

# *Open Government Updates*

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# *Summary and Review*

## ▶ *Open Meetings Act*

- ▶ *Applicability of the Act*
- ▶ *What Constitutes a Meeting*
- ▶ *Notice Requirements*
- ▶ *Procedures*
- ▶ *Violations*

## ▶ *Public Information Act*

- ▶ *Responsibilities*
- ▶ *Definitions*
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- ▶ *Penalties*
- ▶ *Custodians*

# *Open Meetings Act*

*The Texas Open Meetings Act (TOMA) was adopted to help make governmental decision-making accessible to the public.*

*The provisions of the TOMA are mandatory and are to be liberally construed in favor of open government.*

*Texas Government Code, Chapter 551*

# *Applicability of the Act:*

## *What is a Quorum*

- ▶ *General Rule - The Act applies to a gathering of a quorum of a governmental body's member if public businesses is deliberated or discussed*
- ▶ *Cities:*
  - ▶ *Home Rule City- Charter generally states the quorum requirements → Council is four (4) members*
  - ▶ *General Quorum - A majority of a governmental body or board unless already expressed in Charter or ordinance*
  - ▶ *Circumvention: The Act may apply even when a quorum is not present*

# *What Constitutes a Meeting?*

*Meeting Occurs when*

***Quorum***

***of a governing  
body gathers***

***Either***

***Deliberation  
about the body's  
public business  
or formal action  
taken by the  
body***

***An opportunity  
provided by the  
body for  
members to ask  
about, speak  
about or listen to  
information***

# Examples:

- ▶ **A gathering of a quorum at a:**
  - ▶ **Social Function**
  - ▶ **Convention or Workshop**
  - ▶ **Ceremonial Event, or**
  - ▶ **Press Conference**
- ▶ **Attorney General's Advice: Develop a habit of asking yourself : "IS THIS A MEETING?"**

**Is Not a Meeting**

**If, no formal action is taken, and**

**Any discussion of public business is incidental to the authorized event**

# Notice Requirements

- ▶ *The Act requires written notice of the date, hour, place and subject of each meeting- both open meetings and executive sessions*
- ▶ *Specificity: The notice must be sufficient to apprise the general public of the subject matter to be discussed - legal sufficiency depends on the facts:*
  - ▶ *Listing like “personnel” or “new business/old business generally insufficient*
  - ▶ *More important the issue is the public, the more specific the notice should be*
  - ▶ *Public Forum or Public Comment is sufficient to hear from Public/Residents*
    - ▶ *Council, staff, and/or board members can only speak on a published agenda item specifically*

# *Procedures and Requirements Open Meetings*

- ▶ *A governmental body may adopt reasonable rules to maintain order in a meeting*
  - ▶ *Bylaws*
    - ▶ *City Charter, Section 2.10, City Council “Rules of Procedure”*
    - ▶ *City Charter, Section 6.03, Planning & Zoning Commission “Rules of Procedure”*
    - ▶ *Resolution 2009-17, Open Space and Trails Committee Bylaws*
    - ▶ *Resolution 2019-03, Section 4.07, Economic Development Corporation Bylaws*



# Violations

- ▶ ***Criminal Penalties Exist for Knowingly Violating the Act in 4 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 numbers less than a quorum***
- ▶ ***551.143 - Deliberations outside a meeting among a quorum through a series of communications that individually do not involve a quorum but when combined = a quorum of members deliberating about an item of business***

# *Resources*

*This presentation and applicable training links will be made available after this meeting on the city's website.*

*Thank You*

# *Public Information Act*

*“It is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government”*

*- Texas Government Code, Chapter 552*

## *Responsibilities of Governmental Bodies*

- ▶ *Complete open records training as required by law*
- ▶ *Provide requested information promptly*
- ▶ *Inform the requestor if the information will not be provided within ten business days and give an estimated date on which it will be provided*

# *Information Definition*

- Traditional paper copies of documents*
- Photographs*
- Letters*
- Audio/video recordings*
- Electronic communications*
- E-mails*
- Internet postings*
- Text messages*

# ***Policy: Presumption of Openness***

***All public information is subject to disclosure unless specifically made confidential or specifically excepted from disclosure***

***Attorney General construes the Act in favor of this open government policy***

# *Penalties for Non-Compliance*

*Officers or employees of governmental bodies may face criminal penalties under Sections 552.352 and 552.353 for:*

- Releasing information that must not be disclosed; or*
- Withholding information that must be released.*

# *New Custodians of Information*

*SB 944: Amends section 552.002, Texas Government Code.*

- Adds definition of a “temporary custodian” includes:*
  - Officer or employee (including former officers and employees)*
  - Who create or receive public information about city-related business that they have not provided to the City Secretary*



***QUESTIONS?***