



Aging Texas Well Advisory Committee

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- Governor Rick Perry established the Aging Texas Well Advisory Committee (ATWAC) by Executive Order RP-42.
- Under the ATWAC's rule, 40 Tex. Admin. Code § 89.4, ATWAC's tasks include:
 - (1) Identifying and discussing aging policy issues;
 - (2) Assessing state government readiness to address issues facing older Texans;
 - (3) Promoting increased local community preparedness for aging Texans; and
 - (4) Assisting HHSC by providing recommendations, including recommendations for changes to the Aging Texas Well Plan.
- ATWAC is subject to Texas Government Code ch. 551, the Texas Open Meetings Act, as if it were a governmental body.¹
- It is lawful for a licensed handgun holder to carry a handgun, openly or concealed, into an ATWAC meeting.²

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

The Open Meetings Act (OMA) requires a governmental body to hold all meetings in public, in an accessible location.³

Meeting requirements:

- Under the terms of the OMA, a meeting is:

Deliberation of board's public business + Quorum⁴

¹ 40 Tex. Admin. Code § 89.2(c).

² See Tex. Penal Code § 46.035(c) ("A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter.").

³ Tex. Gov't Code § 551.002; see also *id.* § 551.001(3) (defining "governmental body").

⁴ See *id.* § 551.001(4); see also *id.* § 551.001(2), (6) (defining "deliberation" and "quorum").



- A meeting can be virtual!
- Under the Committee’s rule, 40 Tex. Admin. Code § 89.4(c), ATWAC’s composition and number of members is set in the ATWAC bylaws. Under the bylaws, ATWAC is composed of 11 voting members and 13 non-voting members.⁵
- A quorum is a majority (0.5 or 1 more than 1/2). Under ATWAC bylaws, “[s]ix voting members constitutes a quorum.”⁶
- Gatherings of a quorum that *may not* be a meeting:
 1. Social function⁷
 2. Regional, state, or national convention or workshop, ceremonial event, or press conference⁸
 3. Candidate forum, appearance, or debate⁹
 4. Legislative committee or legislative agency meeting or hearing¹⁰

Meeting by teleconference:

- 40 Tex. Admin. Code § 89.2(b) allows the members of ATWAC to meet in-person or by teleconference.
- Governmental body members who attend a meeting by phone may be counted when determining whether a quorum is present.
- Telephone conference requirements under the Open Meetings Act:¹¹
 - Same notice requirements as a face-to-face meeting¹²
 - Location of the meeting in the notice is the location where governmental meetings are usually held.¹³
 - Location must provide two-way communication during entire call.¹⁴

⁵ Aging Texas Well Advisory Committee Bylaws 4.A.

⁶ *Id.* 8.B.

⁷ Tex. Gov’t Code § 551.001(4).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* § 551.0035.

¹¹ *Id.* § 551.125(b)(3).

¹² *Id.* § 551.125(c).

¹³ *Id.* § 551.125(d).

¹⁴ *Id.* § 551.125(f).



- Each party must be clearly identified before speaking.¹⁵
- Public must be able to hear open portions of the meeting.¹⁶
- Open portions of the meeting must be recorded.¹⁷
- Recording is an open, public record, and must be made available “in an online archive located on the Internet website of the entity holding the meeting.”¹⁸

Notice requirements:

- Substance of the notice: Written notice must include:
 1. Date of the meeting
 2. Hour of the meeting
 3. Place at which the meeting will be held
 4. Subject or subjects to be discussed at the meeting.¹⁹
- Posting:
 1. on the Secretary of State’s website “at least seven days before the date of the meeting; and
 2. on HHSC’s website “within the time required for posting under” the OMA.²⁰
- In emergency circumstances, two-hour notice is required.²¹ 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.²²

Open portion of meeting:

- Quorum must convene and adjourn in the open.²³
- Any action, decision, or vote must be in the open.²⁴

¹⁵ *Id.*

¹⁶ *Id.* § 551.125(e).

¹⁷ *Id.*

¹⁸ *Id.* § 551.121(f)

¹⁹ *Id.* § 551.041.

²⁰ *Id.* § 531.0165(d).

²¹ *Id.* § 551.045(a).

²² *Id.* § 551.045(b).

²³ *Id.* § 551.101.

²⁴ *Id.* § 551.102.



- If public comment is taken, the governmental body may not restrict on discriminatory grounds.
- 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:
 1. Stating specific factual information;
 2. Reciting existing policy; or
 3. Telling the speaker that the subject will be on a future agenda.²⁵
- Minutes must be kept or a recording made.²⁶ If minutes are kept, the minutes must note the subject of each deliberation and note each vote, order, decision, or action taken. The minutes or recording is subject to release under the Public Information Act.²⁷

Closed portion of meeting:

- A governmental body may meet in a closed meeting only if a statute expressly authorizes the closure. Examples of authorized closed meetings:
 1. Attorney-client consultation.²⁸
 2. Deliberation of a gift or donation if an open discussion would harm the governmental body's position in negotiations.²⁹
 3. Discussion of personnel matters.³⁰ A discussion of the qualifications of persons under consideration for appointment to a statewide advisory committee is not a "personnel matter" that may be discussed in a closed session.³¹
- The members who are present must convene in the open.³²
- 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.³³
- No final actions, decisions, or votes may be taken.³⁴

²⁵ *Id.* § 551.042.

²⁶ *Id.* § 551.021.

²⁷ *Id.* § 551.022.

²⁸ *Id.* § 551.071.

²⁹ *Id.* § 551.073.

³⁰ *Id.* § 551.074.

³¹ Tex. Att'y Gen. Op. No. DM-149 (1992).

³² Tex. Gov't Code § 551.101.

³³ *Id.* § 551.101.

³⁴ *Id.* § 551.102.



- The governmental body must keep a certified agenda or recording of each closed meeting.³⁵
- Only members of the governmental body have a right to attend. Other individuals may be admitted, but the governmental body should carefully consider the need for "other individuals" to be included.³⁶

Penalties for violations:

1. Action is voidable, not void.³⁷
2. If the advisory committee is subject to the Open Meetings Act by statute, criminal penalties are possible.³⁸ ATWAC is not subject to the Open Meetings Act by statute.

Problems:

1. The Texas Dog Sled Racing Commission is a nine-member governmental body. Five members are present for a meeting by teleconference. During the meeting, one member loses the connection when lightning strikes a transmission tower near her office. May the Commission continue the meeting when the member loses the connection?

NOTES:

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 the Commission have to comply with the Open Meetings Act when either committee meets?

NOTES:

³⁵ *Id.* § 551.103.

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

³⁷ Tex. Gov't Code § 551.141.

³⁸ *Id.* §§ 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. The state employee responsible for coordinating the Texas Dog Sled Commission's meetings emails each member, in the week before the Commission's November meeting, a meeting packet that includes the agenda and supporting materials. One of the agenda items is a discussion of the Commission's planned trip to Alaska to experience the Iditarod. Upon receiving the email, one member responds that the Iditarod trip is an inappropriate use of state money and hits "Reply All." Is there a violation of the Open Meetings Act?

NOTES:

4. 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?

NOTES:

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/open-government/open-meetings-act-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 Handbook 2018:

<https://www.texasattorneygeneral.gov/open-government/open-meetings-act-training>

Public Information Act Training:

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

Questions/Comments