



BOARD OF DIRECTORS MEETING

FEBRUARY 20TH 2025



State Fair Park Authority

Board of Directors Meeting

Agenda

February 20, 2025

8:30am Roll Call

- Commissioner Butters

8:35am Approval of January Board Meeting Minutes.

8:40am Annual Open Meeting Act Training

- Todd Jensen Assistant Attorney General

9:00am LH/UFAIR Power District Update

- Brad Holmes
- Amanda Covington
- Kelsey Berg
- Benn Buys

9:30am: January Financial Performance Review

- Allan Kitterman

9:45am: 2025 Budget Discussion & Forecast

- Allan Kitterman
- Larry Mullenax

10:00am Board Committee Discussion

- Dave Lewis

10:15am Committee Updates

- Legislative: Jennifer & Wade
- Fair: Lillian Bayles
- Rodeo: Wade Garrett
- Livestock: Lillian Bayles

10:45am Additional Business

10:50am Meeting Adjourned

Utah State Fairpark Authority Board Meeting

January 23, 2025

<u>Via Teams</u>	<u>In Person</u>	<u>Staff</u>	<u>Excused</u>
Comm'r Craig Buttars	Lillian Bayles	Larry Mullenax	Kip Paul
Jennifer Seelig	Jim Webb	Allan Kitterman	Senator Sandall
Benn Buys (UFAIR)	Dave Lewis	Becky Knight	
Andrew Marr	Ted Lewis		
	Wade Garrett	<u>Public</u>	<u>Absent</u>
	Steve Lund	Tony Semerad (Salt Lake Tribune)	Paul Morris

Dave called the meeting to order roll call as stated above January 23, 2025, 8:33am

Welcome New Board Member

Steve Lund newest Board Members (pending Senate approval). Steve introduced himself. Board Members and staff introduced themselves.

Approval of November Board Meeting Minutes

Ted made a motion to approve the minutes, Wade 2nd seeing no discussion. Motion passes unanimously.

2024 Financial Performance Review:

Revenue numbers are up over last year. Ordinary income is down somewhat over 2023. The spending per person during the Fair was down over last year. Security costs were up due to the conditions around the Fairpark (river area) etc. Utilities continue to increase as well. The Corporation did see a profit this year. Cash is up over the last year.

2025 Budget discussion & forecast "software":

We have acquired a software package that will allow us to upload from QuickBooks that will make the budget process much easier and will be able to see actuals live. For staff to be able to see where they are on their budget. It will help to process the budgets in a quick time frame.

2025 Utah General Legislative Session discussion:

There will be some cleanup bills introduced during this session that will address some of the tax increments that were provided to UFAIR last year, some language changes, some clarification of taxes what would be taxed and what wouldn't be taxed. Senator Wilcox will be submitting that bill. The Fairpark will be reporting to the Economic & Community Development subcommittee during the legislature moving forward. The concern is losing our emphasis towards Agriculture.

UFAIR/LHM Power District Update:

It has been proposed that the name be changed to the Utah Power District Authority. For consistency and avoid confusion. UFAIR intent is to ensure the AG focus of the Fair will continue or intrude on the Fair or it's other programming in any way. The White Ball Park committee consists of Paul Morris, Dave Lewis, Jennifer Seelig, Larry Mullenax, and Senator Sandall. A Fair Grounds planner has been hired to help others understand what our needs are as we continue to grow.

Call for Executive Session pursuant with Utah Code 52-4-204:

Ted made a motion to move to Executive Session to discuss personal and compensation matters. Wade 2nd any discussion seeing none the vote was unanimous. Time 10:11AM at the Utah State Fair Park Administration Building.

Ted made the motion to return to open session Wade 2nd time is 10:52.

Committee Updates:

Legislative - Jennifer & Wade:

Fair - Lillian:

Planning is moving forward for the 2025 Fair. The Fair book is still a work in progress, but good changes have been made so far Sakura is working hard on that. Lillian is acting chair of the Fair Committee until changes have been reassigned. Offers are out for entertainment for the arena waiting on replies, Jaripeo will also be held in 2025 on the first Sunday. Also, the Derby and Monster

truck will be returning as well. We have one more year on the carnival contract. There are changes that are in the works with the carnival.

Rodeo - Wade:

Rodeo is in a good position nothing to report at this time.

Livestock - Lillian:

Lillian and Jim met Wade was out of town Jim was brought up to speed on his new assignment. There is also A Livestock Advisory committee to be on that committee is by application and they were due on the January 17th.

Open Session Action Items:

Ted made a motion to set the max compensation at 20% of base Wade 2nd any discussion seeing none motion passes. Roll call (Lillian Bayles, Jim Webb, Commissioner Buttars, Wade Garrett, Ted Lewis, Dave Lewis) Ted made a motion to set a co adjustment to Larry's comp at 2.5% any discussion seeing none motion passes Roll call (Lillian Bayles, Jim Webb, Commissioner Buttars, Wade Garrett, Ted Lewis, Dave Lewis.) Based on the evaluation work done by the compensation committee the motion that the evaluation results be 80% of the target (which means its 80% of the 20% based on his base. Jim 2nd any discussion seeing none. Roll call (Lillian Bayles, Jim Webb, Commissioner Buttars, Wade Garrett, Ted Lewis, Dave Lewis) motion passes.

The Power District matters will be added to the evaluation for compensation moving forward.

Additional Business:

Meeting Adjourned:

Ted made a motion to adjourn Comm'r Butter 2nd meeting adjourned.

**UTAH STATE FAIR CORPORATION
NOTES TO THE BOARD REPORT
FOR THE MONTH ENDED JANUARY 31, 2025**

SUMMARY:

Winter continues, but we had a solid month.

MONTH-TO-DATE (MTD) ANALYSIS:

Revenues: Revenues are up \$26k to last year and up \$21k against the budget. Pinnacle Productions, Robotics Competition and the Western Winter show were the larger events for the month.

Expenses: Our expenses are up \$21k to last year and down \$13k to budget. Utilities were actually down for a change but payroll and depreciation were still up.

Ordinary income is up \$5k on last year and up \$34k on budget.

Other Income is down \$4k on last year. Interest income was \$42k.

INVESTMENTS AND CASH ACCOUNT BALANCES:

Cash is up on last year, \$1.0 mil. The change in our financial position is up on last year \$2.15 mil. The \$1 mil U Fair funds were transferred to their account. Our financial position continues to be very strong.

Please keep in mind that the numbers on the following reports have not been audited and are subject to change.

UTAH STATE FAIR CORPORATION
Profit & Loss Prev Year Comparison - Month
January 2025

	Jan 25	Jan 24	\$ Change
Ordinary Income/Expense			
Income			
Event Revenue	81,631.73	55,966.39	25,665.34
Miscellaneous Incomes	1,801.80	1,842.37	-40.57
Monthly Rental/ Storage	24,440.71	24,005.12	435.59
Total Income	107,874.24	81,813.88	26,060.36
Gross Profit	107,874.24	81,813.88	26,060.36
Expense			
Advertising & Legal	1,631.68	179.29	1,452.39
Awards & Premiums	0.00	500.00	-500.00
Board Member Expenses	3,151.09	682.39	2,468.70
Computer & Professional Service	13,242.46	11,628.00	1,614.46
Data Processing	6,042.61	2,228.70	3,813.91
Depreciation Expense	37,243.61	30,730.30	6,513.31
Equipment Rental	2,705.67	4,712.04	-2,006.37
Insurance	10,140.13	8,089.36	2,050.77
Maintenance Expenses	7,790.06	8,893.40	-1,103.34
Miscellaneous Expense	1,798.43	934.13	864.30
Office Equipment/ Furnishings	636.98	1,049.00	-412.02
Office Expense	619.98	660.72	-40.74
Payroll Expenses	163,845.54	151,501.62	12,343.92
Processing Fees	1,630.74	4,263.75	-2,633.01
Travel Expenses	1,663.34	354.96	1,308.38
Utilities	38,969.03	44,063.86	-5,094.83
Total Expense	291,111.35	270,471.52	20,639.83
Net Ordinary Income	-183,237.11	-188,657.64	5,420.53
Other Income/Expense			
Other Income	41,593.72	45,591.08	-3,997.36
Net Other Income	41,593.72	45,591.08	-3,997.36
Net Income	-141,643.39	-143,066.56	1,423.17

UTAH STATE FAIR CORPORATION

Budget vs. Actual - Month

January 2025

	Jan 25	Budget	\$ Over Budget
Ordinary Income/Expense			
Income			
Event Revenue	81,631.73	61,235.00	20,396.73
Miscellaneous Incomes	1,801.80	1,841.00	-39.20
Monthly Rental/ Storage	24,440.71	24,004.00	436.71
Total Income	107,874.24	87,080.00	20,794.24
Gross Profit	107,874.24	87,080.00	20,794.24
Expense			
Advertising & Legal	1,631.68	179.00	1,452.68
Awards & Premiums	0.00		
Board Member Expenses	3,151.09	683.00	2,468.09
Computer & Professional Service	13,242.46	14,995.00	-1,752.54
Data Processing	6,042.61	2,174.00	3,868.61
Depreciation Expense	37,243.61	38,877.00	-1,633.39
Equipment Rental	2,705.67	4,898.00	-2,192.33
Insurance	10,140.13	8,121.00	2,019.13
Maintenance Expenses	7,790.06	18,198.00	-10,407.94
Miscellaneous Expense	1,798.43	1,535.00	263.43
Office Equipment/ Furnishings	636.98		
Office Expense	619.98	842.00	-222.02
Payroll Expenses	163,845.54	161,860.80	1,984.74
Processing Fees	1,630.74	3,191.00	-1,560.26
Travel Expenses	1,663.34	2,025.00	-361.66
Utilities	38,969.03	46,910.00	-7,940.97
Total Expense	291,111.35	304,488.80	-13,377.45
Net Ordinary Income	-183,237.11	-217,408.80	34,171.69
Other Income/Expense			
Other Income	41,593.72	40,000.00	1,593.72
Net Other Income	41,593.72	40,000.00	1,593.72
Net Income	-141,643.39	-177,408.80	35,765.41

UTAH STATE FAIR CORPORATION
Statement of Financial Position
As of January 31, 2025

	Jan 31, 25	Jan 31, 24	\$ Change
ASSETS			
Current Assets			
Checking/Savings	11,173,156.48	10,171,348.64	1,001,807.84
Accounts Receivable	451,017.52	270,057.10	180,960.42
Other Current Assets	156,974.82	68,781.98	88,192.84
Total Current Assets	11,781,148.82	10,510,187.72	1,270,961.10
Other Assets	4,793,839.61	3,915,033.08	878,806.53
TOTAL ASSETS	16,574,988.43	14,425,220.80	2,149,767.63
LIABILITIES & EQUITY			
Liabilities			
Current Liabilities			
Accounts Payable	194,773.59	178,661.03	16,112.56
Credit Cards	2,364.38	-25.61	2,389.99
Other Current Liabilities	1,486,529.96	669,693.91	816,836.05
Total Current Liabilities	1,683,667.93	848,329.33	835,338.60
Long Term Liabilities	711.13	35.46	675.67
Total Liabilities	1,684,379.06	848,364.79	836,014.27
Equity	14,890,609.37	13,576,856.01	1,313,753.36
TOTAL LIABILITIES & EQUITY	16,574,988.43	14,425,220.80	2,149,767.63

Utah State Fair Park
Budget 2025 - 2025
2/18/2025 16:18

Description	Total	Fair
Income	10,849,380	6,801,842
Contributions / Sponsorships	307,828	282,828
Event Revenue	3,782,669	69,926
Fair Revenue	6,267,968	6,267,968
Jr Livestock Auction	41,662	41,662
Miscellaneous Incomes	191,668	139,458
Monthly Rental/ Storage	257,010	-
Stall Rental	575	-
Gross Profit	10,849,380	6,801,842
	100.00%	100.00%
Expense	9,766,521	4,817,013
Advertising & Legal	277,241	250,500
Awards & Premiums	183,154	182,823
Board Member Expenses	23,798	5,508
Computer & Professional Service	4,138,268	3,039,296
Data Processing	63,173	26,599
Depreciation Expense	497,100	-
Equipment Rental	356,836	277,630
Insurance	102,133	-
Interest Expense	-	-
Maintenance Expenses	530,921	169,380
Miscellaneous Expense	94,912	54,535
Office Equipment/ Furnishings	7,405	-
Office Expense	46,283	33,855
Payroll Expenses	2,590,601	564,219
Processing Fees	147,908	101,203
Public Relations Expenses	6,129	2,304
Sponsorships/ Donations	96,500	96,500
Travel Expenses	21,779	12,654
Utilities	582,380	7
Uncategorized Expense	-	-
Operating Income	1,082,859	1,984,829
	10.00%	29.20%
Other Income	480,000	-
Other Income	480,000	-
Other Expense	-	-
Other Expense	-	-
Net Income	1,562,859	1,984,829
	14.40%	29.20%



State Fair Park Authority
Executive Directors Monthly Review
February 20, 2025

Executive Summary

- **SLC Public Utilities (Water)**

Late summer the water department imposed new fees on our monthly water bills. The fees were applied to both incoming water and sewer. Incoming water now has a stabilization fee that is applied to each meter, the cost of the fee is based on the size of the meter. In addition, they applied a new fee each incoming water meter for wastewater discharge.

The new fees add up to \$800.00 dollars per month for each of our large incoming supply lines (3) and \$250.00 dollars each month for the smaller meters. The purpose of the new fees was to offset the decrease in demand (revenue) paid to the public works department by users. The public's conservation efforts reduced demand thereby reducing their annual budget.

We met with the Director of SLC public works department this past Thursday to discuss the new fees, and the financial impact it's having on the corporation. Additionally, we needed to help them understand how we use the water and what makes us different from other industrial users.

First, the park is on a loop system, all the large meters feed the same lines therefore we should only be assessed a single stabilization fee for a single meter. Two of our meters are only utilized for summer irrigation and have never recorded winter water usage, therefore a stabilization fee for these meters during the winter months isn't applicable and should be removed.

We also helped them understand that a significant amount of water is used for agriculture purposes and will not use the sewer lines or require treatment. The water used to prepare the arena dirt for example.

They agreed to evaluate our unique circumstances and agreed that some of our water use should be recognized as agriculture use. Thereby removing fees and sewer charges.

They also acknowledged that the new Stabilization fees are not being received well by the public and will be changing soon.

Lastly, they are willing to do a straight one for one exchange with us. They desire to keep more water in the Jordan river as such they are willing to execute a water exchange with us for our Jordan River Canal Water. This would/could be a good option for us, we would have access to the same amount of water without fees while saving us the cost of building a pump station.

We have a follow-up meeting scheduled for the first week of March, I will deliver an update at our next board meeting.

Days of 47 Rodeo

We are working with Dan Shaw, CEO of the Days of 47 Rodeo on a new contract. A draft Copy will be available for review at our next board meeting.

Our cost have increased exponentially since the use agreement was initially drafted. They pay us a flat 100K to use the facility and they keep all the revenue streams. Which simply doesn't cover our cost and creates lost opportunities. A typical contract includes rental of the facility, a per person ticket fee and share the revenue streams with us. Our goal is to create equity in our partnership.

Board Report
Marketing, Sponsorship, & Entertainment Department
February 2025

- The team attended the reestablished Utah Association of Fairs & Events mini-conference last month at the Juab County Fairgrounds. It was a well-attended event by many fairs and events across the state. We are happy to be involved with it as it is revitalized.
- I recently presented on an IAFE webinar about the Fair'ly Merry Christmas Party. Many fairs loved the idea of celebrating the Fair during the holiday season.

MARKETING & SPONSORSHIPS

- We're incredibly excited to host the XGames this June. I'll be continuously working with them to ensure the Fairpark is well represented on media outlets.
- I've been working on updating all our marketing materials for the Fairpark and Fair to ensure professionalism, clearer communication and branding consistency (i.e. Fairpark Brochure, Arena Promoters Guide, Handbooks, etc.)
- We have two major sponsors returning to the Fair (Bullfrog Spas and Mattress Hub) with new multi-year agreements.
- We are actively looking for more partnerships from local companies and organizations that will help the Fair better showcase all things Utah.

ENTERTAINMENT

- In the world of concerts for the Fair, we have made an offer on a comedian and are waiting for response. We have also made a number of inquiries on country and classic rock artists. Using 2023-24 box office data, we are targeting those with ticket sales that confirm their ability to sell 8,000 seats in the arena. It has been fascinating to observe the disparity between some artists' fee expectations and their actual ticket-selling capabilities.
- Agreements with the Demolition Derby and Monster Truck show are completed. Demo Derby is on sale and Monster Truck should be on sale very soon.
- We currently have over 75 applications to perform at the Fair by local artists. The application will stay open through the beginning of March.



UTAH STATE FAIRPARK BOARD REPORT

Sales and Event Department 30

February Board Meeting – January 2025 Notes

Sales & Event Department 30

Aly Garcia: Events Director | Public Safety and Security

Corey Burns: Sales Manager | Group Sales

Kelli McCaffery: Event Coordinator | Community Outreach | Commercial Vendor Sales

Fred Acebo: Food and Beverage Manager

January 2025 Events

- WWSRA: 1.13 - 1.16.25
- DNR : 1.13.25
- Dinosaur Adventure: 1.17 - 1.19
- Black Diamond Corporate Party: 1.17.25
- Robotics Competition Rumble in the Rockies: 1.29-2.1.25
- Alter Domus after New Years Party: 1.31.25
- Hot Tub Swim Spa: 1.31 - 2.3.25

Sales Report – Corey Burns

I can't wait to start using our new EventPro software. I believe it will streamline the booking process to help us book the smaller venues more efficiently and more often. Bonneville and Deseret are under-utilized buildings and the idea to rent them out more often is to embed a link in the website with very simple automated options for midweek rentals that I can approve or follow up with. Generally January feels light on sales but from preliminary numbers, we are looking at a 70% increase in gross sales over January 2024. This trickled down to net sales of \$49,000 which is a 206% increase over January 2024. While this is still not enough money to truly offset the majority of our operating expenses, it's still an increase in revenue which can never be overlooked. Hiring Fred will alleviate some of the work from Kelli and we will hopefully be able to generate more revenue from food and beverage with Fred paying more attention to the sales aspect of Food and Beverage.

Department 30 Report – Aly Garcia

We are excited to have hired Fred Acebo as our new Food and Beverage Manager who officially started February 3rd. During the month of January, Kelli was able to help close out our F&B for the 2024 year and begin contracting and applications for F&B this year.

Corey and I have been working on the new software Budgty to finalize our budgets for this year. Like any software there is a lot of learning and figuring things out. EventPro software has begun their build, we have official training beginning the end of February and the first week in March, upon completion we will be able to launch.

Recognizing that January revenue is not as big as other months, we've worked to decrease any outside spending as much as possible.

Commercial Vendors Report – Kelli McCaffery

We've gone through all the initial onboarding for our new vendor management software Eventeny and are now starting to work on the small details and questions that come with learning a new program. Thankfully their team has been incredibly responsive to any further requests for training and assistance.

With this we have also finalized our updates to the 2025 handbook and are now aiming for it as well as the vendor application to go live on Valentine's Day.

Our next goal will be to finalize our initial vendor placement map for the 2025 Fair, we plan to make a few small changes this year to that layout that will hopefully improve the attendee flow as well as vendor revenue. These changes will be finalized and uploaded to the website and application before the beginning of March, to allow vendors the opportunity to make an informed decision on whether they would like to accept their space or defer it to our wait list.

Our current timeline is as follows:

February 14 – Applications Live

March 4th – Acceptance emails sent out

June 1st – Space payments due (any waitlist vendor accepted after this date will pay upon acceptance)

Food & Beverage Report – Fred Acebo

Hello Board Members, I'm very excited to be part of the team. Everyone has been very supportive and welcoming during my first few weeks—encouraging my growth and success at Fairpark. As mentioned in last months report, I am in the process of learning my predecessor's system and finding ways to improve efficiency and accountability.

We're hitting the ground running over here, with Kilby on the horizon and State fair applications going live nearly at the same time. I am scheduling and meeting with brick & mortar existing partners as well as potential partners. We're hoping to fill some spaces with high recognition brands that are equipped for volume.

Open applications for Kilby close on the 24th and vendors will be notified shortly after (if not already decided upon before then).

Public Safety & Security Report – Aly Garica

We have begun talks with different radio providers to get estimates and ideas on how we can license a radio frequency and take our radio communication needs in house. Last year I spent 7.5k in radios just for the fair alone. We can take the cost spent throughout the year with large festivals, smaller events and the fair and invest rather than spend. As always trends in violence especially with public events creates a need for something we use more on a regular basis.

For large events such as XGames we have begun to put together introductions to their Public Safety Teams and Security Companies to start providing quotes and understanding the scope of work.

Board Report
Department 80/90
February 2025

Rodeo:

- In progress of securing a rodeo photographer
- Will have PRCA and WPRA approvals submitted by end February
- Seeking additional rodeo committee support and working on defining roles
- Sponsorship- returning sponsor agreements, new sponsor proposals, sponsor prospecting

Rodeo stats

- Social media engagement within the last 10 days: (as of 2/13)
 - Engagement increased by 330%
 - 16% increase in followers
 - 204.6% increase in views
 - 509.3% increase in interactions
- Rodeo attendance since 2022 has increased 45% overall
- Rodeo sponsorship from 2022 has increased over 400% to date and growing

Livestock

- Committees have been assigned with 4 new members for 2025
- Sponsorship information has been created and is in the process of being distributed
- Top 40 buyer appreciation gifts have been ordered and will be distributed by the first week of March
- Committee application is live for open show/breeding show support and revamp
- All awards will be ordered by the end of March
- Will be attending the Utah FFA Convention March 13-14th

Miscellaneous

- Creating a schedule of rodeos and fairs to attend between now and July to gain further knowledge, network, and observe other operations.

February 2025 Utah State Fair Board Meeting Information
Competitive Arts and Ag Education: Sakura Gallegos

Fair General:

- Finished my 2025 Budget
- Working on STEM
- Attended the UAFE in Juab
- Attended the UAEA (Utah Art Educators Association) Met with several people and discussed demonstrating during fair and judging
- Spoke to 2 counties so far about having a banner representing their County at the State Fair
- FFA would like us to review our contract for Barn Yard Friends. I met with them in November and have a list of changes they would like to see.
- Looking for New Chickens for Little Hands on the Farm, ours look like zombie chickens

Fair Displays:

- For 2025 look at updating displays for the Promontory Building
- Still need to build/buy a honey display cabinet in Horticulture.
- I need to get the building drawing layouts done for a few more buildings.

Fair Bldgs. and Staff:

- Look at changing Display layout in Promontory, just to change it up so it's not like every year.
- Meeting with Utah Giant Pumpkin people on 2/22/2025 to discuss 2025 contest
- Posted ad for Culinary and Fiber Arts Supervisor
- Meeting with Embroidery guild on 2/27/2025 to go over what they liked and what changes they would like to see

Follow Up Reminders:

- Review Divisions and Classes for 2025, update (Still Working)
- I would like to add special competitions that change year to year in various departments
- Find demonstrators for Zions and Promontory
- Looking for potential sponsors
- I would like to host comp art craft classes in 2025 to introduce crafts that are new to the community

Facilities and Operations Report

February 2025

DFCM Projects/Status

1. UPDATE: Zion appliances and kitchen upgrades is in full swing and the demo is near complete.
2. UPDATE: Pioneer and gazebo brick repair project is in the mobilization stage and set to begin week of 2/17/25.
3. UPDATE: Pioneer HVAC project has begun, and the duct work has been installed. Awaiting unit arrival to continue.
4. Admin lighting project going out to bid with a construction start date of April 7th, 2025. Project came in under budget and additional funds to be added to Grand cooling and air handler replacement/upgrades project awarded for FY26 project list.

Fairpark Projects/Status

1. Operations have been pulling down holding pens, clearing shavings, and re-winterizing barns 9 and 11 now that PBR has passed. We will begin building holding pens back at the arena.
2. All holes in asphalt left by World of Illumination tear down and move out have been filled to prevent asphalt damage in the main parking lot.
3. Facilities management has chosen UPKEEP CMMS (computerized maintenance management system) to help us better manage work orders, inventory and assets as well as the preventative maintenance process and is finalizing the contract and preparing for implementation. UPDATE: Should be finalized by end of month.

Operations Update

The Operations team is keeping busy with weekly event setups and building cleanup between smaller events and minor repairs and damages are also being addressed. We've been manic about utilities and keeping expenses down and have focused efforts in being sure that temperatures are kept just above freezing to prevent pipes from bursting and making sure all lights are off after hours park wide.

UTAH OPEN & PUBLIC MEETINGS ACT State Fair Park Authority February 19, 2025



Utah Code § 52-4-101 et seq.

What is OPMA?

OPMA requires that the public's business be done in public.

- It provides requirements for conducting meetings of public officials, who have the authority to make policy and budget decisions in the public's interest.
- It requires that there be notice and an open deliberative process before a public body votes on matters under its jurisdiction.
- ALL votes are taken in public.



What is a Public Body?

OPMA defines a Public body as:

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;

Board created in Utah Code 11-68-301

2. Consists of two or more persons;
3. Expends, disburses, or is supported in whole or in part by tax revenue; **and**
4. Is vested with the authority to make decisions regarding the public's business.

What is a Meeting?

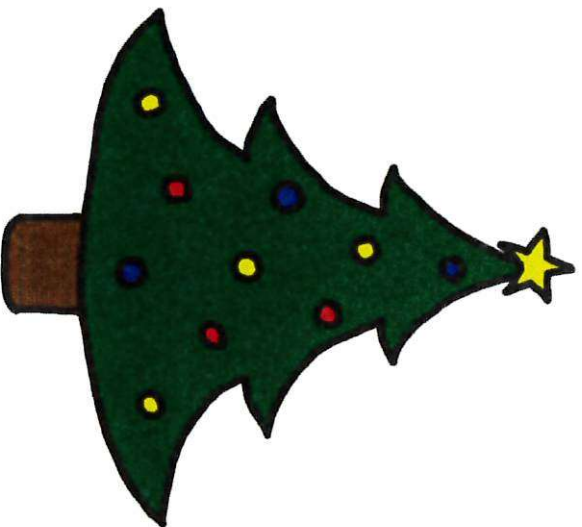


OPMA defines a Meeting as:

“The convening of a public body or specified body, with a quorum present, including a workshop or an executive session, whether 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 or specific body has jurisdiction or advisory power.”

What isn't a meeting?

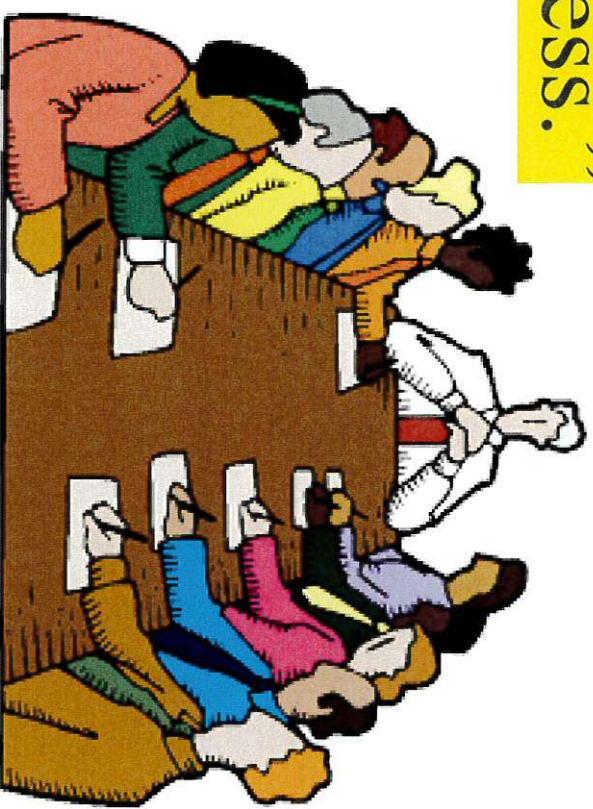
OPMA says a meeting does not mean a chance gathering or social gathering.



What is a Quorum?

Utah Code 11-68-301(5)

“A majority of the members of the board is a quorum for the transaction of business.”



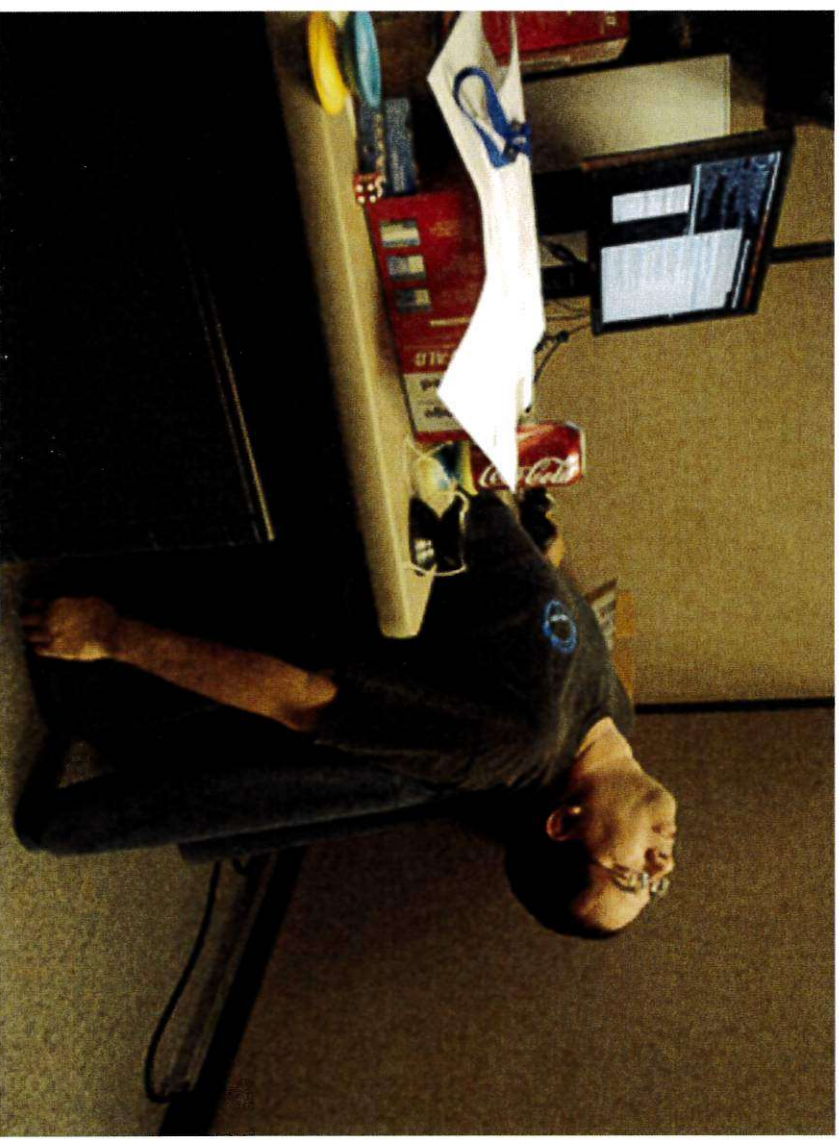
What isn't a Quorum?



Quorum does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken.

Stay with me!

OPMA isn't
very exciting,
but it's very
important!



NOTICE and AGENDA

NOTICE

- At least 24 hrs. in advance of meeting;
- Posted at public body's office; and
- Posted on Utah Public Notice Website

AGENDA

- Posted with notice;
- Must be “reasonably specific” (an average person would be on notice as to all topics of discussion and action planned for the meeting).

Notice Requirements

In addition, a public body that 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.





Records of Open Meetings

Do we have to keep minutes and/or recordings?

- **YES TO BOTH!**
- Even though there is an audio recording, the approved written minutes will be the official record.
- Include both written minutes and recording of open meetings as public records.
- Public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.

The Bad Examples: SLC School Board

FOX 13 News

Investigates:

“Salt Lake City school board members caught sending unprofessional, profane messages”
October 19, 2020



<https://www.fox13now.com/news/fox-13-investigates/salt-lake-city-school-board-members-get-caught-sending-unprofessional-vulgar-messages>

Written Minutes

- Date, time, and place of meeting;
- Names of members present and absent;
- Substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments;
- Record, by individual member, of each vote taken by the public body
 - Unanimous consent (meeting minutes, motion to adjourn)
 - No votes (record who says No, or Nay)
 - Recusal
 - “You’re on mute”
 - Bad internet connections
- Name of each person who makes a public comment and the substance of the comment; and



Written Minutes

- Any other information that is a record of the proceedings of the meeting that any member requests be entered in the meetings or recording.
- Public bodies for whom members are elected must record votes in a list format, by category for each action taken by a member, including yes votes, no votes, and absent members, and by each member's name.





Posting Approved Minutes and Audio Recordings to Public Notice Website

Pending Minutes:

Available to public within 30 days after the meeting (State Public Body and Specified Local Public Body). All other public bodies required to make pending minutes available to public in a reasonable amount of time.

Approved Minutes:

Posted on the PNW within 3 business days of public body's approval (All Public Bodies). A website link to approved minutes may be posted on the PNW for public bodies that are not a State or Specified Local Public Body.

Audio Recordings:

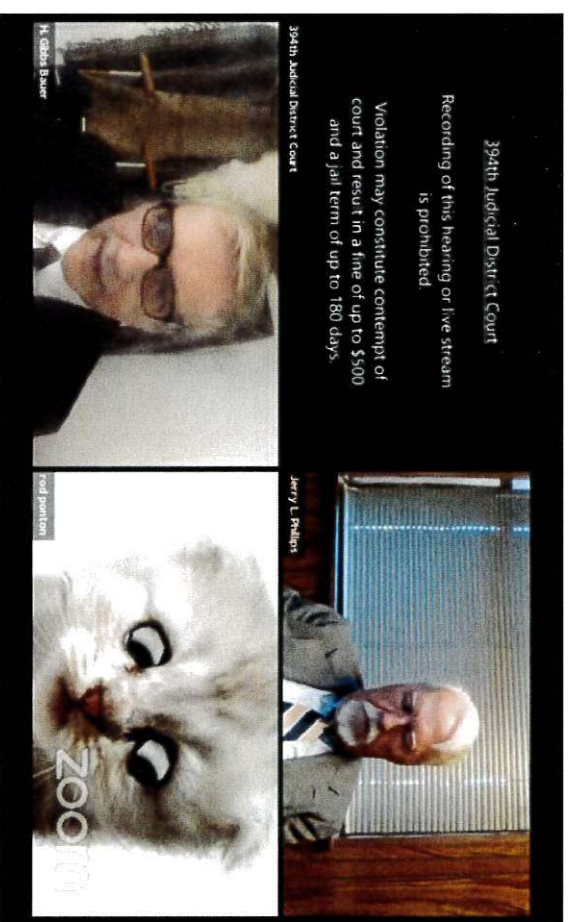
Audio recording or a link to the audio recording posted on the PNW within 3 business days after the meeting (State Public Body). Specified Local Public Body and all other public bodies are required to make audio recording available to public within 3 business days after meeting but no requirement to post.

Electronic Meetings

Public bodies may meet by web meeting, phone or other electronic means that allows participants to hear or observe communications.

- Notice requirements still apply.
- The public must have a means to attend, watch, or participate (if allowed during public comment).
- May be held without an anchor location if it presents a substantial risk to health or safety but requires written determination by the chair of the public body.

- **Roll-call vote required for non-unanimous actions.**

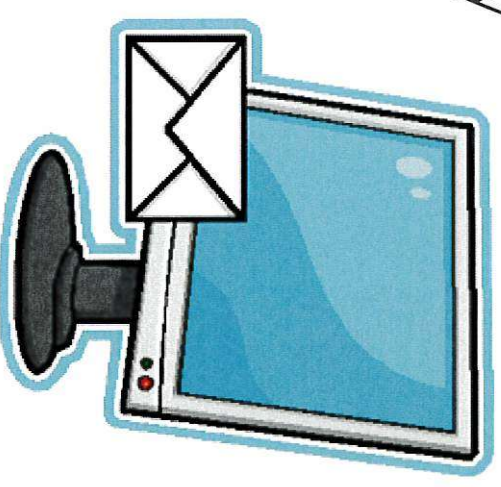


Electronic Message Transmissions

Question: Is a group email a meeting?

Answer: No. However, avoid conducting board business via email.

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.



Emergency Meetings



Due to unforeseen circumstances that must be articulable.

- An example might be a broken water line that cannot wait for the next scheduled meeting.

- Emergency!

Failure to comply with OPMA requirements isn't an unforeseen circumstance.

Requires best notice practicable.

Cannot be held unless an attempt has been made to notify all members of the public body and a majority of the members approve the meeting.



Closed Meetings

- A public body can go from an open meeting into a closed meeting under certain circumstances.
- 52-4-205 lists **all** of the reasons for closing an open meeting.
- A quorum must be present. A motion to close the meeting must be made, naming the specific statutory reason for closure. Then, a roll call vote must be taken. Two-thirds of the body must approve the closed meeting.
- If the closed meeting is held to discuss 52-4-205(1)(a), (1)(f), or (2), the presiding member of the public body is to execute a sworn statement that the sole purpose of the closed meeting was to discuss these issues. No recording is required.
- If the meeting is closed for any other statutory reason, a recording shall be made, and written minutes can also be made. These are protected records under GRAMA.
- **NO VOTES ARE TAKEN IN CLOSED MEETINGS**
(Except allowed to end a closed meeting)

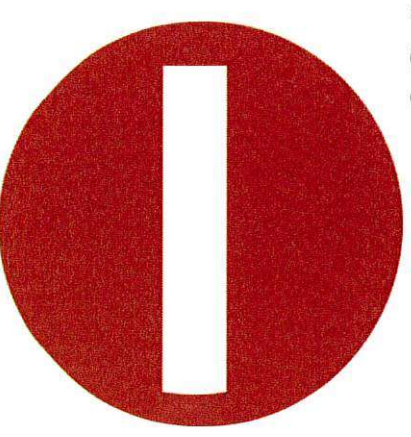
Reasons a Meeting May be Closed

1. To discuss character, professional competence, or physical or mental health of an individual (doesn't require recording if the chair signs an affidavit after);
2. To discuss collective bargaining;
3. To discuss pending or reasonably imminent litigation/legal advice;
4. To discuss the purchase, exchange, or lease of real property, if public discussion would disclose the appraisal value or prevent the transaction on the best possible terms;
5. To discuss the sale of property, if public discussion would disclose the appraisal value or prevent transaction on best possible terms as long as there's public notice of sale and terms are disclosed before the sale;
6. To discuss security personnel, devices, or systems (doesn't require recording if the chair signs an affidavit after);
7. To discuss investigative proceedings regarding allegations of criminal misconduct; and
8. A few other exceptions relating to the Legislature, Higher Education and the Utah Procurement Code.

What is Forbidden During a Closed Meeting?

You may not:

- Approve an 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.



What Happens if Someone Violates OPMA?

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 attorney fees.
- “In addition to any other penalty under this chapter, a member of a public body who intentionally violates or intentionally abets or advises in violation of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.” (6 months in jail and/or \$1,000 fine)



Remedies & Enforcement

Voiding final action

- Any final action taken in violation of Section 52-4-201*, 52-4-202*, 52-4-207, or 52-4-209 is voidable by a court of competent jurisdiction.
- Must file a complaint with the court within **90 days** of final action. If the alleged violation involves bonds, notes, or other evidences of indebtedness the Complaint must be filed within **30 days**.
- **Does not apply to some notice exemptions for municipalities, special district with less than \$1 million annual budgets.*

Who can take action?

- Attorney General and County Attorneys
- Any party denied a right by the action taken
- Court may order compliance and enjoin violation
- Aggrieved party may recover attorney's fees



Public Comment – not required

The Board may allow for public comment during a meeting, but it is not required.

Time limitations are okay. For example: 2 minutes, and request to speak must be submitted 48 hours in advance of meeting.



Disruption of Meetings

OPMA allows for the removal of any person from a meeting if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised. Utah Code 52-4-301.



Common Violations of OPMA

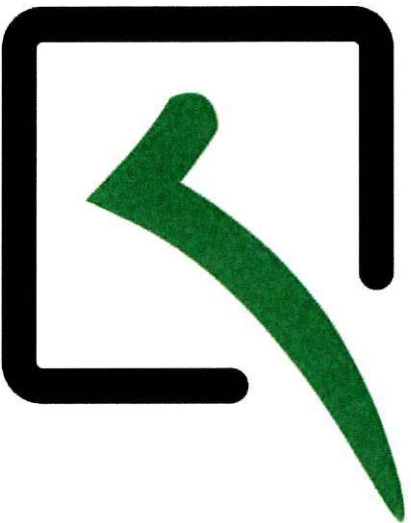
- Closing meeting without members of the public body voting first in an open meeting to close the meeting.
- Conducting a closed meeting for reasons other than those allowed by OPMA.
- Taking official or final action in a closed meeting.
- Failing to properly provide notice of a public meeting.
- Taking action or voting on items not listed on the agenda (discussing items not noticed on the agenda is ok).

Parting Tips and Helpful Suggestions:



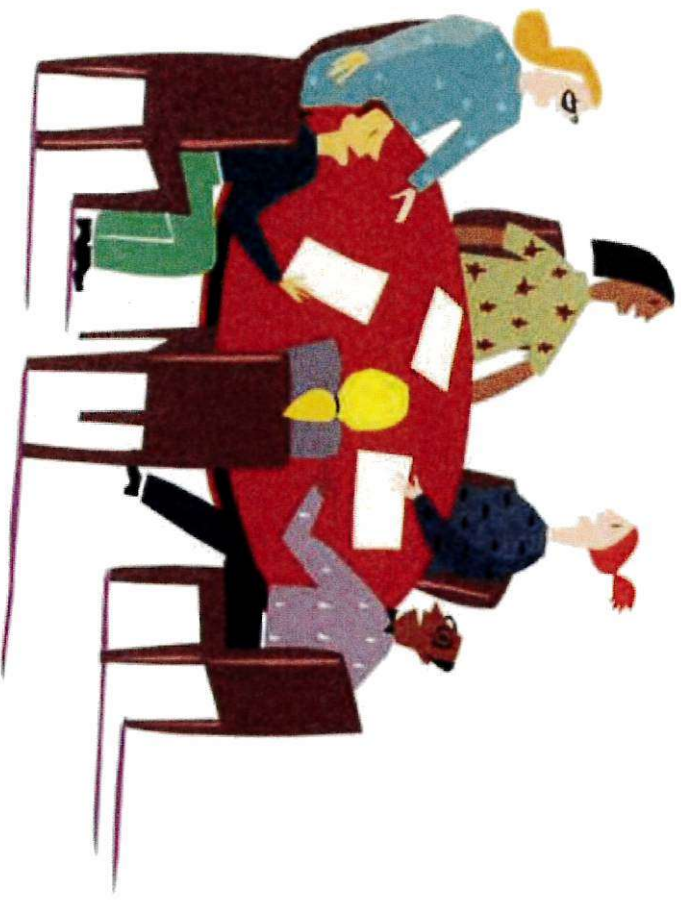
- 24-hour notice
- Be specific with agenda items
- “Action taken on items discussed in closed meeting” is not enough
- Close meetings only for allowed statutory purposes and follow the process
- Provide minutes in a timely manner
- Don't text during meetings
- Receive training once a year
- Err on the side of transparency
- When in doubt, consult your legal counsel

ANNUAL OMPA TRAINING REQUIREMENT



Completed!

The presiding officer of a public body shall ensure that the body receives OPMA training on an annual basis.



THE Power District

THE
Joey A. Miller
COMPANY

*Joey A.
Miller*
REAL ESTATE

Joey A. Miller
SPORTS + ENTERTAINMENT



UFAIR District

NOT INVOLVED IN FAIRPARK OPERATIONS

Executive Director: Benn Buys

DUTIES

- ❧ Facilitate development of District
- ❧ Marketing and business recruitment
- ❧ Provide economic and other benefits to the District
- ❧ Improve and restore areas along the Jordan River

TOOLS

- ❧ Tax increment financing
- ❧ Public infrastructure districts
- ❧ Taxing authority
- ❧ Public safety services

Utah State Fairpark

RESPONSIBLE FOR FAIRPARK OPERATIONS

Executive Director: Larry Mullenax

MISSION STATEMENT

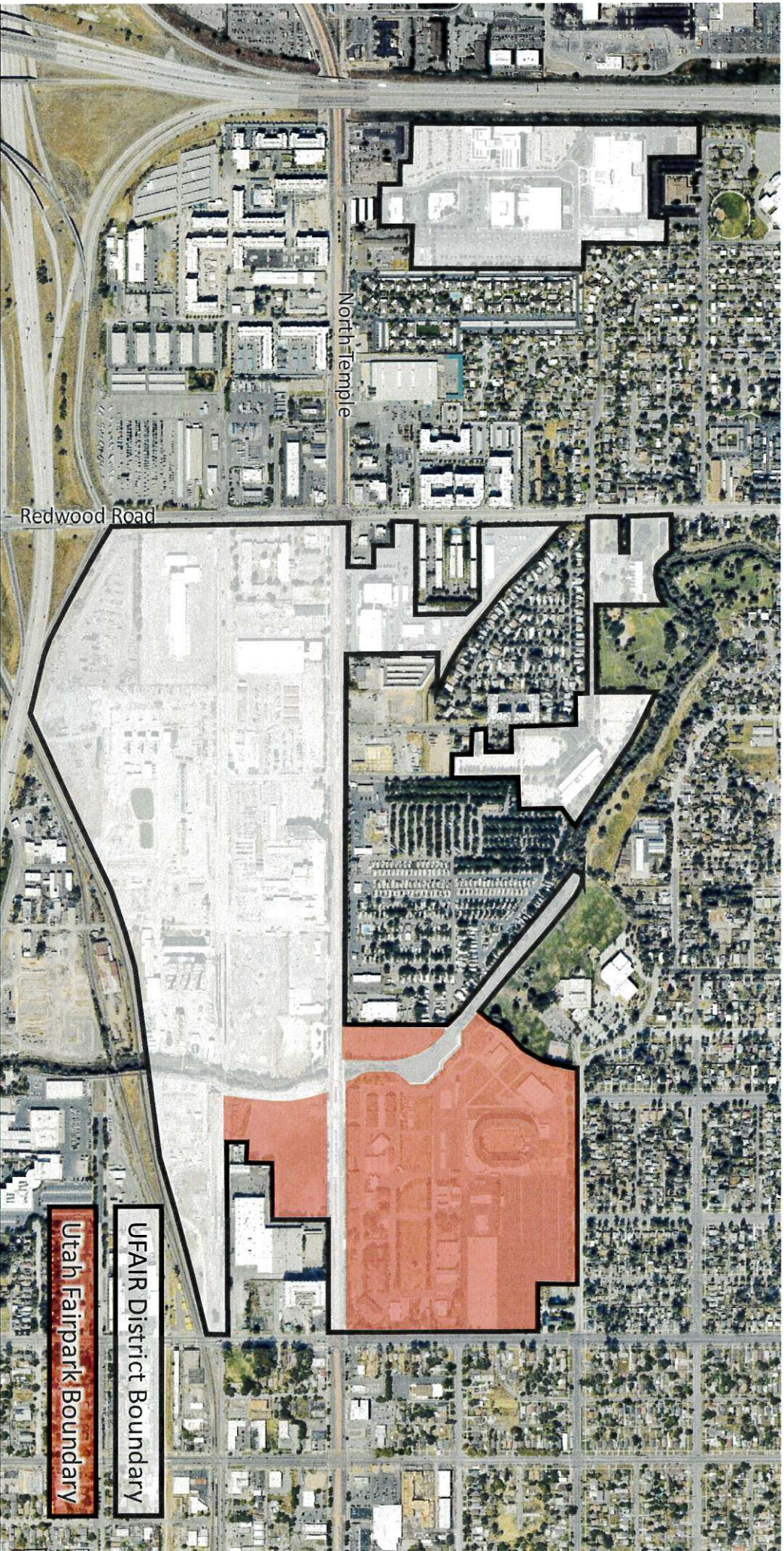
- ❧ Preserve Utah's heritage
- ❧ Meet tomorrow's future today
- ❧ Showcase agriculture, innovative technology and all things Utah with an emphasis on family values
- ❧ Cultivate and support future leaders in agriculture

UFAIR Legislation Summary

- ✔ Coordinating with and supporting the Fairpark authority in the Fairpark authority's use of fair park land;
- ✔ In consultation with the Fairpark authority board, the Fairpark district may adopt a project area plan for the development of some or all of the Fairpark land;
- ✔ The District agreement with LHM regarding a stadium shall also: (xi) establish the timing and process for assisting the Fairpark authority to complete the Fairpark authority's master plan;
- ✔ The Fairpark district is responsible for and has jurisdiction over any development that occurs on Fairpark land, including the funding (bonding) of that development.
- ✔ The Fairpark district shall consult and coordinate with the Fairpark authority with respect to any development activities anticipated for or that occur on Fairpark land.
- ✔ Any development of Fairpark land shall be subject to and compatible with the use of Fairpark land for state fair purposes and related and other activities under the jurisdiction of the Fairpark authority; and as far as practicable, consistent with the master plan for Fairpark land approved by the Fairpark authority.

STATE FAIRPARK REVENUES:

- ✔ Privilege tax a designated parcel that is part of the Fairpark land;
- ✔ (A) 75% of the revenue shall be paid to the Fairpark district; and
- ✔ (B) 25% of the revenue shall be paid to the Fairpark authority; and
- ✔ Land lease revenue from developed portions of Fairpark land





Accomplishments

- ✔ Enabling legislation
- ✔ Partnership with DNR and DPS on improving public safety at the Jordan River
- ✔ Ongoing communication and coordination with Fairpark leaders
- ✔ Rezoned property and executed development agreement with Salt Lake City
- ✔ Private land ownership assembled
- ✔ Demolished ABF and submitted application for environmental remediation
- ✔ Began demolition of Ramada
- ✔ RMP HQ and Phase 1 apartments under design
- ✔ Submitted federal grant for Jordan River
- ✔ Precedent trip to NWSS in Denver

Fairpark Benefits

- ✔ Public safety is greatly increased and ensured long-term with activation
- ✔ Long-term financial success of Fairpark is ensured
- ✔ Redeveloped and activated riverfront
- ✔ Rural Utah has a place they feel comfortable coming to
- ✔ Integrated, cohesive and coordinated masterplans
- ✔ Create rural and agricultural education opportunities for urban youth
- ✔ Alignment of interests: when we succeed the Fairpark succeeds



REAL
ESTATE

HANDBOOK FOR MEMBERS OF THE STATE OF UTAH BOARDS AND COMMISSIONS



Spencer J. Cox
Governor



STATE OF UTAH

SPENCER J. COX
GOVERNOR

OFFICE OF THE GOVERNOR
SALT LAKE CITY, UTAH
84114-2220

DEIDRE M. HENDERSON
LIEUTENANT GOVERNOR

Dear Board Member,

As governor, I would like to personally thank you for your willingness to serve the state of Utah as a member of a board or commission. Upon your appointment, you joined a select group of Utahns who represent their community and peers as they help influence policies and programs that play an instrumental and invaluable role in guiding our state toward a successful future.

As you assume your new position, I would like to share with you the six priorities from the One Utah Roadmap, namely economic advancement, education innovation and investment, rural matters, health security, equality and opportunity, and to streamline and modernize state government. By working together in unprecedented ways, I know we will make great strides in the areas that are crucial for Utah's success.

It is our vision to be a state where residents are happy, safe, healthy, and successful. Where we can grow old surrounded by the people we love and live peaceably in the most beautiful state in America. It is my hope that we realize the good that comes from doing things together as One Utah.

Please keep this in mind as you start this new journey. You have a significant responsibility to promote the best interests of our state. I encourage you to attend meetings related to your position and actively participate and stay informed about current issues.

Thank you for your commitment to the well-being of Utah and for your dedication and service. Best wishes as you begin your service.

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer J. Cox".

Spencer J. Cox
Governor

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INTRODUCTION

Welcome to public service. This handbook is a compilation of information and suggestions to help you effectively serve in a position in state government. Some of the information summarizes laws that may affect your service. This handbook is not intended to have the force of law or rule, nor is it necessarily a complete or accurate interpretation of the law. If you have specific questions, please address them to your board staff.

EXECUTIVE BOARDS

Utah Code Annotated § 67-1-2.5 defines an executive board as an executive branch board, commission, council, committee, working group, task force, study group, advisory group, or other body:

- (i) with a defined limited membership;
- (ii) that is created by the constitution, by statute, by executive order, by the governor, lieutenant governor, attorney general, state auditor, or state treasurer or by the head of a department, division, or other administrative subunit of the executive branch of state government; and
- (iii) that is created to operate for more than six months."

Throughout this handbook, the term "board" is used uniformly to refer to any executive board.

TYPES OF BOARDS AND COMMISSIONS

As a board member, you are responsible to learn about your specific assignment. There are three major categories of boards: policy, advisory, and nominating. Please be sure you know what type of board you are assigned to and become familiar with its scope of authority and duties, which are outlined in the statute or provision that creates the board.

POLICY BOARD: A policy board possesses a portion of the sovereign power of the state to enable it to make policy for the benefit of the general public. It is created by the constitution or by statute and performs its duties in accordance with statute and department policies. It is permanent and continuous and not temporary or occasional.

ADVISORY BOARD: An advisory board provides advice and makes recommendations to another person or entity that makes policy for the benefit of the general public. It is created by statute or executive order. It performs its duties only under the supervision of another person or entity, as provided in statute.

NOMINATING COMMITTEE: A nominating committee recruits, evaluates, and recommends qualified individuals to the appointing authority for vacancies in various positions in state government. It is created by the constitution or by statute.

ROLES AND RESPONSIBILITIES OF A BOARD MEMBER

All members of state boards and commissions are expected to:

- Understand that executive boards are a part of the executive branch of government and are accountable to the governor through the executive director of the department or government entity.
- Remember that boards are responsible for policy direction or advice regarding policies. Board members should not be concerned with the day-to-day administration of the executive agency or department.
- Agree to make your board a priority and devote the appropriate amount of time and energy to the assignment.
- Prepare for, attend, and actively participate in all board meetings.
- Learn about your board and the specific role you play as a member. Be sure you know if you are appointed to represent a particular constituent group.
- Represent your constituency by communicating with them and listening to them.
- Know about the authority your board has in shaping public policy. Respect that authority and work within the framework established in statute.
- Maintain a good working relationship with fellow board members, board staff, department administration, and the Governor's Office.
- Research issues and form reasonable recommendations based on facts.
- Maintain a state-wide perspective. Your decisions affect all citizens in Utah and you are responsible to keep the best interest of the public in mind.

CHARACTERISTICS OF AN EFFECTIVE BOARD MEMBER

An effective state of Utah board member is committed to the public and to the mission of the board. The board member has experience dealing with the values, vision, and long-term interests of Utah's citizens. The board member possesses well-developed civic, interpersonal, and professional sensitivities and skills. The board member has the ability to assemble and evaluate information and to communicate his or her own views with honesty, directness, and integrity. The board member is willing to share power and negotiate fairly, to affirmatively participate in board discussions and decision-making, to delegate or allow others to make decisions as needed, and to acknowledge staff's expertise in implementation of policy. The board member has the ability to think in terms of systems and contexts and is willing to do all required "homework" to develop a sound understanding of board subject matter. As a board member, he or she performs with independent judgment and courage, and in good faith.

MEDIA GUIDELINES

The public has a right to know how we conduct ourselves while in public service. To ensure that our work is correctly represented, we must set and meet high standards of professionalism when working with the media. Board members can meet these standards by working closely with the department's Public Information Officer (PIO) to respond to media requests. Media requests should be addressed with the following guidelines in mind:

- **Orderly:** Boards and commissions work with diverse, complex agencies that require orderly interaction with the media to meet needs appropriately. An orderly interaction means requests are funneled through department protocols.
- **Spokespersons:** The department public information officer generally serves as the department spokesperson. There may be occasions when it is appropriate for a board or commission member to give comment to the media. A good working relationship between board members and the department communications team will help facilitate the needs of both the media and the department.
- **Timely:** We respond to media inquiries promptly. If a board or commission member receives a request, the member should contact the department public information officer, and ensure that pertinent information is shared prior to the interview.
- **Role:** The media may contact board members because of their position on the board. If board members respond to a media request, they must recognize that they are doing so as an appointed representative.

Agency public information officers are available for more detailed training on working with the media.

OATH OF OFFICE

The Utah State Constitution, Article IV, Section 10 requires that "all officers made elective or appointive by this Constitution or by the laws made in pursuance thereof, before entering upon the duties of their respective offices, shall take and subscribe" to an oath of office. An oath of office form can be found at <https://boards.governor.utah.gov/s/>. Please appear before a notary or member of the judiciary and have the oath administered. Most departments have a notary on staff. The staff assigned to your board can assist you with the oath of office, if needed.

ATTENDANCE REQUIREMENTS

In order to conduct business, a quorum of the board members must be present. Unless otherwise specified in statutes, a quorum is a simple majority of voting members. Therefore, board members' attendance at meetings is crucial. Within their specific bylaws, most boards have strict attendance policies. The Governor expects appointees to adhere to those policies and make board meetings a priority.

TERM EXPIRATION AND REAPPOINTMENT POLICY

Generally, board members serve four-year terms. When a mid-term vacancy occurs, the replacement fills the remainder of the unexpired term. Board members are often allowed to serve two terms. However, a review is conducted before a reappointment is extended. The Governor makes the final decision on all appointments and reappointments. Please note the term expiration date in your appointment letter. As that date nears, be prepared to notify the board staff and the Governor's Office if you would like to continue your board service. A reappointed member must submit a new application and resume, fill out and oath of office form, and may be asked to complete a new per diem form.

COMPENSATION AND REIMBURSEMENT

Members of boards and commissions created by statute, who are not employed by state or local government, higher education, or the Legislature, receive no regular compensation. However, board members are allowed meeting per diem and mileage and other travel related reimbursement. Reimbursement is based on current state rates and dependent upon the agency approval and budget. This allowance does not apply to boards and commissions not created by statute. As a public service to the state, the board or commission member may opt to decline the allowed per diem or reimbursement. Boards and commissions may set reimbursement rates lower than the state-allowed rates by submitting their proposal in writing to their agency accounting office. State statutes outlining per diem and travel reimbursement for board and commissions can be found at U.C.A. §§ 63G-3-106, 107.

PURCHASING

Purchases made on behalf of the State, the agency or the board must be approved and processed in advance by the agency. Agency staff will be familiar with rules and statutory requirements governing purchasing and procurement. Boards should consult agency staff to ensure compliance with all applicable purchasing and procurement laws.

PUBLIC ACCESS TO GOVERNMENT RECORDS

Utah government adopts the view that the people's business is done in public and government records should generally be available to the public. Exceptions to this rule exist to protect against invasion of privacy and against unreasonable hindrance of government functions.

The Utah law dealing with records is the Utah Government Records Access and Management Act, U.C.A. § 63G-2-101 et seq., known as "GRAMA." GRAMA is a complicated law, but it requires in essence two things: First, it requires a government agency to retain government records in accordance with the agency's approved retention schedule. Second, it requires the government agency to provide copies of, or permit access to, public government records in its possession upon written request.

The requirements of GRAMA apply to government agencies, not to individuals. In nearly every case a request for records under GRAMA is directed to an agency, and it is the agency that is responsible for responding to the request. However, you have obligations under GRAMA as you serve in an official capacity as a board or commission member. This section of the handbook outlines general rules for you to follow to keep within the law.

GENERAL RULE

As a board member, you can most easily satisfy the requirement to retain records by making a practice of promptly providing the board staff with a copy of (1) any record you create as part of your official service and (2) any record you receive from outside the agency in the course of your official service. This latter category could be letters, graphs, handouts or anything given to you by constituents, advocates or others that deal with board business or official duties. You do not have to provide the staff with copies of items passed out in board meetings, since the staff will already have these. If you follow this suggestion, the staff will be responsible for following the record retention requirements.

Please forward any request you receive under GRAMA to agency staff. Please do so immediately, because GRAMA imposes a short deadline on responding. The staff will analyze the request and write a response. Depending on the nature of the request, the staff may contact you to ask for documents in your possession that may need to be included in the response. Please retain (or turn over to the staff) any documents you think may be subject to the request until all appeals on the request have expired.

EXCEPTIONS

Records that board members create or receive in the course of their work as board members are government records and are subject to GRAMA. This includes electronic communications such as emails and text messages regarding public business, regardless of whether they are created or accessed using a public or private device or account. But there are some legal and practical exceptions to this rule.

- *Records a board member receives from staff supporting the board.* Staff will be responsible for complying with GRAMA requirements for these records.
- *Records a board member receives from sources outside of the agency, copies of which are also given to staff supporting the board.* Again, staff will be responsible for complying with GRAMA requirements for these records.
- *Board member's notes or memoranda made in connection with an adjudicative hearing.* These are not records under GRAMA § 63G-2-103(22)(b)(xi).
- *Board member's personal notes and daily calendars, prepared by them for own personal use.* These are not records under GRAMA § 63G-2-103(22)(b)(ix).
- *Junk mail or commercial publications received by a board member in the course of their work.* These are not records under GRAMA § 63G-2-103(22)(b)(vi).

The last three categories of records are not subject to GRAMA, so they need not be reviewed or described in response to a GRAMA request.

If you routinely provide staff with copies of records you create or receive, it is unlikely that you will have records, other than communications, that do not fit into one of the exceptions described above. If all records in your possession fit within one of the exceptions described above, you have no additional obligations under GRAMA. If you leave the board, please provide any records that remain in your possession to agency staff.

OTHER ASPECTS

There are two other GRAMA provisions with which a board member should be familiar:

GRAMA § 63-2-201(8)(a) states: *"A governmental entity is not required to create a record in response to a request."*

Often inquiries labeled as requests for records are really requests for information that would require an agency to create a record in response. If there are no existing records responsive to a GRAMA request, that is a sufficient response.

GRAMA § 63-2-205(3) states: *"Unless otherwise required by a court or agency of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including*

judicial appeal.”

This means that, once a GRAMA request is received, board members and other agency personnel may not destroy a record, or even return it to the person who provided it, until the matter has been resolved.

PRIVACY

A board member with records that are “private,” “controlled,” or “protected” as defined under GRAMA must manage those records in a manner that protects their confidentiality. GRAMA § 63G-2-801 specifies criminal penalties for intentional disclosure of these records. In addition, although the law is undeveloped in this area, it is possible that governmental entities and employees may be found liable for damages for wrongful release of records that contain “private” information.

OPEN MEETING LAW

The Utah Open and Public Meetings Act (“OPMA”) (Utah Code Annotated 52-4-101 et seq.) requires that that public’s business be done in public. It provides requirements for conducting meetings of boards and commissions who have the authority to make policy and budget decisions in the public’s interest. It requires that there be notice and an open deliberative process before a public body (board or commission) votes on matters under its jurisdiction. All votes are taken in public.

NOTICE AND AGENDA

OPMA requires at least 24-hour advance notice of a meeting posted at the public body’s office, on the Utah Public Notice Website, and a newspaper of general circulation (U.C. § 52-4-202(3)). Meeting agenda should be posted with the notice and must be specific enough to notify the public as to the topics to be considered at the meeting (52-4-202(6)).

ELECTRONIC MEETINGS

OPMA allows the board to conduct meetings by “telephone, telecommunications or computer conference,” as long as the board complies with certain statutory requirements for giving public notice and providing each board member an opportunity to participate in the electronic meeting. To hold an electronic meeting, the Board must first adopt a resolution, rule, policy, or ordinance governing the use of electronic meetings (52-4-207(2)). Notice requirements still apply. The board must provide the public a means to attend or participate in person at the anchor location or virtually online. An electronic meeting may be held without an anchor location if an in-person meeting presents a substantial risk to health or safety. To hold a public meeting with no member location requires written determination by the chair of the board as to the health or safety risk. (52-4-207(5)).

CLOSED MEETINGS

Boards and commissions are required to hold open meetings, but in appropriate circumstances, boards may close part of an open meeting to discuss certain statutorily-designated topics. (A “meeting” of a board includes any meeting, other than a chance meeting, in which a quorum of the board convenes to discuss or act upon a subject over which the board has jurisdiction.)

Initial Open Meeting with Quorum Present: Boards may not close a meeting or go into an “executive session” without first convening an open meeting at which a quorum is present. If the board wishes to conduct a closed session, it must first vote on whether a closed session is permissible under the Utah Open Meetings Act. A two-thirds affirmative roll call vote is required.

Minutes Must Reflect the Votes and Reasons for Closed Meeting: The board minutes must indicate the statutory reason(s) for conducting the closed portions of the meeting and must show how each member voted on the proposed closing.

Topics Which May Be Discussed in Closed Meetings: Section 52-4-205 identifies the topics that may be discussed in a closed meeting. Section 52-4-204 of OPMA states that *only* these topics may be discussed at a closed meeting. Some topics which are appropriate matter for a closed meeting are:

- **Discussions About Individuals:** Section 52-4-205(1)(a) allows the board to go into executive session to discuss “the character, professional competence, or physical or mental health of an individual.”
- **Discussions Related to Collective Bargaining:** Section 52-4-205(1)(b) allows for “strategy sessions to discuss collective bargaining” to be closed.
- **Strategy Sessions About Pending Litigation:** Section 52-4-205(1)(c) allows the board to close a meeting for “strategy sessions to discuss pending or reasonably imminent litigation.” If the board were sued, for example, this exception would allow the Board to meet with its attorneys to plan its strategy or settlement response in a particular piece of litigation. This exception would not, however, allow a closed meeting for non-strategy sessions, such as simple reports about the status of a pending lawsuit. Nor would this exception allow the Board to exclude the public from the Board’s discussions about a controversial topic that could conceivably result in some future litigation. Unless the threatened litigation is “reasonably imminent” and the Board needs to discuss its litigation strategy, this statutory exception does not apply.
- **Discussions Regarding Sale of or Acquiring Real Property.** Section 52-4-205(1)(d) provides for closure of meetings for “strategy sessions to discuss the purchase, exchange, or lease of real property when public discussion of the

transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms.” Section 53-4-205(1) provides for closure of meetings for “strategy sessions to discuss the sale of real property” under certain circumstances.

No Final Decisions or Actions in a Closed Meeting Although board members may discuss certain topics in a closed meeting, any actual votes or decisions must be made in an open meeting. Section 52-4-204(3)(a) states that “an ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.”

Penalties for Violating OPMA: If a court finds that a public body has violated the OPMA, the court may declare that any final action taken at the meeting is void and may order the public body to comply with the statute (52-4-302). The court may also order the public body to pay the opposing party’s attorney’s fees and may order the public body to release the audio recording or minutes from the closed meeting (52-4-303). In addition, a member of a public body who knowingly or intentionally violates any of the closed meeting provisions may be found guilty of a class B misdemeanor (52-4-305).

UTAH ADMINISTRATIVE RULE MAKING PROCESS

This section only applies to policy boards which are given rule making authority by statute. The basic rule making process is formally outlined in Utah Code Annotated, 63G-3-101 et seq. The requirements for special types of rulemaking actions such as 120-Day Emergency Rules and Five-Year Review and Extensions will vary somewhat from this basic process. Additional information on rule making is available at <http://www.rules.utah.gov>.

General Background: The rule making process includes five major phases: (1) pre-proposal phase; (2) proposal phase; (3) comment period; (4) adoption of the rule; and (5) enforcement of the rule. A rule is published twice – once when it is proposed, and again, when it is made effective – and both publications are significant milestones in the rulemaking process. The basic sequence of the rule making process is outlined below.

Pre-Proposal Phase: An agency may not propose a rule unless:

- The agency is authorized by the Utah Constitution, state statute, federal law, or a court order to make rules.
- The agency identifies a need for a new rule or a change to an existing rule. (The need for a rule may come from public comments, new legislation, court decisions, etc.)

An agency must engage in rulemaking when any of its action:

- Authorizes, requires, or prohibits an action;

- Provides or prohibits a material benefit;
- Applies to a class of persons or another agency; and
- Is explicitly or implicitly authorized by statute.

The term “agency” refers to state boards, commissions, departments, divisions and other state entities that are “authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.” The term “agency” does not include the legislative or judicial branches of state political subdivisions. See U.C.A. § 63G-3-102(2).

Ideally, the agency works in partnership with interested parties when it prepares a proposed rule. The agency must also complete a **rule analysis** as required by UCA 63G-3-301. This statute requires the agency to identify the rationale for the rule, the fiscal impact on the agency and others, and the procedures for allowing public comment on the proposed rule.

The executive director of each department must review rules prepared and submitted by entities under its jurisdiction and must comment on the fiscal impact the rule may have on businesses. The agency may also pre-file the rule with the Governor’s Office of Planning and Budget.

Interested persons may request that their name be placed on a mailing list for advanced notice of rulemaking. (The term “interested person” refers to individuals, corporations, organizations, and governmental entities other than the agency. See UCA 63G-3-102.

Proposal Phase: The agency files the proposed rule with the Office of Administrative Rules, which reviews the rule for completeness and compliance with the Utah Administrative Rulemaking Act and related rules. The Office of Administrative Rules also sends a copy of the rule to the Governor’s Office of Planning and Budget for executive branch review.

The agency notifies interested persons who: (1) have requested notice; (2) are legally entitled to receive such notice; and (3) in the judgment of the agency, should be notified. At a minimum, the notice must include a copy of the rule analysis.

The Office of Administrative Rules publishes the proposed rule in the Utah State Bulletin. The Office of Administrative Rules also publishes a summary of the rule in the Utah State Digest.

Comment Period: During the comment period, any person may submit public comments about a proposed rule directly to the agency. The rule analysis will have specified how to submit such comments to the agency’s contact person.

The agency must accept public comment during the period it designates on the rule analysis. The comment period must be no fewer than 30 days and no more than 119 days after publication of the proposed rule. The agency then considers the public comment it received. The Legislative Administrative Rules Review Committee may also ask the agency to appear before the committee to discuss the proposed rule.

Interested person may request that the agency hold a public hearing about a specific proposed rule. The agency *must* hold a hearing when other law requires a hearing, or when requested by: (1) another state agency; (2) ten interested persons; or (3) an interested association having not fewer than ten members. Even if these factors are not involved, the agency may hold a hearing if it so wishes. The request for a hearing must be made within 15 days of publication of the rule in the Bulletin, must be held before the rule is made effective, and must be no fewer than seven nor more than 30 days after the agency received the request.

Adoption Phase: The agency notifies the Office of Administrative Rules of the rule's effective date. The effective date must be no fewer than 31 days and no more than 120 days after publication of the rule in the Bulletin. The Office of Administrative Rules then codifies and publishes the effective rule in the Utah Administrative Code. If the Office of Administrative Rules does not receive a Notice of Effective Date on or before the 120th day, the rule lapses and to enact the rule, the agency must start the rulemaking process over again.

Enforcement Phase: During this phase, the agency enforces the final rule. The final rule is still subject to review, however. For example, the Legislative Administrative Rules Review Committee may ask the agency to appear before the committee to discuss the rule.

ADMINISTRATIVE PROCEDURES

Some boards or commissions are given authority to conduct administrative proceedings including formal and informal hearings. The procedures for conducting administrative proceedings are outlined in the Utah Administrative Procedures Act, U.C.A. 63G-4-101 et seq. The APA governs challenges and appeals to certain government agency actions and lays out the process for agency adjudicative proceedings relating to such challenges. Boards should consult with their supervising agency and agency staff to determine applicability of APA to the work and actions the board conducts.

ETHICS ACT AND CONFLICTS OF INTEREST

This section provides information on ethics requirements and potential or actual conflicts of interest of members of boards. In addition to this information, many agencies and boards have specific policies and forms regarding these matters

As you are aware, the boards are comprised of members who by statute are representatives of various interests and groups. These statutorily-established criteria for membership on the boards often raise potential conflicts of interest.

Applicable Law: Board members are governed by the Utah Public Officers' and Employees' Ethics Act (Ethics Act). U.C.A. § 67-16-1 et seq. Under that statute "public officer" is defined to include "all elected or appointed officers of the state . . . who occupy policy-making posts." Board members are appointed and determine state policy under their respective statutory powers. The Board Vacancies and Conflicts of Interest Act, U.C.A. § 63G-24-101 et seq. also applies to require board members to identify and declare conflicts of interest.

Requirements of the Ethics Act

A. Disclosure

Under of the Ethics Act, every public officer who is an officer, director, agent, employee, or the owner of a substantial interest in any business entity which is subject to the regulation of the agency is required to disclose the position held, the precise nature and value of the officer's interest. If the position changes or value is significantly increased, it must be reported.

Under § 67-16-6, a public officer may not receive or agree to receive compensation for assisting any person or business in any transaction involving any agency unless the public officer discloses the name and address of the public officer and the agencies involved and provides a brief description of the transaction.

Under § 67-16-8, a public officer may not participate or receive compensation in respect to any transaction between the state and any business entity to which the public officer is also an officer, director or employee or owns a substantial interest, unless disclosure is made as indicated below.

The Ethics Act also makes it an offense to donate or to demand donations of property, money or services on a condition of granting a permit, approval, or other authorization. UCA § 67-16-5.3 and 5.6.

B. Method of Disclosure

A sworn, written statement by the public officer giving the information listed above is to be filed with the head of the agencies involved and the Utah Attorney General's Office. Many boards have a specific form or format for the written statement.

C. Prohibitions

Under the Ethics Act no public officer shall:

1. accept employment or engage in any business or professional activity that they may reasonably expect would require or induce them to improperly disclose controlled information;
2. improperly disclose or use controlled, private or protected information acquired by reason of official position or in the course of official duties to further substantially personal economic interest or obtain special privileges or exemptions for self or others;
3. use or attempt to use the position to further substantially personal economic interest or to secure special privileges or exemptions for self or others;
4. accept employment that would impair independence of judgment or interfere with the ethical performance of his public duties;
5. receive, take, seek, or solicit, directly or indirectly, for self or another a gift of substantial value or a substantial economic benefit tantamount to a "gift",
 - a. that would tend to improperly influence the official in the discharge of public duties,
 - b. that the person knows or a reasonable person in that position should know under the circumstances is primarily to reward the person for official action taken,
 - c. if the official recently has been or is or will be involved in a government action affecting the donor or lender unless a disclosure of the gift, compensation, or loan has been made in the manner described above;
6. have personal investments in any business entity which will create a substantial conflict between private interests and public duties; or
7. donate or to demand donations of property, money or services on a condition of granting a permit, approval or other authorization.

Ethics Act offenses do not include criminal acts in violation of U.C.A. § 63-56-72 or § 76-8-105. U.C.A. § 63-56-72 makes it a felony for any person who in any official capacity participates in the procurement of any supplies, services, construction, real property, or insurance for the state of Utah or any subdivision thereof if that person asks, receives, or offers to receive, from any person interested in the sale of these items or services, any emolument, gratuity, contribution, loan, reward, or any promise thereof, either for himself or for another person or organization.

Under U.C.A. § 76-8-105, a public servant is guilty of receiving or soliciting a bribe if that person asks for, solicits, accepts, or receives, directly or indirectly, any benefit with the understanding that the purpose is to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion. It is not a defense that the public servant was not qualified to act in the desired way, did not act in the desired way, or the benefit is not asked for, conferred, solicited, or accepted until after the public servant has performed the desired action or ceases to be a public servant.

Conflicts of Interest: A potential conflict of interest is any direct and immediate interest or relationship, including financial interest, with persons or businesses regulated by or directly affected by decisions of the Board, or persons or organizations which may present requests or issues before the Board. The interest of a spouse or other members of the immediate family/household or the interest of any other person which is constructively controlled by the member is included.

It is recognized that some relationships and interests have more “potential” for being an actual conflict of interest than others. Some interests and relationships, are insignificant. The financial interest may be so small or the relationship so remote that it does not present an actual conflict.

Potential conflicts of interest include relationships or interests with persons, business enterprises, or nonprofit, professional, charitable, religious, social, educational, recreational, environmental, public service, or civic organizations,

1. with which you are connected as a member, employee, officer, owner, director, trustee, partner, advisor, or consultant;
2. in which you have any continuing financial interest as a creditor or through ownership of stocks, bonds, or other securities, ownership of real property or rights in lands, or through a pension or retirement plan, shared income or otherwise; or
3. to which you are indebted financially.

Approaches to Discussing Conflicts: Different approaches may be appropriate when a board member has a conflict of interest. These approaches include:

1. oral disclosure of the conflict before discussion and then participating in the discussion but not the vote;
2. oral disclosure of the conflict at the beginning of the discussion with no participation in discussion or the vote; or
3. oral disclosure of the conflict and physically withdrawing from the meeting when an action is being discussed and voted upon.

The approach taken by the board member with a conflict of interest is an individual decision. While no specific approach mandates how conflicts of interest should be resolved, the board may establish a policy to address conflicts of interest.

PARLIAMENTARY PROCEDURE

Based on Robert's Rules of Order (1977 Edition)

RULES OF ORDER

Boards are encouraged to develop a consistent protocol for their meetings. Robert's Rules of Order is perhaps the most widely known set of rules for the conduct of meetings, though it is not the only one.

The rules of parliamentary procedure are meant to help, not hinder. Applied with common sense, they should not frustrate the meeting or entangle it in red tape. The chair should retain control, give clear explanations, and keep things as simple as possible. Adhering to protocol and agendas keeps meetings organized. A chair who maintains parliamentary rules at normal times may welcome the general recognition of rules during a stressful meeting.

When in doubt, the underlying rule is:

- Respect the wishes of the majority;
- Protect the minority;
- Do what seems fair and equitable.

RESPONSIBILITIES OF THE CHAIR

1. Recognize board members entitled to speak or propose motions. Note: some motions may be made while another member has the floor. Speaker must state the purpose of the interruption so the chair can rule on its validity.
2. Restate motions after they have been seconded, then open discussion.
3. Close discussion and put motions to vote. Votes on motions that are not debatable should be called immediately. Restate the motion exactly as it was made or amended before calling for a vote.
4. Announce the result of a vote immediately. A tie vote defeats a motion requiring a majority of those voting. The chair may vote to make or break a tie.
5. Avoid entering any controversy or interfering with legitimate motions.
6. Maintain order and proper procedure, making necessary rulings promptly and clearly.
7. Expedite board business in every way compatible with the rights of board members. You can allow brief remarks on motions that are not debatable, advise board members how to take action (proper motion or form of motion), or order proposed routine action without a formal vote (for example, "If there is no objection, the minutes will stand approved as read. Hearing no objection so ordered").

PRINCIPLES OF PARLIAMENTARY LAW

1. Parliamentary procedure requires that all board members have equal right; there must be mutual respect among board members; and the rights of the minority to

initiate motions, debate, and have their votes counted be protected, while at the same time the will of the majority governs.

2. Only one item may be under consideration at a time.
3. The majority vote decides the questions.
4. Any matter once decided cannot be brought up again at the same meeting, except by a motion to reconsider.
5. The simplest, clearest and most expeditious way is considered proper, as long as it does not violate the rights of board members.

PROPOSING AND DISPOSING OF A MOTION

1. Gain floor by being recognized by chair.
2. State motion. ("I move that...")
3. Motion can be seconded by any member without gaining floor.
4. Chair state motion (if proper) and opens it for discussion (if debatable).
5. During discussion, the motion may be amended or disposed of by postponement (to a time certain or indefinitely), referral to a committee, or tabling.
6. The chair puts the motion to a vote when there is no further discussion.
7. The chair announces the outcome of the vote.

MOTIONS

1. **Motion to take from table** - requires second, not debatable, and not amendable.

Purpose: To bring up for consideration an issue that has been laid on the table.

Effect of adoption: Puts motion before board again in exactly the same condition as when laid on table.

2. **Motion to reconsider** - requires second, debatable, and not amendable.

Purpose: To set aside a previous vote and reconsider the question for adoption or rejection.

Restrictions: Used only if vote cannot be reversed with more simple procedures. Motion must be made by members who voted on the prevailing side. May not be made later than the next meeting after the vote to which it applies. If action has already been implemented, vote cannot be reversed. Motion may be made when another member has the floor, but its consideration is the same for a main motion.

Effect of motion: Stops any action authorized by the original vote.

Effect of adoption: Sets aside original vote, puts matter back to where it was just before the vote was taken.

3. **Main Motion** - requires second, debatable, and amendable.

Purpose: To bring an issue up for consideration or action.

Effect of adoption: Action authorized.

4. **Motion to postpone indefinitely** - req. second, debatable, not amendable

Purpose: To kill main motion without a formal vote; trial vote to test strength.

5. **Motion to amend a motion** - requires second, debatable*, amendable.

*not debatable if motion to which it applies is not debatable.

Purpose: To put motion in most acceptable form before voting on it, by striking out or inserting words or substituting one paragraph or motion for another.

Restrictions: An amendment to a pending amendment may be proposed, but not an amendment to the third degree. Any germane amendment is in order as long as it is not identical in effect to a no vote on the main motion.

Effect of adoption: Changes the wording of the pending motion.

6. **Motion to refer to a committee** - requires second, debatable, and amendable.

Purpose: To have a matter studied by a committee.

Form: Motion may include membership of committee and instructions to it, and may be amended with respect to these matters.

Effect of adoption: Disposes of motion until the committee reports back or is discharged by the board.

7. **Motion to limit debate or extend limits** - requires second, not debatable, and amendable.

Purpose: To regulate length of time a question may be discussed or length of time allotted to each speaker.

Form: Motion state limits and may be amended in this regard.

8. **Motion on previous question** - requires second, not debatable, and not amendable.

Purpose: To have discussion ended immediately and a vote taken.

Form: May specify only the immediately pending question, of all pending questions.

Effect of adoption: Chair must immediately put the question to a vote and allow no further discussion.

NOTE: This motion should not be confused with the call for the "question" which is only a suggestion that the board members are ready to vote and may not be used to deprive any board member of the right to continue the discussion if desired.

9. **Motion to table** - requires second, not debatable, and not amendable.

Purpose: To set a matter aside temporarily. May be moved even after the previous question has been ordered.

Effect of adoption: Matter on table may be brought up again, but not later than the next meeting, by adoption of a main motion to take it off the table.

10. **Question of order** - no second required, decision of chair, not debatable, not amendable.

Purpose: To ask that a rule that is being violated be observed.

Form: Floor is gained, even while another is talking, by stating, "Chairperson, I

rise to a point of order.” Chair asks the member to state a point, then rules whether the point is well taken. If a point is accepted, the Chair makes a ruling. If a point is not accepted, Chair overrules point of order.

11. **Division of board** - no second required, no vote necessary, not debatable, not amendable.

Purpose: To secure a recount of a vote by a more accurate method than originally used.

Form: board member, without recognition, says, “I call for a division.”

12. **Appeal Chair’s decision** - requires second, debatable*, not amendable.

Purpose: To overrule a decision made by the chair.

Form: Board member says, “Chairperson, I appeal from the decision of the chair.”

Restrictions: Motion must be made as soon as the decision is announced.

*Debatable if the pending question is debatable. Can be laid on the table, which takes the pending with it.

Effect of adoption: If less than majority sustain chair decision is reversed.

PARLIAMENTARY PROCEDURE AT A GLANCE

Based on Roberts Rules of Order

To do this...	You say this...	May you interrupt?	Is a second required?	Is the motion debatable?	Required vote
*Adjourn meeting	"I move the meeting be adjourned"	No	Yes	No	Majority
Recess meeting	"I move the meeting be adjourned until..."	No	Yes	No	Majority
*Make a personal request	"Point of privilege"	Yes	No	No	No vote
*Suspend further consideration	"I move to table the motion"	No	Yes	No	Majority
End debate	"I move the previous question"	No	Yes	No	2/3 vote
Postpone consideration	"I move this matter be postponed until..."	No	Yes	Yes	Majority
Have something studied further	"I move this matter be referred to a committee"	No	Yes	Yes	Majority
Amend a motion	"I move that this motion be amended by"	No	Yes	Yes	Majority
Introduce new business	"I move that..."	No	Yes	Yes	Majority
*Object to something	"Point of order"	Yes	No	No	No vote Chair only
Request information	"Point of information"	Yes	No	No	No vote
*Ask for a vote by actual count to verify a voice vote	"I call for a division of the house (or board)"	No	No	No	No vote
*Object to discuss a matter	"I object to consideration of this matter"	Yes	No	No	2/3 vote
*Take up a matter previously tabled	"I move to take from the table"	No	Yes	No	Majority
*Reconsider a previous action	"I move to reconsider the action relative to..."	Yes	Yes	Yes	Majority
*Consider out of order	"I move to suspend the rules and consider..."	No	Yes	No	2/3 vote
*Vote on a ruling by the chair	"I appeal the chair's decision"	Yes	Yes	Yes	Majority

*Motion cannot be amended

GOVERNMENTAL IMMUNITY

As a member of a statutorily created board or commission, you are entitled to the protections of the Governmental Immunity Act found in Title 63G, Chapter 7 of the Utah Code.

Board and commission members are included within the definition of "employee" for purposes of the Governmental Immunity Act (§ 63G-7-103(3), Utah Code).

By broad interpretation pertinent part, the Governmental Immunity Act shields "employees" from personal liability from their acts or omissions occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, unless the employee acted or failed to act due to fraud or malice or otherwise intentional misconduct. *See generally* § 63G-7-202(3), (4), Utah Code).

In addition, volunteer board members are generally immune from liability arising from acts or decisions of the board. The Utah Immunity for Persons Performing Volunteer Services Act states:

"A person performing services on a voluntary basis, without compensation, under the general supervision of, and on behalf of any public entity, is immune from liability with respect to any decisions or actions, other than in connection with the operation of a motor vehicle, taken during the course of those services, unless it is established that such decisions or actions were grossly negligent, not made in good faith, or were made maliciously."

Note: Advisory groups or panels created by boards and commissions may or may not be entitled to governmental immunity. Please consult with the agency for further information.