



# **Open Meetings Act Basic Training**

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Views expressed are those of the presenters, do not constitute legal advice, and are not official opinions of the Office of the Texas Attorney General.



# Certificate of Course Completion

## CERTIFICATE *of* COURSE COMPLETION

### Open Meetings Act

I, **Jane Doe**, certify that I have completed a course of training on the Texas Open Meetings Act that satisfies the legal requirements of Government Code, Section 551.005.

Certificate is issued effective this 24th day of October, 2016.



*NOTICE TO CERTIFICATE HOLDER: You are responsible for the safekeeping of this document as evidence that you have completed this open government training course. The Office of the Attorney General does not maintain a record of course completion for you and is unable to issue duplicate certificates. Government Code Section 551.005(c) requires the governmental body with which you serve to maintain this Certificate of Course Completion and make it available for public inspection.*

Certificate No.: 16-218093M



# Today's Agenda

- ▶ Applicability of the Act
- ▶ Notice requirements
- ▶ How to conduct open meetings
- ▶ Teleconferences, videoconferences, online message boards
- ▶ When closed sessions are permissible
- ▶ Penalties and remedies under the Act



# Applicability of the Open Meetings Act

- ▶ Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by the Act.
  
- ▶ The Act generally applies whenever there is:
  - a governmental body, and
  - that body is meeting



# The Definition of “Governmental Body”

- ▶ State boards, commissions, departments, committees or agencies within the legislative or executive branch
- ▶ County commissioners courts, municipal governing bodies, school boards, special district boards, and deliberative bodies with rulemaking or quasi-judicial authority that are part of a municipality or county
- ▶ Local workforce development boards
- ▶ Certain nonprofit corporations and property owners' associations



# The Definition of “Quorum”

- ▶ Generally, the Act applies whenever a quorum of a governmental body meets.
- ▶ A quorum is a majority of the governing body, unless otherwise defined by law.



# The Definition of “Meeting”

- ▶ The Act defines “meeting” in two ways.
  
- ▶ A “meeting” requires:
  - A gathering of a quorum of the governmental body; and either:
    - Deliberation about the governmental body’s public business or formal action taken by the governmental body, or
    - An opportunity provided by the governmental body for members to ask about, speak about, or listen to information relating to public business



# Applicability: Exceptions

- ▶ A gathering of a quorum at a:
  - Social function
  - Convention or workshop
  - Ceremonial event, or
  - Press conference
  
- ▶ Is not a meeting, provided:
  - No formal action is taken, and
  - Any discussion of public business is incidental to the authorized event



# Notice: Content

- ▶ A governmental body shall give written notice of the:
  - Date
  - Hour
  - Place
  - Subjects to be considered at the meeting of the governmental body



# Deadlines for Posting Notice

- ▶ Political subdivisions must generally post notice 72 hours before a meeting.
- ▶ Governmental bodies with statewide jurisdiction must generally post notice 7 days prior to a meeting.
- ▶ In emergencies, notice must be posted 2 hours before the meeting.



# Locations for Posting Notice

- ▶ Notice must be posted in a place readily accessible to the general public at all times during the required posted period.
  
- ▶ Sections 551.048-551.056 of the Government Code provide detailed posting requirements for state entities, counties, cities, school districts, and other districts and political subdivisions, which vary depending on the type of governmental body:
  - A state governmental body is required to provide notice to the Secretary of State, which is then posted on the Internet
  
  - Local government bodies are generally required to post notice on a bulletin board with convenient public access as well as on their Internet sites



# Emergency Meetings

- ▶ The Act creates an exception to the 72-hour or 7-day posting requirements in the event of an emergency, which is defined as a situation when immediate action is required because of:
  - An imminent threat to public health and safety; or
  - A reasonably unforeseeable situation



# Posting Notice for Emergency Meetings

- ▶ When calling an emergency meeting:
  - Post the notice at least 2 hours before the meeting
  - Notify the media if they have previously requested to receive special notice in the event of an emergency
  - Clearly identify the emergency or urgent public necessity in the notice



# Notice for Recesses

- ▶ Reposting of notice is not required when recessing if:
  - The meeting resumes the following regular business day; and
  - The recess is made in good faith and not to circumvent the Act



# Consequences of Improper Notice

- ▶ Actions taken without proper notice are voidable.
- ▶ Improperly noticed actions may be ratified at a subsequent meeting where the subject matter has been properly noticed.



# Location for Open Meetings

- ▶ Meetings must be:
  - Accessible to the public
  - Generally located in the boundaries of the governmental body's jurisdiction
  - Accessible to individuals with disabilities



# Conducting Open Meetings

- ▶ To convene a meeting, a quorum is required.
- ▶ If members leave, resulting in the loss of a quorum, the meeting should be recessed until a quorum is again present.



# Keep Minutes of Open Meeting

- ▶ The Act requires a governmental body to prepare and keep minutes or make a recording of each open meeting.
- ▶ The minutes must:
  - State the subject of each deliberation; and
  - Indicate each vote, order, decision, or other action taken
- ▶ Minutes and recordings are public records and shall be available for public inspection and copying.



# Rights of the Public in an Open Meeting

- ▶ The public must be able to:
  - Attend
  - Record by video, audio, or other means
  
- ▶ If allowing the public to speak, the governmental body may impose reasonable limits but cannot unfairly discriminate among speakers based on their views for or against a specific matter.



# Broadcasting Open Meetings

- ▶ All governmental bodies may broadcast their meetings over the Internet, and certain higher educational institutions are required to do so.
  
- ▶ Some governmental bodies are required to record and post on the Internet recordings of their regularly scheduled open meetings, including:
  - Board of trustees for a school district with a student enrollment of 10,000 or more
  - Governing body of a home-rule municipality with a population of 50,000 or more
  - County commissioners court of a county with a population of 125,000 or more
  - Certain transit authorities or departments



# Teleconferencing

- ▶ A governmental body may hold a meeting by telephone conference if an emergency or urgent public necessity exists and convening at one location is difficult or impossible.
- ▶ Some specific governmental bodies are authorized to meet by telephone conference in other circumstances.
- ▶ A governmental body may use a conference call to consult with its attorney.



# Videoconferencing

- ▶ Members of a governmental body may participate remotely in a meeting by videoconference call when certain requirements are met, including, among others:
  - The video and audio feed of the remote member's participation in the meeting must be broadcast live
  - The member of the governmental body presiding over the meeting must be present in a physical space that is open to the public
  - Depending on the type of governmental body, a quorum may still need to be present in the meeting place



# Online Message Boards

- ▶ Members of a governmental body may deliberate about public business or policy on an online message board without violating the Act, as long as certain requirements are met.
- ▶ No voting or formal action may be taken through the online message board.
- ▶ The Act establishes posting and archiving requirements, as well as technical requirements to create the online message board.



# Closed Meetings

- ▶ A governmental body may meet in a closed meeting or executive session when expressly authorized to do so by statute:
  - The Open Meetings Act contains more than 25 exceptions to the requirement that meetings be open
  - Statutes outside of the Act may also apply to specific entities to allow closed sessions in specific circumstances
- ▶ Authority to meet in closed session may not be implied by statute.



# Attorney Consultations

- ▶ A governmental body may not conduct a private consultation with its attorney except:
  - When the governmental body seeks the advice of its attorney about pending or contemplated litigation or a settlement offer, or
  - On a matter that requires the attorney to meet in a closed meeting in order to comply with the Texas Disciplinary Rules of Professional Conduct.



# Deliberation about Personnel Matters

- ▶ A governmental body may meet in a closed meeting to:
  - Deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or
  - Hear a complaint or charge against an officer or employee
  
- ▶ This exception does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing.



# Deliberations about Real Property

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



# Limitation on Closed Meetings

- ▶ To the extent that closed meetings are permitted, they are only for purposes of deliberation.
- ▶ Any vote or final action on an issue must be conducted in an open meeting.



# Procedures for a Closed Meeting

- ▶ Post notice as usual.
- ▶ Do not begin until a quorum is present.
- ▶ First convene in an open meeting.
- ▶ Identify in the open meeting the legal provision authorizing the governmental body to meet in closed session.
- ▶ Keep a certified agenda or make a tape recording as required by law.



# Keep a Certified Agenda or Recording

- ▶ The Act requires a governmental body to make and keep a certified agenda or recording of most closed meetings.
  
- ▶ Certified agendas are required to indicate:
  - The presiding officer announced the date and time at both the beginning and end of the meeting
  - A statement of the subject matter of each deliberation
  - A record of any further action taken
  - Certification that the agenda is a true and correct record of the closed meeting



# Maintaining a Certified Agenda or Recording

- ▶ A certified agenda or recording of a closed meeting is confidential and is not available to the public except by court order.
- ▶ A person who knowingly and without lawful authority makes a certified agenda or recording public commits a Class B misdemeanor.
- ▶ A certified agenda or recording shall be preserved for at least 2 years.



# Who May Attend a Closed Meeting

- ▶ Only members of the governmental body have a right to attend.
  
- ▶ An employee may attend if the employee's presence is:
  - Necessary to the closed meeting, and
  
  - Would not defeat its legal basis
  
- ▶ No one whose presence would undermine the legal basis for the closed meeting may attend.



# Criminal Penalties

- ▶ Criminal penalties exist for knowingly violating the Act in four circumstances:
  - Failing to keep a certified agenda or recording
  - Unlawfully disclosing a certified agenda or recording
  - Holding or participating in an illegally closed meeting
  - Circumventing the Act by meeting with numbers less than a quorum
- ▶ Enforced by district and county attorneys



# Beware of Walking Quorums

- ▶ “A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent [the Act] by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of [the Act].”

Tex. Gov't Code § 551.143



# Civil Remedies

- ▶ The Act permits a court to void any action taken in violation of the Act.
- ▶ Individuals may sue to prevent threatened actions in violation of the Act.



# Open Meetings Act Handbook

- ▶ Available online at:

[https://www.texasattorneygeneral.gov/files/og/OMA\\_handbook\\_2016.pdf](https://www.texasattorneygeneral.gov/files/og/OMA_handbook_2016.pdf)



# Open Government Hotline

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