

# OPEN MEETINGS ACT

## 2007 Update

Prepared by the Legal Department  
of the

TEXAS ASSOCIATION OF COUNTIES

1210 San Antonio  
Austin, Texas 78701

*HONORABLE MARC HAMLIN, ASSOCIATION PRESIDENT, 2007*

ASSOCIATION STAFF MEMBERS SERVING YOU AND YOUR COUNTY'S NEEDS

*Karen Ann Norris, Executive Director*

*Carey Boethel, Director of Governmental Relations*  
*Paul Sugg, Manager*

*Robert L. Lemens, General Counsel*

*James Jean, Director of Program Administration*  
*Karen Baker, Underwriting*  
*Larry Cowles, Claims*  
*Bill Norwood, Health & Employee Benefits*

*Stan Reid, Chief Information Officer*

*Richard Slagle, Director of Field Services*  
*Mike Strawn, Manager, Safety Specialists*

*Jay Johnson, Director of Education*

*Gene Terry, Director of Operations*

*Jim Lewis, Director of Communications*

*Terry Wyatt, Comptroller*  
*Nancy Lyter, Finance*

*Gayle Latham, Director, County Information Resources Agency*

Legal Research Toll Free "Hot Line": (888)275-8224    Direct Fax: (512)478-3573  
or visit our web site at [www.county.org](http://www.county.org)

THIS PUBLICATION IS A RESEARCH TOOL AND NOT THE COUNSEL OF AN ATTORNEY. THIS PUBLICATION IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY. It is provided without warranty of any kind and, as with any research tool, should be double checked against relevant statutes, case law, attorney general opinions and advice of legal counsel e.g., your county attorney. Each public officer is responsible for determining duties of the office or position held. Any question regarding such duties should be directed to competent legal counsel for a written opinion.



# TABLE OF CONTENTS

<b>Introduction.....</b>	<b>1</b>
<b>Part One - The Basics .....</b>	<b>2</b>
<b>What is the Open Meetings Act?.....</b>	<b>2</b>
<b>Officer training required .....</b>	<b>2</b>
<b>What does the Act require? .....</b>	<b>3</b>
<b>What is a "meeting? .....</b>	<b>3</b>
<b>What is a quorum? .....</b>	<b>3</b>
<b>Attendance at Legislative Meeting.....</b>	<b>5</b>
<b>What about telephone and videoconference meetings? .....</b>	<b>5</b>
<b>Telephone conferences .....</b>	<b>5</b>
<b>Videoconferences.....</b>	<b>5</b>
<b>What about subcommittees?.....</b>	<b>6</b>
<b>What about staff briefings? .....</b>	<b>7</b>
<b>What about consultation with an attorney?.....</b>	<b>7</b>
<b>Part Two - Notice .....</b>	<b>7</b>
<b>What must be posted? .....</b>	<b>7</b>
<b>1. The right balance of information.....</b>	<b>7</b>
<b>2. Flexibility for Court action.....</b>	<b>8</b>
<b>3. Simple language.....</b>	<b>8</b>
<b>Open versus closed meeting.....</b>	<b>8</b>
<b>Where and when must an notice be posted? .....</b>	<b>8</b>
<b>Who "controls" preparation of an agenda?.....</b>	<b>9</b>
<b>Must the full agenda be posted? .....</b>	<b>9</b>
<b>What about a recess?.....</b>	<b>10</b>
<b>Are supplemental postings permitted? .....</b>	<b>10</b>
<b>What are emergency postings?.....</b>	<b>10</b>
<b>What if a meeting cannot be convened due to a catastrophe?.....</b>	<b>11</b>
<b>What minutes must be kept? .....</b>	<b>11</b>
<b>Can the Court discuss something that wasn't posted? .....</b>	<b>11</b>
<b>What are the rights of the public? .....</b>	<b>11</b>
<b>Part Three - Closed Meetings .....</b>	<b>13</b>
<b>What are closed or "executive" sessions?.....</b>	<b>13</b>
<b>What's the procedure for holding a closed meeting? .....</b>	<b>13</b>
<b>What are the permissible reasons for a closed meeting? .....</b>	<b>14</b>
<b>Who may attend an executive session? .....</b>	<b>14</b>
<b>What effect does the open meetings act have on the confidentiality of records discussed in a closed meeting?.....</b>	<b>15</b>
<b>Part Four - Violations.....</b>	<b>15</b>
<b>What are the criminal penalties for a violation? .....</b>	<b>15</b>
<b>When can a judge or commissioner be held criminally liable? .....</b>	<b>16</b>

<b>Who prosecutes a criminal offense under the Open Meetings Act, and where is it prosecuted?.....</b>	<b>17</b>
<b>What about attorney’s fees? .....</b>	<b>17</b>
<b>Removal from office .....</b>	<b>17</b>
<b>What are the civil sanctions for a violation of the Open Meetings Act? .....</b>	<b>18</b>
<b>Who may challenge the validity of an action alleged to be in violation of the Act? .....</b>	<b>18</b>
<b>How can an action taken in violation of the Act be “cured”? .....</b>	<b>19</b>
<b>What should you do? .....</b>	<b>19</b>
<b>APPENDIX.....</b>	<b>20</b>
<b>RULES OF PROCEDURE, CONDUCT AND DECORUM.....</b>	<b>21</b>
<b>EXHIBIT “A”.....</b>	<b>25</b>
<b>COUNTY COMMISSIONERS COURT PUBLIC PARTICIPATION FORM.....</b>	<b>26</b>
<b>EXHIBIT “B”.....</b>	<b>27</b>
<b>Notice of Open Meeting.....</b>	<b>28</b>
<b>EXHIBIT “C”.....</b>	<b>30</b>
<b>Certified Agenda of Closed Meeting.....</b>	<b>31</b>

# **The Open Meetings Act**

## **Some Basic Information for Commissioners Courts**

### **Introduction**

The intent of this handbook is to outline the Open Meetings Act for new County Judges and Commissioners. It may also serve as a useful refresher for incumbent Judges and Commissioners. The material covers amendments to the Open Meetings Act through the regular session of the 80th Legislature (2007). Hopefully, the reader will obtain an understanding of the primary components of the Open Meetings Act and its application to the meetings of the Commissioners Court.

The handbook is not designed to be a comprehensive explanation of the Open Meetings Act. Nor should the reader rely solely on this booklet to answer all questions that may arise relating to the Open Meetings Act.<sup>1</sup> You may consult your attorney for assistance.

---

<sup>1</sup>The office of the Texas Attorney General publishes a comprehensive Open Meetings Handbook. You may obtain a copy from that office or access it through the Attorney General's Internet site, [www.oag.state.tx.us](http://www.oag.state.tx.us). The Attorney General's opinions are also available on the Internet at that site.



## Part One - The Basics

### What is the Open Meetings Act?

The Open Meetings Act is a Texas statute that provides for public access to meetings of governmental bodies. It is codified as chapter 551 of the Government Code.

It is a well-established rule of law, predating the Open Meetings Act, that a governmental body must act as a body.<sup>2</sup> The purpose of this rule

is to afford each member of the body an opportunity to be present and to impart to his associates the benefit of his experience, counsel, and judgment, and to bring to bear upon them the weight of his argument on the matter to be decided by the Board, in order that the decision, when finally promulgated, may be the composite judgment of the body as a whole.<sup>3</sup>

When a group of people takes action or makes a decision, some meeting of the minds has occurred to make that action possible. With respect to actions taken by governmental bodies, it is the process by which this meeting of the minds occurs that the Open Meetings Act intends to be open to public scrutiny.<sup>4</sup> To accomplish its end, the Open Meetings Act requires that every meeting of a governmental body, with certain narrowly drawn exceptions, be open to the public and that the public be given notice of the time and place of meetings and the subject matter to be discussed or acted on.<sup>5</sup> The Open Meetings Act explicitly lists a commissioners court as a governmental body.<sup>6</sup>

The Open Meetings Act does not set out all procedures applicable to meetings of governmental bodies.<sup>7</sup> However, any additional procedure that a governmental body adopts for the conduct of its meetings must be consistent with the Open Meetings Act.

### Officer training required.

The Open Meetings Act was recently amended to require elected and appointed officers of governmental bodies to complete training on the Act.<sup>8</sup> The attorney general has developed a course in a DVD format and has made the course available on his Internet website free of charge to members of governmental bodies. An official who takes office on or after January 1, 2006,

---

<sup>2</sup> *Webster v. Texas & Pacific Motor Transport Co.*, 166 S.W.2d 75 (Tex.1942).

<sup>3</sup> *Id.* at 77.

<sup>4</sup> Tex. Att'y Gen. Op. No. DM - 95 (1992); citing *Cox Enters. Inc. v. Board of Trustees of Austin Indep. School Dist.*, 706 S.W.2d 956, 960 (Tex.1986) (the act is intended to safeguard the public's interest in knowing the workings of its governmental bodies).

<sup>5</sup> Gov't Code, §§ 551.002, 551.041.

<sup>6</sup> Gov't Code § 551.001 (3) (B).

<sup>7</sup> Appendix I to this booklet contains a sample of procedural rules for commissioners court meetings. The sample was provided by the Texas County Judges and Commissioners Association through its General Counsel, Jim Allison.

<sup>8</sup> SB 286, 79th Leg. Reg. Session, is codified in Gov't Code §551.005. The amendment took effect on January 1, 2006.

must complete the 1-2 hour training not later than 90 days thereafter. A person in office before January 1, 2006, had until December 31, 2006, to complete the training. An official's failure to satisfy the training requirement does not affect the validity of an action taken by the governmental body.

## **What does the Act require?**

The three central features of the Open Meetings Act are: (1) the requirement that the public be permitted to attend meetings;<sup>9</sup> (2) the requirement that the subject matter of meetings be posted prior to the meetings to give the public notice of the meeting;<sup>10</sup> and (3) the requirement that minutes or tape recordings of meetings be kept.<sup>11</sup> Everything else is built around these main ideas.

## **What is a "meeting?"**

A meeting is a **verbal exchange** among a **quorum** of the Court, or between a **quorum** of the Court and another person, concerning an issue within the Court's jurisdiction.<sup>12</sup> "Verbal" is not defined in the Act, but its meaning in everyday English is "of, relating to, or consisting of words."<sup>13</sup> Note that the term "verbal" does not connote only spoken words, but also may refer to written words.

The term "meeting" does not include a gathering of a quorum of the Court at a social function unrelated to County business if the judge and commissioners don't engage in a verbal exchange about public business or policy or to attend a ceremonial event or press conference.<sup>14</sup>

## **What is a quorum?**

A quorum of a commissioners court is three members.<sup>15</sup> Note that a special quorum of four is required when the Court is levying a tax.<sup>16</sup>

It is possible for members of a governmental body to violate the Open Meetings Act even though they are not physically present in one place, for example, by discussing public business of the governmental body over the telephone.<sup>17</sup> By the same logic, exchanges among members of the

---

<sup>9</sup> Gov't Code, §551.002.

<sup>10</sup> Gov't Code, §551.041, et seq.

<sup>11</sup> Gov't Code, §551.021, et seq.

<sup>12</sup> Gov't Code, §551.001(4).

<sup>13</sup> Webster's 9th New Collegiate Dictionary 1309 (1984). See also Tex. Att'y Gen. Op. No. JM - 1127 (1989) citing Webster's 3d New International Dictionary 2542 (1961).

<sup>14</sup> Gov't Code, §551.001(4).

<sup>15</sup> Loc. Gov't Code § 81.006 (a).

<sup>16</sup> Loc. Gov't Code § 81.006 (b).

<sup>17</sup> Tex. Att'y Gen. Op. Nos. GA-0326 (2005), JC-0307 (2000), LO 95-055 (1995), DM-95 (1992); *Hitt v. Mabry*, 687 S.W. 2d 791 (Tex. App. - San Antonio 1985, no writ).

Court by such methods as e-mail and even memoranda may violate the Act.<sup>18</sup> Whether members of a governmental body have engaged in deliberations that violate the Act has been characterized as a fact question.<sup>19</sup>

In an often cited case, the Texas Water Commission sent a notice through its General Counsel to parties involved in a contested case indicating that it had decided to consider some of the parties' complaints to the exclusion of all others.<sup>20</sup> The validity of this action was challenged on the ground, among others, that the decision stated in the letter had not been made in a public meeting. It was unsuccessfully argued to the court that "each Commissioner: (1) reached the identical decision completely on his own without conferring with one another; and (2) each independently informed the Commission's general counsel in a "straw poll" of his informal opinion on the motion. Therefore... there could be no violation of the Open Meetings Act because there was never any deliberation among the Commissioners."<sup>21</sup>

The court found that the evidence supported the finding that the Commission's actions had violated the Open Meetings Act: "Given the detail of the June 11 letter, it would be highly improbable that the decision was made without any communication, direct or indirect, between [a quorum of the Commissioners]. For the Commissioners to have reached the decision independently, [the Commissioners] would have had to make at least seven separate decisions and communicate them to the General Counsel...."<sup>22</sup>

Recently, the attorney general considered a hypothetical situation in which a county commissioner made successive telephone calls to other members of the court to discuss public matters and to urge the other members to vote on those matters in a certain way. At no time was a quorum on the phone simultaneously. The attorney general reasoned that these successive discussions between two members at a time would nonetheless result in a quorum taken as a whole. These secret discussions on a public matter by officers who conspire together in numbers less than a quorum violate the Act.<sup>23</sup>

An email exchange among a quorum of members of a city council that violated a matter pending before the council led to the indictment of two of the council members for criminal violations of the Open Meetings Act. The indicted officials then unsuccessfully challenged the Act as unconstitutional.<sup>24</sup>

---

<sup>18</sup> A "verbal exchange" may occur through written words. See footnote 12, *supra*. *Esperanto Peace & Justice Ctr. v. City of San Antonio*, 316 F.Supp. 433 (W.D.Tex. 2001); *Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App. – San Antonio 2003, pet. denied)

<sup>19</sup> Tex. Att'y Gen. Op. No. LO 95 - 055 (1995). Tex. Att'y Gen. Op. No. JC-0053 (1999) at 6 n.3.

<sup>20</sup> *City of Stephenville v. Texas Parks and Wildlife Dept.*, 940 S.W.2d 667, 675, ( Tex. App.-Austin 1996, writ den'd).

<sup>21</sup> *Id.* at 674.

<sup>22</sup> *Id.*

<sup>23</sup> Tex. Att'y Gen. Op. GA-0326 (2005). .

<sup>24</sup> *Rangra v. Brown* \_\_\_ F. Supp \_\_\_, WL3327634 WD, 2006.

## Attendance at Legislative Meeting

When a quorum of a commissioners court or other governmental body attends a legislative committee meeting at which matters within the governmental body's jurisdiction are considered, the question arises whether it is a "meeting" of the body that must be posted.<sup>25</sup>

Section §551.0035 was added in 2001 to clarify that a quorum of a governmental body who attend a legislative meeting to offer public testimony and comment and to publicly respond to questions asked by a member of a legislative committee or agency is not considered a meeting of the governmental body. Under these circumstances, the governmental body is not required to post a notice of the meeting.

## What about telephone and videoconference meetings?

The Open Meetings Act permits a governmental body to conduct a meeting even though one or more members of the body are not physically present at the usual meeting location.<sup>26</sup> The general rules governing open and closed meetings apply. In addition, there are other procedural requirements that must be met. Given the narrow circumstances that permit a video or teleconference meeting, it is likely that a commissioners court will have very few occasions to meet in this way.

**Telephone conferences.** Under rare circumstances, a meeting by telephone conference call is permitted. A commissioners court may conduct a meeting in which one or more members of the court participate by telephone **only** if an emergency or public necessity exists **and** it is difficult or impossible for a quorum of the court to convene at one location.<sup>27</sup> Under the Open Meetings Act, an emergency exists only if immediate action is required by the court because of an imminent threat to public health and safety or because of a reasonably unforeseeable situation.<sup>28</sup>

The notice posted for the meeting must specify the location that the Court usually convenes as the meeting location. The portion of a telephone conference meeting that is open to the public must be audible to the public and must be tape-recorded. Two-way communications during the telephone conference must be provided and the identity of each party to the call must be clearly stated before each person speaks.

**Videoconferences.** A videoconference meeting may be conducted by a commissioners court only if a quorum of the Court is physically present at one location. The notice of the meeting must specify as a location of the meeting the location where a quorum will be present and specify the intent to have a quorum present at that location. The notice must also specify each

---

<sup>25</sup> Recent opinions of the Attorney General had concluded that attendance by a quorum of a governmental body at a legislative meeting is a "meeting" of the governmental body. Tex. Atty. Gen. Op. Nos. JC-0203C (2000), and JC-0248 (2000).

<sup>26</sup> Gov't Code §§ 551.125 and 551.127.

<sup>27</sup> Gov't Code §§ 551.125.

<sup>28</sup> Gov't Code § 551.045.

remote location at which a member of the Court who will be participating in the meeting is physically present. Each location must be open to the public during the open parts of the meeting.

The Open Meetings Act sets additional technical requirements for a videoconference meeting. Each part of the meeting that is required to be open to the public must be visible and audible to the public at each location. A recording of the meeting must be made. There must be two-way communication between the locations. While speaking, each participant to the call must be visible and audible to each other participant. During the open parts of the meeting, each speaker must also be visible and audible to the public at each location.

Finally, the statute designates the Texas Department of Information Resources to set minimum standards for audio and video signals for a videoconference call meeting. The quality of the signals at each location must meet these standards. The Attorney General has considered the situation in which there was an interruption in two-way communications between the locations of a videoconference meeting.<sup>29</sup> The Attorney General opined that a videoconference meeting must be recessed or adjourned when technical difficulties at one location render the audio or video portions inaccessible to the public at other locations. It was not sufficient, he reasoned, for the original posting to specify that if technical difficulties occurred, the meeting would continue at the location where a quorum was physically present.

## **What about subcommittees?**

According to the Attorney General, a subcommittee chosen by a governmental body from its membership may be subject to the Open Meetings Act, even though it consists of less than a quorum of the parent body.<sup>30</sup>

For example, in one opinion, the Attorney General considered the proposal of a state agency board to divide its membership into several committees that would study matters destined for board attention and recommend board action on those matters. The committees, consisting of less than a quorum of the full board, would be unable to bind the board. However, the Attorney General found that "a real danger exists that the full board might become merely the 'rubber stamp' of one or more of its committees and thereby deprive the public of access to the effective decision-making process." The opinion concluded that the committees of board members are subject to the requirements of the Open Meetings Act.

Recently the Attorney General determined that a nine-member "evaluation committee" appointed by a commissioners court to recommend the selection of an architect was subject to the Open Meetings Act because the county judge and one county commissioner were appointed to serve on the committee.<sup>31</sup> The inclusion of the judge and commissioner on the committee led to the Attorney General's conclusion that the committee was more than advisory.

---

<sup>29</sup> TEX. ATT'Y GEN. Op. NO. DM – 480 (1998).

<sup>30</sup> TEX. ATT'Y GEN. Op. NOS. H-3 (1973), H-238 (1974).

<sup>31</sup> TEX. ATT'Y GEN. Op. No. JC-0060 (1999).

## What about staff briefings?

Effective September 1, 1999, a governmental body may no longer confer with one or more of its employees outside of an open meeting to receive information from the employees or to question the employees. An amendment to the Act now includes within the definition of a “meeting” a gathering of a quorum of the Court when a third party (including a staff member) is present to give or receive information, or to ask or answer questions about County business.

## What about consultation with an attorney?

A commissioners court may use a telephone or video conference or an internet communication to conduct a consultation with its attorney in an open or closed meeting.<sup>32</sup>

If the consultation occurs during an open meeting of the court, the communications with the attorney must be audible to the public.

## Part Two - Notice

### What must be posted?

The Open Meetings Act requires written notice of all meetings.<sup>33</sup> The notice must be sufficient to apprise the general public of the subjects to be considered during the meeting.<sup>34</sup> The notice must be more specific if the public has a special interest in the topic under discussion.<sup>35</sup>

As a practical matter, there are three important considerations in creating a proper written notice of a meeting:

**1. The right balance of information** The notice must describe the subject matter that will be discussed or acted on with enough specificity that a member of the general public will know what is to be discussed.<sup>36</sup>

It's never sufficient to use catch-all listings like “other business,” “real estate matters,” and the like.<sup>37</sup> A posting should have enough information to allow a reader to know the subject matter

---

<sup>32</sup> This method of “off-site” communication with an attorney is not permitted if the attorney is a regular employee of the governing body (a person from whose salary the government body deducts employment taxes). Rather, this method is only available when the attorney is serving in an outside counsel capacity.

<sup>33</sup> Gov't Code, §551.041. See example in Appendix I.

<sup>34</sup> *Id.*; *Friends of Canyon Lake v. Guadalupe-Blanco River Authority*, 96 S.W.3d 519 (Tex. App. - Austin, 2002, pet. denied) ; *City of San Antonio v. Fourth Court of Appeals*, 820 S.W. 2d 762 (Tex. 1991).

<sup>35</sup> *Cox*, supra, at 959; *Markowski v. City of Marlin*, 940 S.W.2d 720, 726 (Tex. App.-Waco 1997 no writ); *Mayes v. City of De Leon*, 922 S.W.2d 200, 203 (Tex. App.--Eastland 1996, writ denied).

<sup>36</sup> *City of San Antonio*, supra., at 765. (“The intended beneficiaries of the Act are not individual citizens, such as the particular landowners affected by this condemnation, but members of the interested public.”)

<sup>37</sup> *Cox*, supra, at 959. (“Selection of a new school superintendent is not in the same category as ordinary personnel matters -- and a label like “personnel” fails as a description of that subject.”)

the Court will consider, without overwhelming the reader with so much detail that the posting becomes meaningless.<sup>38</sup>

“Public comment” is a sufficient notice under the Act to advise that members of the general public will address the governmental body.<sup>39</sup>

“Staff briefing” or “employee briefing” does not provide adequate notice to the public of the subjects to be considered in the meeting.<sup>40</sup>

**2. Flexibility for court action.** A notice shouldn’t tie the Court's hands. For instance, it’s not ideal to have a posting set out in such intricate detail that the Court would be open to an accusation that it deviated from the posting because the action taken deviated in some minor way from that described in the notice. In other words, a notice should not be a script. Remember, the purpose of the Open Meetings Act is to open the decision-making process to the public. If the notice is tightly scripted, it implies that the decisions have already been made.

**3. Simple language.** A notice should use plain, concise English. A posting should avoid jargon, hyper-technical language, or idiosyncratic usage that only someone intimately involved with the subject matter could be expected to understand. The audience to which a notice should be aimed is the general public.<sup>41</sup>

**4. Open versus closed meeting.** The Act does not require the notice to specify whether a matter will be considered in an open or closed session. However, the Attorney General has cautioned that a governmental body’s abrupt departure from a practice of indicating which items will be taken up in open session and identifying those to be covered in an executive session may raise a question of whether the less specific notice adequately informs the public.<sup>42</sup>

## Where and when must a notice be posted?

There are two notice requirements: a physical one and an electronic one.

**1. Physical Posting.** All counties must comply with a “physical” notice requirement by posting a hard copy notice of its meetings on a bulletin board at a place in the county courthouse<sup>43</sup> For a county that posts only physical notices, the notice must be readily accessible by the general public **at all times for at least 72 hours before the scheduled time for the**

---

<sup>38</sup> *City of San Antonio, supra*, at 766 (“Far from serving the purposes of the Act, this degree of specificity would so overwhelm readers that it would prove even less informative than the current notice.”).

<sup>39</sup> TEX. ATT’Y GEN. OP. NO. JC-0169 (2000).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 765.

<sup>42</sup> TEX. ATT’Y GEN. OP. NO. JC-0057 (1999).

<sup>43</sup> Gov’t Code, §551.049

**meeting.**<sup>44</sup> The case law demonstrates that this requirement demands strict compliance. This posting requirement is mandatory. If it's not followed *to the letter*, the posting is legally insufficient.<sup>45</sup> A practice of stamping the date and time of posting on the notice itself may avoid a challenge to the timeliness of the notice.

2. **Electronic Posting.** Beginning January 1, 2006, the Act imposed an additional electronic posting for counties with an Internet website.<sup>46</sup> This Internet notice must be made at the same time the physical notice is posted. An electronic notice that fails to comply with the requirements is not invalid if the county makes a good faith attempt to comply and the failure is due to a technical problem beyond the commissioners court's control.<sup>47</sup>

For a County that gives the additional electronic notice, the physical posting accessibility requirement is less stringent. In that circumstance, the statute is satisfied by making the physical notice readily accessible to the general public during normal business hours, rather than at all times during the 72-hour period.<sup>48</sup>

## **Who "controls" preparation of an agenda?**

Who determines the subject matter that the commissioners court will consider in its meetings? Does the county clerk, the county judge, or any other person the court designates to prepare the agenda actually control the items to be included in the notice? No.

The constitution vests responsibility in the commissioners court, acting as a whole, to exercise the power and jurisdiction over all county business prescribed by the constitution or by statute.<sup>49</sup> The commissioners court is charged to issue notices necessary for the proper execution of its powers and duties.<sup>50</sup> According to the attorney general, the court's agenda is a "notice" which is made "necessary" by the Open Meetings Act for the court's proper execution of its duties.<sup>51</sup> The court may designate an agenda clerk to compile items to be placed on the agenda, and the court may prescribe the *manner* in which items are to be submitted for inclusion. However, each member of the court must be permitted to place on the agenda any item of his or her choosing.<sup>52</sup>

## **When must an agenda be posted?**

A physical notice need not include the backup materials associated with each subject listed in the posting. However, for a meeting held on or after January 4, 2006, the commissioners court in a

---

<sup>44</sup> Gov't Code, §551.043. The Texas Supreme Court found a notice posted in a locked courthouse was not accessible to the public and failed to meet the posting requirement of 72 hours. *Smith County v. Thornton*, 726S.W.2d (Tex. 1986).

<sup>45</sup> *Acker v. Texas Water Com'n*, 790 S.W.2d 299, at 300 (Tex. 1990); *City of San Antonio, supra*, at 768.

<sup>46</sup> This electronic posting requirement applies to meetings held on or after January 4, 2006. The new provision is codified as Gov't Code §551.056.

<sup>47</sup> Gov't Code §551.056 (d); *Argyle ISD v. Wolf*, 2007 WL 2285472 (Tex. App. – Fort Worth 2207, rehearing overruled).

<sup>48</sup> Gov't Code § 551.043

<sup>49</sup> TEX. CONST., art. V, §18.

<sup>50</sup> Loc. Gov't Code, § 81.002.

<sup>51</sup> Tex. Att'y Gen. Op. No. JM-63 (1983).

<sup>52</sup> *Id.*

county with a population of 65,000 or more and that has a website is required to post the “agenda” for the meeting on its Internet website along with the meeting notice.<sup>53</sup> Because the two terms are used interchangeably in the statute and in common parlance, it is not clear what additional information should be included under this provision.

### **What about a recess?**

May a governmental body recess a meeting and reconvene on another day without posting another notice? This question has been the topic of attorney general opinions and at least one court ruling. The Act was recently amended to address the issue of reconvening after recessing a meeting. Section §551.0411 authorizes the commissioners court to recess a properly posted meeting and continue it on the next regular business day. There is no additional posting required for this continuation so long as the body’s action is taken in good faith and not to circumvent the act. However, the statute does not allow the governing court’s to recess the continued meeting to yet another day without posting the proper notice.

### **Are supplemental postings permitted?**

Except in an emergency, nothing may be added to an agenda after the 72-hour deadline for posting the notice. As noted, a posting must be continuously available to the public for 72 hours before the scheduled time of the meeting. If a non-emergency item is to be added to the agenda, it must satisfy the usual 72-hour notice requirement.

### **What are emergency postings?**

In an emergency, the notice of a meeting may be posted as late as two hours before the meeting is scheduled to begin.<sup>54</sup> However, it must be a real emergency.<sup>55</sup> An emergency exists only if immediate action is required of a governmental body because of an imminent threat to public health and safety or a reasonably unforeseeable situation. In 2007 the Act was amended to include “the sudden relocation of a large number of residents from the area of a declared disaster to a governmental body’s jurisdiction” within the scope of reasonably unforeseeable situations<sup>56</sup>. The posting must clearly identify the emergency.<sup>57</sup>

The need for quick action, without more, is not an emergency.<sup>58</sup>

---

<sup>53</sup> Gov’t Code §551.056.

<sup>54</sup> Gov’t Code, §551.045.

<sup>55</sup> *Piazza v. City of Granger*, 909 S.W.2d 529, 535, n.3 (Tex. App. - Austin 1995, no writ). (“Even if the meeting notice clearly identifies an emergency, the actions taken at the emergency meeting will be void if an emergency did not in fact exist.”)

<sup>56</sup> Gov’t Code §551.045(e)

<sup>57</sup> *Id.* at 533. (“[E]ven if an emergency... exists, notice of an emergency meeting is nevertheless defective if it fails to clearly identify the existing emergency.”)

<sup>58</sup> *Id.* (“[T]he development of a ‘lack of confidence’ in a police officer by a governing body is a foreseeable situation...”)

## **What if a meeting cannot be convened due to a catastrophe?**

If the commissioners court is prevented from convening a properly posted meeting because of a catastrophe, the court may convene in a convenient location within 72 hours without reposting the notice.<sup>59</sup> If it is not possible to convene within that 72-hour period, the court must post a new notice before it may meet.

## **What minutes must be kept?**

The Open Meetings Act requires a governmental body to keep minutes, or make a tape recording, of every meeting.<sup>60</sup> The minutes, or the recording, is a public record.<sup>61</sup> If minutes are kept, they must state the subject of each discussion, and record each vote, order, decision, or other action taken.<sup>62</sup> Another statute requires the county clerk to keep the minutes of the commissioners court meetings.<sup>63</sup>

Secret ballots are not permitted.<sup>64</sup>

## **Can the Court discuss something that wasn't posted?**

No. If a member of the public (or, for that matter, a member of the Court) raises a subject that has not been included in the notice for the meeting, any discussion of the subject, other than merely providing a factual answer to a question, must be limited to a proposal to place the subject on the agenda for a future meeting.<sup>65</sup>

## **What are the rights of the public?**

The Open Meetings Act gives the public:

1. the right to have timely notice of the time and place of the meeting and of the matters to be discussed or acted on;<sup>66</sup>
2. the right to attend the meeting;<sup>67</sup> and

---

<sup>59</sup> Gov't Code, §551.0411. "Catastrophe" is defined as a condition or occurrence that interfered physically with the ability of a governmental body to conduct a meeting, including a fire, flood, earthquake, power failure, or civil disturbance.

<sup>60</sup> Gov't Code, §551.021.

<sup>61</sup> Gov't Code, §551.022.

<sup>62</sup> Gov't Code, §551.021.

<sup>63</sup> Loc. Gov't Code §81.003.

<sup>64</sup> *Id.*; TEX. ATT'Y GEN. Op. No. H-1163 (1978).

<sup>65</sup> Gov't Code, §551.042. *Hays County Water Planning P'ship v. Hays County*, 41Sw3d174 (Tex. App. – Austin 2001, pet. denied).

<sup>66</sup> Gov't Code, §551.041.

<sup>67</sup> Gov't Code, §551.002.

3. the right to record open meetings with a tape recorder or a camera. The Court's authority to adopt reasonable rules to maintain order at a meeting limits that right. For example, the Court may restrict where a camera may be set up, so long as the rules do not prevent the person from exercising this right.

The Act does not entitle the public to choose the items to be discussed or to speak about items on the agenda. However, the Court may adopt procedures to give members of the public an opportunity to speak at Court meetings. If this is done, the opportunity must be made available in an evenhanded manner. For example, reasonable restrictions on the number of speakers and the time allowed to them are permissible.<sup>68</sup> Most importantly, the opportunity of a person to address the body may not be restricted because of what the person may have to say.<sup>69</sup>

If a law requires a public hearing, that law may impose additional requirements for members of the public to be heard.

---

<sup>68</sup> See TEX. ATT'Y GEN. L.O. 96-111.

<sup>69</sup> These are basic First Amendment concepts.

## Part Three - Closed Meetings

### What are closed or “executive” sessions?

Closed meetings or executive sessions are meetings that are permitted to be conducted in private. The Open Meetings Act refers to these as “closed meetings,” but the term “executive session” is frequently used. In this publication, the terms are used interchangeably.

While the Open Meetings Act sometimes permits executive sessions, it *never* permits a body to meet without posting the subject matter to be discussed.<sup>70</sup>

An executive session may be held on any posted matter if an executive session is permitted under the Open Meetings Act. So long as the posting for an item identifies the subject matter that will be discussed, the Open Meetings Act does not require that the fact that the item will be discussed in a closed meeting be specified in the posting. A recent Attorney General’s Opinion reiterates that no judicial decision or attorney general opinion states that a governmental body must indicate in a notice of a meeting whether a subject will be discussed in open or closed session.<sup>71</sup> However, the opinion suggests that an abrupt departure from the voluntary practice of posting items for open and closed sessions may raise a question of the adequacy of a notice to inform the public.

### What's the procedure for holding a closed meeting?

When the Court goes into a closed meeting, it must first convene publicly.<sup>72</sup> The presiding officer, the County Judge if present, must publicly announce the section of the Open Meetings Act that permits the session to be closed to the public.<sup>73</sup>

No vote or final action may be taken in a closed meeting.<sup>74</sup>

Except in the case of a closed meeting held to receive legal advice, the executive session must be taped, or a "certified agenda" kept. The certified agenda or tape recording of an executive session must be kept a minimum of two years after the date of the session.<sup>75</sup> The commissioner’s court as a governmental body is the proper custodian of the certified agenda or tape recording of a closed meeting. Acting as a body, the commissioner’s court may designate the county clerk as the custodian of the certified agenda or tape recording.<sup>76</sup> The tape or the certified agenda is confidential, but a judge in a lawsuit challenging compliance with the Open Meetings Act may

---

<sup>70</sup> *Cox Enters. v. Board of Trustees*, 706 S.W. 2d 956, 958 (Tex. 1986).

<sup>71</sup> TEX. ATT’Y GEN. Op. No. JC-0057 (1999).

<sup>72</sup> Gov’t Code, §551.101.

<sup>73</sup> Open Records Letter No. 2003-2361 (2003).

<sup>74</sup> Gov’t Code, 551.102; *Cox Enters. v. Board of Trustees*, 679 S.W. 2d 86 (Tex. App. - Texarkana 1984), *aff’d in part, rev’d in part on other grounds*, 706 S.W. 2d 956, 958 (Tex. 1986), *Weatherford v. The City of San Marcos*, 157 SW3d 473(Tex. App-Third Court of Appeals (2004)).

<sup>75</sup> Gov’t Code, §551.104. An example of a certified agenda is included in Appendix I.

<sup>76</sup> TEX. ATT’Y GEN. Op. No. GA-0277 (2004).

review it.<sup>77</sup>

### **What are the permissible reasons for a closed meeting?**

Generally, the permissible reasons for conducting a closed meeting are enumerated in the Open Meetings Act.<sup>78</sup> The reasons that are most often relied on by a Commissioners Court are to receive legal advice, to discuss personnel matters, and to discuss real estate.<sup>79</sup> As noted on page seven, it is no longer permissible to hold a closed meeting to receive a “staff briefing.”

In 1999, the Legislature added economic development negotiations as a permitted topic for an executive session.<sup>80</sup> Under this exception, the county may discuss or deliberate regarding commercial or financial information that the county receives from a business prospect that the county seeks to have locate, stay, or expand in or near the county and with which the county is conducting economic development negotiations, or to deliberate an offer of a financial or other incentive to such a business prospect.

Governmental bodies may conduct closed meetings to deliberate on matters relating to acts of terrorism and related criminal activity including discussions of security systems, vulnerability of critical infrastructure, and details about communications systems used to prevent, detect, or investigate terrorist acts or related criminal activity. A governmental body that meets in executive session on homeland security matters must make a tape recording of the proceedings.<sup>81</sup>

The commissioners court in a county of 400,000 or more population may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated by the county. However, before the commissioners court may meet in such an executive session, the court must vote unanimously that deliberation in an open meeting would have a detrimental effect on the court's position in negotiations with a third person, and the attorney advising the court must issue a written determination that an open meeting would be detrimental to the court's negotiations on the matter. The commissioners court must make a tape recording of the proceedings of a closed meeting to deliberate the information<sup>82</sup>

### **Who may attend an executive session?**

Attendance at an executive session is not limited to the commissioners court. Generally, a governmental body may include in a closed meeting a person whose interests are not adverse to the governmental body's interests and whose participation is necessary to the matter under discussion.<sup>83</sup> The Attorney General recently reaffirmed his earlier position that the commissioner's court may exclude the county clerk from its executive sessions notwithstanding

---

<sup>77</sup> *Id.* Open Records Letter No. 2003-2361 (2003).

<sup>78</sup> Gov't Code, §§551.071 et seq.

<sup>79</sup> Exceptions permitting executive sessions are enumerated in Gov't Code, §§551.071 through 551.086.

<sup>80</sup> Gov't Code, §551.086.

<sup>81</sup> Gov't Code, §418.183.

<sup>82</sup> Gov't Code, §551.0725.

<sup>83</sup> TEX. ATT'Y GEN. OP. NO. JC-0375 (2001).

the clerk's statutory duty to record and keep the commissioner's court's minutes and records.<sup>84</sup> When the basis of a closed meeting is consultation with its attorney regarding pending litigation or settlement options, the governmental body must take another factor into consideration as well. The Attorney General opined that the Smith County commissioners court was authorized to include the county auditor in a closed meeting with the county's attorney, but the opinion cautioned the commissioners court that under certain circumstances the presence of a third person may waive the attorney-client privilege.<sup>85</sup>

### **What effect does the open meetings act have on the confidentiality of records discussed in a closed meeting?**

The Open Meetings Act and the Open Records Act are separate laws, and information is not excepted from required public disclosure under the Open Records Act simply by virtue of its having been considered in a closed meeting.<sup>86</sup> Conversely, the fact that certain information is protected from disclosure under the Open Records Act does not necessarily authorize a governmental body to meet in executive session to discuss the information.<sup>87</sup>

## **Part Four - Violations**

### **What are the criminal penalties for a violation?**

The Open Meetings Act provides criminal penalties for a member of a governing body who knowingly calls, aids in calling, or participates in an improper closed meeting.<sup>88</sup> The Act also criminally sanctions a member of a governing body who knowingly conspires to circumvent the Act by meeting with other members in numbers less than a quorum for secret deliberations.<sup>89</sup> In either case, the penalty is a fine between \$100 and \$500, inclusive, confinement between one month and six months, or both the fine and the confinement.

Meeting in an executive session knowing that a certified agenda or a tape recording isn't being kept is a Class C misdemeanor (\$500 maximum fine).<sup>90</sup> Improperly disclosing the tape or certified agenda of an executive session is a Class B misdemeanor (maximum fine of \$2,000, maximum confinement of 180 days, or both).<sup>91</sup>

---

<sup>84</sup> TEX. ATT'Y Gen Op. No. GA-0277 (2004).

<sup>85</sup> TEX. ATT'Y GEN. OP. NO. JC-0506 (2002).

<sup>86</sup> TEX. ATT'Y GEN. ORD- 485 (1987); see also TEX. ATT'Y GEN. ORD-605 (1992) (concluding that section 551.074 of the Open Meetings Act does not authorize a governmental body to withhold its records of the names of applicants for public employment who were discussed in an executive session).

<sup>87</sup> TEX. ATT'Y GEN. OP. NOS. GA-0019 (2003), JM-595 (1986), and MW-578 (1982).

<sup>88</sup> Gov't Code, §551.144.

<sup>89</sup> Gov't Code, §551.143. TEX. ATT'Y GEN Op. No. GA-0326 (2005).

<sup>90</sup> Gov't Code, §551.145; Penal Code, §12.23.

<sup>91</sup> Gov't Code, §551.146; Penal Code, §12.22.

## When can a judge or commissioner be held criminally liable?

In 1998, to the surprise of most local officials, the Texas Court of Criminal Appeals upheld the conviction of a local official for violating the Open Meetings Act.<sup>92</sup> Mr. Tovar, a former president of a school board was convicted in Bexar County of two charges of violating the Open Meetings Act. The punishment was assessed at six months in prison and a \$500 fine for each offense, and the sentence was probated. The defendant appealed. The Court of Criminal Appeals held that a government official can be found guilty of violating the Act by calling or participating in an impermissibly closed meeting *even when the official is unaware of the illegality of the meeting*.

The court said: “a member of a governmental body can be held criminally responsible for his involvement in the holding of a closed meeting which is not permitted under the Act regardless of his mental state with respect to whether the closed meeting is permitted under the Act.”<sup>93</sup>

At the urging of many local officials and their representative organizations, the Legislature reacted swiftly to the high court’s ruling. Effective September 1, 1999, the Act provides an affirmative defense to a member of a governmental body who is charged with illegally calling or participating in a closed meeting.<sup>94</sup> The defense is available only to an official who can prove he or she acted in reasonable reliance on a court order or a *written* interpretation of the Open Meetings Act contained in an opinion of a court of record, the attorney general, or the attorney for the governmental body. A county official would be well advised to seek a written opinion of the county attorney about the legality of meeting in a closed meeting about which the official has any reservations.

In another recent case, the Court of Criminal Appeals held that a criminal prosecution under the Open Meetings Act is appropriate for either a procedural or substantive violation.<sup>95</sup> The court held that if a closed meeting is authorized (i.e. an exception applies), the governing body must comply with the procedural steps enumerated in the Open Meetings Act. On the other hand, if one of the exceptions does not apply, then the closed meeting is violative of the Open Meetings Act regardless of whether the governing body complied with the procedural steps.<sup>96</sup>

---

<sup>92</sup> *Tovar v. State*, 978 S.W.2d 584 (Tex. Crim. App., 1998). The defendant, Mr. Tovar, was convicted of having knowingly participated in a closed meeting of the school board that was not permitted under the Act, and of having called or aided in calling and organizing a closed meeting of the school board that was not permitted under the Act. See Gov’t Code, §551.144.

<sup>93</sup> *Id.* at 584.

<sup>94</sup> Gov’t Code, §551.144(c).

<sup>95</sup> *Martinez v. State*, 879 S.W.2d 54 (Tex. Crim. App. 1994).

<sup>96</sup> *Id.* at 56

## **Who prosecutes a criminal offense under the Open Meetings Act, and where is it prosecuted?**

A criminal violation of the Open Meetings Act is a misdemeanor.<sup>97</sup> District courts have original jurisdiction over all misdemeanors involving official misconduct.<sup>98</sup>

Official misconduct is an offense that is an intentional or knowing violation of a law committed by a public servant while acting in an official capacity.<sup>99</sup> A criminal violation of the Open Meetings Act is, therefore, a misdemeanor involving official misconduct.<sup>100</sup>

In criminal prosecutions in district court, the district attorney represents the state.<sup>101</sup> When requested, the county attorney may aid the District Attorney in a prosecution in district court.<sup>102</sup> Recently, the Attorney General has prosecuted alleged violations of the Act at the request of the local prosecutor.<sup>103</sup>

## **What about attorney's fees?**

Public funds may not be spent to defend a judge or commissioner accused of a criminal violation of the Act. The court may not authorize the expenditure of public funds to reimburse the legal expenses of a judge or commissioner who is found guilty of a violation. However, a governmental body that determines that a public purpose will be served by paying the expenses of an officer after an acquittal may do so.<sup>104</sup>

## **Removal from office.**

A county judge or commissioner may be removed from office for official misconduct.<sup>105</sup> Conviction of a county judge or commissioner for a misdemeanor involving official misconduct operates as an immediate removal from office of that officer.<sup>106</sup>

---

<sup>97</sup> Gov't Code, §§ 551.143 - 551.146.

<sup>98</sup> Code of Criminal Procedure, Art. 4.05.

<sup>99</sup> Code of Criminal Procedure, Art. 3.04.

<sup>100</sup> *Tovar v. State*, 949 S.W.2d 370, 374 (Tex. App. – San Antonio 1997).

<sup>101</sup> Code of Criminal Procedure, Art. 2.01.

<sup>102</sup> Code of Criminal Procedure, Art. 2.02.

<sup>103</sup> In May, 2005, an indictment was returned against a school board trustee for meeting in numbers less than a quorum to circumvent the Act. See *The State of Texas v. John Wesley Moore, II*.

<sup>104</sup> TEX. AG OP. NO. JC-0294 (2000).

<sup>105</sup> Loc. Gov't Code §87.013.

<sup>106</sup> Loc. Gov't Code §87.031.

## What are the civil sanctions for a violation of the Open Meetings Act?

The Open Meetings Act provides mandamus or injunction (writs used to compel or prevent action by an agency of the government) as civil remedies to stop, prevent, or reverse violations of the Act.<sup>107</sup> Actions taken by a governmental body in violation of the Open Meetings Act are voidable.<sup>108</sup>

## Who may challenge the validity of an action alleged to be in violation of the Open Meetings Act?

The general rule is that an individual cannot institute a cause of action if he or she is not being affected differently from all other citizens. However a particular statute may confer more expansive standing as an exception to the rule. The Texas Legislature exercised its discretion to grant broader standing to citizens under the Open Meetings Act.<sup>109</sup> Accordingly, Texas courts have liberally granted standing to challenge an action under the Open Meetings Act. In addition, a federal district court found that taxpayer citizens who had a “keen interest (although such an interest is not necessary) in the workings of their government” were entitled to bring an action under the Open Meetings Act to enjoin a downtown sports development committee.<sup>110</sup>

In a recent case, the Court of Appeals rejected an argument by the Austin Community College (ACC) that the Save Our Springs Alliance be required to show that it was “affected differently from other citizens” in order to achieve standing to challenge an action under the Open Meetings Act. In rejecting the argument the Court cited the Supreme Court’s *City of San Antonio* decision for the proposition that “the intended beneficiaries of the Open Meetings Act are ‘members of the interested public.’ ”<sup>111</sup>

In the same case ACC argued that an individual plaintiff did not have standing because she was not a resident of the community college district, did not pay taxes to the district, and was not entitled to vote in district elections. The court held that “[T]he interest protected by the Open Meetings Act is not simply that of the taxpayer.”<sup>112</sup> The court found that the plaintiff’s risk that the board’s action will adversely affect her neighborhood was sufficient to confer standing, and that the plaintiff did not have to prove the extent of future harm to proceed.<sup>113</sup>

---

<sup>107</sup> Gov’t Code, §551.142.

<sup>108</sup> Gov’t Code, §551.141.

<sup>109</sup> *Save Our Springs Alliance, Inc. v. Lowry*, 934 S.W.2d 161, 162 (Tex.App.-Austin 1996, mand. overr.).

<sup>110</sup> *Finlan v. City of Dallas*, 888 F.Supp. 779, 784 (N.D.Tex.1995).

<sup>111</sup> *Save our Springs, supra*, at 164.

<sup>112</sup> *Id.*; cf. *Laidlaw Waste Sys. (Dallas), Inc. v. Wilmer*, 904 S.W.2d 656, 660 (Tex.1995) (assuming while not holding that company holding permit to construct and operate municipal solid waste landfill on site annexed by city had standing under the Open Meetings Act).

<sup>113</sup> *Save our Springs, supra*, at 163.

## **How can an action taken in violation of the Open Meetings Act be “cured”?**

An action taken in violation of the Open Meetings Act may not be retroactively ratified.<sup>114</sup> Assuming proper notice under the Open Meetings Act, the governing body may, of course, vote to take the same action as it originally intended to do at the previous meeting. However, that action may not be given retroactive effect.<sup>115</sup> Of course, there is no “cure” for a criminal violation.

## **What should you do?**

Obviously, the best way to avoid adverse publicity concerning your participation in meetings of the commissioners court is for you to familiarize yourself with the basic requirements of the Open Meetings Act. Review the agenda posted for each meeting to assure yourself that your court is not attempting to deliberate on a matter not properly posted.

Before participating in a closed meeting, make sure that the presiding officer announces the exception that allows the meeting to be closed to the public. See that a tape recording or certified agenda is kept of any closed meeting you attend. In short, conscientiously follow the letter and spirit of the law. Finally, if you are in doubt about the propriety of the court’s proposed actions under the Open Meetings Act, obtain prompt written legal advice, from your county attorney or private attorney you retain to represent you as to that issue.

---

<sup>114</sup> *Mayes v. City of De Leon*, 922 S.W.2d 200, 204 (Tex. App.-Eastland 1996, writ den’d); *Lower Colorado River Authority v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975); *Dallas County Flood Control District No. 1 v. Cross*, 815 S.W.2d 271, 283 (Tex. App.--Dallas 1991, writ den’d).

<sup>115</sup> *Id.*; Tex. Att’y Gen. Op. No. GA-0477 (2006).

# **APPENDIX**

**Suggested Procedures Memo  
Sample Agenda Posting  
Sample Certified Agenda**



**RULES OF PROCEDURE, CONDUCT AND DECORUM  
AT MEETINGS OF THE  
COUNTY COMMISSIONERS COURT**

- I. All Regular, Special, Emergency and Executive Session Meetings of the \_\_\_\_\_ County Commissioners Court will be called and conducted in accordance with the provisions of the Texas Open Meetings Act, Chapter 551, Government Code.
- II. Regular, Special and Emergency Meetings of the \_\_\_\_\_ County Commissioners Court are open to the public and to representatives of the press and media. Executive Sessions of the Commissioners Court are not open to the public, the press or the media and only those individuals expressly requested or ordered to be present are allowed to attend Executive Sessions.
- III. The \_\_\_\_\_ County Commissioners Court meets in Regular Session on the second and fourth Mondays of each month. In order for a matter or issue to appear as an agenda item on the Agenda of any Regular Meeting of the Commissioners Court, a request must be filed with and approved by at least one member of the Commissioners Court and/or the County Judge by 12:00 p.m. (noon) on the Wednesday immediately preceding the next Regular Meeting of the Commissioners Court.
- IV. The business of \_\_\_\_\_ County is conducted by and between the members of the \_\_\_\_\_ County Commissioners Court and by those members of the county staff, elected officials, department heads, consultants, experts and/or members of the public requested to be present and participate. While the public is invited to attend all meetings of the Commissioners Court (except Executive Sessions) the public's participation therein is limited to that of observees unless a member (or members) of the public is requested to address the Commissioners Court on a particular issue (or issues) or unless the member (or members) of the public completes a Public Participation Form and submits same to the county clerk prior to the time the agenda item (or items) is addressed by the Court. A sample of the \_\_\_\_\_ County Commissioners Court Public Participation Form is attached hereto as Exhibit "A".
  - A. Each member of the public who appears before the Commissioners Court shall be limited to a maximum of five (5) minutes to make his/her remarks. Time for each speaker shall be maintained by the County Clerk or such other designated representative of the Commissioners Court.
  - B. Maximum discussion on any agenda item, regardless of the number of members of the public wishing to address the Commissioners Court on such agenda item (or items) shall be limited to thirty (30) minutes. In the event that more than six (6) members of the public wish to address a particular agenda item (or items), then only the first six (6) members of the public recognized to speak shall be divided equally between those members of the public wishing to speak for the agenda item (or items) and those members of the public wishing to speak against the agenda item (or items).

- C. In matters of exceptional interest, the Court may, by the majority vote of the members of the Court in attendance at the meeting, either shorten or lengthen the time allocated for a particular member of the public, all members of the public and/or the amount of time allocated for all agenda items and/or a specific agenda item.
- D. It is the intention of the Court to provide an open access to the citizens of \_\_\_\_\_ County to address the Commissioners Court and to express themselves on issues of county government. Members of the public are reminded that the \_\_\_\_\_ County Commissioners Court is a Constitutional Court, with both judicial and legislative powers, created under Article V, Section 1 and Section 18 of the Texas Constitution. As a Constitutional Court, the \_\_\_\_\_ County Commissioners Court also possesses the power to issue a Contempt of Court Citation under Section 81.024 of the Texas Local Government Code. Accordingly, all members of the public in attendance at any Regular, Special and/or Emergency meeting of the Court shall conduct themselves with proper respect and decorum in speaking to, and/or addressing the Court; in participating in public discussions before the Court; and in all actions in the presence of the Court. Proper attire for men, women and children is mandatory. Those members of the public who are inappropriately attired and/or who do not conduct themselves in an orderly and appropriate manner will be ordered to leave the meeting. Refusal to abide by the Court's order and/or continued disruption of the meeting may result in a Contempt of Court Citation.
- E. It is not the intention of the \_\_\_\_\_ County Commissioners Court to provide a public forum for the demeaning of any individual or group. Neither is it the intention of the Court to allow a member (or members) of the public to insult the honesty and/or integrity of the Court, as a body, or any member or members of the Court, individually or collectively. Accordingly, profane, insulting or threatening language directed toward the Court and/or any person in the Court's presence and/or racial, ethnic, or gender slurs or epithets will not be tolerated. Violation of these rules may result in the following sanctions:
1. cancellation of a speaker's remaining time;
  2. removal from the Commissioners Courtroom;
  3. a Contempt Citation; and/or
  4. such other civil and/or criminal sanctions as may be authorized under the Constitution, Statutes and Codes of the State of Texas.
- V. The County Judge is the presiding officer of the \_\_\_\_\_ County Commissioners Court and is a fully participating member thereof. In the event of the absence of the County Judge, the senior member of the Commissioners Court (in terms of total number of years as an elected representative) present at the Regular, Special, Emergency meeting or Executive Session, shall serve as the Judge Pro-Tem of the Court. However, nothing

herein shall prevent the senior member of this Commissioners Court from delegating this duty to another member of the Commissioners Court.

- VI. The County Judge (or the designated Judge Pro-Tem of the Commissioners Court), as presiding officer of the Commissioners Court, is responsible for conducting all meetings and members of the public who have properly completed a Public Participation Form and submitted same to the County Clerk must wait to be recognized before they will be allowed to address the Court.
- VII. Special rules for the press and media:
  - A. No media personnel or equipment, including lights, cameras or microphones will be located on the Commissioners Court bench nor closer than five (5') feet in front of the Commissioners Court bench.
  - B. Reporters and media technicians are required to structure their movements, equipment set-up and take-down and adjustments, etc., in such a manner as to not disrupt the Commissioners Court deliberations or the ability of the public to see, hear, and participate in the proceedings.
  - C. Interview shall not be conducted inside the Commissioners Courtroom during the time the Court is in session.
  - D. Media interviews which are conducted outside the Commissioners Courtroom should be conducted in such a manner that the interview does not disturb, impede or disrupt the proceedings of any regular, special, or emergency and/or executive session of the court.
- VIII. The Sheriff of \_\_\_\_\_ County, Texas, or his designated deputy, shall serve as the bailiff at all regular, special, and emergency meetings of the Court. However, in the event of the absence of the sheriff, or in the event that there exists a conflict of interest between the sheriff, any member of the sheriff's department, and the Commissioners Court, or in the event of an Executive session of the Court in which the Sheriff is not an authorized participant, then in such event, the Court shall appoint such other commissioned peace officers to serve as bailiff as may be necessary.
- IX. From time to time, the Commissioners Court shall conduct town meetings and public hearings. These rules of procedure, conduct and decorum shall also apply to such town meetings and public hearings; however, the Commissioners Court may adopt such additional and supplemental rules for such meetings as may be necessary and appropriate to conduct such meetings in an orderly, efficient and proper manner.
- X. These Rules of Procedure, Conduct and Decorum at Meetings of the \_\_\_\_\_ County Commissioners Court shall be effective immediately upon adoption by the Court and shall remain in full force and effect until amended or repealed by a majority vote of the Commissioners Court.

ADOPTED BY THE UNANIMOUS VOTE OF THE \_\_\_\_\_  
COUNTY COMMISSIONERS COURT on this the \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
County Judge

\_\_\_\_\_  
Commissioner, Pct. 1

\_\_\_\_\_  
Commissioner, Pct. 3

\_\_\_\_\_  
Commissioner, Pct. 2

\_\_\_\_\_  
Commissioner, Pct. 4

Attest:

\_\_\_\_\_  
County Clerk

**EXHIBIT “A”**



**COUNTY COMMISSIONERS COURT**  
**PUBLIC PARTICIPATION FORM**

Instructions: Fill out all appropriate blanks. Please print or write legibly.

NAME: \_\_\_\_\_

HOME ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

HOME TELEPHONE: \_\_\_\_\_

PLACE OF EMPLOYMENT: \_\_\_\_\_

EMPLOYMENT TELEPHONE: \_\_\_\_\_

Do you represent any particular group or organization? \_\_\_\_\_

If you do represent a group or organization, please state the name, address and telephone number of such group or organization.

\_\_\_\_\_  
\_\_\_\_\_

Which agenda item (or items) do you wish to address? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

In general, are you for or against such agenda item (or items)? \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

NOTE: This Public Participation Form must be presented to the County Clerk prior to the time the agenda item (or items) you wish to address are discussed before the Court.



**EXHIBIT “B”**



**DISCLAIMER: This document is provided as a guideline only. Legal advice should be sought on the proper posting of specific items of county business.**

\_\_\_\_\_ **County Commissioners Court**

**Notice of Open Meeting**

DATE OF MEETING: *(Include day/time)*  
STREET LOCATION:  
CITY LOCATION:

COMPLETE AGENDA:  
[REVISED AGENDA: *If necessary*]

Call to Order – *(Include day/time)*

**DELIBERATE AND CONSIDER ACTION ON THE FOLLOWING ITEMS:**

Minutes of *(date)* Commissioners Court meeting  
Open and consider/award bids received for purchase of *(equipment)* for *(specific precinct or department)*.

**Departmental reports:\***

Treasurer  
County Clerk  
Commissioner Pct. 1  
Commissioner Pct. 2  
Commissioner Pct. 3  
Commissioner Pct. 4  
Sheriff  
Auditor

\*Include detailed description of any item in report that may be of public interest.

Proposed Budget Draft  
Request for Budget Amendment from *(department)*  
Appoint members of the \_\_\_\_\_ Committee  
Bid specifications to be published for purchase of *(equipment)* for *(specific precinct or department)*  
Interlocal cooperation agreement with *(other political subdivision)* relating to *(describe project or purchase)*

Construction/repair of road/bridge located at (specific address or location, including precinct)

Procure easement necessary to widen County Road \_\_\_ in Precinct \_\_\_\_\_

Employee Grievance by (*describe position or name employee*)

Report from consultant on (ex. Year 2000 computer compliance procedures for all county departments)

Public Comment (NO DISCUSSION OR ACTION) (5 minutes per speaker)

Adjourn.

Pursuant to the authority granted under Government Code, Chap. 551, the Commissioners Court may convene a closed session to discuss any of the above agenda items. Immediately before any closed session, the specific section or sections of Government Code, Chap. 551 that provide statutory authority will be announced.

#### CERTIFICATION

ATTEST:

NAME: (*County Clerk or other authorized official*)

TITLE:

SIGNATURE OF CERTIFYING OFFICIAL: \_\_\_\_\_

DATE:

TELEPHONE NUMBER: 000-000-0000

FAX NUMBER: 000-000-0000

**EXHIBIT “C”**



\_\_\_\_\_ **County Commissioners Court**

**Certified Agenda of Closed Meeting**

I, \_\_\_\_\_, THE PRESIDING OFFICER OF THE \_\_\_\_\_ COUNTY COMMISSIONERS COURT, DO HEREBY CERTIFY THAT THIS DOCUMENT ACCURATELY REFLECTS ALL SUBJECTS CONSIDERED IN AN EXECUTIVE SESSION OF THE COURT CONDUCTED ON \_\_\_\_\_ (date).

1. The executive session began with the following announcement by the presiding officer: “The \_\_\_\_\_ County Commissioners Court is now in executive session on (date) at (time).”

2. SUBJECT MATTER OF EACH DELIBERATION

Agenda Item #: (insert basis for closed session and general description of the deliberation.).

Agenda Item #: (insert basis for closed session and general description of the deliberation.).

3. No further action was taken.

4. The executive session ended with the following announcement by the presiding officer: “This executive session ended on (date) at (time).”

\_\_\_\_\_  
Presiding Officer