



Texas Council on Alzheimer's Disease and Related Disorders

**Presenter: Kym Oltrogge
January 30, 2019**

- The Council is established by statute, Tex. Health & Safety Code ch. 101, to, among other things, "advise [the Department of State Health Services] and recommend needed action for the benefit of persons with Alzheimer's disease and related disorders and their caregivers"; "coordinate public and private family support networking systems for primary family caregivers;" and "facilitate coordination of state agency services and activities relating to persons with Alzheimer's disease and related disorders."¹
- Council rules are found at 25 Tex. Admin. Code § 801.1.
- The Council is a governmental body subject to the Open Meetings Act (OMA) as an entity that makes final decisions on matters and is not solely advisory.²
 - In addition, the Council's statute states that the Council is subject to the OMA,³ and the Council's rule stipulates that the Council will announce and conduct meetings in compliance with the OMA.⁴
- It is not lawful for a licensed handgun holder to carry a handgun, openly or concealed, into a Council meeting.⁵
- The OMA requires one to two hours of OMA training for members of governmental bodies.
- In addition, the Council's statute states that a Council member may not vote, deliberate, or be counted as a member in attendance at a meeting until the individual completes a training program that includes the requirements of the OMA.⁶

¹ Tex. Health & Safety Code § 101.007(a).

² Tex. Gov't Code § 551.001(3) (defining "governmental body"); *see also Gulf Reg'l Educ. Television Affiliates v. Univ. of Houston*, 746 S.W.2d 803, 809 (Tex. App.--Houston [14th Dist.] 1998, writ denied) (recognizing that OMA applies by its terms to an entity that, among other things, "has supervision or control over ... public business or policy). An advisory committee is not subject to the OMA.

³ Tex. Health & Safety Code § 101.007(b).

⁴ 25 Tex. Admin. Code § 801.1(c)(2).

⁵ Tex. Penal Code § 46.035(c).

⁶ Tex. Health & Safety Code § 101.0023(a), (b)(7)(A).



Open Meetings Act, [Tex. Gov't Code ch. 551](#):

The OMA requires a governmental body to hold all meetings in public, in an accessible location.⁷

Meeting requirements:

- Meeting = Gathering of quorum + Discussion of public business⁸
 - Quorum = majority of the governmental body (voting + nonvoting members)⁹
 - Council rule: "A simple majority of the members of the council shall constitute a quorum"¹⁰
 - The council may "transact official business only when in a legally constituted meeting with a quorum present."¹¹

Notice requirements:

- Substance of the notice: Must be in writing and must state:
 - Date of the meeting
 - Hour of the meeting
 - Place at which the meeting will be held
 - Subject or subjects to be discussed at the meeting.¹²
- Handgun warning: Council notice also must state that handguns are prohibited.¹³
 - Failure to post notice is a defense to prosecution.¹⁴
- Posting: Absent an emergency, notice must be posted on the Secretary of State's website "at least seven days before the date of

⁷ Tex. Gov't Code § 551.002.

⁸ *See id.* § 551.001(2), (6) (defining "deliberation" and "quorum").

⁹ *Id.* §551.001(6) (defining "quorum"); Tex. Gov't Code §311.013(b) ("A quorum ... is a majority of the number of members fixed by statute").

¹⁰ 25 Tex. Admin. Code § 801.1(c)(3).

¹¹ *Id.* § 801.1(c)(4).

¹² Tex. Gov't Code § 551.041.

¹³ Tex. Penal Code §§ 30.06, .07.

¹⁴ *Tafel v. State*, 524 S.W.3d 687, 689 (Tex. App.—Waco 2016, pet. ref'd).



the meeting,"¹⁵ not counting the day of posting or the day of the meeting.¹⁶

- Two-hour notice is sufficient in the event of an emergency or urgent public necessity.¹⁷
 - An emergency or an urgent public necessity exists *only* if a governmental body must take immediate action because of: (1) an imminent threat to public health and safety; or (2) a reasonably unforeseeable situation.¹⁸

Procedures:

- Open portion of meeting:
 1. Quorum must convene and adjourn in the open.¹⁹
 2. Any action, decision, or vote must be in the open.²⁰
 3. If public comment is taken, the governmental body may not restrict on discriminatory grounds.
 - Council statute requires the Council to develop and implement policies that provide the public with a reasonable opportunity to appear before the Council and to speak on any issue within the Council's jurisdiction.²¹
 4. Do not discuss items not listed on the agenda. If a member of the public raises an issue not included in the posted notice, the governmental body may respond by:
 - a. Stating specific factual information;
 - b. Reciting existing policy; or
 - c. Telling the speaker that the subject will be on a future agenda.²²
 5. Minutes must be kept or a recording made.²³ If minutes are kept, the minutes must note the subject of each deliberation and note

¹⁵ Tex. Gov't Code § 551.044(a).

¹⁶ 1 Tex. Admin. Code § 91.21(a)(1).

¹⁷ Tex. Gov't Code § 551.045(a).

¹⁸ *Id.* § 551.045(b).

¹⁹ *Id.* § 551.101.

²⁰ *Id.* § 551.102.

²¹ Tex. Health & Safety Code § 101.0065.

²² Tex. Gov't Code § 551.042.

²³ *Id.* § 551.021.



each vote, order, decision, or action taken. The minutes or recording is subject to release under the Public Information Act.²⁴

- Closed portion of meeting:

1. A governmental body may meet in a closed meeting only if a statute *expressly* authorizes the closure.²⁵

Authorized closed meetings (examples)	Authorized by	Notes
Attorney-client consultation	Tex. Gov't Code §551.071	(a) Governmental body must seek attorney's advice about litigation or a settlement offer; OR (b) Issue to be discussed is one in which the attorney's duty requires confidentiality. Attorney must be present. General discussion of policy is not permissible merely because attorney is present. ²⁶
Deliberation of a gift or donation	Tex. Gov't Code §551.073	Allowed only if an open discussion would harm the governmental body's position in negotiations. Council statute allows the Council to seek gifts and grants. ²⁷
Discussion of personnel matters	Tex. Gov't Code §551.074	

²⁴ *Id.* § 551.022.

²⁵ *Id.* § 551.101.

²⁶ *Finlan v. City of Dallas*, 888 F. Supp. 779, 782 n.9 (N.D. Tex. 1995).

²⁷ Tex. Health & Safety Code § 101.009(a).



Discussion regarding security devices or security audits	Tex. Gov't Code §§ 551.076, .089	
----------------------------------------------------------	----------------------------------	--

2. The members who are present must convene in the open.²⁸
3. Before the governmental body goes into a closed meeting, the presiding officer must announce that the body will go into a closed meeting and must announce the law or laws that allow the closure.²⁹
4. No final actions, decisions, or votes may be taken.³⁰
5. The governmental body must keep a certified agenda or recording of each closed meeting.³¹
 - a. A certified agenda must:
 - i. State the subject matter of each item discussion;
 - ii. Record any further action taken;
 - iii. Reflect an announcement by the presiding officer of the starting date and time and ending date and time of the closed meeting; and
 - iv. Include a certification by the presiding officer that the agenda is a true and correct record of what happened.³²
 - b. A tape recording must include announcements by the presiding officer at the beginning and end of the meeting indicating the date and time.³³
 - c. The certified agenda or recording is not available to the public under the Public Information Act.³⁴
 - d. A member of the governmental body is not a member of the public.³⁵
6. Only members of the governmental body have a right to attend. In general, other individuals may be admitted, but the governmental body should carefully consider the need for "other individuals" to be included and should not include any person who destroys the purpose of the exception.³⁶

²⁸ Tex. Gov't Code § 551.101.

²⁹ *Id.* § 551.101.

³⁰ *Id.* § 551.102.

³¹ *Id.* § 551.103.

³² *Id.* § 551.103(c).

³³ *Id.* § 551.103(d).

³⁴ *Id.* § 551.104.

³⁵ Tex. Att'y Gen. Ops. DM-227 (1993); JC-120 (1999).

³⁶ Tex. Att'y Gen. Op. No. GA-0277 (2004) and opinions cited therein.



- All other procedural matters generally must be determined in accordance with Roberts Rules of Order.³⁷

Penalties for violations:

1. Action is voidable, not void.³⁸
2. Criminal penalties are possible.³⁹

Problems:

1. The Texas Dog Sled Racing Commission is a nine-member governmental body. Six of its members attend a legislative hearing on a proposed bill that would ban races in a state park on the Texas-Mexico border. The Commission did not post notice that a quorum would be attending the hearing. Commissioner Snow testifies before the legislative committee, and Commissioner White answers some questions posed by the legislators. After the hearing, the members discuss the bill in the hall. At what point is there a violation of the Open Meetings Act?

2. The Texas Dog Sled Racing Commission (nine members) has two committees. One committee has three commissioners, the other has six commissioners. Both committees are advisory only; decisions made by the committees are always brought to the full Commission for discussion and a vote. Does either committee have to comply with the Open Meetings Act?

³⁷ 25 Tex. Admin. Code § 801.1(c)(5).

³⁸ Tex. Gov't Code § 551.141.

³⁹ *Id.* §§ 551.143 (conspiracy to circumvent chapter), 551.144 (closed meeting), 551.145 (closed meeting without certified agenda or recording), 551.146 (disclosure of certified agenda or recording of closed meeting).



3. A member of the Texas Sandcastle Regulatory Commission took notes during a closed meeting. The notes are not the certified agenda; the commissioner took the notes for her personal use. A member of the public subsequently files a Public Information Act request for any notes taken during the closed meeting. Must the Commission release the notes to the requestor?

Resources:

Tex. Gov't Code ch. 551, Open Meetings Act:

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.551.htm>

Open Meetings Act Training:

<https://www.texasattorneygeneral.gov/og/oma-training>

Open Meeting Handbook 2018:

<https://www.texasattorneygeneral.gov/og/oma-training>

Tex. Gov't Code ch. 552, Public Information Act:

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>

Public Information Act Training:

<https://www.texasattorneygeneral.gov/og/pia-training>

Public Information Handbook 2018:

<https://www.texasattorneygeneral.gov/og/oma-training>