

Open Meetings Act Refresher



Type B Board
Presentation

April 16, 2018

General Rule - Meetings

- Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by the Texas Open Meetings Act.
 - The Act generally applies whenever there is:
 - a gov't body (rule making or quasi judicial authority or as provided by ordinance), and
 - that body is meeting.
 - Certificate of Formation and the Local Government Code require that this Corporation be subject to the Open Meetings Act.
-

Definition of “Meeting”

- Meeting is a gathering of a **quorum** of the governmental body and a discussion about the public business between the members or with a third party
 - Gathering at a social function, regional/state/local convention or workshop, ceremonial event, or press conference is not a meeting **if**:
 - No formal action **and**
 - Any discussion of public business is merely incidental to the organized event
-

Examples of Meetings

- Quorum appears at regular meeting of the Board.
- Quorum meets at a social function related to Type B business and discusses public business.
- Quorum attends a meeting of another entity and discusses public business.
- Quorum meets with City Staff outside regular meeting.
- Electronic communications between a quorum – ex: reply all to email, group texts, or Facebook.

Required Notice for Items at Meetings

- At least 72 hours written notice of the:
 - Time & Date of Meeting
 - Place
 - Subjects to be considered
- Limited right to post on 2 hours notice in actual emergencies with threat to public health/safety
- Public comment OK without notice of subject, but Board cannot discuss or deliberate item brought up during public comment

Recess, Postponement, Cancellation

- 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.
- No notice needed to cancel
- Postponement of meeting OK in catastrophe

Quorum

- Quorum – usually majority – required to convene meeting and conduct business
- If no quorum is present, gathering does not violate OMA (exception – circumvention or walking quorum)
- If quorum is lost, business may not be conducted

Meetings must be Open

- Located in Texas
- Accessible to Public
- Accessible to persons with disabilities
- Governmental body may not vote in an open session by secret written ballot.
- Governmental body may not take action by circulated letter without a meeting.
- All action must be in open session.

Crimes violating Open Mtgs Act

- Participating in a “closed meeting” other than a permissible executive session
- Participating in a “closed meeting” w/ knowledge that no certified agenda or minutes being made
- Disclosure of certified agenda
- Punishable by up to 30 days jail & \$500 fine

Crimes Continued – Walking Quorum

“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 Ann. § 551.143.

Walking Quorum

- Courts have defined “walking quorum” as:
- “serial meetings of less than a quorum.” *Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App.—San Antonio 2003).
 - “overlapping series of meetings or telephone conferences [when] a quorum of members was not in the same room at the same time” *Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d 433 (W.D. Tex. 2001).

Treatment of Email by OMA

- A “deliberation” is a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person.
- AG has stated that deliberation need not be oral. Meeting can be by written letter, email, memo, etc.
- Dangers:
 - Reply all to e-mails – Councilmembers have been prosecuted for replying to all in emails
 - Facebook, Twitter - Befriending other members

Best Practices

- Bcc'ing instead of cc'ing all Board Members in e-mails, to avoid accidental reply-to-all
 - No Public Business on Facebook or Twitter
 - Do not follow or friend other Board members on social media
 - No quorum present at meetings of other entities
 - No discussion of public business at social functions, especially if other Board members are present
 - No independent conversations regarding Board business that might constitute a walking quorum.
 - Always err on the side of caution.
-