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## Alan Bojorquez

- Municipal Lawyer (City Attorney / Special Counsel)
- Managing Partner of statewide firm based in Austin, TX
- Texas Tech University: JD, MPA, BA
- Former Staff Lawyer, Texas Municipal League
- Past-President, Texas City Attorneys Association
- Board Member, International Municipal Lawyers Association
- Honorary Member, Texas Municipal Clerks Association
- Honorary Member, International City Managers Association
- Outstanding Government Lawyer, SBOT Gov't Law Section
- Author, *Texas Muni Law & Procedure Manual* (7<sup>th</sup> Ed.)



**BOJORQUEZ**  
**LAW FIRM, PC**  
 TexasMunicipalLawyers.com

State Bar of Texas  
 Government Law Section  
 Advanced Government Law  
 July 31, 2025

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## 1. Preparing the Agenda

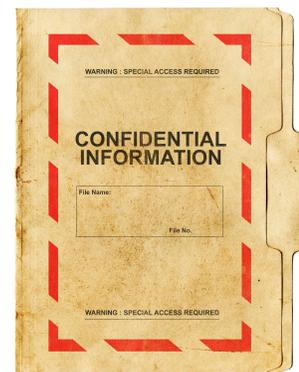
- TOMA is silent on Agenda Prep
- Governmental Body has discretion
- May adopt Reasonable Rules & Procedures
- Each Member has Right to Place Items on Agenda
- Subject to Local Rules



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## 2. Agenda Packets

- Posting of Backup / Supporting Docs not required
- Governmental Body has discretion
- Common to publicly post Agenda Packets
- Balance Transparency with Security
- Beware of Cyber Fraud
  - Confidential
  - Privileged
  - Financial / Vendor
  - Infrastructure
  - Real Estate
  - Executive Session



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### 3. Posting Online

- Must Post at City Hall / County Courthouse, etc.
- Physical (Hard Copy) or Electronic Bulletin Board
- Must also post Online (on Website)
- Failure to post Online is ok if:
  - Made Good Faith Effort but
  - Technical Problems beyond Control



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### 4. Breaking Quorum

- Refusal to Attend / Quorum Busting / Legislative Walkout
- Intentional Absence for Political Purposes
- Common to have Rules Compelling Attendance
- First Amendment Concerns?
- Absence Alone isn't "Speech"
- Non-Attendance isn't "Expressive"
- Government's Interest in Functionality may Outweigh Individual's Interest in Speech
- Officials do not speak as Citizens when acting in Official Capacities



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## 5. Abstentions & Recusals

- Terms often used Interchangeably
- Often Local Rules mandate Vote on all Matters unless must recuse due to Conflict of Interest
- Voluntary Recusal might be Prohibited
- First Amendment Concerns?
- Abstaining / Recusing is Not Clearly Protected
- Legislator's Vote is Not Necessarily Personal Speech



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## 6. Shifting Majority Thresholds

- "Majority" = More than Half (acc. to Robert's Rules)
- Other Definitions can be problematic (eg, 50% +1)
  - If 7 members & 7 present & voting
  - Then Majority = 4
  - 50% = 3.5
  - Therefore 50%+1 = 4.5 (Thus 5)
- 2/3 Requirement means *at least* 2/3
- Simple Test for 2/3: Aye Votes must Double Nay

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## 6. More on Shifting Majority

- Common to track Abstentions
- Abstention is a Refusal to Vote
- Usually Abstention has No Effect on Outcome
- If Rules explicitly require *majority of members present* or *majority of the entire membership*, then Abstention has effect of a Nay (No) vote



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## 7. Disrupting a Meeting

- TOMA doesn't address
- Disrupting Meeting (Class B Misd.)
  - Intentionally prevent or disrupt lawful meeting by obstructing or interfering or verbal utterance
- Hindering Proceedings by Disorderly Conduct (Class A Misd.)
  - Intentionally / Recklessly through noise, violent actions, other disturbances after being asked to stop
- First Amendment still Applies
  - Expulsion can't be based on Viewpoint



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## 8. Participants in Executive Session

- TOMA doesn't address
- Ordinarily Members of Governing Body can Attend
- Body may Exclude a Member who has Sued
- Body has Right to Consult its Attorney
- May invite Employees if Necessary to Discussion
- Can't admit 3<sup>rd</sup> Party Adversaries or persons whose presence would prevent Privileged communications



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## 9. Locational Requirements

- TOMA mandates location be Accessible to Public
- OAG opined can't meet in area requiring Photo ID
- OAG opined must meet in Texas
- Not limited to Publicly-Owned facilities
- Generally, not limited to jurisdictional boundaries



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## 10. Legal Questions in Open Session

- Preferable if Clients Pose Questions in Advance
- Client Reps might not Anticipate Legal Questions
- Client Reps may want Audience to Hear Lawyer
- Attorney could:
  - make General Statement w/o Opinion
  - ask Chair to Delay until Later
  - request Topic be Tabled
  - suggest Executive Session
  - decline to Comment due to Privilege



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## 11. Notices of Possible Quorum

- Meetings Happen / Gatherings Occur
  - Other Groups host events
  - Political / Campaign functions are popular
  - Members of One Body attend Meeting of Another
- If anticipate a Quorum & Discussion of Business it's preferable to Post Agenda properly
- If in doubt / too late, consider:
  - Notice of Possible Quorum
    - Include Date / Time / Location
    - State is Not a Meeting / No Action



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## 12. Requiring Speakers' Addresses

- TOMA doesn't address
- Is very Common Practice
- Law lacks Clarity
- Obvious First Amendment issues
- May be concerns about Speaker's Personal Safety
- Requiring Addresses can have a Chilling Effect



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## 13. Rules for Public Comment

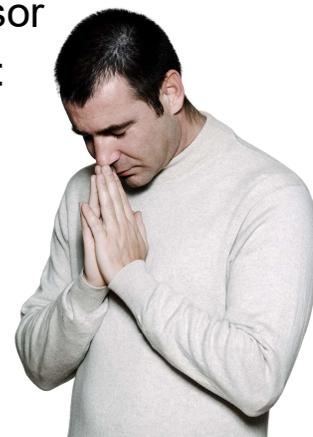
- TOMA allows Reasonable Rules
  - Number, Frequency, Length of Presentations
  - Sign up in Advance (Card / List)
  - Locations for Signage, Size of Signage, Locations for Lights
- Can't Discriminate on Topics or Speakers
- Can't Prohibit Criticism
- Must Allow Recording



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## 14. Invocations & Benedictions

- Legislative Prayer
- Does Not Necessarily Violate 1<sup>st</sup> Amendment
- Government Entities Not Required to Censor
- Unlikely to Violate Establishment Clause if:
  - Audience Invited (Not Required)
  - Given in Open Session
  - Lends Gravity to Occasion
  - Encourages Reflection
  - Reflect Upon Common Ideals
  - Does not Discriminate
  - Does not Proselytize
  - Does not Preach Conversion



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## 15. Physical Altercations

- What is the Role of the Attorney?
- Protect Yourself!
- Avoid Escalating the Situation
- Periodically Meet with Presiding Officer, Manager & Chief Law Enforcement
  - What's the Plan?
  - Who makes the Call?
  - When?
  - Exchange Cell Numbers!



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