

City of OVILLA City Council Workshop Agenda

Ralph G. Hall, Place One
Larry Stevenson, Place Two
David Griffin, Place Three

Richard Dormier, Mayor

Doug Hunt, Place Four
Dean Oberg/Place Five
Cyndy Powell, City Administrator

Monday, January 13, 2014 105 S. Cockrell Hill Road, Ovilla, TX 75154 6:00 P.M. Council Chamber Room

Pursuant to the provisions of Chapter 551 VTCA Government Code, NOTICE is hereby given of a Workshop Meeting of the City Council of the City of Ovilla, to be held on Monday, January 13, 2014 at 6:00 P.M. in the City Hall Council Chamber Room, 105 S. Cockrell Hill Road, Ovilla, Texas, 75154, for the purpose of considering the following items.

I. CALL TO ORDER

II. REGULAR AGENDA

- ITEM 1. Receive presentation from the City's legal counsel, Ron MacFarlane, providing training on the Texas Open Meetings Act, Responsibilities of Boards and Commissions, and review of the City's Rules of Procedure governing the boards, commissions, and City Council.

III. ADJOURNMENT

THIS IS TO CERTIFY THAT A COPY OF THE NOTICE OF the January 13, 2014 Regular City Council Agenda was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, and to the City's website, www.cityofovilla.org, on the 10th day of January 2014 prior to 6:00 p.m., in compliance with Chapter 551, Texas Government Code.



Pamela Woodall, City Secretary

DATE OF POSTING: 1-10-14 TIME: 9:00 am/pm
DATE TAKEN DOWN: _____ TIME: _____ am/pm

IF YOU OR YOUR REPRESENTATIVE HAVE A DISABILITY THAT REQUIRES SPECIAL ARRANGEMENTS AND YOU PLAN TO ATTEND THIS PUBLIC MEETING, PLEASE CALL THE CITY SECRETARY AT 972-617-7262 WITHIN 24 HOURS OF THE MEETING. REASONABLE ACCOMMODATIONS WILL BE MADE TO MEET YOUR NEEDS AT THE MEETING. PLEASE SILENCE ALL PAGERS, CELL PHONES & OTHER ELECTRONIC EQUIPMENT WHILE THE CITY COUNCIL MEETING IS IN SESSION.



AGENDA ITEM REPORT

Item(s): 1 (City Secretary use only)

Meeting Date: January 13, 2013

Department: Administration

Discussion Action

Budgeted Expense: YES NO N/A

Submitted By: Staff

Amount: \$N/A

Attachments:

- 1. Boards and Commissions Training Materials

Agenda Item / Topic:

ITEM 1. Receive presentation from the City's legal counsel, Ron MacFarlane, providing training on the Texas Open Meetings Act, Responsibilities of Boards and Commissions, and review of the City's Rules of Procedure governing the boards, commissions, and City Council.

Discussion / Justification:

Each year volunteer citizens choose to serve the community, contributing their time, sharing a variety of expertise, and demonstrating interest in the democratic process. City Council approves citizen appointments to various boards and commissions who are then charged with certain responsibilities in their advisory role. City Council and board members are subject to the Texas Open Meetings Act and required to take on-line training within 90-days of appointment. Ron MacFarlane will give an overview of the Texas Open Meetings Act, review the responsibilities of the members established by ordinance, and review the City's Rules of Procedure governing members during meetings.

Recommendation / Staff Comments:

Sample Motion(s):

No action.

OVERVIEW OF THE TEXAS OPEN MEETINGS ACT

AND

OVILLA'S BOARDS, COMMISSIONS, DISTRICTS
AND ECONOMIC DEVELOPMENT CORPORATION

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January 13, 2014

TABLE OF CONTENTS

	<u>Page</u>
Texas Open Meetings Act.	1
Conduct During Meetings.	8
Boards, Commissions, Districts and Economic Development Corporation.	9
Zoning Board of Adjustment.	9
Planning and Zoning Commission.	10
Economic Development Corporation.	10
Municipal Development District.	11

TEXAS OPEN MEETINGS ACT

History

The Texas Open Meetings Act (the "Act") was adopted to provide the public with access to the governmental decision-making process. It requires meetings of governmental entities, including city councils and municipal boards and commissions, to be open to the public, except for authorized closed sessions. Meetings must be preceded by public notice of the time, place and subject matter of the meeting. All decisions of a governmental body, board or commission must be made by the body as a whole at a properly called open meeting.

Notice of Meeting

A municipality must post notice of each meeting on a physical or electronic bulletin board at a place convenient to the public in the city hall, generally at least 72 hours before the meeting. Note that the term "notice" and "agenda" are often used interchangeably because of the practice of posting the agenda as the notice of a public meeting or attaching the agenda to the notice of the meeting. The term "electronic bulletin board" is defined to mean "an electronic communication system that includes a perpetually illuminated screen on which the governmental body can post messages or notices viewable without manipulation by the public."

Section 551.056 requires municipalities and economic development corporations to post notice on their Internet website, in addition to other postings required by the Act. This provision applies only if the entity maintains an Internet website or has a website maintained for it.

Only issues listed in the Agenda can be discussed or deliberated in an open session or at a closed session.

Governmental actions taken in violation of the notice requirements of the Act are voidable.

Open Meetings Training

Section 551.005 of the Act requires **each elected or appointed public official who is a member of a governmental body subject to the Act to complete a course of training addressing the member's responsibilities under the Act.** The public official must complete the training not later than the 90th day after taking the oath of office, if required to take an oath to assume duties as a member of the governmental body, or after the public official otherwise assumes these duties if the oath is not required. The failure of one or more members of a governmental body to complete the required training does not affect the validity of an action taken by the governmental body, but evidence of such training could be very useful in the defense of a criminal prosecution under the Act.

The training course must be at least one and no more than two hours long and must include instruction in the following subjects:

- (1) the general background of the legal requirements for open meetings;
- (2) the applicability of this chapter to governmental bodies;
- (3) procedures and requirements regarding quorums, notice and record keeping;
- (4) procedures and requirements for holding an open meeting and for holding a closed meeting; and
- (5) penalties and other consequences for failure to comply with this chapter.

A training video by the Texas Attorney General is available online at http://www.oag.state.tx.us/opinopen/og_training.shtml. The video suffices as the required training.

Informal or Social Meetings

When a quorum of the members of a governmental body assembles in an informal setting, such as a social occasion, it will be subject to the requirements of the Act if the members engage in a verbal exchange about public business or policy. The Act's definition of a meeting expressly excludes gatherings of a "quorum of a governmental body at a social function unrelated to the public business that is conducted by the body." The definition also excludes from its reach the attendance by a quorum at certain other events such as conventions, ceremonial events and press conferences. In both instances, there is no "meeting" under the Act "if formal action is not taken and any discussion of public business is *incidental* to the social function, convention, workshop, ceremonial event, or press conference."

Civil and Criminal Penalties

Civil

Section 551.142(a) authorizes any interested person to bring a civil action seeking either a writ of mandamus or an injunction. Section 551.142(b) authorizes a court to award reasonable attorney fees and litigation costs to the party who substantially prevails.

Section 551.141 provides that an action taken by a governmental body in violation of the Act is voidable.

Criminal

Sections 551.143 and 551.144 of the Government Code establish criminal sanctions for certain conduct that violates openness requirements. A member of a governmental body must be found to have acted "knowingly" to be found guilty of either of these offenses.

Section 551.143 provides as follows:

- (a) A **member or group of members** of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.
- (b) An offense under Subsection (a) is a misdemeanor punishable by:
 - 1. a fine of not less than \$100 or more than \$500;
 - 2. confinement in the county jail for not less than one month or more than six months; or
 - 3. both the fine and confinement.

Section 551.144 provides as follows:

- (a) A member of a governmental body commits an offense if a closed meeting is not permitted under this chapter and the member knowingly:
 - 1. calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting;
 - 2. closes or aids in closing the meeting to the public, if it is a regular meeting; or
 - 3. participates in the closed meeting, whether it is a regular, special, or called meeting.
- (b) An offense under Subsection (a) is a misdemeanor punishable by:
 - 1. a fine of not less than \$100 or more than \$500;
 - 2. confinement in the county jail for not less than one month or more than six months; or
 - 3. both the fine and confinement.

Quorum Required

A meeting may not be convened unless a quorum of the governmental body, board or commission is present.

Location

The Act requires meetings to be held in a location accessible to the public. In addition, pursuant to the Americans with Disabilities Act, a meeting room in which a public meeting is held must be physically accessible to individuals with disabilities.

Votes and Final Actions

A final action, decision or vote on any matter may be made only in an open session held in compliance with the notice requirements of the Act. Votes in an open session cannot be made by a secret written ballot.

Closed Sessions

Overview

The Act provides certain narrowly drawn exceptions to the requirement that meetings of a governmental body be open to the public. These exceptions are found in sections 551.071 through 551.088 of the Act. The exceptions that generally apply to city councils, boards and commissions are as follows:

Requisites for a Closed Session

Section 551.101 of the Act provides as follows:

If a closed meeting is allowed under this chapter, a governmental body may not conduct the closed meeting unless a quorum of the governmental body first convenes in an open meeting for which notice has been given as provided by this chapter and during which the presiding officer publicly:

- (1) announces that a closed meeting will be held; and
- (2) identifies the section or sections of this chapter under which the closed meeting is held.

The reason that the presiding officer must announce that a closed session will be held and identify the section(s) of the Act authorizing the closed session is to assess and decide on the applicability of the exceptions before going into a closed session, and to inform those present of the exceptions and give them an opportunity to object.

Certified Agendas and Recordings

Section 551.103(a) provides that a governmental body shall *either* keep a certified agenda *or* make a tape recording of the proceedings of each closed meeting, except for a private consultation

with its attorney permitted by section 551.071.

If a certified agenda is kept, the presiding officer must certify that the agenda is a true and correct record of the closed session. The certified agenda must include: (1) a statement of the subject matter of each deliberation; (2) a record of any further action taken; and (3) an announcement by the presiding officer at the beginning and the end of the closed meeting indicating the date and time. A certified agenda does not have to be a verbatim transcript of the meeting, but it must provide a brief summary of each deliberation. **Any member of a governmental body participating in a closed session knowing that an agenda or recording is not being made commits a Class C misdemeanor.**

The certified agenda or tape recording of a closed session must be kept a minimum of two years after the date of the session. If during that time a lawsuit that concerns the meeting is brought, the agenda or tape of that meeting must be kept pending resolution of the lawsuit.

Certified agendas or tape recording of closed sessions are confidential and **any person who knowingly and without authority makes the records public is guilty of a Class B misdemeanor and may be held liable for actual damages, court costs, reasonable attorney fees and exemplary or punitive damages.** However, member of the governmental body has a right to inspect the certified agenda or tape recording of a closed session even if they did not participate. This is not a release to the public in violation of the confidentiality provisions of the Act. The member may not copy the tape recording or certified agenda of a closed session, nor may a former member of a governmental body inspect the records once they leave office.

Provisions Authorizing Closed Sessions for Municipalities

Section 551.071. Consultations with Attorney

A governmental body may not conduct a private consultation with its attorney except:

- (1) when the governmental body seeks the advice of its attorney about:
 - (A) pending or contemplated litigation; or
 - (B) a settlement offer; or
- (2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

This provision implements the attorney-client privilege, an attorney's duty to preserve the confidences of a client. It allows a city council to meet in a closed session with its attorney when it seeks the attorney's advice with respect to pending or contemplated litigation or settlement offers, including pending or contemplated administrative proceedings.

In addition, subsection 551.071(2) of the Government Code permits a city council to consult in an executive session with its attorney “on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts” with the Act. Thus, a governmental body may hold a closed session to seek or receive its attorney’s advice on legal matters that are not related to litigation or the settlement of litigation. **However**, a governmental body may not invoke section 551.071 to convene a closed session and then discuss matters outside of that provision. A general discussion of policy, unrelated to legal matters, is not permitted merely because an attorney is present. For example, a city council may consult with its attorney in executive session about the legal issues raised in connection with contemplated contract, but it may not discuss the merits of a proposed contract, financial considerations, or other nonlegal matters.

It is important for governmental bodies to be aware of the legal and ethical responsibilities of their attorneys when it comes taking matters into a closed session, whether the closed session is called under Section 551.071 or one of the other exceptions under the Act. Rule 1.03 of the Texas Rules of Disciplinary Conduct prohibits a lawyer from assisting a client to engage in conduct that the lawyer knows is criminal or fraudulent. Rule 3.03 prohibits a lawyer from knowingly making a false statement of fact to a tribunal or failing to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act. Further, Rule 4.04 prohibits a lawyer from failing to disclose a material fact when disclosure is necessary to avoid making the lawyer a party to a criminal or fraudulent act perpetrated by a client. What does all this mean? If a governmental body holds an impermissible closed session, i.e. an illegal closed session, the lawyer can find himself in the position of being required to report the matter.

Section 551.072. Deliberations about Real Property

Section 551.072 provides as follows:

A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

Section 551.073. Deliberations Regarding Gifts and Donations

Section 551.073 provides as follows:

A governmental body may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the state or the governmental body if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

Section 551.074. Personnel Matters

Section 551.074 authorizes certain deliberations about officers and employees of the governmental body to be held in executive session. Specifically, Section 551.074 provides:

- (a) This chapter does not require a governmental body to conduct an open meeting:
 - (1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or
 - (2) to hear a complaint or charge against an officer or employee.
- (b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing.

This section permits executive session deliberations concerning an individual officer or employee. Deliberations about a *class* of employees, however, must be held in an open session.

Section 551.076. Deliberations Regarding Security Devices or Security Audits

Section 551.076 provides:

This chapter does not require a governmental body to conduct an open meeting to deliberate:

- (1) the deployment, or specific occasions for implementation, of security personnel or devices; or
- (2) a security audit.

Section 551.087. Deliberation Regarding Economic Development Negotiations

This section provides as follows:

This chapter does not require a governmental body to conduct an open meeting:

- (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or
- (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).

Persons 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. A governmental body has discretion to include in an executive session any of its officers and employees whose participation is necessary to the matter under consideration. But caution should always be taken when holding a closed session under 551.071 to avoid waiving the attorney-client privilege.

CONDUCT DURING MEETINGS

Background and Purpose

Maintaining public trust and confidence is absolutely critical to the continued operation of good government. All public officials, whether city council members or members of boards, commissions, districts or other entities of local governments, should accept and maintain a level of professionalism and decorum during public meetings that preserves and enhances public trust and confidence. It is in the best interest of the public, and indeed in the best interest of public officials, that all members of local governmental entities exercise leadership in a form and demeanor that reflects the public trust.

It takes a lot of time and work to gain public trust and confidence, but it can all be lost in a matter of seconds. Nowhere is this fact more true than in a public official's conduct during public meetings. Debate is essential to the democratic process, but it does not need to be, and should not be, mean spirited, angry or even vulgar.

Rules of Conduct and Decorum

1. During all public meetings the presiding officer and all members of the council, board, committee or other organization, must preserve order and decorum and not delay or interrupt the proceedings or refuse to obey the orders of the presiding officer.
2. A member, once recognized by the presiding officer, shall not be interrupted while speaking unless called to order by the presiding officer, unless a point of order is raised by another member or unless the speaker chooses to yield to another member.
3. If a member is called to order while speaking, that member is to stop speaking immediately until the question of order is determined. If ruled to be in order, the member is permitted to proceed. If ruled to be out of order, the member must remain silent or alter his/her remarks so as to comply with the rules of decorum.

The types, order and precedence of motions used during public meetings are set forth in Pages 9 - 21 of the Policy for Governance Process and Rules of Procedure.

BOARDS, COMMISSIONS, DISTRICTS AND ECONOMIC DEVELOPMENT CORPORATION

Background

Municipal boards, commissions, districts and economic development corporations are an integral part of local government in Texas. The creation of boards, commissions and districts is a way for local governments to engage citizens in the democratic process. Municipal boards, commissions and districts provide assistance to city councils when formulating public policy and transforming policy into action. Boards and commissions may conduct background work on technical or politically important issues before elected officials make a decision. Generally, municipal boards and commissions are advisory in nature; however, some are quasi-judicial.

Zoning Board of Adjustment

The Ovilla Zoning Board of Adjustment (herein “ZBA”) is governed by Chapter 211 of the Texas Local Government Code and Section 45 of Ovilla’s Zoning Ordinance as set forth in Chapter 14 of Ovilla’s Code of Ordinances. The ZBA consists of five regular members and two alternate members, all of whom are appointed by the City Council. An alternate member is to participate and serve *only* in the absence of a regular member. A members can be removed by the City Council if the member missed more than two consecutive meetings or three meetings in any twelve-month period, or by for other misconduct as the City Council may establish by resolution.

The ZBA is a quasi-judicial board in that it is authorized to interpret provisions of the Zoning Code when it is alleged that there has been some error in an order, requirement, decision or determination made by an administrative official in the application or enforcement of the Zoning Ordinance. The ZBA may reverse, affirm or modify the administrative official’s order or decision from which an appeal is taken. The ZBA may grant special exceptions and variances to the requirements of the Zoning Ordinance, subject to the provisions of Section 45.5 thereof, and to hear and decide matters concerning nonconforming uses. All cases heard by the ZBA must be heard by a minimum of four members.

The ZBA may only exert jurisdiction to the extent allowed by Texas Law and the specific provisions of the Zoning Ordinance. The ZBA does not have the authority to draft, amend or adopt any municipal ordinance.

Any person aggrieved by a decision of the ZBA, including the City, can appeal the decision by filing suit in a court of competent jurisdiction within 10 days after the filing of the ZBA’s decision.

Planning and Zoning Commission

Ovilla's Planning and Zoning Commission (herein "P&Z") is governed by Chapter 211 of the Texas Local Government Code and Section 47 of Ovilla's Zoning Ordinance as set forth in Chapter 14 of Ovilla's Code of Ordinances.

The P&Z serves in an advisory capacity to the City Council. The P&Z's role is, generally, to identify community needs and advise the City Council of short term and long term implications for development in the City and recommend goals, programs and plans for development.

The P&Z has numerous and specific duties and powers which are enumerated in Section 47.5 of the Zoning Code, including, but not limited to reviewing and recommending administrative procedures to the City Council in regards to inspection of property and premises; recommending approval or disapproval of proposed zoning changes; formulating and recommending a comprehensive plan for growth and development in the City; formulating a zoning district map to carry out the comprehensive plan; evaluating and recommending the approval or disapproval of plans, plats and replat; studying and recommending locations for public buildings, parks and public rights-of-way; formulating, analyzing and recommending to the City Council for its adoption zoning regulations and policies consistent with the needs of the City; and holding initial hearings on zoning ordinances.

A quorum necessary to conduct business of the P&Z is at least 4 of its 7 members.

Economic Development Corporation

The Ovilla Economic Development Corporation ("EDC") is a non-profit corporation that is established by the City to foster and promote economic development within Ovilla. The EDC is a Type-B economic development corporation, as opposed to a Type-A. A Type-B corporation has greater flexibility to spend its dedicated sales and use tax revenue than does a Type-A corporation. The largest category projects available to a Type-A corporation are those that create or retain primary jobs – those that are generally considered "blue collar" jobs related to industrial and manufacturing facilities, but may include research and development facilities, distribution centers and warehouses and regional or national corporate headquarters. But Type-A projects do not include expenditures that promote primary jobs related to basic commercial, retail and service industries.

A Type-B corporation, like Ovilla's EDC can spend its sales and use tax revenue on any project authorized for a Type-A corporation in a addition to a few other categories of expenditures like recreational and community facilities, such as public parks. Also, a Type-B corporation in a city with a population of 20,000 or less may offer incentives to promote new or expanded business development and enterprises, like commercial and retail economic development, which cannot be supported by a Type-A corporation.

The City Council must approve all programs and expenditures of the EDC and must annually review the EDC's financial statements. The City Council is entitled to access to the EDC's books and records at all times.

As a Type-B corporation, the EDC must generally hold at least one public hearing prior to spending any money to undertake a project. Further, as a smaller Type-B corporation, the EDC must not undertake any project to promote new or expanded commercial and retail development until the City Council adopts a resolution approving the project and after giving the resolution at least two separate readings.

As a Type-B corporation, the EDC cannot participate in a project if the City Council receives a petition from more than 10 percent of the registered voters in Ovilla requesting that an election be held on the undertaking of the project.

Finally, as with all other municipal boards and commissions, the EDC is subject to the provisions of the Texas Open Meetings Act and the Texas Public Information Act.

Ovilla Municipal Development District

The Municipal Development District ("MDD") was established in the City of Ovilla in 2009. The MDD is governed by the provisions of Chapter 377 of the Texas Local Government Code. The MDD is financed through a one-fourth of one percent sales tax.

There are two possible advantages to a municipal development district tax over an economic development sales tax: (1) the MDD sales tax need not be levied over the entire city, which is useful for cities that are already at the two-percent sales tax "cap" in some portion of the city but not in others; and (2) it is the only municipal sales tax that may be levied in the city's extraterritorial jurisdiction (ETJ).

The MDD must establish a development project fund and must deposit the sales tax proceeds and all revenue from the sale of bonds into the fund. The money in the fund can be used to pay costs associated with development projects in the district, including maintenance and operation costs. A development project may consist of a 4B economic development project and can also include a convention center facility or related improvements including parking facilities and civic center hotels.

The MDD must be governed by at least four directors, though it is best to have an odd number to prevent tie votes. The directors are appointed by the City Council and serve staggered two-years terms. Any director can be removed by the City Council without cause. The directors must reside in the Ovilla or its ETJ. An employee or officer of the City, including a member of the City Council may serve as a director as long as they do not have a personal interest in a contract executed by the MDD.

Chapter 377 requires that all meetings of the MDD must be held in Ovilla. Interestingly, the statute does not specifically state that the MDD is subject to the Open Meetings and Public Information Acts, but this was probably an oversight by the legislature. As a municipal district, the MDD must comply with those Acts.