

Open and Public Meetings Act Training
Carbon Water Conservancy District - October 2023

Purpose of Open and Public Meetings Act

Public bodies are to take their actions and deliberations openly (U.C.A. 52-4-102)

Meeting Agendas

Agenda must “provide reasonable specificity to notify the public as to the topics” (U.C.A. 52-4-202(6)(a))

Notice is to be given as follows: (1) to be published on the Utah Public Notice Website; (2) posted where the meeting will be held; and (3) to at least one newspaper of general circulation within the geographic jurisdiction in the area where the meeting is to take place, at least 24 hours prior to the meeting

Agenda need not state a closed session may occur

A topic raised by a member of the public may be discussed during an open and public meeting, even if not on the agenda, but no action may be taken on the topic if not on the agenda (U.C.A. 52-4-202(6)(b) and (c))

Who may place an item on an agenda? This is not governed by the Open and Public Meetings Act. Typically, any board member may do so. The public is not entitled by law to place items on the agenda.

What items should on the agenda?

- a. Tasks that the Board is statutorily required to take care of;
- b. Approvals of contracts and other procurements;
- c. Resolutions, formal decisions, and formal recommendations to other board or governmental entities
- d. Policy statements and policy positions;
- e. Workshops at which information is presented to you as a board as a whole; or at which an issue that may eventually come before the board for decision will be studied

Meetings

A meeting requires the following:

1. The convening of:
 - a. A public body;
 - b. A quorum of the public body;
 - c. For the purpose of
 - i. Discussing;
 - ii. Receiving comments about; or
 - iii. Acting upon a matter over which the public body has jurisdiction or advisory power.
2. A public meeting includes a “workshop” or “executive session”

Warning: Just because no formal action is being taken does not mean that an item does not need to go on an agenda

3. A “meeting” under the statute does not mean the convening of a public body that has both legislative and executive responsibilities if:
 - a. no public funds are appropriated for expenditure during the time the public body is convened; and
 - b. the public body is convened solely for the discussion or implementation of administrative or operational matters;
 - i. For which no formal action by the public body is required; or
 - ii. That would not come before the public body for discussion or action.

Rule of thumb: Does the decision affect how the public or other entities deal with the governmental entity? If so, the decision should be made during an open and public meeting.

4. Emergency meetings may be held to cover matters “of an emergency or urgent nature” that arise because of “unforeseen circumstances”. Even so, they require the “best notice practicable” of the time and place of the meeting to have the discussion and the topics to be considered. An attempt must be made to notify the members of the Board, and a majority of all members must approve of having the meeting. Emergency meetings are still open and public meetings; they are not the same as an electronic meeting (U.C.A. 52-4-205(5)(a))

Electronic Meetings (U.C.A. 52-4-207)

A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.

An electronic meeting means any meeting where one or more participants is connected to the audio. It presupposes that there will be an anchor location and that a quorum of the members would be present.

Still requires notice and access to the public.

A public body may convene and conduct an electronic meeting without an anchor location if the chair of the public body makes a written determination that conducting the meeting with an anchor location presents a substantial risk to the health and safety of those at the anchor location. There still must be provided a way for the public to listen to the meeting and make comments during any comment period.

NEW PROVISION: An electronic meeting requires all votes to be taken by roll call

Closed Meetings

Can't go into to a closed session without first starting in a properly noticed open and public meeting.

A two-thirds vote of the members present is required to go into a closed session. The motion to go into the closed session must include the statutory reasons for holding the closed meeting.

Closed meetings must be recorded and unedited and stored UNLESS it is to discuss a matter of the character or competency of an individual, in which case the presiding authority (the chairman) shall make an affidavit certifying that fact

Cannot approve any resolution, rule, regulation, contract or appointment in a closed session, except for a vote to end the closed portion of the meeting, which only needs a majority vote

Statutory reasons for going into a closed session include the following:

- i. The character, professional competence, or physical or mental health of an individual - this is not limited to employees - this is often incorrectly described as a "personnel issue" - not all personnel issues involve character, competence or health, and many such issues can be dealt with administratively;

- ii. Strategy session for pending or reasonably imminent litigation;
- iii. Strategy sessions for the purchase, sale, exchange, lease of real property (including water shares), if discussion would prevent the public body from completing the transaction on the best possible terms or disclose value of the property;
- iv. The deployment of security personnel, devices, or systems;
- v. Investigative proceedings regarding allegations of criminal misconduct
- vi. A meeting of the Colorado River Authority of Utah to discuss negotiations with the Federal government or to discuss pending litigation

A judge may review an allegation that a meeting was closed illegally by reviewing the minutes of the closed meeting in camera. If the judge determines that the meeting was closed illegally, the judge shall publicly disclose all information from the portion of the meeting that was closed illegally. (U.C.A. 52-4-304)

Minutes and Recordings of Minutes

Minutes are to be kept of all open and public meetings

Minutes should include:

- (i) The date, time and place of meeting;
- (ii) A record of all Board members attending;
- (iii) The substance of all matters discussed, proposed, or decided by the public body (this may include a summary of comments made by members of the public body);
- (iv) A record by individual name of each vote taken;
- (v) The name of each person recognized by the presiding member of the body who was allowed to provide testimony or comments to the public body, and brief summary of those comments; and
- (vi) Any other information that is a record of the proceedings that any member requests to be entered in the minutes or the recording.

Pending minutes are subject to GRAMA and should contain a disclosure that they are pending minutes and are subject to change until approved by the public body (U.C.A. 52-4-203(4)(b) and (c)).

Pending minutes are to be made available within "a reasonable time" after the meeting

Approved minutes are to be made available within 3 days after being approved

A link is to be provided from the state public notice website to a website where approved

meeting minutes can be found as well as any public materials distributed at the meeting

Audio Recordings

Recordings of all open portions of the meeting are to be kept and labeled as to date, time and place

Recordings are to be “maintained or converted to a format that meets long term storage requirements”

Audio recordings of open portions of the meeting are to be made available within 3 days after the meeting

An audio recording is not required for a site visit if no action is taken on the visit

Miscellaneous

A person may be removed from a public meeting “if the person willfully disrupts the meeting to the extent that orderly conduct is compromised.” U.C.A. 52-4-301

A “final action” taken in violation of the Open and Public Meetings Act is voidable by a court if taken within 90 days of the action. U.C.A. 52-4-302

Knowingly violating this Act is punishable as a Class B misdemeanor. U.C.A. 52-4-305