

**2022**  
**COMMISSIONERS COURT**  
**MEETINGS PROCEDURE AND DECORUM**

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## INTRODUCTION: THE PURPOSE OF PROCEDURAL RULES

The members of the commissioners court are the county judge and the county commissioners.<sup>1</sup> If present, the county judge presides over the commissioners court. As every committee chair and presiding officer knows, running an efficient and organized public meeting can be a real challenge. Whether it is making sure everyone has an opportunity to be heard, staying on topic, or keeping track of motions, getting things done in a timely manner is easier when you have some basic rules of procedure in place, and everyone understands those rules. Historically, rules of parliamentary procedure allow healthy debate and discussion while controlling who speaks and when so that decisions are made in an orderly and timely fashion. To that end and given there are no laws dictating what parliamentary procedure a commissioners court must follow, many counties have adopted Robert's Rules of Order, as it is the most widely accepted procedure guide.

However, Robert's Rules are quite complicated, and at times conflict with Texas Law. For example, Robert's Rules provide mechanisms by which an item can be added to the agenda during a meeting, the rule requiring notice or thresholds for votes to pass can be suspended under some circumstances, and the like. Furthermore, learning to effectively use Robert's Rules is a task unto itself that would require hours and hours of pouring over a 500+ page manual which is often even more daunting obstacle than the duties of the county judge or the commissioner themselves. While Robert's Rules may be effective to assist in the orderly conduct of large groups, confusion and conflicts could arise when overlaying Robert's Rules with a commissioners court's statutory requirements, customs, or other aspects of local government.

Parliamentary rules serve three main purposes. First, the rules should establish order, giving both participants and observers a sense that the meeting and the court is well organized and efficient. Second, the rules should lead to wider understanding and participation, not add to confusion or alienate all but the most well versed and nibble parliamentarians. Third, the rules should strike a balance and enforce the will of the majority while protecting the rights of the minority.

With these ideas in mind, this guide is intended to serve as a simplified approach to procedures to follow during a commissioners court regular or special called meeting. While there are various laws requiring meeting notices, open meetings, and agendas, the section on decorum and court procedures only covers suggested procedures for efficiently conducting the meeting itself. Please see the "Frequently Asked Questions"

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<sup>1</sup> Tex. Local Gov't Code §81.001

section of this publication and TAC's legal publication on the Open Meetings Act for further information.

With a few alterations to meet the needs of your county and in consultation with your legal counsel, the Rules of Procedure, Conduct, and Decorum<sup>2</sup> found in Appendix A, may be adopted as Standard Operating Procedure for the conduct of commissioners court meetings. For a quick summary of the most common motions, see Appendix C, "Motions at a Glance."

For more information regarding parliamentary procedure for local governments, see Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21<sup>st</sup> Century<sup>3</sup>, Suggested Rules of Procedure for Small Local Government Boards<sup>4</sup>, or [Suggested Rules of Procedure for the Board of County Commissioners](#)<sup>5</sup>.

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<sup>2</sup> The original version of these rules was provided by the County Judges and Commissioners Association of Texas through its General Counsel, Jim Allison. Some modifications have been made to the enclosed version.

<sup>3</sup> Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21<sup>st</sup> Century, available at [https://www.calcities.org/docs/default-source/get-involved/rosenberg's-rules-of-order-simple-parliamentary-procedures-for-the-21st-century.pdf?sfvrsn=d3f73e91\\_3](https://www.calcities.org/docs/default-source/get-involved/rosenberg's-rules-of-order-simple-parliamentary-procedures-for-the-21st-century.pdf?sfvrsn=d3f73e91_3) (hereinafter "Rosenberg's Rules").

<sup>4</sup> A. Fleming Bell, II, Suggested Rules of Procedure for Small Local Government Boards, 2<sup>nd</sup> Ed., 1998.

<sup>5</sup> Suggested Rules of Procedure for the Board of County Commissioners, available at <https://www.sog.unc.edu/publications/books/suggested-rules-procedure-board-county-commissioners-0>.

## PROCEDURAL BEST PRACTICES FOR COMMISSIONERS COURT

**The Presiding Officer.** The presiding officer of the court, which will be the county judge when physically present<sup>6</sup>, is charged with applying the rules of conduct in a commissioners court meeting. As such, a county judge should be well versed in the rules adopted by the body and their practical application. The judge's decisions and rulings on procedure are final, unless overruled by a majority vote of the court after a motion to challenge the procedural ruling. Given the power vested in the judge, as a courtesy, the judge may show respect to the other members of the court by only making a motion or second when no other member of the court will do so or the item itself is of special interest to the judge. This does not mean that a judge is not a fully participating and voting member of the court, but rather means the judge may defer to other court members and be the last to speak at the discussion or debate stage of a meeting.

Statute does not dictate who should preside over the court if the county judge is not physically present in the physical space made available to the public for the meeting. Consequently, it is best practice to include some mechanism to determine who should take the proverbial gavel in the judge's absence. Some counties designate that the most senior member of the court shall preside in the judge's absence, while others explicitly state it is at the judge's discretion. The problem with not having a clear rule is that it can leave room for confusion in unexpected situations such as sudden illness or other emergencies.

**Preparing the Agenda.** Though the task of compiling the agenda often falls to the county judge or the judge's staff, the authority to place an item on the agenda is vested in each member of the court equally.<sup>7</sup> A commissioners court should include in its procedural rules and decorum the mechanism by which items are placed on the agenda to ensure fair access but logistical parameters that allow the county to comply with the notice requirements of the Texas Open Meetings Act, regardless of who is tasked with compiling and posting the official agenda. For example, the rules should establish who receives agenda items and deadlines for submissions.

Some courts elect to include a "Consent Agenda" for agenda items which are routine or non-controversial, and which neither a member of the commissioners court nor the public has asked to be open for discussion or debate. Once the court has established the Consent

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<sup>6</sup> Tex. Local Gov't Code §81.001. Statute does not set out who should be the presiding officer of the court when the County Judge is not physically present in the space made available to the public for a meeting.

<sup>7</sup> Tex. Att'y Gen. Op. No. JM-0063 (1983)

Agenda, agenda items included on it will be voted upon in one vote and will not be discussed separately unless requested by a citizen or court member.

**The Flow of a Meeting.** Once a quorum is present, the presiding officer should call the meeting to order. The meeting should, to the extent possible, follow the order of the posted agenda. Some courts prefer to begin the meeting with a review of the agenda and announce any times certain for items of particular public interest or requiring the attendance of an expert or other official who may have limited availability. At this time, it can be helpful to announce any agenda items that have been pulled down or no longer require the attention of the court, assuming there is no objection to passing the item from any member of the court. Many courts routinely begin with county announcements, a short description of the expected order of the meeting, public comment, consent items, proclamations/resolutions, and then the remainder of the agenda. No statute dictates the order of the meeting in general. Thus, unless set out in procedural rules adopted by a particular court, the presiding officer has discretion regarding the order of items taken up by the court.

Some courts choose to adopt the minutes from the prior meeting. Doing so can ensure accuracy and consensus on what occurred during a meeting, though minutes generally track the motions and votes but do not provide details or word for word transcripts of a meeting. No statute dictates that minutes be adopted but statute does require the county clerk to record and attest to the accuracy of the minutes.<sup>8</sup> Thus, having the court approve the minutes may assist the clerk in ensuring accuracy but doing so is up to the discretion of the body through adopting procedural rules to that end or through the standard motion, second, and vote on a posted item. Inaccuracies in minutes to which a clerk has already attested can be addressed by subsequently placing the minutes on a future agenda for correction.

**General Format for an Agenda Item and Discussion.** Each agenda item may be addressed with the following basic format:

1. The presiding officer announces the agenda item number and subject. It is best practice to announce the item's subject as written on the posted agenda. The presiding officer should announce the intended format for addressing the item. For example, announcing comments (including public comment if members of the public have complied with any procedural rules regarding public comment previously adopted by the court), presentations, and/or committee reports to be received prior to motions or seconds on the item.

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<sup>8</sup> Tex. Local Gov't Code §81.003

2. One at a time, the presiding officer should invite the appropriate individual(s) to offer their comments, information, and/or recommendations.
3. As each speaker concludes, the chair should ask members of the court if they have any questions. Note, this is not a time for back-and-forth discussion, but only a time for questions directed to the individual offering comments, information, or recommendations to the court. The speaker should be given the opportunity to respond to any questions.
4. The presiding officer should invite a motion. If a motion is made, the presiding officer should repeat the motion – clarifying, if necessary—and announce who made the motion.
5. If required by the procedural rules adopted by the court (and as recommended as best practice), the chair should then invite a second to the motion, announcing who seconds if a second is made.
6. If a motion is made and seconded, the presiding officer should ensure that every member of the court has a full understanding of the motion made by either repeating the motion, asking the maker of the motion to repeat the motion, or asking the clerk to repeat the motion.
7. After a motion and second, the presiding officer should invite discussion by the court. Once all members of the court have had adequate opportunity to contribute to the discussion and the discussion has ended, the presiding officer should announce that a vote will be taken on the motion. If the discussion was limited or minimal, the presiding officer need not repeat the motion. If, however, the discussion was such that the motion on the floor may no longer be clear or easily recalled, the presiding officer should repeat the motion prior to the vote.
8. The presiding officer then takes the vote asking for “ayes” and “nays” or by a show of hands. A motion is approved by a majority vote of those present – which would always be at least three votes of a commissioners court meeting with the required quorum.
9. The presiding officer then announces the results of the vote and what action the body has taken. It is helpful to reiterate for the record and the public which members of the court voted aye/nay and the final count of the vote. For example,

“The motion passes on a 3/2 vote with Commissioners A, B, and C voting in support and myself and Commissioner D opposing.”

Of course, the above example does not consider motions to amend or other motions that may be made that will alter the above flow. Such circumstances should be handled on a case-by-case basis but will be addressed in the “Motions” section below.

## MOTIONS

**The Why’s and What’s of Motions.** Most of us have been in meetings where folks start discussion on an issue without a clear question in mind or without real direction. This procedural framework uses motions to give the court a target - a specific, defined action to consider prior to debate or discussion on an item, providing structure and focus to the meeting. Specifically, a motion is a proposal to bring a subject to a group for its consideration and action – it is starting at the end point, defining the goal, and then efficiently working towards that goal. With any defined approach to a problem, there must be a clear order of operations so that when taken in order, the path to the end goal becomes clear. To that end, motions are not all the same. Different types of motions are used for different purposes and some take priority over others.

The first and most basic type of procedural motion is a “main motion.” This is the basic “I move to adopt the budget” type of motion. Main motions put a matter before the court and can be made when no other motion is pending. Consequently, only one main motion can be considered at a time, and no other main motion may be introduced until the first one is put to rest by a motion to table, withdraw, or by vote.

Speaking of amendments, the next type of procedural motion is the “subsidiary motion.” Subsidiary motions work to move a main motion to an end through amending, substituting, or otherwise altering the main motion. As such, they should be made only when there is a main motion before the court and the subsidiary motion takes priority over the main motion when it is time to vote. This makes sense because voting on a main motion while an amendment is pending and then voting on the amendment would result in conflicting outcomes. Whereas, voting on the amendment first settles the question and makes a vote on the main motion unnecessary.

While main motions and subsidiary motions relate to the business before the court, sometimes other factors that are not directly related to the subject matter before the court may need to be addressed with priority. For example, if a member of the court needs to request a member of the public speak into a microphone or needs a recess, they’d make



a “privilege motion” or “point of privilege”. And while these types of things can certainly be handled in a less formal way than making a motion, their place in procedure and decorum can help avoid conflicts when things become contentious. Notably, privileged motions may interrupt debate before the court.

Lastly, an incidental motion provides a means of questioning a procedure concerning other motions. An incidental motion must be considered before other motions. For example, an incidental motion might question procedure such as if a second was made before debate began or if the proper agenda item was announced. These motions should be resolved before main or subsidiary motions can be put to a vote.

Finally, a note about the presiding officer’s role when it comes to motions. While the presiding officer is a full voting member of the court with every right to make motions themselves, it is considered a show of respect and deference to other members of the court for the judge to only make motions when convinced no other member of the court is willing to do so. After the initial information or presentation on an item and any subsequent questions and responses, the presiding officer should invite a motion. The presiding officer may, for example, indicate the floor is open for motions (“The floor is open for motions.” “A motion would now be in order.”), suggest a motion (“A motion to impose an outdoor burn ban would be in order.”), or finally, make a motion themselves.

The various motions available are explained under the “Motions at a Glance” section in Appendix C. Further, the purpose, priority, and proper timing for each motion is set out in Appendix D, “Quick Reference Guide.”

**Putting Motions in Motion.** Motions are made in a simple, two-step process. First, when an individual member of the commissioners court wishes to make a motion, the presiding officer must first recognize the individual’s right to speak. Then, the individual may make the motion, beginning with the phrase, “I move...”. For example, “I move to adopt the proposed Subdivision Regulations as written.” This would be considered a main or basic motion.

If a member of the court agrees with the basic motion but wants to change it slightly, they would make a **motion to amend**. For example, “I move to amend the motion to approve the proposed subdivision rules with the minimum lot frontage requirements being increased to 80 feet.”

If a member wants to put an entirely new motion before the court, they will make a **motion to substitute**. For example, “I move to decline to adopt subdivision regulations.”

Of course, it is important to remember that only motions that fall within the posted agenda language should be made. For example, a motion to consider hiring an engineering firm to study the floodplain may fall outside of a typical posting like, “Approve or reject subdivision regulations.” However, a broader posting like “Consider and take appropriate actions on subdivision regulations” may allow for a motion to consider referring an issue to a committee or consultant. This broad language, however, may cover referral as a next step but likely would not satisfy notice requirements for referral to a particular firm (nor would it comply with the professional services agreement requirements on its face).

Typically, after a motion has been made, the presiding officer will ask for a second.<sup>9</sup> Once seconded, and only once seconded, discussion and debate occurs. Sometimes, during such discussions, one or more members of the court may realize a slight alteration to the original motion seems appropriate and supported by the movant and the member who seconded. In this case, one may offer a “friendly amendment.” For example, “I want to suggest a friendly amendment to approve the Subdivision Regulations as written to be effective as of January 1, 2023.” If both the movant and the person who seconded the motion agree, the amended motion now becomes the motion up for vote without the formality of withdrawing or voting down the original motion.

To help put the above into context, let’s look at a simple example of proper procedure.

1. Member addresses the Judge<sup>10</sup>. “Judge.”
2. Judge recognizes the commissioner.
3. Commissioner: “I move that \_\_\_\_\_ (states motion).” Judge may choose to restate motion and name the movant for the record and inquire as to a second.
4. Second to motion. “I second the motion.” Judge may choose to name the commissioner who offers the second for the record.
5. Judge states motion: “It has been moved by (name) and seconded that \_\_\_\_\_.”

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<sup>9</sup> Technically, the court may choose in its adoption of parliamentary rules whether to require a second. The purpose of requiring a second is to assure minimum support for the issue. Keep in mind, that without the use of a second, there is the potential for one member to repeatedly propose an issue that the rest of the court finds irrelevant, allowing one member of the court to hijack a meeting. Thus, although not required, a second is highly suggested and assumed to be the case throughout this guide.

<sup>10</sup> Or presiding officer.

6. Discussion: If the motion is debatable, every member has the right to debate; the Judge refrains from debate until all other members of the court have had at least one opportunity to speak. The Judge carefully determines the order in which members are recognized to speak, giving first opportunity to the proposer of the motion. Care should be given to assure that discussion is related to the question.
7. The Judge says, "If there is no further discussion, the motion is \_\_\_\_\_ (restate motion)."
8. Vote: The Judge says, "All those in favor of \_\_\_\_\_ (the motion stated) say 'aye.' Those opposed say 'nay.'"
9. Result of the vote is stated by the Judge. "The motion is carried/approved" or "the motion fails/is lost."

**Who's On First?** The above examples seem straight forward. But what happens if a second or even third motion is made before the initial main motion is resolved? Typically, and as stated in the accompanying rules of decorum, only one main motion and up to two secondary motions (such as to amend or substitute) should be on the floor simultaneously. The presiding officer can, but is not required to, reject a fourth motion. When there are two or three motions on the floor (with seconds) simultaneously, the vote should be taken in reverse order – the last motion made and seconded should be put to a vote first, working backward.

For example, one commissioner might move to refer an issue to a committee by stating, "I move to refer installation of a traffic control device at the intersection of FM 3422 and Old Smith Road to a committee for review and recommendation." The motion is seconded.<sup>11</sup> During discussion, it becomes clear that some members of the court feel the decision cannot wait and must be voted on immediately. Another member of the court says, "I move we have traffic light installed immediately." That motion is seconded. Perhaps a third member then says, "I move to amend the previous (second) motion and move that the county installs a stop sign rather than a traffic light." Some member of the court is persuaded that this is a reasonable option and seconds that motion. The procedure would play out as follows:

The last motion made and seconded (installing a stop sign) should be handled first. Discussion on that motion should be allowed, if necessary. Then, if the motion passed, the second and first motions would now be moot, and no vote is necessary on either of those motions. The agenda item would be complete with a vote to install a traffic light.

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<sup>11</sup> Robert's Rules does not require a second for a referral to committee, but for simplicity's sake, this guide suggests and assumes seconds are required.

If, however, the third motion (to amend the second motion) fails, the body would then vote on the second motion – to install a traffic light. If that motion passes, the first motion is moot, and the agenda item is complete. If it fails, however, the first motion (to refer the issue to a committee) should go to a vote. If the first motion also fails, the item could be complete without action from the court. If it passes, it is best practice to set a time certain for the issue to be placed back on the agenda for further consideration – see motion to table below.

**Debate – That’s Debatable, Or Is It?** Most motions are subject to discussion and debate for as long as the chair entertains the debate – or until a motion to limit or end debate passes. Some notable exceptions to this rule are motions that end or temporarily recess as a **motion to adjourn, motion to recess, or a motion to adjourn to a fixed time**. Please refer to Appendix C, “Motions at a Glance”, and Appendix D, “Quick Reference Guide” for quick reference to the purpose and requirements of certain motions.

Only after the motion and second does the presiding officer open the floor to discussion of the motion. It is often helpful to repeat the motion prior to opening debate to focus the discussion on the action before the court. The maker of the motion speaks first, and the presiding officer allows proponents and opponents to alternate speaking if possible. A member who has not yet spoken has precedence over those who have already voiced an opinion. The presiding officer has the authority to end discussion if it becomes too personal or too longwinded. The decision can be overcome by a motion, second, and majority vote of the court, however.

Note that discussion/debate is different from receiving a report or information from staff, an expert, the public, or other presentation intended to inform the court such that it can consider the item at hand. Questions posed to the person offering information or testimony are not considered discussion or debate and should be limited to questions and follow-up questions between the court and the presenter. Back and forth between members of the court should only occur once a motion has been made and seconded.

A handful of motions are not debatable as they require immediate attention. Motions to adjourn, recess, motions to table, and motions to end the debate are not up for discussion and should be voted on immediately after receiving a second. Points of privilege, points of order, points of information and objections to the consideration of an item are not debatable and do not require a second.

**The Vote.** After the debate, or no debate is needed, the presiding officer should call the vote. It is best practice to do so verbally with “ayes” and “nays”. Under Robert’s Rules and this guide silence counts as an affirmative vote. Thus, if a member of the court would like to abstain due to a conflict of interest<sup>12</sup>, perceived conflict, or for some other reason, they should state their abstention on the record. It is also good practice for the presiding officer to announce the vote aloud: “The motion carries with Commissioners Smith, Patel, and myself voting yes, Commissioner Wilson voting no, and Commissioner King abstaining.” The presiding officer can then state the effect of the vote: “The Court approves the proposed settlement payment of \$25,000 to settle all claims in Cause number D-1-2344, Smith v. County.” Such an announcement becomes more important when a long discussion period of any confusion during due to amendments or substitute motions has occurred.

## ADDITIONAL CONSIDERATIONS FOR COURT DECORUM

In the interest of orderly and efficient meetings, the court may choose to implement some rules on decorum into their procedure guide. These rules can be as broad or as specific as a court determines is necessary to best manage its agenda. When a situation arises that is not addressed by statute or the policies adopted by a court, the presiding officer would generally have discretion in how to handle the situation.

**Public Comment.** Commissioners courts are required to allow a “member of the public who desires to address the body regarding an item on an agenda . . . to address the body regarding the item at the meeting before or during the body’s consideration of the item.”<sup>13</sup> The court may “adopt reasonable rules regarding the public’s right to address the body. . . including rules that limit the total amount of time that a member of the public may address the body on a given item.”<sup>14</sup> For example, courts may require speakers to sign up in advance and may establish reasonable limits on the length of presentations or the total time a member of the public can address the court on a given item.

Courts may also designate a single public comment period at the beginning of a meeting to address all items on the agenda and may place a reasonable limit on the total amount of time one speaker has to address all items on the agenda.<sup>15</sup> This helps to keep discussion of issues timely and on point. Also, if a time limit is established in advance and applied

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<sup>12</sup> For a discussion of conflict of issues, see “Quorum Issues” question no. 4 below and [Pitfalls and Perils of Public Office](#), pg. 2.

<sup>13</sup> Tex. Gov’t Code §551.007(b)

<sup>14</sup> *Id.* at §551.007(c)

<sup>15</sup> Tex. Att’y Gen. Op. No. KP-0300 (2020)

consistently, it is less likely that an individual will feel personally attacked if he or she is asked to yield the floor at the end of the allotted time. Sometimes, when there are items of particular public interest with many members of the public present to comment, it may be appropriate to hold all comments until that agenda item is called up. The court's procedures should contemplate this scenario.

Given the options, it is best practice that a county has a process in place for members of the public to register to speak and request translators<sup>16</sup>, if necessary. These rules cannot prohibit criticism of the court or any act, omission, policy, procedure, program, or service.<sup>17</sup> Rules can, however, limit obscenity or offensive language and dictate when the member of the public is allowed to address the court, so long as it is allowed before or during the consideration of the item being addressed by the member of the public. Courts can also require public comment be related to an item on the agenda. However, the better practice may be to hold a brief (often three minutes per person) public comment portion of the commissioners court meetings to give the public an opportunity to speak on matters that are relevant and within the authority of the body being addressed. To avoid violating the Open Meetings Act, court members should take care to refrain from discussing or commenting at length on remarks made by the public that do not relate to agenda items. If a court chooses to allow an open forum for public comment, the procedure should be set out in the rules adopted by the court.

When a court permits public comment on agenda items or other matters directly relevant to county business, the court has likely created a "designated public forum" and thus members of the public are entitled to their First Amendment right of free speech. Thus, any rules put in place must be content neutral, meaning the rule cannot prohibit a comment based on the opinion, perspective, or ideology being expressed. Nonetheless, the Supreme Court has recognized that the First Amendment permits restrictions upon the content of speech in a "few limited areas," including obscenity, defamation, fraud, incitement, fighting words, and speech integral to criminal conduct. When in doubt, a commissioners court should consult and work with their county attorney to draw up meeting guidelines that are constitutionally sound but responsive to the need to conduct orderly meetings and conserve public resources.

**General Expectations of Courtesy and Respect.** A policy on respect for the court and citizens may also help meetings to be more orderly and productive. Such a policy may require individuals to refrain from using the public meeting as a forum for rude,

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<sup>16</sup> Courts must either use simultaneous translation equipment or allot twice as much time for members of the public using translators. *Id.* at §551.007(d)

<sup>17</sup> *Id.* at §551.007(e)

slanderous, or disruptive personal attacks on others, and may allow the presiding officer to take the floor away from individuals who act unruly. Individuals may further be prohibited from private discourse or other distractions, and any such acts may be stopped by the presiding officer. Although the Open Meetings Act does not address behavior or conduct of the public, other laws do. In Texas, it is a criminal offense for a person, with the intent to prevent or disrupt a lawful meeting, to substantially obstruct or interfere with the meeting by physical action or verbal utterance.<sup>18</sup> It is best practice to issue warnings for disruptive behavior before taking further action such as expulsion, arrest, or findings of contempt.

**Media.** The media has a right to access public meetings in the same manner as individuals. That being said, the court can adopt reasonable rules to ensure that media presence does not interfere with the meeting itself. For example, the court may designate a particular area for cameras, microphones, and members of the media. The court can also require the media to come and go in a manner that does not disrupt the meeting.

**Bailiff.** Commissioners courts may choose to set out in their procedures who will serve as bailiff to the commissioners court. Most often, this is the sheriff or a sheriff's deputy. However, the procedure should also set out who will serve as the bailiff in the event the Sheriff's Office and its personnel are unable to serve for any reason.

**Mechanism for Amending Rules.** Despite best efforts, it is inevitable that situations will arise and evolve making it necessary to amend any procedures or rules for decorum a court may adopt. Thus, it is important to include in those rules, a mechanism for amending the rules to fit a new court, situation, or circumstance.

**Inclusivity Considerations.** As a body of local government, courts should strive to make meetings accessible for all members of the public. Consider policies and practices that are mindful of the range of experiences and backgrounds in your community and strive to show respect for all who attempt to engage in and are served by county government. For example, making translators (for both spoken and sign languages) available upon request or obtaining translation software can encourage and support participation. Something as simple as making an effort to pronounce people's names correctly and address them in a way that shows respect can build trust in the community and increase your influence as a community leader. If you are unsure how someone would like to be addressed or referred to, it is ok to respectfully ask them and then do your best to honor their request. Similarly, deliberate awareness of marginalized communities and stigmatized issues (such as addiction or mental health issues) can help de-escalate tensions around

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<sup>18</sup> Tex. Penal Code §42.05; *Morehead v. State*, 807 S.W.2d 577 (Tex. Crim. App. 1991)

polarizing issues and create a less hostile environment in which county business can be handled.



## **COMMISSIONERS COURT: FREQUENTLY ASKED QUESTIONS**

Every year, the Legal Services Department of the Texas Association of Counties answers thousands of calls from counties on the Legal Helpline at 1-888-ASK TAC4 (275-8224). Many of these calls concern the operations of the county commissioners court. Below are several questions we commonly (and some uncommonly) have received from counties edited to avoid identifying the particular county from which it came.

### **AGENDA**

The notice of a commissioners court meeting, commonly referred to as the agenda, is the heart of the commissioners court's work. Section 551.041 of the Government Code requires the commissioners court to give written notice of the date, hour, place, and subject of each meeting.<sup>19</sup> The notice must be posted in a place readily accessible to the public at all times for at least 72 hours before the scheduled time of the meeting, except for an emergency meeting.

**1. Does a county commissioner have the right to place an item on the court's agenda?**

Yes. Each commissioner may place items of their choice on to each agenda, if done in a timely manner. The agenda belongs to the court as a whole rather than to the county judge or another authority.<sup>20</sup>

**2. May a commissioner's submitted agenda item be edited for clarity?**

We find no express authority for a commissioner's agenda item to be edited. With that said, a commissioner should be open to review of the suggested text to ensure it meets the Open Meeting Act's sufficiency requirements for sufficiency of notice. As stated above, §551.041 of the Texas Government Code requires the posted notice to address the date, hour, place, and subject of each meeting.

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<sup>19</sup> Tex. Gov't Code §551.041

<sup>20</sup> Tex. Att'y Gen. Op. No. JM-0063 (1983)

**3. What is the difference between the terms “agenda” and “notice”?**

There is no practical difference.<sup>21</sup> Notice is the term used in the Open Meetings Act, while we have found in discussions with counties that agenda is the more commonly used day to day term.

**4. May a commissioners court set rules for the submission of items to be placed on the agenda?**

Yes, so long as the effect of the adopted rules do not preclude a commissioner from placing an item on an agenda.<sup>22</sup> The court as a whole may create rules to address the form in which proposed agenda items are to be submitted for inclusion, to whom the items must be submitted and a deadline for submission.<sup>23</sup>

**5. May a commissioners court limit the number of times the same or a similar item may be placed on an agenda?**

Not if doing so would impede a commissioner’s authority to place items on the agenda.

**6. Have posting requirements been met if the agenda is posted timely online but not physically on the county bulletin board?**

Section 551.049 of the Government Code generally requires a county governmental body to post notice of each meeting on a bulletin board at a place convenient to the public at the county courthouse. With that said, §551.056 requires the county to post the notice of the court’s meeting on the county website in addition to the physical posting at the courthouse. Section 551.043 provides that a county satisfies the requirement that the notice be posted with the posting requirements in a place readily accessible to the public if it (1) makes a good faith effort to continuously post the notice on its website for the prescribed period, (2) complies with the duty to physically post the notice at a particular location and (3) the physically posted notice is readily accessible to the public during regular business hours.

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<sup>21</sup> David B. Brooks, Texas Practice Volume 35, *County and Special District Law*, §6.10, pg. 303

<sup>22</sup> Tex. Att’y Gen. Op. No. JM-0063 (1983)

<sup>23</sup> *Id.*

**7. If an agenda item concerns the employment of a specific person, must that person be named?**

The specificity required in the notice is driven partially by the public interest in the position. If the public has a special interest, more specific language may well be required.<sup>24</sup> We would urge a county to consult with the county attorney in drafting agenda items concerning personnel and other out of the ordinary issues.

**8. May an agenda be amended if the amendment is made at least 72 hours before the scheduled meeting?**

Yes, so long as the amended agenda is posted in full in a place readily accessible to the public at all times at least 72 hours prior to the meeting as required by §551.043 of the Texas Government Code.<sup>25</sup>

**9. Does supplemental information provided to the court have to be posted along with the website posting of the agenda?**

No. While nothing prevents the county from posting such information, §551.056 of the Texas Government Code only requires posting of the notice of the meeting.<sup>26</sup>

**10. May the county judge refuse to put an item on the agenda?**

No. Each commissioner has the right to place items on the agenda. Even if the court has ceded the administrative duty to prepare the agenda to the county judge, the actual authority over the agenda remains with the court as a whole entity.

**11. May the commissioners court discuss agenda items placed on the agenda by a commissioner who is absent from the meeting?**

So long as a quorum is present, the court may discuss any item on the agenda, whether or not the member who placed the item on the agenda is present.

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<sup>24</sup> *Port Isabel ISD v. Hinojosa*, 797 S.W. 2d 176 (Tex.App.-Corpus Christi, 1990, writ denied)

<sup>25</sup> Tex. Gov't Code §551.043

<sup>26</sup> *Id.* §551.056

**12. Must a meeting that will be held by telephone conference state the fact it is being held by phone?**

No. When a telephone conference meeting is held, the notice must state the location at which the commissioner court's meetings are normally held but does not have to indicate the meeting will be held telephonically.<sup>27</sup>

**13. Does the meeting notice have to specify which items will be heard in executive session?**

No. The Act does not require the notice to specify whether a matter will be considered in an open or closed session.<sup>28</sup> 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. A commissioners court may also include language in each of its agendas that any item may be considered in closed session as authorized by the Open Meetings Act. The notice of a closed meeting does not need to include the section number of the Open Meetings Act that authorizes the closed meeting.<sup>29</sup>

**14. Should a notice be posted if a quorum of the commissioners court is likely to be present at a social event?**

The Open Meetings Act does not include the gathering of a quorum of the court at a social function unrelated to the public business of the commissioners court in the definition of a meeting.<sup>30</sup> Therefore, the county is not required to post an agenda or notice when a majority of the court will be present at a social event if public business will not be conducted.

**15. Must an agenda be signed?**

There is no statutory requirement for a posted agenda to be signed by the county judge or any other authority, though many counties do engage in this practice.

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<sup>27</sup> *Id.* §551.125

<sup>28</sup> Tex. Att'y Gen. Op. No. JC-0057 (1999)

<sup>29</sup> Tex. Att'y Gen. Op. No. GA-0511 (2007)

<sup>30</sup> Tex. Gov't Code §551.001(4)

## PUBLIC COMMENT

A commissioners court is required to provide the public with an opportunity to comment on items on the agenda before or during the consideration of the item.<sup>31</sup> This agenda comment period is in addition to the general public comment period that many counties have traditionally allowed at commissioners court meetings.

### **1. May the commissioners court adopt a rule that limits the amount of time a person has to comment?**

Yes, under §551.007(c) of the Government Code, the court may adopt reasonable rules limiting the total amount of time a person may address the body on a given item.<sup>32</sup> With that said, the section does not provide guidance on what constitutes a reasonable amount of time for comment except that §552.007(d) requires that any limitation of time to comment must provide that a commenter addressing the court through a translator must be given at least twice the amount of time for comment as a person who does not require a translator.<sup>33</sup>

### **2. May the court provide a single public comment period for agenda items at the beginning of the meeting?**

After §551.007 was added to the Government Code and became effective in September 2019, the attorney general was asked whether a county could provide a single comment period at the beginning of the commissioners court meeting to cover all the agenda items or whether the intent of the law was to provide a public comment period immediately before the court's consideration of each item on the agenda. The attorney general opined that a single comment period at the beginning of the meeting is sufficient, though the court certainly could provide for comment before each item if it so chose.<sup>34</sup>

### **3. May the court adopt limitations on the content of public comment?**

As noted above, the court may adopt some limitations on public comment. However, §551.007(e) of the Government Code provides that the commissioners court may not

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<sup>31</sup> *Id.* §551.007

<sup>32</sup> *Id.* §551.007(c)

<sup>33</sup> *Id.* §551.007(d)

<sup>34</sup> Tex. Att'y Gen. Op. No. KP-0300 (2020)

prohibit public criticism of the court, including criticism of any county act, omission, policy, procedure, program, or service.<sup>35</sup>

**4. Is there a distinction between public comment concerning the items on the meeting agenda and general public comment?**

Allowing public comment on posted agenda items before or during discussion of the item is required under Government Code §551.007. In contrast, general public comment is not a required element of a meeting held under the Open Meetings Act, although many counties have traditionally provided time for the public to comment on general issues.

**5. In general public comment, may the commissioners respond to questions or statements from the public concerning items not on the agenda?**

No, except to provide factual information or recite existing policy.<sup>36</sup> The commissioners should limit their comments to items on the meeting's agenda to avoid potential violations of the Open Meetings Act. Commissioners also may suggest an item be placed on a future agenda to permit discussion by the court.

## QUORUM ISSUES

**1. What is a quorum?**

Section 551.001(6) of the Government Code defines a quorum as a majority of the governmental body, unless defined differently by applicable law or rule or the charter of the governmental body. For a commissioners court, a quorum is three or more members of the court.<sup>37</sup> An example of an applicable law that defines quorum differently for a specific purpose is §67.004 of the Election Code under which two members of the commissioners court constitute a quorum for the purpose of canvassing an election.<sup>38</sup> Another example is the requirement at §81.006(b) of the Local Government Code that four members of the court be present to levy a county tax.<sup>39</sup>

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<sup>35</sup> Tex. Gov't Code §551.007(e)

<sup>36</sup> *Id.* §551.042.

<sup>37</sup> Tex. Gov't Code §551.001(6)

<sup>38</sup> Tex. Election Code §67.004

<sup>39</sup> Tex. Local Gov't Code §81.006(b)

**2. Does discussing an issue through email or text messages avoid the possibility of a walking quorum violation of the Open Meetings Act?**

No. Section 551.143 of the Government Code provides that it is a criminal offense for a member of a governmental body to knowingly engage “in at least one communication among a series of communications that each occur outside of a meeting . . . and that concern an issue within the jurisdiction of the governmental body in which members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of the members.”<sup>40</sup>

A “walking quorum” is a communication between a majority of members of the commissioners court outside an open meeting concerning an issue or item that is subject to the Act.

The method of communication, whether in person or through electronic communication does not impact the illegality of the communication. Email chains have proven especially dangerous in inadvertently causing a walking quorum to arise.

**3. Must the court maintain a quorum at a workshop meeting?**

No. A quorum is necessary for the court to take action at a properly noticed public meeting. The commissioners court may hold a number of workshops to discuss the budget. No actions on adopting the budget are taken at the conclusion of a workshop. Because no action is contemplated to be taken, the loss of a quorum does not impact the ability of less than a majority of the court to be present at the workshop. With that said, the court should be careful if a quorum is lost to avoid discussions that may lead to a walking quorum or communications by a majority of the court outside a public meeting.

**4. May a court member who is conflicted out of a vote still participate in the discussion or debate of an agenda item?**

A member of the commissioners court is prohibited from participating in a matter related to a business entity or real property in which the member has a substantial interest.<sup>41</sup> Participation includes discussion, deliberation or a vote or decision. A

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<sup>40</sup> Tex. Gov’t Code §551.143

<sup>41</sup> Tex. Local Gov’t Code §171.004. For a discussion on conflict of interests, see *Pitfalls and Perils of Public Office*, pg. 2.

member of the court must avoid deliberating by exchanging written communication or communication through a third party. A member of the court does not necessarily participate in a matter merely by attending a meeting, including an executive session, related to the matter in which the member of the court has a substantial interest.

The only exception to the prohibition against participating in a matter in which a member of the court has a substantial interest is if a majority of the court has a substantial interest in the matter and have filed affidavits declaring the interest.<sup>42</sup> Under this limited circumstance, the members with a substantial interest are not required to abstain from discussion or a vote on the matter.

As for the open portion of commissioners court meetings, videoconference meetings are required, at a minimum, to have an audio recording.<sup>43</sup> There is no general requirement to record a general in person commissioners court meeting; §551.021(a) of the Government Code, requires either minutes or a recording of the open meeting to be made.<sup>44</sup> A commissioners court for a county that has a population of 125,000 or more is required to make a video and audio recording of each regularly scheduled open meeting that is not a work session or special called meeting and make available an archived copy of the recording on the Internet not later than seven days after the date of the recording.<sup>45</sup>

**5. Can a county judge unilaterally cancel a commissioners court meeting by simply posting a sign to that effect?**

No. Any three members of the commissioners court constitutes a quorum that may go forward with a properly posted and noticed meeting.

**6. Does a commissioner automatically resign if the commissioner misses a certain number of meetings?**

No. There is no provision for automatic resignation of county commissioners for missing meetings of the court. There are provisions of this sort specifically applicable to certain types of municipalities, but the legislature has not extended a similar requirement to county commissioners.

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<sup>42</sup> Tex. Local Gov't Code §171.004(c)

<sup>43</sup> *Id.* §551.127(g)

<sup>44</sup> *Id.* §551.021(a)

<sup>45</sup> *Id.* §551.128



## MISCELLANIOUS

**1. What authority does a “county judge pro tem” have to conduct a meeting of the commissioners court?**

Although many commissioners courts have created the position of county judge pro tem, it is important to note that this position does not exist in statute. While a court may appoint one of its members (often but not necessarily the member with the most seniority) to conduct meetings of the court in the county judge’s absence, the county judge pro tem’s authority does not extend beyond the meeting into the actual administrative and judicial authority of the county judge.

**2. Is the county judge allowed to make motions? Second motions? Vote on agenda items?**

Yes. The county judge is a full member of the commissioners court and has the right to vote on all matters before the court.<sup>46</sup> In some counties, the judge has traditionally not voted, or only votes to break ties, but this is a local practice and the decision whether to make or second motions or vote on items before the court is purely at the discretion of the county judge.

**3. Is the county clerk required to be present in an executive session to take notes of the certified agenda?**

No. The commissioners court may exclude the county clerk from executive sessions notwithstanding the clerk’s statutory duty to record and keep the commissioners court’s minutes and records.<sup>47</sup>

**4. Is attendance in an executive session limited to members of the commissioners court?**

No. The commissioners may permit attendance by additional parties if their participation is necessary to the matter under discussion and their interest is not adverse to the county.<sup>48</sup>

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<sup>46</sup> Tex. Att’y Gen. Op. No. GM-2145 (1940) (formerly designated O-2145)

<sup>47</sup> Tex. Att’y Gen. Op. No. JM-0006 (1983)

<sup>48</sup> Tex. Att’y Gen. Op. No. JC-0375 (2001)

**5. If a county judge dies while in office, may a member of the commissioners court be appointed to replace him?**

No. To be eligible for appointment as county judge, a commissioner must have (1) resigned and (2) have had his successor appointed to office to release the commissioner's holdover status. Once this has been done, the commissioner is no longer a sitting member of the court which removes the self-appointment issue. The county judge is the person with authority to fill commissioner vacancies. If the county judge has passed away, there is no one to appoint someone to fill the vacancy and end the commissioner's holdover status. Because the commissioner will remain a holdover member of the court until a new judge is appointed, the commissioner is ineligible to be appointed as county judge. A non-member of the court will have to be appointed as county judge.

**6. Does a commissioners court have contempt authority?**

Yes. Section 81.023 of the Local Government Code grants the court authority to punish a person by fine of not more than \$25 or confinement for not more than 24 hours. A person may be confined until the fine is paid.<sup>49</sup>

**7. Must a commissioners court meeting be recorded?**

Government Code §551.103 requires a closed meeting (executive session) to either be recorded or for a certified agenda to be created for the meeting containing the requisite elements.<sup>50</sup> An audio recording of the executive session is sufficient to comply with §551.103 if the decision is made to record rather than create a certified agenda.

**8. If a county commissioner hires a brother-in-law of another commissioner to work on his or her road crew, does the hiring represent a nepotism violation?**

Perhaps. A brother-in-law is related by the second degree by affinity which falls within the prohibited nepotism relationship.<sup>51</sup> In a county under the ex officio road commissioner system of road administration in which county commissioners are responsible for the maintenance of roads inside their precincts, §252.006(c) of the Transportation Code provides that commissioners may employ persons in the precinct to be paid from the county's road and bridge fund subject to authorization

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<sup>49</sup> Tex. Local Gov't Code §81.023

<sup>50</sup> Tex. Gov't Code §551.103

<sup>51</sup> *Id.* §573.041

from the commissioners court.<sup>52</sup> The issue would be whether the hiring commissioner had sole hiring authority over the brother-in-law or whether that authority was vested in the court as an entity.

**9. May a commissioner be reimbursed for legal fees?**

The attorney general has suggested that if a commissioner was acquitted and the commissioners court determines it is in the public interest to reimburse the commissioner for legal expenses incurred defending a matter concerning the commissioner's duties, the court may reimburse the commissioner for the expenses.<sup>53</sup> Under §157.901 of the Local Government Code, a county official or employee is entitled to have the county pay for outside legal counsel if necessary and proper to defend them in a suit brought by an entity other than the county from an action concerning the official or employee's public duty.<sup>54</sup>

**10. May the commissioners court limit educational or other expenses of a "lame duck" fellow commissioner?**

Yes. Section 130.908 of the Local Government Code allows the court to approve expenditures of a county official, including a commissioner who has lost his or her bid for renomination in the primary or reelection at the general election.<sup>55</sup>

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<sup>52</sup> Tex. Trans. Code §252.006(c)

<sup>53</sup> Tex. Att'y Gen. Op. No. KP-0037 (2013)

<sup>54</sup> Tex. Local Gov't Code §157.901

<sup>55</sup> *Id.* §130.908

## Appendix A

### 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 Session.
  
- III. The \_\_\_\_\_ County Commissioners Court meets in Regular Session on the \_\_\_\_\_ of each month/week. 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 Commissioner or the County Judge by 12:00 p.m. (noon) on the Wednesday immediately preceding the next Regular Meeting of the Commissioners Court.
  - A. The County Judge may group routine items without controversy together on the Court's Voting Session Agenda as "Consent Items," which items may be approved by the Court on a single motion and vote.
    1. Prior to consideration of the "Consent Items" the County Judge, or presiding member of the Court, will honor any request from any Court Member that an item be removed from the Consent Items and separately considered by the Court.
    2. Each Voting Session agenda item may, after discussion, be designated as "Consent", if appropriate, and included in the consent motion of the appropriate Voting Session. However, any single Court Member may prevent an item from being included in the Voting Session consent motion.

- B. Items that are likely to be discussed in Executive Session may be grouped on the agenda with an indication under which provisions of the Texas Open Meetings Act the Executive Session will be heard.

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 observers unless a member of the public is invited to address the Commissioners Court on a particular issue or unless the member of the public completes a Public Participation Form and submits same to the County Clerk prior to the time the agenda item is addressed by the Court. The Court will make every reasonable effort to accommodate requests for interpreters but may need advanced notice to be able to accommodate such requests. 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. 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.
- 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 shall be limited to thirty (30) minutes. If more than six (6) members of the public wish to address a particular agenda item, then time allocated to members of the public recognized to speak shall be divided equally between those members of the public wishing to speak for the agenda item and those members of the public wishing to speak against the agenda item.
- 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 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 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 §81.023 of the Texas Local Government Code. Accordingly, 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. Those members of the public 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. These Rules do not prohibit public criticism of the Commissioners Court, including criticism of any act, omission, policy, procedure, program, or service. 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.
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- V. All members of the Court and public are expected to conduct themselves in a manner that demonstrates respect towards others and the Court itself. Behavior that impedes or disrupts the business of the Commissioners Court while Court is in session is prohibited and unlawful pursuant to Texas Penal Code § 42.05. It is the intention of \_\_\_\_\_ County Commissioners Court to attend to County business effectively and efficiently, without undue interruption. Cell phone usage during Commissioners Court is strictly prohibited. All cell phones, pagers, and other mobile communication devices should be in “silent” mode at all times while Court is in session.
  - VI. The County Judge is the presiding officer of the \_\_\_\_\_ County Commissioners Court and is a fully participating member thereof. In 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 preside over of the Court meeting. However, nothing herein shall prevent the senior member of this Commissioners Court from delegating this duty to another member of the Commissioners Court.
  - VII. The presiding officer of the Commissioners Court is responsible for conducting all meetings in accordance with these Rules of Decorum and Procedure. The presiding officer shall conduct the meeting in the following manner:
    - A. When an individual member of the Commissioners Court wishes to make a motion, the presiding officer shall first recognize the individual’s right to speak. The individual may then make the motion. A second is then required prior to any discussion or debate on the matter before the Court.
    - B. Only after the motion and second, the presiding officer repeats the motion and opens the floor to discussion of the motion. The maker of the motion speaks first, and the presiding officer allows proponents and opponents to alternate speaking if possible. A member who has not yet spoken has precedence over those who have already voiced an opinion. The presiding officer has the authority to end discussion if it becomes too personal or too longwinded by calling for a vote.

- C. Motions are limited to those listed in Addendum A, "Motions at a Glance." A member may only make one motion at a time. The presiding officer may decline to allow more than three motions (one main, two secondary) on the floor at one time; for example, one substantive motion and two motions to amend. When multiple motions are on the floor, the last motion made should be the first voted on.
- D. The presiding officer at the officer's discretion but in keeping with these rules, makes procedural rulings. The body may overrule the presiding officer's procedural ruling with a motion, second, and majority vote to do so.
- E. Three members of the Court constitute a quorum unless the Court is levying taxes, in which case four members constitutes a quorum or unless the Court is canvassing an election, in which case only two members of the Court constitutes a quorum. If a quorum is present, the Judge shall take a vote by asking for the "ayes" and "nays". Silence shall indicate an "aye" vote. Abstentions should be stated on the record. Approval of a motion is attained by a majority vote of all the votes cast when a quorum is present. The presiding officer shall announce the result of the vote and each member's vote verbally to ensure a complete record.

#### VIII. 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 feet (5') 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. Interviews 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,



Emergency and/or Executive Session Meeting of the Court.

- IX. 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.
- X. 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.
- XI. 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. These Rules may be temporarily suspended by majority vote of the Court in a manner that does not conflict with the Texas Open Meetings Act.

*[Signature page follows]*

ADOPTED BY THE UNANIMOUS VOTE OF THE \_\_\_\_\_ COUNTY  
COMMISSIONERS COURT on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

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

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

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

Attest:

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

**Appendix B**  
**COUNTY COMMISSIONERS COURT**  
**Public Participation Form**

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

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

HOME ADDRESS (optional): \_\_\_\_\_

\_\_\_\_\_

HOME TELEPHONE (optional): \_\_\_\_\_

Are you requesting an interpreter? \_\_\_\_\_

If so, what language? \_\_\_\_\_

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 that the agenda item (or items) you wish to address are discussed before the Court.

## Appendix C

### MOTIONS AT A GLANCE

#### Procedural Motions

The following procedural motions (main and subsidiary motions) may be needed by a commissioners court to conduct its business. They are presented in descending order of precedence.

**Basic Motion:** The basic motion puts forward a decision for the court's consideration. It is made after information is received. If seconded, the subject of the motion may move into debate and discussion.

**Motion to appeal the procedural ruling:** If the presiding officer makes a procedural ruling that a member of the court disagrees with, they can immediately appeal that ruling by stating, "I appeal the Judge's ruling." A second is required to move the appeal to a vote. If the body passes the motion, the procedural ruling is overturned. This motion may be made without being recognized to speak by the presiding officer and it cannot be ruled out of order.

**Motion to adjourn:** This motion proposes the meeting end and takes precedence over all other motions if it passes. It may not be made during a presentation of information or the discussion of a pending substantive issue and may only be brought by an individual after he or she has been recognized by the chair to have the floor. There is no debate on the motion to adjourn, so after the motion and second a vote must be held.

**Motion to recess:** This motion, which cannot be debated, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote. Note, however, that the presiding officer may call a brief recess at any time without a motion.

**Call to follow the agenda:** If a member of the court believes the court has veered away from the properly noticed agenda items, they can use this motion to attempt to get the court back on track. This motion may be made without being recognized to speak and is debatable. For a formal vote, this motion requires a second.

**Motion to go into closed/executive session:** This motion coincides with the law

regarding the Open Meetings Act, Government Code §551.071, et. seq. If during a meeting the court needs to go into closed session for one of the limited purposes listed in the statute, a member may make this motion to go into closed session.

**Motion to leave closed session:** This motion allows the court to return from a closed session into an open meeting, to take a vote in open court, as required, conclude any business, or simply to adjourn the open meeting.

**Motion to Table:** Often used when one or more members wants additional information, this motion puts the discussion of an agenda item on hold. Best practice is to have a time certain at which the discussion will resume to ensure the matter is taken back up in the future, if that is the desire of the court. The motion could specify, for example, "...until after executive session and consultation with our attorney" or "until the court receives the committee report on xx date."

**Motion to end/limit debate:** If one or more members of the court feels the discussion has gone on long enough, and typically only after all members have had the opportunity to speak at least once, a member may "Move the previous question." If all members have not had an opportunity to speak, the presiding officer may rule the motion is out of order. The motion may also seek to impose a time limit on the discussion or debate. This motion does require a second but is not debatable. A presiding officer may choose to treat this motion informally and simply ask if there is any more debate or if everyone is ready to vote. If everyone is not on the same page, a formal second and vote should be taken to determine if more debate is necessary. The practical effect could mean that you then discuss the need for more discussion.

**Motion to Refer a Matter to a Committee:** If the court believes it would be better served to let a committee first consider, debate, or gather more information on the topic of the substantive motion, it may move to refer to committee, assuming the county has a suitable committee for such consideration. Under Robert's Rules, this motion does not require a second, but in the context of county government and for the sake of simplicity, this guide suggests all motions require seconds. The substantive motion may set out a specified period of time in which the committee shall report back to the court, such as sixty days.

**Motion to amend:** If a member wants to change a basic motion that is before the body in some related and not substantively different way, they move to amend. It is best practice to allow full discussion of the original motion before offering an amendment. This ensures each member has a chance to be heard before taking the discussion in

another direction. Once a motion to amend is made, discussion should turn only to that amendment and not revert to discussion on the original motion.

Since only three motions can be pending at any given time, only two amendments may be on the floor at one time; the first motion to amend changes the original motion, and the second motion to amend must relate to the first amendment. Motions to amend must then be voted on in reverse order as needed; the second motion to amend will be voted on, then the first motion to amend, then the original motion if necessary. See the above example on page 10 under section [“Who’s on First?”](#)

**Motion to reconsider:** This motion allows an issue considered earlier in the meeting to be reconsidered. Typically, this would only happen if some relevant information became available after the initial vote that changes the mind of a member of the court. To ensure finality, the motion may only be made by someone who voted with the majority and must occur in the same meeting as the original vote.<sup>56</sup> Any member may second the motion, regardless of their prior vote on the matter. If a motion to reconsider passes, a new original motion should be made and the standard procedures of a second, debate, and vote should be followed as if it is the first time the matter is before the court.

**Withdraw the motion:** The person who made the motion may interrupt the speaker to withdraw his or her motion at any time during discussion or before it is amended, whichever comes first. Motions to amend may only be withdrawn by the person moving to amend and only in the order in which the motion would go to vote. For example, if there is a motion to amend and a motion to amend the amendment, neither the original motion nor the first motion to amend may be withdrawn while the second motion to amend is pending. If a motion to withdraw receives a second, the motion is withdrawn without the need for a vote.

### **Points of Privilege**

As discussed above, procedural motions are used to accomplish the business of the court. However, sometimes other issues and needs of the court and its members need to be addressed with some priority. In these circumstances, the court members can declare “points” to address the needs within the structure of proper procedure. These points do not require a motion, second, debate, or vote. Points should be of high importance and

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<sup>56</sup> A meeting continued by adjournment to a time and place certain is considered to be the same meeting for purposes of motions to reconsider.

urgency. As such, a member of the court can interrupt the speaker to raise the point.

**Point of inquiry:** If a member of the court is confused as to the intent or substance of a motion, or as to the pragmatic effect of an aye or nay vote, the court member may raise a point of inquiry to seek clarification. The individual must first be recognized by the presiding officer.

**Point of privilege:** Points of privilege are used if an individual needs to interrupt because there is an urgent need to address something (i.e., noise, heat, cold, technical difficulty) that is interfering with the general atmosphere of the meeting. An interruption that a door should be closed because of outside noise would be an example.

**Point of order:** An individual may also interrupt the speaker because the meeting is being conducted inappropriately in some way. For example, if a third motion to amend is made, and only two are permitted, the individual would say “point of order”, and the presiding officer would then say, “state your point”.

# Appendix D

## QUICK REFERENCE GUIDE



## PROCEDURAL RULES CHEAT SHEET

To:	You say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Vote Needed
Adjourn	"I move that we adjourn"	No	Yes	No	No	Majority
Recess	"I move that we recess until..."	No	Yes	No	Yes	Majority
Complain about noise, room temp., etc.	"Point of privilege"	Yes	No	No	No	Judge Decides
Suspend further consideration of something until majority votes to resume the discussion	"I move that we table it"	No	Yes	No	No	Majority
End debate	"I move the previous question/we take a vote on the motion."	No	Yes	No	No	Majority
Postpone consideration of something until a certain time (like the next meeting or a subsequent meeting)	"I move we postpone/table this matter until..."	No	Yes	Yes	Yes	Majority
Amend a motion	"I move that this motion be amended by..."	No	Yes	Yes	Yes	Majority
Suggest a motion on the current agenda item (a primary motion)	"I move that..."	No	Yes	Yes	Yes	Majority
Go into/leave executive session	"I move that we go into executive session/return to open session."	No	Yes	Yes	Yes	Majority
Have a committee review/research and provide more information	"I move we refer this matter to x committee made up of xyz."	No	Yes	Yes	Yes	Majority

The above listed motions and points are listed in established order of precedence. When any one of them is pending, you may not introduce another that is listed below, but you may introduce another that is listed above it.

To:	You say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Vote Needed
Object to procedure or personal affront	"Point of order"	Yes	No	No	No	Judge decides
Request information	"Point of information"	Yes	No	No	No	None
Take up matter previously tabled	"I move we take from the table..."	Yes	Yes	No	No	Majority
Reconsider something already disposed of	"I move we now (or later) reconsider our action relative to..."	Yes	Yes	Only if original motion was debatable	No	Majority
Vote on a ruling by the Presiding Officer/Judge	"I appeal the Judge's decision"	Yes	Yes	Yes	No	Majority

The motions, points and proposals listed above have no established order of preference; any of them may be introduced at any time except when meeting is considering one of the top three matters listed from the first chart (Motion to Adjourn, Recess or Point of Privilege).

## PROCEDURE FOR HANDLING A MAIN MOTION

**NOTE:** Nothing goes to discussion without a motion being on the floor and a second.

### Obtaining and Assigning the Floor

- A commissioner raises hand when no one else has the floor
- The presiding officer recognizes the commissioner by name.

### How the Motion is Brought Before the Assembly

- The commissioner makes the motion: *"I move that" (or "to")*.
- Another commissioner (or the presiding officer, if necessary) seconds the motion: *"I second the motion" or "I second it." or "Second."*
- The presiding officer states the motion: *"It is moved and seconded that ... the floor is open for debate."*

### Consideration of the Motion

1. Commissioners and the judge can debate the motion.
2. Before speaking in debate, commissioners obtain the floor.
3. Customarily, the maker of the motion has first right to the floor first, if desired.
4. The presiding officer should ensure that debate is confined to the merits of the motion.
5. Debate can be closed upon motion, second, and majority vote of the commissioners court or by the presiding officer if no one seeks the floor for further debate.

### The Presiding Officer Puts the Motion to a Vote

1. The chair asks: *"Are we ready to vote?"* If no one rises to claim the floor, the presiding officer proceeds to take the vote.
2. The presiding officer repeats the motion and says: *"All in favor, say 'Aye'."* (Pause for response.) *"Those opposed, say 'Nay'."* (Pause for response.) *"Are there any abstentions?"* (If necessary.)

### The Chair Announces the Result of the Vote

1. *"The ayes have it, the motion carries, and ..."* (indicating the effect of the vote) or
2. *"The nays have it and the motion fails."*

#### **WHEN DEBATING YOUR MOTIONS:**

1. Listen to the other side
2. Focus on issues, not personalities
3. Avoid questioning motives
4. Be polite

## HOW TO ACCOMPLISH WHAT YOU WANT TO DO IN MEETINGS

### Main Motion

You want to propose an action related to the current agenda item

- After recognition, make a main motion.
- Commissioner (or Judge, if necessary): *"I move that \_\_\_\_\_."*

### Amending a Motion

You want to change some of the wording that is being discussed.

- After recognition, *"Judge, I move that the motion be amended by adding the following words \_\_\_\_\_."*
- After recognition, *"Judge, I move that the motion be amended by striking out the following words \_\_\_\_\_."*
- After recognition, *"Judge, I move that the motion be amended by striking out the following words, \_\_\_\_\_, and adding in their place the following words \_\_\_\_\_."*

### Refer to a Committee

You feel that an idea or proposal being discussed needs more study and investigation.

- After recognition, *"Judge, I move that the question be referred to a committee made up of members Smith, Jones and Brown."*

### Postpone the Vote to Gather More Information

You want the membership to have more time to consider the question under discussion and you want to postpone it to a definite time or day, and have it come up for further consideration.

- After recognition, *"Judge, I move to postpone the question until \_\_\_\_\_."*

### Previous Question

You think discussion has gone on for too long and you want to stop discussion and vote.

- After recognition, *"Judge, I move the previous question/we take a vote."*

### Limit Debate

You think discussion is getting long, but you want to give a reasonable length of time for consideration of the question.

- After recognition, *"Judge, I move to limit discussion to two minutes per speaker."* Or *"Judge, I move we debate until 11:45."*

## **Recess**

You want to take a break for a while.

- After recognition, *"Judge, I move to recess for ten minutes."*

## **Adjournment**

You want the meeting to end.

- After recognition, *"Judge, I move to adjourn."*

## **Permission To Withdraw a Motion**

You have made a motion and after discussion, are sorry you made it.

- After recognition, *"Judge, I ask permission to withdraw my motion."*

## **Suspending the Rules**

The rules of procedure your court has adopted allow 3 minutes for public comment. However, a member of the public has come before the court with a particularly relevant or important topic. Their three minutes are up but you really want to hear what else they have to say or feel that they deserve to be heard. Note that you cannot suspend the laws such as The Open Meetings Act but a court can set aside its own rules temporarily with a motion, second, and majority vote to do so.

- After recognition, *"Judge, I move we suspend the rules and allow the speaker to continue."*

## **Point of Personal Privilege**

The noise outside the meeting has become so great that you are having trouble hearing.

- Without recognition, *"Point of personal privilege."*
- Judge: *"State your point."*
- Commissioner: *"There is too much noise, I can't hear."*

## **Closed/Executive Session**

You are going to get advice on pending litigation from your county attorney and are ready to go to executive session.

- After recognition, *"Judge, I move that we go into executive session."*

## **Point of Order**

It is obvious that the meeting is not following proper rules.

- Without recognition, *"Point of order."*

### **Point of Information**

You are wondering about some of the facts under discussion, such as the number of vehicles in the county's fleet.

- Without recognition, "*Point of information.*"

### **Appeal From the Decision of The Chair**

Without recognition, "*I appeal from the decision of the chair.*"