

Yes, We Are
OPEN

Open and Public Meetings Act (OPMA) Annual Training

1

Declaration of Public Policy

§52-4-102

The Legislature finds and declares that the state, its agencies and political subdivisions exist to aid in the conduct of the peoples' business.

The Legislature intends that the state, its agencies and its political subdivisions: (a) take their actions openly; and (b) conduct their deliberations openly.

2

OPMA

- OPEN AND TRANSPARENT ACTIONS
- PUBLIC NOTICE
- MAKE AND KEEP A RECORD
- PROCESS AND PARTICIPATION

3

Public Body

- Is created by the Utah Constitution, statute, rule, ordinance, or resolution;
- Consists of two or more individuals;
- Spends, distributes, or is supported by tax monies; and
- Has authority to make decisions regarding the public's business.

4

Definition of a Meeting

"Meeting" means a gathering of a public body with a quorum present

Called by an individual with authority to convene the public body & following the process in law to convene the public body.

For the express purpose of acting as a public body to:

- Receive public comment;
- Deliberate; or
- Take action on a relevant matter.

5

Meeting Notice requirements

- 24 hours prior - Class A notice per §63G-30-102.
- Post notice to the Utah Public Notice Website.
- Publish on Agency's official website.
- Agenda must be reasonably specific.

6

Meeting Attendance

- Members may attend in person or remotely.
- Notice requirements still apply.
- Public must have a means to attend or participate (anchor location).
- Body must have a rule or policy that allows remote attendance.



7

R698-10 – Electronic Meetings

- Anchor location for the public to attend; must be identified in the meeting notice.
- Only allowed electronic communication during the meeting is public communication.
- Improper for board members to send private messages to each other.
- Meeting minutes must identify who appeared in person vs. remotely.
- Remote members count toward the quorum.

8

Taking Action & Public Comment

- Cannot take final action on a topic unless it has been listed as an agenda item & included in the public notice.
- Chair has discretion to hear comments & discuss a matter raised by the public not on the agenda, but no action can be taken.
- Members of the body cannot act together outside of the meeting to predetermine the action to be taken.



9

Emergency Meetings

Exception to the 24-hr. notice requirement to address “emergency or urgent” matters:

- The best notice practicable is given; &
- Minutes include a statement of the unforeseen circumstances that made the meeting necessary.



10

Records must be kept

- **Written minutes**
 - Open meeting = **must** be taken.
 - Closed meeting = **may** be taken.
- **Recordings**
 - **Must** be kept of both open & closed meetings.
 - Closed meeting recording is confidential & can only be released:
 - By a court order; or
 - To OLAG upon request



11

Closed Meeting Recording Exceptions

No recording required . . .

- (1) Discussion regarding deployment of security;
- (2) Discussion of an individual’s character, competence, or physical or mental health; or
- (3) Statutorily required closed meetings (§52-4-205)

Chair must sign an affidavit stating that the sole purpose of the closed meeting was to discuss one of the 3 authorized topics.

Affidavit & votes become part of the written record.

12

Are there any meetings that must be closed?

Yes, but not this body.

A list of mandatory closed meetings is in §52-4-205(2).

The decision to close a meeting to the public for other than mandatory closed meetings is discretionary.



13

All other closed meetings

- Must be recorded.
- Audio recording is protected under GRAMA.
- May only be disclosed
 - By court order; or
 - To OLAG upon request



14

Closed Meeting - Record

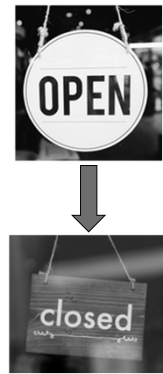
- **Recording & any minutes must include:**
 - Date, time, & place of meeting;
 - Names of members present & absent;
 - Names of all others except if disclosure would infringe on the confidentiality related to the purpose of closing the meeting.
- A recording must be complete & unedited from the beginning of the closed meeting through adjournment of the closed meeting.



15

Requirements to Close a Public Meeting

- Quorum present.
- 2/3 of the body present must vote to close the meeting.
- Public meeting with proper notice held before going into the closed meeting.
- Must publicly state & record in the minutes (open meeting):
 - Vote of each member for or against closing;
 - Reason(s) for the closed meeting; &
 - Location of the closed meeting.



16

What cannot occur in a closed meeting?

- Voting, **except** to vote to end the closed portion of the meeting.
- Approving any ordinance, resolution, rule, regulation, contract, or appointment.
- Interviewing a person to fill an elected position.



17


Moving Back to the Open Meeting








- Motion made to end closed meeting;
- Approved by majority of members present.



18


Open Meeting Minutes Requirements



-  Date, time, & place;
-  Names of all members present or absent;
-  All matters proposed, discussed, or decided;
-  All names and substance of information from individuals giving testimony;
-  Individual votes by each member on each matter;
-  Any additional information requested by a member; &
-  Copies of public materials distributed at the meeting.

19

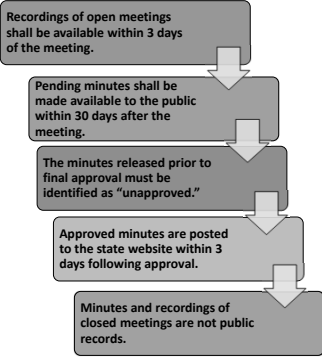
Audio recordings



- Must be a complete & unedited record of all open portions of the meeting.
- From the start of the meeting through adjournment.

20

Posting minutes & recordings




```

graph TD
    A[Recordings of open meetings shall be available within 3 days of the meeting.] --> B[Pending minutes shall be made available to the public within 30 days after the meeting.]
    B --> C[The minutes released prior to final approval must be identified as "unapproved."]
    C --> D[Approved minutes are posted to the state website within 3 days following approval.]
    D --> E[Minutes and recordings of closed meetings are not public records.]
  
```

21




Common OPMA Violations

- Closing meetings w/o first voting in an open meeting go into closed session.
- Conducting a closed meeting for reasons other than those allowed by OPMA.
- Taking official or final action in a closed meeting.
- Improper notice
 - At least 24 hours notice
 - Agenda items must be reasonably specific
- Potential "due process" violation to allow public comment on a pending application where the applicant has not been given prior notice.



22


Who can enforce OPMA violations?

-  County Attorney
-  Attorney General
-  A person who is denied any right under OPMA.

23



OPMA Violation Penalty

- **Class B misdemeanor**
 - Knowingly & intentionally violates; or
 - Abets or advises a violation of the closed meeting provisions.
- A court may void any action taken in violation of the Act.
- A violation can be "cured" by discussing the voided action and taking a public vote in a subsequent meeting. Ward v. Richfield City (Utah 1990)
- Possible court costs & attorney fees.



24

**Time-Period
to Pursue
Corrective
Action**

-  90 days after the date of the action.
-  30 days if it involves bonds, notes, or debt.

25

Questions?

26