

SUCCESSFUL BOARDS

**THE CHARACTERISTICS OF SUCCESSFUL BOARDS
IN COMMUNITY LEADERSHIP**



August 11, 2012

This 2012 Trustee Workshop Presentation has been prepared in reference to Bylaw 3.3. I took an Oath of Office to follow Policy 401-14 "Comply with all applicable laws and legal requirements" which is not defined anywhere within the CLCCA Bylaws or Policies. I am not an attorney or have any legal background. However, I have performed many hours of research for this presentation.

This presentation includes specific references to Texas Chapters and Articles of Law, House / Senate Bills signed by Texas Governors, and Attorney General's Legal Opinions which are applicable to the CLCCA. This presentation also includes but not limited to: Texas Open Meetings Act (OMA), Texas Business Organization Code (BOC), Texas Open Meetings 2012 Handbook which explains the Open Meetings Act and our own internal CLCCA Governing Documents, Articles of Incorporation, Certificate of Amendment, Bylaws & Policies.

What is missing are the various Property Codes 201 – 211 and the various articles of those Property Codes that must be determined by our legal counsel that affect the CLCCA, not listed in Bylaw 3.3 or any policy.

Hyperlinks are included in certain places throughout this presentation. The last page of this presentation has Hyperlinks to Texas Governmental Documents & Index for Texas Attorney General Legal Opinions and the Robert Rules of Order On-Line that is referenced in Bylaw 6.8.

Fred Swerdlin, Meadowgreen Trustee, CLCCA Secretary

Definition of Terms & Phrases in Texas Law Code Construction for Texas Statutory Laws

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.311.htm#311.016

GOVERNMENT CODE TITLE 3.

LEGISLATIVE BRANCH SUBTITLE B. LEGISLATION

CHAPTER 311. CODE CONSTRUCTION ACT

SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is Expressly provided by statute:

- (1) "May" creates discretionary authority or grants permission or a power.**
- (2) "Shall" imposes a duty.**
- (3) "Must" creates or recognizes a condition precedent.**
- (4) "Is entitled to" creates or recognizes a right.**
- (5) "May not" imposes a prohibition and is synonymous with "shall not."**
- (6) "Is not entitled to" negates a right.**
- (7) "Is not required to" negates a duty or condition precedent.**

Attorney General Greg Abbott

Open Meetings 2012 Handbook (Page 2)

Referencing the Open Meetings Act Code 551

My Fellow Texans:

- The Texas Open Meetings Act honors the principle that government at all levels in this state should operate in a way that is open and accessible to the people. As Attorney General, I am committed to that vision as well, and I am working to ensure that Texas government is as transparent as possible.
- Texas courts have upheld the statutory duty of public officials to conduct open meetings, except in certain limited circumstances, and have affirmed that ignorance of the law does not shield anyone from compliance with the law.
- Public officials often ask my office for guidance in complying with the Open Meetings Act, and one of the ways we respond is to provide this *Open Meetings Handbook*. The *Handbook*, also available on the Internet at www.oag.state.tx.us/open/publications_og.shtml, is designed to help public officials avoid unintentional violations of the law and to help all Texans understand how the Open Meetings Act affects them.
- Part of the great trust that the public has bestowed upon government officials is the confidence they will conduct business responsibly and in the open. My commitment to enforcing the open government laws of Texas is unwavering, and it is my sincere hope that this *Handbook* will serve as a guide for all governmental bodies as they conduct the people's business.
- Sincerely, Greg Abbott, Attorney General of Texas

Open Meetings Act (OMA)

- As stated by the Honorable Greg Abbott, Texas Attorney General in the previous slide, Page 2 of the Open Meetings Handbook pertains only to the Open Meetings Act Ethics Code 551 and no other statute of Texas Law.
- It is a guide to inform the public official to what each article of law within the Open Meetings Act means to strive for open government and provides footnotes about cases that have appeared before the Texas Appeals and Supreme Courts and Attorney General Legal Opinions, and Texas Case Law in the administration of the Open Meetings Act.

Robert Rules of Order - Voting

<http://rulesonline.com/>

Bylaw 6.8 – “Robert Rules of Order will act as a guideline for all meetings”

<http://rulesonline.com/rror-08.htm#47>

“Votes that are Null and Void even if Unanimous.

No motion is in order that conflicts with the laws of the nation, or state, or with the assembly's constitution or by-laws, and if such a motion is adopted, even by a unanimous vote, **it is null and void.**”

CLCCA Bylaw 2.1 Excerpt & Bylaw 6.7

- Bylaw 2.1 – “All powers of the corporation shall be vested in the Board of Trustees except as otherwise provided in these bylaws.”
- Bylaw 6.7 – “A majority of the duly elected or appointed and qualified Trustees shall constitute a quorum for the transaction of business at any meeting and an affirmative vote of the majority of the Trustees thus present, provided at least a majority of the duly elected or appointed and qualified Trustees shall vote affirmatively, shall be necessary for the transaction of ordinary business of the corporation, except as otherwise provided by the articles of Incorporation and these Bylaws.”

Certificate of Formation (1963 Articles of Incorporation) 2009 Certificate of Amendment Page 8 of 9 Article X

“Anything to the contrary herein notwithstanding the Trustee **shall not**:

- 1) lend any part of the corporation assets to;
- 2) pay any compensation, other than that set forth in Article VI to;
- 3) make any services, benefits, or facilities of the corporation available on a preferential basis to;
- 4) purchase any securities or other property for other than adequate consideration in money or money’s worth to;
- 5) sell any securities or other property for other than adequate consideration in money or money’s worth to;
- 6) engage in any other transaction which diverts any part of the corporate assets to;

any person, association or corporation who has contributed property or money to the corporation, nor shall the Trustees ever engage, participate, or intervene in any activity or transaction which would cause the corporation to lose its status as an exempt organization under the provisions of the Internal Revenue Code and the use, directly or indirectly, of any part of the corporation’s funds or property in **Any such activity or transaction is hereby expressly prohibited.**”

Texas Business Organizations Code (BOC)

www.sos.state.tx.us/corp/forms/boc/boc-np-2010.pdf

www.legis.state.tx.us/tlodocs/78R/billtext/pdf/HB01156F.pdf#navpanes=0

- In 2003, the Texas Legislature enacted the Texas Business Organizations Code (BOC), which codified the provisions of the statutes governing nonprofit corporations. The BOC represented a major restructuring of the business organization statutes, and also made substantive changes to the law in existence at the time of its enactment.
- Because the structure, organization, and language of the BOC differed from existing statutes, the Legislature delayed the effectiveness of the BOC until January 1, 2006. In addition, the Legislature provided for a four-year period of transition before the repeal of the statutes codified by the BOC and the mandatory application of the BOC to pre-existing entities. Consequently, on January 1, 2010, a Texas entity that was formed before January 1, 2006 and that has not elected to adopt the BOC will automatically be subject to the BOC.

Acting in Good Faith (Cut & Paste)

- TEXAS NONPROFIT CORPORATION ACT (TNPCA)
VERNON'S TEXAS CIVIL STATUTE ARTICLE 1396
(Repealed thru HB 1156 01/01/2010)
- Art. 1396-2.26. LIABILITY OF DIRECTORS IN CERTAIN CASES.

Item D. A director shall not be liable under this Article if, in the exercise of ordinary care, he acted in good faith and in reliance upon the written opinion of an attorney for the corporation.

<http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.22.htm#22.228>

- BUSINESS ORGANIZATION CODE CHAPTER 22
- Sec. 22.228. RELIANCE ON WRITTEN OPINION OF ATTORNEY. A director is not liable under Section 22.226 or 22.227 if, in the exercise of ordinary care, the director acted in good faith and in reliance on the written opinion of an attorney for the corporation

BUSINESS ORGANIZATION CODE

- Sec. 22.002. MEETINGS BY REMOTE COMMUNICATIONS TECHNOLOGY. Subject to the provisions of this code and the certificate of formation and bylaws of a corporation, a meeting of the members of a corporation, the board of directors of a corporation, or any committee designated by the board of directors of a corporation may be held by means of a remote electronic communications system, including videoconferencing technology or the Internet, only if:
 - (1) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and
 - (2) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant.

BUSINESS ORGANIZATION CODE

- Sec. 22.215. VOTING IN PERSON OR BY PROXY. A director of a corporation may vote in person or, if authorized by the certificate of formation or bylaws of the corporation, by proxy executed in writing by the director.
- Sec. 22.219. OTHER COMMITTEES.
 - (a) The board of directors of a corporation, by resolution adopted by the majority of the directors at a meeting at which a quorum is present, or the president, if authorized by a similar resolution of the board of directors or by the certificate of formation or bylaws of the corporation, may designate and appoint one or more committees that do not have the authority of the board of directors in the management of the corporation.
 - (b) The membership on a committee designated under this section may be limited to directors.

(WAS) TNPCA – (NOW) BOC TERMS

The following chart provides the terms used by the Texas Non-Profit Corporation Act and the terms used to describe the same filing instrument under the BOC. (TNPCA OBSOLETE 01/01/2010 HB1156)

Texas Non-Profit Corporation Act		Texas Business Organizations Code
○ Articles of Incorporation	<i>now</i>	Certificate of Formation
○ Articles of Amendment	<i>now</i>	Certificate of Amendment
○ Restated Articles of Incorporation	<i>now</i>	Restated Certificate of Formation
○ Articles of Correction	<i>now</i>	Certificate of Correction
○ Articles of Dissolution	<i>now</i>	Certificate of Termination
○ Articles of Merger	<i>now</i>	Certificate of Merger
○ Articles of Consolidation	<i>now</i>	Certificate of Merger
○ Application for Certificate of Authority	<i>now</i>	Application for Registration

DUTY

The primary responsibility of each and every board member is to come together to act as one leadership voice for the community, recognizing that their fiduciary duty is to follow Federal & Texas Statutory Law, CLCCA Governing Documents, IE: Certificate of Formation, Bylaws & Policies, while preserving, maintaining, and enhancing the value of the assets of the community and corporation as defined in the Oath of Office and Policy 401-14 Code of Conduct.

BOARD MEETINGS – OATH OF OFFICE

As a member of this Board of Trustees, I am committed to upholding all Texas laws and all CLCCA documents governing the operations of the Board of Trustees, and the CLCCA; providing for maintenance, preservation and architectural control of properties within the boundaries of the Clear Lake City Community Association's jurisdiction, and promoting the health, recreation and wellbeing of the residents and of the community. (551.005 Item 1)

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.551.htm#551.005

...AS SERVANT LEADERS

- Board members see their role as one of serving the property owners of the association and the community at large, not feeding their own personal agendas
- Board members see their role as temporary stewardship of the Property Owner's whom they serve
- Board members act as process facilitators, finding out the best way to do things in their community legally
- Board members emphasize empowering others in the community to build strong relationships

...AS STAFF FACILITATORS

- Board members see staff members as part of the team, not as opponents
- Board members are respectful of staff inquiries, rather than demanding a response
- Board members establish and follow protocols in working with staff per CLCCA Governing Documents. Normally, the President is the Single Point of Contact with the General Manager for all staff inquiries by Trustees
- Board members rely on staff to implement board decisions and policies
- Board members differentiate between policy making decisions and managerial task managing

SUCCESSFUL CHARACTERISTICS

“Texas courts have upheld the statutory duty of public officials to conduct open meetings, except in certain limited circumstances, and have affirmed that ignorance of the law does not shield anyone from compliance with the law.” (Attorney General Greg Abbott Open Meetings 2012 Handbook Page 2)

- Listening first is a priority
- Strive for unanimity and community harmony
- Separate business from social matters
- Time efficient and conscientious
- Support board decisions – regardless of their own opinion based upon Texas Statutory Law & CLCCA Governing Documents
- They come prepared to meetings reviewing meeting packet
- Understand they are responsible for other’s castles

PROPERTY OWNER ASSOCIATION (POA) BASICS

- Plan and Prepare for Board Meetings – Board Packet
- Conduct Board Meetings in a Business Environment
- Provide Notice to the Public & Property Owners Pursuant to OMA Ethics Code 551.043 (72 Hour Notice)
- Follow the Texas Open Meetings Act (Ethics Code 551) as interpreted by the Texas Attorney General OM Handbook
- Follow the Texas Business Organization Code (BOC) Specifically Chapter 22*
- Adhere to Certificate of Formation/Certificate of Amendment

*** The Texas Nonprofit Corporation Act (TNPCA) also known as the Vernon's Texas Civil Statue Article 1396 was codified into the Business Organization Code (BOC). This was created by HB 1156 signed into law on 05/19/2003. The BOC became a Mandatory Statue for all Nonprofit Corporations that also revoked the TNPCA on 01/01/2010. See Pages 1&2 from the Secretary of State Hyperlink.**

www.sos.state.tx.us/corp/forms/boc/boc-np-2010.pdf

POA BASICS

- Conduct Brief Homeowner Forum at the Beginning of Regular & Special Meetings of the Board (Policy 401-8) Limit 2 Minutes per person
- Use Agenda and Stick To It (Code 551.041 & 551.042)
- Follow Robert's Rules of Order (Bylaw 6.8)
- Keep Meetings Moving
- Dealing with Conflicts During Meetings
- Taking Proper Meeting Minutes and record all Board actions (Code 551.021 & Code 551.022 Retention)
- Refrain from taking unilateral actions without majority Board quorum consent (Bylaws 2.1 & 6.7) upon duly made motions and voted upon by the Board of Trustees

www.legis.state.tx.us/BillLookup/Text.aspx?LegSess=73R&Bill=SB248

Open Meetings 2012 Handbook (Page 53)

“551.021. MINUTES OR TAPE RECORDING OF OPEN MEETING REQUIRED.

(a) A governmental body shall prepare and keep minutes or make a tape recording of each open meeting of the body.

(b) The minutes must:

- (1) state the subject of each deliberation; and**
- (2) indicate each vote, order, decision, or other action taken.”**

POA BASICS

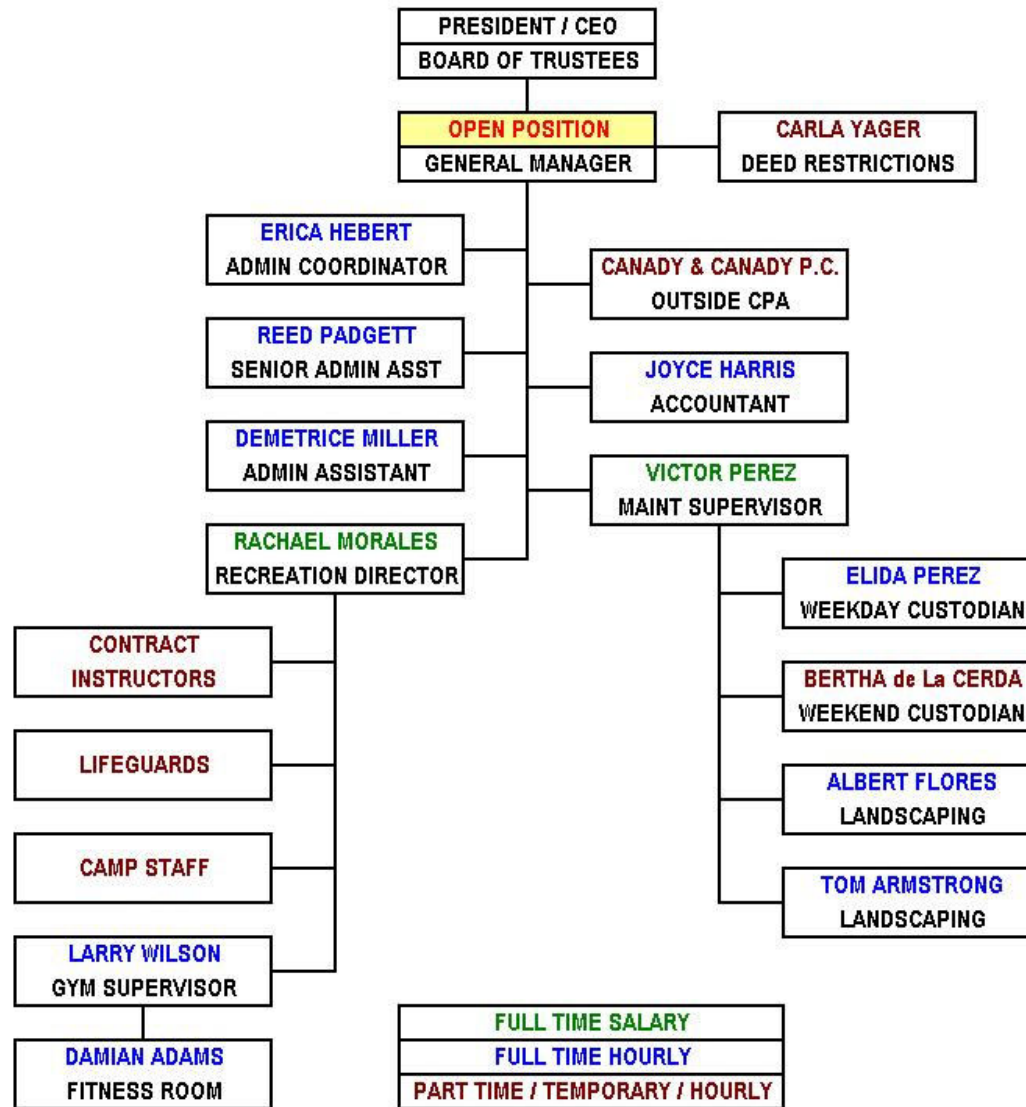
- Other Issues to Be Aware of
 - Conflicts of Interest CLCCA Policy 401-12
 - Removal and Replacement of Directors (Bylaws 5.1 – 5.4 & BOC 22.211 & BOC 22.212)
 - Associations Required to Ensure Homeowner Compliance with Rules, Regulations, and Deed Restrictions.

www.clcca.org/doc/AdobeViewer.asp?doc_filename=%2Fhoa%2Fassn16427%2Fdocuments%2F401-12.pdf&sfind=&print=1&docid=461864 – Policy 401-12

POA BASICS

- Legal Documents for Association (in order of hierarchy)
[Management Certificate listing relevant documents]
 - Plat
 - Certificate of Formation
 - 1963 CLCCA Founding Document (includes CSC Fee)
 - 1968 CLCCA Modification to Founding Document
 - Declaration of Covenants, Conditions & Restrictions (aka Residential Deed Restrictions)
 - Property Codes 201 – 211 (Not all are Applicable)
 - Bylaws
 - Rules and Regulations (Governing Documents and Policies based upon Bylaws 2.1 & 6.7)
 - Resolutions (Written & Verbal)

MANAGEMENT STRUCTURE



EXPECTATIONS AND BOUNDARIES

For Board Members of Employees:

- ✓ Staff works for the community
- ✓ Staff works when others are not
- ✓ Staff is paid to do a job, and not just a mediocre job – an exemplary job
- ✓ Untold number of hours spent by full-time employees....be respectful of their time off
- ✓ When you leave your job and go home, how do you expect to be treated?

EXPECTATIONS AND BOUNDARIES

For Staff Employees of Board Members:

- ✓ Board Members have volunteered and have lives...this is our job as staff, not theirs.
- ✓ Board Members have a Fiduciary Duty to act in the best interest of the Association as a WHOLE according to law, not just their Core or their own personal political agenda. It's a temporary "Stewardship."
- ✓ Board Members will support board decisions regardless of how they voted as an individual.
- ✓ Board Members have the right to ask questions. IN FACT ITS AN OBLIGATION. But the manner in which they ask will be a respectful inquiry per Robert Rules of Order during Board & Committee Meetings.
- ✓ Board Members will be respectful of staff member's time, especially at night meetings when the staff member has already worked a full day.
- ✓ When you leave your job and go home, how do you expect to be treated?

BOARD MEETINGS OF TRUSTEES

- This is a business meeting of the Board of Trustees, where directors make decisions concerning the operation of the association in compliance with Federal & Texas Statutory Laws and CLCCA Governing Documents
- Two types – open meetings and closed executive meetings (As described in OMA Code 551 and the Texas Attorney General OM Handbook)

CONDUCT AT BOARD MEETINGS

- Act in the best interests of the community as a whole
- Comply with governing documents and relevant law (Policy 401-14)
- Work within the association's framework (documents) and refrain from unilateral action (Bylaws 2.1 & 6.7)
- Hold themselves to high standards – Fiduciary Duty
- A fiduciary duty is the highest standard of care at either equity or law. A fiduciary is expected to be extremely loyal to the person or persons to whom he/she owes the duty, the electorate that voted the person into office.

CLCCA Policy 401-14 Code of Conduct

www.clcca.org/doc/AdobeViewer.asp?doc_filename=%2Fhoa%2Fassn16427%2Fdocuments%2F401-14%20code%20of%20conduct.pdf&sfid=&print=1&docid=782568

Bylaw 2.1 “All powers of the corporation shall be vested in the Board of Trustees except as otherwise provided in these Bylaws.”

CONDUCT AT BOARD MEETINGS

- Seek Professional Advice (when requested by Trustees)
- Don't Debate
- Behave Professionally at meetings. Do not hold side conversations while other Trustees are speaking concerning topics listed on the agenda. Only one Trustee speaks at a time and when it is your turn to speak and recognized by the Presiding Officer
- Maintain confidentiality when appropriate
- Disclose conflicts of interests
- Refrain from defaming or harassing others
- If the association has a normally unruly type attending the meetings the chair of the meeting should have a gavel to restore order when needed.
- Come prepared to conduct business and limit comments to the topic being discussed

CONDUCT AT BOARD MEETINGS

- Come prepared
- Review the meeting agenda packet in advance of the meeting and raise questions with management **PRIOR** to the meeting so the manager can have responses for the meeting.

Policy 401-11 First Paragraph 03/09/2010

“Clear Lake City Community Association (CLCCA) requires trustees, officers and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As employees and representatives of the CLCCA, we must practice honesty and integrity in fulfilling our responsibilities and comply with all applicable laws and regulations.”

TYPES OF BOARD MEETINGS

- Regular – Held on the 3rd Tuesday of Every Month (Bylaw 6.1)
- Special – Called for any purpose by the President or two Trustees acting together with ten (10) days notice to all board members – or if eight (8) board members waive their notice to ten (10) days – it may be called sooner but not less than three (3) days notice to the public in compliance with OMA 551.043 & Bylaw 6.3
- Special Meetings also allow a public comment period by homeowners per Policy 401-8

TYPES OF BOARD MEETINGS

- Emergency – Code 551.045 Called regarding an unexpected situation (NO pre-existing conditions). Generally an emergency is such that without immediate action the Association would be exposed to new legal liability, severe loss to capital equipment or condition of land, or loss of normal operations. President may call alone – or two Trustees acting together (Bylaw 6.5)

BOARD MEETING AGENDA

- The most important part of a Board Meeting (Code 551.041). This is the plan of action for the Board to follow. Board meetings should last no more than two (2) hours with a homeowner Comments included (Policy 401-8).
- Draft agenda is emailed out two Friday's before the regular meeting date. (Policy 401-1)
- Submissions to be placed on the agenda are due (along with all attachments) the Tuesday Noon of the week prior to the meeting at Noon. (Policy 401-1)
- Vague items like: "Discuss Maintenance and Possible Motion" will NOT be included (Violates Policy and OMA); A proper item would be: "Discuss Maintenance Frequency of Bathrooms at Recreation Center and any Necessary Motion to increase frequency."

BOARD MEETING AGENDA

- If an item is raised during Homeowner Comments either by the Public or a Trustee – it may **not** (Will Not) be responded to unless it is an item already on the agenda. A Trustee may respond to identify the Policy or Bylaw. It may be placed on a future agenda for discussion. (Policy 401-1 #2 & Code 551.042)

USING AGENDA = SUCCESSFUL MEETING

Motion / Second / Discussion / Vote

Stick to the Agenda!

If you are reviewing the financials and the landscaper's invoice comes up, don't start talking about the landscaper's performance, or how bad the grass looks. Wait until committee reports. Finish the agenda before starting another subject.

The motion should be specific!

When making decisions ensure that a motion is made (with a second) PRIOR to beginning discussion.

MEDIA RELATIONS

The US Navy Expression – Loose Lips Sink Ships

If you don't want to see it on TV or in print, DON'T SAY IT!

Know who you are dealing with.....and talk to them.

Build a relationship with the reporter –
the reporters are key, not the editor.

Declining to comment may be the best policy

MEDIA RELATIONS

Terms of Engagement:

On-the-record – Automatically assumed once the reporter identifies him/herself.

Off-the-record – Has different meanings to different reporters – YOU MUST CLARIFY MEANING. If you don't want to be "Quoted" then make the reporter put his pen down, this reduces the chance that an off-the-record comment will be published accidentally, and serves as a signal that the reporter acknowledges the off-the-record status of the comment.

Background Information – Information you provide that is simply meant to educate the reporter. You should clarify to what extent the source will be revealed.

Off-the-record is NOT recommended! If you don't want to see it on TV or in print, DON'T SAY IT!

MEDIA RELATIONS

Tips In Dealing

- Ask reporter to read back any quotes/comments to avoid being misquoted.
- You can manage the process to minimize errors and show organization in best light – but do not attempt to control the process. Reporters hate to feel pushed or manipulated.
- Published out of context??? ALWAYS be thoughtful about what you say.
- Don't joke!!! It might become a headline.
- There is no shame in saying "I Don't Know."
- If it's a difficult question – you MAY ask to think about it for a minute.
- Press the POSITIVE side of what you do.
- Off-the-record is NOT recommended!
- If at all possible, utilize ONE spokesperson.

OPEN MEETINGS

Committee Meetings – Is committee “advisory”?

If recommendations of committee are generally “rubber-stamped” they are not “advisory” and ARE subject to Open Meetings. (Advisory Bodies – OM HB Page 13)

Notice Requirements (Code 551.041 – 551.056)

72 hrs – regular meeting (Code 551.043)

2 hrs – emergency meeting (Code 551.045)

*MUST have date, hour and place of meeting AND a description of each subject to be discussed. (Code 551.041)
i.e. “Personnel” – NOT SUFFICIENT to discuss firing the police chief

*A governmental body must give the public advance notice of the subjects it will consider in an open meeting or a closed executive session. (OMA 2012 HB Page 22)

OPEN MEETINGS

What do I do if an un-posted issue is raised at an open or closed executive meeting? (Code §551.042)

Four OPTIONS

- a. Official may respond with a statement of specific factual information or recite the governmental body's existing policy on that issue.
- b. An official may direct the person making the inquiry to visit with staff about the issue.
- c. The governing body may offer to place the item on the agenda for discussion at a future meeting.
- d. The governing body may offer to post the matter as an emergency item, but **ONLY IF** the item meets the criteria for an emergency posting.

Policy 401-1 Item #2 Monthly Agenda & Packet: Items which do not appear on the written agenda of the regular scheduled meeting **shall not** be taken up. **[Not to be discussed]**

OPEN MEETINGS BY REMOTE TELEPHONE COMMUNICATIONS

CLCCA Generally NOT allowed per OMA 551.125

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.551.htm#551.125 551.125

www.legis.state.tx.us/tlodocs/74R/billtext/doc/HB02508F.doc HB 2508 08/25/1995 (b1 & b2)

OMA 551.125 – Other Governmental Body (3 Conditions & only 3 Conditions)

OMA 551.045 – Exception to General Rule Notice to Emergency Meeting/Agenda

BOC 22.002 – Meetings by Remote Communications Technology

BOC 22.215 – Voting in Person or by Proxy with Proxy Power of Attorney

Bylaw 9.12 – “Proxy voting is not allowed for matters of the Board”

Email Polls - Making individual phone calls to poll members on an issue is a criminal violation. = Meeting in numbers less than a quorum to circumvent the Act. (Code 551.143)

www.oag.state.tx.us/media/videos/2005openmeetings.wmv

AG Training Video Ethics Code 551.005 Phone Calls *Time Index 24:28 - 24:58*

AG Legal Opinions pertaining to Phone Calls for Governmental Bodies

<https://www.oag.state.tx.us/opinions/opinions/47matttox/op/1986/pdf/JM0584.pdf> Participating

<https://www.oag.state.tx.us/opinions/opinions/49cornyn/op/2000/pdf/JC0194.pdf> Participating

<https://www.oag.state.tx.us/opinions/opinions/49cornyn/op/2001/pdf/JC0352.pdf> Participating

<https://www.oag.state.tx.us/opinions/opinions/50abbott/op/2012/pdf/ga0908.pdf> Participating

<https://www.oag.state.tx.us/opinions/opinions/48morales/lo/1994/pdf/lo1994028.pdf> Voting

CLOSED EXECUTIVE MEETINGS

Allowed Executive Session Subjects:

1. Consideration of specific personnel matters;
2. Attorney consultations;
3. Discussions about the value or transfer of real property;
4. Discussions about security personnel, security devices, or a security audit;
5. Discussions about a prospective gift or donation to the city;
6. Discussions by a governing body of potential items on tests that the governing body conducts for purposes of licensing individuals to engage in an activity;
7. Discussions of certain economic development matters;
8. Discussions of certain competitive matters – utility and city related
9. Certain information relating to the subject of emergencies and disasters.

CLOSED EXECUTIVE MEETINGS

Executive Session - Personnel

- ❖ Appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee
- ❖ Complaints or charges against such officer or employee – UNLESS the employee or officer requests that it be heard in open session
- ❖ Employee does not necessarily have the right to attend.
- ❖ The public can NOT be invited selectively to give feedback on employee.

CLOSED EXECUTIVE MEETINGS

Executive Session - Attorney Consultations

- ❖ Legal advice about pending or contemplated litigation or about settlement offers
- ❖ Does NOT include discussions about general policy matters.
- ❖ Potential contracts may be discussed ONLY in closed to receive advice on legal issues raised by contract. Merits of the contract MUST be reviewed in open session.

CLOSED EXECUTIVE MEETINGS

Executive Session – Who May Attend?

“Only the members of a governmental body have a right to attend an executive session, except that the governmental body’s attorney must be present when it meets under section 551.071.” (Open Meetings 2012 Handbook Page 51)

Attorney – If discussion involves litigation, opposing party may not be present.

Consider:

1. whether the person’s interests are adverse to the governmental body’s;
2. whether the person’s presence is necessary to the issues to be discussed; and
3. whether the governmental body may waive the attorney-client privilege by including the non-member.

Staff attendance is not required – they may be excluded or included based on above.

CLOSED EXECUTIVE MEETINGS

Executive Session - Records of Meeting

- Certified Agenda OR Tape Recording
 - ❖ You may turn the recording off when consulting with the attorney.
 - ❖ Records (Agenda/Tape) must be kept for 2 yrs!
- Records of meeting may ONLY be released to the public under COURT ORDER. - CRIMINAL PENALTIES APPLY
- Texas Courts have held that a member of a governmental body has NO RIGHT to tape an executive session over the objection of a majority of the governmental body's members.
- There is a CHANCE that an individual's notes taken during an executive session COULD be subject to TPIA Request.

(551.102) FINAL ACTION "A governmental body's final action, decision or vote on any matter within its jurisdiction may be made only in an open session held in compliance with the notice requirements of the Act." (OM 2012 HB Page 36) Notice Provisions: 551.041 / 551.042 / 551.043

OPEN MEETINGS

Penalties

Civil Penalties and potential jail time exist for the following violations:

- a. Unauthorized Executive Sessions
- b. Meeting in Numbers Less than a Quorum with intent to Circumvent the Act (Code 551.143)
- c. Failure to keep a Certified Agenda
- d. Disclosure of a Copy of a Certified Agenda
- e. Deliberately violating the Open Meetings Act

www.legis.state.tx.us/tlodocs/80R/billtext/pdf/HB03674F.pdf#navpanes=0

Could repeated violations of the OMA subject a Trustee to Penal Code for official misconduct and possible fraud? Consider Codes 551.0015 & 552.0036 HB3674 “A property owners’ association is subject to this chapter in the same manner as a governmental body.”

www.statutes.legis.state.tx.us/Docs/PE/htm/PE.32.htm#32.03

www.statutes.legis.state.tx.us/Docs/PE/htm/PE.39.htm#39.02

Americans with Disabilities Act (ADA)

- Bylaw 4.1 – “Rules governing elections shall be those which govern elections for public office in the State of Texas except as required by the **Texas Property Code** or stated specifically herein.”
- Bylaw 4.3 - Elections for Trustees shall be held on the first Saturday of May in any given year. Early voting will begin two (2) business weeks prior to election day. Voters must appear in person at the place of voting which shall be the Clear Lake Recreation Center, 16511 Diana Lane, Houston, Texas 77062-5796.
- Title II of the Americans with Disabilities Act of 1990 (the “ADA”) prohibits discrimination against disabled individuals in the activities, services and programs of public entities. All the activities of state and local governmental bodies are covered by the ADA, including meetings. (Page 64 OM 2012 Handbook)

<http://www.legis.state.tx.us/tlodocs/80R/billtext/pdf/HB00556F.pdf#navpanes=0>

<http://www.statutes.legis.state.tx.us/Docs/EL/htm/EL.61.htm#61.012>

- ACCESS BY PERSONS WITH DISABILITIES. (a) Except as provided by Section 61.013, each polling place must provide at least one voting station that:
 - (1) complies with:
 - (A) Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments;
 - (B) Title II of the federal Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments; and
 - (C) the requirements for accessibility under 42 U.S.C. Section 15481(a)(3) and its subsequent amendments; and
 - (2) provides a practical and effective means for voters with physical disabilities to cast a secret ballot.

Audio or Video Recording of Open Meetings

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.551.htm#551.023

Sec. 551.023. RECORDING OF MEETING BY PERSON IN ATTENDANCE.

(a) A person in attendance may record all or any part of an open meeting of a governmental body by means of a tape recorder, video camera, or other means of aural or visual reproduction.

(b) A governmental body may adopt reasonable rules to maintain order at a meeting, including rules relating to:

(1) the location of recording equipment; and

(2) the manner in which the recording is conducted.

(c) A rule adopted under Subsection (b) may not prevent or unreasonably impair a person from exercising a right granted under Subsection (a).

Criminal Violations of Chapter 552 Public Information Act

Criminal violations of Chapter 552 of the Texas Government Code, the Public Information Act. Texas law specifies only three criminal offenses arising from violations of the Act:

- (1) Failure or refusal of an officer for public information to provide access to or copying of public information (Section 552.353, Government Code);**
- (2) Destruction, removal or alteration of public information (Section 552.351, Government Code); and**
- (3) Distribution or misuse of confidential information (Section 552.352, Government Code).**

All other violations of the Public Information Act are civil violations. For more information on remedies for civil violations, please call the Texas Attorney General's Open Government Hotline at 1-877-673-6839.

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm#552.351

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm#552.352

www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm#552.353

QUESTIONS & ANSWERS

“Other open government resources are available on the OAG website at www.texasattorneygeneral.gov. These resources include frequently asked questions; a library of open records decisions dating back more than 30 years; and a public Information cost estimate model, which assists governmental bodies in determining the cost of a public information request. Texans can also call our open government telephone hotline (877-OPEN- TEX) with their questions.”

Sincerely, Greg Abbott; Attorney General of Texas

HELPFUL HYPERLINKS

Helpful Hyperlinks - Texas Statues, AG Legal Opinions, AG Open Meetings Handbook & frequently asked questions, Texas Secretary of State Instructions for Nonprofit Corporations, and Robert Rules of Order Online.

- ❖ <http://www.statutes.legis.state.tx.us/> - Index to Texas Governmental Statues
- ❖ <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.551.htm> OMA
- ❖ <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm> PIA
- ❖ <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.1.htm> BOC
- ❖ <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.2.htm> BOC All Entities
- ❖ <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.20.htm> BOC
- ❖ <http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.22.htm> BOC
- ❖ https://www.oag.state.tx.us/open/publications_oq.shtml - AG Publications
- ❖ https://www.oag.state.tx.us/AG_Publications/pdfs/openmeeting_hb.pdf Handbook
- ❖ https://www.oag.state.tx.us/open/oq_faqs.shtml - AG FAQ
- ❖ <https://www.oag.state.tx.us/opin/opindex.shtml> - Index by INTS
- ❖ https://www.oag.state.tx.us/opin/op_letters.shtml - Index by LO
- ❖ <http://www.sos.state.tx.us/corp/forms/boc/boc-np-2010.pdf> SOS BOC NPC
- ❖ <http://rulesonline.com/> Robert Rules of Order On-Line