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B. D. Griffin

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March 3, 2025

via email to: opinion.committee@oag.texas.gov

The Honorable Ken Paxton
Attorney General, State of Texas
Attention: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

RE: *Quorum of members of a home rule city council when the mayor votes in limited circumstances under the Texas Open Meetings Act*

Dear Attorney General Paxton:

B. D. Griffin, County Attorney of Montgomery County, Texas respectfully requests an opinion on the number of members of a home rule city council that constitutes a quorum when the mayor has the authority to vote only in the event of a tie or removal of city officers.

Duke W. Coon, Mayor of the City of Conroe, has requested this office seek an opinion on issues relating to the Texas Open Meetings Act. A copy of Mayor Coon's written request is enclosed with this request for opinion. A copy of the memorandum dated February 28, 2025 from Mike Garner, City Attorney for the City of Conroe is also enclosed.

Specifically, the Montgomery County Attorney submits the following questions:

1. Does a meeting of three (3) city Councilmenⁱ (not including the mayor) constitute a quorum of a home rule municipality's governing body under the Texas Open Meetings Act when (a) the mayor is a member of the city council but is not entitled to vote except in the events of a tie or removal of city officers and (b) when the city charter defines a quorum "to do business" as 2/3rds of the council including the mayor?

2. Does the Texas Open Meetings Act apply if three (3) city Councilmen (not including the mayor) of such home rule city meet outside of a properly noticed meeting to discuss city business when a tie vote rarely occurs?

Opinion request City of Conroe
March 3, 2025

The Texas Open Meetings Act defines “Quorum” in Section 551.001(6) as “a majority of a governmental body, unless defined differently by applicable law or rule of the charter of the governmental body.” TEX. GOV’T CODE § 551.001(6) (V.A.T.S. 2021). The City of Conroe (“Conroe” or the “City”) is a home rule city in Montgomery County. Section 1.01 of Conroe’s charter states “[t]he governing body of the City of Conroe shall be a mayor-council composed of five (5) councilmen and a mayor elected at large from the City of Conroe as hereinafter provided.” In section 3.10, Conroe’s charter provides

“[t]he Mayor and all Councilmen are qualified members of the City Council. Two-thirds (2/3) of the qualified members of the City Council shall constitute a quorum to do business and the affirmative vote of a majority of those present shall be necessary to adopt any ordinance or resolution.”

The City’s charter does not define “meeting”. Section 3.09 provides for regular and special meetings of the city council. Section 3.09 does not require a quorum to hold a meeting. The language of § 3.10 defines 2/3rds of qualified members to be a quorum “to do business” and “to adopt any ordinance or resolution (by an affirmative vote of a majority of those present)”.

Section 3.01(d) of Conroe’s charter provides (5) councilmembers and a mayor are elected to four (4) year terms. The Mayor is entitled to vote only in the event of a tie vote by the councilmembers present and to remove the City Secretary or City Attorney. Section 3.08 states “[t]he Mayor shall preside at meetings of the Council. He shall be entitled to vote upon matters considered by the Council only in case of a tie vote.” Sections 4.03 and 4.05, respectively, provide that the City Secretary and City Attorney serve “until removed by the majority of the total membership of the Council.”

The result of Sections 3.10, 3.01 and 3.08 is that three (3) councilmembers are a voting majority on most matters that come before the city council. As stated in Mayor Coon’s request letter to our office, some council members have asserted that three (3) members of the council may meet to discuss city business outside of a properly noticed meeting without violating the Texas Open Meetings Act (“TOMA”). There are concerns that this practice of three council members meeting outside of a noticed meeting violates the spirit, if not, the letter of TOMA. Additionally, there are concerns that such practice could be deliberation by a “walking quorum” under Section 551.143 of TOMA.

The issues presented here and upon which the Montgomery County Attorney requests an opinion are important issues to the community and are arising frequently. Your opinion on this matter will greatly aid the City of Conroe and the residents of Montgomery County. Thank you for your assistance in this matter. Please do not hesitate to contact me if you have any questions or if you are in need of additional information.

Respectfully,



B. D. Griffin,
County Attorney of Montgomery County, Texas

Opinion request City of Conroe
March 3, 2025

BDG/

Enclosure: Letter from Duke W. Coon, Mayor of City of Conroe
February 28, 2025 Memorandum from City of Conroe

cc: Duke W. Coon, Mayor
Michael Garner, City Attorney for City of Conroe

¹As described in Section 1.01 of the city charter and not including the mayor who is also a member of the city council.



Office of the Mayor
Duke W. Coon

CITY OF CONROE

Est. 1904

February 25, 2025

B. D. Griffin, Montgomery County Attorney
501 N. Thompson St Suite 300
Conroe, Texas 77301

Dear Mr. Griffin,

I hope as of this writing you and your staff are well; I sincerely appreciate your time and attention to this request. Mr. Griffin, I am coming to you to formally request your office seek an opinion from the Texas Attorney General regarding a matter of legal interpretation involving the City of Conroe's charter in relation to the Texas Open Meetings Act (TOMA). Specifically, I seek clarification on whether the City of Conroe's charter creates a loophole that permits a voting majority of the City Council to meet and deliberate city business outside of an open meeting, potentially circumventing the transparency and public access requirements established under TOMA. Given that some council members have publicly asserted that the charter permits such discussions, this matter raises serious concerns about transparency and public accountability.

If the AG's office determines that a loophole does indeed exist, I would also request their guidance on available solutions to close the loophole.

As you know, the Texas Open Meetings Act is designed to ensure transparency and accountability in government by requiring that deliberations and decisions made by elected officials occur in an open forum accessible to the public. However, it has been stated from the dais in an open meeting by some of our council members that provisions within the City of Conroe's charter allow them, a voting majority (3 of 5 voting council members, mayor does not vote but only for a tie) of the City Council, to discuss city business outside of a properly posted public meeting, raising concerns about compliance with state law.

Given the importance of maintaining public trust and adhering to both the letter and spirit of open government laws, it is in the best interest of the City of Conroe and Montgomery County to obtain an authoritative legal opinion from the Texas Attorney General on this matter. Such an opinion would provide necessary guidance to ensure our city governance remains transparent, accountable, and fully compliant with state law.

I appreciate your attention to this important matter and look forward to your guidance on the next steps. Please feel free to contact me if you require additional information.

Sincerely,



Duke W. Coon, Mayor
City of Conroe

300 West Davis, Suite 300
Conroe, Texas 77301
Office: 936-522-3012
duke.coon@cityofconroe.org

Sec. 3.10. - Rules of procedure.

The City Council shall determine its own rules of procedure and may compel the attendance of its members. The Mayor and all Councilmen are qualified members of the City Council. Two-thirds ($\frac{2}{3}$) of the qualified members of the City Council shall constitute a quorum to do business and the affirmative vote of a majority of those present shall be necessary to adopt any ordinance or resolution. Minutes of the proceedings of all meetings of the City Council shall be kept, to which any citizen may have access at all reasonable times and which shall constitute one of the archives of the City. The vote upon the passage of all ordinances and resolutions shall be taken by the "ayes" and "nays" and entered upon the minutes, and every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose under full caption, and shall be authenticated by the signature of the presiding officer and the person performing the duties of the City Secretary.



CITY OF CONROE

Est. 1904

MEMORANDUM

To: City Council
From: Mike Garner, City Attorney
Date: February 28, 2025
Re: Quorums under the Texas Open Meetings Act

Under the Texas Open Meetings Act (the Act), a quorum is a majority of a governmental body, unless defined differently by the governmental body's charter.¹ The City of Conroe's Home Rule Charter, as restated in the current City Council Rules, establishes a meeting of any four member of the City Council, to include the Mayor, as a quorum. Specifically:

"The Mayor and all Councilmen are qualified members of the City Council. Two-thirds ($\frac{2}{3}$) of the qualified members of the City Council shall constitute a quorum to do business and the affirmative vote of a majority of those present shall be necessary to adopt any ordinance or resolution."²

The City's Charter therefore includes the Mayor as part of the City Council, the City of Conroe's governmental body, for purposes of the Act³ and establishes a quorum of the City Council as any four members of the qualified members of the City Council:

$$\frac{2}{3} \times 6 = 4$$

This formula is supported by other provisions of the Charter. The Mayor is allowed to vote on a matter considered by the Council when there is a tie vote.⁴ The Mayor is also allowed to vote on the removal of the City Secretary and the City Attorney.⁵ Finally, the Charter requires three (3) City Councilmen to call a special meeting of the City Council.⁶ This provision *explicitly* allows three (3) City Councilmen to speak together about a matter of public business without constituting a quorum to call a special meeting. In other words, this very provision allows (3) City Councilmen to identify and discuss a matter of public concern and then call a special meeting of all qualified members of the

City Council to address the matter identified by the original three. By denying City Councilmen this authority, *only* the Mayor would be allowed to identify and place on meeting agendas public matters that are of concern to him.

While a quorum (four or more qualified members) of the City Council is required to hold a meeting to discuss and consider public business and/or take formal action⁷, a quorum is not allowed to deliberate public business outside of an open, public meeting.⁸ Deliberation includes a verbal or written exchange (such as an email) between a quorum of the City Council.⁹ When three or fewer qualified members of the City Council deliberate public business, those members are not in violation of the Act.

The notion that a quorum is created by the meeting of only three (3) of the five (5) City Councilmen is not supported by the law and dispelled by the very terms of the Charter discussed above:

- Two-thirds ($\frac{2}{3}$) of the qualified members of the City Council [*the Mayor and all Councilmen*] shall constitute a quorum to do business and the affirmative vote of a majority of those present shall be necessary to adopt any ordinance or resolution.
- The Charter requires either the Mayor or three (3) members of the City Council to call a special meeting of the City Council:
 - Practically speaking, the Charter allows three (3) Councilmen to *lawfully* discuss public matters in reaching a mutual decision to call a special meeting of the City Council.
 - Incorrectly holding that three (3) Councilmen creates a quorum and, therefore, the three cannot lawfully meet and discuss matters of public business *eviscerates the Councilmen's Charter established authority to consider the need and then call for a special meeting to address matter of great public concern to those three Councilmen, which amounts to good government.*
 - Any notion that the Act and Charter, not a *loophole*, allow three Councilmen to meet and discuss matters of public business creates unfair voting block prior to a notice public meeting is less than speculative. This notion is not supported by the facts. A review of meeting agendas and minutes shows :
 1. very few items placed on an open meeting agenda by City Councilmembers; and
 2. a vast majority of Council votes are either 5 to 0 or 4 to 1.

This provision of Section 3.09 of the Charter is why adoption of a rule in City Council's rules of procedure would impermissibly amend and/or strike a Councilman's right under the City Charter.

- Finally, three (3) Councilmen of the five (5) Councilmen do not equate to two-thirds ($\frac{2}{3}$) as required by the Charter.

$$3/5 = 0.60$$

$$0.60 < 2/3 \quad \text{or} \quad 0.60 \neq 2/3$$

In a very recent example of three qualified members of the City Council meeting outside of a noticed public meeting to discuss a public matter, was the hiring process of the City's new police and fire chiefs. The Mayor created two committees made up of himself and two Councilmen¹⁰, three qualified members of the City Council. The Mayor and the two Councilmen met with City staff to interview and evaluate candidates for the open positions of police and fire chief. These meetings were not noticed and open to the public. But because the number of qualified members (3) who met during this process was less than a quorum (4), the Charter and the Act were not violated.

If the Mayor and the two Councilmen, three qualified members of the City Council involved in the interview process, had subsequently communicated on this public issue outside of a noticed public meeting with another member of the City Council who was not part of the original, permissible meeting or communication, that subsequent communication would have created an impermissible quorum in violation of the Act and the City Charter.¹¹

¹ Tex. Gov't Code Ann. 551.001(6) (West 2021): "'Quorum' means a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body."

² Conroe, Tx. *Charter* § 3.10.

³ Conroe, Tx. *Charter* §§ 1.01, 3.10; Tex. Gov't Code § 551.001(6).

⁴ Conroe, Tx. *Charter* § 3.08.

⁵ Conroe, Tx. *Charter* §§ 4.03, 4.05.

⁶ Conroe, Tx. *Charter* § 3.09.

⁷ Tex. Gov't Code Ann. 551.001(4).

⁸ *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).

⁹ Tex. Gov't Code § 551.001(2).

¹⁰ Mayor Coon, CM Porter and CM Hardman outside of a public meeting discussed candidates the Police Chief and Mayor Coon, CM Porter and CM Wood outside of a public meeting discussed candidates for Fire Chief.

¹¹ Tex. Gov't Code Ann. § 551.143(a) (West 2019); Conroe, Tx. *Charter* § 3.10.