

TEXAS MUNICIPAL LAW Bulletin™

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OPEN GOVERNMENT & CORONAVIRUS

In light of the COVID-19 situation, local government officials are concerned about virus transmission at public meetings. Emergency operations plans are being put into effect. Disaster declarations are altering municipal operations and civic life. This document is an educational bulletin prepared to convey general, non-specific data to our clients, friends and colleagues. As such, it should not be construed as legal advice. For particularized assistance, please contact a lawyer at the firm to discuss the facts of your situation.

MEETINGS

FREQUENT QUESTIONS

When contemplating whether to conduct a meeting, you may want to consider these questions.

Necessity: Does the governmental body really need to hold the meeting at this time? Are there matters that can wait or be delayed?

Extent: If the governmental body does need to meet, can it streamline the agenda? Can the number of agenda items be reduced so the governing body can make decisions only on the most urgent or time-sensitive or essential items, thus decreasing the meeting's duration? Can items soliciting public input (e.g., public hearings) be postponed? Might the governing body want to dispose of formalities such as the Pledge of Allegiance, Invocation, Proclamations, and Staff Reports in the interest of time?

Participants: Who needs to be at the meeting other than the governing body? Which staff members are essential? What consultants are vital to deliberations?

Means: If the governmental body does need to meet to decide some matters, can it set up a conference call or videoconference enabling remote participation options for the members? (*see legal info on following pages*)

Alternatives: What are the other options for distributing material to the governmental body, staff, volunteers, and the citizenry? Can information that is typically disseminated at a meeting be made available in writing, electronically, or via social media?

Public Input: If the governmental body accepts public comments at a meeting, can it strongly encourage written or electronic comments instead? Might the governing body establish a public comment email to receive comments to be read at the meeting and included in the public record?

Screening: If a meeting of the governmental body is necessary, can members be medically screened in advance - at least for fever - and those with symptoms barred from attending in person?

Spacing: Can member attendance be limited to a bare quorum with attendees sitting at least six feet apart?

Maximum Occupancy: Should the governmental body limit the number of members of the public who attend in person as of right? This would be done objectively without discriminating against any particular people or their viewpoints. It must be content-neutral.



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Citizen Comments: Would it be wise to limit the number of speakers who can address the governmental body during the Citizen Comment Period or on other agenda items and require that they sign up in advance?

EMERGENCY MEETINGS

If Unable To Convene Due to Catastrophe

A governmental body that is prevented from convening an open meeting that was otherwise properly posted because of a catastrophe (e.g., epidemic) may convene the meeting in a convenient location within 72 hours pursuant to § 551.045 if the action is taken in good faith and not to circumvent the Texas Open Meetings Act



(TOMA). If the governmental body is unable to convene the open meeting within those 72 hours, the governmental body may subsequently convene the meeting only if the governmental body gives written notice of the meeting as required by this subchapter. Tex. Gov't Code § 551.0411(b).

Emergency Items

Governmental bodies can add emergency items to their agendas if the supplemental notice is posted at least one hour before the meeting. Tex. Gov't Code § 551.045(a).

Emergency Meetings

Governmental bodies can gather to deliberate or take action on the emergency or urgent public necessity if the agenda is posted at least one hour before the meeting. The emergency must clearly be noted on the agenda. Tex. Gov't Code § 551.045.

Notice to Media of Emergency Meeting

The person who calls an emergency meeting or adds an emergency item to the agenda must notify the news media if the news media has previously:

- filed at the headquarters of the governmental body a request containing all pertinent information for the special notice; and
- agreed to reimburse the governmental body for the cost of providing the special notice.

Notice can be given by telephone, facsimile transmission, or electronic mail at least one hour before the meeting is convened. Tex. Gov't Code § 551.047.

VIDEOCONFERENCING

TOMA authorizes a governmental body to hold an open or closed meeting by video-conference call or telephonic conference call. Typically, there are limitations on use of these procedures, including mandates regarding quorums, full participation, and technical specifications. Tex. Gov't Code §§ 551.125 and 551.127. However, Governor Abbott exercised his emergency powers to suspend certain aspects of TOMA temporarily.

A webinar-type meeting with members of the public being allowed to write-in their questions that are read into the record will likely satisfy the requirements of the law during this emergency period.

<https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Open%20Meeting%20Laws%20Subject%20to%20Temporary%20Suspension.pdf>



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VIDEOCONFERENCING (cont.)

The following are *NOT REQUIRED* during this emergency:

- physical quorum at specified location.
- physical posting of the agenda, so long as electronic agenda contains a videoconference link or dial-in number to access the meeting, along with any agenda packet.
- meeting be audible to members of the public who are physically present at the specified location, but the meeting must be audible to members of the public and allow for two-way communication.
- face-to-face interaction between members of public and public officials.

CONSULTATION WITH ATTORNEY

Attorneys who are not employees of the governmental body may participate in the meeting by telephone conference. Tex. Gov't. Code § 551.129. We assume this rule would be interpreted to apply to videoconferences during emergency situations.

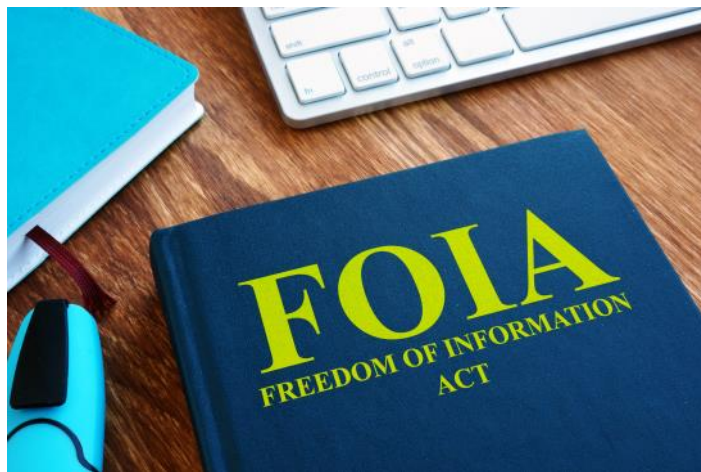


RECORDS

A governmental body “impacted by a catastrophe” can to temporarily suspend the requirements of the Texas Public Information Act (PIA) for up to two consecutive seven-day periods. Catastrophe includes an *epidemic*. To do so, it must provide notice to the AG’s Office on the prescribed form. The AG has a link to a sample notice:

<https://www.texasattorneygeneral.gov/open-government/governmental-bodies/catastrophe-notice>

If the governmental body suspends the requirements of the PIA, requests received during the suspension period are considered to have been received on the first business day after the date the suspension period ends. Deadlines for requests received before the suspension period are tolled until the first business day after the date the suspension period ends. However, skeleton crew days or days that the City is closed are not counted for purposes of the PIA. But, if the governmental body is overwhelmed with requests when it returns to normal operations, it might consider this as an option. Tex. Gov’t Code § 552.233



This information was prepared by the members of the Bojorquez Law Firm, PC, as general educational material for our clients, friends and colleagues. This was not prepared as guidance in response to any questions or situations posed to the firm. This data was not intended as legal advice, and should not be construed as such. Those seeking legal opinions on a particular matter should consult with their assigned attorney in order to receive specific guidance.

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