

2019 ADVISORY BOARD TRAINING

Utah Communications Authority

2019 Advisory Board Training

July, 2019

OPEN PUBLIC MEETINGS ACT

Utah Code Ann. 52-4-101, *et seq.*

- “It is the intent of the Legislature that the state, its agencies, and its political subdivisions: (a) take their actions openly; and (b) conduct their deliberations openly.”

Key Definitions

- Meeting – the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session for the purpose of taking public comment or acting upon a matter over which the body has jurisdiction or advisory power.
- Public Body – Any administrative, advisory, executive, or legislative body that: (a) is created by the Constitution, statute, rule, ordinance, or resolution; (b) consists of two or more persons; (c) expends, disburses, or is supported in whole or in part by tax revenue; and (d) is vested with the authority to make decisions regarding the public's business.

Public Notice

- To conduct a meeting, these committees must generally give at least 24 hours' public notice that includes the date, time, place, and agenda. This notice must be physically posted at the principal office of the public body and the Utah Public Notice Website.
- Annual meeting schedule should also be posted once per year on the Utah Public Notice Website.

Public Notice - Emergency

- In an emergency, the public notice requirements are waived so long as the public body gives the best notice practicable of the time, place, and topics of the meeting.

Stick to the Agenda

- The required agenda must provide reasonable specificity of the topics to be considered and, unless a topic is raised by the public, the public body should only discuss the topics on the agenda. If the public raises an issue, and if the chair agrees, that issue may then be discussed in the meeting, even if it was not on the agenda. However, no final action can be taken on any item not on the agenda.

Minutes of the Meeting

- Written minutes and a recording of an open meeting shall be kept, which include the date, time, and place of the meeting. These minutes should also include the names of the members present/absent and the substance of all matters proposed, discussed, or decided by the public body.
- The minutes should also reflect the vote taken by the individual members of the public body and the name of every member of the public who is recognized by the presiding member to provide comments and a summary of those comments. These minutes should also include anything else that a member of the public body requests be in the minutes.

Minutes of the Meeting

- Within 30 days of a meeting, the public body shall make pending minutes, clearly marked as pending, available to the public.
- Within 3 business days of approving minutes, the public body must post to the OPMA website, a copy of those minutes and any public materials distributed in the meeting.

Recordings of the Meeting

- A recording of an open meeting shall be a complete and unedited record of all open portions of the meeting from beginning to end. Recordings should be labeled with the date, time, and place of the meeting.
- This recording should be posted to the OPMA website within three business days.

Closed Meetings

A closed meeting may be held if:

- A quorum is present;
- The meeting is an open meeting for which proper notice has been given; and
- 2/3 of the members of the public body present at the open meeting vote to approve closing the meeting.

However, a closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.

An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

During the open portion of the meeting, the following shall be publicly announced and entered into the minutes of the open meeting:

- The reason or reasons for holding the closed meeting;
- The location where the closed meeting will be held; and
- The vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.

Closed Meetings – Utah Code 52-4-205

The reasons for closing a meeting include:

- Usually, a discussion of the character, professional competence, or physical or mental health of an individual;
- Strategy sessions to discuss collective bargaining;
- Strategy sessions to discuss pending or reasonably imminent litigation;
- Strategy sessions to discuss the purchase, exchange, lease, or sale of real property if that discussion would disclose the appraisal or estimated value of the property under consideration or would prevent the public body from completing the transaction on the best possible terms;
- Discussion regarding deployment of security personnel, devices, or system;
- Investigative proceedings regarding allegations of criminal misconduct;
- Deliberations, not including any information gathering activities, of a public body acting in the capacity of and evaluation committee, a protest officer, or a procurement appeals panel under the Utah Procurement Code;
- Considering information that is a trade secret or other confidential information in order to properly conduct a procurement under the Utah Procurement Code.

Record of Closed Meetings

Generally, a public body should record the closed portion of a meeting and keep detailed written minutes that disclose the content of the closed portion of the meeting. This recording and minutes shall include the date, time, and place of the meeting, the names of the members present/absent, and the names of all other present unless that disclosure would infringe on the confidentiality necessary to fulfill the original purpose of the closed meeting.

These records are protected under GRAMA.

If a public body closes a meeting exclusively for the purposes of discussing the character, professional competence, or physical/mental health of an individual, or the deployment of security personnel, devices, or systems, a recording and minutes need not be kept but the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was discuss these purposes.

Electronic Meetings

Telephonic meetings are permissible so long as all persons participating in the meeting can hear each other at the same time. Participation by a board member in this fashion constitutes presence in person at such a meeting.

Electronic meetings require the same level of notice as a live, in person meeting and requires at least one anchor location for members of the public to participate at that location, including public comment, if being taken.

Chance or Social Meetings

OPMA does not apply to any chance meeting or social gathering, though these types of meetings cannot be used to circumvent the provisions of this chapter. In other words, if you have a party, don't talk business.

Emails and Text

Nothing in the OPMA restricts a member of a public body from transmitting an electronic message to other members of the public body at a time when the public body is not convened in an open meeting.

Enforcement



Enforcement

Violations of this act can lead to final actions by the public body being voidable by the court. The attorney general is charged with enforcement of this statute, but individuals denied a right under this chapter have a private right of action. Attorneys' fees and costs are available to a successful plaintiff. Improperly closed information can be made public by a court.

A member of a public body who knowingly or intentionally violates, abets, or advises a violation of any of the closed meeting provisions is guilty of a class B misdemeanor.