



MEMORANDUM

TO: Deborah Thomas, Interim City Attorney
Luis Soberon, Ethics Review Commission
Olivia Overturf
Mayor Pro Tem Natasha Harper-Madison
Mayor Adler
Council Member Tovo
Council Member Kelly

FROM: Myrna Rios, Deputy City Clerk 

DATE: May 18, 2021

SUBJECT: Sworn Complaint

The attached sworn complaint was received on May 17, 2021 in the Office of the City Clerk. It was e-filed by Olivia Overturf against Mayor Pro Tem Natasha Harper-Madison. You are receiving a copy of the complaint because you were identified by the complainant as a person who may have been involved or aware of the alleged inappropriate conduct.

Per City Code, Chapter 2-7-41(D), this letter serves as the Office of the City Clerk's acknowledgement that the complaint was received and as notice to all those named above, as required in the code.

Attachment

OCC RECEIVED AT
MAY 17 '21 PM 8:28

ETHICS REVIEW COMMISSION
CHAPTER 2-7 CITY CODE
COMPLAINT

NAME OF PERSON(S) FILING COMPLAINT:
MAILING ADDRESS:
PHONE NUMBER:
EMAIL ADDRESS:

Olivia Overkurf



PLEASE FILE A SEPARATE COMPLAINT FORM FOR EACH PERSON COMPLAINED AGAINST.

NAME OF PERSON COMPLAINED AGAINST:

Mayor Pro tem Natasha Harper Madison

CITY OFFICE, DEPARTMENT, COMMISSION:

City Council

MAILING ADDRESS:

P.O. Box 1088 Austin, TX 78767

PHONE NUMBER [IF KNOWN]:

512-978-2101

EMAIL ADDRESS [IF KNOWN]:

natasha.madison@austintexas.gov

The Ethics Review Commission has jurisdiction to hear complaints alleging violation(s) of the following provisions:

- City Code, Chapter 2-1, Section 2-1-24 (City Boards, Conflict of Interest and Recusal)
- City Code, Chapter 2-2 (Campaign Finance)
- City Code, Chapter 2-7 (Ethics and Financial Disclosure), except for Article 6 (Anti-lobbying and Procurement)
- City Code, Chapter 4-8 (Regulation of Lobbyists)
- City Charter, Article III, Section 8 (Limits on Campaign Contributions and Expenditures)

PLEASE LIST EACH ALLEGED VIOLATION OF THE ABOVE CITY CODE AND CHARTER PROVISIONS SEPARATELY ON THE FOLLOWING PAGES.

** Please see all attachments
* Six violations in total*

I.

SECTION OF CHARTER OR ORDINANCE VIOLATED: 2-2-1(B)

DATE OF ALLEGED VIOLATION: March 25, 2021

ACTIONS ALLEGED TO BE A VIOLATION:

X see attached form

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED:

Mayor Steve Adler
Council member Mackenzie Kelly
Council member Kathy Tavo
ATXN Video of meeting on March 25, 2021
- see evidence on additional page
- all witnesses for this case are the same throughout

CONTACT INFORMATION OF ANY PERSON(S), OTHER THAN THE PERSON COMPLAINED AGAINST, WHO IS IDENTIFIED BY NAME ABOVE OR IN ANY ATTACHMENTS AS INVOLVED IN THE ALLEGED INAPPROPRIATE CONDUCT: (Leave blank if inapplicable.)

NAME: Mayor Steve Adler

MAILING ADDRESS: P.O. Box 10888 Austin TX 78767

EMAIL ADDRESS [IF KNOWN]: w/k

NAME: Councilmember Mackenzie Kelly

MAILING ADDRESS: same as above

EMAIL ADDRESS [IF KNOWN]: w/k

NAME: Councilmember Kathy Tavo

MAILING ADDRESS: same as above

EMAIL ADDRESS [IF KNOWN]: w/k

II.

SECTION OF CHARTER OR ORDINANCE VIOLATED: 2-21(E)

DATE OF ALLEGED VIOLATION: 3-25-2021

ACTIONS ALLEGED TO BE A VIOLATION:
See Attachment page 2

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED:
See attachment same used for all

CONTACT INFORMATION OF ANY PERSON(S), OTHER THAN THE PERSON COMPLAINED AGAINST, WHO IS IDENTIFIED BY NAME ABOVE OR IN ANY ATTACHMENTS AS INVOLVED IN THE ALLEGED INAPPROPRIATE CONDUCT: (Leave blank if inapplicable.)

NAME: _____

MAILING ADDRESS: _____

EMAIL ADDRESS [IF KNOWN]: _____

NAME: _____

MAILING ADDRESS: _____

EMAIL ADDRESS [IF KNOWN]: _____

NAME: _____

MAILING ADDRESS: _____

EMAIL ADDRESS [IF KNOWN]: _____

✶ [IF MORE ROOM IS NECESSARY, PLEASE CONTINUE ON A BLANK PAGE USING THE SAME FORMAT]

*✶ See all continued and additional pages
✶ pages 1-6 added*

ALL THE STATEMENTS AND INFORMATION IN THIS COMPLAINT ARE TRUE AND FACTUAL TO THE BEST OF MY KNOWLEDGE.

DATE: 5-17-21

[Redacted Signature]

COMPLAINANT'S SIGNATURE

Olivia Overturf

PRINT NAME

STATE OF TEXAS

COUNTY OF TRAVIS

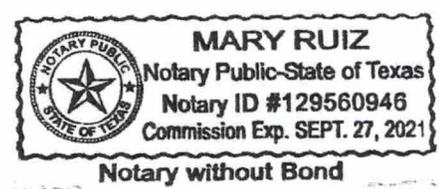
This instrument was acknowledged, sworn to and subscribed before me by

Olivia Overturf

On the 17th day of May, 2021, to certify which witness my hand and official seal.

[Signature]
Notary Public in and for the State of Texas

Mary L Ruiz
Typed or Printed Name of Notary



THIS FORM MUST BE SUBMITTED TO THE OFFICE OF THE CITY CLERK.

Additional violation

Page 1

SECTION OF CHARTER OR ORDINANCE VIOLATED: Section 2-2-1(B) *The proper operation of a representative democracy requires that elected public officials exercise independent judgement, act impartially, and remain responsible to the people.*

DATE OF ALLEGED VIOLATION: 3-25-2021

ACTIONS ALLEGED TO BE A VIOLATION: Co-opting citizen communication

When testing this multipronged policy, it is stood to reason that the entirety of the operation of this city's "representative democracy" fails once a leading city official with a commanding title and status such as the MAYOR PRO TEM, speaks in a negative and disparaging demeanor, on record, during "citizen communication". While MPT Madison's judgement to do so in this manner was without regard to long term effects of harming the sanctity of citizen communication, this surely cannot be a matter of acceptable protocol the city, as a whole, would subscribe to. The MPT's decision to act impartially fails instantly in her attempt at "saving face", disclosing two citizen's names without their consent during her speaking time as a City Official in that capacity, during citizen communication. Her lapse of responsibility to the people was apparent once she disclosed two private citizen's names without asking their public consent to do so, and the date she claimed she found out about the incident at Mt.Carmel, which was not known publicly at the time, when neither question when there was no inquiry regarding this information. Regardless, this is perhaps why the dissenting opinion of former Attorney General Cornyn and Governor Abbott advise heavily that city councilmembers refrain from speaking during citizen communication while on the dais. **see attached opinion*

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: *Witnesses will be the same for all violations*

additional violation

Page 2

SECTION OF CHARTER OR ORDINANCE VIOLATED: Section 2-2-1(E) *The public should have justified confidence in the integrity of it's government*

DATE OF ALLEGED VIOLATION: March 25, 2021

ACTIONS ALLEGED TO BE A VIOLATION: Lack of public confidence in the city's government system

The mere fact that a private citizen must prepare well ahead of time and feel so compelled to speak at citizen communication already lends to the notion that public confidence is in question. The proof that the MPT chose to defend her integrity during citizen communication is either an overt cover up of guilt, display of ego, or a very public form of gaslighting a private citizen in a public manner. Integrity should always come into question when discussions from a city official, happen publicly and on record, that are meant to demean, disparage and put into question the citizens character and honesty to a public audience, is a reflection of our municipal governing body.

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: *Witnesses will be the same for all violations*

**additional violation*

Page 3

SECTION OF CHARTER OR ORDINANCE VIOLATED: Section 2-7-62(B) *Standards of Conduct*

DATE OF ALLEGED VIOLATION: March 25, 2021

ACTIONS ALLEGED TO BE A VIOLATION: Making a *formal appearance* as a city official to which the city official is an employee of, during citizen communication, while acting as an advocate for herself, for two minutes. **an informal appearance would indicate a recess would be taken, the MPT would remove herself from the dais, announce she is making an informal appearance, and have registered ahead of time as a citizen communicator.* This would be placed on the agenda at least 72 hours before the meeting per Texas Open Meetings act.

During the Citizen's Communication portion of the council meeting on this day, I spoke about a devastating situation occurring at the Mt. Carmel Apartments, which is located in Mayor Pro Tem Madison's District (D1). I spoke for approximately two minutes (which is the *only* amount of allotted time for a private citizen to speak at a public council meeting. Once my citizen communication ended, I was disconnected from the call, however Mayor Pro Tem Madison, in her formal appearance and capacity as Mayor Pro Tem and leader of District 1, requested and was granted permission to speak. The Mayor Pro Tem's "rebuttal", self-advocacy by way of defending her actions as a MPT for this specific situation, and disparaging remarks directed towards me (including being referred to me as a "liar(sic)" and "to be unbelievable(sic)" by the public viewing and listening audience, lasted into the two minute mark, during the "citizen communication" portion of the meeting. The MPT, at no time during her harmful statements and self-advocacy did she excuse herself from her formal roll away from the dais. The MPT spoke in her official capacity, as registered in roll call that day. To further complicate this type of insubordinate behavior, Councilmember Kelly, Mayor Steve Adler, and Councilmember Tovo also added and engaged in the MPT's statement causing what is by legal definition, a **"deliberation"* at a meeting open to the public, which was not placed on the agenda before the agenda was posted by the city clerk. No other councilmember spoke at this time. During the remainder of citizen communication, at no point did any councilmember, including the MPT, address a citizen in such a manner. There were at least two other citizen communicators who discussed the situation at Mt. Carmel.

(continued)

*"deliberation" is defined in Texas Government Code 551.001(definitions) as "a verbal or written exchange between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body.

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: *Witnesses will be the same for all violations.* Code of Ordinances 1-1-3 Words and Phrases(A)

~~#~~ additional violation

Page 4

SECTION OF CHARTER OR ORDINANCE VIOLATED: Section 2-7-1(A) *Declaration of Policy*

DATE OF ALLEGED VIOLATION: 3-25-2021

ACTIONS ALLEGED TO BE A VIOLATION: The MPT communication via self-preservation , during citizen communication does not indicate that she acted "impartially" as a public official, nor did she remain responsible to her duties in honoring decorum(Robert's Rules of Order) nor did she display the ability to showcase integrity during her time , publicly speaking as a MPT , against me.

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: *Witnesses will be the same for all violations*

*additional violation

Page 5

SECTION OF CHARTER OR ORDINANCE VIOLATED: Section 2-7-1(B)(1) *To encourage high ethical standards in official conduct by city officials and employees*

DATE OF ALLEGED VIOLATION: March 25, 2021

ACTIONS ALLEGED TO BE A VIOLATION: In this case ,high ethical standards would include refraining from using citizen communication time to co-opt an opportunity to self-advocate, refraining from using disparaging and harmful language to a citizen during citizen during citizen communication and to refrain from diluting the only opportunity citizens may have to address their city's leadership in an official capacity and on record, which is broadcasted live and recorded. The MPT's public attack directed towards me as a citizen communicator included elements of intimidation and gaslighting, as a city official.

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: *Witnesses will be the same for all violations.* City Code Section 2-1-48 Rules of Order (A) and 2-1-48(C)

**additional violation*

Page 6

Section 2-7-1 (B)(2) *To establish guidelines for ethical standards of conduct for all such officials and employee by setting forth those acts or actions that are incompatible with the best interest of the city.*

DATE OF ALLEGED VIOLATION: March 25, 2021

ACTIONS ALLEGED TO BE A VIOLATION:

The MPT's decision to speak at length during citizen communication does not reflect high ethical standards in official conduct, as a city official. The concept of interrupting citizen communication is not common place for any city council meeting, commission meeting or otherwise as even displayed in a subsequent meeting I spoke at as a citizen communicator (Audit and Finance Committee on March 31, 2021) and during the Ethics Commission Hearing on May 12, 2021 which I was the complainant of.

**during the Ethics Commission Meeting on May 12, 2021, Ethics Commissioner Danburg asked Ethics Commission Chair Seboron if she could address a citizen communicator by the name of Tiffany Washington, to which commission chair stated on record "I want to remind you, we don't usually kind of open the door to questions for citizens communication, but I am happy if you got a comment you'd like to make".*

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: *Witnesses will be the same for all violations.* City Code of Ordinances to include Section 2-1-44 Meeting Procedures(A), Section 2-1-48 Rules of Order(A) and 2-1-48(C).

For these reasons, a conservative approach is suggested that the subject of a council member's proposed comments be included in a posted agenda. As noted earlier, the Texas Supreme Court has stated that TOMA demands "exact and literal compliance with the terms of the Texas Open Meeting Act".⁵⁸ The "public comment" item currently included in many municipalities agenda is certainly part of a "meeting" as defined under the Act because the city council receives information from the person commenting. Any council member comment will be measured by the statutory definition as to whether it relates to public business or public policy over which the governmental body has supervision or control. The issue of supervision and control has generally been held to be a fact issue for determination of the trier of fact. Further, public business is a very expansive term which would include a potential universe of matters. If a staff or council member comments under the "public comment" provision in the agenda, and there is prosecution for an alleged violation of the Act, the matter commented upon or discussed will be measured by a court or jury to determine whether the commented item should have been the subject of specific notice on the agenda. Moreover, prior cases have determined that notice must be even more specific if the public has a special interest in the topic under discussion.⁵⁹ It may also be expected that under this rationale there will be an argument that any comment or remark of a council member or high official with the city is a matter of special interest to the public and should be the subject of specific substantive notice in the agenda to alert the public.

V. LITIGATION CONCERNS

As previously noted, the Texas Supreme Court has indicated that TOMA is to be liberally construed. Since a city decides what it will discuss at its meetings, it has the ability to know or learn in advance the subject matter of reports of briefing of employees, consultants, auditors, persons engaged in business with a governmental body, and by other third parties with a special connection with the city. Consequently, there are no particular difficulties in providing notice of the subject matter of such presentations to the public. Accordingly, a city should not be surprised that the Attorney General may argue that any comments by staff or a council member under the public comment section of the Agenda, without a specific notice of the subject matter to be addressed, would be a violation of TOMA.

Additionally, the Attorney General in JC-0169 opined that "if a governmental body is apprised in advance" that members of the public will be present to comment on a specific item during public comment, that the agenda item provide notice of the subject matter of that public comment.

Further, any member of the public has the ability to institute legal action for alleged violations of the Texas Open Meetings Act or make complaints to the local district attorney's office which will often result in the unpleasant experience of being examined by a grand jury.

The violation of TOMA is generally a fact issue for individual determination and full trial on the merits may be required.⁶⁰ As stated by the Attorney General in JC- 0294, any council member who may be called to testify before a grand jury is disqualified from voting on a resolution to pay his/her own legal fees or the legal fees of another council member for defense

House Bill 2840: Public Comment on Agenda Items
Zindia Thomas, TML Assistant General Counsel
July 2019

What is H.B. 2840?

House Bill 2840 by Representative Terry Canales (D – Edinburg) is effective date of September 1, 2019. The bill amends the Texas Open Meetings Act to provide that “a governmental body shall allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body’s consideration of the item.” Before the passage of the bill, the public had only the right to observe, rather than speak at, an open meeting of a governmental body.

What right does the public have to speak on a particular agenda item?

The public has the right to speak on each item on the agenda at an open meeting of all governmental bodies as defined by the Open Meetings Act, except for state agencies. Tex. Gov’t Code § 551.007(a).

When does the public have the right to speak on items on the agenda of an open meeting?

The governmental body must allow the public the right to speak on items on the agenda either at the beginning of the meeting or during the meeting when the agenda item is being considered by the governmental body. *Id.* § 551.007(b).

Is a governmental body allowed to adopt reasonable rules on the public’s right to speak?

Yes. A governmental body may adopt reasonable rules concerning the public’s right to speak at an open meeting. *Id.* § 551.007(c). The rules may include how long the person can address the governmental body on a given item. If the person addressing the governmental body needs a translator, the governmental body is required to allow at least twice the normal amount of time for the non-English speaker to address the body. *Id.* § 551.007(d).

May the governmental body still allow the public to ask questions about items not on the agenda?

The governmental body may decide to allow the public to ask questions about items not on the agenda. If the governmental body allows the public to ask questions about items not on the agenda, the governmental body can still apply reasonable rules regarding the number, frequency, and length of presentation, but it cannot discriminate against speakers. The governmental body will not be able to deliberate on any item that is not on the agenda. For such an item, the governmental body may either: (1) make a statement of fact regarding the item; (2) make a statement concerning the policy regarding the item; or (3) propose that the item be placed on a future agenda. *Id.* § 551.042.

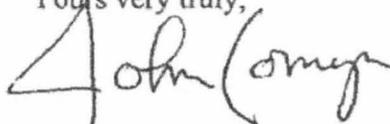
May the governmental body prevent the public from criticizing the governmental body or actions of the governmental body?

A governmental body may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service. However, the bill “does not apply to public criticism that is otherwise prohibited by law.” *Id.* § 551.007(e). What public criticism is prohibited by law remains to be seen. Defamation would probably fall under that prohibition. In any case, a city should be able to enforce a decorum policy for public speakers, so long as it doesn’t prohibit criticism.

S U M M A R Y

“Public comment” provides sufficient notice under the Open Meetings Act of the subject matter of “public comment” sessions where the general public addresses the governmental body about its concerns and where the governmental body does not comment or deliberate except as authorized by section 551.042 of the Government Code. “Employee briefing” or “staff briefing” does not give adequate notice of subjects presented to a governmental body by employees or *staff members*.

Yours very truly,

A handwritten signature in black ink that reads "John Cornyn". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

CLARK KENT ERVIN
Deputy Attorney General - General Counsel

ELIZABETH ROBINSON
Chair, Opinion Committee

Rick Gilpin
Assistant Attorney General - Opinion Committee

problems, it must insure that its notice is tailored to its prior knowledge. *See Cox Enterprises*, 706 S.W.2d 956.

We must also briefly explain how our conclusion here relates to section 551.042 of the Act. That section provides:

(a) If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply:

(1) a statement of specific factual information given in response to the inquiry; or

(2) a recitation of existing policy in response to the inquiry.

(b) any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

TEX. GOV'T CODE ANN. § 551.042 (Vernon 1994). This provision relates to "inquiries" from members of the public. Its purpose is to authorize a governmental body to make a limited response to an inquiry from the public about a subject not included on the posted notice and to prevent it from engaging in "deliberation" or making a "decision" about the subject matter of the inquiry. When an inquiry or a comment from a member of the public requires such deliberation or decision, members of the governmental body may respond merely that the matter shall be placed on a future agenda.

You also ask whether "employee briefing sessions" may be held without specific notice under the category denominated "public comment" or "staff briefing." Between 1987 and 1999, "employee briefing sessions" were permitted to be held in executive session. Section 551.075 provided:

(a) This chapter does not require a governmental body to confer with one or more employees of the governmental body in an open meeting if the only purpose of the conference is to:

(1) receive information from the employees; or

(2) question the employees.

(b) During a conference under Subsection (a), members of the governmental body may not deliberate public business or agency policy that affects public business.

6. Is a governmental body required to allow the public to speak on agenda items at “workshops” or “work sessions?”

Cities sometimes post meeting notices indicating that the city council will hold a “council work session” or “council workshop.” These terms are not defined in the Act, but are commonly used to refer to a meeting in which the council will be briefed by staff (or other experts) on a single matter of interest to the city. Oftentimes, the subject of a work session is highly technical in nature and/or requires a detailed and thorough explanation. A city council generally will not plan to take action during a work session as it is frequently intended as an educational precursor to some possible future action. For instance, city councils often hold meetings referred to as “work sessions” leading up to the adoption of the budget.

City attorneys disagree about whether Section 551.007 applies to a workshop or work sessions. While some believe it applies, others have a different interpretation. That interpretation is largely based on when the governmental body “considers” an item. For example, a city may hold budget workshops for city councilmembers to discuss financial priorities amongst themselves. Some argue that the city council isn’t “considering” the item at that time. Rather, they argue, the budget itself will be considered when it is placed on the city council’s agenda for action at a future meeting. The bill author’s staff has indicated that the bill isn’t meant to apply to a workshop or work session.

7. May the governmental body still allow the public to ask questions about items not on the agenda? Must a governmental body allow the public to ask questions about items not on the agenda?

It has long been “common for units of local government to invite any member of the public to make whatever comments they desire in the public forum at the time of the public meeting,” including comments about items not on the agenda. Tex. Att’y Gen. Op. Nos. JC-0169 (2000). A governmental body may, but does not have to, allow the public to make comments about items not on the agenda. House Bill 2840 mandates that a governmental body allow a citizen to speak only in regard to items on an agenda.

If the governmental body allows the public to comment on items not on the agenda, the governmental body can still apply reasonable rules regarding the number, frequency, and length of presentation, but it cannot discriminate against speakers. See, e.g., Tex. Att’y Gen. Op. No. LO-96-111. The governmental body may not deliberate on any item that is not on the agenda. For such an item, the governmental body may: (1) make a statement of fact regarding the item; (2) make a statement concerning the policy regarding the item; or (3) propose that the item be placed on a future agenda. TEX. GOV’T CODE § 551.042.

8. May the governmental body prevent the public from criticizing the governmental body or actions of the governmental body?

A governmental body may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service. However, the bill “does not apply to public criticism that is otherwise prohibited by law.” *Id.* § 551.007(e). What public criticism is prohibited by law remains to be seen. Defamation would probably fall under that prohibition. In any case, a city should be able to enforce a decorum policy for public speakers, so long as it doesn’t prohibit criticism.



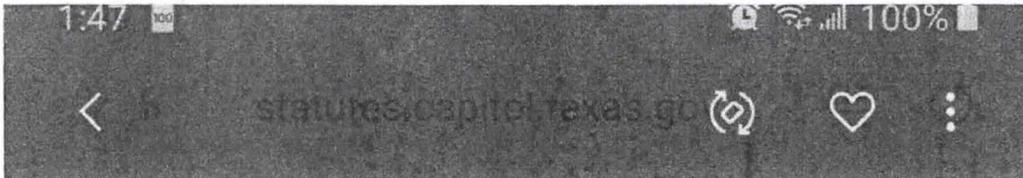
at least five days before the meeting.

Source: Ord. 20071129-011; Ord. 20080618-030; Ord. 20101209-003.

§ 2-1-44 - MEETING PROCEDURES.

- (A) Board meetings are governed by Robert's Rules of Order and the board's bylaws.
- (B) Each board shall adopt the City's standard board bylaws. A bylaw amendment is not effective unless approved by the council after review by the Council Audit and Finance Committee.
- (C) A board meeting may not extend beyond 10:00 p.m., unless the board votes to continue.
- (D) Boards may adopt special rules of procedure as required. A board's special rules of procedure may not conflict with state or federal law, the board's bylaws, or the City Code.
- (E) A member of the public may not address a board at a meeting on an item posted as a briefing.

Source: Ord. 20071129-011; Ord. 20080214-012; Ord. 20080618-030; Ord. 20101209-003; Ord. No. 20141211-204, Pt. 4, 12-22-14; Ord. 2150129-026, Pt. 7, 2-9-



GOVERNMENT CODE

TITLE 5. OPEN GOVERNMENT; ETHICS

SUBTITLE A. OPEN GOVERNMENT

CHAPTER 551. OPEN MEETINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 551.001. DEFINITIONS. In this chapter:

(1) "Closed meeting" means a meeting to which the public does not have access.

(2) "Deliberation" means a verbal or written exchange between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body.

(3) "Governmental body" means:

(A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;

(B) a county commissioners court in the state;

(C) a municipal governing body in the state;

(D) a deliberative body that has



for employees). Isn't the board required to go through the agenda in order, so the public is properly kept informed of the board's business? There are quite a few people in the community who believe this should be the case.

A: The Texas Open Meetings Act requires that the public be notified — at least 72 hours in advance of a regular meeting — of each item to be deliberated by a governmental body in the meeting. There are AG opinions and information in the AG's TOMA Handbook to the effect that the public notice need not distinguish between action items that are to be discussed in open session and items that are to be discussed in closed session. Agenda items should be described in enough detail to give the general public a clear idea of what each item is.

As to the order in which items are laid out for discussion in a meeting, the TOMA handbook is silent. So to me, a non-lawyer, it's more of a question of procedure. With a nod to Robert's Rules or Order, you may readily discern how helpful it is for any deliberative body to be consistent in its procedures. If taking items seemingly at random is causing problems, adversely affected parties should exercise their civic duty and complain through official channels. Also, Op/Eds and letters to the editor may help nudge the governmental body toward the desired action.

Have a question for TPA Hotline? Contact Ed

problems, it must insure that its notice is tailored to its prior knowledge. *See Cox Enterprises*, 706 S.W.2d 956.

We must also briefly explain how our conclusion here relates to section 551.042 of the Act. That section provides:

(a) If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply:

(1) a statement of specific factual information given in response to the inquiry; or

(2) a recitation of existing policy in response to the inquiry.

(b) any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

TEX. GOV'T CODE ANN. § 551.042 (Vernon 1994). This provision relates to "inquiries" from members of the public. Its purpose is to authorize a governmental body to make a limited response to an inquiry from the public about a subject not included on the posted notice and to prevent it from engaging in "deliberation" or making a "decision" about the subject matter of the inquiry. When an inquiry or a comment from a member of the public requires such deliberation or decision, members of the governmental body may respond merely that the matter shall be placed on a future agenda.

You also ask whether "employee briefing sessions" may be held without specific notice under the category denominated "public comment" or "staff briefing." Between 1987 and 1999, "employee briefing sessions" were permitted to be held in executive session. Section 551.075 provided:

(a) This chapter does not require a governmental body to confer with one or more employees of the governmental body in an open meeting if the only purpose of the conference is to:

(1) receive information from the employees; or

(2) question the employees.

(b) During a conference under Subsection (a), members of the governmental body may not deliberate public business or agency policy that affects public business.