

# UTAH OPEN & PUBLIC MEETINGS ACT

## UTAH CODE TITLE 52, CHAPTER 4

(Paul is really boring, please get your caffeine fix now)



This wonderful presentation is  
specifically suited for...



The State Records Committee

## Why do we do this?

“The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.”

Utah Code § 52-4-104

In other words, blame the Legislature.

## Declaration of Public Policy Utah Code §52-4-102

- (1) The Legislature finds and declares that the state, its agencies and political subdivisions exist to aid in the conduct of the peoples business.
- (2) It is the intent of the Legislature that the state, its agencies and its political subdivisions : *(a) take their actions openly; and (b) conduct their deliberations openly.*



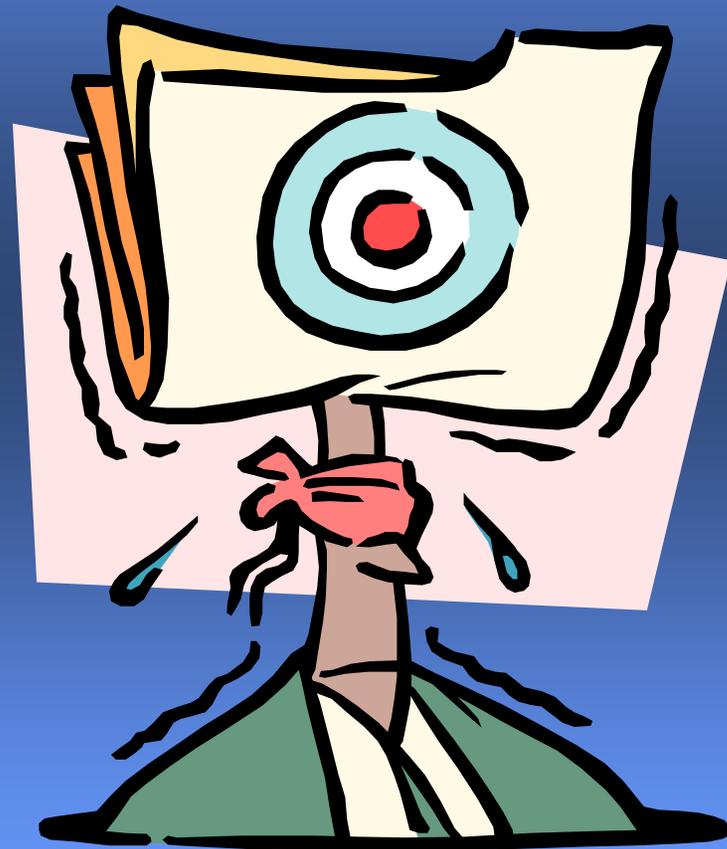
# UTAH OPEN & PUBLIC MEETINGS ACT

- WHAT DOES THE OPEN MEETINGS ACT DO?
  - “It requires government to take actions openly.”
  - “Ensures deliberations allow for an open public process.”

In other words, we want the people to know what is going on with state government.

# Who Is Subject To This Law?

- DO I HAVE TO FOLLOW THE LAW?
- YES, if you are:
  - An administrative, advisory, executive or legislative body of the state or its subdivisions and;
    - Were created by the Utah Constitution, statute, rule, ordinance or resolution
    - Consist of two or more persons
    - Spends, distributes or is supported by tax money
    - Has authority to make decisions about the public's business.



# Examples

- DABC Commission
- Board of Pardons
- City or County Councils
- City or County Council Advisory Boards
  - Planning & zoning
  - Board of adjustments
  - Project committees
- Special Districts

# And since we are here...

- The Utah State Records Committee



# Who Is Not Subject to Open Meetings law

- Political parties, groups and caucuses
- State Legislative conference, rules and sifting committees
- School community council, established under 53A-19-108



# Utah Code § 52-4-103(5)(a)

- WHAT IS A MEETING?
  - “Meeting” means the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held 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 has jurisdiction or advisory power, about, or acting upon a matter over which the public body has jurisdiction or advisory power.”

# Utah Code § 52-4-103(5)(b)

- WHAT DOES “MEETING” NOT MEAN?
  - A chance meeting
  - A social meeting
  - Meeting of a public body with **both** legislative and executive responsibilities where:
    - No public funds are appropriated for expenditure
    - Meeting solely for discussion or to implement administrative/operational matters for which no formal action by the public body is required
    - Meeting solely for discussion or to implement administrative/operational matters that would not come before the body for discussion or action

# What is a Quorum

- § -103(10)(a) “Quorum” means a simple majority of the membership of a public body, unless otherwise defined by applicable law
- § -103(10)(b) “Quorum” does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power

# Attendance at Meetings

## Utah Code § 52-4-207

- DO I HAVE TO ATTEND MEETINGS, OR CAN IT BE HELD WITHOUT PEOPLE IN THE SAME ROOM?
  - Can meet by phone or other electronic means which allows all participants to hear or observe communications
    - Must be adopted into existing rules/ordinance
    - Notice requirements still apply
    - Public must have a means to attend or participate



## Utah Admin. Code R. 35-1-2

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically, pursuant to Utah Code Section 52-4-207.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more Committee members or parties may be participating electronically or telephonically, **public notices of the meeting shall so indicate**. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, **any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee**. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Committee Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Committee Chair.

# Utah Code § 52-4-202 Notice Requirements

- ARE THERE ANY NOTICE REQUIREMENTS?
- Yes, notice requires all of the following:
  - Must be posted as a written notice at the place where the meeting will be held
  - Must be given to at least one local general circulation newspaper or local media correspondent
  - By posting notice to the “Utah Public Notice Website” Utah Code § 63F-1-701
  - At least 24 hours prior to meeting post:
    - Agenda including all action items stated with reasonable specificity
    - Date
    - Time
    - Place
  - Note Certain municipal public bodies may be exempt from posting on the Notice Website based on their budget.

## Utah Code § 52-4-202(2)(a) Notice Requirements

- In addition to the requirements under Subsection §52-4-202(1), a public body which 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...

# Utah Code §52-4-201, -204 & -205

## Closed Meetings

- CAN A MEETING BE CLOSED TO THE PUBLIC? IF SO WHEN?
  - An open meeting can be closed for the following purposes:
    - A meeting is open to the public unless closed under § 52-4-204, -205 or -206
    - Discussing an individual's character, professional competence, or physical or mental health
    - Strategy sessions to discuss collective bargaining
    - Strategy sessions to discuss pending or reasonably imminent litigation



## Closed Meetings (Cont.)

- An open meeting can be closed for the following purposes continued:
  - Discussions regarding security personnel, devices or systems
  - Investigative proceedings regarding allegations of criminal misconduct
  - Strategy sessions to discuss the purchase, exchange, lease or sale of water rights or water shares if public discussion would disclose the appraisal/estimated value of the property under consideration; or would prevent the transaction from being completed under the best possible terms
  - Strategy sessions to discuss the purchase, exchange, lease or sale of real property
    - Public notice of the terms and public approval of sale required
    - Water rights shares under certain conditions

## - Closed Meetings (Cont.)

- An independent Legislative Ethics Commission or Legislative Ethics Committee review of ethics complaints
- A county legislative body discussing commercial information.

## Special exception for State Records Committee?

(a) The records committee may review the disputed records. However, if the committee is weighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be *in camera*.

(b) Members of the records committee may not disclose any information or record reviewed by the committee *in camera* unless the disclosure is otherwise authorized by this chapter.

Utah Code § 63G-2-403(9)

# Are There Any Meetings That Must Be Closed?

- **NO.** NOTE: A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Utah Code § 52-4-205.
- The decision to close a meeting to the public is always discretionary, not mandatory. The law does not require any meeting to be closed.
- **EXEPTIONS** The following must be closed:
  - A meeting of the Health and Human Services Committee to review a fatality review report
  - A meeting of the Child Welfare Legislative Oversight Panel to review a fatality review report

# Utah Code §52-4-204 Closing Meetings

- IS THERE A PROCESS TO CLOSE MEETINGS?
- YES, 52-4-204 (Effective September 12, 2012)
  - A Quorum must be present.
  - Two-thirds of the members present must vote to close the meeting.
  - The body must first hold an open public meeting with proper notice before entering into the closed meeting.
  - The body must publicly disclose: **Note: there are separate requirements in subsections (B), (C) & (D)**
    - The vote by name of each member for or against entering into the closed meeting
    - The reasons for holding the closed meeting
    - Location of the closed meeting

# What Is Forbidden During A Closed Meeting?

- You may not:
  - Approve any 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 ABOUT EMERGENCIES?

## § 52-4-202

- The law allows for meetings for “emergency or urgent” matters if:
  - The best notice practicable is given
  - The minutes include a statement of the unforeseen circumstances that made the meeting necessary



# RECORDS OF OPEN MEETINGS

## (Utah Code § 52-4-203)

- DO WE HAVE TO KEEP MINUTES AND/OR Recordings?
- YES TO BOTH!
- Even though there is a recording, the approved written minutes will be the official record.
- include both written minutes and recording of open meeting as public records.
- Public body shall establish and implement procedures for the public body's approval of the written minutes each meeting
-

# What Are The Requirements For Keeping Minutes of Open Meetings?

- All minutes must include
  - Date/time
  - Place of meeting
  - Names of all members present or absent
- In addition minutes of open meetings must include
  - All matters proposed, discussed or decided
  - All names and substance of information from individuals giving testimony
  - Individual votes on each matter
  - Any additional information requested by a member

# What are the Requirements For Keeping Minutes of Closed Meetings?

- Minutes of closed meetings must include
  - The names of all members present
  - The names of others present at the closed meeting, unless it infringes on the purpose of the closed meeting
  - The closed meeting must be recorded and shall be complete and unedited
    - Note: There may be exceptions to this requirement see § 52-4-206(6)(a) and (b)
  - Detailed written minutes may be kept
  - Minutes and/or recordings of closed meetings are not public records.

# State Records Committee...?

- A separate recording is made for closed sessions (*in camera*).
- Recording is not a public record.

## Utah Code §52-4-203(4) Minutes and Recordings of Open Meetings

- WHEN ARE THE MINUTES OF MEETINGS PUBLIC?
  - Written minutes and recordings of open meetings are public records pursuant to Utah Code § 63G-2-101 et seq. (GRAMA) and shall be released within a reasonable amount of time.

- Written minutes shall be available to the public before final approval when the minutes are only awaiting formal approval.
- The minutes released prior to final approval must be identified as “unapproved”.
- The recording of a open meeting must be made available within 3 business days.

# Electronic Message Transmissions

- Utah Code § 52-4-210 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.

# WHAT HAPPENS IF SOMEONE VIOLATES OPMA?

- -302 & -305
- 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 attorneys fees
  - “In addition to any other penalty under this chapter, a member of a public body who intentionally violates or intentionally abets or advises a violation of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.” (6 mos. Jail and/or \$1,000.00 fine)



# Common Violations Of OPMA

- Discussing matters in a closed meeting that should be discussed during the open session
- Taking official or final action in a closed meeting
- Closing meetings without members of the body voting first in an open meeting to close the meeting
- Conducting a closed meeting for reasons other than those allowed by OPMA
- Failing to properly provide notice of a public meeting
- Failing to provide adequate notice of a public meeting

# WHO CAN ENFORCE OPMA?

- The courts
- The Attorney General
- A County Attorney
- A private citizen who is an aggrieved party

# UTAH OPEN & PUBLIC MEETINGS ACT

- HOW LONG DOES A PARTY HAVE TO PURSUE CORRECTIVE ACTION?
  - 90 Days
  - 30 Days if it involves, bonds, notes, or debt

# UTAH OPEN & PUBLIC MEETINGS ACT

- QUESTIONS?

