

# **THE TEXAS OPEN MEETINGS ACT MADE EASY**



**ANSWERS TO THE MOST FREQUENTLY ASKED  
QUESTIONS ABOUT THE OPEN MEETINGS ACT**

**ATTORNEY GENERAL'S  
MUNICIPAL ADVISORY COMMITTEE**

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## **The Texas Open Meetings Act Made Easy**

Each year, the Attorney General's Municipal Advisory Committee asks the Attorney General's Office to produce a publication that addresses certain key issues that city officials face in their day-to-day operations. In a question-and-answer format, this article covers the most frequently asked questions on the Texas Open Meetings Act.<sup>1</sup> For example, the article addresses: when the Open Meetings Act generally applies, what constitutes reasonable notice of the subject matter of an open meeting, the application of the Act to informal gatherings of the city council, and the limited right of individual council members to place items on an agenda. Additionally, the article covers what are permissible subjects for executive sessions, who may attend an executive session, and the appropriate handling of a certified agenda. Finally, the article addresses the ability to "ratify" an action, civil enforcement of the Open Meetings Act, and criminal penalties for certain Open Meetings Act violations.

The stakes are high for city officials. Texas courts have ruled that in certain cases, a local public official can be convicted of participating in an illegal closed meeting even though the official may have believed at the time that the closed meeting was authorized. City officers can also face criminal penalties if they attempt to avoid open meetings requirements by meeting in numbers of less than a quorum for the purpose of secret deliberations about city business.

This article will attempt to provide answers in lay person's terms to the most frequently asked questions regarding the Open Meetings Act. Additional copies of this article can be obtained by calling the Municipal Affairs Section of the Attorney General's Office at (512) 475-4683.

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## **I. Application of the Open Meetings Act**

### **1. When does the Open Meetings Act generally apply?**

The Open Meetings Act (OMA) generally applies when a quorum of a governmental body is present and discusses public business.<sup>2</sup> However, it does not apply to purely social gatherings or to the attendance of public officials at conferences or training if no formal actions are taken and if the discussion of public business is only incidental at such events.<sup>3</sup>

### **2. Can members of the city council receive a briefing from city staff without posting the briefing as an open meeting?**

State law no longer allows a quorum of the city council to receive a briefing from city staff without posting the briefing as an open meeting. Instead, a city council is now required to post such a meeting and hold it in open session.<sup>4</sup>

### **3. Must city-appointed committees post their meetings under the Open Meetings Act?**

If a city-appointed committee is truly advisory in nature, it generally does not have to post its gatherings as open meetings. Accordingly, the city must first determine whether a committee is advisory or whether it in fact has certain powers that would make it subject to the Open Meetings Act requirements. To make this determination, the city needs to review the actual authority of the committee and how its actions are treated by the city council. For example, if the city-appointed committee has the power to make final decisions or the power to adopt rules regarding public business, it would need to post its gatherings as open meetings. Additionally, if the committee issues recommendations that are usually approved in full by the city council, such committee meetings should also be posted as open meetings. In other words, a committee may not be considered “advisory” if the committee has certain final powers or if the city council generally “rubber-stamps” the committee’s recommendations into final policy.<sup>5</sup>

It should be noted that if a committee has several city council members on it, the committee may in certain cases become subject to the Open Meetings Act. For example, the Attorney General has concluded that an county appointed architect selection committee was subject to the Open Meetings Act.<sup>6</sup> The selection committee included the county judge and one county commissioner; the committee did not include a quorum of the county commissioners’ court. However, because two county commissioners were already on the committee, they only needed to obtain the consent of one more county commissioner to have a majority vote in favor of any committee recommendation. Accordingly, the Attorney General concluded that the committee should be considered subject to the requirements of the Open Meetings Act as a governmental body. This conclusion was based on the fact that it would be too easy for the committee to obtain a “rubber stamp” of its decisions. The Attorney General also went on to indicate,



however, that such a committee would be less likely to be found subject to the Open Meetings Act if the committee did not contain any members of the commissioners' court.

It is important to note that the bylaws of an organization or the provisions within a city charter may specifically require a city committee to post its meetings pursuant to the Open Meetings Act. If there is such a local requirement, it would apply even if the Open Meetings Act would not otherwise require compliance. Conversely, cities cannot, through their city charter or local ordinances, waive the application of the requirements of the Open Meeting Act.

Further, should a quorum of a governmental body attend a committee meeting then the committee would be subject to the Open Meetings Act when a majority of the governmental body is present at a meeting of the committee, and members of the governmental body "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 authority, regardless of whether the committee members or any members of the governmental body engaged in a deliberation.<sup>7</sup>

#### **4. Must private or non-profit entities that receive city funding post their meetings under the Open Meetings Act?**

The Open Meetings Act does not apply to an entity merely because that entity receives public funds.<sup>8</sup> For instance, the Attorney General has concluded that a local chamber of commerce was not subject to the Open Meetings Act even though it received and administered local hotel occupancy tax funds.<sup>9</sup> Additionally, the Attorney General has concluded an economic development corporation formed under the Texas Non-Profit Corporation Act and not the Development Corporation Act of 1979 was not subject to the Open Meetings Act.<sup>10</sup>

Of course, a non-governmental entity may be made subject to the Open Meetings 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 Open Meetings Act. Therefore, local private or nonprofit entities will want to consult with their local legal counsel on whether their bylaws, state law, or a particular contractual commitment make them subject to the Open Meetings Act.

#### **5. 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 each operates independently of the other. The mere fact that a city may be able to withhold a document from the public under the Public Information Act does not mean that the city council has authority to meet in executive session regarding the subject covered in that document.<sup>11</sup> Likewise, the fact that the Open Meetings Act allows a city council to have an executive session about a particular topic does not mean that documents reviewed in the executive session may be

withheld from the public.<sup>12</sup>

## **II. Notice Provisions Under the Open Meetings Act**

### **6. Where and for how long must an open meeting notice be posted?**

The Open Meetings Act requires that the notice for each city council meeting must be posted on a bulletin board at a place convenient to the public in city hall.<sup>13</sup> A Texas court has ruled that posting in a kiosk immediately outside city hall is also permissible.<sup>14</sup> Generally, this agenda must be posted and readily accessible to the public at all times for at least 72 hours preceding the meeting.<sup>15</sup> The city will want to be sure that the posted notice is in a well-lit place that is accessible to the public even when city hall is closed. The same rules apply to posting notice for a meeting to deal with an emergency, except that the notice only needs to be posted for two hours and the notice must give a reason for calling the emergency meeting.

### **7. Is a city required to publish notice of its open meetings in a newspaper?**

The Open Meetings Act does not require that a city publish notice of its meetings in a newspaper. However, for some subjects, there may be another state statute that would require newspaper notice. For example, Texas law requires that a city have two public hearings before annexing an area, and notice of each of those hearings must be published in a local newspaper.<sup>16</sup> Additionally, there are certain notices that a city must publish in the newspaper regarding the adoption of its annual city budget and tax rate. Finally, a home-rule city will want to review its city charter to see if the charter imposes stricter notice requirements on the city than does the Open Meetings Act.

### **8. How specific must the wording be for each agenda item posted for an open meeting?**

The Open Meetings Act requires that the posted notice of an open meeting contain the date, hour, place and a description of each subject to be discussed at the meeting.<sup>17</sup> Texas courts have interpreted this to mean that the notice must be sufficient to alert the public, in general terms, of the subjects that will be considered in the meeting.<sup>18</sup> Descriptions such as “old business,” “new business,” “personnel matters,” and “litigation matters” are usually not sufficiently detailed to meet the requirements of the Act.<sup>19</sup> The courts have also ruled that the more important a particular issue 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.<sup>20</sup> However, the same court found that this phrase was not sufficient when the school was considering hiring a key supervisor such as a principal. Similarly, a Texas court ruled that a posting that said “personnel” was not specific enough to allow a city council to discuss the firing of a police chief.<sup>21</sup>

Finally, a city must be sure that its postings are not misleading. 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.<sup>22</sup>

**9. Is an agenda posting indicating “Public Comment” adequate notice of the subject to be discussed?**

The Attorney General has concluded “public comment” provides sufficient notice under the Open Meetings Act of the subject matter of “public comment” sessions where the general public addresses city council about its concerns.<sup>23</sup>

**10. Does an agenda posting indicating “employee briefing session” or “staff briefing session” provide adequate notice of the subjects to be discussed?**

An agenda posting simply indicating “employee briefing sessions” or “staff briefing session” does not provide the public with sufficient notice as to the subjects which will be discussed at a public meeting.<sup>24</sup> Unlike “public comments” which was considered adequate notice, a city is in a better position to ascertain from its employees or officers in advance what subjects a particular employee or officer will address. Accordingly, agenda postings simply indicating “employee briefing sessions” is inadequate notice as to the subjects the employees will address at the meeting.<sup>25</sup>

**11. Must an agenda posting indicate which subjects will be discussed in executive session?**

No, the Open Meetings Act does not require the agenda to state which items will be discussed in closed session. Some cities indicate in their notice which items will be discussed in open session and which may be discussed in closed or executive session. Nonetheless, should a city consistently distinguish between subjects for public deliberation and subjects for executive session, an abrupt departure from this practice could deceive the public and thereby render the notice inadequate.<sup>26</sup>

**12. What can city council members do if an unposted issue is raised at an open meeting?**

Members of the governmental body may not deliberate or make any decision about an unposted issue at a meeting of the governmental body. If an unposted item is raised, the city council has four options. A council member may respond with a statement of specific factual information or recite the governmental body's existing policy on that issue.<sup>27</sup> Second, a city official may direct the person making the inquiry to visit with city staff about the issue. Third, the city council may offer to place the item on the agenda for discussion at a future city council meeting. Finally, the city council may offer to post the matter as an emergency item if it meets the criteria for an emergency posting. It should be noted that members of the city council are limited in the same way from having unposted items discussed at a city council meeting.

**13. Can a city council change the date of its meeting without posting a corrected notice for 72 hours?**

The Texas Open Meetings Act requires literal compliance.<sup>28</sup> For this reason, a city generally does not have authority to change the date of its meeting without posting the new date for at least 72 hours in advance of the meeting.<sup>29</sup> Of course, if the city is presented with an emergency, it could utilize its power to call an emergency meeting with two hours' notice.

**14. Can a city council change the time of its meeting without posting a corrected notice for 72 hours?**

The Texas Open Meetings Act requires literal compliance.<sup>30</sup> For this reason, a city generally has no authority to change the time of its meeting without posting the new time for at least 72 hours in advance of the meeting.<sup>31</sup> Nonetheless, it is not necessarily a violation of the Open Meetings Act if a city council or city board 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. Cities should consult with local legal counsel if they decide to change a meeting time.

**15. Can a city council change the location of its meeting without posting a corrected notice for 72 hours?**

The Texas Open Meetings Act requires literal compliance.<sup>32</sup> For this reason, a city generally has no authority to change the location of its meeting without posting the new location for at least 72 hours in advance of the meeting.<sup>33</sup> On the day of the meeting, a city will sometimes change a meeting location to a bigger room within the same building to accommodate a large crowd. It is not clear whether such a change would constitute literal compliance with the Act. Cities should consult with local legal counsel if they decide to change a meeting location.

**16. Can a city continue a meeting the next day without reposting?**

It appears that a city may adjourn a meeting and reconvene within 24 hours if the city determines in good faith that such an action is necessary. A Texas court cited with approval an Attorney General opinion that allowed a county commissioners' court to adjourn a meeting and reconvene the very next day.<sup>34</sup> However, this same court ruled that a city council could not adjourn a meeting and reconvene two days later.<sup>35</sup> Additionally, the Attorney General has concluded that an executive session of a public meeting may be continued to the immediate next day.<sup>36</sup>

Arguably, though, a safer practice for cities would be to note on the original agenda that the meeting might be continued to the following day and note when and where such a continued meeting would be held. In this way, the city can comply with the Open Meetings Act requirement that notice of the meeting be posted for at least 72 hours.

## **17. What is required of a city council to cancel a posted meeting?**

The Open Meetings 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, a city may arguably cancel 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 agenda is taken down, a city must re-post and follow all the requirements of the Open Meetings Act for the rescheduled meeting.

## **III. Effect of Quorum Provisions on Open Meetings Act Issues**

### **General Quorum Provisions**

## **18. What constitutes a quorum for purposes of the Open Meetings Act?**

A quorum is generally considered to be a majority of the members of the governmental body.<sup>37</sup> For example, if the governmental body has five members; a quorum would require the presence of three members. For home rule cities (cities that at one time had over 5,000 population and adopted a home rule charter), what constitutes a quorum is usually provided in the city charter. Sometimes, a city charter will require the presence of more than a mere majority in order to have a quorum.

For general law cities (cities that are usually under 5,000 population and that have not adopted a home rule charter), the requirements for acquiring a quorum vary depending on whether the city is organized as a Type A, a Type B, or a Type C general law city. Outlined below are the quorum requirements for each of the three types of general law cities.

For Type A cities, what constitutes a quorum depends on the type of meeting that is being conducted. For regular meetings, the presence of a majority of the number of aldermen is required for a quorum. Generally, a Type A city has five aldermen; accordingly, three aldermen would be needed to have a quorum at a regular meeting. However, if the gathering is a specially-called meeting or a meeting to consider the imposition of taxes, state law requires that at least two-thirds of the number of aldermen be present for a quorum (generally four members).<sup>38</sup> The presence of the mayor would not be counted in reaching the required number for a quorum.

For Type B cities, a quorum requires the presence of either the mayor and three aldermen, or, if the mayor is absent, the presence of four aldermen.<sup>39</sup> State law does not change the quorum requirements for Type B cities based on the type of meeting that is being held.

Type C cities do not have a special state statute that indicates what constitutes a quorum. Therefore, a simple majority of the governmental body would constitute a quorum (two of the three members).<sup>40</sup> The presence of the mayor would be counted to reach a quorum.

**19. Can the city council hold a council meeting if, for any reason, there is not a quorum present?**

There does not appear to be any authority for beginning a city council meeting until a quorum is present.<sup>41</sup> 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.<sup>42</sup> However, Texas case law and attorney general opinions have not addressed whether a properly convened city council meeting could continue if a quorum is lost due to the later departure or temporary absence of a council member. In any case, a city council could not take any action during a meeting if a quorum was not present at that time.

**Application of Open Meetings Act if Quorum of City Council is Present**

**20. Does the Open Meetings Act apply if a quorum of city officials informally meet and no action or vote is taken on public business?**

The Open Meetings Act applies to a gathering of a quorum of city officials if they discuss public business, regardless of whether there is any action or vote taken. All requirements under the Open Meetings Act must be followed for such gatherings unless otherwise provided under state law. As noted earlier, state law provides a limited exception for gatherings at social events, training seminars, or conferences, if the discussion of public business is only incidental and no vote or action is taken.<sup>43</sup>

**21. May a quorum of the city council serve on a city board or commission?**

Nothing in the Open Meetings Act would prohibit a quorum of the city council from serving on a board or commission of the city. However, the meetings of such a board or commission would have to meet all the requirements of the Open Meetings Act. Additionally, under the common law doctrine of incompatibility, a city council is prohibited in most circumstances from appointing one of its own members to a city board position. In certain situations, however, Texas statutes or a city charter specifically allow city councils to appoint their own members to a board or commission. For example, the Development Corporation Act (Article 5190.6) indicates that the city council may appoint up to four city council members to serve as board members of a Section 4B development corporation board. A city council will want to discuss the issue with local legal counsel before making an appointment of one of its own members to a city board or commission.

**22. Can a quorum of city council members sign a group letter or other document without violating the Open Meetings Act?**

It remains a fact issue whether the presence of signatures by council members on a group letter or within another document constitutes a violation of the open meetings laws. If the council members met in a quorum without following open meetings procedures to discuss and then create or sign the document, there would be a violation of the Act. Similarly, if the council members met in numbers less than a quorum regarding the document with the specific intent of circumventing the purposes of the Act, a violation of the Open Meetings Act would also have occurred.<sup>44</sup> Such communications are best considered at posted open meetings and any signatures executed in response to a vote at the meeting on the issue.

**23. Can a quorum of city council members attend a committee meeting of the city?**

A quorum of city council could attend a committee hearing. However, the attendance of a quorum of the city council would constitute a meeting which would require compliance with the Open Meetings Act. In JC-0313, the Attorney General concluded should a quorum of a governmental body attend a committee meeting then the committee would be subject to the Open Meetings Act when a majority of the governmental body is present at a meeting of the committee, and members of the governmental body “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 authority, regardless of whether the committee members or any members of the governmental body engaged in a deliberation.<sup>45</sup>

**24. Can a quorum of city council members attend a state legislative committee meeting without violating the Open Meetings Act?**

Effective June 4, 2001, attendance of a quorum of city council at a meeting of a committee or agency of the state legislature does not constitute a meeting of city council provided deliberations at the meeting by the city council members consists only of publicly testifying at the meeting, publicly commenting at the meeting, and publicly responding at the meeting to questions asked by a member of the state legislative committee or agency.<sup>46</sup>

## **Application of Open Meetings Act to Gatherings of Less Than a Quorum of the City Council**

### **25. Is a gathering of less than a quorum of city officials subject to the Open Meetings Act?**

A gathering of less than a quorum of city officials is not generally subject to the Open Meetings Act. However, if a standing committee or subgroup of the governmental body meets and the discussion of public business occurs, there is an argument that such gatherings should also be posted and conducted as open meetings.

State law also provides that if less than a quorum of city official gather with the intent of circumventing the purposes of the Open Meetings Act, criminal penalties can be imposed against the participating officials. In other words, if city council members are holding their discussion of public business in numbers less than a quorum in order to avoid having to meet the requirements of the Open Meetings Act, criminal prosecution can be pursued against such officials for such discussions.

### **26. Can less than a quorum of city council members meet with independent contractors, or with public or private groups without posting the gathering as an open meeting?**

It is not uncommon for several council members to be present at a private or public gathering that is put on by another entity. The Open Meetings Act does not require that the gathering be treated as an open meeting if less than a quorum of city council members are present. However, as noted above, a city official faces potential criminal penalties if such gatherings are used with the intent of circumventing a discussion of public business at an open meeting.

### **27. Can less than a quorum of city council members visit over the phone without violating the Open Meetings Act?**

The mere fact that two council members visit over the phone does not in itself constitute a violation of state law. However, if city council members are using individual telephone conversations to poll the members of the council on an issue or are making such telephone calls to conduct their deliberations about public business, there may be a potential criminal violation. Physical presence in one place is not necessary to violate the Open Meetings Act.<sup>47</sup> It would remain a fact issue whether certain phone conversations between less than a quorum of city council members would be a violation of the Open Meetings Act.<sup>48</sup> Such interactions could amount to meeting in numbers less than a quorum to circumvent the purposes of the Open Meetings Act.



**28. Can less than a quorum of city council members sign a group letter or other document without violating the Open Meetings Act?**

It is a fact issue whether the presence of less than a quorum of city council member signatures on a group letter or other document constitutes a violation of the open meetings laws. For example, if the council members at some time met in numbers less than a quorum to discuss signing the document in order to circumvent the purposes of the Act, a violation of the Open Meetings Act would have occurred.<sup>49</sup>

**Adoption of Procedural Guidelines to Administer the Open Meetings Act**

**29. Does state law set out procedural rules that apply to open meetings?**

Relatively few procedural rules are contained in the Open Meetings Act for meetings of a governmental body. All meetings must, of course, be properly posted, and a governmental body is limited in how it can respond to inquiries about issues that were not listed on the posted agenda. Additionally, during all meetings, minutes of the meeting must be kept, and certain rules must be followed when holding an executive session.

However, state law does not impose general rules of parliamentary procedure for open meetings. For example, the Open Meetings 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 local governmental body must consult any local rules of procedure that have been adopted by the city council. Home rule cities should also consult their city charters for applicable provisions. If a city has not adopted any such rules, a majority of the city council would determine how items would be considered procedurally. The Texas Attorney General has concluded that Texas cities are generally able to adopt reasonable rules of procedure that do not conflict with the state or federal constitution, a state statute, or a home rule city charter provision.<sup>50</sup>

**30. Does the Open Meetings Act give individual city council members a right to place items on a meeting agenda?**

The Open Meetings Act does not specifically address the power of individual city council members to place items on the agenda for a council meeting. However, the Attorney General has ruled that a home rule city may adopt a local provision that requires the consensus of several council members to place an item on the agenda.<sup>51</sup> For example, the City of Dallas requires the consensus of five council members to place an item on the agenda. However, if a home-rule city has not adopted such a requirement, an argument could be made that individual council members could each place items on the agenda. In general law cities, individual council members could also arguably each place items on the agenda. This argument is supported by the reasoning in Attorney General Opinion DM-228 (1993) that concluded that individual county commissioners have a right to place items on the agenda for a county commissioner's court meeting. A city will want to consult with its local legal

counsel regarding this issue.

### **31. What is the role or power of the mayor during an open or closed meeting?**

The mayor generally serves as the presiding officer for purposes of running an open meeting. If the mayor is absent, this duty usually falls to the mayor pro tem. However, the Open Meetings Act itself does not define more specific powers of the mayor regarding the open portion of a meeting. Accordingly, cities will often adopt local procedural rules that define the role of the mayor and the role of the city council during an open meeting.

The Open Meetings Act does note the role of the presiding officer (generally the mayor) regarding his duties during an executive session. For example, before a city council meets in closed session, the presiding officer must announce that a closed session is about to be held. The presiding officer must also identify the sections of the Open Meetings Act under which the closed session is authorized. Once in an executive session, the presiding officer must announce the date and time that the executive session began and the date and time that the session ended.<sup>52</sup> Finally, the presiding officer must certify that the certified agenda is a true and correct record of the proceedings.

With regard to the other powers and duties of the mayor during an open meeting, the city will want to consult state law for other provisions that may apply to the matter before the city council. Additionally, the city may be bound by its own procedural rules that provide a particular role for the city council and for the mayor. Finally, if the city is a home rule city, it will want to review the city charter for provisions regarding the powers of the mayor and of the city council.

### **32. Can a mayor vote on items or second motions that are made at an open meeting?**

The Texas Open Meetings Act does not address when a mayor can vote on an item during an open meeting. In a home rule city, the power of the mayor to cast a vote is generally addressed in the city charter. For Type A general law cities, state law specifies that the mayor may vote only in the case of a tie.<sup>53</sup> State statutes do not specifically address whether a mayor in a Type B or a Type C general law city may vote on items. Some legal analysts have concluded that the mayor of a Type B city and the mayor of a Type C city may vote on all items even when there is not a tie.<sup>54</sup>

As to who may second motions, the answer would depend on what local rules of parliamentary procedure have been adopted by the city council. Under most rules of parliamentary procedure, only a voting member of the city council could second a motion. Under such a rule, whether or not the mayor could second a motion would depend on whether or not the mayor had the power to vote on the matter that was before the city council.

### **33. Can council members enter their vote on an item without attending the meeting (e.g., vote by proxy)?**

A city council member must be present at a meeting in order to deliberate and to vote; the council member may not vote by proxy.<sup>55</sup>

### **34. Can a city council hold an open meeting by teleconference?**

A city council meeting 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.<sup>56</sup>

When holding such a meeting, there are several special procedural requirements that must be met. First, the meeting must be posted and open to the public in the same manner as a regular meeting. Second, the meeting must be held in the same place where city council meetings are usually held. Third, the identity of each speaker must be clearly stated prior to that person speaking. Fourth, the meeting must be set up so as to provide two-way communications throughout the entire meeting. Fifth, all portions of the meeting (other than executive sessions) must be audible to the public, including the entire conference call. Finally, the meeting must be recorded and a copy of the recording must be made available to the public.

In JC-0352 the Attorney General concluded a governmental body was not required to state in the agenda that the meeting would be held by telephone conference call pursuant to section 551.125 of the Government Code.<sup>57</sup> Further, section 551.125 permitting a meeting by telephone conference call only in case of an emergency or public necessity and only if it is "difficult or impossible" to convene a quorum in one location, contemplates meetings by telephone conference call in extraordinary circumstances and not merely when attending a meeting at short notice would inconvenience members of the governmental body. Should a quorum of the governmental body convene at the meeting location, section 551.125 does not permit absent members to participate from other locations by telephone conference call.<sup>58</sup>

### **35. Can a city council hold an open meeting by video conference?**

A city council may hold an open meeting by video conference if a quorum of the governmental body is physically present at one location for the meeting.<sup>59</sup> There is no requirement that an emergency exist in order to meet by video conference. As with a teleconference meeting, there are several specific procedural requirements that apply to such a meeting. For example, the notice of a video conference meeting must specify the location where a quorum of the city council will be physically present. Additionally, the notice must specify the physical location of each city council member who will be participating in the meeting from another location. All of the locations identified in the notice must be open to the public, and the entire video conference meeting (other than an executive session) must be visible and audible to the public at each of those locations. Each location identified

in the notice must also have two-way communication with all the other locations during the entire meeting. The Act further requires that each participant be clearly audible and visible to all the other participants and to the public (except during an executive session). Additionally, the quality of the audio and video signals at a video conference meeting must meet the requirements set forth by the Texas Department of Information Resources and by section 551.127 of the Texas Government Code. Finally, the entire meeting must be recorded, and the tape must be made available to the public.

### **36. Can a city council broadcast its meetings over the Internet?**

The 1999 Texas Legislature amended the Open Meetings Act to allow a city council to broadcast its open meetings over the Internet.<sup>60</sup> If a city council chooses to broadcast its meetings in this fashion, the city 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 open meeting as must be provided at city hall.

### **37. What accommodations must a city provide at its open meetings for an attendee who has a disability?**

Generally, a city 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. In most cases, such a requirement means that the facility holding the meeting must be physically accessible to individuals with disabilities. Cities may ask that individuals with disabilities provide the city with reasonable notice on any accommodations they may need to attend the meeting. Cities must also 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, large print or braille documents upon request.

## **Managing Discussions at an Open Meeting**

### **38. What right does the public have to speak on a particular agenda item?**

The Open Meetings Act allows the public to observe the open portion of a city council meeting. However, the Texas Attorney General has concluded that the Open Meetings Act does not give members of the public a right to speak on items considered at an open meeting.<sup>61</sup> Such a right only exists if a specific state law requires a public hearing on that item or if state law requires that public comment be allowed on that issue. If a city allows members of the public to speak on an item at a council meeting, the council may adopt reasonable rules regulating the number of speakers on a particular subject and the length of time allowed for each presentation.<sup>62</sup> However, the city council must apply its rules equally to all members of the public.

**39. What is the general distinction between a public hearing and an open meeting?**

A city council is generally not required by the Open Meetings Act to allow members of the public to speak on regular agenda items at an open meeting.<sup>63</sup> However, during a public hearing, members of the public must be given a reasonable opportunity to speak.

Another difference between public hearings and general open meetings is the type of notice that must be provided. Many statutes which require a public hearing also require that special notice of the hearing be given. For instance, when a city is going to have an annexation hearing under section 43.052 of the Texas Local Government Code, it must publish notice of the hearing in a newspaper at some time between ten and twenty days before the hearing. On the other hand, the only notice generally required for a regular open meeting is the 72-hour posted notice at city hall.

**40. Can a city council require that a group select one of its members as a spokesperson?**

A city council may make reasonable rules regulating the number of speakers on a particular subject and the length of each presentation.<sup>64</sup> Arguably, such rules could include a requirement that a group select one of its members as a spokesperson. However, the city council should not discriminate between one group and another on a particular issue. Further, in no case may a city council adopt procedural rules that are inconsistent with the state or federal constitution, state or federal statutes, or city charter provisions (in a home-rule city).<sup>65</sup> A city should visit with its local legal counsel if it decides to impose such a requirement.

**41. Can members of the public be removed from an open meeting for causing a disturbance?**

The presiding officer of the city or the city council as a body may ask that individual members of the public be removed if they are causing a disturbance at a public meeting. What constitutes conduct that rises to the level of disorderly conduct is a fact issue for the city council to consider. A city may want to visit with its local district or prosecuting county criminal attorney for guidance on what actions may constitute “disorderly conduct.”

**42. Can a city council limit city council members to a set amount of time for their testimony or remarks at an open meeting?**

The Open Meetings Act does not address whether a city council may set limits on the remarks of council members at an open meeting. However, the governing body of a city may adopt procedural rules for its meetings that are not inconsistent with the state or federal constitution, state or federal statutes, or with local city charter provisions.<sup>66</sup> Within these parameters, a city council may arguably set reasonable time limits for council member remarks in an open meeting.<sup>67</sup>

**43. Can members of the city council be removed from an open meeting for causing a disturbance?**

The Open Meetings Act does not specifically address the ability to remove a member of the city council from an open meeting for causing a disturbance. Nonetheless, cities have the power to adopt rules and take actions to promote an orderly meeting. Accordingly, if a council member or other official's conduct rose to the level of disorderly conduct, the member could be warned and then if necessary, the presiding officer or the city council as a whole could ask that the council member be removed.

## **Keeping a Record of Open Meetings**

**44. What duty does a city have to produce minutes of open meetings?**

A city must either keep minutes or make a tape recording of every open meeting.<sup>68</sup> If the governmental body chooses to keep minutes rather than make a tape, state law requires that the minutes state the subject of each deliberation and indicate every action that is taken.

**45. What access does the public have to the minutes of an open meeting?**

The minutes or tape recording of an open meeting are open to the public and must be available for inspection and for copying.<sup>69</sup> 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 city must permanently retain copies of its minutes for its meetings. However, the city is not required by state law to publicly post the minutes of an open meeting.

**46. What right does the public have to record open meetings?**

The Open Meetings Act gives any member of the public a legal right to make a video or audio recording of an open meeting.<sup>70</sup> However, the Act also gives a governmental body a right to adopt reasonable rules that are necessary to maintain order at a meeting. Thus, a city council may regulate the location of recording equipment and the manner in which the recording is conducted. However, the city may not adopt any rule that would unreasonably impair a person's right to record an open meeting.

## **IV. Permissible Subjects for Executive Sessions**

### **47. What are the general subjects for which a governmental body may hold an executive session?**

Under the Open Meetings Act, a city council may only hold an executive session for one or more of the following eight reasons:<sup>71</sup> 1) consideration of specific personnel matters; 2) certain consultations with an attorney; 3) discussions about the value or transfer of real property; 4) discussions about security personnel or devices; 5) discussions about a prospective gift or donation to the city; 6) discussion by a governing body of potential test items on tests that the governing body conducts for purposes of licensing individuals to engage in an activity; 7) discussion of certain economic development matters; or 8) discussion of certain competitive matters relating to a city-owned electric or gas utility for which the city council is the governing body.

### **Executive Sessions to Discuss Personnel Issues**

### **48. When can a city meet in executive session to discuss personnel issues?**

The Open Meetings Act allows a governmental body to hold an executive session to discuss the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.<sup>72</sup> A governmental body may also hear a complaint or charge against such officer or employee in an executive session. However, the governmental body is not allowed to meet in executive session about an employee or official if the subject of the deliberation requests that the item be heard in an open session or in a public hearing. Also, any final action by the city council on a personnel matter must be taken in open session.<sup>73</sup>

It is important to note that a city council may only meet in executive session under the personnel exception if the person being discussed is an officer or employee of the city. Neither the appointment of advisory committee members nor the hiring of independent contractors are proper subjects for executive sessions under the personnel exception.<sup>74</sup> In addition, the personnel exception allows only the discussion of a particular person or persons in executive session. A governmental body may not discuss general policies regarding an entire class of employees in an executive session held under the personnel exception.<sup>75</sup> Such general policies must be addressed during the open portion of a meeting.

### **49. Does the city have to post the name of the individual employees that are to be discussed in executive session?**

A city is not required to post the name of the specific individual to be discussed in an executive session.<sup>76</sup> However, the more important the position being discussed, the more specific the posted agenda will need to be in describing that position.<sup>77</sup> Thus, the phrase “possible dismissal of a police officer” would probably be a sufficient posting for a city to consider firing a police officer of low

rank. On the other hand, if the city is considering the dismissal of the police chief, the posting arguably should indicate “possible personnel action regarding police chief” so that the public is clearly informed as to which high-level position is under discussion.<sup>78</sup>

**50. Does the city have to give individual notice to the employee that he/she will be discussed in an executive session?**

The Open Meetings Act does not require that an employee or officer be given individual notice of an executive session in which that person will be discussed.<sup>79</sup> However, it is possible that other law, such as a state statute, a contractual agreement, a city charter, or a local city ordinance may require that certain city staff positions be given individual notice and a hearing before any disciplinary action is taken.<sup>80</sup> Cities should consult with their local legal counsel regarding the applicable laws in such a situation.

**51. Does an employee have a right to attend the executive session if he/she is being discussed?**

When a city council discusses an employee or officer in executive session under the personnel exception, the person being discussed does not have an inherent right to attend the executive session.<sup>81</sup> The governing body of the city decides who are the necessary parties for attendance at the executive session; the governing body chooses whether to allow the attendance of the employee at the executive session.

**52. Does an employee have a right to force the city council to hear a personnel item regarding that employee in an open meeting instead of in executive session?**

The person that is to be discussed under the personnel exception has a right to insist that the item be discussed in a public hearing instead of during an executive session.<sup>82</sup> However, the Open Meetings Act does not give an employee or officer the right to insist that a personnel item regarding that individual be discussed only within an executive session.<sup>83</sup>

**53. Is a city permitted to conduct personnel interviews for new hires or potential city officers in an executive session?**

There do not appear to be any court cases or attorney general opinions that directly address the authority of a city council to interview prospective personnel or officer appointees in an executive session. However, the Open Meetings Act does allow a governmental body to meet in executive session to discuss the “employment .... or appointment... of a public officer or employee.”<sup>84</sup> Thus, an argument can be made that a city council could interview job applicants or potential city officers in closed session.



**54. Can a city meet in executive session to discuss the performance or employment of an independent contractor who is retained by the city?**

A city council may meet in executive session under the personnel exception only to discuss city employees or city officers. Independent contractors are neither officers nor employees of the city. As a result, the city council may not meet in executive session under the personnel exception to discuss the performance or employment of an independent contractor.<sup>85</sup> It is possible that the city could meet in executive session under another exception (such as consultations with attorney if certain legal issues are involved) to discuss the performance or employment of an independent contractor.

**Executive Sessions for Consultations with an Attorney**

**55. When can a city have an executive session using the exception for consultations with an attorney?**

Section 551.071 of the Texas Government Code allows a governmental body to meet with its attorney to receive legal advice about pending or contemplated litigation or about settlement offers. The Attorney General has also concluded that a governmental body may meet with its attorney to receive legal advice on any matter.<sup>86</sup> However, the Attorney General has warned that discussions in an executive session under consultations with an attorney must only relate to legal matters. The city council may not discuss general policy matters that are unrelated to receiving legal advice from the attorney while in executive session under this exception.

**56. Can a city meet in executive session for consultations with an attorney if the attorney is not present?**

Traditionally, State law did not authorize a governmental body to meet in an executive session to discuss legal matters without an attorney present who was advising the city on legal issues during the executive session. Effective September 1, 2001, a city may use a telephone conference call, video conference call, or Internet communications to consult with its attorney in an open meeting or in an executive session. Each part of the public consultation with its city attorney in open session must be audible to the public at the location specified in the agenda. Further, only certain city attorneys may consult with its city via telephone or the Internet. If the city attorney is an employee of the city such consultations via the Internet or telephone are not permitted. An attorney who receives compensation for legal services performed from which employment taxes are deducted by the city is considered to be an employee of the city.<sup>87</sup>

**57. Can city council meet in executive session with its attorney to discuss a proposed contract?**

City council may consult with its attorney in executive session to receive advice on legal issues

raised by a proposed contract. However, the city may not discuss the merits of a proposed contract, financial considerations, or other nonlegal matters related to the contract simply because its attorney is present.<sup>88</sup> General discussion of policy unrelated to legal matters is not permitted under the Open Meetings Act merely because an attorney is present.

## **Executive Sessions for Discussion of Real Property**

### **58. Can a city discuss the acquisition of real estate in an executive session?**

The Open Meetings Act allows a governmental body to hold an executive session to discuss the purchase, exchange, lease, or value of real estate.<sup>89</sup> However, such an executive session is only allowed if discussion of the real estate in an open meeting would have a detrimental effect on the ability of the governmental body to negotiate with a third party.<sup>90</sup> For example, an executive session may in certain cases be permitted to discuss what the city is willing to pay for a piece of real property that it plans to acquire. There is no comparable authority for a city to go into an executive session to discuss the acquisition of items of personal property such as the purchase of a new computer system.

## **Executive Sessions for Discussion of Security Personnel/Devices**

### **59. Can a city discuss security personnel or devices in an executive session?**

The Open Meetings Act permits a city to discuss security personnel or security devices in an executive session.<sup>91</sup>

## **Executive Sessions for Discussion of Gifts and Donations**

### **60. Can a city discuss a contract involving a prospective gift or donation in an executive session?**

A city can meet in executive session to discuss the negotiations for a contract for a prospective gift or donation.<sup>92</sup> Such a contract must relate to a gift to be given to the state or to the city. However, a city may only meet in an executive session if the city's negotiating position with a third person would be negatively affected if the city discussed the contract in open session.

## **Executive Sessions for Discussion of Test Items**

### **61. Can a city discuss a test item in executive session?**

A governing body may discuss a test item or information related to a test item in executive session

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.<sup>93</sup>

## **Executive Sessions for Certain Competitive Matters Relating to Public Utilities**

### **62. Can the governing body of a public utility discuss utility matters in closed session if the disclosure of the information would give an advantage to competitors?**

The governing body of a public electric or gas utility is allowed to discuss information in closed session if that information would give advantage to a competitor or potential competitor.<sup>94</sup> Unlike other provisions authorizing executive sessions, it appears that a governing body is authorized to take a final vote on a matter in a properly held executive session of this type.

In order to use this provision, the governing body is required to take a vote at the beginning of such a closed session. For the closed session to continue, a majority of the governing body must determine that the matter to be discussed is related to the utility's competitive activity and would, if disclosed, give advantage to a competitor or potential competitor. The vote must be recorded in the tape or certified agenda for the closed session.

This new provision also lists several types of information that may not be discussed in this type of executive session. Thus, before using this new authority, the governing body of a public utility will want to review Texas Government Code section 551.086 and discuss the matter with its local legal counsel.

## **Need for Statutory Authority to Hold Executive Sessions**

### **63. Can a city council discuss potential business incentives and other economic development negotiations in executive session?**

Up until recently, there was no specific exception within the Open Meetings Act that allowed the discussion of business relocations or other economic development negotiations in an executive session. Unless a city council could reasonably fit such a discussion within one of the other exceptions allowed under the Act, the council was prohibited from holding a closed meeting for this purpose.<sup>95</sup> However, the Texas Legislature has recently enacted an amendment to the Open Meetings Act that will allow a city council to meet in executive session to discuss certain matters related to economic development.<sup>96</sup> That amendment will authorize a closed session to discuss commercial or financial information that the city council has received from certain business prospects. The business prospect must be one that the city is negotiating with for economic development purposes to locate, stay, or expand in or near the city. Under this amendment, a city council may hold an executive session to discuss a potential offer of financial or other incentives to the business prospect.

**64. Can a city hold workshops or retreats in an executive session?**

It doesn't matter whether the city refers to a gathering as a workshop or as a retreat, the provisions of the open meetings laws would apply to such meetings if a quorum of the city council is present and they deliberate about public business.<sup>97</sup> To go into an executive session, the city must show that the issue to be discussed fits within one of the specific statutory categories that is permitted for executive sessions.

**Procedural Requirements for Meeting in Executive Sessions**

**65. Is there a difference between the terms “executive session,” “closed meeting,” and “closed session”?**

There is no difference between the terms “executive session,” “closed meeting,” or “closed session.” All of these terms are used interchangeably. The important point to remember is that a governmental body may not hold a closed meeting unless there is specific authorization for such a closed meeting under the Open Meetings Act.<sup>98</sup>

**66. May a city council meet in executive session if a local city charter provision requires that all city council meetings be conducted as open meetings?**

A city council may not hold an executive session if the city charter specifically requires that all meetings or that the type of meeting in question be held as an open meeting.<sup>99</sup>

**67. What notice must be posted to consider an item in executive session?**

The rules for posting executive session items are the same as the general rules for posting issues that will be considered in open session.<sup>100</sup> Most cities indicate on the posted agenda that the governmental body may be going into executive session on the particular topic and the statutory section that allows such an item to be considered in a closed meeting. However, the Open Meetings Act does not require the agenda to state which items will be discussed in closed session. Should a city consistently distinguish between subjects for public deliberation and subjects for executive session, an abrupt departure from this practice could deceive the public and thereby render the notice inadequate.<sup>101</sup>

**68. Can an item be considered in executive session if the posted agenda doesn't indicate it will be discussed in executive session?**

In certain cases, a properly posted agenda item may be considered in executive session even though the posted agenda did not indicate that the item would be discussed in executive session.<sup>102</sup> As mentioned above, the rules for posting executive session items are the same as the rules for posting items that will be considered in open session.<sup>103</sup> The open meetings laws only require that the posted notice give reasonable notice of the subjects that will be discussed. There is no requirement that the city indicate whether an item will be handled in open or closed session. However, if the notices posted for a governmental body's meetings consistently distinguish between subjects for public 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.<sup>104</sup>

**69. What procedure should the governing body follow to go into executive session?**

If a city chooses to take an item into executive session, it must follow the statutory procedures required for such sessions. For example, a governmental body must first convene in a properly posted open session. During that open session, the presiding officer must announce that a closed meeting will be held and identify the section or sections of the Open Meetings Act which authorize such a closed meeting.<sup>105</sup> It is also recommended that a city have a prior written opinion from its city attorney that validates that there is a reasonable basis for holding the executive session for the involved item. Once an executive session has begun, the presiding officer must announce the date and time the session started. At the end of that executive session, the presiding officer must again announce the date and time.<sup>106</sup> Also, any action or vote on an agenda item may only be taken during an open session.<sup>107</sup>

**70. Can city council continue an executive session to the immediate next day?**

An executive session of a public meeting may be continued to the immediate next day, so long as, before convening the second-day executive session, a quorum of city council first convenes in an open meeting and the presiding officer, usually the mayor, publicly announces that a closed meeting will be held and identifies the section or sections of the Open Meetings Act under which the executive session is authorized.<sup>108</sup>

**71. If a city council member is not certain that an executive session is permitted, what actions should the official take if such a session is called?**

As noted earlier, if a city council member is not certain that an executive session is permitted on an issue, the member may want to obtain in advance of any executive session a formal written interpretation from the city attorney as to the legality of the meeting.<sup>109</sup> The Open Meetings Act

provides that a city council member who reasonably relies on such a written opinion has an affirmative defense to any criminal prosecution for violation of the Act.<sup>110</sup> Unless the council member has such a written interpretation from the city attorney, the Attorney General, or from a court, the council member should refuse to attend any executive session that he or she feels may be illegal. Simply objecting or not speaking during such an executive session would not relieve the member of potential criminal liability for participation in an illegal closed meeting.

## **72. Who is permitted to attend an executive session?**

The Open Meetings Act does not specify who may or may not attend an executive session. The Attorney General has concluded the governmental body has discretion to determine who may attend executive sessions. However, the governmental body may not admit those whose attendance is contrary to the legal basis for the executive session.<sup>111</sup> For example, an Attorney General opinion concluded with regard to an executive session held under the attorney consultation exception, a governmental body was permitted to admit those officers and employees who were their representatives or agents with respect to the particular litigation in question and whose presence was necessary to effective communication with the attorney. Yet, the governmental body could not admit those third parties who were adversaries or whose presence would otherwise prevent privileged communications from taking place.<sup>112</sup> Similarly, the Attorney General has also concluded an individual school trustee who was suing the school district could be excluded from the executive session held to consult with the school board's attorney about the pending litigation.<sup>113</sup>

For executive sessions other than those involving consultation with an attorney, there does not appear to be a court case or an attorney general opinion that is directly on point. It would appear reasonable, however, to conclude that the test for whether a third party may be admitted to an executive session should be similar to the test just described. That is, a third party could arguably be admitted if that person's interests did not conflict with the governmental body and the person's presence was necessary. In addition, a governmental body should be careful not to admit a party whose presence would circumvent the purpose for which the executive session is authorized. For example, the purpose of the exception that allows closed sessions to discuss the purchase or sale of real property is to hold such talks without putting the governmental body at a disadvantage in bargaining.<sup>114</sup> Arguably, then, a governmental body should not allow someone to attend an executive session regarding a proposed real estate transaction if this person is bargaining with the city for the purchase or sale of the real property.<sup>115</sup>

## **73. Can the city prevent a council member from attending an executive session if the member has a potential conflict of interest on the item?**

The Open Meetings Act does not directly address who may or may not be admitted to an executive session. However, the Attorney General has addressed the ability of a school board to exclude one of its members from an executive session.<sup>116</sup> In that situation, the 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-client confidences to the opposing side. Admitting a member of a governing body who is on the opposite side of litigation to such an executive session would defeat the purpose of holding it. To determine whether such a conflict exists, a city should work closely with its local legal counsel.

**74. Can the city council prevent city staff from attending an executive session?**

The Attorney General has ruled that a city council may exclude persons who are not on the governing body from attending a closed meeting.<sup>117</sup> Thus, a city council may exclude city staff from attending an executive session. However, some city charters and certain statutory provisions provide that the city secretary shall attend all city meetings.<sup>118</sup> It is not clear whether such a provision would require the attendance of the city secretary at an executive session. One attorney general opinion 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.<sup>119</sup> And, another attorney general opinion concluded a contractual provision requiring a superintendent of schools to attend all executive sessions of her school board of trustees was valid under the Open Meetings Act.<sup>120</sup>

**75. Can a city council approve items or take a straw poll in an executive session?**

A court has held that a member of the city council may indicate during an executive session how he or she plans to vote on an item.<sup>121</sup> However, the governing body may not conduct a straw vote or a formal vote during such a session.<sup>122</sup> The Open Meetings Act requires that any final action, decision, or vote be taken in open session.<sup>123</sup>

**Production and Handling of Certified Agenda for Executive Sessions**

**76. Is a city required to record or create a certified agenda of discussions held in executive session?**

A governmental body must produce a "certified agenda" or make a tape recording of every executive session, unless the closed session is being held under the exception for consultation with an attorney.<sup>124</sup> A city may turn off the tape or stop taking notes during the portion of a closed meeting that involves consultations with an attorney. If the governmental body chooses to keep a certified agenda rather than make a tape for an executive session, the certified agenda must state the subject matter of each deliberation. A certified agenda does not have to be a verbatim transcript of what happened in executive session, but it must summarize what was discussed on each topic.<sup>125</sup> In addition, the certified agenda or tape must include an announcement by the presiding officer of the date and time that the executive session began and ended.

**77. Who is responsible for producing the certified agenda of an executive session?**

The Open Meetings Act does not specify a particular individual or officer that is responsible for producing the certified agenda or making the tape of an executive session. However, the presiding officer at the executive session is responsible for certifying that the certified agenda or tape is a true and correct record of the proceedings.<sup>126</sup> It is important to note that a city council member commits a Class C misdemeanor if he/she participates in a closed meeting knowing that a certified agenda or tape is not being made.<sup>127</sup>

**78. Can a city council member or city staff release a copy of a certified agenda to the public?**

A certified agenda or tape kept during an executive session may only be disclosed to a member of the public under a court order.<sup>128</sup> In fact, there are criminal penalties for releasing a copy of the certified agenda to the public without a court order.<sup>129</sup>

**79. May a city council member tape an executive session for the council member's own use?**

A Texas court has ruled that a member of a governmental body has no right to tape an executive session of that governmental body over the objection of a majority of the governmental body's members.<sup>130</sup> A reasonable argument can be made that a governmental body may give permission to one of its members to tape an executive session. However, it does not appear that either the courts or the attorney general have directly addressed this issue.

**80. Can city staff release a copy of a certified agenda to a city council member?**

The Attorney General has concluded that a council member who attended an executive session may later review the certified agenda or tape of that executive session.<sup>131</sup> However, council members do not have a right to make a copy of the certified agenda or tape of the executive session.<sup>132</sup> Further, the Attorney General has concluded an absent council member may review the tape recording of a closed meeting that the member did not attend. The city would want to adopt procedures for reviewing the recording, but it could not absolutely prohibit the review by a member of the governmental body. Additionally, the governmental body could not provide the absent council member with a copy of the tape recording of the executive session. Nor, may the city council allow a member to review the tape of an executive session once the member has left office.<sup>133</sup>



**81. How should city staff handle the certified agendas once they are prepared?**

The Open Meetings Act contains two requirements on how certified agendas or tapes of executive sessions are to be handled once they have been produced.<sup>134</sup> First, the certified agenda or tape may not be disclosed to the public without a court order. Second, the agenda or tape must be preserved for a period of at least two years after the date of the executive session. If any legal action involving the executive session is brought within this time period, the agenda or tape must be further preserved until the action is finished.

**82. Can city council members publicly discuss what was considered in an executive session?**

The Open Meetings Act does not specifically prohibit a council member from discussing or making statements about what occurred in an executive session.<sup>135</sup> However, as noted above, the Act does prohibit a person from disclosing to the public a copy of the actual certified agenda or tape of an executive session.<sup>136</sup> Of course, the fact that a person may legally discuss what occurred in an executive session does not mean that it is advisable to do so. For instance, it is possible that such a discussion could waive the city's claim of attorney-client privilege if a council member revealed attorney-client communications that occurred during an executive session.

It is not clear whether a city council could affirmatively prohibit council members from publically discussing what takes place in executive session. Attorney General Opinion No. JM-1071 (1989) implies that such a restriction may violate the First Amendment of the United States Constitution.<sup>137</sup> A city will want to carefully review this issue with its local legal counsel before attempting to enact any such policy.

**83. Are notes made by an official in an executive session considered confidential under the Public Information Act?**

The certified agenda and tape of an executive session are considered confidential under Texas law. However, a record (other than the certified agenda or tape) is not automatically considered confidential simply because it relates to an executive session.<sup>138</sup> Therefore, whether the notes made by an official in an executive session are confidential would depend on whether an exception under the Public Information Act applies to the information.

For example, a few early attorney general decisions found that notes made by an official are not subject to the Public Information Act if those notes are solely for the official's personal use and are not produced with city property or by city staff.<sup>139</sup> However, these early decisions did not concern notes taken by an official during an executive session. Moreover, recent decisions have found that personal notes are not necessarily excluded from the definition of "public information" in the Public Information Act.<sup>140</sup> For example, if an official uses his or her notes for city purposes or if the notes

are taken as part of the official's duties, the notes are likely to be considered an open record.<sup>141</sup> If there is an open record request for any such notes, the city will want to confer with its local legal counsel. Whether the Act would protect the notes would depend in part on their content and the facts surrounding their creation.<sup>142</sup> For example, the city should consider who prepared the notes, who possesses and controls the notes, who has access to the notes, whether the notes were used in conducting public business, and whether public funds were expended in creating or maintaining the notes.

## **Requirements for Holding Emergency Meetings**

### **84. What is sufficient cause for posting a two-hour emergency posting?**

Under the Open Meetings Act, an emergency exists only if immediate action is required of a governmental body because of an "imminent threat to public health and safety" or "because of a reasonably unforeseeable situation."<sup>143</sup> The courts and the Attorney General have traditionally construed the emergency posting exception strictly. Accordingly, a situation in which a quick decision was needed to purchase a piece of land was held not to be an emergency.<sup>144</sup> The Attorney General has also concluded that the need to discuss indemnifying the city council and hiring a lawyer for a lawsuit did not constitute an emergency.

As a general rule of thumb, the members of a governmental body should ask themselves two questions when considering whether an emergency exists. First, what would happen if the meeting on the "emergency" issue was postponed for 72 hours. If the city cannot point to some imminent risk to public welfare or safety that would occur if action was not taken within 72 hours, then it would be difficult to argue that an emergency exists. Second, the city should ask itself how long it has known about the "emergency" issue. If the city has known about the matter for more than 72 hours, it would work against the city's argument that an emergency exists. It should also be noted that a situation is not "unforeseeable" merely because a deadline is less than 72 hours away. If the council knew about or should have known about the deadline in advance, then it may be difficult to argue that the situation was "reasonably unforeseeable."<sup>145</sup>

### **85. What must be indicated in a posted notice for an emergency item?**

In order to be eligible for a two-hour emergency posting, the notice of an emergency item must "clearly identify the emergency."<sup>146</sup> State law provides that the emergency is "clearly identified" when the city states the reason for the emergency in the posted notice.<sup>147</sup>

### **86. Can a city add non-emergency items onto an agenda that was otherwise validly posted for two hours as an emergency?**

The Open Meetings Act does not allow a governmental body to add non-emergency items to the agenda for an emergency meeting unless the non-emergency items have been posted for sufficient

time. A governmental body must post the non-emergency items for at least 72 hours for them to be considered.

**87. Does the media have a right to specific notice of any items that are considered at a city council meeting on an emergency basis?**

To be entitled to specific notice of items that are to be considered on an emergency basis, members of the media must do two things.<sup>148</sup> First, they must file a request to be notified of such items. This request must be filed at the headquarters of the governmental body (generally, city hall). The request must also include information on how to contact the media member by telephone or telegraph. Second, the media member must agree to reimburse the city for the cost of providing the special notice. Members of the media are not entitled to special notice of an emergency item unless they meet these criteria.<sup>149</sup>

## **V. Enforcement of the Open Meetings Act Requirements**

### **Civil Enforcement of the Open Meetings Act**

**88. What civil remedies does an individual have if the Open Meetings Act is violated?**

An individual may sue to prevent, stop, or reverse a violation of the Open Meetings Act.<sup>150</sup> If a court finds that there will be or is a violation of the Open Meetings Act, the court has at least four options. First, the court may order a city 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.<sup>151</sup> Second, a court may invalidate any action that a governmental body has taken in violation of the Open Meetings Act.<sup>152</sup> Third, in cases where the Act was violated in the course of firing an employee, the courts may order the governmental body to provide back pay to the employee.<sup>153</sup> Finally, at its own discretion, a court may make the losing side in such a case pay costs of litigation and reasonable attorneys' fees.

The Act also provides that an individual, corporation, or partnership that releases a certified agenda or tape of an executive session to the public may be held liable in a civil lawsuit.<sup>154</sup> In such a suit, the person or city that is harmed may get damages, attorneys' fees, and court costs.

**89. Is an action automatically void if it was accomplished without compliance with the Open Meetings Act?**

Actions that violate the Open Meetings Act may be invalidated by a court.<sup>155</sup> However, such actions are not automatically void. Whether to invalidate a particular action is at the discretion of the court. In fact, it is possible that a court may not invalidate an action even if the court finds that the action was taken in violation of the Open Meetings Act.<sup>156</sup> Nonetheless, it is always the safer course to attempt to achieve full compliance with the Open Meetings Act to avoid the likelihood of later court

challenges.

**90. Can a city council later “ratify” an action that was handled in a meeting that did not comply with Open Meetings Act requirements?**

If a city council has taken an action at a meeting that may not have fully complied with the requirements of the Open Meetings Act, the council may at a later time meet again to re-authorize the same action. If the second meeting is held in accordance with all the requirements of law including the Open Meetings Act, then the action under certain circumstances may be considered valid from the date of the second meeting.<sup>157</sup> For example, if a city council fires a city employee at a meeting that does not meet the requirements of the Open Meetings Act, it may then fire the same city employee at a later open meeting that meets the requirements of the Act. However, the city may owe back pay to the employee for the time period between the first meeting and second meetings if a court finds that the first meeting was invalid.<sup>158</sup>

**Criminal Enforcement for Violations of the Act**

**91. What are the criminal penalties for noncompliance with the Open Meetings Act?**

There are four provisions of the Open Meetings Act that provide criminal penalties for violation of the Act:

1) **Unauthorized Executive Sessions.** If a closed meeting is not authorized by law, a city council member commits a crime if he calls or aids in calling such a meeting, closes or aids in closing such a meeting, or participates in such a meeting.<sup>159</sup> A violation of this sort is a misdemeanor punishable by a fine of between \$100 and \$500, one to six months of jail time, or both. Recently, a Texas court has ruled that a public official could be convicted of participating in an illegal closed meeting even if the official attended the session pursuant to advice of legal counsel that the session was legal.<sup>160</sup> The court reasoned that people, including public officials, are generally presumed to know the law. However, in 1999, the Texas Legislature amended the Open Meetings Act to allow a city council member to rely on official written advice from a court, the attorney general, or from the city attorney regarding the legality of an executive session.<sup>161</sup> Specifically, the amendment provides that if a council member has a formal written interpretation from one of these sources indicating that a particular closed meeting is legal, the council member may use that written interpretation as a defense if he or she acted in reasonable reliance on the written interpretation, and is later prosecuted for participating in an illegal closed session. Cities may want to consider asking their local legal counsel to provide in advance a written opinion noting the legal authority for an executive session prior to the city holding the closed meeting.

**2) Meeting in Numbers Less than a Quorum With Intent to Circumvent the Act.**

A city council member commits a crime if that official conspires to circumvent the Open Meetings Act by meeting in numbers of less than a quorum for the purpose of secret deliberations in violation of the Act.<sup>162</sup> A violation of this sort is a misdemeanor punishable by a fine of between \$100 and \$500, one to six months of jail time, or both.

**3) Failure to Produce a Certified Agenda.** A city council member commits a crime if the official participates in a closed meeting knowing that a certified agenda or tape recording of the closed meeting is not being made.<sup>163</sup> A violation of this sort is a Class C misdemeanor and is punishable by a fine of up to \$500.<sup>164</sup>

**4) Disclosure of Copy of Certified Agenda.** Any individual, corporation, or partnership commits a crime if they release to the public a copy of the tape or certified agenda of a lawfully closed meeting.<sup>165</sup> A violation of this sort 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.<sup>166</sup>

**92. Can a city council member be criminally prosecuted if he/she did not intentionally or knowingly violate the open meetings laws?**

Recently, a Texas court has ruled that an individual would not have to know that a closed meeting was illegal in order to be convicted of participating in an illegal closed meeting.<sup>167</sup> Instead, the individual would only have to know that he or she was participating in a closed meeting. Under this court ruling, if it later turned out that there was no legal authority to hold that closed meeting, the person could be convicted of a crime even if he or she thought at the time that it was legal to hold the closed meeting. However, in 1999, the Texas Legislature amended the Open Meetings Act to allow a city council member to rely on official written advice from a court, the attorney general, or the city attorney.<sup>168</sup> If a council member has a formal written interpretation from one of these sources indicating that a particular closed meeting is legal, and the councilmember acted in reasonable reliance on that interpretation, the council member may use the written interpretation as a defense if he or she is later prosecuted for participating in an illegal closed session. Prosecution of such a crime is at the discretion of the local district or prosecuting county attorney.

**93. Can a private citizen who is not a member of city council violate the Open Meetings Act by urging city council members to place an item on the agenda or by informing council members how other members intend to vote on a particular item?**

The Attorney General has concluded a private citizen who acts independently to urge individual council members to place an item on the agenda or to vote a certain way on an agenda item on does not commit an Open Meetings Act violation even if he or she informs members of other members'

view on the matter. Nonetheless, a person who is not a member of the governmental body could be charged with a Open Meetings Act violation only if the person acts with intent and knowingly aids or assists a city council member or members to violate the Open Meetings Act. A private citizen who does not act in concert with city council members does not violate the Open Meetings Act.<sup>169</sup>

**94. What is the role of the local district attorney or prosecuting county attorney regarding Open Meetings Act violations?**

As mentioned above, the local district attorney or prosecuting criminal county attorney (depending on the county) has the authority to prosecute criminal violations of the Open Meetings Act. As with other alleged crimes, the local prosecutor retains the discretion to determine which alleged violations he or she will prosecute.

**95. What is the role of the Texas Attorney General regarding Open Meetings Act issues?**

The Attorney General may issue an official opinion answering questions about the legal meaning of the Open Meetings Act if the opinion is requested by an authorized official such as the Governor, the chair of a state legislative committee, or a district or county attorney.<sup>170</sup> City officials generally work through their district or county attorney or a state legislator to request an attorney general opinion. The Attorney General can only make conclusions about the legal meaning of a law. The Office of the Attorney General does not rule on the facts of a specific case.<sup>171</sup> Thus, in most cases the Attorney General cannot rule as to whether a specific person violated the Open Meetings Act on a specific occasion if it requires a determination of the applicable facts.<sup>172</sup>

It should be noted that the Attorney General does not have enforcement authority with regard to the Open Meetings Act. The prosecution of criminal violations of the Act remains within the discretion and authority of the local district attorney or prosecuting criminal county attorney. A local prosecutor, however, may request the assistance of the Attorney General's Office in prosecuting an Open Meetings Act violation. It is within the discretion of that local prosecutor to determine whether to request such help from the Office of the Attorney General.

**96. Could city council pay attorney's fees incurred to defend city council members charged with violating the Open Meetings Act?**

The Attorney General has concluded that although it is not required to do so, a city council may spend public funds to reimburse a city council member for the legal expenses of defending against an unjustified prosecution for Open Meetings Act violations. However, the city may not decide to pay for such legal expenses until it knows the outcome of the criminal prosecution. The city may not pay the expenses of a city council member who is found guilty of such violations. Additionally, a city council member is disqualified from voting on a resolution to pay his or her own legal fees or

the legal fees of another city council member indicted on the same facts for the same offense.<sup>173</sup>

## **VI. Additional Information on the Open Meetings Act**

### **97. Where can a city get more information about the Open Meetings Act?**

For additional copies of this article, a city may contact the Municipal Affairs Division of the Attorney General's Office at (512) 475-4683. The Municipal Affairs Division will also answer questions regarding the Open Meetings Act. Additionally, the Office of the Attorney General produces the *Open Meetings Handbook*, an in-depth publication about the Open Meetings Act and its interpretation in Attorney General opinions and court cases. That publication may be ordered by calling (512) 936-1730. And finally, the Attorney General's Office sponsors an open government hotline where public officials and concerned citizens can get answers to basic questions about the Open Meetings Act. The open government hotline number is (512) 478-6736.

## ENDNOTES

1. This article was written by Scott Joslove, Robert Ray, and Carla Gay Dickson and revised for 2002 by Jeff Moore. Much of the material in the article is drawn from the Texas Attorney General's *2002 Open Meetings Handbook*. In addition, this article was reviewed by Zindia Thomas and Susan Garrison with the Office of the Attorney General. Bennett Sandlin, Scott Houston and Frank Sturzl of the Texas Municipal League also reviewed this article. Jeff and Zindia would like to express their sincerest thanks for the invaluable assistance provided by these and other individuals in preparing this article for publication.
2. Texas Government Code Section 551.001 (4) (Vernon Supp. 2001).
3. Texas Government Code Section 551.001 (4) (Vernon Supp. 2001).
4. Texas Government Code Section 551.001 (Vernon Supp. 2001).
5. See Texas Attorney General Opinion No. H-3 (1974) (committees whose decisions are "rubber stamped" by governing body may be subject to Open Meetings Act).
6. Texas Attorney General Opinion Nos. JC-0060 (1999) and JC-0160 (1999).
7. Texas Attorney General Opinion No. JC-0313 (2000). See also, Texas Attorney General Opinion No. JC-0203 (2000)
8. Texas Government Code Section 551.001(3) (Vernon Supp. 2001) (definition of "governmental body"); Texas Attorney General Opinion No. JM-1072 (1989) (local-level entity must fall within definition of "governmental body" to be covered by Open Meetings Act).
9. Texas Attorney General Opinion Nos. LO 93-55 (1993) and LO 96-113 (1996); see also Texas Attorney General Opinion No. DM-7 (1991) (committee on aging which receives public funds not subject to Open Meetings Act).
10. Texas Attorney General Opinion No. JC-0327 (2001) (concluding the Bryan-College Station Economic Development Corporation was not subject to the Open Meetings Act).
11. See e.g., Texas Attorney General Opinion No. JM-595 (1986) (Public Information Act does not authorize executive session where documents under discussion are confidential).
12. *City of Garland v. The Dallas Morning News*, 22 S.W.3d 351, 366-67 (Tex. 2000). See also Texas Attorney General Opinion Nos. ORD-605 (1992) (names of applicants discussed in executive session are not confidential under Public Information Act) and ORD-485 (1987) (investigative report considered in executive session may not be withheld).
13. Texas Government Code Section 551.050 (Vernon 1994).
14. *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 768 (Tex. 1991).
15. Texas Government Code Section 551.043 (Vernon 1994).
16. Texas Local Government Code Section 43.052 (Vernon Supp. 2001).
17. Texas Government Code Section 551.041 (Vernon 1994).



18. *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 766 (Tex. 1991).
19. Texas Attorney General Opinion No. H-662 (1975).
20. *Point Isabel Independent School District v. Hinojosa*, 797 S.W.2d 176 (Tex. App. – Corpus Christi 1990, writ denied).
21. *Mayes v. City of DeLeon*, 922 S.W.2d 200 (Tex.App. – Eastland 1996, writ denied).
22. *River Rd. Neighborhood Association v. South Tex. Sports*, 720 S.W.2d 551 (Tex. App. – San Antonio 1986, writ dismissed w.o.j.).
23. Texas Attorney General Opinion No. JC-0169 (2000).
24. Texas Attorney General Opinion No. JC-0169 (2000) at 6.
25. Texas Attorney General Opinion No. JC-0169 (2000) at 6. *See also, Hays County Water Planning Partnership v. Hays County*, 41 S.W.3d 174, 181 (Tex. App. – Austin 2001, pet. denied) (An agenda which simply provided “Presentation by Commissioner Russ Molenaar.” was considered to be insufficient notice. Nothing in the agenda posting indicated the subject matter of the presentation).
26. Texas Attorney General Opinion No. JC-0057 (1999) at 5.
27. Texas Government Code Section 551.042 (Vernon 1994).
28. *Acker v. Texas Water Commission*, 790 S.W.2d 299 (Tex. 1990).
29. *See* Texas Government Code Sections 551.043 (notice must be posted for 72 hours in advance of meeting) and 551.041 (notice must include place of meeting) (Vernon 1994).
30. *Acker v. Texas Water Commission*, 790 S.W.2d 299 (Tex. 1990).
31. *See* Texas Government Code Sections 551.043 (notice must be posted for 72 hours in advance of meeting) and 551.041 (notice must include place of meeting) (Vernon 1994).
32. *Acker v. Texas Water Commission*, 790 S.W.2d 299 (Tex. 1990).
33. *See* Texas Government Code Sections 551.043 (notice must be posted for 72 hours in advance of meeting) and 551.041 (notice must include place of meeting) (Vernon 1994).
34. *See* Texas Attorney General Opinion No. H-1000 (1977) (“day-to-day” does not mean county commissioners court can recess meeting indefinitely, but court may recess until the following day).
35. *Rivera v. City of Laredo*, 948 S.W.2d 787 (Tex.App. – San Antonio 1989, writ denied).
36. Texas Attorney General Opinion No. JC-0285 (2000).
37. Texas Government Code Section 551.001 (6) (Vernon Supp. 2001).
38. Texas Local Government Code Section 22.039 (Vernon 1999).
39. Texas Local Government Code Section 23.028 (Vernon 1999).

40. Texas Government Code Sections 311.013 and 312.015 (Vernon 1998).
41. Texas Government Code Sections 311.013 and 312.015 (Vernon 1998).
42. *Cox Enterprises, Inc., v. Board of Trustees of Austin I.S.D.*, 706 S.W.2d 956 (Tex. 1986).
43. *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 gathering of water district board with landowners, where one board member asked question and another board member answered questions, even though board members did not discuss business among themselves).
44. Texas Attorney General Opinion No. DM-95 (1992).
45. Texas Attorney General Opinion No. JC-0313 (2000).
46. Texas Government Code Section 551.0035 (as added by Texas Senate Bill 170, 77<sup>th</sup> Legislature, Regular Session (2001)).
47. Texas Attorney General Opinion No. DM-95 (1992).
48. *Hitt v. Mabry*, 687 S.W.2d 791 (Tex.App. – San Antonio 1985, no writ)(school trustees violated Open Meetings Act by telephone conferencing); and *Harris County Emergency Service Dist. #1 v. Harris County Emergency Corps*, 999 S.W.2d 163 (Tex. App – Houston [14<sup>th</sup> Dist.] 1999, no writ.) (evidence that one board member of five-member county emergency service district occasionally used telephone to discuss agenda for future meetings with one other board member did not amount to Open Meetings Act violation).
49. Texas Attorney General Opinion No. DM-95 (1992).
50. Texas Attorney General Opinion Nos. DM-473 (1998) (governing body may adopt procedural rules not inconsistent with constitution, statutes, or charter provisions) and H-188 (1973) (governing body may adopt reasonable rules of procedure for open meetings, including Robert's Rules of Order); Texas Local Government Code Section 22.038 (c) (Vernon 1999) (governing body of type A city determines rules of procedure for its meetings).
51. Texas Attorney General Opinion No. DM-473 (1998).
52. Texas Government Code Section 551.103 (Vernon 1994).
53. Texas Local Government Code Section 22.037 (Vernon 1999).
54. Clark, Ronald H., *Texas Municipal Law and Procedure Manual*, 3<sup>rd</sup> edition, p. 4-3.
55. Texas Attorney General Opinion Nos. LO 94-028 (1994), DM-207 (1993), JM-903 (1988), and JM-584 (1986).
56. Texas Government Code Section 551.125 (Vernon Supp. 2001).
57. Texas Attorney General Opinion No. JC-0352 (2001).
58. Texas Attorney General Opinion No. JC-0352 (2001) at 4.

59. Texas Government Code Section 551.127 (Vernon Supp. 2001).
60. Texas Government Code Section 551.128 (Vernon Supp. 2001).
61. Texas Attorney General Opinion No. H-188 (1973).
62. Texas Attorney General Opinion Nos. LO 96-111 (1996) and H-188 (1973).
63. Texas Attorney General Opinion No. H-188 (1973).
64. Texas Attorney General Opinion Nos. LO 96-111 (1996) and H-188 (1973).
65. Texas Attorney General Opinion Nos. DM-473 (1998) and H-188 (1973).
66. Texas Attorney General Opinion No. DM-473 (1998).
67. Texas Attorney General Opinion Nos. LO 96-111 (1996) and H-188 (1973).
68. Texas Government Code Section 551.021 (Vernon 1994); *see also* Texas Attorney General Opinion No. H-1163 (1978) (minutes must record every action of governing body).
69. Texas Government Code Section 551.022 (Vernon 1994); *see also* Texas Attorney General Opinion No. ORD-225 (tapes of meetings used to assist in writing minutes are open records).
70. Texas Government Code Section 551.023 (Vernon 1994).
71. Texas Government Code Section 551.071 - 551.076 (Vernon 1994 & Supp. 2001).
72. Texas Government Code Section 551.074 (Vernon 1994).
73. Texas Government Code Section 551.102 (Vernon 1994).
74. Texas Attorney General Opinion No. DM-149 (1992) (members of advisory committee are not public officers or employees); *Board of Trustees v. Cox Enterprises*, 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) (governing body may meet in executive session to discuss officers and employees only; independent contractors are not officers or employees).
75. Texas Attorney General Opinion No. H-496 (1975) (deliberation about class of employees not allowed in executive session).
76. *See City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991) (Open Meetings Act does not raise due process implications; individual notice is not required).
77. *See, e.g., Point Isabel Independent School District v. Hinojosa*, 797 S.W.2d 176 (Tex. App. – Corpus Christi 1990, writ denied).
78. *See Mayes v. City of DeLeon*, 922 S.W.2d 200 (Tex.App. – Eastland 1996, writ denied).
79. *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991) (Open Meetings Act does not raise due process implications; individual notice is not required); *Rettberg v. Texas Department 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).

80. *See, for example*, Texas Local Government Code Sections 21.002 (Vernon 1999) (hearing for removal of city council member in general-law city) and 22.077 (Vernon 1999) (hearing for removal of certain municipal officers in type A city).
81. *See* Texas Government Code Section 551.074 and Texas Attorney General Opinion No. JM-6 (1983) (members of governing body may exclude non-members from closed meeting).
82. Texas Government Code Section 551.074 (Vernon 1994).
83. Texas Attorney General Opinion No. JM-1191 (1990).
84. Texas Government Code Section 551.074 (a) (Vernon 1994).
85. *Board of Trustees v. Cox Enterprises*, 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).
86. Texas Attorney General Opinion Nos. JM-100 (1983) and JM-238 (1984).
87. Texas Government Code Section 551.129 (as added by Texas Senate Bill 695, 77<sup>th</sup> Legislature (2001)).
88. Texas Attorney General Opinion No. JC-0233 (2000). *See also Finlan v. City of Dallas*, 888 F. Supp. 779, 782 n.9 (N.D. Tex. 1995).
89. Texas Government Code Section 551.072 (Vernon 1994).
90. Texas Attorney General Opinion No. MW-417 (1981).
91. Texas Government Code Section 551.076 (Vernon 1994).
92. Texas Government Code Section 551.073 (Vernon 1994).
93. Texas Government Code Section 551.088 (as renumbered by Texas House Bill 2812, Section 21.001 (50), 77<sup>th</sup> Legislature, Regular Session (2001)).
94. Texas Government Code Section 551.086 (Vernon Supp. 2001).
95. *See, e.g.*, Texas Attorney General Opinion Nos. LO-97-096 (1997) (city council not authorized to discuss tax abatement in executive session); DM-191 (1992) (governmental body not allowed to meet privately with third parties without complying with Open Meetings Act).
96. Texas Government Code Section 551.087 (as renumbered by Texas House Bill 2812, Section 21.001 (49), 77<sup>th</sup> Legislature, Regular Session (2001)).
97. *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 gathering of water district board with landowners, where one board member asked question and another board member answered questions, even though board members did not discuss business among themselves).
98. Texas Government Code Section 551.002 (Vernon 1994).

99. *Shackelford v. City of Abilene*, 585 S.W.2d 665 (Tex. 1979); Texas Government Code Section 551.004 (Vernon 1994).
100. *See, generally*, Texas Government Code Sections 551.041, 551.043, and 551.050 (Vernon 1994).
101. Texas Attorney General Opinion No. JC-0057 (1999) at 5.
102. Texas Attorney General Opinion No. JC-0057 (1999).
103. *See, generally*, Texas Government Code Sections 551.041, 551.043, and 551.050 (Vernon 1994).
104. Texas Attorney General Opinion No. JC-0057 (1999).
105. Texas Government Code Section 551.101 (Vernon 1994); *see also Lone Star Greyhound Park v. Texas Racing Commission*, 863 S.W.2d 742 (Tex. App. – Austin 1993, writ denied) (presiding officer’s announcement of content of applicable section gives sufficient notice).
106. Texas Government Code Section 551.103 (Vernon 1994).
107. Texas Government Code Section 551.102 (Vernon 1994).
108. Texas Attorney General Opinion No. JC-0285 (2000) and Texas Government Code Section 551.101 (Vernon Supp. 2001).
109. Texas Government Code Section 551.144 (Vernon Supp. 2001).
110. *Id.*
111. Texas Attorney General Opinion No. JC-0375 (2001).
112. Texas Attorney General Opinion No. JM-238 (1984). *See also* Texas Attorney General Opinion No. MW-417 (1981).
113. Texas Attorney General Opinion No. JM-1004 (1989).
114. Texas Attorney General Opinion No. MW-417 (1981).
115. *See Finlan v. City of Dallas*, 888 F.Supp. 779, 787 (N.E. Tex. 1995).
116. Texas Attorney General Opinion No. JM-1004 (1989).
117. Texas Attorney General Opinion Nos. JM-6 (1983) and LO-97-017 (1997); *see also* Texas Attorney General Opinion No. JM-238 (1984)(whether particular person may be admitted to closed meeting with attorney must be decided by a case-by-case analysis of all relevant facts).
118. *See* Texas Local Government Code Section 22.073 (requires city secretary in Type A city to attend all meetings and keep required minutes).
119. Texas Attorney General Opinion No. JM-6 (1983).
120. Texas Attorney General Opinion No. JC-0375 (2001).

121. *Board of Trustees v. Cox Enterprises*, 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 Service Commission*, 864 S.W.2d 163, 166 (Tex.App. – Tyler 1993, no writ).
122. *Board of Trustees v. Cox Enterprises*, 679 S.W.2d 86 (Tex. App. – Texarkana 1984), *aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986).
123. Texas Government Code Section 551.102 (Vernon 1994); *Nash v. Civil Service Commission*, 864 S.W.2d 163, 166 (Tex.App. – Tyler 1993, no writ) (actual vote or decision must be made in open meeting).
124. Texas Government Code Section 551.103 (Vernon 1994).
125. Texas Attorney General Opinion No. JM-840 (1988).
126. Texas Government Code Section 551.103 (Vernon 1994).
127. Texas Government Code Section 551.145 (Vernon 1994).
128. Texas Government Code Sections 551.104 & 551.146 (Vernon 1994).
129. Texas Government Code Sections 551.104 & 551.146 (Vernon 1994).
130. *Zamora v. Edgewood I.S.D.*, 592 S.W.2d 649 (Tex. Civ. App. – Beaumont 1979, writ ref'd n.r.e.); Texas Attorney General Opinion No. JM-351 (1985) at 2.
131. Texas Attorney General Opinion Nos. DM-227 (1993) and LO-98-033 (1998).
132. Texas Attorney General Opinion No. LO-98-033 (1998).
133. Texas Attorney General Opinion No. JC-0120 (1999).
134. Texas Government Code Section 551.104 (Vernon 1994).
135. Texas Attorney General Opinion No. JM-1071 (1989).
136. Texas Government Code Sections 551.104 & 551.146 (Vernon 1994).
137. *See also* Texas Attorney General Opinion 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).
138. *See* Texas Attorney General Opinion Nos. ORD-605 (1992), ORD-485 (1987), and ORD-491 (1988).
139. *See* Texas Attorney General Opinion Nos. ORD-145 (1976), ORD-116 (1975), and ORD-77 (1975).
140. *See, for example*, Texas Attorney General Opinion No. ORD-635 (1995).
141. *See, e.g.*, Texas Attorney General Opinion Nos. ORD-225 (1979) and JM-1143 (1990).
142. *See, e.g.*, Texas Attorney General Opinion Nos. ORD-462 (1987), ORD-574 (1990) (inter-agency and intra-agency written memoranda containing advice, recommendations and opinion

can be withheld), and ORD 635.

143. Texas Government Code Section 551.045 (Vernon 1994).
144. Texas Attorney General Opinion No. JM-985 (1988).
145. *See River Rd. Neighborhood Association v. South Tex. Sports*, 720 S.W.2d 551, 557-558 (Tex. App. – San Antonio 1986, writ dism'd w.o.j.).
146. Texas Government Code Section 551.045 (Vernon 1994).
147. *Piazza v. City of Granger*, 909 S.W.2d 529 (Tex. App.-- 3<sup>rd</sup> Dist. 1995, no writ).
148. Texas Government Code Section 551.047 (Vernon 1994).
149. *McConnell v. Alamo Heights Independent School District*, 576 S.W.2d 470 (Civ.App. – San Antonio 1978, writ ref'd n.r.e.) (media not entitled to notice unless they request it).
150. Texas Government Code Section 551.142 (Vernon 1994).
151. *See, e.g., Forney Messenger, Inc. v. Tennon*, 959 F.Supp. 389 (N.D. Texas 1997) (injunctive relief available for violations of Open Meetings Act) and *Board of Trustees v. Cox Enterprises*, 679 S.W.2d 86 (Tex. App. – Texarkana 1984) *aff'd in part, rev'd in part on other grounds*, 706 S.W.2d 956 (Tex. 1986) (declaratory judgment available for violations of Open Meetings Act).
152. Texas Government Code Section 551.141 (Vernon 1994).
153. *Ferris v. Board of Chiropractic Examiners*, 808 S.W.2d 514 (Tex. App. – Austin 1991, writ denied).
154. Texas Government Code Section 551.146 (Vernon 1994).
155. Texas Government Code Section 551.141 (Vernon 1994); *see also Point Isabel Independent School District v. Hinojosa*, 797 S.W.2d 176 (Tex. App. – Corpus Christi 1990, writ denied) (holding actions violating notice provisions voidable).
156. *Collin County v. Homeowners Association*, 716 F.Supp. 953, 960 (N.D. Tex. 1989).
157. *Lower Colorado River Authority v. City of San Marcos*, 523 S.W. 2d 641 (Tex. 1975) (increase in electric rates effective only from date re-authorized at lawful meeting).
158. *Ferris v. Board of Chiropractic Examiners*, 808 S.W.2d 514 (Tex. App. – Austin 1991, writ denied).
159. Texas Government Code Section 551.144 (Vernon Supp. 2001).
160. *Tovar v. State*, 978 S.W. 2d 584 (Tex. Crim. App. 1998).
161. Texas Government Code Section 551.144 (Vernon Supp. 2001).
162. Texas Government Code Section 551.143 (Vernon 1994).
163. Texas Government Code Section 551.145 (Vernon 1994).

164. Texas Penal Code Section 12.23 (Vernon 1994).
165. Texas Government Code Section 551.146 (Vernon 1994).
166. Texas Penal Code Section 12.22 (Vernon 1994).
167. *Tovar v. State*, 978 S.W. 2d 584 (Tex. Crim. App. 1998).
168. Texas Government Code Section 551.144 (Vernon Supp. 2001).
169. Texas Attorney General Opinion No. JC-0307 (2000).
170. Texas Government Code Sections 402.041 - 402.045 (Vernon 1998).
171. Texas Attorney General Opinion No. DM-95 (1992).
172. Texas Attorney General Opinion Nos. JM-840 (1988); H-772 (1976).
173. Texas Attorney General Opinion No. JC-0294 (2000).