



The Governor's Suspension of Certain OMA Provisions in Response to COVID-19

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Purpose of the Open Meetings Act

“The Act is intended to safeguard the public’s interest in knowing the workings of its governmental bodies. A public body’s willingness to comply with the Open Meetings Act should be such that the citizens of Texas will not be compelled to resort to the courts to assure that a public body has complied with its statutory duty.”

Cox Enterprises, Inc. v. Bd. of Trustees of Austin Indep. Sch. Dist., 706 S.W.2d 956, 960 (Tex. 1986).



General requirements

- ▶ Meetings must be open to the public
- ▶ Notice of meetings
- ▶ Record-keeping requirements
- ▶ Limited closed meetings



Application of the Act – Governmental body

- ▶ Statewide entities: boards, commissions, departments, committees or agencies within the legislative or executive branch that are run by elected or appointed officials having control over public business
- ▶ Local entities: county commissioners courts, municipal governing bodies, school district board of trustees
- ▶ Government subsets: bodies with deliberative authority and either rulemaking or quasi-judicial power, special districts created by law
- ▶ Other entities: local workforce development boards, certain nonprofits eligible for federal funds, certain property owners associations, entities made subject to the Act by other law



Application of the Act - Meeting

- ▶ A quorum of members or a quorum and another person exchanges information about public business or public policy over which the body has supervision or control
- ▶ The governmental body calls a gathering of a quorum of members to receive or give information to or from a third person about public business or public policy over which the governmental body has supervision or control
- ▶ Excludes certain social functions unrelated to public business, and conventions, workshops and press conference if discussion of public business is incidental to the event



Notice of meetings

“A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.”

TEX. GOV'T CODE § 551.041



Timing of posting notice

- ▶ Political subdivisions must post at least 72 hours before the scheduled time of the meeting
- ▶ Most governmental bodies with statewide jurisdiction must post notice at least seven days before the date of the meeting
- ▶ All governmental bodies must post notice at least 1 hour before a meeting to address an emergency



Physical location of notice

- ▶ Counties – on a bulletin board at a place convenient to the public in the county courthouse
- ▶ Municipal governmental bodies – on a bulletin board at a place convenient to the public in city hall
- ▶ School districts – on a bulletin board at a place convenient to the public in the central administrative office of the district
- ▶ Special districts extending into fewer than 4 counties – (1) at a place convenient to the public in the administrative office of the district, and (2) either on a bulletin board at the courthouse of each county in the district or on the district's website. Special districts extending into greater than 4 counties must also post with the Secretary of State



Internet posting of notice

- ▶ Some entities must post notice on the Internet if they maintain a website or have populations over a certain size:
 - Municipalities
 - Counties
 - School districts
 - Junior College Districts
 - Economic development corporations
 - Regional mobility authorities



Meetings must be open to the public

“Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter”

TEX. GOV'T CODE § 551.002



Logistical requirements for open meetings

- ▶ Hold the meeting in a location accessible to the public
 - In or near the boundaries of the governmental body
 - Without special access requirements that may prevent entry for the public
- ▶ Provide space for the public so that they may attend the meeting
- ▶ Provide reasonable visual or audio accommodations if requested in advance of the meeting



Public comment

- ▶ State entities may, but are not required to, provide for public comment during their meetings

- ▶ Political subdivisions must allow members of the public interested in speaking on an item on the agenda to do so before or during the governmental body's discussion of that item
 - May create reasonable rules

 - May not discriminate based on the position taken

 - May not prohibit criticism of the governmental body



Open meeting recordkeeping

- ▶ Governmental bodies must prepare and keep minutes or make a recording of each open meeting
- ▶ If keeping minutes, the minutes must state the subject of each deliberation and indicate each vote, order, decision, or other action taken
- ▶ The minutes and recordings are public records and must be available for public inspection



Closed meetings or executive sessions

- ▶ The Act specifies instances when governmental bodies may conduct closed meetings, including, among others, consultations with an attorney about pending or contemplated litigation, and deliberations about personnel matters

- ▶ Procedures for closed meetings:
 - Notice requirements still apply

 - The governmental body must first convene in open session

 - The governmental body must identify the specific legal provision allowing for the closed session

 - No final action or vote may be taken in a closed meeting



Closed meeting recordkeeping

- ▶ A governmental body shall either keep a certified agenda or make a recording of proceedings of each closed meeting, except for attorney consultations under section 551.071

- ▶ If keeping a certified agenda, it must include:
 - A statement of the subject of each deliberation
 - A record of any further action taken
 - An announcement by the presiding officer at the beginning and end of the closed session indicating the date and time
 - Certification by the presiding officer that an agenda kept under subsection (a) is a true and correct record of the proceedings



Penalties and remedies

- ▶ An action taken by a governmental body in violation of this chapter is voidable
- ▶ An interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the Act
- ▶ A court may assess costs and attorney fees to the prevailing party
- ▶ Criminal penalties for illegal closed meetings, not keeping or improperly disclosing a certified agenda, and meetings conducted out of public view through a series of communications



Meeting by telephone

- ▶ A governmental body may use a telephone conference call to conduct a meeting:
 - to address an emergency situation if convening a quorum in one location is difficult
- ▶ Subject to the Act's notice requirements
- ▶ Each part of the open meeting must be audible to the public at the location specified in the notice of the meeting



Meeting by videoconference

- ▶ Governmental bodies may use videoconferencing to ensure members can attend the meetings
- ▶ The requirements for a quorum present at the physical meeting location vary depending on the type of governmental body
- ▶ Technological requirements exist to ensure members of the public can observe the full discussions occurring by videoconference
- ▶ Not limited to an emergency situation



DIR videoconference technical standards

- ▶ DIR standards at: <https://pubext.dir.texas.gov/portal/internal/resources/DocumentLibrary/Videoconferencing%20Guidelines.pdf>



Governor Abbott's temporary suspension of certain OMA provisions

- ▶ Disaster declared March 13, 2020
- ▶ Suspension letter issued March 16, 2020
- ▶ Effective until terminated by the Governor or until the March 13, 2020 disaster declaration is lifted or expires
- ▶ Available on the Texas Attorney General website at:
<https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/COVID-19-OMA-Suspension-Letter.pdf>
- ▶ DIR guidance document published March 19, 2020 –
<https://pubext.dir.texas.gov/portal/internal/resources/DocumentLibrary/Tips%20for%20Conducting%20Open%20Meetings%20Remotely.pdf>



Purpose of the suspension is to avoid in-person meetings

“[S]trict compliance with these laws could prevent, hinder, or delay necessary action by numerous governmental bodies in relation to efforts to cope with the COVID-19 disaster. State and local officials can slow the spread of COVID-19 by avoiding meetings that bring many people into congregate settings”



The majority of TOMA is still in effect

- ▶ The Governor's suspension order provides, "COVID-19 notwithstanding, Texans deserve transparency in government. To that end, OAG's request would leave important open-meeting protections in place," including:
 - Public written notice
 - Recording of the meeting for members of the public to access
 - Public participation through telephonic means or videoconferencing



Categories of suspended provisions

- ▶ Those statutes that require a quorum or a presiding officer to be physically present at the specified location of the meeting
- ▶ Those statutes that require physical posting of a notice
- ▶ Those statutes that require the telephonic or videoconference meeting to be audible to members of the public who are physically present at the specified location
- ▶ Those that may be interpreted to require face-to-face interaction between members of the public and public officials



Statutes requiring physical presence at meeting location

- ▶ Those statutes that require a quorum or a presiding officer to be physically present at the specified location of the meeting:
 - TEX. GOV'T CODE § 551.122(b)
 - TEX. GOV'T CODE § 551.127(a-3), (b)–(c), (e), (h)–(i)
 - TEX. GOV'T CODE § 551.130(c)–(d), (i)
 - A quorum must still participate in the telephonic or videoconference meeting.



Statutes requiring physical posting at a specified location

- ▶ Those statutes that require physical posting of a notice:
 - TEX. GOV'T CODE § 551.043(b)(2)–(3)
 - TEX. GOV'T CODE § 551.049
 - TEX. GOV'T CODE § 551.050
 - TEX. GOV'T CODE § 551.0501
 - TEX. GOV'T CODE § 551.051
 - The online notice must include a toll-free dial-in number or a free-of-charge videoconference link.
 - The online notice to include an electronic copy of any agenda packet



Statutes requiring audible meeting for public in attendance at meeting location

- ▶ Those statutes that require the telephonic or videoconference meeting to be audible to members of the public who are physically present at the specified location
 - TEX. GOV'T CODE § 551.121(f)
 - TEX. GOV'T CODE § 551.122(d)
 - TEX. GOV'T CODE § 551.125(e)–(f)
 - TEX. GOV'T CODE § 551.126(d)(1)
 - TEX. GOV'T CODE § 551.127(f), (j)
 - TEX. GOV'T CODE § 551.130(e)–(f)
 - TEX. GOV'T CODE § 551.131(e)(1)
 - The dial-in number or videoconference link must make the meeting audible to the public and allow for two-way communication.
 - A recording of the meeting must be available to the public.



Statutes requiring face-to-face meetings

- ▶ Those that may be interpreted to require face-to-face interaction between members of the public and public officials
 - TEX. GOV'T CODE § 551.007(b)
 - TEX. GOV'T CODE § 551.125(b)(1), (d)
 - Governmental bodies must offer alternative methods of communicating with their public officials.



Suspension's effectiveness

- ▶ The suspensions are in effect “until terminated by the Office of the Governor or until the March 13, 2020 disaster declaration is lifted or expires.”



Office of the Attorney General TOMA guidance during the disaster

OMA Suspensions during COVID-19

(888) 672-6787

TOMA@oag.texas.gov

Open Government Hotline

(877) OPEN TEX

(877) 673-6839