

Utah Open and Public Meetings Act

SITLA BOARD OF TRUSTEES ANNUAL TRAINING, 2024

Purpose of this presentation:

- ▶ OPMA requires that the presiding officer of each public body (in SITLA's case the Board Chairman) ensure that the public body's members receive annual training regarding the requirements of the Act (UCA 52-4-104). That's what we're doing today.
- ▶ We'll summarize:
 - ▶ Who the Act applies to.
 - ▶ Requirements for meeting notices and meeting agendas.
 - ▶ Requirements for the conducting of open meetings.
 - ▶ Purposes and procedures for closing meetings.
 - ▶ Other relevant provisions.
- ▶ OPMA is laid out in a step-by-step analysis based upon the Act's definitions.

2024 changes (H.B. 36):

- ▶ OPMA was amended via H.B. 36 in the 2024 session.
- ▶ This was largely a reorganizing and rephrasing effort.
- ▶ Changes were made to the definitions of "meeting" and a new definition of "relevant matter" was added.
- ▶ In the opinion of the AG's Office, these changes did not alter the way OPMA actually functions.
 - My presentation this year will use slightly differing terminology, but the substance will be the same.

Is a “public body” involved?

OPMA applies only to public bodies

A “Public body” is defined, in relevant part, as:

- ▶ Any administrative...[or] executive body of the State...
- ▶ Created by...statute...
- ▶ Which expends, disburses, or is supported in whole or in part by tax revenue.
- ▶ Vested with authority to make decisions regarding the public's business.
- ▶ (UCA 52-4-103)
- ▶ SITLA is expressly made subject to the Act (UCA 53C-1-201(3)(e)(i)).

Is it a “meeting” as defined in OPMA?

If not, it need not be open

It is a “meeting” if:

- ▶ A quorum is present
 - ▶ Committee meetings example
 - ▶ Committee processes should not cause Board discussions to be truncated
- ▶ It is held “for the express purpose of acting as a public body...to:
 - ▶ receive public comment about...
 - ▶ deliberate about...or
 - ▶ take action upon...
 - ▶ A “relevant matter”.
- ▶ Voting/formal action is not necessary, “deliberating” or taking comment is enough.
- ▶ (UCA 52-4-103)

A "relevant matter" is defined as:

- ▶ A "matter that is within the scope of the authority of a public body."
- ▶ "Relevant matter" does not include, for a public body with both executive and legislative responsibilities, a managerial or operational matter."
- ▶ A "meeting" does not mean:
 - A chance or social gathering (e.g. a holiday or retirement party).
 - A discussion of administrative or operational matters for which no formal action is required.
 - (These were formerly expressly excluded, and still are by virtue of the new definitions of 'meetings' and 'relevant matters'.

Open meeting requirements

- ▶ All meetings of public bodies are open unless appropriately closed (UCA 52-4-201).
 - ▶ Workshops and executive sessions are open.
 - ▶ Exemption for quasi-judicial deliberations in appeal matters (Common Cause of Utah, etc.)
 - ▶ The exemption applies only to the deliberation function.
 - ▶ All 'information gathering' phases are subject to OPMA and open.
- ▶ With respect to open meetings, the Board must:
 - ▶ Provide notice (UCA 52-4-202)
 - ▶ Minimum 24-hour notice of date, time, place, agenda
 - ▶ Posted at principal office or meeting place; posted on Public Notice Website, posted on the agency's website.
 - ▶ Keep both written minutes and an audio recording (UCA 52-4-203)
 - ▶ If part of a site visit or field trip, and no vote taken, recording not required

Closed meeting requirements

- ▶ Procedure for closing meetings (UCA 52-4-204)
 - ▶ 2/3 of a quorum of Board, in open session, must vote to close meeting
 - ▶ Reasons for closing of meeting must be given in open session
 - ▶ An audio recording of the closed meeting must be kept
 - ▶ No rule, contract, or appointment may be approved in closed meeting
- ▶ Reasons for closing meetings (Complete list found in UCA 52-4-205). A few examples:
 - ▶ Strategy session re purchase, exchange, or lease of real property if public discussion would: disclose the estimated value of the property; or prevent completion of the transaction on the best possible terms.
 - ▶ Similar provision regarding sale of property.
 - ▶ Strategy session to discuss pending or reasonably imminent litigation.
 - ▶ Discussion of character, professional competence of individuals
- ▶ 53C-1-201(8) - strategy session to discuss market conditions relevant to sales, or to evaluate the terms of an OBA or JV (SITLA-specific)

Additional provisions:

- ▶ Electronic meetings are permitted if provided for by rule (UCA 52-4-207). The Board of Trustees has adopted such a rule.
- ▶ Anchor location requirement (exception under UCA 52-4-207(5) for health/safety issues)
- ▶ New provision: Individuals constituting a quorum may not, outside of a meeting, act in a concerted way to predetermine an action to be taken by the public body at a meeting on a relevant matter (UCA 52-4-208).
- ▶ Actions taken in violation of OPMA are voidable by a reviewing court (UCA 52-4-302).
- ▶ Knowingly violating OPMA is a class B misdemeanor. (UCA 52-4-305)
- ▶ Board Policy 2020-02: governs agendas/notices of Board meetings. It establishes a practice of publishing agendas 10 days in advance, publishing notice of closed sessions if they are planned in advance, and requiring reasonable specificity in the identification of agenda items.