



Economic Development Quick Guide for Commissioners Courts

Open Government

Commissioners Court may deliberate economic development agreements in closed session but a Commissioners Court does not have the authority to invite developers or members of the public into these closed session deliberations. *See Finlan v. City of Dallas*, 888 F. Supp. 779, 787 (N.D. Tex. 1995). The commissioners court can invite a member of their staff or an agent of the county to brief the court in closed session on information they have received from the developer, but the developer and his employees and agents may not participate directly in executive session.

“Site Visits”

Many developers have invited commissioners courts to attend facilities tours. However, if three or more commissioners are together for the purpose of conducting county business, the Open Meetings Act requires the meeting to be public. Thus, while individual members of the court may attend facilities tours, if a quorum of the court attends, the public and media should also have access to the facility and the ability to observe any deliberations.

Non-Disclosure or Confidentiality Agreements

Developers are also requesting Counties or their officials and employees to sign non-disclosure agreements. Generally, only the commissioners court has the authority to bind the county. Thus, if the County wants to sign a non-disclosure agreement, the agreement itself should be put on the commissioners court agenda and approved by the court before anyone signs the agreement on behalf of the County.

NDA's will not conceal information that is subject to mandatory public disclosure under the Texas Public Information Act. Counties may withhold information from disclosure only if the County has specific authority to do so, either by law or by judicial decision. TAC strongly recommends any non-disclosure agreements contain the following language or similar language to the same effect:

Nothing in this Agreement shall be construed to limit the obligations of the County under the Texas Public Information Act (the “Act”), Chapter 552, Texas Government Code. The parties acknowledge that information subject to disclosure under the Act must be released unless a valid exception applies and is upheld by the Texas Attorney General.

Frequently Asked Questions

May a commissioners court discuss a proposed economic development agreement in closed session?

Yes, 552.087 of the Texas Gov't Code allows a commissioners court to close a meeting for the purpose of deliberating an economic development agreement. Further, 551.072 allows a commissioners court to close a meeting to deliberate the purchase, exchange or lease of real property, which often can be a component of an economic development agreement.

Who may be present in a closed meeting?

Only the commissioners courts, county officials, county employees and agents serving in a fiduciary capacity may attend a closed session. The commissioners court has the sole authority over who may or may not attend. However, developers and their agents, like all other members of the public, may not attend closed sessions.

Can the commissioners court attend a "site visit" with a developer?

No, unless the visit is held as a public meeting accessible to the public and media. Any meeting with three or more commissioners for the purpose of conducting county business is an open meeting, regardless of where it occurs.

Can individual members of the commissioners court attend a "site-visit" with a developer?

Yes, so long as a quorum of the body is not present. Individual commissioners may meet privately with developers and businesses interested in economic development incentives.

Can the county sign a non-disclosure or confidentiality agreement?

Yes, but any such agreement has no effect on a county's obligations under the Public Information Act. The County should consult with their attorney before signing any non-disclosure agreements and any such agreement must go through commissioners court.