

## **Item 6 – Proposed Amendment to District Bylaws – Public Comment**

The Rules Committee met via a posted virtual meeting June 3, 2020 to discuss the current District Bylaws language regarding public comment. They were charged with formulating language that mirrors statute. Committee members in attendance were:

Jan Roe – Chair  
Pete Brien  
Mark Carrabba

Attached is the bylaw current language, proposed amended language, HB 2840 which created the need for the amendment, and Attorney General Paxton's Opinion (KP-0300) addressing how governmental entities can meet the statutory requirements. The last two documents should be read in tandem with the suggested revised language.

**It is the recommendation of the Rules Committee and the General Manager to adopt the revised language to the District Bylaws as presented regarding public comment.**

AN ACT

relating to the right of a member of the public to address the governing body of a political subdivision at an open meeting of the body.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 551, Government Code, is amended by adding Section 551.007 to read as follows:

Sec. 551.007. PUBLIC TESTIMONY. (a) This section applies only to a governmental body described by Sections 551.001(3)(B)-(L).

.(b) 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.

.(c) A governmental body may adopt reasonable rules regarding the public's right to address the body under this section, including rules that limit the total amount of time that a member of the public may address the body on a given item.

.(d) This subsection applies only if a governmental body does not use simultaneous translation equipment in a manner that allows the body to hear the translated public testimony simultaneously. A rule adopted under Subsection (c) that limits the amount of time that a member of the public may address the governmental body must provide that a member of the public who addresses the body through a translator must be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in order to ensure that non-English speakers receive the same opportunity to address the body.

.(e) A governmental body may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service. This subsection does not apply to public criticism that is otherwise prohibited by law.

SECTION 2. This Act takes effect September 1, 2019.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 2840 was passed by the House on May 3, 2019, by the following vote: Yeas 138, Nays 3, 1 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 2840 was passed by the Senate on May 22, 2019, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

\_\_\_\_\_  
Governor



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 22, 2020

The Honorable Deborah Earley  
Blanco County Attorney  
Post Office Box 471  
Johnson City, Texas 78636

**Opinion No. KP-0300**

Re: Authority of a governmental body subject to section 551.007 of the Government Code to regulate public comment sessions during open meetings (RQ-0313-KP)

Dear Ms. Earley:

The Texas Legislature recently added section 551.007 to the Government Code, requiring certain governmental bodies—including a county commissioners court—to permit public comment on an item on the agenda for an open meeting. TEX. GOV'T CODE § 551.007. You ask whether section 551.007 permits a county to hold one public comment period at the beginning of an open meeting to address all agenda items, or instead, whether section 551.007 requires a county to hold separate public comment periods immediately before each agenda item.<sup>1</sup>

Subsection 551.007(b) provides:

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.

*Id.* § 551.007(b) (emphasis added). The statute's plain text allows the county to determine whether the opportunity for public comment will occur either before or during the body's discussion of an agenda item. *Id.*; see *Silguero v. CSL Plasma, Inc.*, 579 S.W.3d 53, 59 (Tex. 2019) ("A statute's plain language is the most reliable guide to the Legislature's intent."); *Jones v. State*, 175 S.W.3d 927, 932 (Tex. App.—Dallas 2005, no pet.) ("Typically, the term 'or' is disjunctive and . . . separates words or phrases in the alternate relationship, indicating that either of the separated words or phrases may be employed without the other."). Moreover, if the county determines the opportunity will occur prior to the consideration of an agenda item, the text does not require that the public comment occur immediately adjacent to the discussion of the item or that it occur

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<sup>1</sup>See Letter from Honorable Deborah Earley, Blanco Cty. Att'y, to Office of the Att'y Gen. at 2–3 (Oct. 25, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter").

separate from public comment on other agenda items. *See* TEX. GOV'T CODE § 551.007(b); *see also* *PHI, Inc. v. Tex. Juv. Justice Dep't*, No. 18-0099, 2019 WL 1873431, at \*6 (Tex. Apr. 26, 2019) (“But no court has the authority, under the guise of interpreting a statute, to engraft extra-statutory requirements not found in a statute’s text.”); *see also* WEBSTER’S THIRD NEW INT’L DICTIONARY 197 (2002) (defining “before” as “preceding: earlier than”). Rather, the only requirement is that the opportunity occur at the public meeting before or during the body’s consideration of the agenda item. TEX. GOV’T CODE § 551.007(b). Accordingly, a county may satisfy subsection 551.007(b)’s requirements by having a single public comment period at the beginning of an open meeting to address all items on the agenda.

You also ask whether section 551.007 permits a county to limit the total amount of time it gives a speaker to address all desired agenda items. *See* Request Letter at 2–3. Subsection 551.007(b) vests the public with the right to address certain governmental bodies on “an item on an agenda for an open meeting.” TEX. GOV’T CODE § 551.007(a), (b). But subsection (c) of that statute recognizes that the governmental body may adopt reasonable rules regarding this right, including time limitations:

A governmental body may adopt *reasonable rules* regarding the public’s right to address the body under this section, *including rules that limit the total amount of time that a member of the public may address the body on a given item.*<sup>2</sup>

*Id.* § 551.007(c) (emphasis and footnote added); *see id.* § 311.005(13) (“‘Includes’ and ‘including’ are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.”). Subsection (c) mandates a requirement of any rule affecting the public’s right to address an agenda item: reasonableness. *Id.* § 551.007(c); *see also id.* § 551.007(e) (generally prohibiting governmental body from prohibiting public criticism); Tex. Att’y Gen. Op. No. H-188 (1973) at 2 (providing, in part, that commissioners court may not unfairly discriminate among views seeking expression). Thus, a rule capping the total amount of time a speaker has to address all agenda items is permissible only if the rule is reasonable. *See* TEX. GOV’T CODE § 551.007(c). Whether a particular period of time is reasonable to address all desired agenda items at an open meeting will depend on many factors, including the number of agenda items and their complexity, and is a fact question for the county to determine in the first instance subject to judicial review. *See generally* Tex. Att’y Gen. Op. Nos. KP-0178 (2018) at 3 (noting that this office does not resolve questions of fact in the opinion process), LO-96-111, at 1.

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<sup>2</sup>The statute specifically addresses time for translation, providing:

A rule adopted under Subsection (c) that limits the amount of time that a member of the public may address the governmental body must provide that a member of the public who addresses the body through a translator must be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in order to ensure that non-English speakers receive the same opportunity to address the body.

S U M M A R Y

Government Code subsection 551.007(b) requires certain governmental bodies to permit public comment on an item on the agenda for an open meeting either before or during the body's consideration of the item. A governmental body may satisfy subsection 551.007(b)'s requirements by holding a single public comment period at the beginning of an open meeting to address all items on the agenda.

Government Code subsection 551.007(c) authorizes a governmental body subject to its provisions to adopt reasonable rules regarding the public's right to address the body, including time limitations. Pursuant to subsection 551.007(c), a governmental body may adopt a rule capping the total amount of time a member of the public has to address all items on the agenda if the rule is reasonable.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

RYAN L. BANGERT  
Deputy First Assistant Attorney General

RYAN M. VASSAR  
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER  
Chair, Opinion Committee

## DISTRICT BYLAWS

### SECTION 2. BOARD OF DIRECTORS

#### Current Bylaw Language

##### 2.8. Public Comment

During Board meetings, other than a work session, public comment may be heard by the Board. Public comment during a Board meeting will be of two types:

- (1) Public comments of a general nature may be made under the public comment item on the agenda; or
- (2) Specific comments on any posted agenda item may be made following recognition of the speaker by the Board chair. Such comments may be made after the presentation of the item, or during the Board discussion of the item, if the speaker is called upon.

Public comments of either type will be accepted by the Board chair only after the person wishing to speak has completed an information card, which is available at the meeting. The card must contain the speakers name, address, phone number, and the number of the agenda item that will be addressed, if applicable. A speaker may speak for three (3) minutes or less. Speakers shall address only the item for which they signed up, unless their general comment is heard during the Public Comment period. No speaker will be allowed to pass his time to someone else, nor will be permitted to repeat comments made by another, except to concur with those remarks.

#### Suggested Revised Bylaw Language

##### 2.8. Public Comment

During District open meetings, ~~other than a work session~~, public comment ~~may~~ shall be heard by the Board. Public comment during a Board meeting will be of two types:

- (1) Public comments of a general nature may be made under the public comment Item on the agenda; or
- (2) Specific comments on any posted agenda item may be made following recognition of the speaker by the Board chair. Such comments may be made either during the public comment item on the agenda before Board consideration or during Board consideration of the posted agenda item, as determined by the Board chair, ~~after the presentation of the item, or during the Board discussion of the item, if the speaker is called upon.~~

Public comments of either type will be accepted by the Board chair only after the person wishing to speak has completed an information card, which is available at the meeting. The card must contain the speakers name, address, phone number, and the number of the agenda item that will be addressed, if applicable. A speaker may speak for three (3) minutes or less. Speakers shall address only the item(s) for which they signed up, unless their general comment is heard during the Public Comment period. No speaker will be allowed to pass his time to someone else, ~~nor will be permitted to repeat comments made by another, except to concur with those remarks.~~ A member of the public who addresses the body through a translator must be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in order to ensure that non-English speakers receive the same opportunity to address the body.

The District may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service, unless otherwise prohibited by law.