



Utah Open & Public Meetings Act

TOWN COUNCIL & PLANNING COMMISSION
ANNUAL TRAINING

Why Do We Do This?

“The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.”

Utah Code § 52-4-104

Declaration of public policy utah code §52-4-102

(1) The Legislature finds and declares that the state, its agencies and political subdivisions exist to aid in the conduct of the peoples business.

(2) It is the intent of the Legislature that the state, its agencies and its political subdivisions :

- Take their actions openly;
- Conduct their deliberations openly.

What does the open meetings act do?

- “Requires government to take actions openly.”
- “Ensures deliberations allow for an open public process.”

In other words, we want the people to know what is going on with local and state government.

Who is subject to this law?

“Public Body” defined by Utah Code § 52-4-103(9) means any “administrative, advisory, executive, or legislative body of the state or its political subdivisions” that:

1. Is created by the Utah Constitution, statute, rule, ordinance, or resolution;
2. Consists of two or more persons;
3. Expends, disburses, or is supported in whole or in part by tax revenue;
4. Is vested with authority to make decisions regarding the public’s business.

Who Is Subject To This Law? Part II

2017 Legislative Session included a reference to 53A-1, Part 16 “Public School Membership in Associations” where an association:

- Consists of two or more persons.
- Expends, disburses, or is supported in whole or in part by dues paid by a public school.
- Is vested with authority to make decisions regarding the participation of a public school or student in interscholastic activities.

Examples

- City or County Councils
- City or County Council Advisory Boards
 - Planning & zoning
 - Board of adjustments
 - Project committees
- Special Districts DABC Commission
- State Records Committee
- Board of Pardons

Cardiff Canyon Owners Assoc. v. Mountain Accord

- July 10, 2017 decision from Judge Laura Scott, 3rd District Court, Salt Lake County.
- The Mountain Accord initially was a joint or cooperative undertaking because all of the parties were public agencies.
- Consequently, Mountain Accord is a “public body” subject to the requirements of OPMA.
- Each of the public entities acting alone “would be unquestionably subject to the OPMA.” The Court concluded that a private entity’s participation in a joint or cooperative undertaking does not take Mountain Accord “beyond the reach of the OPMA.”

Moral of the Story

When in doubt, hold a public meeting.



Who Is Not Subject to the Open Meetings Act Law?

- Political parties, groups and caucuses.
- State Legislative conference, rules and sifting committees.
- School community council, established under 53A-19-108.
- The Economic Development Legislative Liaison Committee (2017 Change).

Meeting

Utah Code § 52-4-103(5)(a)

meet·ing | \ 'mē-tīŋ:

“...the convening of a public body, with a quorum present, **including a workshop or an executive session** whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or **acting upon a matter over which the public body has jurisdiction or advisory power.**”

Utah Code § 52-4-103(5)(b)

The following **DO NOT** qualify as a meeting:

- A chance meeting
- A social meeting
- Meeting of a public body with both legislative and executive responsibilities where:
 - No public funds are appropriated for expenditure.
 - Meeting solely for discussion or to implement administrative/operational matters for which no formal action by the public body is required.
 - Meeting solely for discussion or to implement administrative/operational matters that would not come before the body for discussion or action.

What is a Quorum?

§ -103(10)(a) “Quorum” means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

§ -103(10)(b) “Quorum” does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

Attendance at Meetings Utah Code § 52-4-207

Do I have to **physically** attend meetings?

- Can meet by **phone** or other electronic means, such as **Zoom**, which allows all participants to hear or observe communications
 - Must be adopted into existing rules/ordinance.
 - Notice requirements still apply.
 - Public must have a means to attend or participate.

Utah Code § 52-4-202 Notice Requirements

Notice requirements are as follows:

- Must be posted as a written notice at the place where the meeting will be held.
- By posting notice to the “Utah Public Notice Website” Utah Code § 63F-1-701.
- Must be given to at least one local general circulation newspaper or local media correspondent.
- At least 24 hours prior to meeting post:
 - Agenda including all action items stated with reasonable specificity
 - Date
 - Time
 - Place

Example

**TOWN OF APPLE VALLEY
Planning Commission
Hearing and Meeting Notice**

NOTICE IS HEREBY GIVEN THAT THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY WILL HOLD A **PUBLIC HEARING DURING THE PLANNING COMMISSION MEETING ON WEDNESDAY, FEBRUARY 3RD, 2021, AT 6:00 PM** AT 1777 N MEADOWLARK DR, APPLE VALLEY, UT 84737.

Pursuant to the Executive Order issued by Governor Gary Herbert on March 18, 2020 regarding Electronic Public Meetings, please be advised that the Planning Commission Meeting will be held electronically and will be broadcast via Zoom. Persons will be allowed to comment during the meeting via Zoom or by calling in. Meeting details and dial in phone numbers will be provided when the agenda for the meeting is published on the Town website or via <https://www.utah.gov/pmn>.

Zoom Meeting ID: 870 4501 0060

Zoom Link: <https://us02web.zoom.us/j/87045010060>

The agenda shall be as follows:

1. Call to Order, Pledge, and Roll Call
2. Conflict of Interest Disclosures
3. Approval of Minutes for Prior Meetings
 - a. July 8th, 2020
 - b. October 7th, 2020
 - c. November 17th, 2020
 - d. December 9th, 2020
 - e. January 6th, 2020
4. Public Hearings:
 - a. Public Hearing for ZONE CHANGE of parcels: AV-1330-C from Open Space (OS) to Agriculture 10 Acre (A-10)
 - b. Public Hearing for ZONE CHANGE of parcels: AV-1365-J-1 from Open Space (OS) to Rural Estate 20 Acre (RE-20)
 - c. Public Hearing on land use ordinance creating "Camping Resort Zone (CRZ)"
5. Planning Commission Business:
 - a. Discussion and possible action on ZONE CHANGE application for AV-1330-C from Open Space (OS) to Agriculture 10 Acre (A-10)
 - b. Discussion and possible action on ZONE CHANGE application for AV-1365-J-1 from Open Space (OS) to Rural Estate 20 Acre (RE-20)
 - c. Discussion and possible action on land use text amendment creating "Camping Resort Zone (CRZ)"

Notice Requirements

Utah Code § 52-4-202(2)(a)

In addition to the requirements under Subsection §52-4-202(1), a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once a year of its annual meeting schedule.

Closed Meetings

Utah Code §52-4-201, -204 & -205

A meeting can be closed to the public under the following circumstances:

- A meeting is open to the public unless closed under § 52-4-204, -205 or -206.
- Discussing an individual's character, professional competence, or physical or mental health.
- Strategy sessions to discuss collective bargaining .
- Strategy sessions to discuss pending or reasonably imminent litigation.

Closed Meetings, Part II

An open meeting can be closed for the following purposes:

- Discussions regarding security personnel, devices or systems.
- Investigative proceedings regarding allegations of criminal misconduct.
- Strategy sessions to discuss the purchase, exchange, lease or sale of water rights or water shares if public discussion would disclose the appraisal/estimated value of the property under consideration; or would prevent the transaction from being completed under the best possible terms.

Closed Meeting, Part III

- An independent Legislative Ethics Commission or Legislative Ethics Committee review of ethics complaints.
- A county legislative body discussing commercial information.
- Strategy sessions to discuss the purchase, exchange, lease or sale of real property.
- Public notice of the terms and public approval of sale required.
- Water rights shares under certain conditions.

Guidelines for Closing Meetings

- A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Utah Code § 52-4- 205.
- The decision to close a meeting to the public is always discretionary, not mandatory. The law does not require any meeting to be closed.
- Exceptions to this rule; the following must be closed:
 - A meeting of the Health and Human Services Committee to review a fatality review report.
 - A meeting of the Child Welfare Legislative Oversight Panel to review a fatality review report.

Closing Meetings

Utah Code §52-4-204

The process to close meetings is as follows:

- A Quorum must be present.
- Two-thirds of the members present must vote to close the meeting.
- The body must first hold an open public meeting with proper notice before entering into the closed meeting.
- The body must publicly disclose: Note: there are separate requirements in subsections (B), (C) & (D).
 - The vote by name of each member for or against entering the closed meeting.
 - The reasons for holding the closed meeting.
 - Location of the closed meeting.

Forbidden in a Closed Meeting

The following actions are forbidden during a closed meeting:

- Approve any ordinance, resolution, rule, regulation, contract or appointment.
- Interview a person to fill an elected position.
- Take final action.
- Final votes must be open and on the record (except as allowed specifically by statute).

Emergency Meeting Guidelines

Utah Code § 52-4-202

The law allows for meetings for “emergency or urgent” matters if:

- The best notice practicable is given.
- The minutes include a statement of the unforeseen circumstances that made the meeting necessary.

Records Guidelines of Open Meetings(Utah Code § 52-4-203)

- It is required to keep minutes and/or recordings.
- Even though there is a recording, the approved written minutes will be the official record.
- Include both written minutes and recording of open meeting as public records.
- Public body shall establish and implement procedures for the public body's approval of the written minutes each meeting.

Requirements for Keeping Minutes: Open Meetings

All minutes must include:

- Date/time
- Place of meeting
- Names of all members present or absent

In addition, minutes of open meetings must include:

- All matters proposed, discussed or decided.
- All names and substance of information from individuals giving testimony.
- Individual votes on each matter.
- Any additional information requested by a member.

Requirements for Keeping Minutes: Closed Meetings

Minutes of closed meetings must include:

- The names of all members present.
- The names of others present at the closed meeting, unless it infringes on the purpose of the closed meeting.
- The closed meeting must be recorded and shall be complete and unedited.
 - Note: There may be exceptions to this requirement see § 52-4-206(6)(a) and (b) – Detailed written minutes may be kept.
- Minutes and/or recordings of closed meetings are not public records.

Minutes and Recordings of Open Meetings Utah Code §52-4-203(4)

Guidelines for releasing minutes and recordings of open meetings:

- Written minutes and recordings of open meetings are public records pursuant to Utah Code § 63G-2-101 et seq. (GRAMA) and shall be released within a reasonable amount of time.
- Written minutes shall be available to the public before final approval when the minutes are only awaiting formal approval.
- The minutes released prior to final approval must be identified as “unapproved”.

Minutes and Recordings

Guidelines, Part II

- The recording of a open meeting must be made available within 3 business days.
- A public body may satisfy the requirements that minutes include the substance of matters proposed, discussed or decided or the substance of testimony or comments by maintaining a publicly available online version of the minutes that provides a link to the meeting recording at the place in the recording where the matter is proposed, discussed, or decided or the testimony or comments provided (2017 change).

Electronic Message Transmissions

Utah Code § 52-4-210 The Open Public Meetings Act does not restrict members of a public body from transmitting an electronic message to other members of the public body when the body is not in an open meeting.

Violating OPMA

○ -302 & -305

○ A court can void any action in violation of the law.

- Sometimes a violation can be “cured” by discussing and taking a public vote in a subsequent meeting.
- May have to pay court costs and attorneys fees.
- “In addition to any other penalty under this chapter, a member of a public body who intentionally violates or intentionally abets or advises a violation of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.” (6 mos. Jail and/or \$1,000.00 fine)

Common Violations Of OPMA

- Discussing matters in a closed meeting that should be discussed during the open session.
- Taking official or final action in a closed meeting.
- Closing meetings without members of the body voting first in an open meeting to close the meeting.
- Conducting a closed meeting for reasons other than those allowed by OPMA.
- Failing to properly provide notice of a public meeting.
- Failing to provide adequate notice of a public meeting.

WHO CAN ENFORCE OPMA

- The courts
- The Attorney General
- A County Attorney
- A private citizen who is an aggrieved party

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Length of time a party has to pursue corrective action:

- 90 Days
- 30 Days if it involves, bonds, notes, or debt

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Questions?