

Surviving the Zombie

# TOMNA-CALYPSE

A group of zombies is shown in a dark, smoky environment. The zombies are in various poses, some walking and some standing. The background is a mix of dark and light colors, creating a hazy, atmospheric effect.

Walking Dead Quorums and  
Other Dilemmata

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# TEXAS OPEN MEETINGS ACT

Chapter 551, Texas Local Government Code

Adopted to help make governmental decision-making accessible to the public.

Requires meetings of governmental bodies to be open to the public, except for expressly-authorized closed sessions.

Meetings must be preceded by public notice of the time, place, and subject matter of the meeting.



The provisions  
of the Act are  
**mandatory**  
and are to be  
**liberally**  
**construed**  
in favor of  
open government.

Governmental actions taken in violation of TOMA are subject to **judicial invalidation**, but proving a violation **does not necessarily render voidable** all related subsequent actions by a governmental body.

Violations of TOMA may be criminal  
or civil; if criminal, they are

**MISDEMEANORS**

# WALKING QUORUMS



# WALKING QUORUMS

## "PROHIBITED SERIES OF COMMUNICATIONS"

Engaging in any series of smaller meetings or communications that cumulatively involve a quorum of the GB, and are intended to discuss public business or policy secretly, thereby evading the transparency requirements mandated by TOMA.

# WALKING QUORUMS

The physical presence of a quorum at a single place at the same time is not always necessary for a violation of TOMA to occur.



# WALKING QUORUMS



A per se violation of TOMA does not occur when members of a governmental body confer one-on-one outside of a posted meeting, unless the members meet in less than a quorum with the intent to evade TOMA's requirements.

Foreman v. Whitty, 392 S.W.3d 265, 268  
Tex. App.—San Antonio 2012, no pet.)

# CLOSED SESSION



TOMA mandates that "every regular, special, or called meeting of a governmental body shall be open to the public," with certain narrowly drawn exceptions.

Closed or executive sessions are authorized if the business to be discussed clearly meets one of the exceptions to open sessions listed in TOMA, and if the closed sessions are properly noticed with specific notice of the subjects to be discussed and a tape recording or certified agenda of the closed session is kept.

# CLOSED SESSION: SCOPE

TGC 551.071:

CONSULTATION WITH ATTORNEY; CLOSED MEETING.

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.

# CLOSED SESSION: SCOPE

TGC 551.072:

DELIBERATION REGARDING REAL PROPERTY;  
CLOSED MEETING. 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.

# CLOSED SESSION: SCOPE

TGC 551.074:

PERSONNEL MATTERS; CLOSED MEETING.

(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.

# CLOSED SESSION: SCOPE

TGC 551.087:

DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS; CLOSED MEETING. 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).

# **CLOSED SESSION: AGENDA LANGUAGE**

Notice is sufficient if  
"it would alert a  
reader to the fact  
that some action"  
would be taken on a  
certain topic.

Lower Colorado River Auth. v. City of San  
Marcos, 523 S.W.2d 641, 646 (Tex.1975)





**THIS MAN IS ERNEST SCRIBBLER...**

**The notice must be more specific if the public has a special interest in the topic under discussion.**

Foreman v. Whitty, 392 S.W.3d 265, 268 (Tex. App.—San Antonio 2012, no pet.)

# CLOSED SESSION: AGENDA LANGUAGE

To determine if the notice sufficiently informs the public of the topic under discussion, the court will focus its analysis on comparing the content of the notice given and the action taken at the meeting.

Rettberg, 873 S.W.2d at 412; Point Isabel Indep. Sch. Dist. v. Hinojosa, 797 S.W.2d 176, 180 (Tex.App.—Corpus Christi 1990, writ denied)

# CITIZEN COMMUNICATION



# Public testimony

## TGC 551.007

Allows members of the public to address the governing body before or during the body's consideration of the item.

Allows the City to adopt reasonable rules, including time limits.

Prohibits criticism, of of any act, omission, policy, procedure, program, or service... *except for public criticism otherwise prohibited by law.*

# DISTURBANCES

A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.

= Class B misdemeanor.

# DISTURBANCES

In protecting the freedom of persons at meetings to speak and to listen...

The State has a legitimate, even compelling, interest in ensuring that some individuals' unruly assertion of their rights of free expression does not imperil other citizens' First Amendment freedoms

*Still, in the pursuit of this interest, the government may not forbid expressive conduct that is merely provocative or challenging and that does not curtail the exercise of others' rights. Morehead v. State, 807 S.W.2d 577, 580 (Tex. Crim. App. 1991)*

# DISTURBANCES

The presiding officer or the governing body may ask that individual members of the public be removed if they are causing a disturbance at an open meeting.

What constitutes "disorderly conduct" is a fact issue for the governing body to consider.

A city should consult its city attorney for guidance and adopt policies to put the public on notice.













Leave me  
OUT of this...



Vending machines  
in City Hall?

Rectangles?

Communists  
and crooks?

Standing on  
the desk?

Other?

# A TERRIFYING TRIFECTA...



The lawsuit specifically calls out council members for allegedly violating the Open Public Meeting Act at least 135 times.

Walking quorum...

Disruptive behavior...

**AND SO IT WENT...**

