



Open Meetings Act Public Comment¹

The purpose of the Texas Open Meetings Act (OMA) is to ensure the public's access to meetings of governmental bodies so that it has the opportunity to be informed concerning the transactions of public business. *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377 (Tex. App.—San Antonio 1971, no writ).

The OMA, Texas Government Code chapter 551, requires meetings of governmental bodies, including community college boards, to be open to the public except for expressly authorized executive sessions, referred to as closed meetings. The OMA also requires public comment at every open board meeting. Tex. Gov't Code §§ 551.001(3)(E), .002, .007.

This document addresses the public comment requirements for open board meetings, including changes made by House Bill 2840, which was enacted by the Texas Legislature and became effective on September 1, 2019. For additional information regarding the general requirements of the OMA, please see [Open Meetings Act—Basic Principles](#) on TASB College eLaw.

1. What is a public comment period?

A *public comment* period is a time or portion of an open meeting of a governmental body, including a community college board, during which members of the public provide comments or information to the governmental body. A public comment period is sometimes also referred to as *public participation*, *public forum*, or *open mike*.

2. Is a public comment period the same as a public hearing?

No. A *public hearing* describes a form of board meeting usually required by a specific statute that provides the public an opportunity to provide testimony or comment concerning a specific topic or subject. See *Eudaly v. City of Colleyville*, 642 S.W.2d 75 (1982) (distinguishing between *public comment* and *public hearing*); Tex. Att'y Gen. Op. Nos. JC-169 (2000), JH-188 (1973), CM-220 (1968).

¹ An electronic version of this document is available on [TASB College eLaw](https://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-oma-public-comment.pdf) at tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-oma-public-comment.pdf.

3. Is a community college board required to allow a public comment or public forum section at board meetings?

Yes. As of September 1, 2019, the OMA requires a board, including a community college board, to allow each member of the public who wants to comment on an item on the agenda of an open meeting to address the board before or during consideration of the item. This requirement applies to every open meeting, including the open meeting portion of a regular meeting, special meeting, or board workshop. A board may continue, but is not required, to receive public comments concerning subject matters not posted on an agenda. Tex. Gov't Code § 551.007(b); Tex. Att'y Gen. Op. No. KP-300 (2020) (concluding that a public comment period may be held at the beginning of an open meeting to address all agenda items).

4. If a community college board does not vote or take any action at work sessions, is public comment still required for work sessions?

Yes. A community college board must allow each member of the public who desires to address the board regarding an item on an agenda for any open meeting of the board, as defined by the OMA, to address the board regarding the item at the meeting. Tex. Gov't Code § 551.007(b).

5. May a community college board limit the amount of time a member of the public may speak or set other limits on public comment?

Yes. The OMA permits a community college board to adopt reasonable rules governing how the public may comment, including rules that limit the total amount of time a member of the public may comment on an agenda item. Citizens may still be required to sign up at or before the meeting to address the board. However, no member of the public who wishes to speak about an agenda item and who has followed reasonable sign-up rules should be turned away due to an overall cap on the number of speakers or total time for public comment. If a board finds that it is overwhelmed by the number of citizens wishing to address the board, the board should seek legal advice before refusing to allow a citizen to address the board prior to consideration of a given agenda item. Tex. Gov't Code § 551.007(c).

6. If a community college board does not like the viewpoint a citizen wants to share, can it prevent the citizen from speaking?

A public comment period during a community college board meeting constitutes a *limited public forum* under the First Amendment. Although a board may adopt reasonable rules governing the public comments, such as the number, frequency, and length of presentations, it must also provide alternative paths for citizens to express categories of protected speech that are excluded from the forum. Tex. Att'y Gen. Op. No. JH-188 (1973); Tex. Att'y Gen. LO-96-111 (1996).

A board must not, however, discriminate between speakers based on the content of their speech or the message it conveys. A board must also not discriminate against speech on the basis of viewpoint. For example, if three speakers arrive to a board meeting to speak about the basketball program, the board cannot agree to hear the individuals who speak favorably of the program and not hear a speaker who criticizes the program. Additionally, under the OMA a college board may not prohibit public criticism of the board, including any act, omission, policy, procedure, program, or service. Tex. Gov't Code § 551.007(e); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995); *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747 (5th Cir. 2010).

7. How should a community college board respond to questions and comments from speakers during public comment?

Very carefully. The OMA allows a very limited response. A community college board is not authorized to discuss or act on the public's comments or complaints if the subject is not on the agenda. If a member of the public or the board inquires about a subject for which notice has not been given, the board may only:

- **Give factual information:** Make a statement of specific factual information (e.g., "The deadline for submitting bids on that proposal is March 28, 2022.")
- **Give a policy reference:** Recite existing policy in response to the inquiry (e.g., "Complaints by a member of the public against a college employee should be submitted under the college's local policy GB(LOCAL).")
- **Place on a future agenda:** Respond merely that the matter shall be placed on a future agenda.
- **Deliberate placement on an agenda:** Discuss only the limited inquiry of a proposal to place the subject on the agenda for a subsequent meeting.

Tex. Gov't Code § 551.042; Tex. Att'y Gen. Op. No. JC-169 (2000).

8. What can a community college board do to limit disruptions by members of the public audience?

A person who, with the intent to prevent or disrupt a lawful meeting, substantially obstructs or interferes with the meeting by physical action or verbal utterance commits a criminal offense. Tex. Penal Code § 42.05; *Morehead v. State*, 807 S.W.2d 577 (Tex. Crim. App. 1991) (en banc).

A community college board has a right to insist that persons attending the meeting maintain order and obey the board's rules. Boards may adopt specific operating procedures that set out specific responses that the presiding board member will use when handling disruptions.

The board should take care to warn an individual who is mildly disruptive and remove only those individuals who are substantially interfering with the board's ability to conduct business. If any person continues to disrupt a meeting after receiving a warning, the presiding board member may request the assistance of local law enforcement to escort the disruptive individual from a meeting.

TASB Community College Services strongly recommends that colleges work in advance of board meetings in consultation with local counsel to adequately plan and prepare for the use of law enforcement at board meetings.

9. May a community college board prohibit public criticism of the board or the college?

No. The OMA specifically disallows a governmental body, including a community college board, from prohibiting public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service, that is not otherwise prohibited by law. Tex. Gov't Code § 551.007(e).

10. May a community college board prohibit public criticism of an individual?

Maybe. The OMA's restriction on prohibiting public criticism of the governmental body does not apply to public criticism that is otherwise prohibited by law. Tex. Gov't Code § 551.007(e). A college should consult its local counsel when developing procedures prohibiting certain public comments, including the consideration of whether prohibitions are reasonable, viewpoint-neutral, and avoid interfering with a person's rights under other law.

11. Is a community college board required to respond to complaints?

No. A community college board is not required to negotiate or respond to complaints at an open meeting. However, the board must "stop, look, and listen and must consider the petition, address, or remonstrance." *Prof'l Ass'n. of Coll. Educators v. El Paso County Cmty District*, 678 S.W.2d 94 (Tex. App.—El Paso 1984, writ ref'd n.r.e.).

12. May a community college board require a group of citizens to appoint a spokesperson to speak on their behalf?

No. A community college board may not require the designation of a spokesperson to reduce the number of speakers. The OMA requires the board to allow each member of the public who desires to address the board on an agenda item to do so. Tex. Gov't Code § 551.007(b).

13. What does the OMA require if a community college board does not use simultaneous translation equipment?

If a community college board assigns time limits to speakers but does not use translation equipment in a manner that allows the board to hear translated public testimony simultaneously, the board must provide those using a translator at least twice the amount of time to comment as is provided a speaker who does not require translation assistance. Tex. Gov't Code § 551.007(d).

14. How does a community college board list a public comment section on its meeting agenda and notice?

A notation such as "Public Comment" is generally sufficient. The attorney general has stated that while public comment sessions constitute meetings for which notice must be given, the terms "public comment," "public forum," or some other generic term provide sufficient notice. However, if the community college board, prior to the meeting, is aware or reasonably should have been aware of specific topics to be raised, such as a local neighborhood association requesting to present a public comment, then the meeting notice should be tailored to reflect that knowledge. Tex. Att'y Gen. Op. No. JC-169 (2000).

15. What TASB Policies apply to public comment periods?

See TASB Policy BDB(LEGAL) and (LOCAL).

16. Where can I get more information on public comment periods?

If you have questions about these or other legal issues, community college representatives may contact TASB Community College Services at 800.580.1488 or colleges@tasb.org.

For more information on community college law topics,
visit TASB College eLaw online at colleges.tasb.org/elaw.

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