

The Open Public Meetings Act: Annual Training

DECEMBER 2024 BOATING ADVISORY COUNCIL PRESENTATION
SHANE STROUD, AAG

What is OPMA?

- ▶ OPMA is the acronym for the Open Public Meetings Act, Utah Code Title 52, Part 4.
- ▶ The act applies to meetings of certain state government committees, commissions, and councils, including the Boating Advisory Council.
- ▶ OPMA advances the policy that “the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business” and “that the state, its agencies, and its political subdivisions [...] take their actions openly; and [...] conduct their deliberations openly.”
- ▶ The law generally requires four things: proper notice of meetings, providing the ability for the public to attend, transacting business in an open and transparent manner, and good record keeping.

Who does OPMA apply to?

- ▶ “Meetings” of the Boating Advisory Council:
 - ▶ OPMA defines a “meeting” as “a gathering [...] of a public body or specified body [...] with a quorum present that is convened [...] by an individual [...] with authority to convene the public body or specified body [...] following the process provided by law for convening the public body or specified body [...] for the express purpose of acting as a public body or specified body to [...] receive public comment about a relevant matter, [...] deliberate about a relevant matter, [...] or take action upon a relevant matter.”
 - ▶ Meetings” do not include:
 - ▶ Chance meeting or social meetings (like dinners).
 - ▶ Gatherings where there is no quorum present (4 or fewer Council members).
 - ▶ In general, meetings where the BAC doesn’t deliberate about matters, receive public comments, or take any action.

When and Where does OPMA apply?

- ▶ Applies to all meetings, open and closed.
- ▶ Specific rules apply to closed meetings:
 - ▶ To close a meeting, a quorum must be present (at least 5 members of the Council) at an open meeting and 2/3 of the members present must vote to close the meeting.
 - ▶ A meeting can only be closed for a specific purpose under 52-4-205, like the discussion of litigation, certain discussions about the value of real property up for sale, and discussions about the health or competence of individuals.
 - ▶ The chair must announce the reason the meeting is being closed, the location where the closed meeting will be held, and the names of those that voted to close the meeting.
 - ▶ The Council must keep a recording (not just minutes) of the closed meeting and state on the recording when and where it was held and the names of those present.
 - ▶ Must provide a sworn statement instead of a recording if closing a meeting to discuss the health of an individual or certain security measures.
- ▶ Can't vote on anything during a closed meeting except a vote to reopen the meeting.
- ▶ Resolutions, rules, contracts, or appointments must be confirmed or passed in open meetings.

How should I comply?

- ▶ When in doubt about whether the Council is “meeting,” consult with the Division.
- ▶ Consult Utah Code § 52-4-202 and the electronic meeting policy to ensure electronic meetings are carried out consistent with OPMA’s requirements.
- ▶ If the Council anticipates a meeting will be closed, identify that as a possibility in advance and consult with the Division so that it can be placed on the agenda, properly closed, and appropriately recorded.
- ▶ Ensure proper notice of meetings (both regular and emergency): notice requirements can be found at Utah Code § 52-4-202.

How should I comply?

- ▶ Include all items of business—and especially all action items—on the agenda. If it is not included on the agenda you cannot take action on the item.
- ▶ Keep an audio, or audio and video, recording of each meeting (both open and closed). Minutes of open meetings should be posted in accordance with Utah Code § 52-4-203.
- ▶ Keep written minutes of all open meetings and vote to approve those minutes at the next Council meeting (details of what must be included can be found at Utah Code § 52-4-203(2)).
- ▶ Keep copies of all material introduced during open meetings; they should probably be posted as part of the meeting's record.

Final thoughts

- ▶ Biggest way to run afoul of OPMA is by taking action outside a duly-called meeting, or by closing a meeting that should be open. To avoid these pitfalls, take action only during noticed Council meetings (or other duly-called meetings) and be sure to discuss the need to close meetings in advance.
- ▶ Take votes by roll call whenever holding an electronic meeting: it makes recording the votes easier.
- ▶ Don't conduct Council business at social gatherings or during site visits; keep those social or focused on learning. Wait until you convene at the next Council meeting to discuss and vote on potential action items.
- ▶ Allowing public attendance is important, but the Council can remove individuals that disrupts the meeting such that the conduct of the Council is seriously compromised.



Questions?

Additional Training:

<https://training.auditor.utah.gov/courses/open-and-public-meetings-act-training-2024>