



FARMERS  
BRANCH

# Planning and Zoning Commission Open Meetings Act Workshop

Kevin B. Laughlin, Partner  
Nichols, Jackson, Dillard, Hager & Smith, LLP

Farmers Branch Planning & Zoning Commission  
Work Session  
April 23, 2018

# OPEN MEETINGS ACT

- Every regular, special or called meeting of a governing body is open to the public unless a closed meeting is authorized by the Act.
- Governing body includes quasi-judicial boards and commissions but not advisory board.
- Act requires 72-hour posted notice of meeting.

# BODIES SUBJECT TO THE ACT

- City Council, Planning & Zoning, Board of Adjustment, Building and Standards Commission.
- Advisory board, commission or committee, such as the Library Board which has no authority over public business or policy is not subject to the Act.
- Committees consisting of members of the governing body even though less than a quorum are subject to the Act when the committee meets to discuss public business.
- By local City policy all boards and commissions are required to follow the Act.

# MEETINGS SUBJECT TO THE ACT

- Any discussion or deliberation between a quorum (majority), or between a quorum and another person, about public business or policy which the Board/Commission controls or supervises, or during which formal action is taken.
- Deliberation is defined as a verbal exchange during a meeting between a quorum, or between a quorum and another person concerning public business or policy.

# NOTICE

- Seventy-two (72) hours prior written notice of the date, hour, place, and subject of each meeting, including authorized closed meetings with the exception of a closed meeting for consultation with an attorney.
- Notice must be sufficient to inform the public of the subject matter that the governing body will consider in an open or closed meeting.
- The more critical the topic, the more specific the notice.
- General descriptions such as “new business,” “old business,” “personnel,” and “litigation” are insufficient.
- Can include item “Future Agenda Items” but only for purpose of requesting proper posting and discussion/action at later meeting.

# OPEN MEETINGS ACT DOES NOT APPLY

- Purely social meetings unrelated to public business;
- Conventions, seminars or workshops;
- Testimony before legislature and agencies; and
- Appearance at a candidate forum, appearance or debate to inform the public

**IF** no formal action is taken and any discussion of public business is incidental to the event.

# SECRET DELIBERATIONS

- May not contact members by telephone for the purpose to arrive at a decision or consensus concerning public business.
- May not use email/voice mail to arrive at a decision.
- May not meet in numbers less than a quorum for the purpose of secret deliberations.
- Discussions of city business through social media sites (Facebook, NextDoor, Twitter, etc.) may constitute a meeting



Can I count on your  
Vote



# SECRET DELIBERATIONS

- May not meet or conspire to meet in numbers that do not physically constitute a quorum at any one time but through successive gatherings secretly discuss a public matter with a quorum.
- **Golden Rule**: If public deprived of opportunity to see deliberation, and see officials in action, then such telephone/email exchange or other gatherings should be avoided.

# FINAL ACTION

- Decision must be made public.
- No voting in closed session or by secret ballot.

# MINUTES

- Must prepare and retain minutes or a tape of each of its meetings – staff function.
- Minutes state the subject matter of each deliberation, vote, order, decision, or other action and are available to the public.
- Tape or certified agenda required for closed meetings.

# CERTIFIED AGENDA

- Certified agenda or tape recording must be kept of closed meetings.
- Certified agenda must include:
  - Announcement at the beginning and end of meeting stating the date and time the closed meeting began and ended
  - Subject matter discussed
  - Any action taken in open session.
- Certified agenda may not be released to the public except by court order.

# CLOSED MEETINGS

- Limited to specific purposes.
- Notice must be posted listing the specific Section of the Gov Code and give brief description.
- Attendance should be limited to persons necessary for purpose of executive session and whose interest is not adverse to the City.
- Common examples: seek the advice of attorney, discuss real estate, discuss terms of settlement of lawsuit or administrative action, discuss personnel and economic development.

# PROCEDURE FOR CLOSED SESSIONS

- Quorum first convenes in open meeting for which proper posted notice is given.
- Presiding officer announces that a closed meeting will be held, states the applicable sections of the Texas Government Code and the subject matter (usually already printed on agenda).

# CONSULTATION WITH ATTORNEY

- Seek the advice of attorney about pending or contemplated litigation or a settlement offer, the agenda notice should describe the lawsuit.
- If during the course of a meeting, a situation arises in which the city council seeks legal advice and in order to preserve the attorney/client privileged communication, the city council may convene a closed meeting to seek legal advice even though not listed on the meeting agenda.

# **VIOLATIONS**

- Action taken in violation of the Act is voidable.
- Action may be set aside by a court/but can be cured by subsequent meeting.
- Members who knowingly conspire to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of the Act, commit a misdemeanor offense.



# **VIOLATIONS**

- Knowingly calling or aiding in calling or organizing an illegal closed meeting or participating in an illegal closed meeting; closing or aiding in closing the meeting to the public = misdemeanor offense.
- Offense if participating in a closed meeting knowing that a certified agenda of the meeting is not being kept or that a tape recording of the closed meeting is not being made.

# **VIOLATIONS**

- Disclosure of the certified agenda or tape recording of a meeting that was lawfully closed to the public under the Act is a misdemeanor.
- Member is liable to the person who is injured or damaged by the disclosure for actual damages, including damages for personal injury, lost wages, defamation, mental or emotional distress, reasonable attorney's fees, and court costs



FARMERS  
BRANCH

# QUESTIONS?