; TTY users route through Relay Texas at 711.

This is a meeting of the Council appointed Charter Review Committee.

Consistent with Governor Greg Abbott's suspension of various provisions of the Open Meetings Act, effective August 1, 2020 and until further notice, to reduce the chance of COVID-19 transmission, all City of Georgetown Advisory Board meetings will be held virtually. Public comment will be allowed via teleconference; no one will be allowed to appear in person.

Join from a PC, Mac, iPad, iPhone or Android device, Please click this URL to join:

Join Zoom Meeting
https://georgetowntx.zoom.us/j/99683083051?pwd=VkRkNE43dnZVSFZEMTB0NDVTMGVOQT09
Meeting ID: 996 8308 3051
Passcode: 824582
One tap mobile
+13462487799,,99683083051# US (Houston)
+16699006833,,99683083051# US (San Jose)
Dial by your location
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
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+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
833 548 0282 US Toll-free
877 853 5257 US Toll-free
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833 548 0276 US Toll-free

Meeting ID: 996 8308 3051

Citizen comments are accepted in three different formats: Submit written comments to mayra.cantu@georgetown.org by 5:00 p.m. on the day before the date of the meeting and the Recording Secretary will read your comments into the recording during the item that is being discussed.
Log onto the meeting at the link above and "raise your hand" during the item.

Use your home/mobile phone to call the toll-free number.

To join a Zoom meeting, click on the link provided and join as an attendee. You will be asked to enter your name and email address (this is so we can identify you when you are called upon). To speak on an item, click on the icon labeled "Participants" at the bottom center of your PC or Mac screen. At the bottom of the window on the right side of the screen, click the button labeled "Raise Hand." Click "Raise Hand" if you want to say something in the meeting. When you are called upon by the Recording Secretary, your device will be remotely un-muted by the Administrator and you may speak for three minutes. Please state your name clearly, and when your time is over, your device will be muted again. You can lower your hand by clicking the same button, now labeled "Lower Hand."

The same method can be used to raise your hand in a Zoom meeting on a mobile device, simply tap "Raise Hand" at the bottom left corner of the screen. The hand icon will turn blue and the text below it will switch to say "Lower Hand" while your hand is raised.

Use of profanity, threatening language, slanderous remarks or threats of harm are not allowed and will result in you being immediately removed from the meeting.

Regular Agenda

A Call to Order - Skye Masson, City Attorney

B Introduction of Committee Members - Skye Masson, City Attorney

C Discussion and possible action to elect a Committee Chairperson and Vice-chairperson - Skye Masson, City Attorney

D General overview of the City Charter - Skye Masson, City Attorney

E Review direction from City Council - Skye Masson, City Attorney

F Review City Charter Amendment Timeline - Skye Masson, City Attorney

G Review of Open Meetings Act - Skye Masson, City Attorney

H Schedule of future meetings - Mayra Cantu, Management Analyst

Certificate of Posting

I, Robyn Densmore, City Secretary for the City of Georgetown, Texas, do hereby certify that this Notice of Meeting was posted at City Hall, 808 Martin Luther King Jr. Street, Georgetown, TX 78626, a place readily accessible to the general public as required by law, on the _____ day of _____, 2021, at _____, and remained so posted for at least 72 continuous hours preceding the scheduled time of said meeting.

_____
Robyn Densmore, City Secretary

City of Georgetown, Texas
Charter Review Committee
March 2, 2021

SUBJECT:
General overview of the City Charter - Skye Masson, City Attorney

ITEM SUMMARY:

FINANCIAL IMPACT:
NA

SUBMITTED BY:

ATTACHMENTS:

	Description	Type
🗋	Charter Overview	Presentation
🗋	Home Rule Charter	Exhibit

City Charter Articles

1. Incorporation, Form of Government and Powers
   - Council-Manager Government
   - Control of Streets
   - Annexation
   - Planning Powers
2. The Council
   - Qualifications
   - Vacancies
   - Enacting legislation
   - Boards and Commissions
   - Renumeration

City Charter Articles

3. Elections
   - Regulation of elections
   - Filing of candidates
   - Special elections
4. Initiative, Referendum, and Recall
   - Power of initiative and referendum
   - Forms of petitions
   - Recall

City Charter Articles

5. Administrative Organization
   - City Manager
   - City Attorney
   - Municipal
   - Administrative structure
6. Finance
   - Budget
   - Appropriations
   - Bonds

City Charter Articles

7. Taxation
   - Taxation powers
   - Tax payments and tax liens
8. Franchise and Public Utility
   - Franchise powers of the City
   - Regulation of franchises and rates
9. General Provisions
   - Catch all provisions
   - Ethics, nepotism, records, notice of claims

Footnotes:

*--- (**1**) ---*

***Editor's note—** The Home Rule Charter was amended at an election held Apr. 5, 1986, called by Ord. No. 86-12, adopted Feb. 25, 1986. Amendment No. 1 specified that all pertinent sections be amended to make nouns and pronouns neuter in gender and replacing "Councilman" with "Councilmember." This has been done throughout the Charter without further reference to Ord. No. 86-12, Amend. No. 1. Other sections which have been amended by Ord. No. 86-12 (and future ordinances) will be accompanied by a history note giving the amendment number.*

PREAMBLE

We, the Citizens of Georgetown, Texas, dedicated to the principle of local self-government, under law, as interpreted by the light of reason, and administered to secure justice, do invoke the guidance of God in establishing a municipal government, and do hereby ordain and establish this Home Rule Charter in accordance with the statutes of the State of Texas; and do hereby declare the residents of the City of Georgetown, in Williamson County, Texas, living within the legally established boundaries of the said City, to be a political subdivision of the State of Texas incorporated forever under the name and style of the "City of Georgetown" with such powers, rights and duties as are herein provided.

ARTICLE I. - INCORPORATION, FORM OF GOVERNMENT AND POWERS

Sec. 1.01. - Incorporation.

The inhabitants of the City of Georgetown, Williamson County, Texas, residing within its corporate limits as heretofore or hereafter established, are hereby constituted and shall continue to be a municipal body politic and corporate in perpetuity under the name of the "City of Georgetown," hereinafter referred to as the "City" with such powers, privileges, rights, duties and immunities as are herein provided.

Sec. 1.02. - General powers.

The City shall have all the powers granted to cities by the Constitution and laws of the State of Texas together with all of the implied powers necessary to carry into execution such granted powers. The City may use a corporate seal; may sue and be sued; may contract and be contracted with; may cooperate with the government of the State of Texas or any agency or any political subdivision thereof; or with the federal government or any agency thereof, to accomplish any lawful purpose for the advancement of the interest, welfare, health, morals, comfort, safety, and convenience of the City and its inhabitants; may acquire property within or without its corporate limits for any municipal purpose in fee simple, in or any lesser interest or estate, by purchase, gift, device, lease or condemnation, and, subject to the provisions of this Charter, may sell, lease, mortgage, hold, manage, improve, and control such property as may now or hereafter be owned by it; may pass ordinances and enact such regulations as may be expedient for the maintenance of good government, order and peace of the City and the welfare, health, morals, comfort, safety, and convenience of its inhabitants. The powers hereby conferred upon the City shall include, but are not restricted to, the powers conferred expressly and permissively by Chapter 147, Page 307, of the Acts of the 33rd. Legislature, Regular Session enacted in 1913 pursuant to the Home Rule Amendment of the Constitution of Texas, known as the Enabling Act and including Articles 1175, 1176, 1177, 1178, 1180, of Vernon's Annotated Civil Statutes of Texas, as now or hereafter amended, all of which are hereby adopted. In addition to the powers enumerated herein, and subject only to the limitations imposed by the State Constitution, the State laws, and this Charter, the City shall have, without the necessity of express enumeration in this Charter, each and every power which, by virtue of Article XI, Section 5 of the Constitution of Texas, the people of the City are empowered by election to grant to or confer upon the City by expressly and specifically granting and enumerating the same herein. All such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed in this Charter; or when not prescribed herein, in such manner as shall be provided by ordinance or the Council.

Sec. 1.03. - Form of government.

The municipal government provided by this Charter shall be, and shall be known as "Council-Manager Government." Pursuant to the provisions of and subject only to the limitations imposed by the State Constitution, the State laws, and this Charter, all powers of the City shall be vested in and exercised by an elective Council, hereinafter referred to as "the City Council" which shall enact legislation, adopt budgets, determine policies, and appoint the City Manager who shall execute the laws and administer the government of the City.

Sec. 1.04. - Streets and public property.

The City shall have exclusive dominion, control and jurisdiction in, upon, over and under the public streets, sidewalks, alleys, highways, public squares and public ways (except those under State control if required by State law) that are within the corporate limits of the city, and in, upon, over, and under all public property of the City. With respect to each and every public street, sidewalk, alley, highway, public square, public park or other public way (except those under State Control if required by State law) that are within the corporate limits of the City, the City shall have the power to establish, maintain, improve, alter, abandon, or vacate the same; to regulate the use thereof including but not limited to the right to erect traffic signals, lights and signs thereon; and to abate and remove in a summary manner any encroachment thereon.

(Res. No. 050603-B, 5-3-03)

Sec. 1.05. - Street development and improvements.

The City shall have the power to develop and improve, or cause to be developed and improved, any and all public streets or ways (except those under State control and if required by State law) within the corporate limits of the City by laying out, opening, narrowing, widening, straightening, extending, lighting, and establishing building lines along the same, by purchasing condemning, and taking property therefor; by filling, grading, raising, lowering, paving, repaving, and repairing, in a permanent manner, the same; and by constructing, reconstructing, altering, repairing, and realigning curbs, gutters, drains, sidewalks, culverts, and other appurtenances and incidentals in connection with such development and improvement authorized hereinabove, or any combination or parts thereof. The cost of such development and improvement may be paid partly or entirely by assessments levied as a lien against the property abutting thereon and against the owners thereof, and such assessments may be levied in any amounts and under any procedure not prohibited by State law; provided, that no assessment shall be made against such land or owners in excess of the enhancement in value of such property occasioned by such improvement.

If improvements be ordered constructed in any part of any such area used or occupied by the tracks or facilities or any railroad or public utility, then the City Council shall have power to assess the whole cost of improvements in such area and the added costs of improvements in areas adjacent thereto made necessary by such use or occupancy against such railway or utility, and shall have power, by ordinance, to provide for the enforcement of such assessment.

As an alternate and cumulative method of developing, improving, and paving any and all public streets, sidewalks, alleys, highways, and other public ways (except those under State control if required by State law) within its corporate limits, the City shall have the power and authority to proceed in accordance with Chapter 106, Page 489, Acts 1927, Fortieth Legislature, First Called Session, as now or hereafter amended, the same being Article 1105b of the Vernon's Annotated Civil Statutes of Texas.

(Res. No. 050603-B, 5-3-03)

Sec. 1.06. - Annexation and disannexation of territory.

(1) Annexation. The City Council may fix the boundary limits of the City by any of the following methods:

(a) Upon the introduction and passage of the ordinance in compliance with all requirements of this Charter and State law, with or without the consent of the voters and/or landowners in the area to be annexed; or

(b) Upon the request by written petition of a majority of qualified voters and landowners in the area requesting annexation subject to procedural rules as provided by State law and the passage of an annexation ordinance in response to the

petition procedure; or

(c) By election, in accordance with applicable State law.

(2) Annexed Territory. The inhabitants of annexed territory are entitled to all the rights and privileges of city citizenship, and are bound by all such duties of citizenship. The inhabitants of any annexed territory are bound by all the acts, resolutions, ordinances, and regulations of the City.

(3) Disannexation. The City Council may detach and disannex any territory within the city limits by any of the following methods:

(a) Upon the introduction and passage of the ordinance in compliance with all requirements of State law, with or without the consent of the voters and/or landowners in the area disannexed;

(b) Upon the request by written petition of a majority of qualified voters and landowners in the area proposed for disannexation in compliance this Charter, State law, and the passage of an ordinance in response to the petition procedure.

(Res. No. 050603-B, 5-3-03; Ord. No. 86-12, Amend. No. 2, 2-25-86)

Sec. 1.06A. - Plats and blocks.

An owner of any property within the City limits or within the extraterritorial jurisdiction of the City which is platted into blocks and lots shall comply with all requirements of Chapter 231, Page 342, Acts of the 40th Legislature, 1927, as amended (Article 974a, Vernon's Annotated Civil Statutes) and all other applicable laws, ordinances and charter provisions as amended.

(Ord. No. 86-12, Amend. No. 2, 2-25-86)

Sec. 1.07. - Urban development, redevelopment and renewal.

The City shall have the power to carry out slum clearance, public housing, and urban redevelopment and renewal projects. For these purposes it may acquire land by eminent domain, may contract or cooperate with the State or Federal Governments or any agency thereof, may invest its funds, and borrow or accept money.

Sec. 1.08. - Comprehensive plan.

(1) Purpose and Intent. It is the purpose and intent of this Article that the City Council establish comprehensive planning as a continuous and ongoing governmental function in order to promote and strengthen the existing role, processes and powers of the City of Georgetown to prepare, adopt and implement a comprehensive plan to guide, regulate, and manage the future development within the corporate limits and extraterritorial jurisdiction of the City to assure the most appropriate and beneficial use of land, water and other natural resources, consistent with the public interest. Through the process of comprehensive planning and the preparation, adoption and implementation of a comprehensive plan, the City intends to preserve, promote, protect and improve the public health, safety, comfort, order, appearance, convenience and general welfare; prevent the overcrowding of land and avoid undue concentration or diffusion of population or land uses; facilitate the adequate and efficient provision of transportation, water, wastewater, schools, parks, recreational facilities, housing and other facilities and services; and conserve, develop, utilize and protect natural resources.

It is further the intent of this Article that the adopted comprehensive plan shall have the legal status set forth herein, and that all public and private development should be in conformity with such adopted comprehensive plan or element or portion thereof.

(2) The Comprehensive Plan. The Council shall adopt by ordinance a revised comprehensive plan within two (2) years from the date the amended Charter is adopted, which shall constitute the master and general plan. The comprehensive plan shall contain the Council's policies for growth, development and beautification of the land within the corporate limits and the extraterritorial jurisdiction of the City, or for geographic portions thereof including neighborhood, community or area-wide plans. The comprehensive plan should include but not be limited to:

(a) A future land-use element;

(b) A traffic circulation and public transit element;

(c) A wastewater, electric, solid waste, drainage and potable water element;

(d) A conservation and environmental resources element;

(e) A recreation and open space element;

(f) A housing element;

(g) A public services and facilities element, which shall include but not be limited to a capital improvement program;

(h) A public buildings and related facilities element;

(i) An economic element for commercial and industrial development and redevelopment;

(j) Health and human service element;

(k) Historic preservation element;

(l) Citizen participation element; and

(m) Urban design element.

(n) Public safety element.

The several elements of the comprehensive plan should be coordinated and be internally consistent. Each element should include policy recommendations for its implementation and should be implemented, in part, by the adoption and enforcement of appropriate land development regulations. The comprehensive plan shall be amended only once per year and revised not more than once every five (5) years unless such amendment or revision is adopted by a majority plus one of the City Council. An amendment is defined as a minor change in the plan. A revision is defined as a substantial change to the plan.

(3) Legal Effect of Comprehensive Plan. Upon adoption of a comprehensive plan or element or portion thereof by the City Council, all land development regulations, including zoning and map, subdivision regulations, roadway plan, all public improvements, public facilities, public utilities projects and all city regulatory actions relating to land use, subdivision and development approval, should be consistent with the adopted comprehensive plan, element or portion thereof.

(4) Legal Effect of Prior Comprehensive Plan. Any comprehensive plan or element or portion thereof adopted pursuant to law, but prior to the effective date of this Charter shall continue to have such force and effect as it had at the date of its adoption, until further action pursuant to this section is taken by the City Council.

(Res. No. 050603-B, 5-3-03; Amended by voters in the May 1994 General Election; Ord. No. 880170, Amend. No. 1, 5-10-88; Ord. No. 86-12, Amend. No. 3, 2-25-86)

Sec. 1.09. - The Planning and Zoning Commission.

There shall be established by ordinance a Planning and Zoning Commission composed of at least five (5) citizens of the City of Georgetown who must be registered voters in the City of Georgetown and must have resided within the city for one (1) year next preceding their appointment. The Mayor and Council shall be responsible for appointing a Commission which is broadly representative as a whole. Members shall be drawn, for example, from different residential areas, different racial and ethnic groups, different occupations and professions, different interest groups. The Commission shall be responsible to and act as an advisory body to the Council and shall perform such additional duties and exercise such additional powers as may be prescribed by ordinance of the Council not inconsistent with the provisions of this Charter.

(Ord. No. 880170, Amend. No. 2, 5-10-88; Ord. No. 86-12, Amend. No. 4, 2-25-86)

ARTICLE II. - THE COUNCIL

Sec. 2.01. - Number, selection, and term of office.

The Council shall be composed of seven (7) Councilmembers elected from single-member districts and a Mayor elected at-large, each of whom unless sooner removed under the provisions of the Charter, shall serve for three-year terms, from the first meeting of the Council following the Councilmember's election until the first meeting of the Council following the election two (2) years later, or until the councilmember's successor has been elected and duly qualified.

Four (4) members of the Council shall be elected each odd-numbered year and three (3) members and a Mayor each even-numbered year.

Councilmembers must reside in the districts from which they are elected except that Councilmembers may complete the terms to which they were elected if district boundaries are changed during their terms causing their residences no longer to be within the districts from which they were elected.

The authority to adopt council district boundaries shall reside in the council. The council may revise district boundaries from time to time and shall adopt district boundaries within one year after the publication of each United States decennial census.

Councilmembers and Mayor shall be elected for three-year terms, which shall begin with the general election to be held in 1995, and the terms shall be staggered such that three Council members are elected in one year, the Mayor and two Council members are elected in the following year and two Councilmembers are elected the last year. For the staggering of the initial three-year terms, the following procedure shall apply:

(1) In 1995, Councilmembers shall be elected for Districts 1, 3, 4 and 5. Following the election, the Councilmembers shall draw lots to serve either a three-year term (2 members) or a two-year term (2 members).

(2) In 1996, the Mayor shall be elected for a three-year team, and Councilmembers shall be elected for Districts 2, 6 and 7. Following the election, the Councilmembers shall draw lots to serve either a three-year term (2 members) or a two-year term (1 member).

(3) In 1997, the two Districts whose Councilmembers serve two-year terms shall elect Councilmembers for three-year terms. All succeeding elections shall be to elect Councilmembers for three-year terms in compliance with this Charter.

1994	M, 2, 6, 7
1995	1, 3, 4, 5-draw straws as to terms: 3 yr. terms (2), 2 yr. terms (2)
1996	M, 2, 6, 7 - Mayor = 3 yrs.; draw straws as to terms; 3 yr. terms (2), 2 yr. terms (1)
1997	1995 2 yr. terms (2)
1998	1995 3 yr. terms (2) 1996 2 yr. terms (1)
1999	Mayor 1996 3 yr. terms (2)
2000	1996 3 yr. terms (2)

(Amended by voters in May 1994 General Election; Ord. No. 880170, Amend. No. 3, 5-10-88)

Sec. 2.02. - Qualifications.

At the time of election to office, each Councilmember and the Mayor shall be at least twenty-one (21) years of age, shall be a citizen and qualified voter of the State of Texas and the City of Georgetown and a resident of the Council District the member would be representing for a period of twelve (12) months as of the last legal date for filing. No member of the Council shall hold any other office or employment under the City Government while a member of said Council, nor hold any paid employment under the City Government within two (2) years thereafter. A member of the Council ceasing to reside in the City shall immediately forfeit that office.

(Amended by voters in the May 1994 General Election; Ord. No. 86-12, Amend. No. 5, 2-25-86)

Sec. 2.03. - Vacancies.

When a vacancy occurs in the Council, the vacancy shall be filled at a special election called for this purpose within one hundred and twenty (120) days after the vacancy or vacancies occur in compliance with Article XI, Section 11 of the Texas Constitution and other applicable State laws.

(Res. No. 050603-B, 5-3-03)

Sec. 2.04. - Powers of the Council.

All powers and authority which are expressly or impliedly conferred on or possessed by the City shall be vested in and exercised by the Council; provided, that the Council shall have no power to exercise those powers which are expressly conferred upon City officers by this Charter or under the laws of the State of Texas. The compensation of all appointive officers and employees shall be fixed by the City Council, who may increase or diminish such compensation at will or abolish, except those required by this Charter or the laws of the State of Texas, and create any appointive office at any time.

(Ord. No. 86-12, Amend. No. 6, 2-25-86)

Sec. 2.05. - Investigative body.

The Council shall have the power to inquire into the official conduct of any division department, agency, office, officer, or employee of the City, and for that purpose shall have the power to administer oaths, subpoena witnesses, compelling the production of books, papers, and other evidence material to the inquiry. The Council shall provide by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence, and shall have the power to punish any such contempt in the manner provided by such ordinance.

(Ord. No. 86-12, Amend. No. 7, 2-25-86)

Sec. 2.06. - Mayor and Mayor Pro Tem.

The Mayor shall preside at all meetings of the Council and shall be recognized as head of the City government for all ceremonial purposes, for the purpose of receiving services of civil process, for emergency purposes, and for military purposes; but the Mayor shall have no regular administrative duties. The Mayor, as a member of the Council, shall be entitled to vote only in case of a tie upon all affairs considered by the Council and shall have no veto power. At its first meeting following each regular election of Councilmembers, the Council shall, by election, designate one of its number as Mayor Pro Tem, who shall serve in such capacity during the pleasure of the Council. The Mayor Pro Tem shall act as Mayor during the absence or disability of the Mayor, and shall have power to perform every act the Mayor could perform if present; provided, however, that in all cases the Mayor Pro Tem shall be entitled to vote.

(Ord. No. 86-12, Amend. No. 8, 2-25-86)

Sec. 2.07. - City Secretary.

The Council shall appoint the City Secretary, who shall serve at the pleasure of the Council. The City Secretary shall keep the records of the Council, and shall have such other duties and responsibilities as may be assigned by this Charter and the Council. The City Secretary shall appoint such assistants as may be authorized by the Council.

Sec. 2.08. - Meetings of Council.

There shall be regular meetings of the City Council which shall be held at such times and places as shall be prescribed by ordinance or resolution. Special meetings may be called at any time by the City Secretary upon the request of the Mayor, the City Manager, or three (3) Councilmembers. Notice of special meetings shall be given to all members of the Council who are not absent from the City; provided, however, that any member of the Council who did not receive notice of a special meeting may, either before or after such special meeting is held, waive such notice. It shall not be necessary to give notice to a Councilmember of a special meeting held at a time when such Councilmember is absent from the City, and it shall not be necessary for such absent Councilmember to waive such notice.

Sec. 2.09. - Rules of procedure.

The Council shall by ordinance determine its own rules and order of business. The Mayor and a majority of the members of Council shall constitute a quorum, and in the Mayor's absence, a majority plus one of the members of Council shall constitute a quorum. Legislation may not be enacted unless it is adopted by a vote of not less than a majority of the members of the Council. Should the Council be reduced to less than a majority plus one of the members of Council by death, resignation, nonresidence or for any other reason, the remaining members of the Council shall constitute a quorum for the purpose of filling vacancies. Should the Council be reduced to less than a majority plus one of the members of Council by death, resignation, nonresidence, or for any other reason, the remaining members of the Council shall constitute a quorum for the purpose of filling vacancies and for the purpose of taking an emergency action to protect the life, health, safety, property and welfare of the public. Such emergency action shall take effect only upon the unanimous approval of the then remaining members of the Council. The Council may adopt such rules, and prescribe such penalties as it may see fit to enforce the attendance of its members at all regular and called meetings of the Council or its committees. Minutes of all meetings of the Council shall be taken and recorded in the form and manner required by state law, and such minutes shall constitute a public record.

(Res. No. 050603-B, 5-3-03; Ord. No. 880170 § 5 (part), 5-10-88; Ord. No. 86-12, Amend. No. 10, 2-25-86)

Sec. 2.10. - Procedure to enact legislation.

The Council shall legislate by ordinance, and the enacting clause of every ordinance shall be: "Be it ordained by the City Council of the City of Georgetown." The City Attorney shall approve all ordinances adopted by the Council, as to the legality thereof, or shall file with the City Secretary written legal objections thereto. Evidence of approval of an ordinance by the City Attorney may be by notation on the ordinance itself, or by separate paper or instrument. Every ordinance enacted by the Council shall be signed by the Mayor, Mayor Pro Tem, or by two (2) Councilmembers and shall be filed with and recorded by the City Secretary. All ordinances shall be read in open meeting of the Council at two (2) open meetings of the Council on two (2) separate days; the second such reading shall occur not less than ten (10) days following the first such reading; provided, that the secondary reading required herein shall be sufficient if read by descriptive caption only. The actual reading of the ordinance on first reading may be handled by the reading of the caption if the following provisions of the Charter have preceded the first reading.

1. The caption of the proposed ordinance has been published in a newspaper of general circulation within the City for a minimum of seventy-two (72) hours prior to the meeting; and
2. The proposed ordinance is filed with the City Secretary at least seven (7) days prior to the meeting.

The City Council may require a full reading of the proposed ordinance prior to adoption by a vote of the majority of the Councilmembers present at the meeting. All ordinances, unless otherwise provided by law or by the terms of such ordinance, shall take effect immediately upon final passage thereof. The requirements for reading ordinances on two separate days may

be dispensed with where an ordinance relating to the immediate preservation of the public peace, health, safety or welfare is adopted by the favorable vote of not less than a majority, plus one, of all the Councilmembers qualified and serving, and contains a statement of the nature of the emergency.

(Amended by voters in the May 1994 General Election; Ord. No. 880170 § 5 (part), 5-10-88; Ord. No. 86-12, Amend. No. 11, 2-25-86)

Sec. 2.11. - Publication of ordinance.

Except as otherwise provided by law or this Charter, the City Secretary shall give notice of the enactment of every ordinance imposing any penalty, fine, or forfeiture for any violation of any of its provisions, and of every other ordinance required by law or this Charter to be published, by causing the said ordinance, or its caption and penalty, to be published at least one (1) time within ten (10) days after final passage thereof or as soon thereafter as possible in a newspaper of general circulation within the City. The affidavit of such publication by the publisher of such newspaper taken before any officer authorized to administer oaths and filed with the City Secretary shall be conclusive proof of the legal publication and promulgation of such ordinance in all courts. Such ordinance shall take effect ten (10) days after the date of such publication, provided that any penal ordinance passed as an emergency measure under Section 2.10 of this Article shall take effect immediately on its publication.

(Ord. No. 86-12, Amend. No. 12, 2-25-86)

Sec. 2.12. - Code of ordinances.

The Council shall have the power to cause all general ordinances of the City to be compiled and printed in code form. Every general ordinance enacted subsequent to such codification shall be enacted as an amendment to this code. The Council shall cause all general ordinances to be codified, recodified and reprinted whenever in its discretion such is deemed desirable, or when such codification or recodification is required by law. When adopted by the Council, the printed codes of general ordinances contemplated by this section shall be in full force and effect without the necessity of such code or any part thereof being published in any newspaper. The caption, descriptive clause, and other formal parts of the ordinances of the City may be omitted without affecting the validity of such ordinances when they are published as a code.

Sec. 2.13. - Emergency powers of mayor.

The Mayor of the City of Georgetown shall have such emergency powers as are provided by this Charter's provisions, all applicable ordinances, and all other laws of the State of Texas.

(Res. No. 050603-B, 5-3-03)

Sec. 2.14. - Boards, Commissions and Committees.

The Council shall have the power to establish boards, commissions and committees to assist it in carrying out its duties in accordance with State law.

Members of such bodies shall be recommended by the Mayor and appointed by a vote of the majority of the Council in open meeting unless otherwise provided by law. Should the Mayor fail to recommend and/or the Council fail to appoint the member(s) recommended by the Mayor, a majority of the Council plus one may make the appointment(s) without a recommendation of the Mayor.

(Ord. No. 880170, Amend. No. 4, 5-10-88; Ord. No. 86-12, Amend. No. 13, 2-25-86)

Sec. 2.15. - Remuneration to Mayor and Council.

The Mayor shall name a committee, composed of qualified voters, whose responsibility will be to review, at least every two (2) years, the salaries of the Mayor and Councilmembers, and make recommendations regarding those salaries. The report of the committee shall be made at a regular Council meeting and shall require an official act by Council to either enact, alter or reject the recommendations. In all cases where action alters existing salaries for Mayor and Councilmembers, the changes in salaries will begin immediately following the next election of City officials.

(Ord. No. 86-12, Amend. No. 14, 2-25-86)

Sec. 2.16. - Personnel policy.

The Council shall establish by ordinance a personnel policy which shall include, but shall not be limited to, the following provisions. That:

(a) All employees of the City are employees at will, unless otherwise provided by the terms of a written contract between the employee and the City, which has been formally approved by the Council.

(b) Before disciplinary action may be taken as a result of a complaint against a City employee, the complaint must be reduced to written form and a copy of the written complaint must be provided to the affected employee.

(c) In the event of a suspension, demotion or termination of a City employee, the affected employee shall be afforded the due process provided by the Personnel Policies of the City.

(Res. No. 050603-B, 5-3-03)

Editor's note— An amendment of May 3, 2003, amended § 2.16 in its entirety to read as herein set out. Formerly, § 2.16 pertained to the council to establish personnel policy and derived from Ord. No. 86-12, Amend. No. 36A, adopted February 25, 1986.

ARTICLE III. - ELECTIONS

Sec. 3.01. - General election.

The regular City election shall be held annually on the first Saturday in May or on such date as is otherwise required by State law, at which time officers shall be elected to fill those offices which become vacant that year. Said election shall be ordered by the Mayor, and in case of the Mayor's failure to order the same, the Council of the City shall make such order. In the case of the inability of the Mayor and the Council to act, the election may be called by the City Secretary, and in case of the City Secretary's inability to act, by the County Judge of Williamson County, Texas, and in case of the County Judge's inability to act, by the Governor of the State of Texas. The Mayor of the City shall give notice of such election in the manner required by law.

(Res. No. 050603-B, 5-3-03; Amended by voters in the May 1994 General Election; Ord. No. 86-12, Amend. No. 15, 2-25-86)

Sec. 3.02. - Regulation of elections.

All elections shall be held in accordance with the laws of the State of Texas regulating the holding of municipal elections and/or in accordance with the ordinances adopted by the Council for the conduct of election. The Council shall appoint the election judges and other election officials and shall provide for the compensation of all election officials in the City elections and for all other expenses of holding such elections.

Sec. 3.03. - Filing of candidates.

Any qualified person who desires to become a candidate for election to City office shall file application of candidacy with the City Secretary, in accordance with State law. Such application shall contain a sworn statement by the candidate that the candidate is fully qualified to hold the office under the provisions of this Charter and State law.

(Res. No. 050603-B, 5-3-03; Ord. No. 86-12, Amend. No. 16, 2-25-86)

Sec. 3.04. - Canvassing election and declaring results.

The returns of every municipal election shall be delivered forthwith by the Election Judges to the Mayor and City Secretary. The Council shall canvass the returns, investigate the qualifications of the candidates, and declare the official results of the election not later than the first regular meeting following the delivery of the returns to the Mayor. The returns of every municipal election shall be recorded in the minutes of the Council.

In every election for the office of Councilmember and for the office of Mayor, each qualified voter shall vote for not more than one candidate for the district in which the voter and the candidate reside and for not more than one candidate for the office of Mayor.

Where in an election for any office no candidate receives a majority of all the votes cast for such office at such election, the Council shall, immediately upon declaring the official results to the election, issue a call for a runoff election for every office to which no one was elected. Such runoff election shall be held on a date set by the Council not earlier than the twentieth day or later than the thirtieth day after the date of the final canvass of the main election is completed. In such runoff election the two candidates who received in the preceding election the highest number of votes for each office to which no one was elected shall be voted on again, and the candidate who receives the majority of the votes cast for each such office in the runoff election shall be elected to such office.

The decision of the Council as to the qualification of candidates shall be conclusive and final for all purposes.

(Ord. No. 880170, Amend. No. 5, 5-10-88; Ord. No. 86-12, Amend. No. 17, 2-25-86)

Sec. 3.05. - Notification and qualification of City officers.

It shall be the duty of the City Secretary to notify all persons elected or appointed to office of their election or appointment and all the newly elected or appointed officers may enter upon their duties. Any officer elected or appointed must qualify by taking and subscribing the oath of office within thirty (30) days; otherwise the office may be deemed vacant.

Sec. 3.06. - Special elections.

The Council may by ordinance or resolution call such special elections as are authorized by the State law and this Charter, fix the day and place of holding same, and provide all means for holding such special elections, provided that every special election shall be called and held as nearly as practicable according to the provisions governing general elections.

ARTICLE IV. - INITIATIVE, REFERENDUM AND RECALL

Sec. 4.01. - Power of initiative.

The people of the City reserve the power of direct legislation by initiative, and in the exercise of such power may propose any ordinance, except ordinances appropriating money or levying taxes, or ordinances repealing ordinances appropriating money or levying taxes, not in conflict with this Charter, the State Constitution, or the State laws. Any initiated ordinance may be submitted to the Council by a petition signed by qualified voters of the City, equal in number to at least fifteen (15) per cent of the qualified voters of the City in the last municipal election, but not less than two hundred fifty (250) qualified voters of the City.

Sec. 4.02. - Power of referendum.

The people reserve the power to approve or reject at the polls any legislation enacted by the Council which is subject to the initiative process under this Charter, except that ordinances authorizing the issuance of bonds (either tax bonds or revenue bonds), whether original or refunding bonds, shall not be subject to such referendum. Prior to or within thirty (30) days after the effective date of any ordinance which is subject to referendum, a petition signed by qualified voters of the City equal in number to at least fifteen (15) per

cent of the qualified voters in the last municipal election but not less than two hundred fifty (250) qualified voters of the City may be filed with the City Secretary requesting that any such ordinance be either repealed or submitted to the vote of the people. When such a petition has been certified as sufficient by the City Secretary, the ordinance specified in the petition shall not go into effect, or if it shall have gone into effect, then further action thereunder shall be suspended until and unless it is approved by the voters as herein provided.

(Ord. No. 86-12, Amend. No. 18, 2-25-86)

Sec. 4.03. - Form of petitions.

Initiative petition papers shall contain the full text of the proposed legislation in the form of an ordinance, including a descriptive caption. Referendum petition papers shall contain a sufficient description of the ordinance sought to be referred to identify it, or if the ordinance has been passed by the Council, the full text of the ordinance sought to be referred shall be included in such papers. The signatures to the initiative or referendum petitions need not be all appended to one (1) paper, but each signer shall sign his name in ink or indelible pencil, together with a notation showing the signer's residence address and day, month and year of signing. No signature shall be counted where there is reason to believe it is not the actual signature of the purported signer or that it is a duplication either of name or of handwriting used in any other signature on the petition, and no signature shall be counted unless all required information of the signer is shown, or unless it is signed exactly as the name of the voter appears on the official copy of the current qualified voters list. Before the signatures on any petition paper may be counted one of the signers of such petition paper, a qualified voter shall make oath before the City Secretary, or any other officer competent to administer oaths, that the statements made therein are true, that each signature to the paper appended is the genuine signature of the person whose name purports to be signed thereto, and that such signatures were placed thereon in the person's presence. The petition shall otherwise comply with State law requirements.

(Res. No. 050603-B, 5-3-03)

Sec. 4.04. - Filing, examination and certification of petitions.

Within thirty (30) days after an initiative or referendum petition is filed, the City Secretary shall determine whether the same is properly signed by the requisite number of qualified voters. The City Secretary shall declare void any petition paper which does not have an affidavit attached thereto as required in Section 4.03 of this Article. In examining the petition, the Secretary shall write the letters "D.V." (meaning "Disqualified Voter") in red ink opposite the names of signers found not qualified, pursuant to this Charter and State law. After completing examination of the petition, the Secretary shall certify the result thereof to the Council at its next regular meeting. If the certificate of the City Secretary shall show an initiative or referendum petition to be insufficient, the Secretary shall notify the person filing the petition, and it may be amended within ten (10) days from the date of such notice by filing a supplementary petition upon additional papers signed and filed as provided for in the original petition. Within thirty (30) days after such amendment is filed, the Secretary shall examine the amended petition and certify as to its sufficiency. If the amended petition is then found to be insufficient, no further proceedings shall be had with regard to it.

(Res. No. 050603-B, 5-3-03)

Sec. 4.05. - Council consideration and submission to voters.

When the Council receives an authorized initiative petition certified by the City Secretary to be sufficient, the Council shall either: (a) pass the initiated ordinance without amendment within thirty (30) days after the date of the certification to the Council; or (b) submit said initiated ordinance without amendments to a vote of the qualified voters of the City at a regular or special election to be held on the next uniform election date in order to comply with State election laws; or (c) at such election submit to a vote of the qualified voters of the City said initiated ordinance without amendment, and an alternative ordinance on the same subject proposed by the Council. When the Council receives an authorized referendum petition certified by the City Secretary to be sufficient, the Council shall reconsider the referred ordinance, and if upon such reconsideration such ordinance is not repealed within thirty (30) days, it shall be

submitted to the qualified voters of the City at a regular or special election to be held on the next uniform election date in order to comply with State election laws. Special elections on initiated or referred ordinances shall not be held more frequently than once each six (6) months, and no ordinance on the same subject as an initiated ordinance which has been defeated or on the same subject as a referred ordinance which has been approved at any election may be initiated by the voters within two (2) years from the date of such election.

(Amended by voters in the May 1994 General Election)

Sec. 4.06. - Results of referendum elections.

Any number of ordinances may be voted on at the same election in accordance with the provisions of this Article. If a majority of the legal votes cast is in favor of an initiated ordinance, it shall thereupon be effective as an ordinance of the City. A favorable vote of a majority plus one of all Councilmembers qualified and serving be required to repeal or amend an ordinance passed at a referendum election. A referred ordinance which is rejected by a majority of the legal votes cast in a referendum election shall be deemed thereupon repealed.

(Ord. No. 880170 § 5 (part), 5-10-88)

Sec. 4.07. - Recall of City Officials.

The people of the City reserve the power to recall any elected officer of the City of Georgetown, on the grounds of incompetence, misconduct, or malfeasance in office, and may exercise such power by filing a petition, as described herein, with the City Secretary.

A petition to recall the Mayor only shall be, signed by registered voters of the City equal in number to at least fifteen (15) percent of the number of all of the registered voters in the City at the time of the last regular municipal election, demanding the removal of the Mayor. The petition shall be signed and verified as required by this Charter's provisions and State law.

A petition to recall a Council member shall be signed only by the registered voters of the single member council district that the Council member represents, and the signatures must be equal in number to at least fifteen (15) percent of the number of registered voters residing in that council district at the time of the last regular municipal election, demanding the removal of their specific Councilmember. The petition shall be signed and verified as required by this Charter's provisions and State law.

In the case of an election to recall the Mayor, any registered voter residing within the City may cast a ballot on the issue of the Mayor's recall.

In the case of an election to recall a Council member, only registered voters residing within the single member council district represented by the Council member sought to be recalled may cast a ballot on the issue of their Council member's recall.

(Res. No. 050603-B, 5-3-03)

Editor's note— An amendment of May 3, 2003, amended § 4.07 in its entirety to read as herein set out. Formerly, § 4.07 pertained to the power of recall and derived from original codification.

Sec. 4.08. - Recall petition.

The recall petition shall be addressed to the City Council of the City of Georgetown, and shall distinctly and specifically set out the factual basis and circumstances upon which the petition for removal is predicated with sufficient specificity to give the official sought to be removed notice of all matters and things with which the official is charged. If the petition is certified by the City Secretary to be sufficient, the Council shall order and hold an election forthwith to determine whether such officer shall be recalled.

(Res. No. 050603-B, 5-3-03)

Editor's note— An amendment of May 3, 2003, amended § 4.08 in its entirety to read as herein set out. Formerly, § 4.08 pertained to recall elections and derived from original codification.

Sec. 4.09. - Results of recall election.

If the majority of the legal votes cast at a recall election be "in favor of" the recall of the official, a special election for the filling of the vacancy shall be called and held in accordance with State law and with the provisions of this Charter on elections. An officer thus removed shall not be eligible to hold office again in the City of Georgetown within a period of four (4) years from date of that officer's recall.

(Res. No. 050603-B, 5-3-03)

Sec. 4.10. - Limitation on recall.

No recall petition shall be filed against an officer within six (6) months after the officer takes office, and no officer shall be subjected to more than one (1) recall election during a term of office.

Sec. 4.11. - Public hearing to be held.

The officer whose removal is sought may, within five (5) days after such recall petition has been presented to the City Council, request that a public hearing be held to permit the officer to present facts pertinent to the charges specified in the recall petition. In this event, the City Council shall order such public hearing to be held, not less than five (5) days nor more than fifteen (15) days after receiving such request for a public hearing.

Sec. 4.12. - Failure of City Council to call a recall election.

If all of the requirements of this Charter have been met and the Council fails or refuses to receive the recall petition, or order the recall election, or discharge any other duties imposed upon the Council by the provision of this Charter with reference to this recall, then any citizen who is a registered voter of Georgetown may file, with the District Court of Williamson County, Texas, a writ of mandamus seeking to force the City to call the election in accordance with State law.

(Res. No. 050603-B, 5-3-03)

ARTICLE V. - ADMINISTRATIVE ORGANIZATION

Sec. 5.01. - The City Manager.

The Council shall appoint a City Manager who shall be the chief administrative and executive officer of the City. The City Manager shall be chosen by the Council solely on the basis of executive and administrative training, experience and ability, and need not, when appointed, be a resident of the City of Georgetown; however during the tenure of office, the City Manager shall reside within the City.

The City Manager shall not be appointed for a definite term, but may be removed at the will and pleasure of the Council by the vote of a majority of all Councilmembers qualified and serving. The action of the Council in removing the City Manager shall be final, it being the intention of this Charter to vest all authority and fix all responsibility for such removal in the Council. The City Manager shall receive such compensation as may be fixed by the Council.

No member of the Council shall, during the time for which the councilmember is elected or for two (2) years thereafter, be chosen as City Manager.

Sec. 5.02. - Powers and duties of the City Manager.

The City Manager shall be responsible to the Council for the proper administration of all the affairs of the City. The powers herein conferred upon the City Manager shall include, but shall not be limited by, the following:

(a) To appoint and remove any officer or employee of the City except those officers and employees whose appointment or

election is otherwise provided for by State law or this Charter;

(b) To perform such other duties as may be prescribed by this Charter or required by the Council, not inconsistent with the provisions of this Charter.

(Ord. No. 86-12, Amend. No. 19, 2-25-86)

Sec. 5.03. - Administrative divisions and departments.

There shall be such divisions and departments as are established by this Charter and as may be established by ordinance, all of which shall be under the control and direction of the City Manager. The Council may abolish or combine one (1) or more divisions or departments created by it, and may assign or transfer duties of any divisions or departments of the City from one division or department to another by ordinance.

(Ord. No. 86-12, Amend. No. 7, 2-25-86)

Sec. 5.04. - Directors of divisions.

At the head of each division there shall be a director who shall be appointed, and who may be removed, by the City Manager. Such directors shall have supervision and control over their respective divisions, and may head any departments within a division. Two (2) or more departments may be headed by the same individual, and the City Manager may temporarily head one (1) or more divisions.

(Ord. No. 86-12, Amend. No. 7, 2-25-86)

Sec. 5.05. - Divisional and departmental organization.

The work of each division shall be distributed among such departments as may be established by ordinance. Pending passage of ordinances establishing departments or divisions, the City Manager may establish temporary departments.

(Ord. No. 86-12, Amend. No. 7, 2-25-86)

Sec. 5.06. - City Attorney.

The City Council shall appoint a competent attorney who shall have practiced law in the State of Texas for at least two (2) years immediately preceding the appointment. The City Attorney shall be the legal advisor of, and attorney for, all of the offices and departments of the City, and shall represent the City in all litigation and legal proceedings. The City Attorney shall draft, approve, or file written objections to every ordinance adopted by the Council, and shall pass upon all documents, contracts and legal instruments in which the City may have an interest.

There shall be such assistant City Attorneys as may be authorized by the Council and appointed by the City Attorney with the approval of the City Council, and such assistant City Attorneys shall be authorized to act for and on behalf of the City Attorney. The City Attorney(s) and any assistant City Attorney(s) serve solely at the will of the Council.

(Res. No. 050603-B, 5-3-03)

Sec. 5.07. - Municipal Court.

There shall be a court known as the Municipal Court of the City of Georgetown, which court shall be deemed always open for the trial of causes, with such jurisdiction, powers, and duties as are given and prescribed by the laws of the State of Texas.

(Ord. No. 86-12, Amend. No. 20, 2-25-86)

Sec. 5.08. - Judge of the Municipal Court.

The Municipal Court shall be presided over by a magistrate who shall be known as the Judge of the Municipal Court. The Judge shall be appointed by the Council for a term of two (2) years, from June first in even years until May thirty-first two (2) years later, or for the portion of such term unexpired at the time of his appointment. Except as hereinafter provided, the Judge of the Municipal Court shall be a competent attorney who at the time of the appointment has practiced law for at least two (2) years and who is a resident of the City of Georgetown; if a suitable resident of Georgetown cannot be found, the Council shall have the power to appoint a practicing attorney in the City of Georgetown who resides in the extraterritorial jurisdiction of said City. In the event an attorney with the above qualifications is not available, a citizen of this City considered qualified shall be appointed by the Council as the Judge of the Municipal Court. The Judge of the Municipal Court may be removed in accordance with State law.

In the event the Judge of the Municipal Court is temporarily unable to act for any reason, the Council shall appoint a qualified person to act in the Judge's place. The Judge, or anyone acting in the Judge's place, shall receive such compensation as may be set by the Council.

(Res. No. 050603-B, 5-3-03; Ord. No. 86-12, Amend. No. 20, 2-25-86)

Sec. 5.09. - Clerk of the Court.

The Municipal Judge shall appoint, with the approval of the City Manager, a City employee to serve as Clerk of the Municipal Court. The Clerk of the Municipal Court shall have the power to administer oaths, make certificates, affix the seal of said Court thereto and generally do and perform any and all acts usual and necessary by Clerks of Courts in issuing processes of said Court and conducting the business thereof.

(Ord. No. 86-12, Amend. No. 20, 2-25-86)

Sec. 5.10. - Official bonds for City employees.

The City Manager and the City Secretary and such other officers and employees as the City Council may require, shall, before entering upon the duties of their offices, enter into a good and sufficient fidelity bond in a sum to be determined by the City Council, payable to the City of Georgetown and conditioned upon the faithful discharge of the duties of such persons and upon the faithful accounting for all monies, credits, and things of value coming into the hands of such persons, and such bonds shall be signed as surety by some company authorized to do business under the laws of the State of Texas, and the premium on such bonds shall be paid by the City of Georgetown, and such bonds must be acceptable to the City Council.

ARTICLE VI. - FINANCE

Sec. 6.01. - Fiscal year.

The fiscal year of the City shall begin on the first day of each October and end on the last day of September of the succeeding year. All fiscal transactions of the City shall be accounted for in accordance with generally accepted governmental accounting principles.

(Ord. No. 880170, Amend. No. 6, 5-10-88)

Sec. 6.02. - Budget preparation and adoption.

Budget Workshop(s) shall be held within the City limits of Georgetown in meeting(s) open to the public prior to the adoption of the Budget. At least thirty (30) days prior to the end of each fiscal year the City Manager shall submit to the Council a proposed budget presenting a complete financial plan for the ensuing fiscal year. The budget shall be finally adopted not later than the twenty-seventh day of the last month of the fiscal year. Should the Council take no final action on or prior to such day the budget, as submitted, shall

be deemed to have been finally adopted by the Council. No budget shall be adopted or appropriations made unless the total of estimated revenues, income and funds available shall be equal to or in excess of such budget or appropriations, except as otherwise provided in this Article.

(Res. No. 050603-B, 5-3-03)

Sec. 6.03. - Appropriations.

From the effective date of the budget, the several amounts stated therein as proposed expenditures shall be and become appropriated to the several objects and purposes named therein. Except as provided in this Article no funds of the City shall be expended nor shall any obligation for the expenditure of money be incurred, except pursuant to the annual budget as adopted and as provided by this Article. At the close of each fiscal year, any unencumbered balance of an appropriation shall revert to the fund from which appropriated and become available for reappropriation for the next fiscal year. The Council may transfer any unencumbered appropriation balance or portion thereof from one division, office, department, or agency to another at any time. The City Manager shall have authority, without Council approval, to transfer appropriation balances from one expenditure account to another within a single division, office, department, or agency of the City.

(Ord. No. 86-12, Amend. No. 7, 2-25-86)

Sec. 6.04. - Budget amendments and emergency appropriations.

The Council may authorize a vote by a majority plus one on an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforseen condition that could not have been included in the original budget through the use of reasonable diligent thought and attention. Such amendments shall be made by the Council after giving legal notice as specified in Texas State law. If the Council amends the original budget to meet an emergency, the Council shall file a copy of its order or resolution amending the budget with the City Secretary and the Secretary shall attach the copy to the original budget. After the adoption of the budget or a budget amendment, the budget officer shall provide for the filing of a true copy of the approved budget or amendment in the office of the County Clerk of Williamson County.

Should the unappropriated and unencumbered revenues, income and available funds of the City for such fiscal year not be sufficient to meet the expenditures under the appropriations authorized by this section, thereby creating a deficit, it shall be the duty of the Council to include the amount of such deficit in its budget for the following fiscal year, and said deficit shall be paid off and discharged during the said following fiscal year.

(Ord. No. 880170, Amend. No. 7, 5-10-88; Ord. No. 86-12, Amend. No. 21, 2-25-86)

Sec. 6.05. - Borrowing to meet emergency appropriations.

In the absence of unappropriated available revenues or other funds to meet emergency appropriations under the provisions of the next preceding section [6.04], the Council may by resolution, authorize the borrowing of money to meet such deficit by the issuance of notes, each of which shall be designated "Emergency Note" and may be renewed from time to time, but all such notes of any fiscal year and any renewals thereof shall mature and be payable not later than the last day of the current fiscal year in which the emergency appropriation was made, as provided in the last preceding section [6.04].

Sec. 6.06. - Borrowing in anticipation of property taxes.

In any fiscal year, in anticipation of the collection of the ad valorem property tax for such year, whether levied or to be levied in such year, the Council may by resolution authorize the borrowing of money, not to exceed in any fiscal year an amount equal to ten (10) percent of the budget for that fiscal year. Such borrowing shall be by the issuance of negotiable notes of the City, each of which shall be designated, "Tax Anticipation Note for the Year 19" (stating the tax year). Such notes shall mature and be payable not later than the end of the fiscal year in which issued.

Sec. 6.07. - Depository.

All moneys received by any person, department or agency of the City for or in connection with affairs of the City shall be deposited promptly in the City depository or depositories, which shall be designated by the Council in accordance with such regulations and subject to such requirements as to security for deposits and interest thereon as may be established by ordinance. All checks, vouchers, or warrants for the withdrawal of money from the City depositories shall be signed by the Mayor and countersigned by the City Manager. Provided, that the Council, under such regulations and limitations as it may prescribe, may by ordinance authorize the use of machine-imprinted facsimile signatures of said Mayor and City Manager on such checks, vouchers and warrants.

Sec. 6.08. - General obligation bonds.

The City shall have the power to borrow money on the credit of the City and to issue general obligation bonds for permanent public improvements or for any other public purpose not prohibited by the Constitution and laws of the State of Texas, and to issue refunding bonds to refund outstanding bonds of the City previously issued. All such bonds shall be issued in conformity with the laws of the State of Texas.

Sec. 6.09. - Revenue bonds and Obligations.

The City shall have power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the Constitution and laws of the State of Texas, and to issue revenue bonds and obligations in accordance with State law. Such bonds and obligations shall be a charge upon and payable solely from the properties, or interest therein, pledged, or the income therefrom, or both, and shall never be a debt of the City. All such debts shall be issued in conformity with the laws of the State of Texas.

(Res. No. 050603-B, 5-3-03)

Editor's note— An amendment of May 3, 2003, amended § 6.09 in its entirety to read as herein set out. Formerly, § 6.09 pertained to revenue bonds and derived from original codification.

Sec. 6.10. - Sale of bonds and Obligations.

All bonds and obligations of the City having been issued and sold in accordance with the terms of this section, and having been delivered to the purchasers thereof, shall thereafter be incontestable, and all bonds issued to refund and in exchange for outstanding bonds previously issued shall, after said exchange, be incontestable.

(Res. No. 050603-B, 5-3-03)

Sec. 6.11. - Purchase procedure.

The Council may, by ordinance, confer upon the City Manager general authority to contract for expenditures without further approval of the Council for all budgeted items that do not exceed the amount which requires compliance with the State competitive bidding/purchasing laws. All contracts for expenditures involving more than the amounts which require compliance with the State competitive bidding/purchasing laws must be expressly approved in advance by the Council.

The Council shall develop and adopt purchasing policies to encourage and utilize local business and service providers insofar as such policies are consistent with state law and prudent expenditures of public funds.

(Res. No. 050603-B, 5-3-03; Amended by voters in the May 1994 General Election: Ord. No. 86-12, Amend. No. 22, 2-25-86)

Sec. 6.12. - Independent audit.

At the close of each fiscal year, and at such other times as it may be deemed necessary, the Council shall cause an independent audit to be made of all accounts of the City by a certified public accountant. The certified public accountant(s) shall be selected by and shall report directly to the Council. Further, the certified public accountant(s) so selected shall have no personal or business interest, directly or indirectly, in the financial affairs of the City or any of its officers or officials, nor shall the selected accountant(s) have any business interest with the City, other than the provision of independent auditing services related to the accounts of the City. Upon completion of the audit, and upon presentation to and acceptance by the Council of the final audit report, the results shall be published as soon as possible in a newspaper of general circulation within the City of Georgetown and copies placed on file in the City Secretary's office as public record.

(Res. No. 050603-B, 5-3-03; Ord. No. 86-12, Amend. No. 23, 2-25-86)

ARTICLE VII. - TAXATION

Footnotes:
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***Editor's note—** Amendment No. 24 of Ord. No. 86-12, adopted Feb. 25, 1986, amended Art. VII to read as set out in §§ 7.01—7.05. The article formerly consisted of §§ 7.01—7.08.*

Sec. 7.01. - Taxation.

The Council shall establish a taxation process to assess and collect City taxes. The City Manager shall recommend and the Council shall appoint a person or entity to act as the City's Tax Assessor-Collector. The City's appointed Tax Assessor-Collector shall give a surety bond for the faithful performance of all responsibilities and duties of the office, as prescribed by the City Council and State law.

(Res. No. 050603-B, 5-3-03)

Editor's note— An amendment of May 3, 2003, amended § 7.01 in its entirety to read as herein set out. Formerly, § 7.01 pertained to the taxation department and derived from Ord. No. 86-12, Amend. No. 24, adopted February 25, 1986.

Sec. 7.02. - Taxation powers.

The City Council may levy, assess, and collect taxes of any type or character not prohibited by the laws of the State of Texas.

(Ord. No. 86-12, Amend. No. 24, 2-25-86)

Sec. 7.03. - Tax appraisal, assessment and collection.

Appraisal, assessment and collection of taxes shall be according to the requirements of the Texas Property Tax Code or other law.

(Ord. No. 86-12, Amend. No. 24, 2-25-86)

Sec. 7.04. - Tax payments due.

All City taxes are due and payable on or before the first day of February at the office of the Tax Assessor-Collector. Taxes may be paid at any time after the tax rolls for the year have been completed and approved. Taxes paid after February 1 are delinquent and subject to penalties and interest. The City Council may, by city ordinance, provide for payment of taxes by installments. The Tax Assessor-Collector's failure to levy or assess taxes does not relieve any owner from tax liability on taxable property.

(Ord. No. 86-12, Amend. No. 24, 2-25-86)

Sec. 7.05. - Tax liens.

All taxes levied by the City are a lien, charge, and encumbrance on the taxpayer's property as of the first day of January in the year the tax is due. The City may enforce and foreclose, in any court of proper jurisdiction, a lien on the property, regardless of the legal residency of the property owner.

(Ord. No. 86-12, Amend. No. 24, 2-25-86)

ARTICLE VIII. - FRANCHISE AND PUBLIC UTILITY

Sec. 8.01. - Powers of the City.

In addition to the City's power to buy, construct, lease, maintain, operate and regulate public utilities and to manufacture, distribute and sell the output of such utility operations, the City shall have further powers as may now or hereafter be granted under the Constitution and laws of the State of Texas.

Prior to the consideration of a sale of the City's community-owned electric utility, the City Council shall hold a public hearing during which the City's financial advisor shall present a report to the City Council concerning the revenue that has been earned by the City's community-owned electric utility throughout the City's ownership thereof, and an analysis of the revenue to be lost by the City through the proposed sale of the electric utility.

There shall be two Council votes twelve months apart to call a referendum election concerning the sale of the electric utility. The City shall then hold a referendum election which must be favorably passed by a majority of the voters voting at the election.

(Amended by voters in the May 1994 General Elections)

Sec. 8.02. - Inalienability of control of public property.

The right to control and use of public streets, highways, sidewalks, alleys, parks, public squares, and public places of the City is hereby declared to be inalienable by the City, except by ordinances not in conflict with the provisions of this Charter. No act or omission by the Council or any officer or agent of the City shall be construed to grant, renew, extend, or amend, expressly or by estoppel or implication, any right, franchise or easement affecting said public streets, highways, sidewalks, alleys, parks, public squares, public places and other real property, except as provided in this Charter.

Sec. 8.03. - Franchise; power of the City Council.

The City Council shall have the power by ordinance to grant, amend, renew and extend, all franchises of all public utilities of every character operating within the City of Georgetown. All ordinances granting, amending, renewing, or extending franchises for public utilities shall be read at two (2) separate regular meetings of the City Council, and shall not be finally passed until thirty (30) days after the first reading; and no such ordinance shall take effect until thirty (30) days after its final passage; and pending such time, the full text of such ordinances shall be published once each week for four (4) consecutive weeks in a newspaper of general circulation published in the City of Georgetown, and the expense of such publication shall be borne by the proponent of the franchise. No public utility franchise shall be granted for a term of more than twenty (20) years; no public utility franchise shall be transferable except with the approval of the City Council expressed by ordinance.

(Ord. No. 86-12, Amend. No. 25, 2-25-86)

Sec. 8.04. - Regulation of franchise.

Every grant, renewal, extension, or amendment of a public utility franchise, whether so provided in the ordinance or not, shall be subject to the right of the council:

(1) To forfeit any such franchise by ordinance at any time for failure of the holder thereof to comply with the terms of the

franchise. Such power shall be exercised only after written notice to the franchise holder stating wherein the franchise holder has failed to comply with the terms of the franchise and setting a reasonable time for the correction of such failure, and shall be exercised only after hearing and after such reasonable time has expired.

(2) To impose reasonable regulations to ensure safe, efficient and continuous service to the public.

(3) To require such expansion, extension, enlargement and improvements of plants and facilities as are necessary to provide adequate service to the public.

(4) To require every franchise holder to furnish to the City, without cost to the City, full information regarding the location, character, size, length, and terminals of all facilities of such franchise holder, in, over and under the streets, alleys, and other public property of the City, and to regulate and control the location, relocation, and removal of such facilities.

(5) To collect from every public utility operating in the City such proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping, and sprinkling the streets, alleys, bridges, culverts, viaducts, and other public places of the City as represents the increased cost of such operations resulting from the occupancy of such public places by such public utilities, and such proportion of the costs of such operations as results from the damage to or disturbance of such public places caused by such public utility; or to compel such public utility to perform at its own expense, such operations as above listed which are made necessary by the occupancy of such public places by such utility or by damage to or disturbance of such public places caused by such public utility.

(6) To require every franchise holder to allow other public utilities to use its poles and other facilities, including bridges and viaducts, whenever in the judgment of the Council such use shall be in the public interest, provided that in such event a reasonable rental shall be paid such owner of facilities for such use. Provided, further, that inability of such public utilities to agree upon rentals for such facilities shall not be an excuse for failure to comply with such requirements by the Council.

(7) (a) To require the keeping of accounts in such form as will accurately reflect the value of the property of each franchise holder which is used and useful in rendering its service to the public and the expenses, receipts and profits of all kinds of such franchise holder.

(b) To examine and audit at any time during business hours the accounts and other records of any franchise holder.

(c) To require reports on the operations of the utility, which shall be in such form and contain such information as the Council shall prescribe.

Sec. 8.05. - Regulation of rates.

The Council shall have full power after notice and hearing to regulate by ordinance the rates, charges and fares of every public utility franchise holder operating in the City, provided that no such ordinance shall be passed as an emergency measure. Every franchise holder who shall request an increase in rates, charges, or fares, shall have, at the hearing of the Council called to consider such request, the burden of establishing by clear, competent and convincing evidence, the value of its investments properly allocable to serve in the City, and the amount and character of its expenses and revenues connected with the rendering of such service. If, upon such hearing, the Council is not satisfied with the sufficiency of the evidence so furnished, it shall be entitled to call upon such public utility for the furnishing of additional evidence at a subsequent date, to which said hearing may be adjourned. If at the conclusion of said adjourned hearing, the Council is still not satisfied with the sufficiency of the evidence furnished by said utility, the Council shall have the right to select and employ, then and later, rate consultants, auditors and attorneys to conduct investigations, present evidence, advise the Council, and conduct litigation on such requested increase in rates, charges or fares; and said utility shall reimburse the City for its reasonable and necessary expense so incurred to the extent required by State law. Such rate consultants, auditors and attorneys shall be qualified, competent, and of good standing in their professions. No public utility franchise holder shall institute any legal action to contest any rate, charge or fare fixed by the Council until such franchise holder has filed a motion for rehearing with the Council specifically setting out each ground of its complaint against the rate, charge, or fare fixed by the Council,

and until the Council shall have acted upon such motion. Such motion shall be deemed overruled unless acted upon by the Council within a reasonable time, not to exceed ninety (90) days from the filing of such motion for rehearing; provided, that the Council may by resolution extend such time limit for acting on said motion for rehearing from ninety (90) days to one hundred eighty (180) days.

(Res. No. 050603-B, 5-3-03)

Sec. 8.06. - Grant not to be exclusive.

No grant or franchise to construct, maintain or operate a public utility and no renewal or extension of such grant shall be exclusive.

ARTICLE IX. - GENERAL PROVISIONS

Sec. 9.01. - Nepotism.

A person who is related within the second degree by affinity or within the third degree by consanguinity to the Mayor or any member of the City Council or City Manager may not be employed or appointed to any office, position, or clerkship of the City. This prohibition does not apply to any person employed by the City at least one (1) year prior to and at the time of the election of the Mayor or Council members, or appointment of the City Manager. This provision does not apply to any unpaid members of City boards, committees, or commissions.

(Res. No. 050603-B, 5-3-03; Ord. No. 86-12, Amend. No. 26, 2-25-86)

Sec. 9.02. - Publicity of records.

All records and accounts of every office, division, department, or agency of the City shall be open to the public as provided by applicable State and Federal law.

(Res. No. 050603-B, 5-3-03; Ord. No. 86-12, Amend. No. 27, 2-25-86)

Sec. 9.03. - Improper acts.

Any person employed by the City or appointed to a City office may contribute to and participate in City elections to the extent allowed by State and Federal law.

(Ord. No. 86-12, Amend. No. 28, 2-25-86)

Sec. 9.04. - Political activity.

A person seeking appointment or promotion in the City administrative services may not, directly or indirectly, give or pay any money, service, or benefit to any person to assist the promotion or appointment.

(Ord. No. 86-12, Amend. No. 29, 2-25-86)

Sec. 9.05. - Officer, employees, and penalties.

Any person who is found to have violated Section 9.03 or Section 9.04 of this Charter and after having received due process of law as provided by ordinance, is ineligible for appointment or election to a position in City government for a period of four (4) years after the violation; and if the person is an office holder or employee of the City at the time of the violations, the person forfeits the office or position held at the time of the violation.

(Ord. No. 86-12, Amend. No. 30, 2-25-86)

Sec. 9.06. - Oath of office.

All officials and officers of the City shall, before entering upon the duties of their respective offices, take and subscribe the official oath prescribed by State law. The oath of office shall be administered by the Mayor, Mayor Pro Tem, City Secretary or any other person authorized by law to administer oaths.

(Res. No. 050603-B, 5-3-03)

Sec. 9.07. - Notice of claims.

Before the City of Georgetown shall be liable for damages for the death or personal injuries of any person or for damage to or destruction of property of any kind, which does not constitute a taking or damaging of property under Article I, Section 17, Constitution of Texas, the person injured, if living; or, if dead, the person's representative; or the owner of the property damaged or destroyed shall give the City Council or City Manager notice in writing of such death, injury, damage or destruction, duly verified by affidavit, within six (6) months after same has been sustained, stating specifically in such written notice when, where and how the death or injury was sustained; the amount of damage sustained to property, and the actual residence of the claimant by street and number at the date the claim is presented; the actual residence of such claimant for six (6) months immediately preceding the occurrence of such death, injury, damage or destruction, and the names and addresses of all witnesses upon whom it is relied to establish the claim for damages; and the failure to so notify the Council or City Manager within the time and manner specified herein shall exonerate, excuse and exempt the City from any liability whatsoever. No act of any officer or employee of the City shall waive compliance, or estop the City from requiring compliance, with the provisions of this section as to notice, but such provisions may be waived by resolution of the Council, made and passed before the expiration of the six-month period herein provided, and evidenced by minutes of the Council.

(Ord. No. 86-12, Amend. No. 31, 2-25-86)

Sec. 9.08. - Assignment, execution, and garnishment.

The property, real and personal, belonging to the City shall not be liable for sale or appropriation under any writ of execution. The funds belonging to the City, in the hands of any person, firm or corporation, shall not be liable to garnishment, attachment or sequestration; nor shall the City be liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the City nor any of its officers or agents shall be required to answer any such writ of garnishment on any account whatever. The City shall not be obligated to recognize any assignment of wages or funds by its employees, agents or contractors, except as required by law.

(Ord. No. 86-12, Amend. No. 32, 2-25-86)

Sec. 9.09. - Effect of Charter on existing law.

All ordinances, resolutions, rules and regulations now in force under the City government and not in conflict with the provisions of any amendment to this Charter shall remain in force under such amendment until altered, amended or repealed by the Council after such amendment to this Charter takes effect. All rights of the City under existing franchises and contracts and all existing authority for the issuance of bonds, not in conflict with the provisions of any amendment to this Charter, shall be preserved in full force and effect.

Sec. 9.10. - Construction of Charter.

This Charter shall not be construed as a mere grant of enumerated powers, but shall be construed as a general grant of power and as a limitation of power on the government of the City of Georgetown in the same manner as the Constitution of Texas is construed as a limitation on the powers of the Legislature. Except where expressly prohibited by this Charter, each and every power under Article XI, Section 5 of the Constitution of Texas, which it would be competent for the people of the City of Georgetown to expressly grant to the City, shall be construed to be granted to the City by this Charter.

Sec. 9.11. - Applicability of general laws.

The Constitution of the State of Texas, the statutes of said State applicable to home ruled municipal corporations, as now or hereafter enacted, this Charter and ordinances enacted pursuant hereto shall, in the order mentioned, be applicable to the City of Georgetown, but the City shall also have the power to exercise any and all powers conferred by the laws of the State of Texas upon any other kind of city, town or village, not contrary to the provisions of said home rule statutes, charter and ordinances, but the exercise of any such powers by the City of Georgetown shall be optional with it, and it shall not be required to conform to the law governing any other cities, towns or villages unless and until by ordinance it adopts same.

Sec. 9.12. - Judicial notice.

This Charter shall be deemed a public act, may be read in evidence without pleading or proof, and judicial notice shall be taken thereof in all courts and places.

Sec. 9.13. - Severability clause.

If any section or part of a section of this Charter is held to be invalid or unconstitutional by a court of competent jurisdiction, the same shall not invalidate or impair the validity, force or effect of any other section or part of a section of this Charter.

Sec. 9.14. - Amending the Charter.

Amendments to this Charter may be framed and submitted to the voters of the City in the manner provided by law.

(Ord. No. 86-12, Amend. No. 33, 2-25-86)

Sec. 9.15. - Rearrangement and renumbering.

The Council shall have the power, by ordinance, to renumber and rearrange all articles, sections and paragraphs of this Charter or any amendments thereto, as it shall deem appropriate, and upon the passage of such ordinance, a copy thereof certified by the City Secretary shall be forwarded to the Secretary of State for filing.

(Ord. No. 86-12, Amend. No. 34, 2-25-86)

> *Footnotes:*
> *--- (**3**) ---*
> ***Editor's note—** Amendment No. 34 repealed former § 9.15, "Interim Municipal Government;" renumbered § 9.16 as § 9.15; repealed former § 9.17, "Submission of Charter to Voters;" and specified that former §§ 9.15, 9.17 be retained for historical significance as an addendum to the Charter.*

Sec. 9.16. - Ethics review.

The Council shall adopt an ethics ordinance and provide for an annual review thereof; there shall also be a minimum of one (1) work session per year devoted to the study of ethics statutes.

(Ord. No. 86-12, Amend. No. 35, 2-25-86)

> *Footnotes:*
> *--- (**4**) ---*
> ***Editor's note—** For the former provisions of § 9.16, see the editor's note to § 9.15.*

ADDENDUM

> *Footnotes:*
> *--- (**5**) ---*

Editor's note— *See the editor's note to § 9.15.*

Sec. 9.15. - Interim municipal government.

From and after the date of the adoption of this Charter, the persons then filling elective offices which are retained under this Charter will continue to fill those offices for the terms for which they were elected. At the first regular City election after the adoption of this Charter, three (3) councilmembers shall be elected and shall serve terms of two (2) years. Thereafter the City Council shall be elected as provided in Section 3.01 of this Charter. Persons, who on the date this Charter is adopted are filling appointive positions with the City of Georgetown which are retained under this Charter may continue to fill these positions for the terms for which they were appointed.

Sec. 9.17. - Submission of Charter to voters.

The Charter Commission in preparing this Charter finds and decides that it is impracticable to segregate each subject so as to permit a vote of yes or no on the same, for the reason that the Charter is so constructed that in order to enable it to work and function it is necessary that it should be adopted in its entirety. For these reasons, the Charter Commission directs that the said Charter be voted upon as a whole and that it shall be submitted to the qualified voters of the City of Georgetown at an election to be held for that purpose on Saturday, April 4, 1970. Not less than thirty (30) days prior to such election, the City Council shall cause the City Secretary to mail a copy of this Charter to each qualified voter of the City of Georgetown as appears from the latest tax collector's roll. If a majority of the qualified voters voting in such election shall vote in favor of the adoption of this Charter, it shall become the Charter of the City of Georgetown, and after the returns have been canvassed, the same shall be declared adopted and the City Secretary shall file an official copy of the Charter with the records of the City. The secretary shall furnish the Mayor a copy of said Charter, which copy of the Charter so adopted, authenticated and certified by his signature and the seal of the City, shall be forwarded by the Mayor to the Secretary of State of the State of Texas and shall show the approval of such Charter by majority vote of the qualified voters, voting at such election.

Sec. 9.18. - Disaster clause.

In case of disaster when a legal quorum of members of the Council cannot otherwise be assembled due to multiple deaths or injuries, the surviving member(s) of the Council, or the highest surviving City Officer, if no elected official remains, shall within twenty-four (24) hours of the disaster, request the Commissioners Court of Williamson County, to appoint a commission to act during the emergency and within fifteen (15) days of the disaster call a City election for election of member(s) to the Council, if it is known that it is impossible for a quorum of the present Council to meet again.

(Res. No. 050603-B, 5-3-03)

Sec. 9.19. - Nonsubstantive Charter Amendments.

The City Council may, by ordinance, make nonsubstantive amendments to the Charter only for the purpose of correcting grammatical errors, enhancing readability, updating legal citations, and clarifying existing provisions to aid in public understanding.

(Res. No. 050603-B, 5-3-03)

CHARTER COMPARATIVE TABLE - ORDINANCES/RESOLUTIONS

This table shows the location in the sections of the basic Charter of any amendments adopted by ordinances or resolutions thereto.

Resolution/ Ordinance Number	Adopted Date	Election Date	Resolution or Ordinance Section Amendment Number	Section this Charter
86-12(Ord.)		2-25-86	2	1.06
				1.06A.
			3	1.08
			4	1.09
			5	2.02
			6	2.04
			7	2.05
				5.03
				5.04
				6.03
			8	2.06
			10	2.09
			11	2.10
			12	2.11
			13	2.14
			14	2.15
			15	3.01
			16	3.03
			17	3.04
			18	4.02
			19	5.02
			20	5.07
				5.08
				5.09
			21	6.04
			22	6.11
			23	6.12
			24	7.01
				7.02
				7.03
				7.04
				7.05
			25	8.03
			26	9.01
			27	9.02
			28	9.03
			29	9.04
			30	9.05
			31	9.07
			32	9.08
			33	9.14
			34	9.15
			35	9.16
880170(Ord.)	5-10-88		1	1.08
			2	1.09

			4	2.14
			5	3.04
			5(part)	2.09
				2.10
				4.06
			6	6.01
			7	6.04
		5-94		1.08
				2.01
				2.02
				2.10
				3.01
				4.05
				6.11
				8.01
050603-B(Res.)		5- 3-03		1.08(2)n.
				2.16
				4.07, 4.08
				5.06
				6.09—6.11
				9.01
				2.09
				2.13
			Added	9.18, 9.19
				1.06(1)(a—c), (3)(a, b)
				2.03
				1.04, 1.05
				3.01
				3.03
				4.03, 4.04
				4.09
				4.12
				5.08
				6.02
				6.12
				7.01
				8.05
				9.02
				9.06

City of Georgetown, Texas
Charter Review Committee
March 2, 2021

SUBJECT:
Review direction from City Council - Skye Masson, City Attorney

ITEM SUMMARY:

FINANCIAL IMPACT:
NA

SUBMITTED BY:

ATTACHMENTS:

	Description	Type
🗋	Proposed Charter Amendments	Exhibit

PROPOSED CHARTER AMENDMENTS

Section	Heading	Summary of Proposed Change	Source
2.01	Number, Selection, and Term of Office	Consider three term limit fo Mayor and Council members.	Council
2.02	Qualifications	Review qualification requirements to match state law.	Council
2.03	Vacancies	Consider change to allow City Council to fill vacancies with less than 12 months left in term.	Council
2.09	Rules of Procedure	Clarification on votes to pass legislation	City Attorney
2.10	Procedure to Enact Legislation	Consider change to requirements for ordinance approval including requirements for second reading and/or reading of caption at second reading.	Council
8.03	Franchise; Power of City Council	Consider removing requirement to publish full text of franchise ordinances.	Staff

City of Georgetown, Texas
Charter Review Committee
March 2, 2021

SUBJECT:
Review City Charter Amendment Timeline - Skye Masson, City Attorney

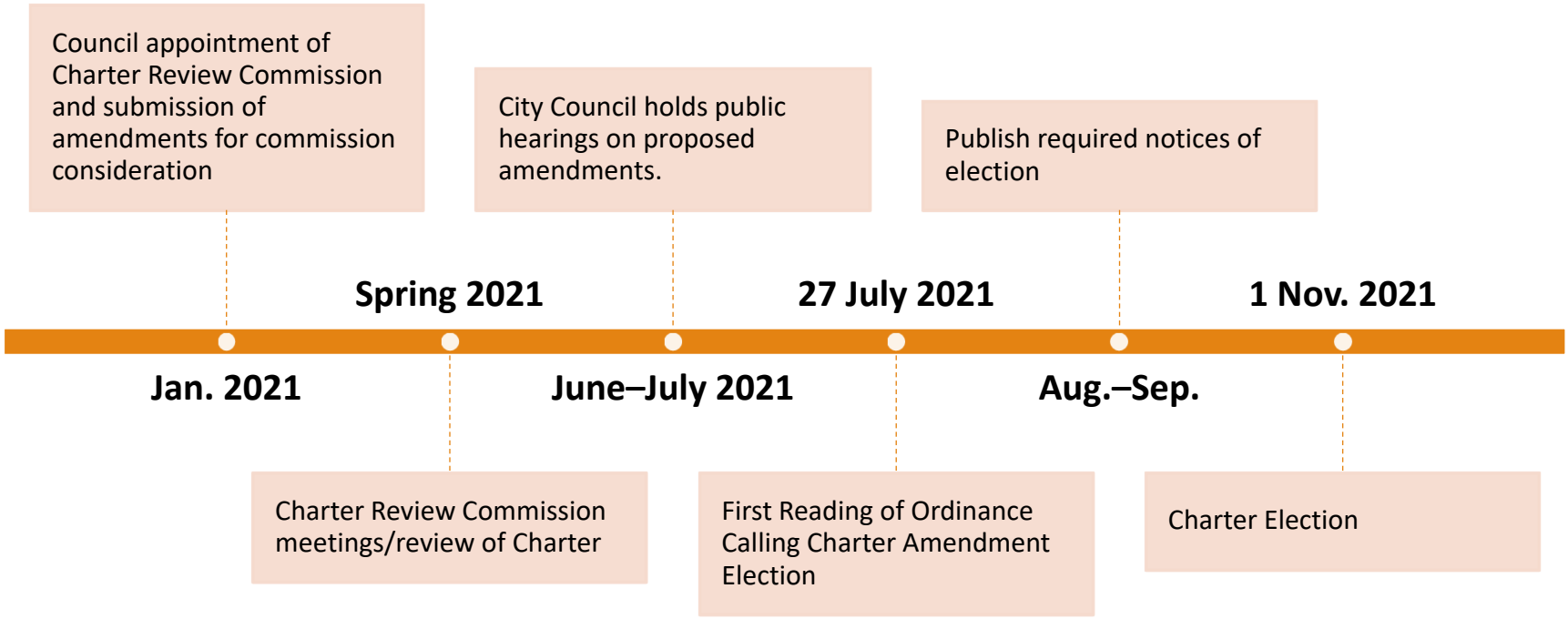
ITEM SUMMARY:

FINANCIAL IMPACT:
NA

SUBMITTED BY:

ATTACHMENTS:

	Description	Type
🗋	Timeline	Exhibit



Schedule for a November 2021 Election

CITY OF GEORGETOWN

City of Georgetown, Texas
Charter Review Committee
March 2, 2021

SUBJECT:
Review of Open Meetings Act - Skye Masson, City Attorney

ITEM SUMMARY:

FINANCIAL IMPACT:
NA

SUBMITTED BY:

ATTACHMENTS:

	Description	Type
🗋	Open Meetings Act Handbook	Backup Material
🗋	Open Meetings Act Manual	Backup Material

THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

OPEN MEETINGS ACT *Handbook* 2020

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

Dear Fellow Texans:

Founding Father James Madison once wrote that democracy without information was "but prologue to a farce or a tragedy," and he regarded the diffusion of knowledge as "the only guardian of true liberty." Texas law has long agreed the inherent right of Texans to govern themselves depends on their ability to observe how public officials are conducting the people's business. That is why the Texas Open Meetings Act was enacted, to ensure that Texas government is transparent, open, and accountable to all Texans.

At its core, the Texas Open Meetings Act simply requires government entities to keep public business, well, open to the public. This *Open Meetings Act Handbook* is intended to help public officials comply with the various provisions of the Texas Open Meetings Act and to familiarize the public with using the Open Meetings Act as a resource for obtaining information about their government. The handbook is available on the Internet and as a printable document at www.texasattorneygeneral.gov/openmeetings_hb.pdf.

As Attorney General, I am proud of my office's efforts to promote open government. We've established an Open Government Hotline for anyone seeking a better understanding of their rights and responsibilities under the law. The toll-free number is 877-OPEN TEX (877-673-6839).

Public access to the proceedings and decision-making processes of government is essential to a properly-functioning and free state. It is my sincere hope that this handbook will make it easier for public officials and citizens to understand and comply with the Texas Open Meetings Act.

Best regards,

Ken Paxton

Ken Paxton
Attorney General of Texas

Table of Contents

I. Introduction

A. Open Meetings Act

The Open Meetings Act (the "Act") was adopted to help make governmental decision-making accessible to the public. It requires meetings of governmental bodies to be open to the public, except for expressly authorized closed sessions,[1] and to be preceded by public notice of the time, place, and subject matter of the meeting. "The provisions of [the Act] are mandatory and are to be liberally construed in favor of open government."[2]

The Act was adopted in 1967[3] as article 6252-17 of the Revised Civil Statutes, substantially revised in 1973,[4] and codified without substantive change in 1993 as Government Code chapter 551.[5] It has been amended many times since its enactment.

Before addressing the Act itself, we will briefly mention certain other issues relevant to conducting public meetings.

B. A Governmental Body Must Hold a Meeting to Exercise its Powers

Predating the Act is the common-law rule that decisions entrusted to governmental bodies must be made by the body as a whole at a properly called meeting.[6] This requirement gives each member of the body an opportunity to state his or her views to other board members and to give them the benefit of his or her judgment, so that the decision "may be the composite judgment of the body as a whole."[7] This rule may be changed by the Legislature.[8]

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1 The term "executive session" is often used to mean "closed meeting," even though the Act uses the latter term. *See* TEX. GOV'T CODE § 551.101; *Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 957 (Tex. 1986) (stating that an executive session is a meeting or part of a meeting that is closed to the public).

2 *See City of Laredo v. Escamilla*, 219 S.W.3d 14, 19 (Tex. App.—San Antonio 2006, pet. denied); *Willmann v. City of San Antonio*, 123 S.W.3d 469, 473 (Tex. App.—San Antonio 2003, pet. denied); *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377, 380 (Tex. App.—San Antonio 1971, no writ).

3 Act of May 8, 1967, 60th Leg., R.S., ch. 271, § 1, 1967 Tex. Gen. Laws 597, 597–98.

4 Act of Mar. 28, 1973, 63d Leg., R.S., ch. 31, § 1, 1973 Tex. Gen. Laws 45, 45–48.

5 Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 583–89.

6 *See Webster v. Tex. & Pac. Motor Transp. Co.*, 166 S.W.2d 75, 76–77 (Tex. 1942); *Fielding v. Anderson*, 911 S.W.2d 858, 864 (Tex. App.—Eastland 1995, writ denied).

7 *Webster*, 166 S.W.2d at 76–77.

8 *See Faulder v. Tex. Bd. of Pardons & Paroles*, 990 S.W.2d 944, 946 (Tex. App.—Austin 1999, pet. ref'd) (concluding that board was authorized by statute to perform duties in clemency matters without meeting face-to-face as a body).

C. Quorum and Majority Vote

The authority vested in a governmental body may generally be exercised only at a meeting of a quorum of its members.[9] The Code Construction Act[10] states as follows:

> (a) A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members fixed by statute.[11]
>
> (b) A quorum of a public body is a majority of the number of members fixed by statute.[12]

The Act defines "quorum" as a majority of the governing body, unless otherwise defined by applicable law or the governing body's charter.[13] For example, three members of the five-member commissioners court constitute a quorum for conducting county business, except for levying a county tax, which requires the presence of at least four members of the court.[14] Ex officio, nonvoting members of a governmental body are counted for purposes of determining the presence of a quorum.[15] A person who has been elected to serve as a member of a governmental body but whose election has not been certified and who has not yet taken the oath of office is not yet a member of the governmental body.[16] Thus, a meeting between two newly elected persons who have not yet taken the oath of office and two serving directors is not subject to the Act because no quorum is present.[17] A board member may not delegate his or her authority to deliberate or vote to another person, absent express statutory authority to do so.[18]

Absent an express provision to the contrary, a proposition is carried in a deliberative body by a majority of the legal votes cast, a quorum being present.[19] Thus, if a body is "composed of twelve members, a quorum of seven could act, and a majority of that quorum, four, could bind the body."[20]

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9 *But see* TEX. GOV'T CODE § 418.1102(b) (providing that a quorum is not required of local governmental entities if the entity's "jurisdiction is wholly or partly located in the area of a disaster declared by the president . . . or governor; and . . . a majority of the members of the governing body are unable to be present at a meeting of the governing body as a result of the disaster").

10 *Id.* §§ 311.001–.034 (chapter 311).

11 A statute may expressly provide a different rule. *See* TEX. LOC. GOV'T CODE § 363.105 (providing that two-thirds majority vote required of a board of crime control and prevention district to reject application for funding).

12 TEX. GOV'T CODE § 311.013; *see id.* § 312.004 ("A joint authority given to any number of officers or other persons may be executed by a majority of them unless expressly provided otherwise."); *see also Tex. State Bd. of Dental Exam'rs v. Silagi*, 766 S.W.2d 280, 284 (Tex. App.—El Paso 1989, writ denied) (stating that absent a statutory provision, the common-law rule that a majority of all members of a board constitutes a quorum applies).

13 TEX. GOV'T CODE § 551.001(6).

14 TEX. LOC. GOV'T CODE § 81.006.

15 Tex. Att'y Gen. Op. No. JC-0580 (2002) at 2–3 (overruling Tex. Att'y Gen. Op. No. DM-160 (1992) in part).

16 Tex. Att'y Gen. Op. No. GA-0355 (2005) at 3.

17 *Id.* at 4.

18 Tex. Att'y Gen. Op. No. JM-903 (1988) at 4–5.

19 *Comm'rs Ct. of Limestone Cty. v. Garrett*, 236 S.W. 970, 973 (Tex. [Comm'n Op.] 1922); Tex. Att'y Gen. Op. Nos. GA-0554 (2007) at 2, GA-0412 (2006) at 3.

20 *Webster*, 166 S.W.2d at 77.

D. Other Procedures

1. In General

Governmental bodies should consult their governing statutes for procedures applicable to their meetings. Home-rule cities should also consult their charter provisions.[21]

Governmental bodies may draw on a treatise such as *Robert's Rules of Order* to assist them in conducting their meetings, as long as the provisions they adopt are consistent with the Texas Constitution, statutes, and common law.[22] A governmental body subject to the Act may not conduct its meetings according to procedures inconsistent with the Act.[23]

2. Preparing the Agenda

An agenda is "[a] list of things to be done, as items to be considered at a meeting."[24] The terms "agenda" and "notice" are often used interchangeably in discussing the Act because of the practice of posting the agenda as the notice of a meeting or as an appendix to the notice.[25]

Some governmental entities are subject to statutes that expressly address agenda preparation.[26] Other entities may adopt their own procedures for preparing the agenda of a meeting.[27] Officers and employees of the governmental body must avoid deliberations subject to the Act while preparing the agenda.[28]

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21 *See Shackelford v. City of Abilene*, 585 S.W.2d 665, 667 (Tex. 1979) (considering home-rule city charter that required all city meetings to be open to the public).

22 *See* Tex. Att'y Gen. Op. No. GA-0412 (2006) at 2; *see also generally* Tex. Att'y Gen. Op. No. GA-0554 (2007).

23 *See* Tex. Att'y Gen. Op. Nos. GA-0412 (2006) at 2; DM-228 (1993) at 3 (addressing governmental body's adoption of provisions of *Robert's Rules of Order* to govern conduct of meetings).

24 BLACK'S LAW DICTIONARY 72 (9th ed. 2009).

25 *See, e.g.*, *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 764 (Tex. 1991).

26 *See* TEX. TRANSP. CODE § 201.054 (providing that Chair of Transportation Commission shall oversee the preparation of an agenda for each meeting).

27 *See* Tex. Att'y Gen. Op. No. DM-473 (1998) at 3 (discussing home-rule city procedure for agenda preparation).

28 *Id.*

II. Recent Amendments

Though comprehensive discussions of these amendments are also included throughout the relevant parts of this Handbook, below is a brief discussion of the amendments to the Act adopted by the 86th Legislature:

A. Section 551.001(2). Definitions

Senate Bill 1640 amended the definition of deliberation from "a verbal exchange" to "a verbal or written exchange."[29]

B. Section 551.007. Public Testimony

Added by House Bill 2840, section 551.007 relates to the right of a member of the public to address certain governmental bodies.[30] It expressly applies to only those governmental bodies listed in subsection 551.001(3)(B)–(L), which excludes entities within the executive or legislative branch of state government directed by one or more elected or appointed members.[31] New section 551.007 requires a governmental body to "allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body's consideration of the item."[32] It also expressly authorizes a governmental body to "adopt reasonable rules regarding the public's right to address the body . . ., including rules that limit the total amount of time that a member of the public may address the body on a given item."[33] A rule limiting the amount of time a member of the public may address the governmental body must provide for twice the allotted time for a member of the public who addresses a governmental body through a translator if the governmental body does not use simultaneous translation equipment.[34] Lastly, section 551.007 states that a governmental body "may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service," except criticism otherwise prohibited by law.[35]

C. Section 551.045. Exception to General Rule: Notice of Emergency Meeting or Emergency Addition to Agenda

Senate Bill 494 amended section 551.045, which relates to open meetings in an emergency or urgent public necessity.[36] Senate Bill 494 changed the posting time for an emergency meeting or

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29 *See* Act of May 23, 2019, 86th Leg., R.S., ch. 645, § 1, 2019 Tex. Sess. Law Serv. 1891 (to be codified at TEX. GOV'T CODE § 551.001(2)).

30 Act of May 22, 2019, 86th Leg., R.S., ch. 861, § 1, 2019 Tex. Sess. Law Serv. 2327, 2328 (to be codified at TEX. GOV'T CODE § 551.007).

31 *See id.*

32 *Id.*

33 *Id.*

34 *See id.*

35 *Id.*

36 Act of May 17, 2019, 86th Leg., R.S., ch. 462, § 1, 2019 Tex. Sess. Law Serv. 865 (to be codified at TEX. GOV'T CODE § 551.045).

the addition of an emergency supplemental item from two hours to one hour.[37] It expressly limited a governmental body's deliberation or action in such a meeting to "a matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting" or an "agenda item listed on the notice of the meeting before the supplemental notice was posted."[38] As amended, section 551.045 clarifies the circumstances that constitute an emergency or urgent public necessity by providing that a "reasonably unforeseeable situation" includes a fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm; power failure, transportation failure, or interruption of communication facilities; epidemic; or riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.[39]

Senate Bill 494 also eliminated the separate requirement to give members of the news media one-hour notice of an emergency meeting if based on the sudden relocation of a large number of residents from a disaster area.[40]

D. Section 551.047. Special Notice to News Media of Emergency Meeting or Emergency Addition to Agenda

Senate Bill 494 amended section 551.047 to specify that notice of an emergency meeting is to be given to news media that previously requested special notice at least one hour before the meeting.[41]

E. Section 551.1283. Governing Body of Certain Water Districts: Internet Posting of Meeting Materials; Recording of Certain Hearings

Senate Bill 239 generally related to improved transparency of certain special purpose districts. With respect to the Open Meetings Act, Senate Bill 239 added section 551.1283. Section 551.1283 applies to special purpose districts that are subject to chapters 51, 53, 54, or 55 of the Water Code and have a population of 500 or more.[42] It authorizes a district resident, "not later than the third day before a public hearing to consider the adoption of an ad valorem tax rate," to request in writing that the district make an audio recording of the hearing and provide the recording to the resident.[43] The district must provide the recording to the resident in an electronic format not later than the fifth business day after the hearing and must maintain a copy of it for at least one year after the hearing.[44] Additionally, the district must "post the minutes of the meeting of the governing body to the district's Internet website if the district maintains" one.[45]

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37 *See id.* § 1.
38 *See id.*
39 *See id.*
40 *See id.*
41 *See id.* § 2.
42 *See* Act of May 10, 2019, 86th Leg., R.S., ch. 105, § 2, 2019 Tex. Sess. Law Serv. 176, 177 (to be codified at TEX. GOV'T CODE § 551.1283).
43 *See id.*
44 *See id.*
45 *See id.*

F. Section 551.142. Mandamus; Injunction

Senate Bill 494 amends section 551.142 in conjunction with the amended emergency notice provision in section 551.045(a-1) to expressly authorize the attorney general to seek mandamus or an injunction to "stop, prevent, or reverse a violation or threatened violation" of section 551.045(a-1).[46] Such a suit brought by the attorney general must be filed in a district court in Travis County.[47]

G. Section 551.143. Prohibited Series of Communications; Offense; Penalty

Senate Bill 1640 amends section 551.143 to remove the "conspire to circumvent the Act" language ruled unconstitutional by the Court of Criminal Appeals and to clarify the specific behavior and mental state required for an offense.[48] *See* Part III.A of this *Handbook*. Section 551.143 provides that it is a criminal offense for a member of a governmental body to engage in at least "one communication among a series of communications that each occur outside of a meeting . . . 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."[49] The offense requires that the member know at the time he or she 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."[50]

H. Section 436.054. Meetings of Texas Military Preparedness Commission

House Bill 2119 (and Senate Bill 2131) amended Government Code section 436.054 relating to the open meetings of the Texas Military Preparedness Commission.[51] Prior to the amendment, section 436.054 merely provided that the Texas Military Preparedness Commission was a governmental body subject to the Act.[52] Both bills retain that language but add language stating that "[e]xcept as otherwise provided by [the bill's provisions], Chapter 551 applies to a meeting of the commission."[53] The provisions "providing otherwise" relate to the Commission's authority to "allow for members' participation in a meeting by telephone or other means of telecommunication or electronic communication to consider an application for a loan from the

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46 *See* Act of May 17, 2019, 86th Leg., R.S., ch. 462, § 3, 2019 Tex. Sess. Law Serv. 865, 865–66 (to be codified at TEX. GOV'T CODE § 551.142).

47 *See id.*

48 *See* Act of May 10, 2019, 86th Leg., R.S., ch. 645, § 2–4, 2019 Tex. Sess. Law Serv. 1891, 1891–92 (to be codified at TEX. GOV'T CODE § 551.143).

49 *See id.*

50 *Id.*

51 *See* Act of May 22, 2019, 86th Leg., R.S., ch. 800, § 1, 2019 Tex. Sess. Law Serv. 2257 (to be codified at TEX. GOV'T CODE § 436.054); Act of May 14, 2019, 86th Leg., R.S., ch. 276, 2019 Tex. Sess. Law Serv. 468 (to be codified at TEX. GOV'T CODE § 436.054).

52 *See id.*

53 *Id.*

Texas military value revolving loan account."[54] Both bills specify quorum requirements but only House Bill 2119 mentions notice and public availability of a recording.[55]

[54] *Id.*

[55] *See* Act of May 22, 2019, 86th Leg., R.S., ch. 800, § 1, 2019 Tex. Sess. Law Serv. 2257 (to be codified at TEX. GOV'T CODE § 436.054); Act of May 14, 2019, 86th Leg., R.S., ch. 276, 2019 Tex. Sess. Law Serv. 468 (to be codified at TEX. GOV'T CODE § 436.054).

III. Noteworthy Decisions Since 2018 *Handbook*

A. Judicial Decisions

In *State v. Doyal*, the Beaumont Court of Appeals rejected a county commissioner's challenge to section 551.143 as facially unconstitutional because it violates the free speech provisions of the First Amendment and is vague and overbroad.[56] The Texas Court of Criminal Appeals reversed the Beaumont court's decision, issuing its opinion on February 27, 2019.

In *State of Texas v. Doyal*, the Court of Criminal Appeals overruled the Beaumont Court of Appeals and held section 551.143 unconstitutionally vague.[57] Stating that "more clarity is required of a criminal law" that implicates the First Amendment, the Court first determined that section 551.143 reaches speech and not just conduct.[58] In considering the substance of the vagueness challenge, the Court observed that "indeterminacy of precisely what" conduct is prohibited renders a statute vague and that section 551.143 was "hopelessly indeterminate by being too abstract" and "lacks language to clarify its scope."[59] The Court also questioned what it meant to "knowingly conspire to circumvent" the law.[60] Reiterating the breadth of section 551.143 and its lack of "any reasonable degree of clarity," the Court concluded that "protected speech is likely to be chilled because of the great degree of uncertainty about what communications government officials may engage in."[61] Lastly, the Court determined that section 551.143 was not susceptible of a narrowing construction, instead leaving such task to the Legislature.[62] In response, the Legislature adopted Senate Bill 1640, which amended section 551.143 to create an offense regarding a series of communications.[63]

In *City of Donna v. Ramirez*, the Corpus Christi Court of Appeals considered whether a meeting notice indicating a cancelled meeting violated the Act.[64] The City of Donna terminated its city manager, Ramirez, who challenged his termination based on an Open Meetings Act violation,

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56 *See State v. Doyal*, 541 S.W.3d 395 (Tex. App.—Beaumont 2018), *rev'd*, No. PD-0254-18, 2019 WL 944022 (Tex. Crim. App. Feb. 27, 2019); *see also State v. Riley*, No. 09-17-00124-CR, 2018 WL 757037 (Tex. App.—Beaumont, Feb. 7, 2018) (mem. op. not designated for publication), *rev'd*, No. PD-0255-18, 2019 WL 2519929 (Tex. Crim. App. June 19, 2019) (not designated for publication); *State v. Davenport*, No. 09-17-00125-CR, 2018 WL 753357 (Tex. App.—Beaumont, Feb. 7, 2018) (mem. op. not designated for publication), *rev'd*, No. PD-0265-18, 2019 WL 2518029 (Tex. Crim. App. June 19, 2019) (not designated for publication). A facial challenge requires a showing that the statute operates unconstitutionally under all possible circumstances. *See McGruder v. State*, 483 S.W.3d. 880, 883 (Tex. Crim. App. 2016).

57 *State v. Doyal*, No. PD-0254-18, 2019 WL 944022, at *10 (Tex. Crim. App. Feb. 27, 2019).

58 *Id.* at *3–4; *see also id.* at *17 (Slaughter, J., concurring) (stating that section 551.143 abridges the freedom of speech and that "[b]y criminalizing all policy discussions by a quorum of members of a governmental body outside the context of a formal meeting, the statute significantly infringes upon the rights of governmental officials to engage in the free exchange of ideas that are essential to effective governance").

59 *Id.* at *5–6 .

60 *Id.* at *7.

61 *Id.* at *9.

62 *See id.* at *10.

63 *See* Act of May 23, 2019, 86th Leg., R.S., ch. 645, §§ 2–4, 2019 Tex. Sess. Law Serv. 1891, 1891–92 (to be codified at TEX. GOV'T CODE § 551.143).

64 *See City of Donna v. Ramirez*, 548 S.W.3d 26 (Tex. App.—Corpus Christi 2017, pet. denied).

among other things.[65] After his termination, Ramirez filed a written request for a hearing before the city council regarding his termination.[66] In response, the City scheduled a special meeting to consider the termination with a notice item referencing the requested hearing.[67] Prior to the meeting, Ramirez's attorney requested that the City reschedule the special meeting.[68] The city secretary believed the special meeting to be rescheduled and wrote "Cancelled" on the meeting notice posted near the front door inside the city hall, but did not mark as cancelled another notice posted in a different location of city hall or on the notice posted on the City's webpage.[69] Though the city secretary had texted the city council members of the cancellation, the meeting proceeded as scheduled and the city council affirmed its termination decision.[70] Ramirez was present at the special meeting.[71] The parties agreed that the notice "properly identified the date, hour, place, and subject of the scheduled meeting."[72] The question for the court was whether the word "Cancelled" prominently written on one copy of the notice demonstrated a violation of the Act.[73] The court said it could not "overlook the effect of the word 'Cancelled' prominently depicted on the notice."[74] The court went on to say that

> [v]iewing the agenda notice in its entirety would lead a member of the general public to conclude that the Donna City Council would not be holding a meeting at the time indicated to discuss any matter, including matters relating to the employment of Ramirez. Simply put, an agenda notice that states a meeting is cancelled does not inform the general public that a meeting will be held. It does the opposite.[75]

The court rejected the City's argument that the defective notice posted inside the city hall was remedied by the notice posting in another location outside city hall and on the City's webpage because section 551.050 requires a municipal meeting notice to be posted in the city hall.[76]

The Corpus Christi Court of Appeals also considered a meeting notice in *Lugo v. Donna Independent School District Board of Trustees*.[77] The Donna Independent School District held a meeting at which it appointed individuals to two vacant seats on the board of trustees.[78] The meeting notice stated: "Discussion and Possible Action Regarding Calling a Special Election for May 7, 2016 to Fill the Unexpired Trustee Terms" for the specified members' terms.[79] At the meeting, the board of trustees considered a motion for the calling of a special election but amended

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65 *See id.* at 31–32.
66 *See id.* at 32.
67 *See id.*
68 *See id.* at 32–33.
69 *See id.* at 33.
70 *See id.*
71 *See id.* at 34.
72 *Id.* at 35.
73 *See id.*
74 *Id.* at 36.
75 *Id.*
76 *See id.*
77 *See Lugo v. Donna Indep. Sch. Dist. Bd. of Trs.*, 557 S.W.3d 93 (Tex. App.—Corpus Christ 2017, no pet.).
78 *See id.* at 95.
79 *Id.*

the motion to provide instead for the appointment of two individuals.[80] Lugo challenged the appointment claiming that the amendment of the motion violated the notice requirement of the Act in section 551.041.[81] He argued that "[t]he only action that the Board was authorized to take pursuant to the posted agenda was to call special elections to fill the two vacant Trustee positions."[82] The court agreed, concluding that the "agenda did not provide notice to the public that the Board would either discuss or actually appoint replacement trustees" at the meeting.[83]

Several recent cases have considered the viability of an action brought by plaintiffs seeking declarations under the Uniform Declaratory Judgment Act of an Open Meetings Act violation against a governmental body's assertion of governmental immunity.

In *City of New Braunfels v. Carowest Land, Ltd.*, the Austin Court of Appeals determined that section 551.142 of the Act, which authorizes any interested person to bring an action by mandamus or injunction, limited the Act's waiver of governmental immunity to only injunctive and mandamus relief.[84] The court further determined that the Act did not waive governmental immunity for declaratory relief sought under the Uniform Declaratory Judgment Act ("UDJA") because section 551.142 did not expressly waive immunity for declaratory relief.[85] At issue in the case was a declaration that a City contract was void due to the City's violation of the Open Meetings Act.[86] A petition for review in the Supreme Court is pending.[87]

In *Town of Shady Shores v. Swanson*, the Fort Worth Court of Appeals disagreed with the Austin Court of Appeals about the scope of the Act's waiver of immunity.[88] The court agreed that section 551.142 contained a limited waiver involving only mandamus or injunction, but raised section 551.141, which provides that an action taken in violation of the Act is voidable, and said that the section's purpose "is to allow courts to declare void actions taken in violation of [the Act]."[89] The court stated that "although [the Act] does not broadly waive immunity for all declaratory judgment actions, it does waive immunity for a declaration that an action taken in violation of [the Act] is void."[90] A petition for review in the Supreme Court has also been granted in this case.[91]

The Fort Worth Court of Appeals, in *Schmitz v. Denton County Cowboy Church*, reiterated its conclusion that the Act waives governmental immunity for claims seeking a declaration that an action taken in violation of the Act is voidable.[92]

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80 *Id.*
81 *See id.*
82 *Id.*
83 *Id.* at 98.
84 *See City of New Braunfels v. Carowest Land, Ltd.*, 549 S.W.3d 163, 173 (Tex. App.—Austin 2017, pet. pending).
85 *See id.*
86 *See id.* at 168.
87 *See Carowest Land, Ltd. v. City of New Braunfels*, No.18-0678 (Tex. filed Oct. 9, 2018).
88 *See Town of Shady Shores v. Swanson*, 544 S.W.3d 426, 437 n.1 (Tex. App.—Fort Worth 2018, pet. granted).
89 *Id.*
90 *Id.*
91 *See Town of Shady Shores v. Swanson*, No. 18-0413 (Tex. filed June 12, 2018).
92 *See Schmitz v. Denton Cty. Cowboy Church*, 550 S.W.3d 342, 355 (Tex. App.—Fort Worth 2018, pet. denied).

B. Attorney General Decisions

Attorney General Opinion KP-0205 considered the authority of an individual commissioner of the Railroad Commission to unilaterally terminate or hire an Executive Director for the Commission.[93] The opinion pointed out that decisions of a governmental body must be made by the body as a whole at a properly called meeting.[94] The opinion stated that "[e]mployment decisions regarding its executive director involve significant public business of the Commission, and any formal action taken in that regard must occur at an open meeting."[95] The opinion determined that "a single commissioner lacks authority to unilaterally terminate or hire an executive director without deliberation and a decision from the Commission at a properly-called meeting in compliance with the Open Meetings Act."[96]

Attorney General Opinion KP-0254, requested by the Commissioner of Education, considered the question whether the Open Meetings Act continues to prohibit a quorum of a governmental body from deliberating about an item of public business outside of an authorized meeting through communications involving fewer than a quorum in light of the Court of Criminal Appeals' decision that section 551.143 was unconstitutionally vague.[97] The opinion concluded, given the language of the Act and prior judicial and attorney general opinions, that a quorum of a governmental body deliberating about the public business of the governmental body outside of an authorized meeting violates the Act.[98] The opinion observed that the Court of Criminal Appeals' striking down of the criminal penalty for walking quorums did not impact the Act's civil remedies.[99] Such civil remedies include the voidability of acts taken in violation of the Act and the ability of any person to ask a court to "stop, prevent, or reverse a violation or threatened violation" of the Act.[100] Lastly, the opinion addressed the availability of regulatory sanctions for certain governmental bodies that violate the Act.[101] The specific remedy raised by the Commissioner of Education was the Texas Education Agency's authority to investigate a school district's lack of compliance with certain state or federal laws, including the requirement in Education Code section 11.051(a-1) that a school district may "act only by majority vote of the members present at a meeting held in compliance with" the Act.[102] Opinion KP-0254 concluded that Education Code sections 39.057 and 39A.002 authorize the Texas Education Agency to investigate and take appropriate action against a violating school district.[103]

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93 *See* Tex. Att'y Gen. Op. No. KP-0205 (2018).
94 *See id.* at 2.
95 *Id.*
96 *Id.*
97 *See* Tex. Att'y Gen. Op. No. KP-0254 (2019).
98 *See id.* at 2.
99 *See id.*
100 *See id.*
101 *See id.* at 3.
102 *See id.*
103 *See id.* at 3, 4.

IV. Training for Members of Governmental Bodies

Section 551.005 requires each elected or appointed public official who is a member of a governmental body subject to the Act to complete a course of training addressing the member's responsibilities under the Act. The public official must complete the training not later than the 90th day after taking the oath of office, if required to take an oath to assume duties as a member of the governmental body, or after the public official otherwise assumes these duties if the oath is not required.

Completing training as a member of the governmental body satisfies the training requirements for the member's service on a committee or subcommittee of the governmental body and ex officio service on any other governmental body. The training may also be used to satisfy any corresponding training requirements concerning the Act that another law requires members of a governmental body to complete. The failure of one or more members of a governmental body to complete the training does not affect the validity of an action taken by the governmental body.

The attorney general is required to ensure that the training is made available, and the attorney general's office may provide the training and may approve any acceptable training course offered by a governmental body or other entity. The attorney general must also ensure that at least one course approved or provided by the attorney general's office is available at no cost on videotape, DVD, or a similar and widely available medium.[104]

The training course must be at least one and no more than two hours long and must include instruction on the following subjects:

(1) the general background of the legal requirements for open meetings;

(2) the applicability of this chapter to governmental bodies;

(3) procedures and requirements regarding quorums, notice and recordkeeping under this chapter;

(4) procedures and requirements for holding an open meeting and for holding a closed meeting under this chapter;

(5) penalties and other consequences for failure to comply with this chapter.[105]

The entity providing the training shall provide a certificate of completion to public officials who complete the training course. A governmental body shall maintain and make available for public inspection the record of its members' completion of training. A certificate of course completion is

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[104] An Open Meetings Act training video is available online at https://www.texasattorneygeneral.gov/open-government/open-meetings-act-training.

[105] In its review of Open Meetings Act training materials submitted for approval, the Office of the Attorney General considers whether the written materials demonstrate that each subject is accurately and sufficiently covered. Materials may be submitted for review at https://www.texasattorneygeneral.gov/open-government/online-training-application-approval.

admissible as evidence in a criminal prosecution under the Act, but evidence that a defendant completed a training course under this section is not *prima facie* evidence that the defendant knowingly violated the Act.

V. Governmental Bodies

A. Definition

Section 551.002 of the Government Code provides that "[e]very regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter."[106] "Governmental body" is defined by section 551.001(3) as follows:

"Governmental body" means:

(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;

(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;[107] 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; and

(L) a joint board created under Section 22.074, Transportation Code.

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[106] An agency financed entirely by federal money is not required by the Act to conduct an open meeting. TEX. GOV'T CODE § 551.077.

[107] *See* 42 U.S.C.A. §§ 9901–9926 (Community Services Block Grant Program).

Section 551.0015 provides that certain property owners' associations in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more are subject to the Act in the same manner as a governmental body.[108]

B. State-Level Governmental Bodies

Section 551.001(3)(A), the definition of "governmental body" applicable to state-level entities, does not name specific entities but instead sets out a general description of such entities. Thus, a state-level entity will be a governmental body within the Act if it is "within the executive or legislative branch of state government" and under the direction of "one or more elected or appointed members."[109] Moreover, it must have supervision or control over public business or policy.[110] A university auxiliary enterprise was a governmental body under the Act because (1) as an auxiliary enterprise of a state university, it was part of the executive branch of state government; (2) a board of directors elected by its membership controlled the entity, formulated policy, and operated the organization; (3) the board acted by vote of a quorum; (4) the board's business concerned public education and involved spending public funds; and (5) the university exerted little control over the auxiliary enterprise.[111] In contrast, an advisory committee without control or supervision over public business or policy is not subject to the Act, even though its membership includes some members, but less than a quorum, of a governmental body.[112] *See Handbook* Part V.E.

The section 551.001(3)(A) definition of "governmental body" includes only entities within the executive and legislative departments of the State. It therefore excludes the judiciary from the Act.[113]

Other entities are excluded from the Act or from some parts of the Act by statutes other than chapter 551. For instance, the Texas HIV Medication Advisory Committee is expressly excluded from the

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108 TEX. GOV'T CODE § 551.0015; *but see* TEX. PROP. CODE § 209.0051(c) (requiring that regular and special board meetings of property owner associations not otherwise subject to chapter 551 be open to the owners), *id.* § 209.0051(b)(1) (defining "board meeting" as "a deliberation between a quorum of the voting board of the property owners' association, or between a quorum of the voting board and another person, during which property owners' association business is considered and the board takes formal action").

109 TEX. GOV'T CODE § 551.001(3)(A); *see id.* § 551.003.

110 *Id.* § 551.001(4) (definition of "meeting"); *Beasley v. Molett*, 95 S.W.3d 590, 606 (Tex. App.—Beaumont 2002, pet. denied); Tex. Att'y Gen. Op. No. GA-0019 (2003) at 5.

111 *Gulf Reg'l Educ. Television Affiliates v. Univ. of Houston*, 746 S.W.2d 803, 809 (Tex. App.—Houston [14th Dist.] 1988, writ denied); Tex. Att'y Gen. Op. No. H-438 (1974) at 4 (concluding that Athletic Council of The University of Texas, as governmental body that supervises public business, must comply with the Act).

112 Tex. Att'y Gen. Op. Nos. JM-331 (1985) at 3 (concluding that citizens advisory panel of Office of Public Utility Counsel, with no power to supervise or control public business, is not governmental body); H-994 (1977) at 2–3 (concluding that committee appointed to study process of choosing university president and make recommendations to Board of Regents not subject to the Act).

113 *See* Tex. Att'y Gen. Op. No. JM-740 (1987) at 4 (concluding that meetings of district judges to choose county auditor is not subject to the Act).

definition of "governmental body" but still must hold its open meetings in compliance with chapter 551, "except that the provisions allowing executive sessions do not apply to the committee."[114]

C. Local Governmental Bodies

Subsection 551.001(3)(B) through (L) lists a number of specific types of local governmental bodies. These include a county commissioners court, a municipal governing body and the board of trustees of a school district.

Subsection 551.001(3)(D) describes another kind of local governmental body: "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."[115] An inquiry into a local entity's powers and relationship to the city or county government is necessary to determine whether it is a governmental body under subsection 551.001(3)(D).

A judicial decision guides us in applying subsection 551.001(3)(D) to particular entities. The court in *City of Austin v. Evans*[116] analyzed the powers of a city grievance committee and determined it was not a governmental body within this provision. The court stated that the committee had no authority to make rules governing personnel disciplinary standards or actions or to change the rules on disciplinary actions or complaints.[117] It could only make recommendations and could not adjudicate cases. The committee did not possess quasi-judicial power, described as including the following:

(1) the power to exercise judgment and discretion;

(2) the power to hear and determine or to ascertain facts and decide;

(3) the power to make binding orders and judgments;

(4) the power to affect the personal or property rights of private persons;

(5) the power to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing; and

(6) the power to enforce decisions or impose penalties.[118]

An entity did not need all of these powers to be considered quasi-judicial, but the more of those powers it had, the more clearly it was quasi-judicial in the exercise of its powers.[119]

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114 TEX. HEALTH & SAFETY CODE § 85.276(d).
115 TEX. GOV'T CODE § 551.001(3)(D).
116 *City of Austin v. Evans*, 794 S.W.2d 78, 83 (Tex. App.—Austin 1990, no writ).
117 *Id.*
118 *Id.* (emphasis omitted); *see also Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360 (Tex. App.—Waco 1998, pet. denied).
119 *City of Austin*, 794 S.W.2d at 83.

The court in *Fiske v. City of Dallas*[120] concluded that a citizens group set up to advise the city council as to persons qualified to serve as municipal judges was not a governmental body within the Act because it was not part of the city council or a committee of the city council, and it had no rulemaking power or quasi-judicial power.[121]

In contrast, Attorney General Opinion DM-426 (1996) concluded that a municipal housing authority created under chapter 392 of the Local Government Code was a governmental body subject to the Act.[122] It was "a department, agency, or political subdivision of a . . . municipality" as well as "a deliberative body that has rule-making or quasi-judicial power" within section 551.001(3)(D) of the Act.[123] Attorney General Opinion DM-426 concluded on similar grounds that a county housing authority was a governmental body.[124]

Subsection 551.001(3)(H) provides "the governing board of a special district created by law"[125] is a governmental body. This office has concluded that a hospital district[126] and the Dallas Area Rapid Transit Authority[127] are special districts.

Sierra Club v. Austin Transportation Study Policy Advisory Committee[128] is the only judicial decision that has addressed the meaning of "special district" in the Act. The court in *Sierra Club* decided that the Austin Transportation Study Policy Advisory Committee (ATSPAC) was a "special district" within the Act. The committee, a metropolitan planning organization that engaged in transportation planning under federal law, consisted of state, county, regional and municipal public officials. Its decisions as to transportation planning within a five-county area were used by federal agencies to determine funding for local highway projects. Although such committees did not exist when the Act was adopted in 1967, the court compared ATSPAC's functions to those of a "governmental body" and concluded that the committee was the kind of body that the Act should govern.[129] The court relied on the following definition of special district:

> a limited governmental structure created to bypass normal borrowing limitations, to insulate certain activities from traditional political influence, to allocate functions to entities reflecting particular expertise, to provide services in otherwise

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120 *Fiske v. City of Dallas*, 220 S.W.3d 547, 551 (Tex. App.—Texarkana 2007, no pet.).

121 *See id.*; *see also* Tex. Att'y Gen. Op. No. GA-0361 (2005) at 5–7 (concluding that a county election commission is not a deliberative body with rulemaking or quasi-judicial powers).

122 Tex. Att'y Gen. Op. No. DM-426 (1996) at 2.

123 *Id.* at 2.

124 *Id.*; *see also* Tex. Att'y Gen. Op. Nos. JC-0327 (2001) at 2 (concluding that board of the Bryan-College Station Economic Development Corporation did not act in a quasi-judicial capacity or have rulemaking power); H-467 (1974) at 3 (concluding that city library board, a department of the city, did not act in a quasi-judicial capacity or have rulemaking power).

125 TEX. GOV'T CODE § 551.001(3)(H).

126 *See* Tex. Att'y Gen. Op. No. H-238 (1974) at 2.

127 *See* Tex. Att'y Gen. Op. No. JM-595 (1986) at 2.

128 *Sierra Club v. Austin Transp. Study Policy Advisory Comm.*, 746 S.W.2d 298, 301 (Tex. App.—Austin 1988, writ denied).

129 *Id.* at 300–301.

> unincorporated areas, or to accomplish a primarily local benefit or improvement, *e.g.*, parks and planning mosquito control, sewage removal.[130]

Relying on the *Sierra Club* case, this office has concluded that a committee of judges meeting to participate in managing a community supervision and corrections department is a "special district" subject to the Act.[131] It also relied on *Sierra Club* to decide that the Act applied to the Border Health Institute, a consortium of public and private entities established to assist the work of health-related institutions in the Texas-Mexico border region.[132] It determined that other governmental entities, such as a county committee on aging created under the Non-Profit Corporation Act, were not "special districts."[133]

D. Committees and Subcommittees of Governmental Bodies

Generally, meetings of less than a quorum of a governmental body are not subject to the Act.[134] However, 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 business or public policy, the committee may itself be a "governmental body" subject to the Act.[135] In *Willmann v. City of San Antonio*,[136] the city council established a subcommittee consisting of less than a quorum of council members and charged it with recommending the appointment and reappointment of municipal judges.[137] The appellate court, reviewing the conclusion on summary judgment that the committee was not subject to the Act, stated that a "governmental body does not always insulate itself from . . . [the Act's] application simply because less than a quorum of the parent body is present."[138] Because the evidence indicated that the subcommittee actually made final decisions and the city council merely "rubber stamped" them, the appellate court reversed the summary judgment as to the Open Meetings Act issue.[139]

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130 *Id.* at 301 (quoting BLACK'S LAW DICTIONARY 1253 (5th ed. 1986)).

131 *See* Tex. Att'y Gen. Op. No. DM-395 (1996) at 3–4. *But see* Tex. Att'y Gen. Op. No. GA-0504 (2007) at 2 n.4 (observing that Texas Supreme Court Order No. 97-9141, 1997 WL 583726 (per curium), had raised questions about the premises underlying the conclusion of Attorney General Opinion DM-395).

132 *See* Tex. Att'y Gen. Op. No. GA-0280 (2004) at 8–9; *see also* Tex. Att'y Gen. Op. No. DM-426 (1996) at 4 (concluding that regional housing authority created under chapter 392 of the Local Government Code is special district within the Act).

133 *See* Tex. Att'y Gen. Op. No. DM-7 (1991) at 2–3; *see also* Tex. Att'y Gen. Op. No. JC-0160 (1999) at 3 (concluding that *ad hoc* intergovernmental working group of employees is not a "special district" within the Act).

134 *See Hays Cty. v. Hays Cty. Water Planning P'ship*, 106 S.W.3d 349, 356 (Tex. App.—Austin 2003, no pet.); Tex. Att'y Gen. Op. No. JC-0407 (2001) at 9.

135 Tex. Att'y Gen. Op. Nos. JC-0060 (1999) at 2, JC-0053 (1999) at 3; Tex. Att'y Gen. LO-97-058, at 2–5; LO-97-017, at 5.

136 *Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App.—San Antonio 2003, pet. denied).

137 *See id.* at 471–72.

138 *Id.* at 478.

139 *See id.* at 480; *see also Finlan v. City of Dallas*, 888 F. Supp. 779, 785 (N.D. Tex. 1995) (noting concern that danger exists that full council is merely a "rubber stamp" of committee); Tex. Att'y Gen. Op. Nos. JC-0060 (1999) at 3, H-823 (1976) at 2, H-438 (1974) at 3 (discussing "rubber stamping" of committee and subcommittee decisions).

Attorney General Opinion GA-0957 recently concluded that 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.[140] Yet, in at least one statute, the Legislature has expressly provided that a committee of a board "where less than a quorum of any one board is present is not subject to the provisions of the open meetings law."[141]

E. Advisory Bodies

An advisory committee that does not control or supervise public business or policy is not subject to the Act,[142] even though its membership includes some members, but less than a quorum, of a governmental body.[143] For example, the multidisciplinary team established to review offenders' records under the Commitment of Sexually Violent Predators Act was not subject to the Act.[144] The team made an initial assessment of certain offenders to determine whether they should be subject to further evaluation for civil commitment. Subsequent assessments by other persons determined whether commitment proceedings should be filed. Thus, the team lacked ultimate supervision or control over public business or policy.[145]

However, if a governmental body that has established an advisory committee routinely adopts or "rubber stamps" the advisory committee's recommendations, the committee probably will be considered to be a governmental body subject to the Act.[146] Thus, the fact that a committee is called an advisory committee does not necessarily mean it is excepted from the Act.

The Legislature has adopted statutes providing that particular advisory committees are subject to the Act, including a board or commission established by a municipality to assist it in developing a zoning plan or zoning regulations,[147] the nursing advisory committee established by the statewide health coordinating council,[148] advisory committees for existing Boll Weevil Eradication zones appointed by the commissioner of the Official Cotton Growers' Boll Weevil Eradication Foundation,[149] and an education research center advisory board.[150]

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140 *See* Tex. Att'y Gen. Op. No. GA-0957 (2012) at 2–3.

141 TEX. WATER CODE § 49.064 (applicable to general law water districts); *see also Tarrant Reg'l Water Dist. v. Bennett*, 453 S.W.3d 51, 58 (Tex. App.—Fort Worth 2014, pet. denied) (discussing Water Code section 49.064 in relation to the Act and questioning previous attorney general opinions' conclusions that an advisory committee could be subject to the Act as a governmental body).

142 *See* Tex. Att'y Gen. Op. No. GA-0232 (2004) at 3–5 (concluding that student fee advisory committee established under Education Code section 54.5031 is not subject to the Act).

143 Tex. Att'y Gen. Op. Nos. JM-331 (1985) at 3 (concluding that citizens advisory panel of Office of Public Utility Counsel, with no power to supervise or control public business, is not governmental body), H-994 (1977) at 3 (discussing fact question as to whether committee appointed to study process of choosing university president and make recommendations to Board of Regents is subject to the Act).

144 *See Beasley*, 95 S.W.3d at 606.

145 *Id.*

146 Tex. Att'y Gen. Op. Nos. H-467 (1974) at 3–4, H-438 (1974) at 3.

147 TEX. LOC. GOV'T CODE § 211.0075.

148 TEX. HEALTH & SAFETY CODE § 104.0155(e).

149 TEX. AGRIC. CODE § 74.1041(e).

150 TEX. EDUC. CODE § 1.006(b).

F. Public and Private Entities That Are Not Governmental Bodies

Nonprofit corporations established to carry out governmental business generally are not subject to the Act because they are not within the Act's definition of "governmental body."[151] A nonprofit created under the Texas Nonprofit Corporation Act to provide services to a county's senior citizens was not a governmental body because it was not a governmental structure, and it had no power to supervise or control public business.[152]

However, the Act itself provides that certain nonprofit corporations are governmental bodies.[153] Other statutes provide that specific kinds of nonprofit corporations are subject to the Act, such as development corporations created under the Development Corporation Act of 1979[154] and the governing body of an open-enrollment charter school, which may be a private school or a nonprofit entity.[155] If a nonprofit corporation provides in its articles of incorporation or bylaws that its board of directors will conduct meetings in accord with the Act, then the board must do so.[156]

A private entity does not become a governmental body within the Act merely because it receives public funds.[157] A city chamber of commerce, a private entity, is not a governmental body within the Act although it receives public funds.[158]

G. Legislature

There is very little authority on section 551.003. A 1974 attorney general letter advisory discussed it in connection with Texas Constitution article III, section 11, which provides in part that "[e]ach House may determine the rules of its own proceedings."[159] The letter advisory raised the possibility that the predecessor of section 551.003 is unconstitutional to the extent of conflict with Texas Constitution article III, section 11, stating that "neither House may infringe upon or limit the present or future right of the other to adopt its own rules."[160] However, it did not address the constitutional issue, describing the predecessor to Government Code section 551.003 as an exercise of rulemaking power for the 1973–74 legislative sessions.[161]

The Texas Supreme Court addressed Government Code section 551.003 in a 2000 case challenging the Senate's election by secret ballot of a senator to perform the duties of lieutenant governor.[162] Members of the media contended that the Act prohibited the Senate from voting by secret ballot.[163]

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151 TEX. GOV'T CODE § 551.001(3). *Cf. id.* § 552.003(1)(A)(xi) (including certain nonprofit corporations in definition of "governmental body" for purposes of the Public Information Act).
152 Tex. Att'y Gen. Op. No. DM-7 (1991) at 3.
153 TEX. GOV'T CODE § 551.001(3)(J)–(K).
154 TEX. LOC. GOV'T CODE § 501.072.
155 TEX. EDUC. CODE § 12.1051.
156 Tex. Att'y Gen. LO-96-146, at 5.
157 Tex. Att'y Gen. LO-98-040, at 2.
158 Tex. Att'y Gen. LO-93-055, at 3.
159 *See* Tex. Att'y Gen. LA-84 (1974) at 2.
160 Tex. Att'y Gen. LA-84 (1974) at 2.
161 *See id.*
162 *In re The Tex. Senate*, 36 S.W.3d 119 (Tex. 2000).
163 *See id.* at 119.

The Supreme Court stated that section 551.003 "clearly covers the Committee of the Whole Senate. Thus, its meetings and votes cannot be kept secret 'except as specifically provided' by the Texas Constitution."[164] The court then determined that Texas Constitution article III, section 41, which authorizes the Senate to elect its officers by secret ballot, provided an exception to section 551.003.[165]

[164] *Id.* at 120.
[165] *See id.*

VI. Meetings

A. Definitions

The Act applies to a governmental body, as defined by section 551.001(3), when it engages in a "regular, special, or called meeting."[166] Informal meetings of a quorum of members of a governmental body are also subject to the Act.[167]

"Deliberation," a key term for understanding the Act, is defined as follows:

> "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.[168]

"Deliberation" and "discussion" are synonymous for purposes of the Act.[169] Prior to the 86th Legislature's amendment to the definition of deliberation, a "verbal exchange" was construed to include not only an exchange of spoken words,[170] but also an exchange of written materials or electronic mail. The 2019 amendment clarifies that a deliberation includes written materials.[171]

The Act includes two definitions of "meeting."[172] Section 551.001(4)(A) uses the term "deliberation" to define "meeting":

> (A) 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 . . . .[173]

B. Deliberations Among a Quorum of a Governmental Body or Between a Quorum and a Third Party

The following test has been applied to determine when a discussion among members of a statewide governmental entity is a "meeting" as defined by section 551.001(4)(A):

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166 TEX. GOV'T CODE § 551.002.

167 *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 300 (Tex. 1990) (considering meeting in restroom of two members of three-person board); *Bexar Medina Atascosa Water Dist. v. Bexar Medina Atascosa Landowners' Ass'n*, 2 S.W.3d 459, 460–61 (Tex. App.—San Antonio 1999, pet. denied) (considering "informational gathering" of water district board with landowners in board member's barn).

168 *See* Act of May 23, 2019, 86th Leg., R.S., ch. 645, § 1, 2019 Tex. Sess. Law Serv. 1891 (to be codified at TEX. GOV'T CODE § 551.001(2)).

169 *Bexar Medina Atascosa Water Dist.*, 2 S.W.3d at 461.

170 *Gardner v. Herring*, 21 S.W.3d 767, 771 (Tex. App.—Amarillo 2000, no pet.).

171 *See* Act of May 23, 2019, 86th Leg., R.S., ch. 645, § 1, 2019 Tex. Sess. Law Serv. 1891 (to be codified at TEX. GOV'T CODE § 551.001(2)).

172 Tex. Att'y Gen. Op. Nos. GA-0896 (2011) at 2, JC-0307 (2000) at 5, DM-95 (1992) at 5.

173 TEX. GOV'T CODE § 551.001(4)(A).

(1) The body must be an entity within the executive or legislative department of the state.

(2) The entity must be under the control of one or more elected or appointed members.

(3) The meeting must involve formal action or deliberation between a quorum of members.[174]

(4) The discussion or action must involve public business or public policy.

(5) The entity must have supervision or control over that public business or policy.[175]

Statewide governmental bodies that have supervision or control over public business or policy are subject to the Act, and so are the local governmental bodies expressly named in the definition of "governmental body."[176] In contrast, a group of public officers and employees in a county who met to share information about jail conditions did not supervise or control public business or public policy and thus was not subject to the Act.[177] A purely advisory body, which has no authority over public business or policy, is not subject to the Act,[178] unless a governmental body routinely adopts or "rubber stamps" the recommendations of the advisory body.[179] *See* Part V.E.

C. Gathering at Which a Quorum Receives Information from or Provides Information to a Third Party

Section 551.001(4)(B) defines "meeting" as follows:

> (B) except as otherwise provided by this subdivision, a gathering:
>
> (i) that is conducted by the governmental body or for which the governmental body is responsible;
>
> (ii) at which a quorum of members of the governmental body is present;
>
> (iii) that has been called by the governmental body; and

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174 Deliberation between a quorum and a third party now satisfies this part of the test. *See id.* § 551.001(2).

175 *Gulf Reg'l Educ. Television Affiliates v. Univ. of Houston*, 746 S.W.2d 803, 809 (Tex. App.—Houston [14th Dist.] 1988, writ denied) (citing Attorney General Opinion H-772 (1976)); *see also* Tex. Att'y Gen. Op. No. GA-0232 (2004) at 3–5 (relying on quoted test to determine that student fee advisory committee established under Education Code section 54.5031 is not subject to the Act).

176 *See* TEX. GOV'T CODE § 551.001(3).

177 *See* Tex. Att'y Gen. Op. No. GA-0504 (2007) at 3.

178 Tex. Att'y Gen. Op. Nos. H-994 (1977) at 2 (concluding that committee appointed to study process of choosing university president and to make recommendations to Board of Regents likely is not subject to the Act), H-772 (1976) at 6 (concluding that meeting of group of employees, such as general faculty of university, is not subject to the Act), H-467 (1974) at 3 (concluding that city library board, which is advisory only, is not subject to the Act).

179 Tex. Att'y Gen. Op. Nos. H-467 (1974) at 4, H-438 (1974) at 3–4.

> (iv) 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.
>
> The term does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, or the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, press conference, or 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.
>
> The term includes a session of a governmental body.[180]

Section 551.001(4)(A) applies when a quorum of a governmental body engages in deliberations, either among the members of the quorum or between the quorum and a third party.[181] Section 551.001(4)(B) reaches gatherings of a quorum of a governmental body even when the members of the quorum do not participate in deliberations among themselves or with third parties.[182] Under the circumstances described by section 551.001(4)(B), the governmental body may be subject to the Act when it merely listens to a third party speak at a gathering the governmental body conducts or for which the governmental body is responsible.[183]

D. Informal or Social Meetings

When a quorum of the members of a governmental body assembles in an informal setting, such as a social occasion, it will be subject to the requirements of the Act if the members engage in a verbal exchange about public business or policy. The Act's definition of a meeting expressly excludes gatherings of a "quorum of a governmental body at a social function unrelated to the public business that is conducted by the body."[184] The definition also excludes from its reach the attendance by a quorum at certain other events such as a regional, state or national convention or workshop, ceremonial events, press conferences, and a candidate forum, appearance, or debate to

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180 TEX. GOV'T CODE § 551.001(4)(B).

181 *Id.* § 551.001(4)(A). *But see* Tex. Att'y Gen. Op. No. GA-0989 (2013) at 2 (concluding that a private consultation between a member of a governmental body and an employee that does not take place within the hearing of a quorum of other members does not constitute a meeting under section 551.001(4)).

182 *Cf.* Tex. Att'y Gen. Op. Nos. JC-0248 (2000) at 2 (concluding that quorum of state agency board may testify at public hearing conducted by another agency), JC-0203 (2000) at 4 (concluding that quorum of members of standing committee of hospital district may attend public speech and comment on matters of hospital district business within supervision of committee).

183 Tex. Att'y Gen. Op. No. JC-2000) at 3–4 (discussing the Act's application when quorum of governmental body listens to members of the public in a session commonly known as a "public comment" session, "public forum" or "open mike" session).

184 TEX. GOV'T CODE § 551.001(4)(B).

inform the electorate.[185] In both instances, there is no "meeting" under the Act "if formal action is not taken and any discussion of public business is *incidental* to the social function, convention, workshop, ceremonial event, or press conference."[186]

E. Discussions Among a Quorum through a Series of Communications

On occasion, a governmental body has tried to avoid complying with the Act by deliberating about public business without a quorum being physically present in one place and claiming that this was not a "meeting" within the Act.[187] Conducting secret deliberations and voting over the telephone, when no statute authorized this, was one such method.[188]

Section 551.143 as originally written prohibited machinations to avoid complying with the Act by criminalizing multiple meetings in numbers less than a quorum to "conspire to circumvent the Act." One example of such a so-called walking quorum was described by *Esperanza Peace and Justice Center v. City of San Antonio*.[189]

Amended section 551.143 now prohibits discussion about an item of public business among a quorum of a governmental body through a series of communications. Section 551.143 provides that it is a criminal offense for a member of a governmental body to knowingly engage "in at least one communication among a series of communications that each occur outside of a meeting . . . and that concern an issue within the jurisdiction of the governmental body in which 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 the members."[190] The member must know at the time he or she 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."[191]

Section 551.006 authorizes members of a governmental body to communicate through an online message board or similar Internet application.[192] A governmental body utilizing an electronic message board may have only one such board and it can be used by only members of the governmental body and their authorized staff.[193] The online message board must be prominently displayed on the governmental body's primary Internet web page and no more than one click away from that page.[194] A governmental body that removes a communication from the online message board that has been posted for at least 30 days must maintain the posting for a period of six years,

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185 *See id.*

186 *Id.* (emphasis added).

187 One court of appeals stated that "[o]ne board member asking another board member her opinion on a matter does not constitute a deliberation of public business." *Foreman v. Whitty*, 392 S.W.3d 265, 277 (Tex. App.—San Antonio 2012, no pet.).

188 *See Hitt v. Mabry*, 687 S.W.2d 791, 793, 796 (Tex. App.—San Antonio 1985, no writ).

189 *Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d. 433 (W.D. Tex. 2001).

190 *See* TEX. GOV'T CODE § 551.143(a), (a)(1).

191 *Id.* § 551.143(a)(2).

192 *Id.* § 551.006.

193 *Id.* § 551.006(b), (c) (providing that a posting by a staff member must include the staff member's name and title).

194 *Id.* § 551.006(b).

and the communication is public information under the Public Information Act.[195] Most importantly, a governmental body may not vote or take any action by communication on an online message board.[196]

F. Meetings Using Telephone, Videoconference, and the Internet

A governmental body may not conduct meetings subject to the Act by telephone or videoconference unless a statute expressly authorizes it to do so.[197]

1. Telephone Meetings

The Act authorizes governmental bodies to conduct meetings by telephone conference call under limited circumstances and subject to procedures that may include special requirements for notice, record-keeping and two-way communication between meeting locations.[198]

A governmental body may hold an open or closed meeting by telephone conference call if:

(1) an emergency or public necessity exists within the meaning of Section 551.045 of this chapter; and

(2) the convening at one location of a quorum of the governmental body is difficult or impossible; or

(3) the meeting is held by an advisory board.[199]

The emergency telephone meeting is subject to the notice requirements applicable to other meetings held under the Act. The open portions of the meeting are required to be audible to the public at the location specified in the notice and must be recorded. The provision also requires the location of the meeting to be set up to provide two-way communication during the entire conference call and the identity of each party to the conference call to be clearly stated prior to speaking.[200]

The Act authorizes the governing board of an institution of higher education, water districts whose territory includes land in three or more counties, the Board for Lease of University Lands, or the Texas Higher Education Coordinating Board to meet by telephone conference call if the meeting is a special called meeting, immediate action is required, and it is difficult or impossible to convene

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195 *Id.* § 551.006(d).

196 *Id.* § 551.006(e).

197 *See generally Hitt*, 687 S.W.2d at 796; *Elizondo v. Williams*, 643 S.W.2d 765, 766–67 (Tex. App.—San Antonio 1982, no writ) (telephone meetings); Tex. Att'y Gen. Op. No. DM-207 (1993) at 3 (videoconference meeting). *But see Harris Cty. Emergency Serv. Dist. No. 1 v. Harris Cty. Emergency Corps.*, 999 S.W.2d 163, 169 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (concluding that telephone discussion by fewer than a quorum of board members about placing items on the agenda, without evidence of intent, did not violate the Act.

198 TEX. GOV'T CODE §§ 551.121–.126, .129–.131 (authorizing meetings by telephone conference call under specified circumstances).

199 *Id.* § 551.125(b). *See* Tex. Att'y Gen. Op. No. GA-0379 (2005) at 2–3 (addressing Government Code section 551.125(b)(3)).

200 TEX. GOV'T CODE § 551.125(b)–(f).

a quorum at one location.[201] The Texas Board of Criminal Justice may hold an emergency meeting by telephone conference call,[202] and, at the call of its presiding officer, the Board of Pardons and Paroles may hold a hearing on clemency matters by telephone conference call.[203] The Act permits the board of trustees of the Teacher Retirement System to hold an open or closed meeting by telephone conference call if a quorum of the board is present at one location and other requirements of the Act are followed.[204]

Statutes other than the Act authorize some governing bodies to meet by telephone conference call under limited circumstances. For example, if the joint chairs of the Legislative Budget Board are physically present at a meeting, and the meeting is held in Austin, any number of the other board members may attend by use of telephone conference call, videoconference call, or other similar telecommunication device.[205]

A governmental body may consult with its attorney by telephone conference call, videoconference call or communications over the Internet, unless the attorney is an employee of the governmental body.[206] If the governmental body deducts employment taxes from the attorney's compensation, the attorney is an employee of the governmental body.[207] The restriction against remote communications with an employee attorney does not apply to the governing board of an institution of higher education or the Texas Higher Education Coordinating Board.[208]

2. Videoconference Call Meetings

The Act also authorizes governmental bodies to conduct meetings by videoconference call and, unlike with telephone meetings, does not limit that authority to emergency circumstances.[209] Section 551.127 authorizes a member or employee of a governmental body to participate remotely in a meeting of the governmental body through a videoconference call if there is live video and

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201 *Id.* § 551.121(c).
202 TEX. GOV'T CODE § 551.123.
203 *Id.* § 551.124.
204 *Id.* § 551.130.
205 TEX. GOV'T CODE § 322.003(d); *see also* TEX. AGRIC. CODE §§ 41.205(b) (Texas Grain Producer Indemnity Board), 62.0021(a) (State Seed and Plant Board); TEX. FIN. CODE § 11.106(c) (Finance Commission); TEX. GOV'T CODE §§ 501.139(b) (Correctional Managed Health Care Committee), 436.054 (Texas Military Preparedness Commission).
206 TEX. GOV'T CODE § 551.129(a), (d).
207 *Id.* § 551.129(e).
208 *Id.* § 551.129(f).
209 *Id.* § 551.127.

audio feed of the remote participant that is broadcast live at the meeting and the feed complies with the other provisions of section 551.127.[210]

As a preliminary matter, a meeting held by videoconference call must meet the regular notice requirements of the Act.[211] In addition, section 551.127 authorizes two logistical scenarios depending on the territorial jurisdiction of the governmental body and requires that the notice specify a particular location of the meeting and who will be physically present there, as follows:

A state governmental body or a governmental body that extends into three or more counties may meet by videoconference call only if the member of the governmental body presiding over the meeting is physically present at one location of the meeting.[212] The notice must specify that location, which must be open to the public during the open portions of the meeting, as well as state the intent to have the member of the governmental body presiding over the meeting present there.[213]

For all other governmental bodies, the Act authorizes a meeting by videoconference call only if a full quorum of the governmental body is physically present at one location of the meeting.[214] In that instance, the notice must specify that location, as well as the intent to have a quorum present there.[215]

The location where the presiding member is physically present must be open to the public during the open portions of the meeting.[216]

Beyond notice and logistics, the Act specifies certain technical requirements. The meeting location where the quorum or presiding member is present as well as each remote location from which a member participates "shall have two-way audio and video communication with each other location during the entire meeting."[217] The Act requires that, while speaking, each participant's face must be clearly visible and the voice audible to each other participant and to the members of the public in attendance at the location where the quorum or presiding member is present and any other location of the meeting that is open to the public.[218] The Act additionally requires that each open portion of the meeting is to be visible and audible to the public at the meeting location where the

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210 *Id.* § 551.127(a-1); *see id.* § 551.127(a) ("[T]his chapter does not prohibit a governmental body from holding an open or closed meeting by videoconference call."). Subsection 81.001(b) of the Local Government Code, which provides that the county judge, if present, is the presiding officer of the county commissioners court, does not apply to a meeting held by videoconference. *See* TEX. LOC. GOV'T CODE § 81.001(b). The subsection ensures that a county judge may remotely participate in a videoconference meeting while another member of the commissioners court presides over the meeting at the physical location accessible to the public.

211 TEX. GOV'T CODE § 551.127(d).

212 *Id.* § 551.127(c).

213 *Id.* § 551.127(e).

214 *Id.* § 551.127(b).

215 *Id.* § 551.127(e).

216 *Id.*

217 *Id.* § 551.127(h). "The audio and video signals perceptible by members of the public at each location of the meeting described by Subsection (h) must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting." *Id.* § 551.127(j).

218 *Id.* § 551.127(h).

quorum or presiding member is present and that at any time that the meeting is no longer visible and audible to the public, the meeting must be recessed until the problem is resolved.[219] The meeting must be adjourned if the problem is not resolved in six hours.[220] The Act tasks the Department of Information Resources to specify minimum standards for the audio and video signals required at a videoconference meeting and the quality of the signals at each location of the meeting must meet or exceed those standards.[221]

Generally speaking, a remote participant "shall be counted as present at the meeting for all purposes."[222] However, if the audio or video communication is lost for any portion of the meeting, the remote participant is considered absent during that time.[223] Should this occur, the governmental body may continue the meeting only as follows: (1) If the meeting is being held by a statewide body or one that extends into three or more counties, there must continue to be a quorum participating in the meeting. (2) If the meeting is held by another governmental body, a full quorum must remain physically present at the meeting location.[224]

Section 551.127 also requires the governmental body to "make at least an audio recording of the meeting" and to make the recording available to the public.[225] And section 551.127 expressly permits a governmental body to allow a member of the public to testify at a meeting from a remote location by videoconference call.[226]

3. Meetings Broadcast over the Internet

Section 551.128 of the Act provides that with certain exceptions a governmental body has discretion to broadcast an open meeting over the Internet and sets out the requirements for a broadcast.[227] The exceptions referred to in section 551.128(b-1) make the broadcast of open meetings over the Internet mandatory for a transit authority or department, an elected school district board of trustees for a school district with a student enrollment of 10,000 or more, an elected governing body of a home-rule municipality that has a population of 50,000 or more, and a county commissioners court in a county with a population of 125,000 or more.[228]

A governmental body required to broadcast its open meetings over the Internet under section 551.128(b-1) must make a video and audio recording of "each regularly scheduled open meeting that is not a work session or a special called meeting" and must make the recording available not later than seven days after the date of the meeting.[229] And the governmental body must maintain

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219 *See id.* § 551.127(f).
220 *Id.*
221 *Id.* § 551.127(i); *see* 1 TEX. ADMIN. CODE §§ 209.1–.33 (Tex. Dept. of Info. Res., Minimum Standards for Meetings Held by Videoconference). The Department of Information Resources has published guidelines at https://pubext.dir.texas.gov/portal/internal/resources/DocumentLibrary/Videoconferencing%20Guidelines.pdf.
222 *See* TEX. GOV'T CODE § 551.127(a-2).
223 *See id.* § 551.127(a-3).
224 *See id.*
225 *Id.* § 551.127(g).
226 *See id.* § 551.127(k).
227 TEX. GOV'T CODE § 551.128(b).
228 *Id.* § 551.128(b-1).
229 *Id.* § 551.128(b-1)(1), (b-4)(1).

an archived recording of the meeting on the Internet "for not less than two years after the date the recording was first made available."[230] Subsection 551.128(b-1) further requires an elected school district board of trustees of a school district with an enrollment of 10,000 or more to make an audio or video recording of any work session or special called meeting at which the board of trustees "votes on any matter or allows public comment or testimony."[231] Subsection 551.128(b-2) provides that a governmental body is not required to establish a separate Internet site but may make the archived recording available "on an existing Internet site, including a publicly accessible video-sharing or social networking site."[232] Similarly, section 472.036 of the Transportation Code requires a metropolitan planning organization that serves one or more counties with a population of 350,000 to broadcast over the Internet each open meeting held by the policy board of the metropolitan planning organization.[233]

Certain junior college districts and general academic teaching institutions are required under sections 551.1281 and 551.1282 to broadcast their open meetings in the manner provided by section 551.128.[234] An Internet broadcast does not substitute for conducting an in-person meeting but provides an additional way of disseminating the meeting.

Outside of the Act, certain entities may have specific provisions imposing broadcasting requirements.[235]

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230 *Id.* § 551.128(b-4)(2).
231 *See id.* § 551.128(b-1)(B).
232 *See id.* § 551.128(b-2).
233 *See* TEX. TRANSP. CODE § 472.036.
234 *See* TEX. GOV'T CODE §§ 551.1281–.1282.
235 *See id.* § 531.0165 (imposing broadcasting and recording requirements on the Health and Human Services Commission and related entities).

VII. Notice Requirements

A. Content

The Act requires written notice of all meetings. Section 551.041 of the Act provides:

> A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.[236]

A governmental body must give the public advance notice of the subjects it will consider in an open meeting or a closed executive session.[237] The Act does not require the notice of a closed meeting to cite the section or subsection numbers of provisions authorizing the closed meeting.[238] No judicial decision or attorney general opinion states that a governmental body must indicate in the notice whether a subject will be discussed in open or closed session,[239] but some governmental bodies do include this information. If the notices posted for a governmental body's meetings consistently distinguish between subjects for public deliberation and subjects for executive session deliberation, an abrupt departure from this practice may raise a question as to the adequacy of the notice.[240]

Governmental actions taken in violation of the notice requirements of the Act are voidable.[241] If some actions taken at a meeting do not violate the notice requirements while others do, only the actions in violation of the Act are voidable.[242] (For a discussion of the voidability of the governmental body's actions, refer to Part XI.C. of this *Handbook*).

B. Sufficiency

The notice must be sufficient to apprise the general public of the subjects to be considered during the meeting. In *City of San Antonio v. Fourth Court of Appeals*,[243] the Texas Supreme Court considered whether the following item in the notice posted for a city council meeting gave sufficient notice of the subject to be discussed:

> An Ordinance determining the necessity for and authorizing the condemnation of certain property in County Blocks 4180, 4181, 4188, and 4297 in Southwest Bexar County for the construction of the Applewhite Water Supply Project.[244]

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236 *Id.* § 551.041.

237 *Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 958 (Tex. 1986); *Porth v. Morgan*, 622 S.W.2d 470, 475–76 (Tex. App.—Tyler 1981, writ ref'd n.r.e.).

238 *See Rettberg v. Tex. Dep't of Health*, 873 S.W.2d 408, 411–12 (Tex. App.—Austin 1994, no writ); Tex. Att'y Gen. Op. No. GA-0511 (2007) at 4.

239 Tex. Att'y Gen. Op. No. JC-0057 (1999) at 5; Tex. Att'y Gen. LO-90-27, at 1.

240 Tex. Att'y Gen. Op. No. JC-0057 (1999) at 5.

241 TEX. GOV'T CODE § 551.141.

242 *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176, 182–83 (Tex. App.—Corpus Christi 1990, writ denied).

243 *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991).

244 *Id.* at 764.

A property owner argued that this notice item violated the subject requirement of the statutory predecessor to section 551.041 because it did "not describe the condemnation ordinance, and in particular the land to be condemned by that ordinance, in sufficient detail" to notify an owner reading the description that the city was considering condemning the owner's land.[245] The Texas Supreme Court rejected the argument that the notice be sufficiently detailed to notify specific owners that their tracts might be condemned. The Court explained that the "Open Meetings Act is not a legislative scheme for service of process; it has no due process implications."[246] Its purpose was to provide public access to and increase public knowledge of the governmental decision-making process.[247]

The Court held that the condemnation notice complied with the Act because the notice apprised the public at large in general terms that the city would consider the condemnation of certain property in a specific area for purposes of the Applewhite project. The Court also noted that the description would notify a landowner of property in the four listed blocks that the property might be condemned, even though it was insufficient to notify an owner that his or her tracts in particular were proposed for condemnation.[248]

In *City of San Antonio v. Fourth Court of Appeals*, the Texas Supreme Court reviewed its earlier decisions on notice.[249] In *Texas Turnpike Authority v. City of Fort Worth*,[250] the Court had addressed the sufficiency of the following notice for a meeting at which the turnpike authority board adopted a resolution approving the expansion of a turnpike: "Consider request . . . to determine feasibility of a bond issue to expand and enlarge [the turnpike]."[251] Prior resolutions of the board had reflected the board's intent to make the turnpike a free road once existing bonds were paid. The Court found the notice sufficient, refuting the arguments that the notice should have included a copy of the proposed resolution, that the notice should have indicated the board's proposed action was at variance with its prior intent, or that the notice should have stated all the consequences that might result from the proposed action.[252]

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245 *Id.*

246 *Id.* at 765 (quoting *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 300 (Tex. 1990)); *see Rettberg*, 873 S.W.2d at 413 (holding that the Act does not entitle the executive secretary of a state agency to special notice of a meeting where his employment was terminated); *Stockdale v. Meno*, 867 S.W.2d 123, 125 (Tex. App.—Austin 1993, writ denied) (holding that Act does not entitle a teacher whose contract was terminated to more specific notice than notice that would inform the public at large).

247 *Fourth Court of Appeals*, 820 S.W.2d at 765.

248 *Id.* at 765–66.

249 *Id.* at 765.

250 *Tex. Tpk. Auth. v. City of Fort Worth*, 554 S.W.2d 675 (Tex. 1977).

251 *Id.* at 676.

252 *Id.*; *see also Charlie Thomas Ford, Inc., v. A.C. Collins Ford, Inc.*, 912 S.W.2d 271, 274 (Tex. App.—Austin 1995, writ dism'd) (holding that notice stating "Proposals for Decision and Other Actions–License and Other Cases" was sufficient to apprise the public that Motor Vehicle Commission would consider proposals for decision in dealer-licensing cases); *Washington v. Burley*, 930 F. Supp. 2d 790, 807 (S.D. Tex. 2013) (determining that notice indicating that school board would "[c]onsider recommendation to propose the termination of the . . . employment of the . . . Chief of Police" was sufficient to inform the public that the board would actually be terminating police chief's employment and that "the notice need not state all of the possible consequences resulting from consideration of the topic"); *City of San Angelo v. Tex. Nat. Res. Conservation Comm'n*, 92 S.W.3d 624, 630 (Tex. App.—Austin 2002, no pet.) (recognizing that "consideration" necessarily

In *Lower Colorado River Authority v. City of San Marcos*,[253] the Texas Supreme Court found sufficient a Lower Colorado River Authority Board notice providing "ratification of the prior action of the Board taken on October 19, 1972, in response to changes in electric power rates for electric power sold within the boundaries of the City of San Marcos, Texas."[254] "Although conceding that the notice was 'not as clear as it might be,'" the Court held that it complied with the Act "because 'it would alert a reader to the fact that some action would be considered with respect to charges for electric power sold in San Marcos.'"[255]

The Texas Supreme Court noted that in *Cox Enterprises, Inc. v. Board of Trustees*[256] "we finally held a notice inadequate."[257] In the *Cox Enterprises* case, the Court held insufficient the notice of a school board's executive session that listed only general topics such as "litigation" and "personnel."[258] One of the items considered at the closed session was the appointment of a new school superintendent. The Court noted that the selection of a new superintendent was not in the same category as ordinary personnel matters, because it is a matter of special interest to the public; thus, the use of the term "personnel" was not sufficient to apprise the general public of the board's proposed selection of a new superintendent. The Court also noted that "litigation" would not sufficiently describe a major desegregation suit that had occupied the district's time for a number of years.[259]

"If the facts as to the content of a notice are undisputed, the adequacy of the notice is a question of law."[260] The courts examine the facts to determine whether a particular subject or personnel matter is sufficiently described or requires more specific treatment because it is of special interest

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encompasses action and stating that the word "consideration alone was sufficient to put the general public on notice that the Commission might act during the meeting"). *But see Save Our Springs All., Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 890 (Tex. App.—Austin 2010, pet. denied) (considering sufficiency of notice about development agreements and recognizing that a notice listing all possible consequences could overwhelm, rather than inform, the reader).

253 *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975).

254 *Id.* at 646.

255 *Fourth Court of Appeals*, 820 S.W.2d at 765 (quoting *Lower Colo. River Auth.*, 523 S.W.2d at 646).

256 *Cox Enters. Inc. v. Bd. of Trs.*, 706 S.W.2d 956 (Tex. 1986).

257 *Fourth Court of Appeals*, 820 S.W.2d at 765 (describing its opinion in *Cox Enterprises*); *see also Lugo v. Donna Indep. Sch. Dist. Bd. of Trs.*, 557 S.W.3d 93, 98 (Tex. App.—Corpus Christi 2017, no pet.) (holding that an agenda item notifying the public that the board would discuss a special election to fill board vacancies by a special election did not give notice that the board would appoint replacement trustees to the board vacancies).

258 *Cox Enters. Inc.*, 706 S.W.2d at 959.

259 *Id.*; *see also Mayes v. City of De Leon*, 922 S.W.2d 200, 203 (Tex. App.—Eastland 1996, writ denied) (determining that "personnel" was not sufficient notice of termination of police chief); *Stockdale*, 867 S.W.2d at 124–25 (holding that "discussion of personnel" and "proposed nonrenewal of teaching contract" provided sufficient notice of nonrenewal of band director's contract); *Lone Star Greyhound Park, Inc. v. Tex. Racing Comm'n*, 863 S.W.2d 742, 747 (Tex. App.—Austin 1993, writ denied) (indicating that notice need not list "the particulars of litigation discussions," which would defeat purpose of statutory predecessor to section 551.071 of the Government Code); *Point Isabel Indep. Sch. Dist.*, 797 S.W.2d at 182 (holding that "employment of personnel" is insufficient to describe hiring of principals, but is sufficient for hiring school librarian, part-time counselor, band director, or school teacher); Tex. Att'y Gen. Op. No. H-1045 (1977) at 5 (holding "discussion of personnel changes" insufficient to describe selection of university system chancellor or university president).

260 *Burks v. Yarbrough*, 157 S.W.3d 876, 883 (Tex. App.—Houston [14th Dist.] 2005, no pet.); *see also Friends of Canyon Lake, Inc. v. Guadalupe-Blanco River Auth.*, 96 S.W.3d 519, 529 (Tex. App.—Austin 2002, pet. denied).

to the community.[261] Consequently, counsel for the governing body should be consulted if any doubt exists concerning the specificity of notice required for a particular matter.

In *City of Donna v. Ramirez*, a court of appeals considered a meeting notice indicating a cancelled meeting.[262] The meeting notice of the Donna city council posted outside city hall had the word "cancelled" written on it, but the notices posted online and inside the city hall did not.[263] The meeting occurred and the notice was challenged.[264] The court held the notice violated section 551.041's requirement that a governmental body give written notice of the date, hour, place, and subject of each meeting and section 551.043's requirement that the notice be posted at least 72 hours before the meeting.

C. Generalized Terms

Generalized terms such as "old business," "new business," "regular or routine business," and "other business" are not proper terms to give notice of a meeting because they do not inform the public of its subject matter.[265] The term "public comment," however, provides sufficient notice of a "public comment" session, where the general public addresses the governmental body about its concerns and the governmental body does not comment or deliberate, except as authorized by section 551.042 of the Government Code.[266] "Public comment" will not provide adequate notice if the governmental body is, prior to the meeting, aware, or reasonably should have been aware, of specific topics to be raised.[267] When a governmental body is responsible for a presentation, it an easily give notice of its subject matter, but it usually cannot predict the subject matter of public comment sessions.[268] Thus, a meeting notice stating "Presentation by [County] Commissioner" did not provide adequate notice of the presentation, which covered the commissioner's views on development and substantive policy issues of importance to the county.[269] The term "presentation" was vague; moreover, it was noticed for the "Proclamations & Presentations" portion of the meeting, which otherwise consisted of formalities.[270]

Attorney General Opinion GA-0668 (2008) had previously determined that notice such as "City Manager's Report" was not adequate notice for items similar to those included in section 551.0415 and that the subject of a report by a member of the city staff or governing body must be included in the notice in a manner that informs a reader about the subjects to be addressed. Section 551.0415, modifying Attorney General Opinion GA-0668, authorizes a quorum of the governing

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261 *River Rd. Neighborhood Ass'n v. S. Tex. Sports*, 720 S.W.2d 551, 557 (Tex. App.—San Antonio 1986, writ dism'd) (concluding that notice stating only "discussion" is insufficient to indicate board action is intended, given prior history of stating "discussion/action" in agenda when action is intended).

262 *City of Donna v. Ramirez*, 548 S.W.3d 26, 35–36 (Tex. App.—Corpus Christi 2017, pet. denied).

263 *See id.* at 33.

264 *See id.*

265 Tex. Att'y Gen. Op. No. H-662 (1975) at 3.

266 Tex. Att'y Gen. Op. No. JC-0169 (2000) at 4; *see* TEX. GOV'T CODE § 551.042 (providing that governmental body may respond to inquiry about subject not on posted notice by stating factual information, reciting existing policy or placing subject of inquiry on agenda of future meeting).

267 Tex. Att'y Gen. Op. No. JC-0169 (2000) at 4.

268 *Id.*

269 *Hays Cty. Water Planning P'ship v. Hays Cty.*, 41 S.W.3d 174, 180 (Tex. App.—Austin 2001, pet. denied).

270 *Id.* at 180 (citing Tex. Att'y Gen. Op. No. JC-0169 (2000)).

body of a municipality or county to receive reports about items of community interest during a meeting without having given notice of the subject of the report if no action is taken.[271] Section 551.0415 defines an "item of community interest" to include:

> (1) expressions of thanks, congratulations, or condolence;
>
> (2) information regarding holiday schedules;
>
> (3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision;
>
> (4) a reminder about an upcoming event organized or sponsored by the governing body;
>
> (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and
>
> (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.[272]

D. Time of Posting

Notice must be posted for a minimum length of time before each meeting. Section 551.043(a) states the general time requirement as follows:

> The notice of a meeting of a governmental body 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, except as provided by Sections 551.044–551.046.[273]

Section 551.043(b) relates to posting notice on the Internet. Where the Act allows or requires a governmental body to post notice on the Internet, the following provisions apply to the posting:

> (1) the governmental body satisfies the requirement that the notice be posted in a place readily accessible to the general public at all times by making a good-faith attempt to continuously post the notice on the Internet during the prescribed period;

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271 TEX. GOV'T CODE § 551.0415(a).
272 *Id.* § 551.0415(b).
273 *Id.* § 551.043(a).

(2) the governmental body must still comply with any duty imposed by this chapter to physically post the notice at a particular location; and

(3) if the governmental body makes a good-faith attempt to continuously post the notice on the Internet during the prescribed period, the notice physically posted at the location prescribed by this chapter must be readily accessible to the general public during normal business hours.[274]

Section 551.044, which excepts from the general rule governmental bodies with statewide jurisdiction, provides as follows:

(a) The secretary of state must post notice on the Internet of a meeting of a state board, commission, department, or officer having statewide jurisdiction for at least seven days before the day of the meeting. The secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view notices of meetings posted by the secretary of state.

(b) Subsection (a) does not apply to:

(1) the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code, of the department, the commissioner of insurance, or the commissioner of workers' compensation; or

(2) the governing board of an institution of higher education.[275]

Section 551.046 excepts a committee of the legislature from the general rule:

> The notice of a legislative committee meeting shall be as provided by the rules of the house of representatives or of the senate.[276]

The interplay between the 72-hour rule applicable to local governmental bodies and the requirement that the posting be in a place convenient to the general public in a particular location, such as the city hall or the county courthouse, at one time created legal and practical difficulties for local entities, because the required locations are not usually accessible during the night or on weekends. Section 551.043(b) solves this problem in part, providing that "if the governmental body makes a good faith attempt to continuously post the notice on the Internet during the prescribed period, the notice physically posted at the location prescribed by this chapter must be readily accessible to the general public *during normal business hours*."[277]

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274 *Id.* § 551.043(b).
275 *Id.* § 551.044.
276 *Id.* § 551.046.
277 *Id.* § 551.043(b)(3) (emphasis added).

The Texas Supreme Court had previously addressed this matter in *City of San Antonio v. Fourth Court of Appeals*.[278] The city had posted notice of its February 15, 1990, meeting in two different locations. One notice was posted on a bulletin board inside the city hall, and the other notice was posted on a kiosk outside the main entrance to the city hall. This was done because the city hall was locked at night, thereby preventing continuous access during the 72-hour period to the notice posted inside. The court held that the double posting satisfied the requirements of the statutory predecessors to sections 551.043 and 551.050.[279]

State agencies have generally had little difficulty providing seven days' notice of their meetings, but difficulties have arisen when a quorum of a state agency's governing body wished to meet with a legislative committee.[280] If one or more of the state agency board members were to testify or answer questions, the agency itself would have held a meeting subject to the notice, record-keeping and openness requirements of the Act.[281] Legislative committees, however, post notices "as provided by the rules of the house of representatives or of the senate,"[282] and these generally require shorter time periods than the seven-day notice required for state agencies.[283] Thus, a state agency could find it impossible to give seven days' notice of a quorum's attendance at a legislative hearing concerning its legislation or budget. The Legislature dealt with this difference in notice requirements by adopting section 551.0035 of the Government Code, which provides as follows:

> (a) This section applies only to the attendance by a quorum of a governmental body at a meeting of a committee or agency of the legislature. This section does not apply to attendance at the meeting by members of the legislative committee or agency holding the meeting.
>
> (b) The attendance by a quorum of a governmental body at a meeting of a committee or agency of the legislature is not considered to be a meeting of that governmental body if the deliberations at the meeting by the members of that governmental body consist only of publicly testifying at the meeting, publicly commenting at the meeting, and publicly responding at the meeting to a question asked by a member of the legislative committee or agency.[284]

E. Place of Posting

The Act expressly states where notice shall be posted. The posting requirements vary depending on the governing body posting the notice.[285] Sections 551.048 through 551.056 address the

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278 *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991).

279 *Id.* at 768.

280 Tex. Att'y Gen. Op. No. JC-0308 (2000) at 2.

281 *Id.* at 2; *see also* Tex. Att'y Gen. Op. No. JC-0248 (2000) at 2.

282 TEX. GOV'T CODE § 551.046.

283 Tex. Att'y Gen. Op. No. JC-0308 (2000) at 2.

284 TEX. GOV'T CODE § 551.0035.

285 The Amarillo Court of Appeals recently rejected a challenge to the sufficiency of a notice that identified the building of the meeting "without identifying the meeting room, full street address, or name of the city." *Terrell v. Pampa Indep. Sch. Dist.*, 572 S.W.3d 294, 299 (Tex. App.—Amarillo 2019, pet. denied).

posting requirements of state entities, cities and counties, school districts, and other districts and political subdivisions. These provisions are quite detailed and, therefore, are set out here in full:

§ 551.048. State Governmental Body: Notice to Secretary of State; Place of Posting Notice

(a) A state governmental body shall provide notice of each meeting to the secretary of state.[286]

(b) The secretary of state shall post the notice on the Internet. The secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice.

§ 551.049. County Governmental Body: Place of Posting Notice

A county governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the county courthouse.

§ 551.050. Municipal Governmental Body: Place of Posting Notice

(a) In this section, "electronic bulletin board" means an electronic communication system that includes a perpetually illuminated screen on which the governmental body can post messages or notices viewable without manipulation by the public.

(b) A municipal governmental body shall post notice of each meeting on a physical or electronic bulletin board at a place convenient to the public in the city hall.

§ 551.0501. Joint Board: Place of Posting Notice

(a) In this section, "electronic bulletin board" means an electronic communication system that includes a perpetually illuminated screen on which the governmental body can post messages or notices viewable without manipulation by the public.

(b) A joint board created under Section 22.074, Transportation Code, shall post notice of each meeting on a physical or electronic bulletin board at a place convenient to the public in the board's administrative offices.

§ 551.051. School District: Place of Posting Notice

A school district shall post notice of each meeting on a bulletin board at a place convenient to the public in the central administrative office of the district.

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[286] Notices of open meetings filed in the office of the secretary of state as provided by law are published in the Texas Register. TEX. GOV'T CODE § 2002.011(3); *see* 1 TEX. ADMIN. CODE § 91.21 (Tex. Sec'y of State, How to File an Open Meeting Notice).

§ 551.052. School District: Special Notice to News Media

(a) A school district shall provide special notice of each meeting to any news media that has;

(1) requested special notice; and

(2) agreed to reimburse the district for the cost of providing the special notice.

(b) The notice shall be by telephone, facsimile transmission, or electronic mail.

§ 551.053. District or Political Subdivision Extending Into Four or More Counties: Notice to Public, Secretary of State, and County Clerk; Place of Posting Notice

(a) The governing body of a water district or other district or political subdivision that extends into four or more 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;

(2) provide notice of each meeting to the secretary of state; and

(3) either provide notice of each meeting to the county clerk of the county in which the administrative office of the district or political subdivision is located or post notice of each meeting on the district's or political subdivision's Internet website.

(b) The secretary of state shall post the notice provided under Subsection (a)(2) on the Internet. The secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice.

(c) A county clerk shall post a notice provided to the clerk under Subsection (a)(3) on a bulletin board at a place convenient to the public in the county courthouse.

§ 551.054. District or Political Subdivision Extending Into Fewer Than Four Counties: Notice to Public and County Clerks; Place of Posting Notice

(a) 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.

(b) A county clerk shall post a notice provided to the clerk under Subsection (a)(2) on a bulletin board at a place convenient to the public in the county courthouse.

§ 551.055. Institution of Higher Education

In addition to providing any other notice required by this subchapter, the governing board of a single institution of higher education:

(1) shall post notice of each meeting at the county courthouse of the county in which the meeting will be held;

(2) shall publish notice of a meeting in a student newspaper of the institution if an issue of the newspaper is published between the time of the posting and the time of the meeting; and

(3) may post notice of a meeting at another place convenient to the public.

Posting notice is mandatory, and actions taken at a meeting for which notice was posted incorrectly will be voidable.[287] In *Sierra Club v. Austin Transportation Study Policy Advisory Committee*, the court held that the committee was a special district covering four or more counties for purposes of the Act and, as such, was required to submit notice to the secretary of state pursuant to the statutory predecessor to section 551.053.[288] Thus, a governmental body that does not clearly fall within one of the categories covered by sections 551.048 through 551.056 should consider satisfying all potentially applicable posting requirements.[289]

§ 551.056. Additional Posting Requirements for Certain Municipalities, Counties, School Districts, Junior College Districts, Development Corporations, Authorities, and Joint Boards

Section 551.056 requires certain governmental bodies and economic development corporations to post notice on their Internet websites, in addition to other postings required by the Act. This provision applies to the following entities, if the entity maintains an Internet website or has a website maintained for it:

(1) a municipality;

(2) a county;

(3) a school district;

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287 TEX. GOV'T CODE § 551.141; *see Smith Cty. v. Thornton*, 726 S.W.2d 2, 3 (Tex. 1986).

288 *Sierra Club v. Austin Transp. Policy Advisory Comm.*, 746 S.W.2d 298, 301 (Tex. App.—Austin 1988, writ denied).

289 *See* Tex. Att'y Gen. Op. No. JM-120 (1983) at 3 (concluding that industrial development corporation must post notice in the same manner and location as political subdivision on whose behalf it was created).

(4) the governing body of a junior college or junior college district, including a college or district that has changed its name in accordance with Chapter 130, Education Code;

(5) a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code);

(6) a regional mobility authority included within the meaning of an "authority" as defined by Section 370.003, Transportation Code; and

(7) a joint board created under Section 22.074, Transportation Code.[290]

If a covered municipality's population is 48,000 or more and a county's population is 65,000 or more, it must also post the agenda for the meeting on its website.[291] Section 551.056 also provides that the validity of a posted notice made in good faith to comply with the Act is not affected by a failure to comply with its requirements due to a technical problem beyond the control of the entity.[292]

F. Internet Posting of Notice and Meeting Materials

Provisions in the Act specific to general academic teaching institutions and certain junior college districts require such institutions to post specified meeting materials to their Internet website. If applicable, section 551.1281 and section 551.1282 require the Internet posting "as early as practicable in advance of the meeting" of "any written agenda and related supplemental written materials" that are provided to the governing board members for their use in the meeting.[293] This posting requirement excludes any written materials "that the general counsel or other appropriate attorney" for the particular governmental body certifies are confidential.[294]

G. Emergency Meetings: Providing and Supplementing Notice

Special rules allow for posting notice of emergency meetings and for supplementing a posted notice with emergency items. These rules affect the timing and content of the notice but not its physical location. Section 551.045 provides:

(a) In an emergency or when there is an urgent public necessity, the notice of a meeting to deliberate or take action on the emergency or urgent public necessity, or the supplemental notice to add the deliberation or taking of action on the

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290 TEX. GOV'T CODE § 551.056(b).

291 *See id.* § 551.056(c)(1)–(2); *see also id.* § 551.056(c)(3)–(6) (providing that certain other covered entities must post agenda on Internet).

292 *Id.* § 551.056(d); *see also Argyle Indep. Sch. Dist. v. Wolf*, 234 S.W.3d 229, 248–49 (Tex. App.—Fort Worth 2007, no pet.) (determining that there was no evidence of bad faith on part of the school district). *Cf. Terrell v. Pampa Indep. Sch. Dist.*, 345 S.W.3d 641, 644 (Tex. App.—Amarillo 2011, pet. denied) (finding a material issue in summary judgment proceedings about whether ISD "actually attempted to post the notices and, therefore, met the good faith exception to the requirement to concurrently post notices").

293 *Id.* §§ 551.1281–.1282.

294 *Id.*

emergency or urgent public necessity as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter, is sufficient if the notice or supplemental notice is posted for at least one hour before the meeting is convened.

(a-1) A governmental body may not deliberate or take action on a matter at a meeting for which notice or supplemental notice is posted under Subsection (a) other than:

(1) a matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting as provided by Subsection (c); or

(2) an agenda item listed on a notice of the meeting before the supplemental notice was posted.

(b) An emergency or urgent public necessity exists only if immediate action is required of a governmental body because of:

(1) an imminent threat to public health and safety, including a threat described by Subdivision (2) if imminent; or

(2) a reasonably unforeseeable situation, including:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;

(B) power failure, transportation failure, or interruption of communication facilities;

(C) epidemic; or

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

(c) The governmental body shall clearly identify the emergency or urgent public necessity in the notice or supplemental notice under this section.

(d) A person who is designated or authorized to post notice of a meeting by a governmental body under this subchapter shall post the notice taking at face value the governmental body's stated reason for the emergency or urgent public necessity.

(e) For purposes of Subsection (b)(2), the sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's

> jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation.[295]

The public notice of a meeting to deliberate or take action on an emergency or urgent public necessity must be posted at least one hour before the meeting is scheduled to begin. A governmental body may decide to consider an emergency item during a previously scheduled meeting instead of calling a new emergency meeting. The governmental body must post a supplemental notice to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda at least one hour before the meeting begins.[296]

In addition to posting the public notice of an emergency meeting or supplementing a notice with an emergency item, the governmental body must give special notice of the emergency meeting or emergency item to members of the news media who have previously (1) filed a request with the governmental body, and (2) agreed to reimburse the governmental body for providing the special notice.[297] The notice to members of the news media is to be given by telephone, facsimile transmission or electronic mail at least one hour before the meeting is convened.[298]

The public notice of an emergency meeting or an emergency item must "clearly identify" the emergency or urgent public necessity for calling the meeting or for adding the item to the agenda of a previously scheduled meeting.[299] The Act defines "emergency" for purposes of emergency meetings and emergency items.[300]

Section 551.045(a-1) prohibits a governmental body from deliberating or taking action on a matter at an emergency meeting or one for which a supplemental notice has been posted other than a matter directly related to responding to the emergency or urgent public necessity identified in the emergency notice or supplemental notice or an agenda item listed on the meeting notice before the supplemental notice was posted.[301] Section 551.142 expressly authorizes the attorney general to bring an action by mandamus or injunction in a Travis County district court to stop, prevent, or reverse a violation or threated violation of section 551.045(a-1).[302]

Because section 551.045 provides for one-hour notice only for emergency meetings or for adding emergency items to the agenda, a governmental body adding a *non*emergency item to its agenda must satisfy the general notice period of section 551.043 or section 551.044, as applicable, regarding the subject of that item.

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295 *Id.* § 551.045.
296 *Id.* § 551.045(a).
297 *Id.* § 551.047(b).
298 *Id.* § 551.047(c).
299 *Id.* § 551.045(c).
300 *Id.* § 551.045(b); *see River Rd. Neighborhood Ass'n v. S. Tex. Sports*, 720 S.W.2d 551, 557 (Tex. App.—San Antonio 1986, writ dism'd) (construing "emergency" consistently with definition later adopted by Legislature).
301 TEX. GOV'T CODE § 551.045(a-1).
302 *Id.* § 551.142(c), (d).

A governmental body's determination that an emergency exists is subject to judicial review.[303] The existence of an emergency depends on the facts in a given case.[304]

H. Recess in a Meeting: Postponement in Case of a Catastrophe

Under section 551.0411, a governmental body that recesses an open meeting to the following regular business day need not post notice of the continued meeting if the action is taken in good faith and not to circumvent the Act. If a meeting continued to the following regular business day is then continued to another day, the governmental body must give notice of the meeting's continuance to the other day.[305]

Section 551.0411 also provides for a catastrophe that prevents the governmental body from convening an open meeting that was properly posted under section 551.041. The governmental body may convene in a convenient location within 72 hours pursuant to section 551.045 if the action is taken in good faith and not to circumvent the Act. However, if the governmental body is unable to convene the meeting within 72 hours, it may subsequently convene the meeting only if it gives written notice of the meeting.

A "catastrophe" is defined as "a condition or occurrence that interferes physically with the ability of a governmental body to conduct a meeting" including:

(1) fire, flood, earthquake, hurricane, tornado, or wind, rain or snow storm;

(2) power failure, transportation failure, or interruption of communication facilities;

(3) epidemic; or

(4) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.[306]

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303 *See River Rd. Neighborhood Ass'n*, 720 S.W.2d at 557–58 (concluding that immediate need for action was brought about by board's decisions not to act at previous meetings and was not due to an emergency); *Garcia v. City of Kingsville*, 641 S.W.2d 339, 341–42 (Tex. App.—Corpus Christi 1982, no writ) (concluding that dismissal of city manager was not a matter of urgent public necessity); *see also Markowski v. City of Marlin*, 940 S.W.2d 720, 724 (Tex. App.—Waco 1997, writ denied) (concluding that city's receipt of lawsuit filed against it by fire captain and fire chief was emergency); *Piazza v. City of Granger*, 909 S.W.2d 529, 533 (Tex. App.—Austin 1995, no writ) (concluding that notice stating city council's "lack of confidence" in police officer did not identify emergency).

304 *Common Cause v. Metro. Transit Auth.*, 666 S.W.2d 610, 613 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see generally* Tex. Att'y Gen. Op. No. JC-0406 (2001) at 5–6.

305 *See* TEX. GOV'T CODE § 551.0411(a). Before section 551.0411 was adopted, the court in *Rivera v. City of Laredo*, held that a meeting could not be continued to any day other than the immediately following day without reposting notice. *See Rivera v. City of Laredo*, 948 S.W.2d 787, 793 (Tex. App.—San Antonio 1997, writ denied).

306 TEX. GOV'T CODE § 551.0411(c).

I. County Clerk May Charge a Fee for Posting Notice

A county clerk may charge a reasonable fee to a district or political subdivision to post an Open Meetings Act notice.[307]

[307] *See* TEX. LOC. GOV'T CODE § 118.011(c); Tex. Att'y Gen. Op. Nos. GA-0152 (2004) at 3, M-496 (1969) at 3.

VIII. Open Meetings

A. Convening the Meeting

A meeting may not be convened unless a quorum of the governmental body is present in the meeting room.[308] This requirement applies even if the governmental body plans to go into an executive session, or closed meeting, immediately after convening.[309] The public is entitled to know which members are present for the executive session and whether there is a quorum.[310]

B. Location of the Meeting

The Act requires a meeting of a governmental body to be held in a location accessible to the public.[311] It thus precludes a governmental body from meeting in an inaccessible location. Recognizing that the question whether a specific location is accessible is a fact question, this office recently opined that a court would unlikely conclude as a matter of law that the Act prohibits a governmental body from holding a meeting held in a location that requires the presentation of photo identification for admittance.[312] This office has also opined that the Board of Regents of a state university system could not meet in Mexico, regardless of whether the board broadcast the meeting by videoconferencing technology to areas in Texas where component institutions were located.[313] Nor could an entity subject to the Act meet in an underwriter's office in another state.[314] In addition, pursuant to the Americans with Disabilities Act, a meeting room in which a public meeting is held must be physically accessible to individuals with disabilities. *See infra* Part XII.C of this *Handbook*.

C. Rights of the Public

A meeting that is "open to the public" under the Act is one that the public is permitted to attend.[315] Many governmental bodies conduct "public comment," "public forum" or "open mike" sessions at which members of the public may address comments on any subject to the governmental body.[316] A public comment session is a meeting as defined by section 551.001(4)(B) of the Government Code because the members of the governmental body "receive information from . . .

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308 TEX. GOV'T CODE § 551.001(2), (4) (defining "deliberation" and "meeting"); *Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 959 (Tex. 1986).

309 TEX. GOV'T CODE § 551.101; *see Martinez v. State*, 879 S.W.2d 54, 56 (Tex. Crim. App. 1994); *Cox. Enters., Inc.*, 706 S.W.2d at 959.

310 *Martinez*, 879 S.W.2d at 56; *Cox Enters., Inc.*, 706 S.W.2d at 959.

311 Other statutes may specify the location of a governmental body's meeting. *See* TEX. WATER CODE § 49.062 (special purpose districts), TEX. LOC. GOV'T CODE §§ 504.054, .055 (specifying alternative meeting locations for a board of an economic development corporation organized under the Development Corporation Act, Title 12, subtitle C1, Local Government Code).

312 Tex. Att'y Gen. Op. No. KP-0020 (2015) at 2 (acknowledging that a court would likely weigh the need for the identification requirement as a security measure against the public's right of access guaranteed under the Act).

313 Tex. Att'y Gen. Op. No. JC-0487 (2002) at 7.

314 Tex. Att'y Gen. Op. No. JC-0053 (1999) at 5–6.

315 Tex. Att'y Gen. Op. No. M-220 (1968) at 5.

316 Tex. Att'y Gen. Op. No. JC-0169 (2000) at 4.

or receive questions from [a] third person."[317] Accordingly, the governmental body must give notice of a public comment session.

Effective September 1, 2019, new section 551.007 entitles the public to speak about items on the agenda at meetings of certain governmental bodies.[318] Section 551.007 excludes a governmental body listed in section 551.001(3)(A), which is "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 officials."[319] Section 551.007 provides that a governmental body to which the section applies "shall allow each member of the public who desires to address the body regarding an item on an agenda . . . to address the body regarding the item at the meeting before or during the body's consideration of the item."[320] The new section expressly authorizes a governmental body to adopt reasonable rules regarding the public's right to address the body, "including rules that limit the total amount of time that a member of the public may address the body on a given item."[321] In setting such rules, a governmental body may not unfairly discriminate among speakers for or against a particular point of view.[322] Additionally, new section 551.007 provides that "a governmental body may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service," except criticism otherwise prohibited by law.[323] Further, a governmental body making a rule limiting the amount of time for a member to address the governmental body and that does not use simultaneous translation equipment must give twice as much time to a person who addresses the governmental body through a translator.[324]

The Act does not entitle the public to choose the items to be placed on the agenda for discussion at the meeting.[325] The Act permits a member of the public or a member of the governmental body to raise a subject that has not been included in the notice for the meeting, but any discussion of the subject must be limited to a proposal to place the subject on the agenda for a future meeting. Section 551.042 of the Act provides for this procedure:

> (a) If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply to:

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317 TEX. GOV'T CODE § 551.001(4)(B)(iv); *see* Tex. Att'y Gen. Op. No. JC-0169 (2000) at 3.

318 *See* Act of May 22, 2019, 86th Leg., R.S., ch. 861, § 1, 2019 Tex. Sess. Law Serv. 2327, 2328 (to be codified at TEX. GOV'T CODE § 551.007).

319 *See id.*; *see also* TEX. GOV'T CODE § 551.001(3)(A).

320 *See* Act of May 22, 2019, 86th Leg., R.S., ch. 861, § 1, 2019 Tex. Sess. Law Serv. 2327, 2328 (to be codified at TEX. GOV'T CODE § 551.007(b)).

321 *See id.*

322 Tex. Att'y Gen. LO-96-111 (1996) at 1.

323 *See* Act of May 22, 2019, 86th Leg., R.S., ch. 861, § 1, 2019 Tex. Sess. Law Serv. 2327, 2328 (to be codified at TEX. GOV'T CODE § 551.007 (e)).

324 *See id.* (to be codified at TEX. GOV'T CODE § 551.007(d)).

325 *See generally Charlestown Homeowners Ass'n, Inc. v. LaCoke*, 507 S.W.2d 876, 883 (Tex. App.—Dallas 1974, writ ref'd n.r.e.) (stating that the Act "does not mean that all such meetings must be 'open' in the sense that persons other than members are free to speak").

(1) a statement of specific factual information given in response to the inquiry; or

(2) a recitation of existing policy in response to the inquiry.

(b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.[326]

Another section of the Act permits members of the public to record open meetings with a recorder or a video camera:

(a) A person in attendance may record all or any part of an open meeting of a governmental body by means of a recorder, video camera, or other means of aural or visual reproduction.

(b) A governmental body may adopt reasonable rules to maintain order at a meeting, including rules relating to:

(1) the location of recording equipment; and

(2) the manner in which the recording is conducted.

(c) A rule adopted under Subsection (b) may not prevent or unreasonably impair a person from exercising a right granted under Subsection (a).[327]

D. Final Actions

Section 551.102 of the Act provides as follows:

> A final action, decision, or vote on a matter deliberated in a closed meeting under this chapter may only be made in an open meeting that is held in compliance with the notice provisions of this chapter.[328]

A governmental body's final action, decision or vote on any matter within its jurisdiction may be made only in an open session held in compliance with the notice requirements of the Act. The

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326 TEX. GOV'T CODE § 551.042.

327 *Id.* § 551.023.

328 *Id.* § 551.102; *see Rubalcaba v. Raymondville Indep. Sch. Dist.*, No. 13-14-00224-CV, 2016 WL 1274486, at *3 (Tex. App.—Corpus Christi, Mar. 31, 2016, no pet.) (mem. op.) (determining that "[w]hile a discussion may have taken place in executive session which may have been in violation of the Act," the fact that the vote occurred in open session after the alleged violations meant that "the vote was not taken in violation" of the Act); *Tex. State Bd. of Pub. Accountancy v. Bass*, 366 S.W.3d 751, 762 (Tex. App.—Austin 2012, no pet.) ("[T]he statute contemplates that some deliberations may occur in executive session, but establishes that the final resolution of the matter must occur in open session.").

governmental body may not vote in an open session by secret written ballot.[329] Furthermore, a governmental body may not take action by written agreement without a meeting.[330]

A city governing body may delegate to others the authority to make decisions affecting the transaction of city business if it does so in a meeting by adopting a resolution or ordinance by majority vote.[331] When six cities delegated to a consultant corporation the right to investigate and pursue claims against a gas company, including the right to hire counsel for those purposes, the attorney hired by the consultant could opt out of a class action on behalf of each city, and the cities did not need to hold an open meeting to approve the attorney's decision to opt out in another instance.[332] When the city attorney had authority under the city charter to bring a lawsuit and did not need city council approval to appeal, a discussion of the appeal by the city manager, a quorum of council members and the city attorney did not involve a final action.[333]

The fact that the State Board of Insurance discussed and approved a reduction in force at meetings that violated the Act did not affect the validity of the reduction, where the commissioner of insurance had independent authority to terminate employees.[334] The board's superfluous approval of the firings was irrelevant to their validity.[335] Similarly, the fact that the State Board of Public Accountancy's discussions in closed sessions, even if the closed sessions were improper under the Act, touched on the accountants' license revocations did not void the board's order removing the accountants' licenses when the vote of revocation was taken in open session.[336]

In the usual case, when the authority to make a decision or to take an action is vested in the governmental body, the governmental body must act in an open session. In *Toyah Independent School District v. Pecos-Barstow Independent School District*,[337] for example, the Toyah school board sued to enjoin enforcement of an annexation order approved by the board of trustees of Reeves County in a closed meeting.[338] The board of trustees of Reeves County had excluded all

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329 Tex. Att'y Gen. Op. No. H-1163 (1978) at 2.

330 *Webster v. Tex. & Pac. Motor Transp. Co.*, 166 S.W.2d 75, 77 (Tex. 1942); Tex. Att'y Gen. Op. Nos. GA-0264 (2004) at 6–7, JM-120 (1983) at 4; *see also* Tex. Att'y Gen. Op. No. DM-95 (1992) at 5–6 (considering letter concerning matter of governmental business or policy that was circulated and signed by individual members of governmental body outside of open meeting).

331 *City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 757 (Tex. 2003) (quoting from *Cent. Power & Light Co. v. City of San Juan*, 962 S.W.2d 602, 613 (Tex. App.—Corpus Christi 1998, pet. dism'd w.o.j.)).

332 *See id.* at 758.

333 *See City of San Antonio v. Aguilar*, 670 S.W.2d 681, 685–86 (Tex. App.—San Antonio 1984, writ dism'd); *see also* Tex. Att'y Gen. Op. No. MW-32 (1979) at 1–2 (concluding that procedure whereby executive director notified board of his intention to request attorney general to bring lawsuit and board member could request in writing that matter be placed on agenda of next meeting did not violate the Act).

334 *Spiller v. Tex. Dep't of Ins.*, 949 S.W.2d 548, 551 (Tex. App.—Austin 1997, writ denied); *see also Swate v. Medina Cmty. Hosp.*, 966 S.W.2d 693, 698 (Tex. App.—San Antonio 1998, pet. denied) (concluding that hospital board's alleged violation of Act did not render termination void where hospital administrator had independent power to hire and fire).

335 *Spiller*, 949 S.W.2d at 551.

336 *Tex. State Bd. of Pub. Accountancy*, 366 S.W.3d at 761–62 ("Thus, to establish that the Board's orders violated the Act, the accountants must establish that 'the actual vote or decision' to adopt the orders was not made in open session.") (footnote and citation omitted).

337 *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377 (Tex. App.—San Antonio 1971, no writ).

338 *Id.* at 377.

members of the public from the meeting room before voting in favor of an order annexing the Toyah district to a third school district.[339] The court determined that the board of trustees' action violated the Act and held that the order of annexation was ineffective.[340] The *Toyah Independent School District* court thus developed the remedy of judicial invalidation of actions taken by a governmental body in violation of the Act. This remedy is now codified in section 551.141 of the Act. The voidability of a governmental body's actions taken in violation of the Act is discussed in Part XI.C of this *Handbook*.

Furthermore, the actual vote or decision on the ultimate issue confronting the governmental body must be made in an open session.[341] In *Board of Trustees v. Cox Enterprises, Inc.*,[342] the court of appeals held that a school board violated the statutory predecessor to section 551.102 when it selected a board member to serve as board president. In an executive session, the board took a written vote on which of two board members would serve as president, and the winner of the vote was announced. The board then returned to the open session and voted unanimously for the individual who won the vote in the executive session.[343] Although the board argued that the written vote in the executive session was "simply a straw vote" that did not violate the Act, the court of appeals found that "there is sufficient evidence to support the trial court's conclusion that the actual resolution of the issue was made in the executive session contrary to the provisions of" the statutory predecessor to section 551.102.[344] Thus, as *Cox Enterprises* makes clear, a governmental body should not take a "straw vote" or otherwise attempt to count votes in an executive session.

On the other hand, members of a governmental body deliberating in a permissible executive session may express their opinions or indicate how they will vote in the open session. The court in *Cox Enterprises* stated that "[a] contrary holding would debilitate the role of the deliberations which are permitted in the executive sessions and would unreasonably limit the rights of expression and advocacy."[345]

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339 *Id.* at 378 n.1.

340 *Id.* at 380; *see also City of Stephenville v. Tex. Parks & Wildlife Dep't*, 940 S.W.2d 667, 674–75 (Tex. App.—Austin 1996, writ denied) (noting that Water Commission's decision to hear some complaints raised on motion for rehearing and to exclude others should have been taken in open session held in compliance with Act); *Gulf Reg'l Educ. Television Affiliates v. Univ. of Houston*, 746 S.W.2d 803, 809 (Tex. App.—Houston [14th Dist.] 1988, writ denied) (concluding that governmental body's decision to hire attorney to bring lawsuit was invalid because it was not made in open meeting); Tex. Att'y Gen. Op. No. H-1198 (1978) at 2 (concluding that Act does not permit governmental body to enter into agreement and authorize expenditure of funds in closed session).

341 TEX. GOV'T CODE § 551.102; *see also Nash v. Civil Serv. Comm'n*, 864 S.W.2d 163, 166 (Tex. App.—Tyler 1993, no writ).

342 *Bd. of Trs. v. Cox Enters., Inc.*, 679 S.W.2d 86, 90 (Tex. App.—Texarkana 1984*), aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986).

343 *Id.* at 90.

344 *Id.*

345 *Id.* at 89 (footnote omitted); *see also Nash*, 864 S.W.2d at 166 (stating that Act does not prohibit board from reaching tentative conclusion in executive session and announcing it in open session where members have opportunity to comment and cast dissenting vote); *City of Dallas v. Parker*, 737 S.W.2d 845, 850 (Tex. App.—Dallas 1987, no writ) (holding that proceedings complied with Act when "conditional" vote was taken during recess, result was announced in open session, and vote of each member was apparent).

In certain circumstances, a governmental body may make a "decision" or take an "action" in an executive session that will not be considered a "final action, decision, or vote" that must be taken in an open session. The court in *Cox Enterprises* held that the school board did not take a "final action" when it discussed making public the names and qualifications of the candidates for superintendent or when it discussed selling surplus property and instructed the administration to solicit bids. The court concluded that the board was simply announcing that the law would be followed rather than taking any action in deciding to make public the names and qualifications of the candidates. The court also noted that further action would be required before the board could decide to sell the surplus property; therefore, the instruction to solicit bids was not a "final action."[346]

[346] *Bd. of Trs.*, 679 S.W.2d at 89–90.

IX. Closed Meetings

A. Overview of Subchapter D of the Open Meetings Act

The Act provides certain narrowly drawn exceptions to the requirement that meetings of a governmental body be open to the public.[347] These exceptions are found in sections 551.071 through 551.090 and are discussed in detail in Part B of this section of the *Handbook*.

Section 551.101 states the requirements for holding a closed meeting. It provides:

> If a closed meeting is allowed under this chapter, a governmental body may not conduct the closed meeting unless a quorum of the governmental body first convenes in an open meeting for which notice has been given as provided by this chapter and during which the presiding officer publicly:
>
> (1) announces that a closed meeting will be held, and
>
> (2) identifies the section or sections of this chapter under which the closed meeting is held.[348]

Thus, a quorum of the governmental body must be assembled in the meeting room, the meeting must be convened as an open meeting pursuant to proper notice, and the presiding officer must announce that a closed session will be held and must identify the sections of the Act authorizing the closed session.[349] There are several purposes for requiring the presiding officer to identify the section or sections that authorize the closed session: to cause the governmental body to assess the applicability of the exceptions before deciding to close the meeting; to fix the governmental body's legal position as relying upon the exceptions specified; and to inform those present of the exceptions, thereby giving them an opportunity to object intelligently.[350] Judging the sufficiency of the presiding officer's announcement in light of whether it effectuated or hindered these purposes, the court of appeals in *Lone Star Greyhound Park, Inc. v. Texas Racing Commission* determined that the presiding officer's reference to the content of a section, rather than to the section number, sufficiently identified the exception.[351]

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347 TEX. GOV'T CODE §§ 551.071–.090; *see also Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 958 (Tex. 1986) (noting the narrowly drawn exceptions).

348 TEX. GOV'T CODE § 551.101.

349 *Martinez v. State*, 879 S.W.2d 54, 56 n.5 (Tex. Crim. App. 1994).

350 *Lone Star Greyhound Park, Inc. v. Tex. Racing Comm'n*, 863 S.W.2d 742, 747 (Tex. App.—Austin 1993, writ denied); *see also Standley v. Sansom*, 367 S.W.3d 343, 355 (Tex. App.—San Antonio 2012, pet. denied) (using the four purposes outlined in *Lone Star* to determine sufficiency of challenged notice for executive session).

351 *Lone Star Greyhound Park, Inc.*, 863 S.W.2d at 748.

B. Provisions Authorizing Deliberations in Closed Meeting

1. Section 551.071. Consultations with Attorney

Section 551.071 authorizes a governmental body to consult with its attorney in an executive session to seek his or her advice on legal matters. It provides as follows:

> A governmental body may not conduct a private consultation with its attorney except:
>
> (1) when the governmental body seeks the advice of its attorney about:
>
> (A) pending or contemplated litigation; or
>
> (B) a settlement offer; or
>
> (2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.[352]

This provision implements the attorney-client privilege, an attorney's duty to preserve the confidences of a client.[353] It allows a governmental body to meet in executive session with its attorney when it seeks the attorney's advice with respect to pending or contemplated litigation or settlement offers,[354] including pending or contemplated administrative proceedings governed by the Administrative Procedure Act.

In addition, subsection 551.071(2) of the Government Code permits a governmental body to consult in an executive session with its attorney "on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts" with the Act.[355] Thus, a governmental body may hold an executive session to seek or receive its attorney's advice on legal matters that are not related to litigation or the settlement of litigation.[356] A governmental body may not invoke section 551.071 to convene a closed session and then discuss matters outside of that provision.[357] "General discussion of policy, unrelated to legal matters is not permitted under the language of [this exception] merely

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352 TEX. GOV'T CODE § 551.071.

353 *Tex. State Bd. of Pub. Accountancy*, 366 S.W.3d at 759; *see* Tex. Att'y Gen. Op. Nos. JC-0506 (2002) at 4, JC-0233 (2000) at 3, H-816 (1976) at 4, M-1261 (1972) at 9–10.

354 TEX. GOV'T CODE § 551.071(1); *Lone Star Greyhound Park Inc.*, 863 S.W.2d at 748.

355 TEX. GOV'T CODE § 551.071(2).

356 *Cf. Weatherford v. City of San Marcos*, 157 S.W.3d 473, 486 (Tex. App.—Austin 2004, pet. denied) (concluding that city council did not violate Act when it went into executive session to seek attorney's advice about land use provision); Tex. Att'y Gen. Op. Nos. JC-0233 (2000) at 3, JM-100 (1983) at 2.

357 *Gardner v. Herring*, 21 S.W.3d 767, 776 (Tex. App.—Amarillo 2000, no pet.). *But see In re City of Galveston*, No. 14-14-01005-CV, 2015 WL 971314, *5–6 (Tex. App.—Houston [14th Dist.] March 3, 2015, orig. proceeding) (mem. op) (acknowledging that the Act does not mandate a "rigid stricture of direct legal question . . . followed by a direct legal answer" and that the "conveyance of factual information or the expression of opinion or intent by a member of the governmental body may be appropriate in a closed meeting . . . if the purpose of such statement is to facilitate the rendition of legal advice by the government's attorney").

because an attorney is present."[358] A governmental body may, for example, consult with its attorney in executive session about the legal issues raised in connection with awarding a contract, but it may not discuss the merits of a proposed contract, financial considerations, or other nonlegal matters in an executive session held under section 551.071 of the Government Code.[359]

The attorney-client privilege can be waived by communicating privileged matters in the presence of persons who are not within the privilege.[360] Two governmental bodies waived this privilege by meeting together for discussions intended to avoid litigation between them, each party consulting with its attorney in the presence of the other, "the party from whom it would normally conceal its intentions and strategy."[361] An executive session under section 551.071 is not allowed for such discussions. A governmental body may, however, admit to a session closed under this exception its agents or representatives, where those persons' interest in litigation is aligned with that of the governmental body and their presence is necessary for full communication between the governmental body and its attorney.[362]

This exception is an affirmative defense on which the governmental body bears the burden of proof.[363]

2. Section 551.072. Deliberations about Real Property

Section 551.072 authorizes a governmental body to deliberate in executive session on certain matters concerning real property. It provides as follows:

> A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.[364]

Section 551.072 permits an executive session only where public discussion of the subject would have a detrimental effect on the governmental body's negotiating position with respect to a third party.[365] Where a court found that open discussion would not be detrimental to a city's negotiations, a closed session under this provision was not permitted.[366] It does not allow a

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358 Tex. Att'y Gen. Op. No. JM-100 (1983) at 2; *see Finlan v. City of Dallas*, 888 F. Supp. 779, 782 n.9 (N.D. Tex. 1995); Tex. Att'y Gen. No. JC-0233 (2000) at 3.

359 *Olympic Waste Servs. v. City of Grand-Saline*, 204 S.W.3d 496, 503–04 (Tex. App.—Tyler 2006, no pet.) (citing Tex. Att'y Gen. Op. No. JC-0233 (2000) at 3).

360 *See* Tex. Att'y Gen. Op. Nos. JC-0506 (2002) at 6, JM-100 (1983) at 2.

361 Tex. Att'y Gen. Op. No. MW-417 (1981) at 2–3; *see also* Tex. Att'y Gen. Op. No. JM-1004 (1989) at 4 (concluding that school board member who has sued other board members may be excluded from executive session held to discuss litigation).

362 *See* Tex. Att'y Gen. Op. No. JC-0506 (2002) at 6; *see also* Tex. Att'y Gen. Op. No. JM-238 (1984) at 5.

363 *See Killam Ranch Props., Ltd. v. Webb Cty.*, 376 S.W.3d 146, 157 (Tex. App.—San Antonio 2012, pet. denied); *City of Farmers Branch v. Ramos*, 235 S.W.3d 462, 466 (Tex. App.—Dallas 2007, no pet.); *Olympic Waste Servs.*, 204 S.W.3d at 504.

364 TEX. GOV'T CODE § 551.072.

365 Tex. Att'y Gen. Op. No. MW-417 (1981) at 2 (construing statutory predecessor to Government Code section 551.072).

366 *See City of Laredo v. Escamilla*, 219 S.W.3d 14, 21 (Tex. App.—San Antonio 2006, pet. denied).

governmental body to "cut a deal in private, devoid of public input or debate."[367] A governmental body's discussion of nonmonetary attributes of property to be purchased that relate to the property's value may fall within this exception if deliberating in open session would detrimentally affect subsequent negotiations.[368]

3. Section 551.0725. Deliberations by Certain Commissioners Courts about Contract Being Negotiated

Section 551.0725 provides as follows:

> (a) The commissioners court of a county may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:
>
> (1) the commissioners court votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person; and
>
> (2) the attorney advising the commissioners court issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person.
>
> (b) Notwithstanding Section 551.103(a), Government Code, the commissioners court must make a recording of the proceedings of a closed meeting to deliberate the information.

Section 551.103(a) provides that a governmental body shall either keep a certified agenda or make a recording of the proceedings of each closed meeting, except for a private consultation with its attorney permitted by section 551.071.

4. Section 551.0726. Texas Facilities Commission: Deliberation Regarding Contract Being Negotiated

This section, which provides as follows, is very similar to section 551.0725:

> (a) The Texas Facilities Commission may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:
>
> (1) the commission votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person; and

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367 *Finlan*, 888 F. Supp. at 787.

368 *Save Our Springs All., Inc. v. Austin Indep. Sch. Dist.*, 973 S.W.2d 378, 382 (Tex. App.—Austin 1998, no pet.).

(2) the attorney advising the commission issues a written determination finding that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person and setting forth that finding therein.

(b) Notwithstanding Section 551.103(a), the commission must make a recording of the proceedings of a closed meeting held under this section.[369]

5. Section 551.073. Deliberation Regarding Prospective Gifts

Section 551.073 provides as follows:

> A governmental body may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the state or the governmental body if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.[370]

Before the Act was codified as Government Code chapter 551 in 1993, a single provision encompassed the present sections 551.073 and 551.072.[371] The authorities construing the statutory predecessor to section 551.072 may be relevant to section 551.073.[372]

6. Section 551.074. Personnel Matters

Section 551.074 authorizes certain deliberations about officers and employees of the governmental body to be held in executive session:

(a) This chapter does not require a governmental body to conduct an open meeting:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or

(2) to hear a complaint or a charge against an officer or employee.

(b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing.[373]

This section permits executive session deliberations concerning an individual officer or employee.[374] Deliberations about a *class* of employees, however, must be held in an open

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369 TEX. GOV'T CODE § 551.0726.

370 *Id.* § 551.073.

371 *See* Act of Mar. 28, 1973, 63d Leg., R.S., ch. 31, § 2, 1973 Tex. Gen. Laws 45, 46 (former article 6252-17, § 2(f), Revised Civil Statutes).

372 *See, e.g., Dallas Cty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 282–83 (Tex. App.—Dallas 1991, writ denied).

373 TEX. GOV'T CODE § 551.074.

374 A federal court has said that this provision is not restricted "only to actions affecting a current employee." *Hispanic Educ. Comm. v. Houston Indep. Sch. Dist.*, 886 F. Supp. 606, 611 (S.D. Tex. 1994), *aff'd*, 68 F.3d 467

session.[375] For example, when a governmental body discusses salary scales without referring to a specific employee, it must meet in open session.[376] The closed meetings authorized by section 551.074 may deal only with officers and employees of a governmental body; closed deliberations about the selection of an independent contractor are not authorized.[377]

Section 551.074 authorizes the public officer or employee under consideration to request a public hearing.[378] In *Bowen v. Calallen Independent School District*,[379] a teacher requested a public hearing concerning nonrenewal of his contract, but did not object when the school board moved to go into executive session. The court concluded that the school board did not violate the Act.[380] Similarly, in *James v. Hitchcock Independent School District*,[381] a school librarian requested an open meeting on the school district's unilateral modification of her contract. The court stated that refusal of the request for a hearing before the school board "is permissible only where the teacher does not object to its denial."[382] However, silence may not be deemed a waiver if the employee has no opportunity to object.[383] When a board heard the employee's complaint, moved onto other topics, and then convened an executive session to discuss the employee after he left, the court found that the employee had not had an opportunity to object.[384]

7. Section 551.0745. Deliberations by Commissioners Court about County Advisory Body

Attorney General Opinion DM-149 (1992) concluded that members of an advisory committee are not public officers or employees within section 551.074 of the Government Code, authorizing executive session deliberations about certain personnel matters. Section 551.0745 now provides that a commissioners court of a county is not required to deliberate in an open meeting about the "appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a member of an advisory body; or . . . to hear a complaint or charge against a member of an advisory body."[385] However, this provision does not apply if the person who is the subject of the deliberation requests a public hearing.[386]

(5th Cir. 1995); *but see* Tex. Att'y Gen. LO-88-52 (1988) at 3 (stating that the exception "applies only to public employees and officers, not to applicants for public employment or office").

375 *Gardner*, 21 S.W.3d at 777; Tex. Att'y Gen. Op. No. H-496 (1975) (construing predecessor to Government Code section 551.074).

376 *See* Tex. Att'y Gen. Op. No. H-496 (1975).

377 *Swate v. Medina Cmty. Hosp.*, 966 S.W.2d 693, 699 (Tex. App.—San Antonio 1998, pet. denied); *Bd. of Trs. v. Cox Enters., Inc.*, 679 S.W.2d 86, 90 (Tex. App.—Texarkana 1984*), aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986); Tex. Att'y Gen. Op. No. MW-129 (1980) at 1–2.

378 TEX. GOV'T CODE § 551.074(b); *see City of Dallas*, 737 S.W.2d at 848; *Corpus Christi Classroom Teachers Ass'n v. Corpus Christi Indep. Sch. Dist.*, 535 S.W.2d 429, 430 (Tex. App.—Corpus Christi 1976, no writ).

379 *Bowen v. Calallen Indep. Sch. Dist.*, 603 S.W.2d 229 (Tex. App.—Corpus Christi 1980, writ ref'd n.r.e.).

380 *Id.* at 236; *accord Thompson v. City of Austin*, 979 S.W.2d 676, 685 (Tex. App.—Austin 1998, no pet.).

381 *James v. Hitchcock Indep. Sch. Dist.*, 742 S.W.2d 701 (Tex. App.—Houston [1st Dist.] 1987, writ denied).

382 *Id.* at 707 (citing *Bowen*, 603 S.W.2d at 236).

383 *Gardner*, 21 S.W.3d at 775.

384 *Id.*

385 TEX. GOV'T CODE § 551.0745.

386 *See id.*

8. Section 551.075. Conference Relating to Investments and Potential Investments Attended by Board of Trustees Growth Fund

Section 551.075 authorizes a closed meeting between the board of trustees of the Texas Growth Fund and an employee of the Fund or a third party in certain circumstances.[387]

9. Section 551.076. Deliberations Regarding Security Devices or Security Audits

Section 551.076 provides as follows:

> This chapter does not require a governmental body to conduct an open meeting to deliberate:
>
> (1) the deployment, or specific occasions for implementation, of security personnel or devices; or
>
> (2) a security audit.[388]

10. Section 551.077. Agency Financed by Federal Government

Section 551.077 provides that chapter 551 does not require an agency financed entirely by federal money to conduct an open meeting.[389]

11. Section 551.078, .0785. Deliberations Involving Individuals' Medical or Psychiatric Records

These two provisions permit specified governmental bodies to discuss an individual's medical or psychiatric records in closed session. Section 551.078 is the narrower provision, applying to a medical board or medical committee when discussing the records of an applicant for a disability benefit from a public retirement system.[390] Section 551.0785 is much broader, allowing a governmental body that administers a public insurance, health or retirement plan to hold a closed session when discussing the records or information from the records of an individual applicant for a benefit from the plan. The benefits appeals committee for a public self-funded health plan may also meet in executive session for this purpose.[391]

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387 *Id.* § 551.075.

388 *Id.* § 551.076; *see* Tex. Att'y Gen. LO-93-105, at 3 (indicating a belief that "the applicability of 551.076 rests upon the definition of 'security personnel'").

389 TEX. GOV'T CODE § 551.077.

390 *Id.* § 551.078; *see also* Tex. Att'y Gen. Op. No. DM-340 (1995) at 2 (concluding that section 551.078 authorizes board of trustees of a public retirement system to consider medical and psychiatric records in closed session).

391 TEX. GOV'T CODE § 551.0785.

12. Sections 551.079–.0811. Exceptions Applicable to Specific Entities

Sections 551.079 through 551.0811 are set out below. The judicial decisions and attorney general opinions construing the Act have had little to say about these provisions.

§ 551.079. Texas Department of Insurance

(a) The requirements of this chapter do not apply to a meeting of the commissioner of insurance or the commissioner's designee with the board of directors of a guaranty association established under Chapter 2602, Insurance Code, or Article 21.28–C or 21.28–D, Insurance Code, in the discharge of the commissioner's duties and responsibilities to regulate and maintain the solvency of a person regulated by the Texas Department of Insurance.

(b) The commissioner of insurance may deliberate and determine the appropriate action to be taken concerning the solvency of a person regulated by the Texas Department of Insurance in a closed meeting with persons in one or more of the following categories:

(1) staff of the Texas Department of Insurance;

(2) a regulated person;

(3) representatives of a regulated person; or

(4) members of the board of directors of a guaranty association established under Chapter 2602, Insurance Code, or Article 21.28–C or 21.28–D, Insurance Code.

§ 551.080. Board of Pardons and Paroles

This chapter does not require the Board of Pardons and Paroles to conduct an open meeting to interview or counsel an inmate of the Texas Department of Criminal Justice.

§ 551.081. Credit Union Commission

This chapter does not require the Credit Union Commission to conduct an open meeting to deliberate a matter made confidential by law.

§ 551.0811. The Finance Commission of Texas

This chapter does not require The Finance Commission of Texas to conduct an open meeting to deliberate a matter made confidential by law.

13. Sections 551.082, .0821, .083. Certain School Board Deliberations

Section 551.082 provides as follows:

> (a) This chapter does not require a school board to conduct an open meeting to deliberate in a case:
>
> (1) involving discipline of a public school child; or
>
> (2) in which a complaint or charge is brought against an employee of the school district by another employee and the complaint or charge directly results in a need for a hearing.
>
> (b) Subsection (a) does not apply if an open hearing is requested in writing by a parent or guardian of the child or by the employee against whom the complaint or charge is brought.[392]

A student who makes a written request for an open hearing on a disciplinary matter, but does not object to an executive session when announced, waives his or her right to an open hearing.[393]

Section 551.0821 provides as follows:

> (a) This chapter does not require a school board to conduct an open meeting to deliberate a matter regarding a public school student if personally identifiable information about the student will necessarily be revealed by the deliberation.
>
> (b) Directory information about a public school student is considered to be personally identifiable information about the student for purposes of Subsection (a) only if a parent or guardian of the student, or the student if the student has attained 18 years of age, has informed the school board, the school district, or a school in the school district that the directory information should not be released without prior consent. In this subsection, "directory information" has the meaning assigned by the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), as amended.
>
> (c) Subsection (a) does not apply if an open meeting about the matter is requested in writing by a parent or guardian of the student or by the student if the student has attained 18 years of age.

The Federal Family Educational Rights and Privacy Act provides for withholding federal funds from an educational agency or institution with a policy or practice of releasing education records

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392 *Id.* § 551.082.

393 *United Indep. Sch. Dist. v. Gonzalez*, 911 S.W.2d 118, 127 (Tex. App.—San Antonio 1995, writ denied).

or personally identifiable information.[394] Section 551.0821 enables school boards to deliberate in closed session to avoid revealing personally identifiable information about a student.

Section 551.083 provides as follows:

> This chapter does not require a school board operating under a consultation agreement authorized by Section 13.901, Education Code [repealed in 1993], to conduct an open meeting to deliberate the standards, guidelines, terms, or conditions the board will follow, or instruct its representatives to follow, in a consultation with a representative of an employee group.[395]

14. Section 551.085. Deliberation by Governing Board of Certain Providers of Health Care Services

Section 551.085 provides as follows:

> (a) This chapter does not require the governing board of a municipal hospital, municipal hospital authority, county hospital, county hospital authority, hospital district created under general or special law, or nonprofit health maintenance organization created under Section 534.101, Health and Safety Code,[396] to conduct an open meeting to deliberate:
>
> (1) pricing or financial planning information relating to a bid or negotiation for the arrangement or provision of services or product lines to another person if disclosure of the information would give advantage to competitors of the hospital, hospital district, or nonprofit health maintenance organization; or
>
> (2) information relating to a proposed new service or product line of the hospital, hospital district, or nonprofit health maintenance organization before publicly announcing the service or product line.
>
> (b) The governing board of a health maintenance organization created under Section 281.0515, Health and Safety Code,[397] that is subject to this chapter is not required to conduct an open meeting to deliberate information described by Subsection (a).[398]

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394 20 U.S.C.A. § 1232g; *see also Axtell v. Univ. of Tex.*, 69 S.W.3d 261, 267 (Tex. App.—Austin 2002, no pet.) (holding that student did not have cause of action under Tort Claims Act for release of his grades to radio station).

395 *See* Act of May 28, 1993, 73d Leg., R.S., ch. 347, § 8.33, 1993 Tex. Gen. Laws 1479, 1556. *See* Tex. Att'y Gen. Op. No. H-651 (1975) at 3 (construing predecessor of Government Code section 551.083).

396 Section 534.101 of the Health and Safety Code authorizes community mental health and mental retardation centers to create a limited purpose health maintenance organization. TEX. HEALTH & SAFETY CODE § 534.101–.124.

397 This provision authorizes certain hospital districts to establish HMOs.

398 TEX. GOV'T CODE § 551.085.

15. Section 551.086. Certain Public Power Utilities: Competitive Matters

This section was adopted as part of an act relating to electric utility restructuring and is only briefly summarized here.[399] Anyone wishing to know when and how it applies should read it in its entirety.[400] It provides that certain public power utilities are not required to conduct an open meeting to deliberate, vote or take final action on any competitive matter as defined by section 552.133 of the Government Code.[401] Section 552.133 defines "competitive matter" as "a utility-related matter that is related to the public power utility's competitive activity, including commercial information and would, if disclosed, give advantage to competitors or prospective competitors."[402] The definition of "competitive matter" further provides that the term is reasonably related to several categories of information specifically defined[403] and does not include other specified categories of information.[404] "Public power utility" is defined as "an entity providing electric or gas utility services" that is subject to the provisions of the Act.[405] Finally, this executive session provision includes the following provision on notice:

> For purposes of Section 551.041, the notice of the subject matter of an item that may be considered as a competitive matter under this section is required to contain no more than a general representation of the subject matter to be considered, such that the competitive activity of the public power utility with respect to the issue in question is not compromised or disclosed.[406]

16. Section 551.087. Deliberation Regarding Economic Development Negotiations

The provision reads as follows:

> This chapter does not require a governmental body to conduct an open meeting:
>
> (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or
>
> (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).[407]

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399 *See* Act of May 27, 1999, 76th Leg., R.S., ch. 405, 1999 Tex. Gen. Laws 2543, 2543–2625.
400 TEX. GOV'T CODE § 551.086.
401 *Id.* § 551.086(c).
402 *Id.* § 552.133(a-1).
403 *Id.* § 552.133(a-1)(1)(A)–(F).
404 *Id.* § 552.133(a-1)(2)(A)–(O).
405 *Id.* § 551.086(b)(1).
406 *Id.* § 551.086(d).
407 *Id.* § 551.087.

17. Section 551.088. Deliberation Regarding Test Item

This provision states as follows:

> This chapter does not require a governmental body to conduct an open meeting to deliberate a test item or information related to a test item if the governmental body believes that the test item may be included in a test the governmental body administers to individuals who seek to obtain or renew a license or certificate that is necessary to engage in an activity. [408]

An executive session may be held only when expressly authorized by law. Thus, before section 551.088 was adopted, the Act did not permit a governmental body to meet in executive session to discuss the contents of a licensing examination. [409]

18. Section 551.089. Deliberation Regarding Security Devices or Security Audits; Closed Meeting

Section 551.089 provides as follows:

> This chapter does not require a governmental body to conduct an open meeting to deliberate:
>
> (1) security assessments or deployments relating to information resources technology;
>
> (2) network security information as described by Section 2059.055(b); or
>
> (3) the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices. [410]

19. Section 551.090. Enforcement Committee Appointed by Texas State Board of Public Accountancy

Section 551.090 provides that an enforcement committee appointed by the State Board of Public Accountancy is not required to conduct an open meeting to investigate and deliberate a disciplinary action under Subchapter K, Chapter 901, Occupations Code, relating to the enforcement of Chapter 901 or the rules of the Texas State Board of Public Accountancy. [411]

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408 *Id.* § 551.088.

409 *See* Tex. Att'y Gen. LO-96-058, at 2.

410 TEX. GOV'T CODE § 551.089. Chapter 2059 of the Government Code relates to the "Texas Computer Network Security System." *Id.* §§ 2059.001–.153.

411 *Id.* § 551.090; *see also* TEX. OCC. CODE §§ 901.501–.511 (subchapter K entitled "Prohibited Practices and Disciplinary Procedures").

C. Closed Meetings Authorized by Other Statutes

Some state agencies are authorized by their governing law to hold closed meetings in addition to those authorized by the Act.[412] Chapter 418 of the Government Code, the Texas Disaster Act, which relates to managing emergencies and disasters, including those caused by terroristic acts, provides in section 418.183(f):

> A governmental body subject to Chapter 551 is not required to conduct an open meeting to deliberate information to which this section applies. Notwithstanding Section 551.103(a), the governmental body must make a tape recording of the proceedings of a closed meeting to deliberate the information.[413]

Section 418.183 states that "[t]his section applies only to information that is confidential under" specific sections of chapter 418.[414]

Similarly, the Texas Oyster Council is subject to the Act but is "not required to conduct an open meeting to deliberate confidential communications and records . . . relating to the investigation of a food-borne illness that is suspected of being related to molluscan shellfish."[415] And though an appraisal review board is generally required to conduct protest hearings in the open, it is authorized to conduct a closed hearing if the hearing involves disclosure or proprietary or confidential information.[416]

D. No Implied Authority for Closed Meetings

Older attorney general opinions have stated that a governmental body could deliberate in a closed session about confidential information, even though no provision of the Act authorizing a closed session applied to the deliberations.[417] These opinions reasoned that information made confidential by statute was not within the Act's prohibition against privately discussing "public business or public policy," or that the board members could deliberate on information in a closed session if an open meeting would result in violation of a confidentiality provision.[418]

However, Attorney General Opinion MW-578 (1982) held that the Texas Employment Commission had no authority to review unemployment benefit cases in closed session, even

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412 *See, e.g.*, TEX. FAM. CODE § 264.005(g) (County Child Welfare Boards); TEX. LAB. CODE § 401.021(3) (certain proceedings of Workers' Compensation Commission); TEX. OCC. CODE § 152.009(c) (Board of Medical Examiners; deliberation about license applications and disciplinary actions).

413 TEX. GOV'T CODE § 418.183(f).

414 *Id.* § 418.183(a) .

415 TEX. HEALTH & SAFETY CODE § 436.108(f); *see also* TEX. LOC. GOV'T CODE § 161.172(b) (excluding county ethics commissions in certain counties from operation of parts of chapter 551).

416 TEX. TAX CODE § 41.66(d-1).

417 Tex. Att'y Gen. Op. Nos. H-1154 (1978) at 3 (concluding that county child welfare board may meet in executive session to discuss case files made confidential by statute), H-780 (1976) at 3 (concluding that Medical Advisory Board must meet in closed session to consider confidential reports about medical condition of applicants for a driver's license), H-484 (1974) at 3 (concluding that licensing board may discuss confidential information from applicant's file and may prepare examination questions in closed session), H-223 (1974) at 5 (concluding that administrative hearings in comptroller's office concerning confidential tax information may be closed).

418 Tex. Att'y Gen. Op. No. H-484 (1974) at 2.

though in some of the cases very personal information was disclosed about claimants and employers. Reasoning that the Act states that closed meetings may be held only where specifically authorized, the opinion concluded that there was no basis to read into it implied authority for closed meetings.[419] It disapproved the language in earlier opinions that suggests otherwise, but stated that the commission could protect privacy rights by avoiding discussion of private information.[420] Thus, the disapproved opinions should no longer be relied on as a source of authority for a closed session.

E. Who May Attend a Closed Meeting

Only the members of a governmental body have a right to attend an executive session,[421] except that the governmental body's attorney must be present when it meets under section 551.071. A governmental body has discretion to include in an executive session any of its officers and employees whose participation is necessary to the matter under consideration.[422] Thus, a school board could require its superintendent of schools to attend all executive sessions of the board without violating the Act.[423] Given the board's responsibility to oversee the district's management and the superintendent's administrative responsibility and leadership of the district, the board could reasonably conclude that the superintendent's presence was necessary at executive sessions.[424]

A commissioners court may include the county auditor in a meeting closed under section 551.071 to consult with its attorney if the court determines that (1) the auditor's interests are not adverse to the county's; (2) the auditor's presence is necessary for the court to communicate with its attorney; and (3) the county auditor's presence will not waive the attorney-client privilege.[425] If the meeting is closed under an executive session provision other than section 551.071, the commissioners court may include the county auditor if the auditor's interests are not adverse to the county and his or her participation is necessary to the discussion.[426]

A governmental body must not admit to an executive session a person whose presence is contrary to the governmental interest protected by the provision authorizing the session. A person who wishes to sell real estate to a city may not attend an executive session under section 551.072, a provision designed to protect the city's bargaining position in negotiations with a third party.[427]

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419 *See* Tex. Att'y Gen. Op. No. MW-578 (1982) at 4.

420 *Id.*

421 *See* Tex. Att'y Gen. Op. Nos. JM-6 (1983) at 1–2 (stating that only members of the governmental body have the right to convene in executive session), KP-0006 (2015) at 2.

422 Tex. Att'y Gen. Op. No. JC-0375 (2001) at 2; *see also* Tex. Att'y Gen. Op. No. GA-0277 (2004) at 3 (concluding that commissioners court may allow the county clerk to attend its executive sessions), KP-0006 (2015) at 2 (concluding that a representative of a municipality may attend an executive session of a housing authority if the governing body of the housing authority determines the municipal representative's participation is necessary to the matter to be discussed).

423 Tex. Att'y Gen. Op. No. JC-0375 (2001) at 2.

424 *Id.*

425 Tex. Att'y Gen. Op. No. JC-0506 (2002) at 6; *see* Tex. Att'y Gen. Op. No. JM-238 (1984) at 5 (concluding that county officers and employees may attend closed session of county commissioners court to discuss litigation against sheriff and commissioners court about county jail conditions).

426 *See* Tex. Att'y Gen. Op. No. JC-0506 (2002) at 6.

427 *Finlan v. City of Dallas*, 888 F. Supp. 779, 787 (N.D. Tex. 1995).

Nor may a governmental body admit the opposing party in litigation to an executive session under section 551.071.[428] A governmental body has no authority to admit members of the public to a meeting closed under section 551.074 to give input about the public officer or employee being considered at the meeting.[429]

[428] *See* Tex. Att'y Gen. Op. Nos. JM-1004 (1989) at 4 (concluding that school board member who has sued other board members may be excluded from executive session held to discuss litigation), MW-417 (1981) at 2–3 (concluding that provision authorizing governmental body to consult with attorney in executive session about contemplated litigation does not apply to joint meeting between the governmental bodies to avoid lawsuit between them).

[429] *See* Tex. Att'y Gen. Op. No. GA-0511 (2007) at 6.

X. Records of Meetings

A. Minutes or Recordings of Open Meeting

Section 551.021 of the Government Code provides as follows:

> (a) A governmental body shall prepare and keep minutes or make a recording of each open meeting of the body.
>
> (b) The minutes must:
>
> (1) state the subject of each deliberation; and
>
> (2) indicate each vote, order, decision, or other action taken.[430]

Section 551.022 of the Government Code provides:

> 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.[431]

If minutes are kept instead of a recording, the minutes should record every action taken by the governmental body.[432] If open sessions of a commissioners court meeting are recorded, the recordings are available to the public under the Public Information Act.[433] (For a discussion of record retention laws, refer to Part XII.F of this *Handbook*).

In 2019, the 86th Legislature added a special posting provision applicable to special purpose districts subject to chapters 51, 53, 54, or 55 of the Water Code with populations of 500 or more.[434]

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430 TEX. GOV'T CODE § 551.021; *see also* Tex. Att'y Gen. Op. No. GA-0727 (2009) at 2 (opining that Texas State Library and Archives Commission rule requiring written minutes of every open meeting of a state agency is likely invalid as inconsistent with section 551.021(a), which authorizes a governmental body to make a recording of an open meeting).

431 TEX. GOV'T CODE § 551.022; *see York v. Tex. Guaranteed Student Loan Corp.*, 408 S.W.3d 677, 688 (Tex. App.—Austin 2013, no pet.) (concluding that exceptions in the Public Information Act do not operate to prevent public disclosure of minutes requested under section 551.022).

432 *See York*, 408 S.W.3d at 687 (defining "minutes" to refer "to the record or notes of a meeting or proceeding, whatever they may contain").

433 Tex. Att'y Gen. Op. No. JM-1143 (1990) at 2–3 (concluding that tape recording of open session of commissioners court meeting is subject to Open Records Act); *see* Tex. Att'y Gen. ORD-225 (1979) at 3 (concluding that handwritten notes of open meetings made by secretary of governmental body are subject to disclosure under Open Records Act); ORD-32 (1974) at 2 (concluding that audio tape recording of open meeting of state licensing agency used as aid in preparation of accurate minutes is subject to disclosure under Open Records Act).

434 *See* Act of May 10, 2019, 86th Leg., R.S., ch. 105, § 2, 2019 Tex. Sess. Law Serv. 176, 177 (to be codified at TEX. GOV'T CODE § 551.1283).

Such a district is to post the minutes of a meeting held to consider the adoption of an ad valorem tax rate on the district's Internet website if it has one.[435]

B. Certified Agenda or Recording of Closed Meeting

A governmental body must make and keep either a certified agenda or a recording of each executive session, except for an executive session held by the governmental body to consult with its attorney in accordance with section 551.071 of the Government Code.[436] If a certified agenda is kept, the presiding officer must certify that the agenda is a true and correct record of the executive session.[437] 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."[438] While the agenda does not have to be a verbatim transcript of the meeting, it must at least provide a brief summary of each deliberation.[439] Whether a particular agenda satisfies the Act is a question of fact that must be addressed by the courts. Attorney General Opinion JM-840 (1988) cautioned governmental bodies to consider providing greater detail in the agenda with regard to topics not authorized for consideration in executive session or to avoid the uncertainty concerning the requisite detail required in an agenda by recording executive sessions.[440] Any member of a governmental body participating in a closed session knowing that an agenda or recording is not being made commits a Class C misdemeanor.[441]

The certified agenda or recording of an executive session must be kept a minimum of two years after the date of the session.[442] If during that time a lawsuit that concerns the meeting is brought, the agenda or recording of that meeting must be kept pending resolution of the lawsuit.[443] The commissioners court, not the county clerk, is the proper custodian for the certified agenda or recording of a closed meeting, but it may delegate that duty to the county clerk.[444]

A certified agenda or recording of an executive session is confidential. A person who knowingly and without lawful authority makes these records public commits a Class B misdemeanor and may be held liable for actual damages, court costs, reasonable attorney fees and exemplary or punitive

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435 *See id.*

436 TEX. GOV'T CODE § 551.103(a); *see* Tex. Att'y Gen. Op. No. JM-840 (1988) at 3 (discussing meaning of "certified agenda"). *But see* TEX. GOV'T CODE §§ 551.0725(b) (providing that notwithstanding section 551.103(a), the commissioners court must make a recording of the proceedings of a closed meeting under this section), 551.0726(b) ("[N]otwithstanding Section 551.103(a), the [Texas Facilities] Commission must make a recording of the proceedings of a closed meeting held under this section.").

437 TEX. GOV'T CODE § 551.103(b).

438 *Id.* § 551.103(c).

439 Tex. Att'y Gen. Op. No. JM-840 (1988) at 4–7.

440 *Id.* at 5–6 (referring to legislative history of section indicating that its primary purpose is to document fact that governmental body did not discuss unauthorized topics in closed session).

441 TEX. GOV'T CODE § 551.145.

442 *Id.* § 551.104(a).

443 *Id.*

444 Tex. Att'y Gen. Op. No. GA-0277 (2004) at 3–4.

damages.[445] Section 551.104 provides for court-ordered access to the certified agenda or recording under specific circumstances:

> (b) In litigation in a district court involving an alleged violation of this chapter, the court:
>
> (1) is entitled to make an in camera inspection of the certified agenda or recording;
>
> (2) may admit all or part of the certified agenda or recording as evidence, on entry of a final judgment; and
>
> (3) 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 recording of any part of a meeting that was required to be open under this chapter.
>
> (c) the certified agenda or recording of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).[446]

Section 551.104 authorizes a district court to admit all or part of the certified agenda or recording of a closed session as evidence in an action alleging a violation of the Act, thus providing the only means under state law whereby a certified agenda or recording of a closed session may be released to the public.[447] The Office of the Attorney General has recognized that it lacks authority under the Public Information Act[448] to review certified agendas or recordings of closed sessions for compliance with the Open Meetings Act.[449] However, the confidentiality provision may be preempted by federal law.[450] When the Equal Employment Opportunity Commission served a Texas city with an administrative subpoena for tapes of closed city council meetings, the Open Meetings Act did not excuse compliance.[451]

A member of the governmental body has a right to inspect the certified agenda or recording of a closed meeting, even if he or she did not participate in the meeting.[452] This is not a release to the public in violation of the confidentiality provisions of the Act, because a board member is not a member of the public within that prohibition. The governmental body may adopt a procedure permitting review of the certified agenda or recording, but may not entirely prohibit a board

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445 TEX. GOV'T CODE § 551.146.

446 *Id.* § 551.104.

447 Tex. Att'y Gen. Op. No. JM-995 (1988) at 5; *In re Smith Cty.*, 521 S.W.3d 447, 454 (Tex. App.—Tyler 2017, no pet.) (stating that "it is clear that [section 551.104] applies to litigation before the recording of a closed meeting is made available to the public[;] . . . . once the recordings of the closed meetings become readily available to the public, section 551.104 no longer applies").

448 TEX. GOV'T CODE ch. 552.

449 *See* Tex. Att'y Gen. ORD-495 (1988) at 2, 4.

450 *Equal Emp't Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995).

451 *Id.*

452 Tex. Att'y Gen. Op. No. JC-0120 (1999) at 4, 5, 7 (overruling Tex. Att'y Gen. Op. No. DM-227 (1993), in part).

member from reviewing the record. The board member may not copy the recording or certified agenda of a closed meeting, nor may a former member of a governmental body inspect these records once he or she leaves office.[453]

C. Additional Recording Requirements for Certain Districts

Section 551.1283 requires a special purpose district subject to chapter 51, 53, 54, or 55 of the Water Code with a population of 500 or more to "make an audio recording of reasonable quality" of a "public hearing to consider the adoption of an ad valorem tax rate" upon timely request of a resident of the district.[454] The district must make the recording available to the resident not later than the fifth business day after the date of the hearing and also maintain a copy of the recording for at least one year.[455]

[453] Tex. Att'y Gen. LO-98-033, at 2–3.

[454] *See* Act of May 10, 2019, 86th Leg., R.S., ch. 105, § 2, 2019 Tex. Sess. Law Serv. 176, 177 (to be codified at TEX. GOV'T CODE § 551.1283).

[455] *See id.*

XI. Penalties and Remedies

A. Introduction

The Act provides civil remedies and criminal penalties for violations of its provisions. District courts have original jurisdiction over criminal violations of the Act as misdemeanors involving official misconduct.[456] The Act does not authorize the attorney general to enforce its provisions. However, a district attorney, criminal district attorney or county attorney may request the attorney general's assistance in prosecuting a criminal case, including one under the Act.[457]

B. Mandamus, Injunction, or Declaratory Judgment

Section 551.142 of the Act provides as follows:

> (a) 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 this chapter by members of a governmental body.
>
> (b) The court may assess costs of litigation and reasonable attorney fees incurred by a plaintiff or defendant who substantially prevails in an action under Subsection (a). 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.[458]

Texas courts examining this provision have said that "[t]he Open Meetings Act expressly waives sovereign immunity for violations of the [A]ct."[459] The four-year limitations period in section 16.051 of the Civil Practices and Remedies Code applies to an action under this provision.[460]

Generally, a writ of mandamus would be issued by a court to require a public official or other person to perform duties imposed on him or her by law. A mandamus ordinarily commands a person or entity to act, while an injunction restrains action.[461] The Act does not automatically confer jurisdiction on the county court, but where the plaintiff's money demand brings the amount in controversy within the court's monetary limits, the county court has authority to issue injunctive and mandamus relief.[462] Absent such a pleading, jurisdiction in original mandamus and original injunction proceedings lies in the district court.[463]

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456 *See State v. Williams*, 780 S.W.2d 891, 892–93 (Tex. App.—San Antonio 1989, no writ).
457 *See* TEX. GOV'T CODE § 402.028(a).
458 *Id.* § 551.142.
459 *Hays Cty. v. Hays Cty. Water Planning P'ship*, 69 S.W.3d 253, 257 (Tex. App.—Austin 2002, no pet.); *see Riley v. Comm'rs Court*, 413 S.W.3d 774, 776–77 (Tex. App.—Austin 2013, pet. denied).
460 *Rivera v. City of Laredo*, 948 S.W.2d 787, 793 (Tex. App.—San Antonio 1997, writ denied).
461 *Boston v. Garrison*, 256 S.W.2d 67, 69 (Tex. 1953).
462 *Martin v. Victoria Indep. Sch. Dist.*, 972 S.W.2d 815, 818 (Tex. App.—Corpus Christi 1998, pet. denied).
463 *Id.*

Section 551.142(a) authorizes any interested person, including a member of the news media, to bring a civil action seeking either a writ of mandamus or an injunction.[464] In keeping with the purpose of the Act, standing under the Act is interpreted broadly.[465] Standing conferred by the Act is broader than taxpayer standing, and a citizen does not need to prove an interest different from the general public, "because 'the interest protected by the Open Meetings Act is the interest of the general public.'"[466] The phrase "any interested person" includes a government league,[467] an environmental group,[468] the president of a local homeowners group,[469] a city challenging the closure of a hospital by the county hospital district,[470] a town challenging annexation ordinances,[471] and a city manager regarding a meeting he attended.[472] A suspended police officer and a police officers' association were "interested persons" who could bring a suit alleging that the city council had violated the Act in selecting a police chief.[473]

Texas courts have also recognized that an individual authorized to seek a writ of mandamus or an injunction under the Act may also bring a declaratory judgment action pursuant to the Uniform Declaratory Judgments Act, chapter 37 of the Texas Civil Practice and Remedies Code.[474] In such a proceeding, the court is authorized to "declare rights, status, and other legal relations" of various persons, including public officers, and thus may determine the validity of a governmental body's actions under the Act.[475] The courts of appeals disagree about whether the scope of the Act's waiver of immunity includes declaratory judgment actions.[476]

Section 551.142(b) authorizes a court to award reasonable attorney fees and litigation costs to the party who substantially prevails in an action brought under the Act.[477] This relief, however, is

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464 TEX. GOV'T CODE § 551.142(a); *see Cameron Cty. Good Gov't League v. Ramon*, 619 S.W.2d 224, 230–31 (Tex. App.—Beaumont 1981, writ ref'd n.r.e.).

465 *See Burks v. Yarbrough*, 157 S.W.3d 876, 880 (Tex. App.—Houston [14th Dist.] 2005, no pet.); *Hays Cty. Water Planning P'ship v. Hays Cty.*, 41 S.W.3d 174, 177 (Tex. App.—Austin 2003, no pet.).

466 *See Hays Cty. Planning P'ship*, 41 S.W.3d at 177–78 (quoting *Save Our Springs All., Inc. v. Lowry*, 934 S.W.2d 161, 163 (Tex. App.—Austin 1996, orig. proceeding [leave denied]).

467 *See Cameron Cty.*, 619 S.W.2d at 230.

468 *See Save Our Springs All., Inc.*, 934 S.W.2d at 162–64.

469 *Id.*

470 *Matagorda Cty. Hosp. Dist. v. City of Palacios*, 47 S.W.3d 96, 102 (Tex. App.—Corpus Christi 2001, no pet.).

471 *City of Port Isabel v. Pinnell*, 161 S.W.3d 233, 241 (Tex. App.—Corpus Christi 2005, no pet.).

472 *City of Donna v. Ramirez*, 548 S.W.3d 26, 34–35 (Tex. App.—Corpus Christi 2017, pet. denied).

473 *Rivera v. City of Laredo*, 948 S.W.2d 787, 792 (Tex. App.—San Antonio 1997, writ denied).

474 *Bd. of Trs. v. Cox Enters., Inc.*, 679 S.W.2d 86, 88 (Tex. App.—Texarkana 1984), *aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986) (recognizing news media's right to bring declaratory judgment action to determine if board violated the Act); *see also City of Fort Worth v. Groves*, 746 S.W.2d 907, 913 (Tex. App.—Fort Worth 1988, no writ) (concluding that resident and taxpayer of city had standing to bring suit for declaratory judgment and injunction against city for violation of the Act).

475 TEX. CIV. PRAC. & REM. CODE § 37.003(a).

476 *See Schmitz v. Denton Cty. Cowboy Church*, 550 S.W.3d 342, 355 (Tex. App.—Fort Worth 2018, pet. denied); *Town of Shady Shores v. Swanson*, 544 S.W.3d 426, 436–37 (Tex. App.—Fort Worth 2018, pet. granted) (holding that section 551.142 waives immunity for a declaration that an action taken in violation of the Act is void); *but see City of New Braunfels v. Carowest Land, Ltd.*, 549 S.W.3d 163, 173 (Tex. App.—Austin 2017, pet. pending) (holding that section 551.142 waives immunity for injunctive and mandamus relief only and not declaratory relief); *see also infra* Part III.A of this Handbook.

477 TEX. GOV'T CODE § 551.142(b); *see Austin Transp. Study Policy Advisory Comm. v. Sierra Club*, 843 S.W.2d 683, 690 (Tex. App.—Austin 1992, writ denied) (upholding award of attorney fees).

discretionary. The Uniform Declaratory Judgments Act also authorizes a court to award reasonable attorney fees.[478]

Section 551.142(c) authorizes the attorney general, in a district court in Travis County, to seek mandamus or an injunction to stop, prevent, or reverse a violation or threatened violation of section 551.142(a-1), a provision which limits a governmental body's actions in an emergency meeting or one for which an emergency supplemental notice is posted.[479]

Depending on the nature of the violation, additional monetary damages may be assessed against a governmental body that violated the Act. In *Ferris v. Texas Board of Chiropractic Examiners*,[480] the appellate court awarded back pay and reinstatement to an executive director whom the board had attempted to fire at two meetings convened in violation of the Act. Finally, at the third meeting held to discuss the matter, the board lawfully fired the executive director. Back pay was awarded for the period between the initial unlawful firing and the third meeting at which the director's employment was lawfully terminated.[481]

Court costs or attorney fees as well as certain other monetary damages can also be assessed under section 551.146, which relates to the confidentiality of the certified agenda. It provides that an individual, corporation or partnership that knowingly and without lawful authority makes public the certified agenda or recording of an executive session shall be liable for:

(1) actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress;

(2) reasonable attorney fees and court costs; and

(3) at the discretion of the trier of fact, exemplary damages.[482]

C. Voidability of a Governmental Body's Action in Violation of the Act; Ratification of Actions

Section 551.141 provides that "[a]n action taken by a governmental body in violation of this chapter is voidable."[483] Before this section was adopted, Texas courts held as a matter of common law that a governmental body's actions that are in violation of the Act are subject to judicial

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478 TEX. CIV. PRAC. & REM. CODE § 37.009; *City of Fort Worth*, 746 S.W.2d at 911, 917–19 (affirming trial court's award in excess of $40,000 in attorney fees to prevailing plaintiff in action pursuant to Uniform Declaratory Judgments Act).

479 TEX. GOV'T CODE § 551.142(c).

480 *Ferris v. Tex. Bd. of Chiropractic Exam'rs*, 808 S.W.2d 514, 518–19 (Tex. App.—Austin 1991, writ denied).

481 *Id.* at 519 (awarding executive director attorney fees of $7,500).

482 TEX. GOV'T CODE § 551.146(a)(2).

483 *Id.* § 551.141.

invalidation.[484] Section 551.141 does not require a court to invalidate an action taken in violation of the Act, and it may choose not to do so, given the facts of a specific case.[485]

In *Point Isabel Independent School District v. Hinojosa*,[486] the Corpus Christi Court of Appeals construed this provision to permit the judicial invalidation of only the specific action or actions found to violate the Act. Prior to doing so, the court addressed the sufficiency of the notice for the school board's July 12, 1988, meeting. With regard to that issue, the court determined that the description "personnel" in the notice was insufficient notice of the selection of three principals at the meeting, a matter of special interest to the public, but was sufficient notice of the selection of a librarian, an English teacher, an elementary school teacher, a band director and a part-time counselor.[487] (For further discussion of required content of notice under the Act, *see supra* Part VII.A of this *Handbook*.) The court in *Point Isabel Independent School District* then turned to the question of whether the board's invalid selection of the three principals tainted all hiring decisions made at the meeting. The court felt that, given the reference in the statutory predecessor to section 551.141 to "an action taken" and not to "all actions taken," this provision meant only that a specific action or specific actions violating the Act were subject to judicial invalidation. Consequently, the court refused the plaintiff's request to invalidate all hiring decisions made at the meeting and held void only the board's selection of the three principals.[488]

A governmental body cannot give retroactive effect to a prior action taken in violation of the Act, but may ratify the invalid act in a meeting held in compliance with the Act.[489] The ratification will be effective only from the date of the meeting at which the valid action is taken.[490]

In *Ferris v. Texas Board of Chiropractic Examiners*, the Austin Court of Appeals refused to give retroactive effect to a decision to fire the executive director reached at a meeting of the board that was held in compliance with the Act.[491] The board had attempted to fire the director at two previous meetings that did not comply with the Act. The subsequent lawful termination did not

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484 *See Lower Colorado River Auth. v. City of San Marcos*, 523 S.W.2d 641, 646 (Tex. 1975); *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377, 380 (Tex. App.—San Antonio 1971, no writ); *see also Ferris*, 808 S.W.2d at 517; Tex. Att'y Gen. Op. No. H-594 (1975) at 2 (noting that governmental body cannot independently assert its prior action that governmental body failed to ratify is invalid when it is to governmental body's advantage to do so).

485 *See Collin Cty., Tex. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 716 F. Supp. 953, 960 n.12 (N.D. Tex. 1989) (declining to dismiss lawsuit that county authorized in violation of Act's notice requirements if county within thirty days of court's opinion and order authorized lawsuit at meeting in compliance with the Act). *But see City of Bells v. Greater Texoma Util. Auth.*, 744 S.W.2d 636, 640 (Tex. App.—Dallas 1987, no writ) (dismissing authority's lawsuit initiated at meeting in violation of the Act's notice requirements).

486 *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied).

487 *Id.* at 182.

488 *Id.* at 182–83.

489 *Lower Colo River Auth.*, 523 S.W.2d at 646–47 (recognizing effectiveness of increase in electric rates only from date reauthorized at lawful meeting); *City of San Antonio v. River City Cabaret, Ltd.*, 32 S.W.3d 291, 293 (Tex. App.—San Antonio 2000, pet. denied). *Cf. Dallas Cty. Flood Control v. Cross*, 815 S.W.2d 271, 284 (Tex. App.—Dallas 1991, writ denied) (holding ineffective district's reauthorization at lawful meeting of easement transaction initially authorized at unlawful meeting, because to do so, given the facts in that case, would give retroactive effect to transaction).

490 *River City Cabaret, Ltd.*, 32 S.W.3d at 293.

491 *Ferris*, 808 S.W.2d at 518–19.

cure the two previous unlawful firings retroactively, and the court awarded back pay to the director for the period between the initial unlawful firing and the final lawful termination.[492]

Ratification of an action previously taken in violation of the Act must comply with all applicable provisions of the Act.[493] In *Porth v. Morgan*, the Houston County Hospital Authority Board attempted to reauthorize the appointment of an individual to the board but did not comply fully with the Act.[494] The board had originally appointed the individual during a closed meeting, violating the requirement that final action take place in an open meeting. The original appointment also violated the notice requirement, because the posted notice did not include appointing a board member as an item of business. At a subsequent open meeting, the board chose the individual as its vice-chairman and, as such, a member of the board, but the notice did not say that the board might appoint a new member or ratify its prior invalid appointment. Accordingly, the board's subsequent selection of the individual as vice-chairman did not ratify the board's prior invalid appointment.

D. Criminal Provisions

Certain violations of the Act's requirements concerning certified agendas or recordings of executive sessions are punishable as Class C or Class B misdemeanors. Section 551.145 provides as follows:

> (a) 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 recording of the closed meeting is not being made.
>
> (b) An offense under Subsection (a) is a Class C misdemeanor.[495]

Section 551.146 provides:

> (a) An individual, corporation, or partnership that without lawful authority knowingly discloses to a member of the public the certified agenda or recording of a meeting that was lawfully closed to the public under this chapter:
>
> (1) commits an offense; and
>
> (2) is liable to a person injured or damaged by the disclosure for:
>
> (A) actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress;
>
> (B) reasonable attorney fees and court costs; and

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492 *Id.*

493 *See id.* at 518 ("A governmental entity may ratify only what it could have lawfully authorized initially.").

494 *Porth v. Morgan*, 622 S.W.2d 470, 473, 475–76 (Tex. App.—Tyler 1981, writ ref'd n.r.e.).

495 TEX. GOV'T CODE § 551.145.

(C) at the discretion of the trier of fact, exemplary damages.

(b) An offense under Subsection (a)(1) is a Class B misdemeanor.

(c) It is a defense to prosecution under Subsection (a)(1) and an affirmative defense to a civil action under Subsection (a)(2) that:

(1) the defendant had good reason to believe the disclosure was lawful; or

(2) the disclosure was the result of a mistake of fact concerning the nature or content of the certified agenda or recording.[496]

In order to find that a person has violated one of these provisions, the person must be determined to have "knowingly." Section 6.03(b) of the Penal Code, defines that state of mind as follows:

> A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to his conduct when he is aware that his conduct is reasonably certain to cause the result.[497]

A 2012 court of appeals case enumerated the elements of this criminal offense to be (1) a lawfully closed meeting, (2) a knowing disclosure of the agenda or tape recording of the lawfully closed meeting to a member of the public, and (3) a disclosure made without lawful authority.[498] In *Cooksey v. State*, Cooksey attached a copy of the tape recording of a closed meeting to his petition in his suit to remove the county judge.[499] He was later charged with violation of section 551.146.[500] The court of appeals determined that the posted notice for the emergency meeting did not clearly identify the emergency and thus the meeting was not sufficient as a "lawfully closed meeting" to uphold Cooksey's conviction.[501]

Section 551.146 does not prohibit members of the governmental body or other persons who attend an executive session from making public statements about the subject matter of the executive session.[502] Other statutes or duties, however, may limit what a member of the governmental body may say publicly.

Sections 551.143 and 551.144 of the Government Code establish criminal sanctions for certain conduct that violates openness requirements. A member of a governmental body must be found to have acted "knowingly" to be found guilty of either of these offenses. Section 551.143 provides:

(a) A member of a governmental body commits an offense if the member:

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496 *Id.* § 551.146.
497 TEX. PENAL CODE § 6.03(b).
498 *Cooksey v. State*, 377 S.W.3d 901, 905 (Tex. App.—Eastland 2012, no pet.).
499 *Id.* at 903–04.
500 *Id.* at 904.
501 *Id.* at 907.
502 Tex. Att'y Gen. Op. No. JM-1071 (1989) at 2–3.

(1) 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

(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.[503]

Section 551.144 provides as follows:

(a) A member of a governmental body commits an offense 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.[504]

(b) An offense under Subsection (a) 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.[505]

(c) It is an affirmative defense to prosecution under Subsection (a) that the member of the governmental body acted in reasonable reliance on a court order or a

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503 TEX. GOV'T CODE § 551.143.

504 *See Asgeirsson v. Abbott*, 773 F. Supp. 2d 684, 690 (W.D. Tex. 2011), *aff'd*, 696 F. 3d 454 (5th Cir. 2012), *cert. denied*, 568 U.S. 1249 (2013) (upholding constitutionality of section 551.144).

505 *See Martinez v. State*, 879 S.W.2d 54, 55–56 (Tex. Crim. App. 1994) (upholding validity of information which charged county commissioners with violating Act by failing to comply with procedural prerequisites for holding closed session).

> written interpretation of this chapter contained in an opinion of a court of record, the attorney general, or the attorney for the governmental body.[506]

In 1998, the Texas Court of Criminal Appeals determined in *Tovar v. State*[507] that a government official who knowingly participated in an impermissible closed meeting may be found guilty of violating the Act even though he did not know that the meeting was prohibited under the Act. Subsection 551.144(c) now provides an affirmative defense to prosecution under subsection (a) if the member of the governmental body acted in reasonable reliance on a court order or a legal opinion as set out in subsection (c).[508]

506 TEX. GOV'T CODE § 551.144.
507 *Tovar v. State*, 978 S.W.2d 584 (Tex. Crim. App. 1998).
508 TEX. GOV'T CODE § 551.144(c).

XII. Open Meetings Act and Other Statutes

A. Other Statutes May Apply to a Public Meeting

The Act is not the only provision of law relevant to a public meeting of a particular governmental entity. For example, section 551.004 of the Government Code expressly provides:

> This chapter does not authorize a governmental body to close a meeting that a charter of the governmental body:
>
> (1) prohibits from being closed; or
>
> (2) requires to be open.[509]

In *Shackelford v. City of Abilene*,[510] the Texas Supreme Court held that an Abilene resident had a right to require public meetings under the Abilene city charter, which included the following provision:

> All meetings of the Council and all Boards or Commissions appointed by the Council shall be open to the public.[511]

Members of a particular governmental body should consult any applicable statutes, charter provisions, ordinances and rules for provisions affecting the entity's public meetings. Laws other than the Act govern preparing the agenda for a meeting[512] but the procedures for agenda preparation must be consistent with the openness requirements of the Act.[513]

Even though a particular entity is not a "governmental body" as defined by the Act, another statute may require it to comply with the Act's provisions.[514] Some exercises of governmental power, for example, a city's adoption of zoning regulations, require the city to hold a public hearing at which parties in interest and citizens have an opportunity to be heard.[515] Certain governmental actions may be subject to statutory notice provisions[516] in addition to notice required by the Act.

The Act does not answer all questions about conducting a public meeting. Thus, persons responsible for a particular governmental body's meetings must know about other laws applicable to these meetings. While this *Handbook* cannot identify all provisions relevant to meetings of

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509 *Id.* § 551.004.

510 *Shackelford v. City of Abilene*, 585 S.W.2d 665, 667 (Tex. 1979).

511 *Id.* at 667 (emphasis omitted).

512 Tex. Att'y Gen. Op. Nos. DM-473 (1998) at 3, DM-228 (1993) at 2–3, JM-63 (1983) at 3, MW-32 (1979) at 1.

513 Tex. Att'y Gen. Op. Nos. DM-473 (1998) at 3, DM-228 (1993) at 3.

514 *See* TEX. EDUC. CODE § 12.1051 (applying open meetings and public information laws to open-enrollment charter schools); *see also* TEX. ELEC. CODE §§ 31.033(d), .155(d) (applying the Act to county election commissions and joint election commission), TEX. WATER CODE § 16.053(h)(12) (providing that regional water planning groups are subject to the Open Meetings Act).

515 *See* TEX. LOC. GOV'T CODE § 211.006.

516 *See id.* § 152.013(b); *see also* TEX. ELEC. CODE §§ 31.033(d), .155(d).

Texas governmental bodies, we will point out statutes that are of special importance to governmental bodies.

B. Administrative Procedure Act

The Administrative Procedure Act (the "APA") establishes "minimum standards of uniform practice and procedure for state agencies" in the rulemaking process and in hearing and resolving contested cases.[517] The state agencies subject to the APA are as a rule also subject to the Act.[518] The decision-making process under the APA is not excepted from the requirements of the Act.[519]

However, this office has concluded that the APA creates an exception to the requirements of the Act with regard to contested cases.[520] A governmental body may consider a claim of privilege in a closed meeting when (1) the claim is made during a contested case proceeding under the APA, and (2) the resolution of the claim requires the examination and discussion of the allegedly privileged information.[521] Although the Act does not authorize a closed meeting for this purpose, the APA incorporates certain rules of evidence and civil procedure, including the requirement that claims of privilege or confidentiality be determined in a nonpublic forum.[522]

The APA does not, on the other hand, create exceptions to the requirements of the Act when the two statutes can be harmonized. In *Acker v. Texas Water Commission*, the Texas Supreme Court concluded that the statutory predecessor to section 2001.061 of the Government Code did not authorize a quorum of the members of a governmental body to confer in private regarding a contested case.[523] Section 2001.061(b) provides in pertinent part: "A state agency member may communicate ex parte with another member of the agency unless prohibited by other law."[524] The court concluded that, when harmonized with the provisions of the Act, this section permits a state agency's members to confer ex parte, but only when less than a quorum is present.[525]

C. The Americans with Disabilities Act

Title II of the Americans with Disabilities Act of 1990 (the "ADA") prohibits discrimination against disabled individuals in the activities, services and programs of public entities.[526] All the activities of state and local governmental bodies are covered by the ADA, including meetings. Governmental bodies subject to the Act must also ensure that their meetings comply with the ADA.[527] For purposes of the ADA, an individual is an individual with a disability if he or she meets one of the following three tests: the individual must have a physical or mental impairment

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517 TEX. GOV'T CODE § 2001.001(1); *see also id.* § 2001.003(1), (6).
518 *See id.* § 2001.003(7) (defining "state agency").
519 Tex. Att'y Gen. Op. No. H-1269 (1978) at 1 (considering statutory predecessor to APA).
520 Tex. Att'y Gen. Op. No. JM-645 (1987) at 5–6.
521 *Id.*
522 *Id.* at 4–5; *see* TEX. GOV'T CODE § 2001.083.
523 *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990).
524 TEX. GOV'T CODE § 2001.061.
525 *Acker*, 790 S.W.2d at 301.
526 42 U.S.C.A. §§ 12131–12165.
527 *See id.* § 12132; 28 C.F.R. §§ 35.130, .149, .160. *See generally Tyler v. City of Manhattan*, 849 F. Supp. 1429, 1434–35 (D. Kan. 1994).

that substantially limits one or more of the individual's major life activities; he or she has a record of having this type of physical or mental impairment; or he or she is regarded by others as having this type of impairment.[528]

A governmental body may not exclude a disabled individual from participation in the activities of the governmental body because the facilities are physically inaccessible.[529] The room in which a public meeting is held must be physically accessible to a disabled individual.[530] A governmental body must also ensure that communications with disabled individuals are as effective as communications with others.[531] Thus, a governmental body must take steps to ensure that disabled individuals have access to and can understand the contents of the meeting notice and to ensure that they can understand what is happening at the meeting. This duty includes furnishing appropriate auxiliary aids and services when necessary.[532]

The following statement about meeting accessibility is included on the Secretary of State's Internet site where state and regional agencies submit notice of their meetings:

> Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining the type of auxiliary aid or services, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.[533]

D. The Open Meetings Act and the Whistleblower Act

In *City of Elsa v. Gonzalez*, a former city manager complained to the city council that it had violated the Open Meetings Act in the meeting at which he was fired.[534] His court challenge included a Whistleblower claim based on his report to the city council of the violation of the Open Meetings Act.[535] The Texas Supreme Court determined that the former city manager had not established, under the Whistleblower Act, an appropriate law enforcement agency to which to report a violation.[536]

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528 42 U.S.C.A. § 12102(1); 28 C.F.R. § 35.104.

529 *See* 28 C.F.R. § 35.149–.150.

530 *See Dees v. Austin Travis Cty. Mental Health & Mental Retardation*, 860 F. Supp. 1186, 1190 (W.D. Tex. 1994); *see generally Tyler*, 849 F. Supp. at 1442.

531 28 C.F.R. § 35.160.

532 *Id.* § 35.160(b)(1).

533 *Available at* http://www.sos.state.tx.us/open/access.shtml.

534 *City of Elsa v. Gonzalez*, 325 S.W.3d 622 (Tex. 2010).

535 *See id.* at 626–28.

536 *See id.* at 628.

E. The Open Meetings Act Distinguished from the Public Information Act

Although the Open Meetings Act and the Public Information Act[537] both serve the purpose of making government accessible to the people, they work differently to accomplish this goal.[538] The definitions of "governmental body" in the two statutes are generally similar, but the Public Information Act also applies to entities supported by public funds,[539] while the Open Meetings Act does not.[540] Each statute contains a different set of exceptions.[541] The Public Information Act authorizes the attorney general to determine whether records requested by a member of the public may be withheld and to enforce his rulings by writ of mandamus.[542] The Open Meetings Act has no comparable provisions. Chapter 402, subchapter C of the Government Code authorizes the attorney general to issue legal opinions at the request of certain officers. Pursuant to this authority, the attorney general has addressed and resolved numerous questions of law arising under the Open Meetings Act.[543] Because questions of fact cannot be resolved in the opinion process, an attorney general opinion will not determine whether particular conduct of a governmental body violated the Open Meetings Act.[544]

In addition, the exceptions in one statute are not necessarily incorporated into the other statute. The mere fact that a document was discussed in an executive session does not make it confidential under the Public Information Act.[545] Nor does the Public Information Act authorize a governmental body to hold an executive session to discuss records merely because the records are within one of the exceptions to the Public Information Act.[546] While some early attorney general opinions treated the exceptions to one statute as incorporated into the other, these decisions have been expressly or implicitly overruled.[547]

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537 TEX. GOV'T CODE ch. 552.

538 *See York v. Tex. Guaranteed Student Loan Corp.*, 408 S.W.3d. 677, 684–87 (Tex. App.—Austin 2013, no pet.) (discussing interplay between the Open Meetings Act and the Public Information Act).

539 TEX. GOV'T CODE § 552.003(1)(A)(xiv).

540 *See* Tex. Att'y Gen. LO-98-040, at 2.

541 *See* Tex. Att'y Gen. ORD-491 (1988) at 4.

542 *See* TEX. GOV'T CODE §§ 552.301–.309, .321–.327.

543 *Id.* §§ 402.041–.045.

544 *See* Tex. Att'y Gen. Op. Nos. GA-0326 (2005) at 4, JC-0307 (2000) at 1, DM-95 (1992) at 1, JM-840 (1988) at 6, H-772 (1976) at 6; *see also Bexar Medina Atascosa Water Dist. v. Bexar Medina Atascosa Landowners' Ass'n*, 2 S.W.3d 459, 461 (Tex. App.—San Antonio 1999, pet. denied) (stating that whether specific conduct violates the Act is generally a question of fact).

545 *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 366–67 (Tex. 2000) (stating "[t]hat a matter can be discussed in closed meetings does not mean that all documents involving the same matter are exempt from public access"); Tex. Att'y Gen. ORD-605 (1992) at 3 (names of applicants); ORD-485 (1987) at 4–5 (investigative report); *see also* Tex. Att'y Gen. ORD-491 (1988) at 7 (noting the fact that meeting was not subject to the Act does not make minutes of meeting confidential under Open Records Act).

546 Tex. Att'y Gen. Op. Nos. JM-595 (1986) at 4–5 (concluding that Open Records Act does not authorize executive session discussion of written evaluations on selection of consultants and bidders), MW-578 (1982) at 4 (concluding there is no implied authority under the Act to hold closed session to review private information in unemployment benefit case files).

547 *See, e.g.*, Tex. Att'y Gen. Op. No. H-1154 (1978) at 3 (closed meeting for discussion of confidential child welfare case files); Tex. Att'y Gen. ORD-461 (1987) (tape recording of closed session is not public under Open Records Act); ORD-259 (1980) (value of donation pledged to city is confidential under statutory predecessor to section 551.072 of the Government Code).

F. Records Retention

The Open Meetings Act requires a governmental body to prepare and keep minutes or make a recording of each open meeting.[548] It also requires a governmental body to keep a certified agenda or make a recording of each closed meeting, except for a closed meeting held under the attorney consultation exception, and to preserve the certified agenda or recording for a period of two years.[549] Other than these provisions, the Open Meetings Act does not speak to a governmental body's record-keeping obligations. Similarly, the Public Information Act, in its provisions governing access to a governmental body's public information, does not specifically address a governmental body's responsibility to retain its records.[550]

Instead, other provisions require a local governmental body or state agency to retain and manage its governmental records.[551] These provisions require local governments and state agencies to establish a records management program that complies with record retention schedules adopted by the Texas State Library and Archives Commission ("TSLAC").[552] A local government record means

> [a]ny document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.[553]

A state record is "any written, photographic, machine-readable, or other recorded information created or received by or on behalf of a state agency or an elected state official that documents activities in the conduct of state business or use of public resources."[554] Under either of these definitions, a governmental body's meeting minutes, notices, agenda and agenda packets, recordings of meetings, and any other record associated with an open or closed meeting are going

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548 TEX. GOV'T CODE § 551.021(a).

549 *Id.* §§ 551.103, .104.

550 *See id.* §§ 552.001–.353 ("Public Information Act"), .004 (providing that governmental bodies, and elected public officials, may determine the time its information not currently in use will be preserved, "subject to any . . . applicable rule or law governing the destruction and other disposition of state and local governmental records or public information.").

551 *See* TEX. LOC. GOV'T CODE §§ 201.001–205.009 (the "Local Government Records Act"); TEX. GOV'T CODE §§ 441.180–.205 (subchapter L entitled: "Preservation and Management of State Records and Other Historical Resources").

552 *See* TEX. LOC. GOV'T CODE §§ 203.002, .005 (elected county officer shall provide for the administration of an "active and continuing records management program"), 203.021 (governing body of a local government shall provide for an "active and continuing program for the efficient and economical management of all local government records"), TEX. GOV'T CODE § 441.183 (head of each state agency "shall establish and maintain a records management program on a continuing and active basis"); *see also* TEX. LOC. GOV'T CODE § 203.042(b)(2) (retention period may not be less than a retention period for the record established by the TSLAC), TEX. GOV'T CODE §§ 441.185(a) (agency records management officer shall submit a records retention schedule to the state records administrator).

553 TEX. LOC. GOV'T CODE § 201.003(8).

554 TEX. GOV'T CODE § 441.180(11).

to be local or state records. As such, they must be retained and managed by the local government or state agency as required by the respective retention schedule and may be destroyed only as permitted under the retention schedule.[555]

[555] *See* TEX. LOC. GOV'T CODE §§ 202.001–.009 ("Destruction and Alienation of Records"), TEX. GOV'T CODE § 441.187 (governing destruction of state records).

Appendix A: Text of the Open Meetings Act

SUBCHAPTER A. GENERAL PROVISIONS

§ 551.001. Definitions

In this chapter:

(1) "Closed meeting" means a meeting to which the public does not have access.

(2) "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.

(3) "Governmental body" means:

(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 authority 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;

(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;

(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; and

(L) a joint board created under Section 22.074, Transportation Code.

(4) "Meeting" means:

(A) 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 body has supervision or

control is discussed or considered or during which the governmental body takes formal action; or

(B) except as otherwise provided by this subdivision, a gathering:

(i) that is conducted by the governmental body or for which the governmental body is responsible;

(ii) at which a quorum of members of the governmental body is present;

(iii) that has been called by the governmental body; and

(iv) 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.

The term does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference, or 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.

The term includes a session of a governmental body.

(5) "Open" means open to the public.

(6) "Quorum" means a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body.

(7) "Recording" means a tangible medium on which audio or a combination of audio and video is recorded, including a disc, tape, wire, film, electronic storage drive, or other medium now existing or later developed.

(8) "Videoconference call" means a communication conducted between two or more persons in which one or more of the participants communicate with the other participants through duplex audio and video signals transmitted over a telephone network, a data network, or the Internet.

§ 551.0015. Certain Property Owners' Associations Subject to Law

(a) A property owners' association is subject to this chapter in the same manner as a governmental body:

(1) if:

(A) membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in

a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;

(B) the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and

(C) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution; or

(2) if the property owners' association:

(A) provides maintenance, preservation, and architectural control of residential and commercial property within a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more; and

(B) is a corporation that:

(i) is governed by a board of trustees who may employ a general manager to execute the association's bylaws and administer the business of the corporation;

(ii) does not require membership in the corporation by the owners of the property within the defined area; and

(iii) was incorporated before January 1, 2006.

(b) The governing body of the association, a committee of the association, and members of the governing body or of a committee of the association are subject to this chapter in the same manner as the governing body of a governmental body, a committee of a governmental body, and members of the governing body or of a committee of the governmental body.

§ 551.002. Open Meetings Requirement

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

§ 551.003. Legislature

In this chapter, the legislature is exercising its powers to adopt rules to prohibit secret meetings of the legislature, committees of the legislature, and other bodies associated with the legislature, except as specifically permitted in the constitution.

§ 551.0035. Attendance by Governmental Body at Legislative Committee or Agency Meeting

(a) This section applies only to the attendance by a quorum of a governmental body at a meeting of a committee or agency of the legislature. This section does not apply to attendance at the meeting by members of the legislative committee or agency holding the meeting.

(b) The attendance by a quorum of a governmental body at a meeting of a committee or agency of the legislature is not considered to be a meeting of that governmental body if the deliberations at the meeting by the members of that governmental body consist only of publicly testifying at the meeting, publicly commenting at the meeting, and publicly responding at the meeting to a question asked by a member of the legislative committee or agency.

§ 551.004. Open Meetings Required by Charter

This chapter does not authorize a governmental body to close a meeting that a charter of the governmental body:

(1) prohibits from being closed; or

(2) requires to be open.

§ 551.005. Open Meetings Training

(a) Each elected or appointed public official who is a member of a governmental body subject to this chapter shall complete a course of training of not less than one and not more than two hours regarding the responsibilities of the governmental body and its members under this chapter not later than the 90th day after the date the member:

(1) takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the governmental body; or

(2) otherwise assumes responsibilities as a member of the governmental body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

(b) The attorney general shall ensure that the training is made available. The office of the attorney general may provide the training and may also approve any acceptable course of training offered by a governmental body or other entity. The attorney general shall ensure that at least one course of training approved or provided by the attorney general is available on videotape or a functionally similar and widely available medium at no cost. The training must include instruction in:

(1) the general background of the legal requirements for open meetings;

(2) the applicability of this chapter to governmental bodies;

(3) procedures and requirements regarding quorums, notice, and recordkeeping under this chapter;

(4) procedures and requirements for holding an open meeting and for holding a closed meeting under this chapter; and

(5) penalties and other consequences for failure to comply with this chapter.

(c) The office of the attorney general or other entity providing the training shall provide a certificate of course completion to persons who complete the training required by this section. A governmental body shall maintain and make available for public inspection the record of its members' completion of the training.

(d) Completing the required training as a member of the governmental body satisfies the requirements of this section with regard to the member's service on a committee or subcommittee of the governmental body and the member's ex officio service on any other governmental body.

(e) The training required by this section may be used to satisfy any corresponding training requirements concerning this chapter or open meetings required by law for the members of a governmental body. The attorney general shall attempt to coordinate the training required by this section with training required by other law to the extent practicable.

(f) The failure of one or more members of a governmental body to complete the training required by this section does not affect the validity of an action taken by the governmental body.

(g) A certificate of course completion is admissible as evidence in a criminal prosecution under this chapter. However, evidence that a defendant completed a course of training offered under this section is not prima facie evidence that the defendant knowingly violated this chapter.

§ 551.006. Written Electronic Communications Accessible to Public

(a) A communication or exchange of information between members of a governmental body about public business or public policy over which the governmental body has supervision or control does not constitute a meeting or deliberation for purposes of this chapter if:

(1) the communication is in writing;

(2) the writing is posted to an online message board or similar Internet application that is viewable and searchable by the public; and

(3) the communication is displayed in real time and displayed on the online message board or similar Internet application for no less than 30 days after the communication is first posted.

(b) A governmental body may have no more than one online message board or similar Internet application to be used for the purposes described in Subsection

(a). The online message board or similar Internet application must be owned or controlled by the governmental body, prominently displayed on the governmental body's primary Internet web page, and no more than one click away from the governmental body's primary Internet web page.

(c) The online message board or similar Internet application described in Subsection (a) may only be used by members of the governmental body or staff members of the governmental body who have received specific authorization from a member of the governmental body. In the event that a staff member posts a communication to the online message board or similar Internet application, the name and title of the staff member must be posted along with the communication.

(d) If a governmental body removes from the online message board or similar Internet application a communication that has been posted for at least 30 days, the governmental body shall maintain the posting for a period of six years. This communication is public information and must be disclosed in accordance with Chapter 552.

(e) The governmental body may not vote or take any action that is required to be taken at a meeting under this chapter of the governmental body by posting a communication to the online message board or similar Internet application. In no event shall a communication or posting to the online message board or similar Internet application be construed to be an action of the governmental body.

§ 551.007. Public Testimony

(a) This section applies only to a governmental body described by Sections 551.001(3)(B)–(L).

(b) A governmental body shall allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body's consideration of the item.

(c) A governmental body may adopt reasonable rules regarding the public's right to address the body under this section, including rules that limit the total amount of time that a member of the public may address the body on a given item.

(d) This subsection applies only if a governmental body does not use simultaneous translation equipment in a manner that allows the body to hear the translated public testimony simultaneously. A rule adopted under Subsection (c) that limits the amount of time that a member of the public may address the governmental body must provide that a member of the public who addresses the body through a translator must be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in

order to ensure that non-English speakers receive the same opportunity to address the body.

(e) A governmental body may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service. This subjection does not apply to public criticism that is otherwise prohibited by law.

SUBCHAPTER B. RECORD OF OPEN MEETING

§ 551.021. Minutes or Recording of Open Meeting Required

(a) A governmental body shall prepare and keep minutes or make a recording of each open meeting of the body.

(b) The minutes must:

(1) state the subject of each deliberation; and

(2) indicate each vote, order, decision, or other action taken.

§ 551.022. 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.

§ 551.023. Recording of Meeting by Person in Attendance

(a) A person in attendance may record all or any part of an open meeting of a governmental body by means of a recorder, video camera, or other means of aural or visual reproduction.

(b) A governmental body may adopt reasonable rules to maintain order at a meeting, including rules relating to:

(1) the location of recording equipment; and

(2) the manner in which the recording is conducted.

(c) A rule adopted under Subsection (b) may not prevent or unreasonably impair a person from exercising a right granted under Subsection (a).

SUBCHAPTER C. NOTICE OF MEETINGS

§ 551.041. Notice of Meeting Required

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

§ 551.0411. Meeting Notice Requirements in Certain Circumstances

(a) Section 551.041 does not require a governmental body that recesses an open meeting to the following regular business day to post notice of the continued meeting if the action is taken in good faith and not to circumvent this chapter. If an open meeting is continued to the following regular business day and, on that following day, the governmental body continues the meeting to another day, the governmental body must give written notice as required by this subchapter of the meeting continued to that other day.

(b) A governmental body that is prevented from convening an open meeting that was otherwise properly posted under Section 551.041 because of a catastrophe may convene the meeting in a convenient location within 72 hours pursuant to Section 551.045 if the action is taken in good faith and not to circumvent this chapter. If the governmental body is unable to convene the open meeting within those 72 hours, the governmental body may subsequently convene the meeting only if the governmental body gives written notice of the meeting as required by this subchapter.

(c) In this section, "catastrophe" means a condition or occurrence that interferes physically with the ability of a governmental body to conduct a meeting, including:

(1) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;

(2) power failure, transportation failure, or interruption of communication facilities;

(3) epidemic; or

(4) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

§ 551.0415. Governing Body of Municipality or County: Reports About Items of Community Interest Regarding Which No Action Will be Taken

(a) Notwithstanding Sections 551.041 and 551.042, a quorum of the governing body of a municipality or county may receive from staff of the political subdivision and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

(b) For purposes of Subsection (a), "items of community interest" includes:

(1) expressions of thanks, congratulations, or condolence;

(2) information regarding holiday schedules;

(3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change

in the status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision;

(4) a reminder about an upcoming event organized or sponsored by the governing body;

(5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and

(6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.

§ 551.042. Inquiry Made at Meeting

(a) If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply to:

(1) a statement of specific factual information given in response to the inquiry; or

(2) a recitation of existing policy in response to the inquiry.

(b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

§ 551.043. Time and Accessibility of Notice; General Rule

(a) The notice of a meeting of a governmental body 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, except as provided by Sections 551.044–551.046.

(b) If this chapter specifically requires or allows a governmental body to post notice of a meeting on the Internet:

(1) the governmental body satisfies the requirement that the notice must be posted in a place readily accessible to the general public at all times by making a good-faith attempt to continuously post the notice on the Internet during the prescribed period;

(2) the governmental body must still comply with any duty imposed by this chapter to physically post the notice at a particular location; and

(3) if the governmental body makes a good-faith attempt to continuously post the notice on the Internet during the prescribed period, the notice

physically posted at the location prescribed by this chapter must be readily accessible to the general public during normal business hours.

§ 551.044. Exception to General Rule: Governmental Body With Statewide Jurisdiction

(a) The secretary of state must post notice on the Internet of a meeting of a state board, commission, department, or officer having statewide jurisdiction for at least seven days before the day of the meeting. The secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view notices of meetings posted by the secretary of state.

(b) Subsection (a) does not apply to:

(1) the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code, of the department, the commissioner of insurance, or the commissioner of workers' compensation; or

(2) the governing board of an institution of higher education.

§ 551.045. Exception to General Rule: Notice of Emergency Meeting or Emergency Addition to Agenda

(a) In an emergency or when there is an urgent public necessity, the notice of a meeting to deliberate or take action on the emergency or urgent public necessity, or the supplemental notice to add the deliberation or taking of action on the emergency or urgent public necessity as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter, is sufficient if the notice or supplemental notice is posted for at least one hour before the meeting is convened.

(a-1) A governmental body may not deliberate or take action on a matter at a meeting for which notice or supplemental notice is posted under Subsection (a) other than:

(1) a matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting as provided by Subsection (c); or

(2) an agenda item listed on a notice of the meeting before the supplemental notice was posted.

(b) An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of:

(1) an imminent threat to public health and safety, including a threat described by Subdivision (2) if imminent; or

(2) a reasonably unforeseeable situation, including:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;

(B) power failure, transportation failure, or interruption of communication facilities;

(C) epidemic; or

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

(c) The governmental body shall clearly identify the emergency or urgent public necessity in the notice or supplemental notice under this section.

(d) A person who is designated or authorized to post notice of a meeting by a governmental body under this subchapter shall post the notice taking at face value the governmental body's stated reason for the emergency or urgent public necessity.

(e) For purposes of Subsection (b)(2), the sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's jurisdiction is considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation.

§ 551.046. Exception to General Rule: Committee of Legislature

The notice of a legislative committee meeting shall be as provided by the rules of the house of representatives or of the senate.

§ 551.047. Special Notice to News Media of Emergency Meeting or Emergency Addition to Agenda

(a) The presiding officer of a governmental body, or the member of a governmental body who calls an emergency meeting of the governmental body or adds an emergency item to the agenda of a meeting of the governmental body, shall notify the news media of the emergency meeting or emergency item as required by this section.

(b) The presiding officer or member is required to notify only those members of the news media that have previously;

(1) filed at the headquarters of the governmental body a request containing all pertinent information for the special notice; and

(2) agreed to reimburse the governmental body for the cost of providing the special notice.

(c) The presiding officer or member shall give the notice by telephone, facsimile transmission, or electronic mail at least one hour before the meeting is convened.

§ 551.048. State Governmental Body: Notice to Secretary of State; Place of Posting Notice

(a) A state governmental body shall provide notice of each meeting to the secretary of state.

(b) The secretary of state shall post the notice on the Internet. The secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice.

§ 551.049. County Governmental Body: Place of Posting Notice

A county governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the county courthouse.

§ 551.050. Municipal Governmental Body: Place of Posting Notice

(a) In this section, "electronic bulletin board" means an electronic communication system that includes a perpetually illuminated screen on which the governmental body can post messages or notices viewable without manipulation by the public.

(b) A municipal governmental body shall post notice of each meeting on a physical or electronic bulletin board at a place convenient to the public in city hall.

§ 551.0501. Joint Board: Place of Posting Notice

(a) In this section, "electronic bulletin board" means an electronic communication system that includes a perpetually illuminated screen on which the governmental body can post messages or notices viewable without manipulation by the public.

(b) A joint board created under Section 22.074, Transportation Code, shall post notice of each meeting on a physical or electronic bulletin board at a place convenient to the public in the board's administrative offices.

§ 551.051. School District: Place of Posting Notice

A school district shall post notice of each meeting on a bulletin board at a place convenient to the public in the central administrative office of the district.

§ 551.052. School District: Special Notice to News Media

(a) A school district shall provide special notice of each meeting to any news media that has:

(1) requested special notice; and

(2) agreed to reimburse the district for the cost of providing the special notice.

(b) The notice shall be by telephone, facsimile transmission, or electronic mail.

§ 551.053. District or Political Subdivision Extending Into Four or More Counties: Notice to Public, Secretary of State, and County Clerk; Place of Posting Notice

(a) The governing body of a water district or other district or other political subdivision that extends into four or more 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;

(2) provide notice of each meeting to the secretary of state; and

(3) either provide notice of each meeting to the county clerk of the county in which the administrative office of the district or political subdivision is located or post notice of each meeting on the district's or political subdivision's Internet website.

(b) The secretary of state shall post the notice provided under Subsection (a)(2) on the Internet. The secretary of state shall provide during regular office hours a computer terminal at a place convenient to the public in the office of the secretary of state that members of the public may use to view the notice.

(c) A county clerk shall post a notice provided to the clerk under Subsection (a)(3) on a bulletin board at a place convenient to the public in the county courthouse.

§ 551.054. District or Political Subdivision Extending Into Fewer Than Four Counties: Notice to Public and County Clerks; Place of Posting Notice

(a) 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.

(b) A county clerk shall post a notice provided to the clerk under Subsection (a)(2) on a bulletin board at a place convenient to the public in the county courthouse.

§ 551.055. Institution of Higher Education

In addition to providing any other notice required by this subchapter, the governing board of a single institution of higher education:

(1) shall post notice of each meeting at the county courthouse of the county in which the meeting will be held;

(2) shall publish notice of a meeting in a student newspaper of the institution if an issue of the newspaper is published between the time of the posting and the time of the meeting; and

(3) may post notice of a meeting at another place convenient to the public.

§ 551.056. Additional Posting Requirements for Certain Municipalities, Counties, School Districts, Junior College Districts, Development Corporations, Authorities, and Joint Boards

(a) This section applies only to a governmental body or economic development corporation that maintains an Internet website or for which an Internet website is maintained. This section does not apply to a governmental body described by Section 551.001(3)(D).

(b) In addition to the other place at which notice is required to be posted by this subchapter, the following governmental bodies and economic development corporations must also concurrently post notice of a meeting on the Internet website of the governmental body or economic development corporation:

(1) a municipality;

(2) a county;

(3) a school district;

(4) the governing body of a junior college or junior college district, including a college or district that has changed its name in accordance with Chapter 130, Education Code;

(5) a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code);

(6) a regional mobility authority included within the meaning of an "authority" as defined by Section 370.003, Transportation Code; and

(7) a joint board created under Section 22.074, Transportation Code.

(c) The following governmental bodies and economic development corporations must also concurrently post the agenda for the meeting on the Internet website of the governmental body or economic development corporation.

(1) a municipality with a population of 48,000 or more;

(2) a county with a population of 65,000 or more;

(3) a school district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more;

(4) the governing body of a junior college district, including a district that has changed its name in accordance with Chapter 130, Education Code, that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more;

(5) a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) that was created by or for:

(A) a municipality with a population of 48,000 or more; or

(B) a county or district that contains all or part of the area within the corporate boundaries of a municipality with a population of 48,000 or more.

(6) a regional mobility authority included within the meaning of an "authority" as defined by Section 370.003, Transportation Code.

(d) The validity of a posted notice of a meeting or an agenda by a governmental body or economic development corporation subject to this section that made a good faith attempt to comply with the requirements of this section is not affected by a failure to comply with a requirement of this section that is due to a technical problem beyond the control of the governmental body or economic development corporation.

SUBCHAPTER D. EXCEPTIONS TO REQUIREMENT THAT MEETINGS BE OPEN

§ 551.071. Consultation with Attorney; Closed Meeting

A governmental body may not conduct a private consultation with its attorney except:

(1) when the governmental body seeks the advice of its attorney about:

(A) pending or contemplated litigation; or

(B) a settlement offer; or

(2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

§ 551.072. Deliberation Regarding Real Property; Closed Meeting

A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

§ 551.0725. Commissioners Courts: Deliberation Regarding Contract Being Negotiated; Closed Meeting

(a) The commissioners court of a county may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:

(1) the commissioners court votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person; and

(2) the attorney advising the commissioners court issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person.

(b) Notwithstanding Section 551.103(a), Government Code, the commissioners court must make a recording of the proceedings of a closed meeting to deliberate the information.

§ 551.0726. Texas Facilities Commission: Deliberation Regarding Contract Being Negotiated; Closed Meeting

(a) The Texas Facilities Commission may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:

(1) the commission votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person; and

(2) the attorney advising the commission issues a written determination finding that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person and setting forth that finding therein.

(b) Notwithstanding Section 551.103(a), the commission must make a recording of the proceedings of a closed meeting held under this section.

§ 551.073. Deliberation Regarding Prospective Gift; Closed Meeting

A governmental body may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the state or the governmental body if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

§ 551.074. Personnel Matters; Closed Meeting

(a) This chapter does not require a governmental body to conduct an open meeting:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or

(2) to hear a complaint or charge against an officer or employee.

(b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing.

§ 551.0745. Personnel Matters Affecting County Advisory Body; Closed Meeting

(a) This chapter does not require the commissioners court of a county to conduct an open meeting:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a member of an advisory body; or

(2) to hear a complaint or charge against a member of an advisory body.

(b) Subsection (a) does not apply if the individual who is the subject of the deliberation or hearing requests a public hearing.

§ 551.075. Conference Relating to Investments and Potential Investments Attended by Board of Trustees of Texas Growth Fund; Closed Meeting

(a) This chapter does not require the board of trustees of the Texas growth fund to confer with one or more employees of the Texas growth fund or with a third party in an open meeting if the only purpose of the conference is to:

(1) receive information from the employees of the Texas growth fund or the third party relating to an investment or a potential investment by the Texas growth fund in:

(A) a private business entity, if disclosure of the information would give advantage to a competitor; or

(B) a business entity whose securities are publicly traded, if the investment or potential investment is not required to be registered under the Securities and Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), and its subsequent amendments, and if disclosure of the information would give advantage to a competitor; or

(2) question the employees of the Texas growth fund or the third party regarding an investment or potential investment described by Subdivision (1), if disclosure of the information contained in the question or answers would give advantage to a competitor.

(b) During a conference under Subsection (a), members of the board of trustees of the Texas growth fund may not deliberate public business or agency policy that affects public business.

(c) In this section, "Texas growth fund" means the fund created by Section 70, Article XVI, Texas Constitution.

§ 551.076. Deliberation Regarding Security Devices or Security Audits; Closed Meeting

This chapter does not require a governmental body to conduct an open meeting to deliberate:

(1) the deployment, or specific occasions for implementation, of security personnel or devices; or

(2) a security audit.

§ 551.077. Agency Financed by Federal Government

This chapter does not require an agency financed entirely by federal money to conduct an open meeting.

§ 551.078. Medical Board or Medical Committee

This chapter does not require a medical board or medical committee to conduct an open meeting to deliberate the medical or psychiatric records of an individual applicant for a disability benefit from a public retirement system.

§ 551.0785. Deliberations Involving Medical or Psychiatric Records of Individuals

This chapter does not require a benefits appeals committee for a public self-funded health plan or a governmental body that administers a public insurance, health, or retirement plan to conduct an open meeting to deliberate:

(1) the medical records or psychiatric records of an individual applicant for a benefit from the plan; or

(2) a matter that includes a consideration of information in the medical or psychiatric records of an individual applicant for a benefit from the plan.

§ 551.079. Texas Department of Insurance

(a) The requirements of this chapter do not apply to a meeting of the commissioner of insurance or the commissioner's designee with the board of directors of a guaranty association established under Chapter 2602, Insurance Code, or Article 21.28–C or 21.28–D, Insurance Code,[556] in the discharge of the commissioner's duties and responsibilities to regulate and maintain the solvency of a person regulated by the Texas Department of Insurance.

(b) The commissioner of insurance may deliberate and determine the appropriate action to be taken concerning the solvency of a person regulated by the Texas Department of Insurance in a closed meeting with persons in one or more of the following categories:

(1) staff of the Texas Department of Insurance;

(2) a regulated person;

(3) representatives of a regulated person; or

[556] Now, repealed.

(4) members of the board of directors of a guaranty association established under Chapter 2602, Insurance Code, or Article 21.28–C or 21.28–D, Insurance Code.

§ 551.080. Board of Pardons and Paroles

This chapter does not require the Board of Pardons and Paroles to conduct an open meeting to interview or counsel an inmate of the Texas Department of Criminal Justice.

§ 551.081. Credit Union Commission

This chapter does not require the Credit Union Commission to conduct an open meeting to deliberate a matter made confidential by law.

§ 551.0811. The Finance Commission of Texas

This chapter does not require The Finance Commission of Texas to conduct an open meeting to deliberate a matter made confidential by law.

§ 551.082. School Children; School District Employees; Disciplinary Matter or Complaint

(a) This chapter does not require a school board to conduct an open meeting to deliberate in a case:

(1) involving discipline of a public school child; or

(2) in which a complaint or charge is brought against an employee of the school district by another employee and the complaint or charge directly results in a need for a hearing.

(b) Subsection (a) does not apply if an open hearing is requested in writing by a parent or guardian of the child or by the employee against whom the complaint or charge is brought.

§ 551.0821. School Board: Personally Identifiable Information about Public School Student

(a) This chapter does not require a school board to conduct an open meeting to deliberate a matter regarding a public school student if personally identifiable information about the student will necessarily be revealed by the deliberation.

(b) Directory information about a public school student is considered to be personally identifiable information about the student for purposes of Subsection (a) only if a parent or guardian of the student, or the student if the student has attained 18 years of age, has informed the school board, the school district, or a school in the school district that the directory information should not be released without prior consent. In this subsection, "directory information" has the meaning assigned by the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), as amended.

(c) Subsection (a) does not apply if an open meeting about the matter is requested in writing by the parent or guardian of the student or by the student if the student has attained 18 years of age.

§ 551.083. Certain School Boards; Closed Meeting Regarding Consultation With Representative of Employee Group

This chapter does not require a school board operating under a consultation agreement authorized by Section 13.901, Education Code,[557] to conduct an open meeting to deliberate the standards, guidelines, terms, or conditions the board will follow, or instruct its representatives to follow, in a consultation with representative of an employee group.

§ 551.084. Investigation; Exclusion of Witness From Hearing

A governmental body that is investigating a matter may exclude a witness from a hearing during the examination of another witness in the investigation.

§ 551.085. Governing Board of Certain Providers of Health Care Services

(a) This chapter does not require the governing board of a municipal hospital, municipal hospital authority, county hospital, county hospital authority, hospital district created under general or special law, or nonprofit health maintenance organization created under Section 534.101, Health and Safety Code, to conduct an open meeting to deliberate:

(1) pricing or financial planning information relating to a bid or negotiation for the arrangement or provision of services or product lines to another person if disclosure of the information would give advantage to competitors of the hospital, hospital district, or nonprofit health maintenance organization; or

(2) information relating to a proposed new service or product line of the hospital, hospital district, or nonprofit health maintenance organization before publicly announcing the service or product line.

(b) The governing board of a health maintenance organization created under Section 281.0515, Health and Safety Code, that is subject to this chapter is not required to conduct an open meeting to deliberate information described by Subsection (a).

§ 551.086. Certain Public Power Utilities; Competitive Matters

(a) Notwithstanding anything in this chapter to the contrary, the rules provided by this section apply to competitive matters of a public power utility.

(b) In this section:

[557] Now, repealed.

(1) "Public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(2) "Public power utility governing body" means the board of trustees or other applicable governing body, including a city council, of a public power utility.

(c) This chapter does not require a public power utility governing body to conduct an open meeting to deliberate, vote, or take final action on any competitive matter, as that term is defined by Section 552.133. This section does not limit the right of a public power utility governing body to hold a closed session under any other exception provided for in this chapter.

(d) For purposes of Section 551.041, the notice of the subject matter of an item that may be considered as a competitive matter under this section is required to contain no more than a general representation of the subject matter to be considered, such that the competitive activity of the public power utility with respect to the issue in question is not compromised or disclosed.

(e) With respect to municipally owned utilities subject to this section, this section shall apply whether or not the municipally owned utility has adopted customer choice or serves in a multiply certificated service area under the Utilities Code.

(f) Nothing in this section is intended to preclude the application of the enforcement and remedies provisions of Subchapter G.

§ 551.087. Deliberation Regarding Economic Development Negotiations; Closed Meeting

This chapter does not require a governmental body to conduct an open meeting:

(1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or

(2) to deliberate the offer of a financial or other incentive to business prospect described by Subdivision (1).

§ 551.088. Deliberations Regarding Test Item

This chapter does not require a governmental body to conduct an open meeting to deliberate a test item or information related to a test item if the governmental body believes that the test item may be included in a test the governmental body administers to individuals who seek to obtain or renew a license or certificate that is necessary to engage in an activity.

§ 551.089. Deliberation Regarding Security Devices or Security Audits; Closed Meeting

This chapter does not require a governmental body to conduct an open meeting to deliberate:

(1) security assessments or deployments relating to information resources technology;

(2) network security information as described by Section 2059.055(b); or

(3) the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

§ 551.090. Enforcement Committee Appointed by Texas State Board of Public Accountancy

This chapter does not require an enforcement committee appointed by the Texas State Board of Public Accountancy to conduct an open meeting to investigate and deliberate a disciplinary action under Subchapter K, Chapter 901, Occupations Code, relating to the enforcement of Chapter 901 or the rules of the Texas State Board of Public Accountancy.

SUBCHAPTER E. PROCEDURES RELATING TO CLOSED MEETING

§ 551.101. Requirement to First Convene in Open Meeting

If a closed meeting is allowed under this chapter, a governmental body may not conduct the closed meeting unless a quorum of the governmental body first convenes in an open meeting for which notice has been given as provided by this chapter and during which the presiding officer publicly:

(1) announces that a closed meeting will be held; and

(2) identifies the section or sections of this chapter under which the closed meeting is held.

§ 551.102. Requirement to Vote or Take Final Action in Open Meeting

A final action, decision, or vote on a matter deliberated in a closed meeting under this chapter may only be made in an open meeting that is held in compliance with the notice provisions of this chapter.

§ 551.103. Certified Agenda or Recording Required

(a) A governmental body shall either keep a certified agenda or make a recording of the proceedings of each closed meeting, except for a private consultation permitted under Section 551.071.

(b) The presiding officer shall certify that an agenda kept under Subsection (a) is a true and correct record of the proceedings.

(c) 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 meeting indicating the date and time.

(d) A recording made under Subsection (a) must include announcements by the presiding officer at the beginning and the end of the meeting indicating the date and time.

§ 551.104. Certified Agenda or Recording; Preservation; Disclosure

(a) A governmental body shall preserve the certified agenda or recording of a closed meeting for at least two years after the date of the meeting. If an action involving the meeting is brought within that period, the governmental body shall preserve the certified agenda or recording while the action is pending.

(b) In litigation in a district court involving an alleged violation of this chapter, the court:

(1) is entitled to make an in camera inspection of the certified agenda or recording;

(2) may admit all or part of the certified agenda or recording as evidence, on entry of a final judgment; and

(3) 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 recording of any part of a meeting that was required to be open under this chapter.

(c) The certified agenda or recording of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).

SUBCHAPTER F. MEETINGS USING TELEPHONE, VIDEOCONFERENCE, OR INTERNET

§ 551.121. Governing Board of Institution of Higher Education; Board for Lease of University Lands; Texas Higher Education Coordinating Board: Special Meeting for Immediate Action

(a) In this section, "governing board," "institution of higher education," and "university system" have the meanings assigned by Section 61.003, Education Code.

(b) This chapter does not prohibit the governing board of an institution of higher education, the Board for Lease of University Lands, or the Texas Higher Education Coordinating Board from holding an open or closed meeting by telephone conference call.

(c) A meeting held by telephone conference call authorized by this section may be held only if:

(1) the meeting is a special called meeting and immediate action is required; and

(2) the convening at one location of a quorum of the governing board, the Board for Lease of University Lands, or the Texas Higher Education Coordinating Board, as applicable, is difficult or impossible.

(d) The telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(e) The notice of a telephone conference call meeting of a governing board must specify as the location of the meeting the location where meetings of the governing board are usually held. For a meeting of the governing board of a university system, the notice must specify as the location of the meeting the board's conference room at the university system office. For a meeting of the Board for Lease of University Lands, the notice must specify as the location of the meeting a suitable conference or meeting room at The University of Texas System office. For a meeting of the Texas Higher Education Coordinating Board, the notice must specify as the location of the meeting a suitable conference or meeting room at the offices of the Texas Higher Education Coordinating Board or at an institution of higher education.

(f) Each part of the telephone conference call meeting that is required to be open to the public must be:

(1) audible to the public at the location specified in the notice of the meeting as the location of the meeting;

(2) broadcast over the Internet in the manner prescribed by Section 551.128; and

(3) recorded and made available to the public in an online archive located on the Internet website of the entity holding the meeting.

§ 551.122. Governing Board of Junior College District: Quorum Present at One Location

(a) This chapter does not prohibit the governing board of a junior college district from holding an open or closed meeting by telephone conference call.

(b) A meeting held by telephone conference call authorized by this section may be held only if a quorum of the governing board is physically present at the location where meetings of the board are usually held.

(c) The telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(d) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location where the quorum is present and shall be recorded. The recording shall be made available to the public.

(e) The location of the meeting shall provide two-way communication during the entire telephone conference call meeting, and the identification of each party to the telephone conference shall be clearly stated before the party speaks.

(f) The authority provided by this section is in addition to the authority provided by Section 551.121.

(g) A member of a governing board of a junior college district who participates in a board meeting by telephone conference call but is not physically present at the location of the meeting is considered to be absent from the meeting for purposes of Section 130.0845, Education Code.

§ 551.123. Texas Board of Criminal Justice

(a) The Texas Board of Criminal Justice may hold an open or closed emergency meeting by telephone conference call.

(b) The portion of the telephone conference call meeting that is open shall be recorded. The recording shall be made available to be heard by the public at one or more places designated by the board.

§ 551.124. Board of Pardons and Paroles

At the call of the presiding officer of the Board of Pardons and Paroles, the board may hold a hearing on clemency matters by telephone conference call.

§ 551.125. Other Governmental Body

(a) Except as otherwise provided by this subchapter, this chapter does not prohibit a governmental body from holding an open or closed meeting by telephone conference call.

(b) A meeting held by telephone conference call may be held only if:

(1) an emergency or public necessity exists within the meaning of Section 551.045 of this chapter; and

(2) the convening at one location of a quorum of the governmental body is difficult or impossible; or

(3) the meeting is held by an advisory board.

(c) The telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(d) The notice of the telephone conference call meeting must specify as the location of the meeting the location where meetings of the governmental body are usually held.

(e) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice

of the meeting as the location of the meeting and shall be recorded. The recording shall be made available to the public.

(f) The location designated in the notice as the location of the meeting shall provide two-way communication during the entire telephone conference call meeting and the identification of each party to the telephone conference call shall be clearly stated prior to speaking.

§ 551.126. Higher Education Coordinating Board

(a) In this section, "board" means the Texas Higher Education Coordinating Board.

(b) The board may hold an open meeting by telephone conference call or video conference call in order to consider a higher education impact statement if the preparation of a higher education impact statement by the board is to be provided under the rules of either the house of representatives or the senate.

(c) A meeting held by telephone conference call must comply with the procedures described in Section 551.125.

(d) A meeting held by video conference call is subject to the notice requirements applicable to other meetings. In addition, a meeting held by video conference call shall:

(1) be visible and audible to the public at the location specified in the notice of the meeting as the location of the meeting;

(2) be recorded by audio and video; and

(3) have two-way audio and video communications with each participant in the meeting during the entire meeting.

§ 551.127. Videoconference Call

(a) Except as otherwise provided by this section, this chapter does not prohibit a governmental body from holding an open or closed meeting by videoconference call.

(a-1) A member or employee of a governmental body may participate remotely in a meeting of the governmental body by means of a videoconference call if the video and audio feed of the member's or employee's participation, as applicable, is broadcast live at the meeting and complies with the provisions of this section.

(a-2) A member of a governmental body who participates in a meeting as provided by Subsection (a-1) shall be counted as present at the meeting for all purposes.

(a-3) A member of a governmental body who participates in a meeting by videoconference call shall be considered absent from any portion of the meeting during which audio or video communication with the member is lost or disconnected. The governmental body may continue the meeting only if a

quorum of the body remains present at the meeting location or, if applicable, continues to participate in a meeting conducted under Subsection (c).

(b) A meeting may be held by videoconference call only if a quorum of the governmental body is physically present at one location of the meeting, except as provided by Subsection (c).

(c) A meeting of a state governmental body or a governmental body that extends into three or more counties may be held by videoconference call only if the member of the governmental body presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting.

(d) A meeting held by videoconference call is subject to the notice requirements applicable to other meetings in addition to the notice requirements prescribed by this section.

(e) The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where a quorum of the governmental body will be physically present and specify the intent to have a quorum present at that location, except that the notice of a meeting to be held by videoconference call under Subsection (c) must specify as a location of the meeting the location where the member of the governmental body presiding over the meeting will be physically present and specify the intent to have the member of the governmental body presiding over the meeting present at that location. The location where the member of the governmental body presiding over the meeting is physically present shall be open to the public during the open portions of the meeting.

(f) Each portion of a meeting held by videoconference call that is required to be open to the public shall be visible and audible to the public at the location specified under Subsection (e). If a problem occurs that causes a meeting to no longer be visible and audible to the public at that location, the meeting must be recessed until the problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned.

(g) The governmental body shall make at least an audio recording of the meeting. The recording shall be made available to the public.

(h) The location specified under Subsection (e), and each remote location from which a member of the governmental body participates, shall have two-way audio and video communication with each other location during the entire meeting. The face of each participant in the videoconference call, while that participant is speaking, shall be clearly visible, and the voice audible, to each other participant and, during the open portion of the meeting, to the members of the public in attendance at a location of the meeting that is open to the public.

(i) The Department of Information Resources by rule shall specify minimum standards for audio and video signals at a meeting held by videoconference call.

The quality of the audio and video signals perceptible at each location of the meeting must meet or exceed those standards.

(j) The audio and video signals perceptible by members of the public at each location of the meeting described by Subsection (h) must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

(k) Without regard to whether a member of the governmental body is participating in a meeting from a remote location by videoconference call, a governmental body may allow a member of the public to testify at a meeting from a remote location by videoconference call.

§ 551.128. Internet Broadcast of Open Meeting

(a) In this section, "Internet" means the largest nonproprietary cooperative public computer network, popularly known as the Internet.

(b) Except as provided by Subsection (b-1) and subject to the requirements of this section, a governmental body may broadcast an open meeting over the Internet.

(b-1) A transit authority or department subject to Chapter 451, 452, 453, or 460, Transportation Code, an elected school district board of trustees for a school district that has a student enrollment of 10,000 or more, an elected governing body of a home-rule municipality that has a population of 50,000 or more, or a county commissioners court for a county that has a population of 125,000 or more shall:

(1) make a video and audio recording of reasonable quality of each:

(A) regularly scheduled open meeting that is not a work session or a special called meeting; and

(B) open meeting that is a work session or special called meeting if:

(i) the governmental body is an elected school district board of trustees for a school district that has a student enrollment of 10,000 or more; and

(ii) at the work session or special called meeting, the board of trustees votes on any matter or allows public comment or testimony; and

(2) make available an archived copy of the video and audio recording of each meeting described by Subsection (1) on the Internet.

(b-2) A governmental body described by Subsection (b-1) may make available the archived recording of a meeting required by Subsection (b-1) on an existing Internet site, including a publicly accessible video-sharing or social networking site. The governmental body is not required to establish a separate Internet site and provide access to archived recordings of meetings from that site.

(b-3) A governmental body described by Subsection (b-1) that maintains an Internet site shall make available on that site, in a conspicuous manner:

(1) the archived recording of each meeting to which Subsection (b-1) applies; or

(2) an accessible link to the archived recording of each such meeting.

(b-4) A governmental body described by Subsection (b-1) shall:

(1) make the archived recording of each meeting to which Subsection (b-1) applies available on the Internet not later than seven days after the date the recording was made; and

(2) maintain the archived recording on the Internet for not less than two years after the date the recording was first made available.

(b-5) A governmental body described by Subsection (b-1) is exempt from the requirements of Subsections (b-2) and (b-4) if the governmental body's failure to make the required recording of a meeting available is the result of a catastrophe, as defined by Section 551.0411, or a technical breakdown. Following a catastrophe or breakdown, a governmental body must make all reasonable efforts to make the required recording available in a timely manner.

(b-6) A governmental body described by Subsection (b-1) may broadcast a regularly scheduled open meeting of the body on television.

(c) Except as provided by Subsection (b-2), a governmental body that broadcasts a meeting over the Internet shall establish an Internet site and provide access to the broadcast from that site. The governmental body shall provide on the Internet site the same notice of the meeting that the governmental body is required to post under Subchapter C. The notice on the Internet must be posted within the time required for posting notice under Subchapter C.

§ 551.1281. Governing Board of General Academic Teaching Institution or University System: Internet Posting of Meeting Materials and Broadcast of Open Meeting

(a) In this section, "general academic teaching institution" and "university system" have the meanings assigned by Section 61.003, Education Code.

(b) The governing board of a general academic teaching institution or of a university system that includes one or more component general academic teaching institutions, for any regularly scheduled meeting of the governing board for which notice is required under this chapter, shall:

(1) post as early as practicable in advance of the meeting on the Internet website of the institution or university system, as applicable, any written agenda and related supplemental written materials provided to the governing board members in advance of the meeting by the institution or system for the members' use during the meeting;

(2) broadcast the meeting, other than any portions of the meeting closed to the public as authorized by law, over the Internet in the manner prescribed by Section 551.128; and

(3) record the broadcast and make the recording publicly available in an online archive located on the institution's or university system's Internet website.

(c) Subsection (b)(1) does not apply to written materials that the general counsel or other appropriate attorney for the institution or university system certifies are confidential or may be withheld from public disclosure under Chapter 552.

(d) The governing board of a general academic teaching institution or of a university system is not required to comply with the requirements of this section if that compliance is not possible because of an act of God, force majeure, or a similar cause not reasonably within the governing board's control.

§ 551.1282. Governing Board of Junior College District: Internet Posting of Meeting Materials and Broadcast of Open Meeting

(a) This section applies only to the governing board of a junior college district with a total student enrollment of more than 20,000 in any semester of the preceding academic year.

(b) A governing board to which this section applies, for any regularly scheduled meeting of the governing board for which notice is required under this chapter, shall:

(1) post as early as practicable in advance of the meeting on the Internet website of the district any written agenda and related supplemental written materials provided by the district to the board members for the members' use during the meeting;

(2) broadcast the meeting, other than any portions of the meeting closed to the public as authorized by law, over the Internet in the manner prescribed by Section 551.128; and

(3) record the broadcast and make that recording publicly available in an online archive located on the district's Internet website.

(c) Subsection (b)(1) does not apply to written materials that the general counsel or other appropriate attorney for the district certifies are confidential or may be withheld from public disclosure under Chapter 552.

(d) The governing board of a junior college district is not required to comply with the requirements of this section if that compliance is not possible because of an act of God, force majeure, or a similar cause not reasonably within the governing board's control.

§ 551.1283. Governing Body of Certain Water Districts: Internet Posting of Meeting Materials; Recording of Certain Hearings

(a) This section only applies to a special purpose district subject to Chapter 51, 53, 54, or 55, Water Code, that has a population of 500 or more.

(b) On written request of a district resident made to the district not later than the third day before a public hearing to consider the adoption of an ad valorem tax rate, the district shall make an audio recording of reasonable quality of the hearing and provide the recording to the resident in an electronic format not later than the fifth business day after the date of the hearing. The district shall maintain a copy of the recording for at least one year after the date of the hearing.

(c) A district shall post the minutes of the meeting of the governing body to the district's Internet website if the district maintains an Internet website.

§ 551.129. Consultations Between Governmental Body and Its Attorney

(a) A governmental body may use a telephone conference call, video conference call, or communications over the Internet to conduct a public consultation with its attorney in an open meeting of the governmental body or a private consultation with its attorney in a closed meeting of the governmental body.

(b) Each part of the public consultation by a governmental body with it attorney in an open meeting of the governmental body under Subsection (a) must be audible to the public at the location specified in the notice of the meeting as the location of the meeting.

(c) Subsection (a) does not:

(1) authorize the members of a governmental body to conduct a meeting of the governmental body by telephone conference call, video conference call, or communications over the Internet; or

(2) create an exception to the application of this subchapter.

(d) Subsection (a) does not apply to a consultation with an attorney who is an employee of the governmental body.

(e) For purposes of Subsection (d), an attorney who receives compensation for legal services performed, from which employment taxes are deducted by the governmental body, is an employee of the governmental body.

(f) Subsection (d) does not apply to:

(1) the governing board of an institution of higher education as defined by Section 61.003, Education Code; or

(2) the Texas Higher Education Coordinating Board.

§ 551.130. Board of Trustees of Teacher Retirement System of Texas: Quorum Present at One Location

(a) In this section, "board" means the board of trustees of the Teacher Retirement System of Texas.

(b) This chapter does not prohibit the board or a board committee from holding an open or closed meeting by telephone conference call.

(c) The board or a board committee may hold a meeting by telephone conference call only if a quorum of the applicable board or board committee is physically present at one location of the meeting,

(d) A telephone conference call meeting is subject to the notice requirements applicable to other meetings. The notice must also specify:

(1) the location of the meeting where a quorum of the board or board committee, as applicable, will be physically present; and

(2) the intent to have a quorum present at that location.

(e) The location where a quorum is physically present must be open to the public during the open portions of a telephone conference call meeting. The open portions of the meeting must be audible to the public at the location where the quorum is present and be recorded at that location. The recording shall be made available to the public.

(f) The location of the meeting shall provide two-way communication during the entire telephone conference call meeting, and the identification of each party to the telephone conference call must be clearly stated before the party speaks.

(g) The authority provided by this section is in addition to the authority provided by Section 551.125.

(h) A member of the board who participates in a board or board committee meeting by telephone conference call but is not physically present at the location of the meeting is not considered to be absent from the meeting for any purpose. The vote of a member of the board who participates in a board or board committee meeting by telephone conference call is counted for the purpose of determining the number of votes cast on a motion or other proposition before the board or board committee.

(i) A member of the board may participate remotely by telephone conference call instead of by being physically present at the location of a board meeting for not more than one board meeting per calendar year. A board member who participates remotely in any portion of a board meeting by telephone conference call is considered to have participated in the entire board meeting by telephone conference call. For purposes of the limit provided by this subsection, remote participation by telephone conference call in a meeting of a board committee does not count as remote participation by telephone conference call in a meeting of the board, even if:

(1) a quorum of the full board attends the board committee meeting; or

(2) notice of the board committee meeting is also posted as notice of a board meeting.

(j) A person who is not a member of the board may speak at the meeting from a remote location by telephone conference call.

§ 551.131. Water Districts

(a) In this section, "water district" means a river authority, groundwater conservation district, water control and improvement district, or other district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(b) This section applies only to a water district whose territory includes land in three or more counties.

(c) A meeting held by telephone conference call or video conference call authorized by this section may be held only if:

(1) the meeting is a special called meeting and immediate action is required; and

(2) the convening at one location of a quorum of the governing body of the applicable water district is difficult or impossible.

(d) A meeting held by telephone conference call must otherwise comply with the procedures under Sections 551.125(c), (d), (e), and (f).

(e) A meeting held by video conference call is subject to the notice requirements applicable to other meetings. In addition, a meeting held by video conference call shall:

(1) be visible and audible to the public at the location specified in the notice of the meeting as the location of the meeting;

(2) be recorded by audio and video; and

(3) have two-way audio and video communications with each participant in the meeting during the entire meeting.

SUBCHAPTER G. ENFORCEMENT AND REMEDIES; CRIMINAL VIOLATIONS

§ 551.141. Action Voidable

An action taken by a governmental body in violation of this chapter is voidable.

§ 551.142. Mandamus; Injunction

(a) 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 this chapter by members of a governmental body.

(b) The court may assess costs of litigation and reasonable attorney fees incurred by a plaintiff or defendant who substantially prevails in an action under Subsection (a). 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.

(c) 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.

(d) A suit filed by the attorney general under Subsection (c) must be filed in a district court of Travis County.

§ 551.143. Prohibited Series of Communications; Offense; Penalty

(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 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 the 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.

(b) An offense under Subsection (a) 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.

§ 551.144. Closed Meeting; Offense; Penalty

(a) A member of a governmental body commits an offense 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.

(b) An offense under Subsection (a) 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.

(c) It is an affirmative defense to prosecution under Subsection (a) 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.

§ 551.145. Closed Meeting Without Certified Agenda or Recording; Offense; Penalty

(a) 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 recording of the closed meeting is not being made.

(b) An offense under Subsection (a) is a Class C misdemeanor.

§ 551.146. Disclosure of Certified Agenda or Recording of Closed Meeting; Offense; Penalty; Civil Liability

(a) An individual, corporation, or partnership that without lawful authority knowingly discloses to a member of the public the certified agenda or recording of a meeting that was lawfully closed to the public under this chapter:

(1) commits an offense; and

(2) is liable to a person injured or damaged by the disclosure for:

(A) actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress;

(B) reasonable attorney fees and court costs; and

(C) at the discretion of the trier of fact, exemplary damages.

(b) An offense under Subsection (a)(1) is a Class B misdemeanor.

(c) It is a defense to prosecution under Subsection (a)(1) and an affirmative defense to a civil action under Subsection (a)(2) that:

(1) the defendant had good reason to believe the disclosure was lawful; or

(2) the disclosure was the result of a mistake of fact concerning the nature or content of the certified agenda or recording.

Appendix B: Table of Authorities

Cases

Statutes

TEXAS OPEN MEETINGS ACT LAWS MADE EASY

2019 Editor

Zindia Thomas
Assistant General Counsel
Texas Municipal League

www.tml.org

Updated September 2019

The Texas Open Meetings Act Made Easy

The Open Meeting Act Made Easy is a handbook in a question and answer format that covers the most frequently asked questions about the Texas Open Meetings Act ("the Act"). The handbook addresses when the Act applies, what constitutes reasonable notice and the application of the Act to informal gatherings. Additionally, the handbook covers permissible subjects for closed meetings/executive sessions, who may attend a closed meeting/executive session, and the appropriate handling of a certified agenda. Finally, the handbook addresses the ability to "ratify" an action, civil enforcement of the Act, and criminal penalties for certain violations.

This "made easy" handbook provides answers in easy to understand language to the most frequently asked questions regarding the Act. The Act does apply to a variety of governmental entities, so although this information is geared towards the Act's application to local governmental bodies, it will be useful to other officials and Texas citizens as well. TML is available to answer questions about this from city officials, who should nonetheless consult with their local legal counsel regarding the application of the law to the facts of each particular situation.

Table of Contents

I. Application of the Open Meetings Act

1. When does the Open Meetings Act generally apply?

The Open Meetings Act (hereinafter "the Act") generally applies when:

1. a quorum[1] of a governmental body[2] is present and discusses public business,[3] or
2. a quorum of a governmental body is present and the governmental body is receiving information from or providing information to a third party.[4]

2. Are there different quorum requirements for different types of cities?

Generally, according to the Act, the definition of quorum is "a majority of a governmental body, unless defined differently by applicable law or rule or charter of the governmental body."[5] However, cities have different quorum requirements depending on the type of city it is:

- **Home Rule**: Generally, the charter expressly states the quorum requirements for the meetings.
- **General Law Type A**:[6]
    - *Regular meetings*: majority of the councilmembers (3)
    - *Special meetings or meetings to impose taxes*: two-thirds (2/3rd) of the council members (4)
- **General Law Type B**: The mayor and three aldermen or four aldermen, if the mayor is absent.[7]
- **General Law Type C**: A majority of the board of commissioners (2).

3. Does the Open Meetings Act always apply when a quorum of a governmental body is present?

The Act does not always apply when a quorum of the governmental body is present. There are exceptions throughout the Act when it does not apply when a quorum of the governmental body is present. These situations are:

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1 *See* Tex. Gov't Code § 551.001(6) (definition of "quorum").
2 *See id*. § 551.001(3) (definition of "governmental body").
3 *Id*. § 551.001(4)(A).
4 *Id*. § 551.001(4)(B).
5 *Id.* § 551.001(6).
6 Tex. Loc. Gov't Code § 22.039.
7 *Id.* § 23.028.

1. A social gathering that is unrelated to the body's public business, regional, state, or national conventions or workshops, ceremonial events, or press conferences, or the attendance by a quorum of a governmental body at a candidate forum, appearance, or debate to inform the electorate, as long as no formal actions are taken and the discussion of public business is only incidental to the event;[8]
2. Attendance at a legislative committee or state agency meeting if the deliberations at the meeting by the members of the governing body consist only of:
    a. Publicly testifying at the meeting,
    b. Publicly commenting at the meeting, and
    c. Publicly responding at the meeting to questions asked by a member of the legislative committee or agency;[9] or
3. When the staff or a member of the governing body of a city or county makes a report about items of community interest during a meeting of the governing body without giving 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. Items of community interest include:
    a. Expressions of thanks, congratulations or condolence;
    b. Information regarding holiday schedules;
    c. An honorary or salutary recognition of a public official, public employee or other citizen, except that a discussion regarding a change in the status of a person's public office or public employment is not an honorary or salutary recognition for purpose of this subdivision;
    d. A reminder about an upcoming event organized or sponsored by the governing body;
    e. Information regarding a social, ceremonial or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and

[8] Tex. Gov't Code § 551.001(4). *See* Tex. Att'y Gen. Op. No. H-785 (1976) at 2 (breakfast meetings of governing body must be purely social without any discussion of public business).

[9] Tex. Gov't Code § 551.0035.

f. Announcement involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posing of the agenda.[10]

4. May a quorum of the members of the governing body receive a briefing from staff without being subject to the Open Meetings Act?

A governing body is subject to the Act when it receives a briefing from staff.[11]

5. Are committees of a governing body subject to the Open Meetings Act?

A committee created by a governmental body is not subject to the Act if it is purely advisory in nature.[12] However, if the committee has the power to make final decisions or the power to adopt rules regarding public business, then the committee is subject to the Act. Also, if the committee issues recommendations that are usually approved in full without discussion by the governing body or it routinely "rubber-stamps" the committee's recommendations, then the committee is subject to the Act.[13]

The governing body will need to review the authority of the committee and how the committee's actions are treated by it to determine whether the Act will apply to the committee. One factor may be the presence of members of the governing body on the committee, because even though they may constitute less than a quorum of the governing body, they may lack only the consent of one more member of the governing body to pass the committee's decision.[14] Also, the governmental body should review the committee's bylaws, city charters, ordinances or orders to see if there is a special provision requiring the committee to follow the Act. If there is such a local requirement, it would apply even if the Act would not otherwise require compliance. However, the governing body cannot waive the requirements of the Act through an ordinance or an order.

Further, a committee meeting could be subject to the Act if a quorum of the appointing governmental body attends the meeting and deliberates with the committee about public business or public policy.[15] The presence of a quorum of the appointing governmental

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10 *Id*. § 551.0415. *See* Tex. Att'y Gen. Op. No. GA-668 (2008).

11 Tex. Gov't Code § 551.001(4)(B).

12 Tex. Atty Gen. Op. Nos. H-994 (1977), H-772 (1976).

13 *Willmann v. City of San Antonio*, 123 S.W.3d 469, 480 (Tex. App. — San Antonio 2003, pet. denied); Tex. Att'y Gen. Op. Nos. JC-60 at 3-5 (1999), H-438 (1974).

14 Tex. Att'y Gen. Op. Nos. JC-60 (1999), Tex. Att'y Gen. Op. No. JC-160 (1999) (ad hoc tax foreclosure committee that does not include members of the governing bodies that the committee serves is not subject to Act), JM-1072 (1989). *See also Tarrant Regional Water Dist. v. Bennett,* 453 S.W.3d 51 (Tex. App. — Fort Worth 2014, pet. denied) (meetings of water district's board committees in which less than a quorum of the board were present were not subject to TOMA's open-meeting requirements.).

15 Tex. Att'y Gen. Op. No. JC-313 (2000). (A component committee of the Board of the Edwards Aquifer Authority is subject to the Open Meetings Act when a majority of the voting members of the

body and deliberation about the appointing governmental body's public business would also constitute a meeting of that body, and that body would be subject to the Act, as well as the committee meeting.

6. Are private or nonprofit entities that receive public funding subject to the Open Meetings Act?

Private or nonprofit entities are not subject to the Act merely because that entity receives public funds.[16] For instance, the attorney general has concluded that a local chamber of commerce was not subject to the Act even though it received and administered local hotel occupancy tax funds.[17] Additionally, the attorney general has concluded that an economic development corporation formed under the Texas Non-Profit Corporation Act and not the Development Corporation Act (Local Government Code Chapters 501-507) was not subject to the Act.[18]

Of course, a non-governmental entity may be made subject to the Act by the entity's own bylaws, by special state legislation pertaining to that entity, or by a contractual commitment by that entity to comply with the Act. Therefore, local private or nonprofit entities will want to consult their legal counsel about whether their bylaws, state law or a particular contractual commitment make them subject to the Act.

7. What is the relationship between the Open Meetings Act and the Public Information Act?

The Open Meetings Act and the Public Information Act are both intended to make government more accessible to the public. However, the two are completely separate statutes and operate independently of each other. The mere fact that a governing body may be able to withhold a document from the public under the Public Information Act does not mean that the governing body has the authority to meet in a closed meeting regarding the subject covered in that document.[19] Likewise, the fact that the Open Meetings Act allows a governing body to have a closed meeting about a particular topic

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Authority's Board, including the committee members, is present at a meeting of the committee, and the Board 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 Edwards Aquifer Authority has authority, regardless of whether the committee members or any Board members engage in a deliberation as defined by Texas Government Code section 551.001(2).)

16 Tex. Att'y Gen. LO-98-40 at 2, LO-93-55, LO-96-113. *See* Tex. Att'y Gen. Op. No. JM-1072 (1989) at 2 (local-level entity must fall within definition of "governmental body" to be covered by Act). *See also* Tex. Gov't Code § 551.001(3) (definition of "governmental body").

17 Tex. Att'y Gen. LO-93-55, LO-96-113.

18 Tex. Att'y Gen. Op. No. JC-327 (2001). *See also* Tex. Att'y Gen. Op. No. GA-206 (2004).

19 Tex. Att'y Gen. Op. No. JM-595 (1986).

does not mean that related documents reviewed in the closed meeting may be withheld from the public.[20]

II. Notice Provisions under the Act

8. Where and for how long must an open meeting notice be posted?

The Act requires that the notice for each open meeting be posted on a bulletin board at a place readily accessible to the public at all times in the county courthouse,[21] school district's central administrative office[22] or various locations for districts or political subdivisions that extend into a certain number of counties.[23] A city can post its notice on a physical or electronic bulletin board at a place readily accessible to the public at all times in the city hall.[24] The notice must be posted for at least 72 hours before the scheduled meeting.[25]

Certain governing bodies that maintain an Internet website are required to concurrently post a notice or an agenda on the Internet.[26] Once those governing bodies make a good-faith attempt to post their notice on the Internet for the required time, the governing bodies satisfy the requirement of having the physical posting accessible to the public at all times, and the physical posting only has to be readily accessible to the public during the governing bodies' normal business hours.[27]

Notice for an emergency meeting must follow the same procedure. However, the notice is only required to be posted one hour before the scheduled meeting, and it must state the reason for the emergency meeting.[28]

9. Is a governing body or an economic development corporation required to publish notice on its Internet website?

The Act requires cities, counties, school districts, junior colleges, junior college districts, economic development corporations and regional mobility authorities to publish notice

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20 *City of Garland v. The Dallas Morning News*, 22 S.W.3d 351, 366-67 (Tex. 2000); Tex. Att'y Gen. ORD-605 (1992) (names of applicants discussed in executive session are not confidential under Public Information Act); ORD-485 (1987) (investigative report considered in executive session may not be withheld).

21 Tex. Gov't Code § 551.049.

22 *Id*. § 551.051.

23 *Id*. §§ 551.053 (districts or political subdivision extending in to four or more counties); 551.054 (district or political subdivisions extending into fewer than four counties).

24 *Id.* § 551.050. *See City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 768 (Tex. 1991) (posting in a kiosk immediately outside city hall is also permissible).

25 Tex. Gov't Code § 551.043(a).

26 *Id*. §§ 551.056, .043(b).

27 *Id.* § 551.043(b)(1)-(3).

28 *Id*. § 551.045 (as amended by S.B. 494 of the 86th Leg., R.S. Effective September 1, 2019.)

of its open meetings on its Internet website, if it maintains an Internet website.[29] Additionally, the following governing bodies or economic development corporations are required to post their agenda, on their Internet websites:[30]

1. A city with a population of 48,000 or more;
2. A county with a population of 65,000 or more;
3. A school district or a junior college district that contains all or part of the area within a city with a population of 48,000 or more;
4. An economic development corporation that was created by or for:
    a. A city with a population of 48,000 or more, or
    b. A county or district that contains all or part of the area within a city with a population of 48,000 or more; or,
5. A regional mobility authority.

The validity of an Internet posting of the notice or agenda made in good faith by the governmental body or the economic development corporation is not affected by the failure to comply with this requirement due to technical problems beyond the control of the governmental body or economic development corporation.[31] Also, any city in a county with 25,000 or more population, and a city with a population of 5,000 or more in a county with less than 25,000 population is required to post each notice of an open meeting on its Internet website if the governing body isa political subdivision with authority to impose a tax at any time on or after January 1, 2019, and that maintains a publicly accessible Internet website.[32]

10. Is a governmental body required to publish notice of its open meetings in the newspaper?

The Act does not require a governmental body to publish notice in the newspaper.

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[29] *Id*. § 551.056(a)-(b).

[30] *Id*. § 551.056(c). (Note: "Agenda" is not defined by the Act, but Black's Law Dictionary defines "agenda" as "a list of things to be done, as items to be considered at a meeting." "Agenda" and "notice" are often used interchangeably in discussing the Act because of the practice of posting agenda as the notice of a meeting or as an appendix to the notice.)

[31] *Id*. § 551.056(d).

[32] *Id*. § 2051.151, .152(a)(5) (as added by H.B. 305 of the 86th Leg., R.S. Effective September 1, 2019.) (Other entities that are excepted from this requirement are 1) a county with a population of less than 10,000 and 2) a school district with a population of less than 5,000 in the district's boundaries and located in a county with a population of less than 25,000.)

11. What information is required to be in the posted notice under the Open Meetings Act?

The Act requires that the posted notice of an open meeting contain the date, hour, place and subject of each meeting.[33]

12. How specific does the subject of the posted notice need to be?

The subject of the posted notice has to be sufficient to alert the public, in general terms, of the subjects that will be considered at the meeting.[34] However, descriptions such as "old business," "new business," "other business,"[35] "personnel"[36] and "litigation matters"[37] are usually not sufficiently detailed to meet the requirements of the Act.[38] Also, the more important the particular subject is to the community, the more specific the posted notice must be. Thus, the phrase "employment of personnel" was held to be a sufficient posting for hiring a school teacher.[39] However, the same court found that this phrase was not sufficient when the school was considering hiring a key supervisor such as a principal.[40]

Finally, a governmental body must be sure that its postings are consistent with prior practice. For example, 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.[41]

13. Is a posting indicating "public comment" sufficient notice of the subject to be discussed?

The attorney general has concluded that "public comment" generally provides sufficient notice under the Act of the subject matter of sessions where members of the general public address a governing body about their concerns.[42]

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33 *Id*. § 551.041.

34 Tex. Att'y Gen. Op. No. H-662 (1975).

35 *Id*.

36 *Cox Enters., Inc. v. Bd. of Trustees*, 706 S.W.2d 956 (Tex. 1986). *See also Mayes v. City of DeLeon*, 922 S.W.2d 200 (Tex .App. — Eastland 1996, writ denied); *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App — Corpus Christi 1990, writ denied).

37 *Cox Enters., Inc. v. Bd. of Trustees*, 706 S.W.2d 956 (Tex. 1986).

38 *See* Tex. Att'y Gen. Op. No. GA-668 (2008). (The city of Corpus Christi's notice "does not sufficiently notify a reader, as a member of the interested public, of the subjects to be addressed at a meeting subject to the Open Meetings Act".)

39 *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App. — Corpus Christi 1990, writ denied).

40 *Id*.

41 *River Rd. Neighborhood Ass'n v. S. Tex. Sports*, 720 S.W.2d 551, 557 (Tex. App. — San Antonio 1986, writ dism'd w.o.j.).

42 Tex. Att'y Gen. Op. No. JC-169 (2000). *See.* Tex. Gov't Code § 551.007 (as added by H.B. 2840 of the 86th Leg., R.S. Effective September 1, 2019) (the public has the right to speak on items on the agenda.).

14. Does a posting indicating "employee briefing session" or "staff briefing session" provide sufficient notice of the subjects to be discussed?

A posting simply indicating "employee briefing session" or "staff briefing session" does not provide the public with sufficient notice as to the subjects that will be discussed at a public meeting.[43] Unlike sessions involving "public comment," which was discussed above, a governmental body is in a better position to ascertain from its employees or officers in advance what subjects will be addressed in a briefing session.

15. Must a posting indicate which subjects will be discussed in a closed meeting?

The Act does not require the posting to state which items will be discussed in a closed meeting.[44] Nonetheless, some entities indicate in their notices which items will be discussed in open session and which may be discussed in closed or executive session. Should a local entity consistently distinguish between subjects for public deliberation and subjects for a closed meeting, an abrupt departure from this practice could deceive the public and thereby render the notice inadequate.[45]

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

Members of the governing body may not deliberate or make any decision about an unposted issue at a meeting of the governing body. If an unposted item is raised by members or the general public, the governing body has four options. First, an official may respond with a statement of specific factual information or recite the governmental body's existing policy on that issue.[46] Second, an official may direct the person making the inquiry to visit with staff about the issue. Third, the governing body may offer to place the item on the agenda for discussion at a future meeting.[47] Finally, the governing body may offer to post the matter as an emergency item if it meets the criteria for an emergency posting. (See Section VI for a discussion on emergency meetings.)

17. May a governing body change the date of its meeting without posting a corrected notice for 72 hours before the meeting starts?

The Act requires literal compliance.[48] For this reason, a governing body does not have authority to change the date of its meeting without posting the new date for at least 72

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43 Tex. Att'y Gen. Op. No. JC-169 (2000) at 6. *See Hays County Water Planning P'ship v. Hays County*, 41 S.W.3d 174, 181 (Tex. App. — Austin 2001, pet. denied) (agenda that provided "presentation by Commissioner" considered to be insufficient notice, as nothing in agenda posting indicated subject matter of presentation); Tex. Att'y Gen. Op. No. GA-668 (2008).

44 Tex. Att'y Gen. Op. No. JC-57 (1999) at 5. *See also* Tex. Att'y Gen. LO-90-27.

45 Tex. Att'y Gen. Op. No. JC-57 (1999) at 5.

46 Tex. Gov't Code § 551.042(a)(1)-(2).

47 *Id*. § 551.042(b).

48 *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299 (Tex. 1990).

hours before the meeting.[49] If the governmental body is presented with an emergency, it could utilize its power to call an emergency meeting which only requires one hour notice. (See Section VI for a discussion on emergency meetings.)

18. May a governing body change the time of its meeting without posting a corrected notice for 72 hours before the meeting starts?

The Act requires literal compliance.[50] For this reason, a governing body has no authority to change the time of its meeting without posting the new time for at least 72 hours before the meeting.[51] Nonetheless, it is not necessarily a violation of the Act if a governing body or one of its committees starts its meeting a little later than the scheduled time. At what point the change in time would present a legal problem would be a fact issue. Local entities should consult their legal counsel if they decide to change a meeting time.

19. May a governing body change the location of its meeting without posting a corrected notice for 72 hours before the meeting starts?

The Act requires literal compliance.[52] For this reason, a governing body has no authority to change the location of its meeting without posting the new location for at least 72 hours before the meeting.[53] However, on the day of the meeting, a governing body may change a meeting location to a bigger room within the same building to accommodate a large crowd. Governing bodies should consult their legal counsel if they decide to change a meeting location.

20. May a governing body continue a meeting to the next day without reposting?

A governing body may continue an open meeting to the next regular business day without reposting notice if the action is taken in good faith and not to circumvent the Act. If a meeting must be continued again, the governing body must give at least 72 hours notice.[54] Additionally, the attorney general has concluded that an executive session of a public meeting may be continued to the immediate next day if certain procedures are followed.[55]

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[49] *See* Tex. Gov't Code §§ 551.041, .043 (notice must be posted for 72 hours in advance of meeting and notice must include place of meeting).

[50] *Acker*, 790 S.W.2d 299.

[51] *See* Tex. Gov't Code §§ 551.041, .043 (notice must be posted for 72 hours in advance of meeting and notice must include place of meeting).

[52] *Acker*, 790 S.W.2d 299.

[53] *See* Tex. Gov't Code §§ 551.041, .043 (notice must be posted for 72 hours in advance of meeting and notice must include place of meeting).

[54] *Id*. § 551.0411(a). *See also Rivera v. City of Laredo*, 948 S.W.2d 787 (Tex. App. — San Antonio 1989, writ denied); Tex. Att'y Gen. Op. No. DM-482 (1998) (Section 551.0411 codified the opinion set forth in DM-482 and the *Rivera* case.)

[55] Tex. Att'y Gen. Op. No. JC-285 (2000).

21. What is required of a governing body to cancel a posted meeting?

The Act does not set forth any particular requirements for canceling a posted meeting. The Act requires meetings to be properly posted, but it does not require that a meeting actually be held once the meeting has been posted. As a result, the Act does not expressly prohibit a governmental body from canceling a posted meeting at any time unless doing so would violate some other provision of law (e.g., a city charter requirement). It is important to note that once the meeting is canceled or the posted notice is taken down, a governmental body must repost and follow all the requirements of the Act for the rescheduled meeting.

III. Effect of Quorum on Issues Concerning the Act

General Quorum Provisions

22. What constitutes a quorum for purposes of the Act?

A quorum is considered by the Act to be a simple majority of the members of the governmental body.[56] However, certain laws, rules or charters of a governmental body might have specific quorum requirements. Different types of cities have different quorum requirements.[57] Local entities should check with their legal counsel.

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

A meeting subject to the Act probably cannot be convened unless a quorum is present in the meeting room. In fact, the Texas Supreme Court has ruled that a school board of trustees may not convene its meeting until a quorum is physically present in the same room.[58] However, 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 was not present.

Application of the Act if Quorum of Governing Body is Present

24. Does the Act apply if a quorum of the governing body informally meets and no action or vote is taken on public business?

The Act applies to a gathering of a quorum of a governing body if it discusses public business, regardless of whether there is any action or vote taken.[59] All requirements

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[56] Tex. Gov't Code § 551.001(6).
[57] *See* Question 2 of this paper.
[58] *Cox Enters*., 706 S.W.2d 956.
[59] *See Bexar Medina Atascosa Water Dist. v. Bexar Medina Atascosa Landowners' Ass'n*, 2 S.W.3d 459, 462 (Tex. App.—San Antonio 1999, pet. denied) (deliberations took place at informational

under the Act must be followed for such gatherings unless otherwise provided under state law. As noted earlier, the Act's requirements do not apply even when a quorum of the governmental body is present in certain enumerated circumstances. Refer to Section I for the list of the exceptions.

25. May a quorum of a governing body serve on an appointed board or commission?

Nothing in the Act would prohibit a quorum of a governing body from serving on a board or commission. However, the meetings of such a board or commission would have to meet all the requirements of the Act. Also, it would probably constitute a meeting of the governing body as well.

Additionally, under the common law doctrine of incompatibility, a governing body is prohibited in most circumstances from appointing one of its own members to board positions.[60] However, in certain situations, Texas statutes or a city charter can specifically allow a governing body to appoint its own members to a board or commission. For example, the Development Corporation Act indicates that a city council may appoint as many as four city council members to serve as board members of a Type B economic development corporation board.[61] A governing body will want to discuss the issue with legal counsel before appointing one of its own members to a board or commission.

26. May a quorum of members of a governing body sign a group letter or other document without violating the Act?

If members meet in a quorum without following open meetings procedures to discuss, create and/or sign a group letter or document concerning public business, they could violate the Act.[62] For example, circulation of a claim, bill or invoice among members for approval of payment in writing without discussion at a meeting would violate the Act.[63] Such communications are best considered at posted open meetings, and any signatures should be executed in response to a vote at the meeting on the issue. Also, it may be a violation of the Act if the members meet or communicate by phone, memo, email or social media[64] in numbers less than a quorum when those communications

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gathering of water district board with landowners in board member's barn, where one board member asked question and another board member answered questions, even though board members did not discuss business among themselves).

60 *See Ehlinger v. Clark*, 8 S.W.2d 666 (Tex. 1928)

61 *See* Tex. Loc. Gov't Code § 505.052(c).

62 Tex. Att'y Gen. Op. No. DM-95 (1992).

63 Tex. Att'y Gen. Op. No. JC-307 (2000).

64 *See* Tex. Gov't Code § 551.006 (allows governmental bodies to discuss public business or pubic policy without it counting as a meeting on an online message board if the requirements are met.)

would involve a quorum of the members and those communications would constitutes a deliberation[65] once a quorum of members engaged in a series of communications.[66]

27. May a quorum of members of a governing body attend a committee meeting of the governmental body?

A quorum of members of a governing body may attend a committee meeting. However, the attendance of a quorum would constitute a meeting of the governing body that would require compliance with the Act in certain circumstances. In Attorney General Opinion JC-313, the attorney general concluded that if enough members of a governmental body attended a meeting of a component committee on which some members of the governmental body sit so that a quorum of the governmental body is present, then the committee would be subject to the Act, regardless of whether the committee members or any members of the governmental body spoke or otherwise engaged in deliberations.[67]

28. May a quorum of the members of the governing body attend a state legislative committee meeting without violating the Act?

The attendance of a quorum of a governmental body at a meeting of a state legislative committee or agency does not constitute a meeting of that body, provided deliberations at the meeting by the members of that body consist only of publicly testifying at the meeting, publicly commenting at the meeting, or publicly responding at the meeting to questions asked by a member of the state legislative committee or agency.[68]

29. Could a gathering of less than a quorum of current board members with board members who have been elected, but not sworn in, constitute a quorum?

No. The board members who have been elected, but not sworn in, would not count toward a quorum of the board under the Act.[69]

Application of the Act to Gatherings of Less Than a Quorum

30. Is a gathering of less than a quorum of a governing body subject to the Act?

Generally, a gathering of less than a quorum of the governing body is not subject to the Act. It is advisable that if a standing committee or subgroup of the governmental body

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65 *See id* § 551.001(2) (as amended by S.B. 1640 of the 86th Leg., R.S. Effective June 10, 2019.) (definition of "deliberation" was amended and means the following "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.")

66 *Id.* § 551.143. (as amended by S.B. 1640 of the 86th Leg., R.S. Effective June 10, 2019.)

67 Tex. Att'y Gen. Op. No. JC-313 (2000).

68 Tex. Gov't Code § 551.0035.

69 Tex. Att'y Gen. Op. No. GA-0355 (2005).

meets and a discussion of public business occurs, such gatherings be posted and conducted as open meetings. Moreover, if the governing body routinely approves decisions of a subcommittee consisting of less than a quorum of the governing body, the subcommittee must comply with the Act.[70] However, if the governing body has a series of discussions between members in numbers less than a quorum, those discussions could lead to a violation of the Act.[71] The members of the governing body could violate the Act if the members know that the discussion will eventually involve a quorum of the members and would constitute a deliberation once a quorum of members engage in the series of communications.

31. May less than a quorum of members of the governing body meet with public or private groups without posting the gathering as an open meeting?

It is common for several members to be present at a private or public gathering that is sponsored by another entity. The Act does not require that the gathering be treated as an open meeting if less than a quorum of members is present. However, as noted above, an official faces potential criminal penalties if such gatherings are considered a series of communications that members know will eventually involve a quorum of the members and would constitute a deliberation once a quorum of members engage in the series of communications.[72]

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

The mere fact that less than a quorum of members of a governing body talk over the phone does not in itself constitute a violation of the Act. However, if members are using telephone conversations to conduct their deliberations about public business, there may be potential criminal violations.[73] Physical presence in one place is not necessary to violate the Act.[74] It remains a fact issue whether certain phone conversations between less than a quorum of members would be a violation of the Act.[75]

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70 *Willmann*, 123 S.W.3d at 480.

71 Tex. Gov't Code § 551.143 (as amended by S.B. 1640 of the 86th Leg., R.S. Effective June 10, 2019.)

72 *Id*.

73 *See Id*.

74 Tex. Att'y Gen. Op. No. DM-95 (1992).

75 *See Hitt v. Mabry*, 687 S.W.2d 791 (Tex. App. — San Antonio 1985, no writ) (school trustees violated Act by telephone conferencing). *But see Harris County Emergency Serv, Dist. #1 v. Harris County Emergency Corps*, 999 S.W.2d 163 (Tex. App. — Houston [14th Dist.] 1999, no writ) (evidence that one board member of a five-member county emergency service district occasionally used telephone to discuss agenda for future meetings with one other board member did not amount to Act violation).

33. May less than a quorum of members of the governing body sign a group letter or other document without violating the Act?

It is a fact issue whether the presence of less than a quorum of the governmental body's members' signatures on a group letter or other document constitutes a violation of the Act. For example, if the members at some time knowingly met in numbers less than a quorum to discuss signing the document or otherwise communicate by phone, memo or email in order to engage in prohibited communications, a violation of the Act would have occurred.[76]

IV. Regular Open Meetings

Adoption of Procedural Guidelines to Administer the Act

34. Does state law set out procedural rules that apply to open meetings?

Relatively few procedural rules are contained in the Act for meetings of a governmental body. All meetings must be properly posted, and a governmental body is limited in how it can respond to inquiries about issues that are not listed on its notice. Additionally, during all meetings, minutes of the meeting must be kept, and certain procedures must be followed when holding a closed meeting.

However, state law does not impose general rules of parliamentary procedure for open meetings. For example, the Act does not specify rules on how many readings of an ordinance are required, who may make a motion, or whether a motion must be seconded. In order to answer these questions, a governing body must consult any applicable state laws and any rules of procedure that it has adopted.[77]

35. Does the Act give individual members of the governing body a right to place items on an open meeting agenda?

The Act does not specifically address the power of individual officials to place items on the agenda for a meeting. However, the attorney general has ruled that the City of Dallas, a home rule city, may adopt a local provision that requires the consensus of several council members to place an item on the agenda.[78] In Attorney General Opinion

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[76] *See Willmann*, 123 S.W.3d at 480; Tex. Att'y Gen. Op. Nos. JC-307 (2000), DM-95 (1992). *See also Esperanza Peace and Justice Center v. City of San Antonio*, 316 F. Supp. 2d 433 (W.D. Tex. 2001) (discussion of an illegal "walking quorum" facilitated by mayor and city manager). *Also see* Tex. Gov't Code § 551.143 (as amended by S.B. 1640 of the 86th Leg. R.S., Effective June 10, 2019.)

[77] Tex. Att'y Gen. Op. No. GA-412 (2006) (stating that a governmental body may adopt Robert's Rules of Order if the adopted provisions are consistent with the Act and other applicable statues). *See* Tex. Loc. Gov't Code § 22.038(c) (the governing body of a Type A general law may determine the rules of its proceedings); Tex. Att'y Gen. Op. No. DM-473 (1998) (home rule city is authorized to adopt reasonable rules of procedure as long as they are not inconsistent with the constitution, statutes or city charter provisions).

[78] Tex. Att'y Gen. Op. No. DM-473 (1998).

DM-228, the attorney general concluded that individual county commissioners have a right to place items on the agenda for a county commissioner's court meeting.[79] A home rule city, a general law city, or other political subdivision that has not adopted a procedure to place items on an open meeting agenda should consult its legal counsel regarding this issue.[80]

36. What is the role or power of the mayor or county judge during an open meeting?

The mayor or county judge serves as the presiding officer during an open meeting.[81] However, the Act itself does not define any specific powers of a mayor or county judge regarding the open portion of a meeting.

37. May a mayor or county judge vote on items or second motions that are made at an open meeting?

The Act does not address when a mayor or a county judge may vote on an item during an open meeting.

- **Home Rule Cities**: the power of the mayor to cast a vote is generally addressed in the city charter.
- **General Law Type A Cities**: state law specifies that the mayor may vote only in the case of a tie.[82]
- **General Law Type B Cities**: State statutes do not address whether a mayor in a Type B general law city may vote on items. Some legal analysts have concluded that the mayor of a Type B city may vote on all items, even when there is not a tie.[83]
- **General Law Type C Cities**: Again, state statutes do not address whether a mayor in a Type C general law city may vote on items. Whether mayors of a Type C city may vote on all items, might depend on the population of the Type C city.[84]

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79 Tex. Att'y Gen. Op. No. DM-228 (1993).

80 *See* Tex. Att'y Gen. Op. No. JM-63 (1983).

81 *See* Tex. Const. Art. V, § 18(b) (county judge is the presiding officer of the county commissioners court); Tex. Loc. Gov't Code §§ 22.037 (mayor is presiding office, in a Type A general law city), 23.027 (mayor is president of a Type B general law city), 51.051(a) (Type C general law city with population between 501 through 4,999 has the powers of a Type A general law city), 51.051(b) (Type C general law city with population of 201 through 500 has the powers of a Type B general law city); 81.001(b) (If present, county judge is the presiding officer of the commissioners court).

82 Tex. Loc. Gov't Code § 22.037(a).

83 Alan J. Bojorquez, *Texas Municipal Law and Procedure Manual* § 1.23(2) (6th ed. 2015).

84 *See* Tex. Loc. Gov't Code §§ 51.051, .052.

- **Counties**: the county judge is a full voting member of the commissioners' court.[85]

Also, the Act does not address who can or cannot make a second motion. As to who may make second motions, the answer would depend on what rules of parliamentary procedure have been adopted by the governmental body.

38. May members of a governing body enter their votes by proxy on an item without attending the meeting?

Though the Act does not address voting by proxy, the attorney general has opined that a member of a governing body may not vote by proxy.[86] A member of a governing body must be present at a meeting in order to deliberate and to vote.[87]

39. May a governing body hold an open meeting by teleconference?

A meeting of a governing body may be held by teleconference call only if:

1. An emergency or public necessity exists; and,
2. It is difficult or impossible to convene a quorum at one location, or,
3. The meeting is held by an advisory board.[88]

When holding such a meeting, there are several procedural requirements that must be met:

1. The meeting must be posted and open to the public in the same manner as a regular meeting.[89] The governmental body is not required to state in the agenda that the meeting will be held by telephone conference call pursuant to the Act.[90]
2. The meeting must be held in the same place where meetings of the governing body are usually held.[91]
3. The identity of each speaker must be clearly stated prior to that person speaking.[92]

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85 *Id*. § 81.001(a). *See* Tex. Att'y Gen. Op. Nos. O-2145 (1940); O-1716 (1939).
86 Tex. Att'y Gen. LO-94-028.
87 Tex. Att'y Gen. Op. Nos. DM-207 (1993); JM-584 (1986).
88 Tex. Gov't Code § 551.125(b). (Note: There are specific governing bodies that have specific statutes within the Act regarding teleconferencing. The governing body will want to check with its legal counsel to make sure the right statute is being used for your governing body. *See* Tex. Gov't Code §§ 551.121, .122, .123, .124.).
89 *Id*. § 551.125(c).
90 Tex. Att'y Gen. Op. No. JC-352 (2001).
91 Tex. Gov't Code § 551.125(d).
92 *Id*. § 551.125(f).

4. The meeting must be set up to provide two-way communications throughout the entire meeting.

5. All portions of the meeting (other than executive sessions) must be audible to the public, including the entire conference call.[93]

6. The meeting must be recorded and a copy of the recording must be made available to the public.

Since extraordinary circumstances are needed to hold a meeting by telephone conference call, governmental bodies cannot have an open meeting by teleconference merely because attending a meeting on short notice would inconvenience members of the governmental body. If a quorum of the governmental body convenes at the meeting location, absent members will not be allowed to participate from other locations by telephone conference call.[94] Further, it would be questionable to allow participation of a third party by teleconference in a meeting due to the strict requirements in this section. Legal counsel should be consulted if such a situation arises.

40. Does the Act allow a member or employee of a governmental body to participate in a governmental body's meeting via videoconference call[95]?

The Act does authorize a member or employee of a governmental body to participate remotely in a meeting of the governmental body by means of a videoconference call assuming certain conditions are met.[96]

41. What procedures must a governmental body that lies in either one or two counties follow when a member or employee will participate in a meeting via videoconference call?

1. A quorum of the governmental body must be present at one physical location.[97]

2. The video and audio feed of the member's or employee's participation, as applicable, must be broadcast live at the meeting.[98]

3. The meeting notice must specify where the quorum of the governmental body will be physically present and the intent to have a quorum present.[99]

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93 *Id*. § 551.125(e).
94 Tex. Att'y Gen. Op. No. JC-352 (2001) at 4.
95 *See* Tex. Gov't Code § 551.001(8) (definition of "videoconference call").
96 *Id.* § 551.127(a-1); *see also id*. § 551.127(a) (providing that the Act does not prohibit a governmental body from holding an open or closed meeting by videoconference call, except as provided by Section 551.127).
97 *Id*. § 551.127(b).
98 *Id*. § 551.127(a-1).
99 *Id*. § 551.127(e).

4. 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.[100]

5. The governmental body must make at least an audio recording of the meeting and the recording must be made available to the public.[101]

6. The location where the quorum is present, and each remote location from which a member of the governmental body participates, must have two-way audio and video communication with each other location during the entire meeting. Each participant's face in the videoconference call, while speaking, must be clearly visible and audible to each other participant, and during the open portion of the meeting, to the members of the public in attendance at the location where a quorum is present, and at any other location of the meeting that is open to the public.[102]

7. The audio and video signals perceptible by members of the public at each location of the meeting must meet or exceed minimum standards established by Texas Department of Information Resources (DIR) rules.[103]

8. The audio and video signals perceptible by members of the public at the location where the quorum is present and any remote location must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.[104]

The requirements set out above are in addition to requirements that otherwise apply to meetings under the Act.[105]

42. What happens in a governmental body that lies in either one or two counties if the audio or video communication is disconnected or another problem occurs that causes the meeting to no longer be visible and audible to the public?

The Act provides that if a member of the governmental body participates by videoconference and the audio or video communication is lost or disconnected, that member could simply be counted absent for the portion of the meeting during which the communication is lost but that the meeting could continue so long as a quorum of the governmental body remains present at the meeting location.[106] Section 551.127(f)

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100 *Id*. § 551.127(f).
101 *Id*. § 551.127(g).
102 *Id*. § 551.127(h).
103 *Id*. § 551.127(i).
104 *Id*. § 551.127(j).
105 *See, e.g., id.* § 551.127(d).
106 *Id*. § 551.127(a-3).

arguably gives the governmental body the alternative option of recessing the meeting for up to six hours in order to fix the problem. Recessing the meeting appears to be the only option if an employee, rather than a member, is participating by videoconference.

43. What procedures must a governmental body that lies in three or more counties follow when a member or employee will participate in a meeting via videoconference call?

1. The member of the governmental body presiding over the meeting must be physically present at one location of the meeting that is open to the public during the open portions of the meeting.[107]

2. The meeting notice must specify the location and the intent to have the presiding officer physically present at the physical space described in 1, above.[108]

3. 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 presiding officer is physically present.[109]

4. The governmental body must make at least an audio recording of the meeting and the recording must be made available to the public.[110]

5. The location where the presiding officer is physically present and each remote location from which a councilmember participates shall have two-way audio and video communication with each other location during the entire meeting. Each participant's face in the videoconference call, while speaking, must be clearly visible and audible to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the location where the presiding officer is present, and at any other location of the meeting that is open to the public.[111]

6. The audio and video signals perceptible by members of the public at each location of the meeting must meet or exceed minimum standards established by Texas Department of Information Resources (DIR) rules.[112]

7. The audio and video signals perceptible by members of the public at the location where the presiding officer is physically present and any remote location must be of sufficient quality so that members of the public at each location can observe

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[107] *Id*. § 551.127(c), (e).
[108] *Id*. § 551.127(e).
[109] *Id*. § 551.127(f).
[110] *Id*. § 551.127(g).
[111] *Id*. § 551.127(h).
[112] *Id*. § 551.127(i).

the demeanor and hear the voice of each participant in the open portion of the meeting.[113]

The requirements set out above are in addition to requirements that otherwise apply to meetings under the Act.[114]

44. May a governing body broadcast its meetings over the Internet?

The governing body may broadcast its open meetings over the Internet.[115] If it chooses to broadcast its meetings in this fashion, the entity must establish an Internet site and provide access to the broadcast from that site. In addition, the Internet site must provide the same 72-hour notice of any meeting as is required by the Act.[116]

45. Is a governing body required to make an audio and video recording of its open meetings?

The following governing bodies are required to make an audio and video recording of its open meetings:

1. Home rule cities with population of 50,000 or more.
2. County with population of 125,000 or more.
3. School District with student enrollment of 10,000 or more.
4. Transit Authority or Department subject to Chapters 451, 452, 453 or 460 of the Transportation Code.[117]

These governing bodies shall make an audio and video recording of each regularly scheduled open meeting.[118] This does not include works sessions or special called meeting. The governing body shall make available an archived copy of the audio and video recording of those meetings on the Internet.[119] The governing body is not required to establish a separate internet site.[120] It may make the recordings available on an existing internet site, including a publicly available video-sharing or social network site. If the governing body maintains an internet site, then it shall make the archived recordings available on that internet site or an accessible link to the archived

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113 *Id*. § 551.127(j).
114 *See, e.g., id.* § 551.127(d).
115 *Id*. § 551.128(b). *See id*. § 551.128(a) (definition of "Internet" in this section).
116 *Id*. § 551.128(c).
117 *Id.* § 551.128(b-1).
118 *Id*. § 551.128(b-1)(1)(A). *See id.* § 551.128(b-1)(1)(B) (special requirements for school districts).
119 *Id.* § 551.128(b-1)(2).
120 *Id.* § 551.128(b-2).

recording.[121] The archived recordings shall be made available on the internet not later than seven days after the date the recordings were made.[122]

The archived recordings shall be maintained on the internet for not less than two years after the date the recordings were made first available.[123] If there is a catastrophe[124] or technical breakdown, the governing body is exempt from having the recordings up no later than seven day and maintaining up on the internet for two years.[125] Once, the catastrophe or technical breakdown is over, the governing body must make all reasonable efforts to make the required recordings available in a timely manner. Finally, these governing bodies can broadcast its regularly open meetings on television.[126]

46. May a governing body discuss public business over the Internet without it being considered a meeting?

Members of a governing body can use an online message board communicate or exchange information concerning public business or public policy under their supervision or control without it being a meeting if certain conditions are met:[127]

1. The communication is in writing.
2. The writings have to be posted on an online message board or a similar internet application and viewable and searchable by the public.
3. The communications have to be displayed in real time and for no less than 30 days after it is first posted.
4. The governing body can only have one online message board that is displayed on its website and can only be one click away from the primary governing body's internet web page.[128]
5. Only members of the governing body or staff member with authorization can post to the online message board. If a staff member posts a message, then staff member must post their name and title along with the message.[129]

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121 *Id.* § 551.128(b-3).
122 *Id.* § 551.128(b-4)(1).
123 *Id.* § 551.128(b-4)(2).
124 *See id.* § 551.0411 (definition of "catastrophe" in this section).
125 *Id.* § 551.128(b-5).
126 *Id.* § 551.128(b-6).
127 *Id.* § 551.006(a).
128 *Id.* § 551.006(b).
129 *Id.* § 551.006(c).

6. If governing body removes a post that has been up for 30 days, the governing body must maintain the posting for six years and the posting is considered public information.[130]

7. The governing body may not vote or take any action by posting a communication to the online message board and a communication cannot be construed to be an action by the governing body.[131]

Governing bodies should consult with their legal counsel when setting up an online message board.

47. May a governing body use telephone conferencing, video conferencing or communication over the Internet to consult with its attorney?

The Act does allow for the governing body to use telephone conferencing, video conferencing or communication over the Internet to consult with its attorney. The governing body can have a public consultation with its attorney in an open meeting or a private consultation in a closed meeting. The public consultation with the governing body's attorney must be audible to the public at the location specified in the notice of the meeting. This provision does not apply to a governing body whose attorney is an employee of the political subdivision.[132]

48. What accommodations must a governing body provide at its open meetings for an attendee who has a disability?

Generally, a governing body must make its meetings accessible to persons with disabilities. Title II of the Americans with Disabilities Act (ADA) provides that activities of state and local governing bodies, including meetings, are subject to the ADA.[133] In most cases, such a requirement means that the facility holding the meeting must be physically accessible to individuals with disabilities. Entities may ask individuals with disabilities to provide the entity with reasonable notice on any accommodations they may need to attend the meeting. Also, entities must be ready to provide an accessible meeting site and provide alternative forms of communications that address the needs of individuals with disabilities. This may involve providing sign language interpreters, readers, or large print or Braille documents upon request.

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130 *Id*. § 551.006(d).
131 *Id.* § 551.006(e).
132 *Id*. § 551.129.
133 42 U.S.C.A. §§ 12131 – 12165.

Managing Discussions at an Open Meeting

49. What right does the public have to speak on a particular agenda item?

The Act gives the public the right to speak on each item on the agenda at an open meeting of all governmental bodies, except for state agencies.[134]

50. When does the public have the right to speak on items on the agenda of an open meeting?

The governmental body must allow the public the right to speak on items on the agenda either at the beginning of the meeting or during the meeting when the agenda item is being considered by the governmental body.[135]

51. Is a governmental body allowed to adopt reasonable rules on the public's right to speak?

Yes. A governmental body may adopt reasonable rules concerning the public's right to speak at an open meeting.[136] The rules may include how long the person can address the governmental body on a given item. If the person addressing the governmental body needs a translator, the governmental body is required to allow at least twice the normal amount of time for the non-English speaker to address the body.[137]

52. May the governmental body still allow the public to ask questions about items not on the agenda?

The governmental body may decide to allow the public to ask questions about item not on the agenda. If the governmental body allows the public to ask questions about items not on the agenda, the governmental body can still apply reasonable rules regarding the number, frequency, and length of presentation, but it cannot discriminate against speakers. The governmental body will not be able to deliberate on any item that is not on the agenda. For such an item, the governmental body may either: (1) make a statement of fact regarding the item; (2) make a statement concerning the policy regarding the item; or (3) propose that the item be placed on a future agenda.[138]

53. May the governmental body prevent the public from criticizing the governmental body or actions of the governmental body?

A governmental body may not prohibit criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or services. However, this

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134 Tex. Gov't Code § 551.007(a) (as added by H.B. 2840 of the 86th Leg., R.S. Effective September 1, 2019.)
135 *Id*. § 551.007(b) (as added by H.B. 2840 of the 86th Leg., R.S. Effective September 1, 2019.)
136 *Id*. § 551.007(c) (as added by H.B. 2840 of the 86th Leg., R.S. Effective September 1, 2019.)
137 *Id*. § 551.007(d) (as added by H.B. 2840 of the 86th Leg., R.S. Effective September 1, 2019.)
138 *Id*. § 551.042.

section "does not apply to pubic criticism that is otherwise prohibited by law."[139] What public criticism is prohibited by law remains to be seen. Defamation would probably fall under that prohibition. In any case, a governing body should be able to enforce a decorum policy for public speakers, so long as it doesn't prohibit criticism.

54. What is the general distinction between a public hearing and an open meeting?

During both an open meeting and a public hearing, members of the public must be given a reasonable opportunity to speak. However, there are special notice requirements for certain statutorily-required public hearings in addition to the Act's notice requirements. For instance, when a city council is going to have an annexation hearing, it must publish notice of the hearing in a newspaper at some time between 10 and 20 days before the hearing. On the other hand, the only notice generally required for an open meeting is the 72 hour posted notice. The governing body will need to review the statute that requires a public hearing for those specific notice requirements.

55. May a governing body limit its members to a set amount of time for their testimony or remarks at an open meeting?

The Act does not address whether a governing body may set time limits on the remarks of its members at an open meeting. However, the governing body may adopt procedural rules for its meetings that are not inconsistent with the state or federal constitution, state or federal statutes, or with a home rule city charter.[140] Within these parameters, a governing body may arguably set reasonable time limits for its members' remarks in an open meeting.[141]

56. May members of the public be removed from an open meeting for causing a disturbance?

The Act does not address removal of a member of the public from an open meeting for causing a disturbance. However, the presiding officer or the governing body as a whole may ask that individual members of the public be removed if they are causing a disturbance at an open meeting. What constitutes conduct that rises to the level of disorderly conduct is a fact issue for the governing body to consider. A local entity may want to consult its attorney for guidance on what actions may constitute "disorderly conduct" and adopt policies to put the public on notice.

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[139] *Id*. § 551.007(e) (as added by H.B. 2480 of the 86th Leg., R.S. Effective September 1, 2019.)
[140] Tex. Att'y Gen. Op. Nos. DM-473 (1998), H-188 (1973).
[141] Tex. Att'y Gen. LO-96-111; Tex. Att'y Gen. Op. No. H-188 (1973).

57. May members of the governing body be removed from an open meeting for causing a disturbance?

The Act does not specifically address removal of a member of a governing body from an open meeting for causing a disturbance. Nonetheless, local entities have the power to take actions to promote an orderly meeting. Accordingly, if a member's conduct were to constitute disorderly conduct, the member could be warned and then, if necessary, the presiding officer or the governing body as a whole could require that the member be removed.[142] A governing body should consult with its legal counsel if it wants to adopt rules of conduct for its members.

Keeping a Record of Open Meetings

58. What duty does a governing body have to keep minutes or recording of open meetings?

A governing body must either keep minutes or make a recording[143] of every open meeting.[144] If the body chooses to keep minutes rather than make a recording, the Act requires that the minutes indicate the subject of each deliberation and indicate every action that is taken.[145]

59. What access does the public have to the minutes or recording of an open meeting?

The minutes or recording of an open meeting are open to the public and must be available for inspection or copying.[146] It should be noted that exceptions to required public disclosure in the Public Information Act do not apply to the minutes or recording of an open meeting. The local entity must permanently retain copies of the minutes or recordings of its meetings. Any city in a county with 25,000 or more population, and a city with a population of 5,000 or more in a county with less than 25,000 population is required by state law to post the minutes of an open meeting on its website if the governing body is a political subdivision with the authority to impose a tax at any time on or after January 1, 2019 and maintains a publicly accessible Internet website.[147] Also,

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142 *See* Tex. Penal Code § 42.05 (disrupting meeting or procession); *State v. Markovich*, 77 S.W.3d 274 (Tex. Crim. App. 2002) (the best way to ensure that the rights of all individuals are protected is to determine whether the actor's behavior substantially impaired the conduct of the meeting before his or her actions could be criminalized).

143 *See* Tex. Gov't Code § 551.001(7) (definition of "recording").

144 *Id*. § 551.021(a).

145 *Id.* § 551.021(b).

146 *Id.* § 551.022. *See also* Tex. Att'y Gen. ORD-225 (1979) (tapes of meetings used to assist in writing minutes are open records).

147 Tex. Gov't Code §§ 2051.151, .152(a)(5) (as added by H.B. 305 of the 86th Leg., R.S. Effective September 1, 2019.) (Other entities that are excepted from this requirement are 1) a county with a population of less than 10,000 and 2) a school district with a population of less than 5,000 in the district's boundaries and located in a county with a population of less than 25,000.)

the public postings of audio and video recording of regularly scheduled meetings depends on the type of governing body.[148]

60. What right does the public have to record an open meeting?

The Act gives any member of the public a legal right to make a video or audio recording of an open meeting.[149] However, the Act also gives a governmental body a right to adopt reasonable rules that are necessary to maintain order. Thus, a governing body may regulate the location of recording equipment and the manner in which the recording is conducted. However, the body may not adopt any rule that would unreasonably impair a person's right to record an open meeting.

V. Closed Meetings/Executive Sessions[150]

61. What are the general subjects for which a governing body may hold a closed meeting?

Under the Act, a governing body may generally hold a closed meeting for one or more of the following nine reasons:

1. consideration of specific personnel matters;[151]
2. certain consultations with its attorney;[152]
3. discussions about the value or transfer of real property;[153]
4. discussions about security personnel, security devices, or a security audit;[154]
5. discussions about a prospective gift or donation to a governmental body;[155]
6. discussions by a governing body of potential items on tests that the governing body conducts for purposes of licensing individuals to engage in an activity;[156]

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148 *See Id*. § 551.128(b-1)-(b-6).
149 *Id*. § 551.023.
150 Texas Government Code § 551.001(1) defines *closed meeting* as "a meeting to which the public does not have access." The Act does not define *executive session*. Black's Law Dictionary defines *executive session* as "a meeting, usually held in secret that only the members and invited nonmembers may attend." These terms are widely used interchangeably. This publication will primarily use *closed meeting* because it is defined by the Act.
151 Tex. Gov't Code § 551.074.
152 *Id.* § 551.071.
153 *Id.* § 551.072.
154 *Id.* § 551.076.
155 *Id.* § 551.073.
156 *Id.* § 551.088.

7. discussions of certain economic development matters;[157]

8. discussions of certain competitive matters relating to a city-owned electric or gas utility for which the city council is the governing body;[158] and,

9. certain information relating to the subject of emergencies and disasters.[159]

Closed Meetings to Discuss Personnel Issues

62. When may a governing body meet in a closed meeting to discuss personnel issues?

The Act allows a governing body to hold a closed meeting to discuss the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee.[160] Also, a governing body may hear a complaint or charge against such officer or employee in a closed meeting. However, the governing body is not allowed to meet in a closed meeting about an employee or official if the subject of the deliberation requests that the item be heard in a public hearing. Also, any final action by the governing body on a personnel matter must be taken in an open meeting.[161]

It is important to note that a governing body may meet in a closed meeting under the personnel exception only if the person being discussed is an officer or employee of the local entity. Neither the appointment of advisory committee members[162] nor the hiring of independent contractors[163] is a proper subject for closed meetings under the personnel exception. In addition, the personnel exception allows only the discussion of a particular person or persons in a closed meeting. A governmental body may not discuss general policies regarding an entire class of employees in a closed meeting held under the personnel exception.[164] Such general policies must be addressed during the open portion of a meeting.

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157 *Id.* § 551.087.
158 *Id.* § 551.086.
159 *Id.* § 418.183(f).
160 *Id.* § 551.074.
161 *Id.* § 551.102.
162 Tex. Att'y Gen. Op. No. DM-149 (1992).
163 *Swate v. Medina Cmty. Hosp.,* 966 S.W.2d 693, 699 (Tex. App. — San Antonio 1998, pet. denied); Tex. Att'y Gen. Op. No. MW-129 (1980).
164 *Gardner v. Herring*, 21 S.W.3d 767, 777 (Tex. App. — Amarillo 2000, no pet.); Op. Tex. Att'y Gen. No. H-496 (1975).

63. Does a governing body have to post the name of an individual who is to be discussed in a closed meeting?

A governing body is not required to post the name of the specific individual to be discussed in a closed meeting.[165] However, the more important the position being discussed, the more specific the posting will need to be in describing that position.[166] Thus, the phrase "possible dismissal of a police officer" would normally be a sufficient posting for a city to consider firing a police officer of low rank, unless unusual circumstances made the item particularly newsworthy. On the other hand, if a city is considering the dismissal of the police chief, for example, the city should indicate "possible personnel action regarding police chief" so that the public is clearly informed as to which high-level position is under discussion.[167]

64. Does a governing body have to give individual notice to the employee that he/she will be discussed in a closed meeting?

The Act does not require that an employee or officer be given individual notice of a closed meeting in which that person will be discussed.[168] However, it is possible that other sources, such as constitutional due process, state statutes, a contractual agreement, a city charter, or a city ordinance may require that certain staff employees or officers be given individual notice and a hearing before any disciplinary action is taken.[169] Local entities should consult their legal counsel regarding the applicable laws in such a situation.

65. Does an employee have a right to attend the closed meeting if he/she is being discussed?

When a governing body discusses an employee or officer in a closed meeting under the personnel exception, the person being discussed does not have an inherent right to attend the closed meeting. The governing body decides who the necessary parties are for attendance at the closed meeting. The governing body chooses whether to allow the attendance of the employee at the closed meeting.[170]

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165 *See City of San Antonio*, 820 S.W.2d 762 (the Act does not raise due process implications; individual notice is not required).

166 *See, e.g., Point Isabel*, 797 S.W.2d 176.

167 *See Mayes*, 922 S.W.2d 200.

168 *City of San Antonio*, 820 S.W.2d 762 (Act does not raise due process implications; individual notice is not required); *Rettberg v. Tex. Dep't of Health*, 873 S.W.2d 408 (Tex. App. — Austin 1994, no writ). (state agency executive secretary not entitled to individual notice); *Stockdale v. Meno*, 867 S.W.2d 123 (Tex. App. — Austin 1993, writ denied) (teacher not entitled to individual notice).

169 *E.g.*, Tex. Loc. Gov't Code § 22.077 (hearing for removal of certain municipal officers in Type A city).

170 Tex. Att'y Gen. Op. No. JM-6 (1983).

66. Does an employee have a right to compel the governing body to hear a personnel matter regarding that employee in an open meeting instead of in a closed meeting?

The employee that is to be discussed under the personnel exception has a right to compel that the item be discussed in a public hearing instead of during a closed meeting.[171] However, the Act does not give an employee or officer the right to compel that a personnel matter regarding that individual be discussed only within a closed meeting.[172]

67. Is a governing body permitted to conduct personnel interviews for new hires or potential officers in a closed meeting?

A governing body is permitted to conduct personnel interviews for new hires or potential officers in a closed meeting under the personnel exception of the OMA. According to case law, the OMA does not restrict the personnel exception only to actions affecting a current employee of the governmental entity.[173]

68. May a governing body admit members of the public selectively to a closed meeting to give feedback on an employee or official being evaluated in the meeting?

No, the closed meeting is for the benefit of the governing body to meet away from public scrutiny under limited exceptions. This purpose would be defeated by selectively admitting the public.[174]

Closed Meetings for Consultations with an Attorney

69. When may a governing body have a closed meeting using the exception for consultations with an attorney?

The Act allows a governmental body to meet with its attorney to receive legal advice about:

1. pending or contemplated litigation;
2. settlement offers; or,
3. a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.[175]

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171 Tex. Gov't Code § 551.074(b).

172 Tex. Att'y Gen. Op. No. JM-1191 (1990).

173 *Hispanic Educ. Committee v. Houston Independent School Dist*., 886 F.Supp. 606, 611 (S.D. Tex. 1994). (Though there is an attorney general letter opinion, LO 88-52 (1988), that states a governmental entity cannot do interviews of non-employees in a closed meeting under the personnel exception of the Open Meetings Act, this case would control over that attorney general opinion.)

174 Tex. Att'y Gen. Op. GA-0511 (2007).

Also, the attorney general has concluded that a governmental body may meet with its attorney to receive legal advice on any matter.[176] However, the attorney general has warned that discussions in a closed meeting under the attorney consultation exception must relate solely to legal matters. The governing body may not discuss general policy matters that are unrelated to receiving legal advice from the attorney while in closed meeting under this exception.[177]

70. May a governing body meet in a closed meeting for consultations with an attorney if the attorney is not physically present?

A governmental body may use a telephone conference call, video conference call, or Internet communications to consult with certain attorneys in a closed meeting. If the attorney is an employee of the local entity, such consultations via the Internet, telephone or video conference are not permitted. An attorney who receives compensation for legal services from which employment taxes are deducted by the entity is considered to be an employee of the entity.[178]

71. May a governing body meet in a closed meeting with its attorney to discuss a proposed contract?

A governing body may consult with its attorney in a closed meeting to receive advice on legal issues raised by a proposed contract. However, the body may not discuss the merits of a proposed contract, financial considerations, or other non-legal matters related to the contract simply because its attorney is present.[179] General discussion of policy unrelated to legal matters is not permitted in a closed meeting under the Act merely because an attorney is present.

Other Types of Closed Meetings

72. May a governing body discuss the acquisition of real estate in a closed meeting?

The Act allows a governmental body to hold a closed meeting to discuss the purchase, exchange, lease or value of real estate.[180] However, such a closed meeting is allowed only if discussion of the real estate in an open meeting would have a detrimental effect

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175 Tex. Gov't Code § 551.071.

176 Tex. Att'y Gen. Op. No. JM-100 (1983). *See also* Tex. Att'y Gen. Op. No. JM-238 (1984) (governing body may admit to executive session persons aligned with governing body and necessary to governing body's full communication with its attorney) (modified by Tex. Att'y Gen. Op. No. JC-506 (2002) to require in addition that presence of person must not waive attorney-client privilege if person is admitted under attorney consultation exception).

177 Tex. Att'y Gen. Op. No. JM-100 (1983) at 2.

178 Tex. Gov't Code § 551.129.

179 *Olympic Waste Servs. v. City of Grand Saline*, 204 S.W.3d 496, 503-04 (Tex. App. — Tyler 2006, no pet.); Tex. Att'y Gen. Op. No. JC-233 (2000) at 3. *See also Finlan v. City of Dallas*, 888 F. Supp. 779, 782 n.9 (N.D. Tex. 1995).

180 Tex. Gov't Code § 551.072.

on the ability of the governing body to negotiate with a third party.[181] For example, a closed meeting may in certain cases be permitted to discuss what the local entity is willing to pay for real property that it plans to acquire. There is no comparable authority for a governing body to go into a closed meeting to discuss the acquisition of items of personal property, such as the purchase of a new computer system.

73. May a governing body discuss security personnel, security devices, or a security audit in a closed meeting?

The Act has permitted a governing body to discuss the deployment, or specific occasions for implementation, of security personnel or security devices in a closed meeting. Also, the Act allows discussion of security audits in a closed meeting.[182] A governing body can also discuss security assessments or deployments relating to information resources technology; certain network security information[183]; or the deployment, or specific occasions for implementation of critical infrastructure.[184]

74. May a governing body discuss a contract involving a prospective gift or donation in a closed meeting?

A governing body may meet in a closed meeting to discuss the negotiations for a contract for a prospective gift or donation.[185] Such a contract must relate to a gift to be given to the state or to the governmental body. However, similar to the real estate exception, the governing body may meet in a closed meeting only if its negotiating position with a third person would be negatively affected by the body's discussion of the contract in an open meeting.

75. May a governing body discuss a test item in a closed meeting?

A governing body may discuss a test item or information related to a test item in a closed meeting if the item may be included in a test that the governing body administers to individuals who seek to obtain or renew a license or certificate that is necessary to engage in an activity.[186]

76. May the governing body of a public power utility discuss competitive matters in a closed meeting?

The governing body of a public power utility (electric or gas utility)[187] is allowed to deliberate, vote or take final action in a closed meeting on any competitive matter.[188]

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181 *City of Laredo v. Escamilla*, 219 S.W.3d 14, 20 (Tex. App. — San Antonio 2006, pet. denied). *See* Tex. Att'y Gen. Op. No. MW-417 (1981).
182 Tex. Gov't Code §§ 551.076, .089.
183 *See* Tex. Gov't Code § 2059.055(b)(network security information that is confidential).
184 Tex. Gov't Code § 551.089.
185 *Id.* § 551.073.
186 *Id.* § 551.088.
187 *See id.* § 551.086(b)(1) (definition of "public power utility").
188 *Id.* § 551.086(c).

The term "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors.[189] Also, the notice of the subject matter of an item that may be considered as a competitive matter is required to contain more than a general representation of the subject matter to be considered, such that the competitive activity of the public power utility with respect to the issue in question is not compromised or disclosed.[190]

77. May a governing body discuss potential business incentives and other economic development negotiations in a closed meeting?

A governing body may meet in a closed meeting to discuss certain matters related to economic development.[191] It may discuss commercial or financial information that the governing body has received from certain business prospects. The business prospect must be one that the governing body is negotiating with for economic development purposes to locate, stay or expand in or near the territory of the local entity. Also, under this exception, a governing body may hold a closed meeting to discuss a potential offer of financial or other incentives to the business prospect.

Need for Statutory Authority to Hold Closed Meetings

78. May a governing body hold workshops or retreats in a closed meeting?

The provisions of the Act would apply to workshops or retreats of the governing body if a quorum of the body is present and the governing body deliberates about public business.[192] To go into a closed meeting, the local entity must show that the issue to be discussed fits within one of the specific statutory categories that allows for closed meetings.

79. Does the Public Information Act provide a basis for meeting in a closed meeting?

The governing body may not use the fact that the governing body will discuss documents that may be confidential under the Public Information Act, Chapter 552 of the Government Code, to justify a closed meeting. Instead, the governing body must specifically rely on one of the particular exceptions to the Open Meetings Act. The Open Meetings Act and the Public Information Act are entirely independent in their operation.[193] (See Section I concerning the relationship between the Open Meetings Act and the Public Information Act.)

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189 *Id.* § 552.133 (definition of "competitive matter").
190 *Id.* § 551.086(d).
191 *Id.* § 551.087.
192 *See Bexar Medina Atascosa Water Dist*., 2 S.W.3d at 462.
193 Tex. Att'y. Gen. Op. No. GA-0019 (2003) at 6.

Procedural Requirements for Meeting in Closed Meetings

80. Is there a difference between the terms "executive session," "closed meeting" and "closed session"?

No. All of these terms are used interchangeably. The important point to remember is that a governmental body may not exclude the public from a meeting unless the Act specifically authorizes such a closed meeting.[194]

81. May a city council meet in a closed meeting if a city charter provision requires that all city council meetings be conducted as open meetings?

A city council may not hold a closed meeting if the city charter specifically requires that all meetings or the type of meeting in question be held as open meetings.[195]

82. What notice must be posted to consider an item in a closed meeting?

The rules for posting closed meeting items are the same as the general rules for posting issues that will be considered in an open meeting.[196] Most local governments indicate on the posting that the governmental body may be going into executive session on a particular topic and the statutory section that allows such an item to be considered in a closed meeting. However, the Act does not require the notice to state which items will be discussed in a closed meeting. Should a governing body consistently distinguish between subjects for public deliberation and subjects for executive session, an abrupt departure from this practice could render the notice inadequate.[197]

83. May an item be considered in a closed meeting if the posted agenda does not indicate it will be discussed in a closed meeting?

In certain cases, a properly posted agenda item may be considered in a closed meeting even though the posted agenda did not indicate that the item would be discussed in a closed meeting.[198] As mentioned above, the rules for posting closed meeting items are the same as the rules for posting items that will be considered in open session.[199] The Open Meetings Act requires only that the posted notice give reasonable notice of the subjects that will be discussed. There is no requirement that the local entity indicate whether an item will be handled in open or closed session. However, if the notices posted for a governmental body consistently distinguish between subjects for public

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194 Tex. Gov't Code § 551.002. *See* n. 150.

195 Tex. Gov't Code § 551.004. *See Shackelford v. City of Abilene*, 585 S.W.2d 665 (Tex. 1979).

196 *See generally* Tex. Gov't Code §§ 551.041, .043. *See* Tex. Att'y Gen. Op. No. GA-511 (2007) at 4. (notice does not have to cite the section or subsection numbers of the provision authorizing the closed session.)

197 Tex. Att'y Gen. Op. No. JC-57 (1999).

198 *Id.*

199 *See generally* Tex. Gov't Code §§ 551.041, .043.

deliberation and subjects for closed session deliberation, an abrupt departure from this practice may raise a question as to the adequacy of a notice to inform the public.[200]

84. What procedure should a governing body follow to go into a closed meeting?

If a governing body chooses to discuss an item in a closed meeting, it must follow the statutory procedures required for such a meeting. The governing body must first convene in a properly posted open meeting. During that open meeting, the presiding officer must announce that a closed meeting will be held and identify the section(s) of the Act authorizing such a closed meeting.[201] A local entity may wish to have a prior written opinion from its attorney setting forth a reasonable basis for holding the closed meeting for the involved item whenever the matter is in dispute. Once a closed meeting has begun, the presiding officer must announce the date and time the session started.[202] At the end of that closed meeting, the presiding officer must again announce the date and time. In most instances, a certified agenda or recording must be made.[203] Also, any action or vote on an agenda item may be taken only during an open meeting.[204]

85. May a governing body continue a closed meeting to the immediate next day?

A closed session of an open meeting may be continued to the immediate next day so long as before convening the second-day closed meeting, a quorum of the governing body first convenes in an open meeting. The presiding officer must publicly announce that a closed meeting will be held and identify the section or sections of the Act under which the closed meeting is authorized.[205]

86. If a member of a governing body is not certain that a closed meeting is permitted what actions should the official take if a closed meeting is called?

If a member is not certain that a closed meeting is permitted on an issue, the member may wish to consider refusing to attend or asking for a formal written interpretation from the local entity's attorney as to the legality of the meeting. Attendance at an unauthorized closed meeting may be a criminal offense.[206] If an official reasonably relies on a written opinion concerning whether a closed meeting is permitted from the

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200 Tex. Att'y Gen. Op. No. JC-57 (1999).

201 Tex. Gov't Code § 551.101. *See Lone Star Greyhound Park v. Tex. Racing Comm'n*, 863 S.W.2d 742, 747-48 (Tex. App — Austin 1993, writ denied) (presiding officer's announcement of content of applicable section, but not section number, gives sufficient notice).

202 Tex. Gov't Code § 551.103 (c)(3) & (d).

203 *Id.*

204 *Id.* § 551.102.

205 *Id*. § 551.101; Tex. Att'y Gen. Op. No. JC-285 (2000). *See also* Tex. Gov't Code § 551.0411(a).

206 Tex. Gov't Code § 551.144.

governing body's attorney, the attorney general or a court, then the official has an affirmative defense to any criminal prosecution for violation of the Act.[207] Simply objecting or not speaking during an illegal closed meeting will not relieve the member of potential criminal liability for participating in the meeting.

87. Who is permitted to attend a closed meeting?

The Act does not specify who may or may not attend a closed meeting.[208] Generally, a governmental body has discretion to determine who may attend closed meetings. Members of the public may not be selectively admitted to an executive session.[209] When a governmental body holds a closed meeting to discuss a lawsuit under the attorney consultation exception, section 551.071 of the Government Code, the governmental body's attorney must be present, but an opposing party may not be present.[210] In considering whether to admit any nonmember to a closed meeting held under this section, a governmental body should consider:

1. whether the person's interests are adverse to the governmental body's;
2. whether the person's presence is necessary to the issues to be discussed; and,
3. whether the governmental body may waive the attorney-client privilege by including the nonmember.[211]

With respect to closed meetings held under other exceptions in the Act, a governmental body has the right to determine which nonmembers may attend and may include a nonmember if the person's interests are not adverse to the governmental body's and the person's participation is necessary to the anticipated deliberation.[212]

88. May a governing body prevent a member from attending a closed meeting?

A governmental body can prevent one of its members from attending a closed meeting when that member is suing the governing body or entity.[213] In Attorney General Opinion JM-1004, a school board had been sued by one of its own members and wanted to discuss the lawsuit with its attorney in an executive session. The attorney general concluded that the school board could exclude the member who had sued the district. The purpose of the exception for consultations with an attorney is, in part, to allow a governmental body to receive legal advice from its attorney without revealing attorney-

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207 *Id.*
208 Tex. Att'y Gen. Op. No. JC-375 (2001).
209 Tex. Att'y Gen. Op. No. GA-0511 (2007).
210 *See* Tex. Att'y Gen. Op. Nos. JC-506 (2002), JC-375 (2001), JM-238 (1984).
211 Tex. Att'y Gen. Op. No. JC-506 (2002).
212 *Id.*
213 Tex. Att'y Gen. Op. No. JM-1004 (1989).

client confidences to the opposing side. Admitting a member of a governing body who is on the opposing side of litigation to such an executive session would defeat the purpose of holding it.

89. May a governing body prevent its staff from attending a closed meeting?

As mentioned above, a governing body may exclude all nonmembers from attending a closed meeting.[214] Thus, a governing body may exclude its staff from attending a closed meeting. There are attorney general opinions that have concluded that the county commissioners' court could exclude the county clerk from an executive session of the commissioners' court where no statute required the presence of the county clerk.[215] Another opinion concluded that a contractual provision requiring a superintendent of schools to attend all executive sessions of her school board of trustees was valid under the Act, but would not preclude her exclusion by the board.[216] However, some city charters and certain statutory provisions provide that the city secretary shall attend all city meetings.[217]

90. May a governing body approve items or take a straw poll in a closed meeting?

A court has held that a member of a governing body may indicate during an executive session how he or she plans to vote on an item.[218] However, the governing body may not conduct a straw vote or a formal vote during such a session.[219] The Act requires that any final action, decision or vote be taken in an open meeting.[220]

Production and Handling of Certified Agenda or Recording for Closed Meetings

91. Is a governing body required to create a certified agenda or recording of discussions held in a closed meeting?

A governing body must create a certified agenda or make a recording[221] of every closed meeting unless the closed meeting is being held under the exception for consultation

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214 *See* Tex. Att'y Gen. Op. Nos. JM-6 (1983), JC-506 (2002); Tex. Att'y Gen. LO-97-017.

215 Tex. Att'y Gen. Op. Nos. JM-6 (1983), GA-277 (2004).

216 Tex. Att'y Gen. Op. No. JC-375 (2001).

217 *See* Tex. Loc. Gov't Code § 22.073 (requires a city secretary in Type A city to attend all meetings and keep required minutes).

218 *Bd. of Trustees v. Cox Enters., Inc.,* 679 S.W.2d 86, 89 (Tex. App. — Texarkana 1984*), aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986); *Nash v. Civil Serv. Comm'n*, 864 S.W.2d 163, 166 (Tex. App. — Tyler 1993, no writ).

219 *Id.*

220 Tex. Gov't Code § 551.102.

221 *See id.* § 551.001(7) (definition of "recording").

with an attorney.[222] The governing body may stop taking notes or turn off the recording during the portion of a closed meeting that involves consultations with an attorney.

The presiding officer shall certify that the agenda or recording of the closed meeting is true and correct record of the proceeding.[223] The certified agenda must state the subject matter of each deliberation and record any further action taken.[224] The certified agenda does not have to be a verbatim transcript of what happened in the closed meeting, but it must summarize what was discussed on each topic.[225] In addition, the certified agenda or recording must include an announcement by the presiding officer of the date and time that the closed meeting began and ended.[226]

92. Who is responsible for creating a certified agenda or recording of a closed meeting?

The Act does not specify a particular individual or officer responsible for producing the certified agenda or making the recording of a closed meeting. However, the presiding officer is responsible for certifying that the certified agenda or recording is a true and correct record of the proceedings.[227] It is important to note that a member of a governing body commits a Class C misdemeanor if he/she participates in a closed meeting knowing that a certified agenda or recording is not being made.[228]

93. May a member of a governing body or staff release a copy of a certified agenda or recording to the public?

A certified agenda or recording kept during a closed meeting may be disclosed to a member of the public only under a court order.[229] There are criminal penalties for releasing a copy of the certified agenda to the public without a court order.[230]

94. May a member of a governing body record a closed meeting for the member's own use?

A member of a governmental body has no right to record a closed meeting over the objection of a majority of the governmental body's members.[231]

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222 *Id.* § 551.103(a).
223 *Id.* § 551.103(b).
224 *Id.* § 551.103(c)(1)-(2).
225 Tex. Att'y Gen. Op. No. JM-840 (1988) at 4-7.
226 Tex. Gov't Code § 551.103(c)(3), (d).
227 *Id.* § 551.103(b).
228 *Id.* § 551.145.
229 *Id.* § 551.104(c).
230 *Id.* § 551.146.
231 *Zamora v. Edgewood Indep. Sch. Dist.*, 592 S.W.2d 649 (Tex. Civ. App. — Beaumont 1979, writ ref'd n.r.e.); Tex. Att'y Gen. Op. No. JM-351 (1985) at 2.

95. May a member of the governing body review a copy of a certified agenda or recording of a closed meeting?

A member of a governing body who attended a closed meeting may later review the certified agenda or recording of that closed meeting.[232] Also, a member who was absent during a closed meeting may review the certified agenda or recording. The governing body should adopt procedures for reviewing a certified agenda or recording to preserve the evidentiary integrity, but the governing body could not absolutely prohibit the review by a member. Once the member has left office, the member does not have the right to review the certified agendas or recordings of closed meetings.[233] Also, the governmental body may not provide the absent member with a copy of the certified agenda or recording of the closed meeting.[234]

96. How should a governing body handle a certified agenda or recording once it is prepared?

The Act contains two requirements on how a certified agenda or recording of closed meetings is to be handled once created:

1. the certified agenda or recording may not be disclosed to the public without a court order, and
2. the certified agenda or recording must be preserved for a period of at least two years after the date of the closed meeting.[235]

If any legal action involving the closed meeting is brought within this time period, the certified agenda or recording must be preserved until the action is finished. The governing body is the proper custodian for the certified agenda or recording, not the city secretary or county clerk; however the governing body may delegate its duty to these individuals.[236]

97. May members of the governing body publicly discuss what was considered in a closed meeting?

The Act does not prohibit a member from discussing or making statements about what occurred in a closed meeting.[237] The fact that a person may legally discuss what occurred in a closed meeting does not mean that it is advisable to do so. For instance, it is possible that such a discussion could waive the governing body's claim of attorney-client privilege if a member revealed attorney-client communications that occurred

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232 Tex. Att'y Gen. Op. No. DM-227 (1993).
233 Tex. Att'y Gen. Op. No. JC-120 (1999).
234 Tex. Att'y Gen. LO-98-033.
235 Tex. Gov't Code § 551.104.
236 Tex. Att'y Gen. Op. No. GA-0277 (2004) at 3.
237 Tex. Att'y Gen. Op. No. JM-1071 (1989). *See* Tex. Att'y Gen. Op. No. MW-563 (1980) at 5 (city ordinance attempting to prohibit public discussion of the contents of an executive session may raise First Amendment concerns, but does not violate the Public Information Act).

during a closed meeting. Other statutes and professional obligations as well as possible civil rights violations, individual privacy concerns, and the best interest of the governing body and the citizens the member represents might counsel against such a course of action. A governing body will want to carefully review this issue with its legal counsel before attempting to enact any such policy.

98. Is the certified agenda or recording of the closed meeting confidential under the Public Information Act?

The certified agenda and recording of a closed meeting are considered confidential under the Public Information Act.[238]

99. Are notes made by an official in a closed meeting confidential under the Open Meetings Act or the Public Information Act?

The Open Meetings Act does not specifically address whether the notes made by an official during a closed meeting are confidential. Whether the notes made by an official in a closed meeting are confidential under the Public Information Act depends on whether an exception would apply to the information. Whether the Public Information Act would protect the notes would depend in part on their content and the facts surrounding their creation.[239] Some factors that should be considered are:

1. who prepared the notes,
2. who possesses and controls the notes,
3. who has access to the notes,
4. whether the notes were used in conducting public business, and
5. whether public funds were expended in creating or maintaining the notes.

If there is a public information request for any such notes, the local entity will want to confer with its legal counsel.

VI. Emergency Meetings

100. What is sufficient cause for a governmental body to have an emergency meeting?

Under the Act, an emergency exists only if immediate action is required of a governmental body because of (1) “an imminent threat to public health and safety” or (2)

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[238] Tex. Att’y Gen. ORD-495 (1988).

[239] *See, e.g.,* Tex. Att’y Gen. ORD-635 (1995); ORD-574 (1990) (inter-agency and intra-agency written memoranda containing advice, recommendations and opinion can be withheld); ORD-462 (1987).

"a reasonably unforeseeable situation."[240] A reasonably unforeseeable situation includes:

1. Fire, flood, earthquakes, hurricane, tornado, or wind, rain or snow storm;

2. Power failure, transportation failure, or interruption of communication facilities;

3. Epidemic; or

4. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.[241]

Additionally, an "imminent threat to public health and safety," shall include a threat described above, if imminent.[242] The sudden relocation of a large number of residents from the area of a declared disaster to a governmental body's jurisdiction is also considered a reasonably unforeseeable situation for a reasonable period immediately following the relocation.[243]

The courts and the attorney general have traditionally construed the emergency posting exception strictly.[244] As a general rule, the members of a governmental body should ask themselves two questions when considering whether an emergency exists:

1. What would happen if the meeting on the "emergency" issue were postponed for 72 hours?

2. How long has the governing body known about the "emergency" issue?

If the governing body has known about the matter for more than 72 hours or the governing body cannot point to an imminent threat to public health or safety that would occur if action were not taken within 72 hours, then it would be difficult to argue that an emergency existed. Also, a situation is not "unforeseeable" merely because a deadline is less than 72 hours away. If the governing body knew about or should have known about the deadline in advance, then it may be difficult to argue that the situation was "reasonably unforeseeable".[245]

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240 Tex. Gov't Code § 551.045(b) (as amended by S.B. 494 of the 86th Leg., R.S. Effective September 1, 2019.)

241 *Id*. § 551.045(b)(2) (as amended by S.B. 494 of the 86th Leg., R.S. Effective September 1, 2019.)

242 *Id*. § 551.045(b)(1) (as amended by S.B. 494 of the 86th Leg., R.S. Effective September 1, 2019.)

243 *Id*. § 551.045(e).

244 *See* Tex. Att'y Gen. Op. Nos. JM-985 (1988), JM-1037 (1989) at 2-5, JC-57 (1999) at 4; *Markowski v. City of Martin*, 940 S.W.2d 720, 725 (Tex. App. — Waco 1997, writ denied).

245 *See River Rd. Neighborhood Ass'n*, 720 S.W.2d at 557-58.

101. What notice must the governing body provide for an emergency meeting or item?

A governing body must post notice of an emergency meeting, or the supplemental notice to add an emergency item to an already existing agenda of a properly posted meeting, at least one hour before the meeting is convened.[246] The notice of an emergency meeting must "clearly identify the emergency or urgent public necessity."[247] The emergency is "clearly identified" when the governing body states the reason for the emergency.[248] Notice of an emergency meeting must be posted in the same places as a governing body would post its notice of a regular or special called open meeting. (See Section II for a discussion on notice.)

102. What action or deliberation may take place at a properly posted emergency meeting?

A governing body may only deliberate or take action on a matter at an emergency meeting that: (1) directly relates to responding to the emergency or urgent public necessity identified in the notice of the meeting; or (2) an agenda item listed on a notice of the meeting before the supplemental notice was posted.[249]

103. Is a quorum needed to conduct an emergency meeting?

A quorum is generally required at an emergency meeting before a governmental body can conduct any official business. However, a quorum is not required if: (1) the local governmental entity is wholly or partly located in the area of a disaster declared by the president of the United States or the governor; and (2) a majority of the members of the governing body are unable to be present at a meeting of the governing body as a result of the disaster.[250]

104. May a governing body add non-emergency items onto an agenda that was otherwise validly posted for one hour as an emergency?

The Act does not allow a governing body to add non-emergency items to the agenda for an emergency meeting unless the non-emergency items have been posted for sufficient time.[251] The body must post the non-emergency items for at least 72 hours for them to be considered.

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246 Tex. Gov't Code § 551.045(a) (as amended by S.B. 494 of the 86th Leg., R.S. Effective September 1, 2019.)

247 Tex. Gov't Code § 551.045(c).

248 *Piazza v. City of Granger*, 909 S.W.2d 529 (Tex. App. — Austin 1995, no writ).

249 Tex. Gov't Code § 551.045(a-1) (as added by S.B. 494 of the 86th Leg., R.S., Effective September 1, 2019.)

250 *Id*. § 418.1102.

251 *See id*. § 551.045(a-1) (as added by S.B. 494 of the 86th Leg., R.S., Effective September 1, 2019.)

105. Does the news media have a right to specific notice of an emergency meeting or emergency items added to an agenda of an open meeting?

Members of the news media are entitled to specific notice of an emergency meeting or items that are to be considered on an emergency basis if they do two things.[252] First, they must file a request to be notified of an emergency meeting or emergency addition of items to an agenda. This request must be filed at the headquarters of the governmental body and include information on how to contact the member of the news media. The presiding officer or member of the governing body must notify the members of the news media by telephone, facsimile transmission, or electronic mail at least one hour before the meeting is convened. Second, the media member must agree to reimburse the local entity for the cost of providing the special notice. Members of the media are not entitled to special notice of an emergency meeting or emergency item unless they meet these criteria.[253]

106. What if a disaster prevents a governing body from holding a meeting that was otherwise properly posted?

If a catastrophe prevents a city council from holding an otherwise properly posted meeting, the governing body may convene at a convenient location within 72 hours of a properly posted meeting if the action is taken in good faith and not done to circumvent the Act.[254] A catastrophe is defined as a condition or occurrence that interferes physically with the ability of a governmental body to conduct a meeting, including:

(1) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;

(2) power failure, transportation failure, or interruption of communication facilities;

(3) epidemic; or

(4) civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.[255]

If the governing body is unable to convene the meeting within those 72 hours, it may subsequently convene the meeting if it provides 72-hour notice of the meeting.[256]

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252 Tex. Gov't Code § 551.047 (as amended by S.B. 494 of the 86th Leg., R.S. Effective 1, 2019.)
253 *McConnell v. Alamo Heights Indep. Sch. Dist*., 576 S.W.2d 470 (Tex. Civ. App. — San Antonio 1978, writ ref'd n.r.e.) (media is not entitled to notice unless they request it).
254 Tex. Gov't Code § 551.0411(b).
255 *Id*. § 551.0411(c).
256 *Id*. § 551.0411(b).

VII. Enforcement of the Act's Requirements

Civil Enforcement of the Act

107. What civil remedies does an individual have if the Act is violated?

An individual may sue to prevent, stop, or reverse a violation of the Act.[257] Standing for bringing such an action has been very liberally construed, even in areas like annexation challenges that normally require an action to be brought by the state's attorney.[258] If a court finds that there will be or has been a violation of the Act, the court has at least four options:

1. The court may order a governmental body or an official to stop violations of the Act, to avoid future violations of the Act or to perform a duty required by the Act.[259]
2. The court may invalidate any action that a governmental body has taken in violation of the Act.[260]
3. The courts may order the governmental body to provide back pay to the employee in cases where the Act was violated in the course of firing an employee.[261]
4. The court, at its own discretion, may make the losing side in such a case pay cost of litigation and reasonable attorney fees.[262]

Also, the Act provides that an individual, corporation, or partnership that releases a certified agenda or recording of a closed meeting to the public may be held liable in a civil lawsuit.[263] In such a suit, the person or entity that is harmed may get damages, attorney fees and court costs.

108. Is an action automatically void if it was accomplished without compliance with the Act?

Actions that violate the Act are not automatically void; rather they are voidable.[264] Whether a particular action is voided is determined by the court. In fact, it is possible that a court may not void an action even if the court finds that the action was taken in

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257 Tex. Gov't Code § 551.142(a).
258 *See City of Port Isabel v. Pinnell*, 161 S.W.3d 233, 241 (Tex. App. — Corpus Christi 2005, no pet.).
259 *See, e.g., Forney Messenger, Inc. v. Tennon*, 959 F. Supp. 389 (N.D. Texas 1997) (injunctive relief available for violations of Act); *Cox Enters. Inc*. 679 S.W.2d 86 (declaratory judgment available for violations of Act).
260 Tex. Gov't Code § 551.141.
261 *Ferris v. Bd. of Chiropractic Exam'rs*, 808 S.W.2d 514 (Tex. App. — Austin 1991, writ denied).
262 Tex. Gov't Code § 551.142(b).
263 *Id.* § 551.146(a)(2).
264 *Id*. § 551.141. *See City of Point Isabel*, 161 S.W.3d 233 (actions violating notice provisions voidable).

violation of the Act.[265] Nonetheless, it is always the safer course to attempt to achieve full compliance with the Act to avoid the likelihood of court challenges.

109. May a governing body later "ratify" an action that was handled in a meeting that did not comply with Act requirements?

If a governing body has taken an action at a meeting that may not have fully complied with the requirements of the Act, the governing body may at a later meeting reauthorize the same action. If the second meeting is held in accordance with all the requirements of law, including the Act, then the action under certain circumstances may be considered valid from the date of the second meeting.[266] For example, if a governing body fires an employee at a meeting that does not meet the requirements of the Act, it may then fire the same employee at a later meeting that meets the requirements of the Act. However, the governing body may owe back pay to the employee for the time period between the first meeting and second meeting if a court voids the action taken at the first meeting to terminate the employment.[267]

Criminal Enforcement of the Act

110. What are the criminal penalties for noncompliance with the Act?

There are four provisions of the Act that provide criminal penalties for violation of the Act:

1. **Unauthorized Closed Meeting**. A member of a governing body commits a crime if he or she calls or aids in calling an unauthorized closed meeting; closes or aids in closing such a meeting; or participates in an unauthorized closed meeting.[268] This violation is a misdemeanor punishable by a fine of between $100 and $500, one to six months in jail, or both.[269] However, if the member of a governing body relied on official written advice from a court, the attorney general, or the governing body's attorney regarding the legality of a closed meeting, the member has an affirmative defense to prosecution under this section of the Act.[270] A governing body may want to ask its legal counsel to provide in advance a written opinion noting the

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265 *Collin County v. Homeowners Ass'n*, 716 F. Supp. 953, 960 n.12 (N.D. Tex. 1989); *TOMA Integrity, Inc, and John Dial v. Windermere Oaks Water Supply Corp*., No. 06-19-00005-CV, 2019 WL 2553300, at *2 (Tex. App.— Texarkana June 21, 2019, no pet. h.)(mem. op., not designated for publication) (action voidable because of violation of the Act, but not void because challenge was not immediate).

266 *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975) (increase in electric rates effective only from date reauthorized at lawful meeting).

267 *Ferris*, 808 S.W.2d 514.

268 Tex. Gov't Code § 551.144(a).

269 *Id.* § 551.144(b).

270 *Id.* § 551.144(c).

legal authority for a closed meeting when doubt exists about the authority for it.

2. **Prohibited Series of Communications**.[271] A member of a governing body commits a crime if that member knowingly engages in at least one communication among a series of communications that each occur outside of an authorized meeting that concerns an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than quorum of members but the members engaging is the series of communications constitute a quorum of the governing body. The member must know at the time of the communications that all the communications taken together would involve a quorum of the members and would constitute a deliberation once all members engaged in the series of communications.[272] This violation is a misdemeanor punishable by a fine of between $100 and $500, one to six months in jail, or both.[273]

3. **Failure to Keep a Certified Agenda or Recording**. A member of a governing body commits a crime if he or she participates in a closed meeting knowing that a certified agenda or recording of the closed meeting is not being made.[274] This violation is a Class C misdemeanor and is punishable by a fine of up to $500.[275]

4. **Disclosure of Copy of Certified Agenda or Recording**. An individual, corporation, or partnership commits a crime if it releases to the public a copy of the certified agenda or recording of a lawfully closed meeting.[276] This violation is a Class B misdemeanor and is punishable by a fine of up to $2,000, a jail term of up to 180 days, or both.[277] Also, the person or entity that is harmed by the release of the certified agenda or recording may get damages, attorney fees and, court costs.[278] However, if the defendant had good reason to believe releasing the certified agenda or recording was lawful, or was mistaken as to the nature or the content of

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[271] The criminal violation of circumventing the Act by meeting in numbers less than a quorum was found unconstitutionally vague on its face by the Texas Court of Criminal Appeals in *State of Texas v Doyal*, No. PD-0254-18, 2019 WL 944022, at *1 (Tex. Crim. App. Feb. 27, 2019).

[272] *Id.* § 551.143(a) (as amended by S.B. 1640 of 86th Leg., R.S. Effective June 10, 2019.)

[273] *Id.* § 551.143(b).

[274] *Id.* § 551.145(a).

[275] *Id.* § 551.154(b). *See* Tex. Pen. Code § 12.23 (Class C Misdemeanor punishment).

[276] Tex. Gov't Code § 551.146(a).

[277] *Id.* § 551.146(b). *See* Tex. Pen. Code § 12.22 (Class B Misdemeanor punishment).

[278] Tex. Gov't Code § 511.146(a)(2).

the certified agenda or recording, the member has a defense to prosecution and an affirmative defense to any civil suit.[279]

111. May a private citizen violate the Act by urging members of the governing body to place an item on the agenda or by informing some members how other members intend to vote on a particular item?

A private citizen who acts independently to urge individual members to place an item on the agenda or to vote a certain way on an agenda item does not commit a violation of the Act, even if he or she informs members of other members' views on the matter. However, a person who is not a member of the governing body may be charged with a violation of an unauthorized closed meeting of the Act (section 551.144), but only if the person acts with intent to aid or assist a member or members who knowingly violate the Act.[280]

112. What is the role of the district attorney or prosecuting criminal county attorney regarding violations of the Act?

The district attorney or prosecuting criminal county attorney (depending on the county) has the authority to prosecute criminal violations of the Act. As with other alleged crimes, the local prosecutor retains the discretion to determine which alleged violations he or she will prosecute.

113. What is the role of the Office of the Attorney General regarding issues concerning the Act?

The Office of the Attorney General (OAG) may issue an official opinion answering questions regarding the legal interpretation of the Act.[281] Only certain public officials are authorized to request an opinion. As mentioned above, the OAG will only make legal interpretations of the Act. The OAG cannot rule as to whether a specific person violated the Act on a specific occasion if the ruling would require a determination of the applicable facts.[282]

The OAG does not have enforcement authority with regard to the Act. The prosecution of criminal violations of the Act remains within the discretion and authority of the district attorney or prosecuting criminal county attorney. However, a local prosecutor may request assistance from the OAG in prosecuting a violation of the Act.[283] It is within the discretion of that local prosecutor to determine whether to request such assistance from the OAG, and it is within the discretion of the OAG whether the interest of the State of Texas makes such assistance proper.

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279 *Id.* § 551.146(c).
280 Tex. Att'y Gen. Op. No. JC-0307 (2000).
281 Tex. Gov't Code §§ 402.041 - .045.
282 Tex. Att'y Gen. Op. Nos. DM-95 (1992); JM-840 (1988); H-772 (1976).
283 Tex. Gov't Code § 402.028.

114. Could a governing body pay attorney fees incurred to defend its members charged with violating the Act?

The Act does not specifically address this issue. A governing body may spend public funds to reimburse a member for the legal expenses of defending against an unjustified prosecution of violations under the Act. However, the governing body may not decide to pay for such legal expenses until it knows the outcome of the criminal prosecution. If the member is found guilty, the governing body may not pay the legal expenses. Additionally, the member under prosecution is disqualified from voting on a resolution to pay his or her own legal fees or the legal fees of another member indicted on the same facts for the same offense.[284]

VIII. Additional Information on the Act

115. Are all elected or appointed government officials required to take training about the Act?

Elected or appointed governmental officials must have a minimum of one hour of training that has been prepared or approved by the OAG. Officials have 90 days after their election or appointment to complete the required training.[285] The official should receive a certificate of course completion, and the governmental body shall maintain the official's certificate. The certificate must be available for public inspection at any time. A training video is available online at https://www.texasattorneygeneral.gov/open-government/open-meetings-act-training.

116. Where may local governmental bodies get more information about the Act?

The Texas Municipal League (TML) has information on the Act on its website at https://www.tml.org/343/Open-Meetings-Act. Also, member cities of TML can email or call the TML Legal Staff with any questions concerning the Act. Additionally, the OAG produces the Open Meetings Handbook, an in-depth publication about the Act and its interpretation in attorney general opinions and court cases. That publication is available in a downloadable PDF format on the Attorney General's website at https://www.texasattorneygeneral.gov/open-government/open-meetings-act-training.
Finally, the OAG sponsors an Open Government Hotline where public officials and concerned citizens can get answers to basic questions about the Act. The Open Government Hotline number is (512) 478-6736 or (877) 673-6839 (OPEN-TEX).

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284 Tex. Att'y Gen. Op. No. JC-294 (2000).
285 Tex. Gov't Code § 551.005.