Open and Public Meetings Act*
Title 52, Chapter 4, Utah Code

What is a public body?

Why conduct business in an open meeting?

What are the penalties?

What is a meeting?

What if an emergency meeting is needed?

What is the 24-hour requirement?

Open Meetings

When can a closed meeting be held?

What must be included in a public notice?

What minutes and recordings must be kept?

*This briefing is provided for the convenience of the Legislature, other public bodies, and citizens. Users should consult the Utah Code for definitive provisions of the Open and Public Meetings Act.

May 2009

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Office of Legislative Research and General Counsel

Open and Public Meetings Act

Training

"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."

Source: Section 52-4-104 Utah Code

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Open and Public Meeting Act

Purpose

The Legislature finds and declares that...

- State agencies and political subdivisions:
  - exist to aid in the conduct of the people's business
  - must take their actions openly
  - must conduct their deliberations openly

Source: Section 52-4-102 Utah Code

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Key Definitions

- "Meeting" = the convening of a public body
  - With a quorum present
  - To discuss, receive comments, or act on a matter over which it has jurisdiction or advisory power
- "Convening" = calling of a meeting of a public body,
  - by an authorized person,
  - to discuss a subject over which it has jurisdiction or advisory power
- "Public body" = any administrative, advisory, executive, or legislative body that:
  - Is created by Utah Constitution, statute, rule, ordinance, or resolution;
  - Consists of two or more persons;
  - Expends, disburses, or is supported in whole or in part by tax revenue; and
  - Is vested with the authority to make decisions regarding the public's business

Source: Section 52-4-103 Utah Code

Key Definitions – Continued

- "Meeting" ≠
  - A chance meeting
  - A social meeting; or
  - A convening solely for discussion or implementation of administrative or operational matters if:
    - no formal action is taken or
    - the matters would not come before the body for discussion or action

- "Public body" ≠
  - Political party, political group or political caucus or
  - Conference committee, rules committee, or sifting committee of the Legislature

Source: Section 52-4-103 Utah Code

Meetings are Open

A meeting is open to the public unless closed in accordance with the act

- Open meetings include:
  - Regular meetings
  - Special meetings
  - Workshops
  - Executive sessions
  - Site visits
  - Traveling tours
- Closed meetings have specific restrictions

Source: Section 52-4-103, 52-4-201 Utah Code

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Closed Meetings

A meeting is open to the public unless...

- A closed meeting may be held if:
  - a quorum is present
  - 2/3 of the members present vote, at an open meeting, to approve closing the meeting
- The reasons and location of the closed meeting shall be announced and entered into the minutes of the open meeting
- Only certain matters may be discussed in a closed meeting

Source: Section 52-4-204 Utah Code

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Closed Meeting – Permitted Purposes

A closed meeting may only be held for:

- Discussion of the character, competence or health of an individual
- Strategy sessions for:
  - Collective bargaining
  - Pending or imminent litigation
  - Purchase, exchange, or lease of real property
  - Sale of real property
- Discussion of security
- Investigations regarding allegations of criminal conduct
- Discussion by a county legislative body of certain commercial taxpayer information

Source: Section 52-4-204 Utah Code

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Public Notice

"A public body shall give not less than 24 hours public notice of each meeting"

- The public notice must include:
  - the agenda (providing reasonable specificity to notify the public as to the topics to be considered - listed as agenda items)
  - the date, time, and place
- The public notice must be:
  - posted at the principal office of the public body, or if none exists, at the building where the meeting is to be held
  - posted on the Utah Public Notice Website (with exceptions for certain small entities)
  - provided to:
    - at least one newspaper of general circulation within the jurisdiction; or
    - a local media correspondent
- Public notice of an annual meeting schedule must be provided if the public body holds regular meetings

Source: Section 52-4-202, 63F-1-701 Utah Code

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Topics Not Listed on the Agenda

A topic raised by the public may be discussed during an open meeting, but the public body may not take final action on the topic at the meeting, unless it is an emergency meeting

Source: Section 52-4-202 Utah Code

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Minutes and Recordings

- Open meetings:
  - written minutes and a recording shall be kept of all open meetings, except a recording is not required to be kept of:
    - a site visit if no action is taken; and
    - a meeting of a small local districts ($50,000 budget or less)
- Closed meetings:
  - a recording must be made of the closed meeting, unless:
    - the closed meeting is exclusively for:
      - discussion of the character, competence or health of an individual; or
      - discussion of security; and
    - the person presiding signs a sworn statement that the closed meeting was solely for the purposes outlined above

Source: Section 52-4-203, 52-4-206 Utah Code

Minutes and Recordings – continued

- **For open meetings**, the written minutes are the official record of action taken and must include:
  - the date, time, place, and the names of all members present and absent
  - the substance of all matters discussed which may include a summary of comments made by the members
  - a record of each vote of each member
  - the name of each person who, after being recognized, provided comments and the substance in brief of each person's comments
  - other information that is a record of the proceedings that a member requests to be entered in the minutes
- A recording shall be complete and unedited from start to finish of the meeting **open or closed** and be properly labeled
- **For closed meetings**, the recording and any minutes must include:
  - The date, time, and place and names of all members present and absent
  - The names of all other present except where the disclosure would infringe on necessary confidentiality to fulfill the purpose of the closed meeting

Source: Section 52-4-203, 52-4-206 Utah Code

Minutes and Recordings – continued

- Written minutes and recordings of **open meetings** are public records under GRAMA
- A public body must establish procedures for approval of written minutes
- Written minutes prepared in a form awaiting only formal approval are a public record
- Written minutes shall be available with a reasonable time after the meeting
- A recording of an open meeting shall be available to the public for listening within three business days after the meeting
- **Closed meetings** minutes and recordings are protected records under GRAMA

Source: Section 52-4-203, 52-4-206 Utah Code

Emergency Meetings

- An emergency meeting may not be held unless:
  - an attempt has been made to notify all members of the public body; and
  - a majority of the members vote to approve the meeting
- The 24 hour public notice requirements may be disregarded if:
  - unforeseen circumstance cause a need to hold an emergency meeting to consider emergency or urgent matters; and
  - the best notice practicable is given of the time, place and topics to be considered

Source: Section 52-4-202 Utah Code

Electronic Meetings

A public body may not hold an electronic meeting unless it has adopted procedures for conducting it
(the Utah Legislature has not adopted procedures)

- "Electronic meeting means a public meeting convened or conducted by means of a conference using electronic communications"
- Adopted procedures may include consideration of budget, logistics, presence of a quorum at an anchor location, vote to establish an electronic meeting, notice requirements, etc.

Source: Section 52-4-103, 52-4-207 Utah Code

Penalties

The attorney general and the county attorneys shall enforce this chapter

- Any final action taken in violation of the act is voidable by a court
  - A suit to void a final action must be commenced within 90 days after the action (30 days for bonding instruments)
- A closed meeting violation is a class B misdemeanor
- If closed meeting is challenged, a court shall review the recording or minutes (in private) and determine whether a violation occurred
  - If the judge determines a violation occurred, the judge shall publicly disclose all information about the portion of the meeting that was illegally closed

Source: Section 52-4-302, 52-4-303, 52-4-304, 52-4-305 Utah Code