

January 6, 2015

Open Meeting Law – Training for City Council

Statutory Obligation to Train (Utah Code § 52-4-104)

The “presiding officer of the public body shall ensure that all members of the public body are provided with annual training on the requirements” of the Open and Public Meetings Act (the “Act”).

A. Basic Principle (§ 52-4-201(1))

A “meeting” of a public body must be open to the public, unless an exception is available under the Act allowing the meeting to be closed.

B. Definitions (§ 52-4-103)

1. “Public Body”

The City Council (the “Council”) is a public body for purposes of the Act.

2. “Meeting”

A meeting is the convening of at least a quorum of a public body for the purpose of (a) discussing, (b) receiving comments from the public about, or (c) acting upon a matter over which the body has jurisdiction or advisory power.

Chance gatherings or social gatherings are not subject to the open meeting law. However, they may not be used to circumvent the Act. (§ 52-4-208)

Electronic meetings may be held subject to the Act and as described below.

3. "Convening"

The calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

[Because a gathering of Council members is not a "meeting" unless it is "convened," and "convening" requires an authorized person to "call together" the Council for the express purposes of discussing or acting upon a matter of business, it seems that gatherings such as group photos or ceremonial appearances are not meetings subject to the Act.]

C. Notice of Meetings (§ 52-4-202)

The Council must give not less than 24 hours public notice of each meeting. The notice must include the:

1. agenda;
2. date;
3. time; and
4. place.

The notice must be:

1. posted (a) at the principal office of the Council and (b) on the Utah Public Notice Website created under Utah Code § 63F-1-701; and
2. provided either (a) to a newspaper of general circulation in Salt Lake City or (b) to a local media correspondent. This requirement is deemed satisfied by providing notice to a newspaper or local media correspondent under Utah Code § 63F-1-701(4)(d) [that may be a bad cross-reference].

In addition, the Council must give annual notice of its annual meeting schedule, specifying the date, time, and place of its scheduled meetings.

The Council is encouraged to develop and use additional electronic means of providing notice of its meetings.

The notice requirement does not apply to emergency meetings, as long as the Council gives the best notice practicable of the time and place of the emergency meeting and the topics to be considered at the emergency meeting. However, an emergency meeting may not be held unless the Council attempts to notify all Council members and a majority of the Council members approve holding the meeting.

D. Agendas (§ 52-4-202)

1. Degree of Specificity

A meeting notice that is required to include an agenda must provide reasonable specificity to notify the public as to the topics to be considered at the meeting. Each topic must be listed under an agenda item on the agenda. (§ 52-4-202(6)(a))

2. Consideration of Matters Not On the Agenda

Generally, the Council may not take final action on a topic in an open meeting unless the topic is (a) listed under an agenda item and (b) included in the advance public notice. (Note: This limitation does not apply to emergency meetings. (§ 52-4-202(6)(c))

Except with respect to emergency meetings, and at the discretion of the presiding member of the Council, a topic raised by the public may be discussed during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting, but final action on the topic may not be taken by the Council at that time. (§ 54-2-202(6)(b))

E. Open Meetings (§ 52-4-201)

1. A meeting is open to the public unless closed pursuant to the Act. (Closed meetings are discussed in the next section.)

2. (a) An open meeting includes a workshop or an executive session in which a quorum is present, unless closed in accordance with the Act.

(b) A workshop or an executive session in which a quorum is present that is held on the same day as a regularly scheduled public meeting may only be

held at the location where the Council is holding the regularly scheduled public meeting unless:

(i) the workshop or executive session is held at the location where the Council usually holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location;

(ii) any of the meetings held on the same day is a site visit or a traveling tour and proper public notice is given;

(iii) the workshop or executive session is a properly conducted electronic meeting; or

(iv) it is not practicable to conduct the workshop or executive session at the regular location of the Council's open meetings due to an emergency or extraordinary circumstances.

F. Closed Meetings (§ 52-4-204, 205)

(Practice point – please note the distinction between “executive session” and “closed session”: The Act uses the term “executive session” to refer to a type of open meeting. See the definition of “meeting” in 52-4-103 and the statement in 52-4-201 that “[a] meeting that is open to the public includes a workshop or an executive session” The latter reference explicitly includes an executive session as a kind of open meeting (without saying what it means by “executive session”). Therefore, we recommend that the Council refer to its closed meetings as “closed sessions” or “closed meetings.”

1. Purposes of Closed Meetings (§ 52-4-205)

a. Discussion of the character, professional competence, or physical or mental health of an individual;

b. Strategy sessions to discuss collective bargaining;

c. Strategy sessions to discuss pending or reasonably imminent litigation;

d. Strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of water right or water shares, if public discussion of the transaction would:

(i) disclose the appraisal or estimated value of the property

- under consideration; or
 - (ii) prevent the City from completing the transaction on the best possible terms;
- e. Strategy sessions to discuss the sale of real property, including any form of water right or water shares, if:
 - (i) public discussion of the transaction would:
 - (A) disclose the appraisal or estimated value of the property under consideration; or
 - (B) prevent the City from completing the transaction on the best possible terms;
 - (ii) the City previously gave public notice that the property would be offered for sale; and
 - (iii) the terms of the sale are publicly disclosed before the City approves the sale;
- f. Discussion regarding deployment of security personnel, devices, or systems; and
- g. Investigative proceedings regarding allegations of criminal misconduct.

Closed meetings are also authorized for the Council to receive the advice of its legal counsel. See Utah Code § 78B-1-137(2) (attorney-client privilege).

2. Procedure for Closing Meetings (§ 52-4-204)

- a. An open meeting must be in session with a quorum present.
- b. Two-thirds of the Council members present must vote to approve closing the meeting.
- c. The meeting may be closed only to discuss a matter listed in § 52-4-205.
- d. The following information must be publicly announced and entered on the minutes:
 - (i) the reason or reasons for closing the meeting
 - (ii) the location of the closed meeting
 - (iii) the vote, by name, of each Council member, either for or against the motion to close the meeting.

G. Record of Meetings (§ 52-4-203, 206)

1. Open Meetings (§ 52-4-203)

Both written minutes and a recording (i.e., an audio or an audio and video record) must be kept of all open meetings.

[The Council has treated its dinners before or during Council meetings as “meetings,” at least to the extent of providing public notice of the dinners. If those dinners really are meetings, they must comply with the minutes and recording requirement.]

However, either written minutes or a recording is adequate if the meeting is a site visit or a traveling tour, if no vote or action is taken. Therefore, unless the Council is keeping both written minutes and a recording during a site visit or traveling tour, it should not take a vote or official action during that site visit or traveling tour.

The recording and minutes must include:

- (a) the date, time, and place of the meeting;
- (b) the names of the Council members present and absent;
- (c) the substance of all matters proposed, discussed, or decided by the Council which may include a summary of comments made by members of the Council;
- (d) a record, by individual Council member, of each vote taken by the Council;
- (e) the name of each person who is not a member of the Council and who, upon recognition by the presiding member of the Council, provided testimony or comments to the Council;
- (f) the substance, in brief, of the testimony or comments provided by the public under (e); and

(g) any other information that any Council member requests be entered in the minutes or recording.

The recording must be a complete and unedited record of all open portions of the entire meeting and be properly labeled or identified with the date, time, and place of the meeting.

The Council must require an individual who publicly presents or provides electronic information relating to an item on the agenda, to provide to the Council, at the time of the meeting, an electronic or hard copy of the electronic information for inclusion in the public record. “Electronic information” means information presented or provided in an electronic format. (This was added by the 2014 Legislature.)

Approved written minutes (not the recording) are the official record of the meeting.

Approval of Minutes

The Council must make pending minutes (i.e., draft minutes that haven’t yet been approved by the Council) available to the public within 30 days after holding the open meeting.

Within three business days after approving written minutes of an open meeting, the Council must post to the Utah Public Notice Website (created under Utah Code § 63F-1-701) and make available at the Council’s primary office a copy of the approved minutes and any public materials distributed at the meeting.

Within three business days after holding an open meeting, the Council must make an audio recording of the open meeting available to the public for listening.

The Council must establish and implement procedures for the approval of the written minutes of each meeting. The written minutes or the recording of an open meeting that are required to be retained permanently must be maintained in or converted to a format that meets long-term records storage requirements.*

*According to the municipal retention schedule, the written minutes must be retained permanently, and the recording must be retained for at least one year.

2. Closed Meetings (§ 52-4-206)

Except when a meeting is closed to discuss (a) the character, professional competence, or physical or mental health of an individual or (b) the deployment of security personnel, devices, or systems, the Council *must* make a recording of the closed meeting and *may* keep detailed written minutes that disclose the content of the closed meeting.

The recording and any minutes must include:

- (a) the date, time, and place of the meeting;
- (b) the names of the Council members present and absent; and
- (c) the names of all others present unless disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

The recording and the written minutes are protected records under GRAMA.

No recording or written minutes are required for a closed meeting to discuss (a) the character, professional competence, or physical or mental health of an individual or (b) the deployment of security personnel, devices, or systems.

The person presiding at such a meeting must sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss those matters.

According to the municipal retention schedule, the written minutes must be retained permanently, and the recording must be retained for at least one year.

H. Electronic Meetings (§ 52-4-207)

1. Resolution, Rule, or Ordinance

The Council may not hold an electronic meeting unless it has adopted a resolution, rule, or ordinance governing the use of electronic meetings. *City Code § 2.06.030E satisfies this requirement.*

The resolution, rule, or ordinance may:

- a. prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;
- b. require a quorum of the Council to: (i) be present at a single anchor location for the meeting; and (ii) vote to approve establishment of an electronic meeting in order to include other Council members through an electronic connection;
- c. require a request for an electronic meeting to be made by a Council member up to three days before the meeting to allow for arrangements to be made for the electronic meeting;
- d. restrict the number of separate connections for Council members that are allowed for an electronic meeting based on available equipment capability; or
- e. establish other procedures, limitations, or conditions governing electronic meetings not in conflict with § 52-4-207.

City Code § 2.06.030E provides that, generally, the Council may hold an electronic meeting only if a majority of a quorum of the Council is physically present at the physical location from which the electronic meeting originates or from which the Council members are connected to the electronic meeting.

2. Notice

The Council must:

- a. give public notice of the meeting in the usual way; and
- b. post written notice at the anchor location;
- c. in addition to giving such public notice, provide:
 - (i) notice of the electronic meeting to the Council members at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and
 - (ii) a description of how the Council members will be

connected to the electronic meeting.

3. Anchor Locations

The Council must establish one or more anchor locations for the meeting, at least one of which is in the City & County Building (i.e., the building in which the Council normally meets).

The Council must provide space and facilities at the anchor locations so that interested persons and the public may attend and monitor the open portions of the meeting.

If comments from the public will be accepted during the meeting, the Council must provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

Electronic Messages

The Act does not restrict a Council member from transmitting an electronic message (such as email, instant messaging, or a text message) to other Council members at a time when the Council is not convened in an open meeting. (52-4-210)

I. Disruption of Meetings (§ 52-4-301)

The Act does not prohibit the removal of any person from a meeting if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

J. Consequences of Violating Open Meeting Law (§§ 52-4-302 to 52-4-305)

Any final action taken in violation of certain provisions of the Act is voidable by a court. The suit must be commenced within 90 days after the date of the action (or 30 days in the case of the issuance of bonds, notes, or other evidence of indebtedness).

A court may not void final action for failure to post notice on the Utah Public Notice Website if the failure was the result of unforeseen Internet

hosting or communication technology failure and the Council otherwise complied with the public notice requirements.

The Attorney General and county attorneys shall enforce the Act. At least annually, the Attorney General's Office must give notice to the Council of any material changes to the requirements for the conduct of meetings.

A person denied a right under the Act may sue to compel compliance with or to enjoin violation of the Act, or to determine the Act's applicability to discussions or decisions of the Council.

A Council member who knowingly and intentionally violates or who knowingly or intentionally abets or advises a violation of the closed meeting provisions of the Act is guilty of a class B misdemeanor.

K. Relevant 2014 Changes

With respect to meetings, the definition of "convening" was slightly changed.

The requirement regarding the presentation of electronic information by an individual was added.