

Open and Public Meetings Act  
Utah Code §§ 52-4-101 et seq.



**Mark H. Anderson (Fabian VanCott)**

# 1. Policy Behind Act:

- Political subdivisions “exist to aid in the conduct of the people’s business”
- So all deliberations and actions are to be conducted openly

## 2. Meetings:

- All “meetings” are open to the public
  - Limited exceptions allowed
- “Meeting” means:
  - the convening of a public body that consists of 2 or more persons and “expends, disburses, or is supported in whole or in part by tax revenue” and “is vested with the authority to make decisions regarding the public’s business”
  - in person or electronically
  - for purpose of
    - discussing,
    - receiving comments from the public, or
    - acting upon

## 2. Meetings (cont.)

- a matter over which the body has jurisdiction or advisory power
- and a quorum is present (simple majority unless otherwise defined by law)
- “Meeting” includes:
  - workshop
  - executive session
    - a workshop or executive session on the same day as a regular meeting must generally be held where the regular meeting is to be held (exceptions include a site visit or a traveling tour)
  - “meeting” does not include:
    - a chance or social gathering
      - may not be used to get around the Act

## 2. Meetings (cont.)

- Convening a public body with both legislative and executive responsibilities solely to discuss or implement administrative or operational matters not requiring formal action and no public funds are appropriated for expenditure
- two elected officials, with no one else present, provided no formal or informal action is taken (not considered to be a quorum, even for a three member board)
- Board members may exchange electronic messages, but only when the board is not convened in open meeting

### 3. Public Notice of Meetings:

- Regular meetings scheduled in advance over course of year
  - notice of schedule once each year, with date, time and place
  - as class A notice under Utah Code Ann. (UCA) § 63G-28-102 (after May 3, 2023) by:
    - publishing the notice on the Utah Public Notice Website (UCA § 63A-16-601)
    - publishing the notice on the district's official website, if the district maintains an official website and has an annual operating budget of \$250,000 or more
    - posting the public notice in or near the affected area in a public location “that is reasonably likely to be seen by: (A) residents of the affected area; or (B) if there are no residents..., individuals who pass through or near the affected area”

### 3. Public Notice of Meetings: (cont.)

- may be satisfied “by posting the notice in, on, or near: (i) the anchor location for the meeting; or (ii) the structure or other area where the meeting will be held”
- Agenda – Date, Time and Place
  - 24 hours minimum notice
  - same notice as above
  - provide “reasonable specificity” of listed agenda topics
  - exceptions:
    - emergency meeting to consider an emergency or urgent matter that was not foreseeable

### 3. Public Notice of Meetings (cont.)

- the best notice practicable of time, place and agenda must be given
- must attempt to notify all members, and a majority of the members must approve the emergency meeting
- a non-agenda topic raised by the public may be discussed (at the discretion of the Chair) but final action cannot be taken
- Must keep written minutes and a recording of all open meetings (with limited exceptions)



## 4. Minutes and Recordings

- Recording
  - complete, unedited record of open portion of the meeting
  - labeled with date, time, place
  - must be available to the public for listening within three business days after the end of the meeting
  - limited exceptions to recording requirement
    - site visit or traveling tour with no vote or action; or
    - district's annual budgeted expenditures, excluding capital expenditures and debt service, are \$50,000 or less
  - Any person in attendance may independently record all or part of an open meeting, provided recording does not interfere with the conduct of the meeting

## 4. Minutes (cont.)

- Written minutes = “the official record of the meeting”
  - date, time, place
  - names of board members present and absent
  - substance of all matters proposed, discussed, or decided
  - record, by individual board member, of each vote (if the board includes elected members, yes votes, no votes, and absent members must be listed)
  - name of each member of the public who, after being recognized by the Chair, provides testimony or comments, including the substance in brief of the testimony or comments
  - any other information that is a record of the proceedings of the meeting that any board member requests be entered

## 4. Minutes (cont.)

- GRAMA = “public records”
  - pending minutes of a municipal or county legislative body must be available to the public within 30 days after the open meeting
  - pending minutes of the legislative body of a local special or special service district must be available to the public within a “reasonable time” after the open meeting
  - pending minutes must be marked “not approved” or “subject to change” or equivalent
  - within three business days after an open meeting, an audio recording of the meeting must be available to the public for listening
- An individual who publicly presents or provides electronic information relating to an item on the agenda is required at that time to provide an electronic or hard copy for inclusion in the public record

## 4. Minutes (cont.)

- Board must establish and implement procedures for the approval of written minutes
- Approved minutes must be posted and made available to the public within three business days after approval
  - Both the approved minutes and any public materials distributed at the meeting must be posted to the Utah Public Notice Website
  - Posting to the Utah Public Notice Website a link to a website on which the approved minutes and public materials are posted will satisfy the posting requirement

## 5. Closed Meeting

- Meeting may be closed, if:
  - quorum present
  - 2/3 of board members (voting power?) present vote to close
  - must publicly announce and enter in the minutes of the open meeting the following
    - the reason or reasons for closing the meeting
    - the location where the closed meeting will be held
    - the vote of each board member, by name, for or against the motion to close the meeting
- Purpose – to discuss:
  - the character, professional competence, or physical/mental health of an individual

## 5. Closed Meeting (cont.)

- collective bargaining strategy
- pending or reasonably imminent litigation
- the purchase, exchange, or lease of real property (including a water right or water shares) if public discussion would:
  - disclose the appraisal or estimated value or
  - prevent completing the transaction on the best possible terms for the district
- the sale of real property (including a water right or water shares) if public discussion would:
  - disclose the appraised or estimated value or
  - prevent completion of the transaction on the best possible terms for the district
  - provided: public notice has been given that the property would be offered for sale and sale terms are publicly disclosed before final approval of the sale

## 5. Closed Meeting (cont.)

- the deployment of security personnel, devices or systems
- investigative proceedings regarding allegations of criminal misconduct
- deliberations of the public body acting as a procurement evaluation committee, a protest officer, or a procurement appeals panel under the Utah Procurement Code
- to consider information designated as a “trade secret” as necessary to properly conduct a procurement under the Utah Procurement Code
- to discuss information provided during a procurement process if, at the time of the meeting, the Utah Procurement Code prohibits public disclosure and the public body needs to review or discuss the information to fulfill its role and responsibilities in the procurement process

## 5. Closed Meeting (cont.)

- To consider a loan application if public discussion would disclose “(i) nonpublic personal financial information; or (ii) a nonpublic trade secret... or nonpublic business financial information the disclosure of which would reasonably be expected to result in unfair competitive injury to the person submitting the information” (effective May 3, 2023)
- Prohibitions:
  - if an elected board vacancy is to be filled, candidates may not be interviewed in a closed meeting
  - may not discuss filling a mid-term board vacancy or temporary absence for military service or discuss the character, professional competence, or physical or mental health of a person under consideration to fill a mid-term vacancy or temporary absence



## 5. Closed Meeting (cont.)

- no ordinance, resolution, rule, regulation, contract, or appointment may be approved during a closed meeting – no vote may be taken during a closed meeting, except for a vote on a motion to end the closed portion of the meeting and return to an open meeting

***HANG ON!  
WERE HALFWAY THERE***



## 6. Record of Closed Meeting

- Recording generally is required
  - Written minutes are optional
  - When a meeting is closed exclusively to discuss the character, professional competence or physical/mental health of an individual, or deployment of security personnel, devices or systems
    - neither a recording nor written minutes are required
    - a sworn statement by the Chair is required
- Recording must be complete/unedited
- The recording (and any minutes) must include: date, time, place, names of members present and absent, names of all others present (unless identification would infringe on confidentiality necessary to fulfill purpose of closing)

## 6. Record of Closed Meeting (cont.)

- Recordings and written minutes of closed meetings are protected under GRAMA
  - court order generally required for disclosure
- Long-term storage

## 7. Electronic Meetings

- Board must adopt a resolution, rule or ordinance governing electronic meetings (otherwise an electronic meeting may not be held)
  - resolution or rules may establish limitations, conditions and procedures governing electronic meetings based upon budget, policy or logistics, and other factors
- Class A public notice required (effective May 3, 2023)
  - in addition to other public notice requirements, written notice must be posted at the anchor location, if there is one
  - each board member must receive at least 24 hours advance notice
  - the notice must include a description of how the members will be connected to the electronic meeting

## 7. Electronic Meetings (cont.)

- One or more anchor locations generally will be required, one of which will be the normal meeting place of the board
  - the requirement that there be an anchor location for an electronic meeting does not apply if the Chair determines that there would be a “substantial risk to the health or safety of those present at the anchor location; or... the location where the public body would normally meet has been ordered closed to the public for health or safety reasons”
    - the Chair’s determination must include a summary of the facts upon which the determination is based and information on how a member of the public may attend remotely using electronic means

## 7. Electronic Meetings (cont.)

- the public notice for the meeting must include a description of the Chair's determination and a summary of the facts on which that determination is based, along with information explaining how a member of the public may attend the meeting remotely by electronic means
- a meeting that began with an anchor location may be converted to a fully electronic meeting based upon a mid-meeting determination by the Chair that continuing to use the anchor location presents a substantial risk to the health or safety of those present and, in convening the meeting, means for the public and Board members to remotely attend the meeting by electronic means have been provided



## 7. Electronic Meetings (cont.)

- under limited circumstances, an owner of land located within a district, or an agent or officer of an owner of land, may qualify to serve on the board; in which event, with proper public notice and a means for board members and members of the public to attend electronically, meetings of the board may be conducted electronically without an anchor location even though there is no health or safety risk (effective May 3, 2023)
- Interested persons and the public must be able to attend open portions of the meeting at the anchor location, if there is one
  - if public comments are to be accepted, or a public hearing will be held, provision must be made for full public participation



## 8. Disruptions

- Removal allowed if
  - disruption willful and
  - orderly conduct is seriously compromised

## 9. Enforcement

- The Utah Attorney General and County Attorneys are statutorily authorized to enforce the Act
  - a person denied any right under the Act may file suit to compel compliance or enjoin violations or determine the applicability of the Act
- Board action is voidable in a court proceeding if
  - open meeting requirements are violated
  - public notice requirements are not met
    - an unforeseen internet hosting or communication technology failure excuses a deficiency in posting on the Utah Public Notice Website

## 9. Enforcement (cont.)

- an electronic meeting was held without satisfying applicable statutory requirements
- Short statute of limitations
  - 30 days for the issuance of bonds, notes or other indebtedness
  - 90 days for all other challenges
- Successful plaintiff may be awarded attorney fees and court costs
- Knowing or intentional violation of any closed meeting statutory provision by a board member (including advising or abetting another person to violate the provision) constitutes a class B misdemeanor

## 10. Annual Training and Notices

- Board Chair required to ensure that board members are provided annual Open and Public Meetings Act training
- Utah Attorney General is, at least annually, to provide notice of any material change in the Act

A photograph of a red metal structure, possibly a gate or a large container, with a warning sign. The sign is white with black text and is mounted on the right side of the structure. The structure has a grid-like pattern of horizontal and vertical bars. The background shows a grassy field and some trees under a clear sky.

CAUTION  
FLOOR  
COVERED  
WITH  
POLITICAL  
PROMISES

# 11. How does it smell?

- Utah Constitution Article XXII Section 5
- Each public officer who makes a profit from public money or uses public money for a purpose not authorized by law shall be guilty of a felony and shall be punished as provided by law, but part of the punishment shall be disqualification to hold public office.

## 12. Partial List of Laws Applicable To ~~Local~~ Special Districts

- Uniform Fiscal Procedures for Local Districts Act – Id. §§ 17B-1-601 *et seq.*
  - Adoption of Budgets (public hearings, etc.)
  - Accounting Requirements
    - Clerk duties spelled out
    - Treasurer duties spelled out
    - Invoice payment procedures
    - Deposit of district funds
    - Approval of district expenditures
    - Financial reports and independent audits
  - Public hearing required before a service fee may be imposed or increased. Id. § 17B-1-643

## 12. Partial List of Laws Applicable To Special Districts (Cont.)

- State Auditor's Duties
  - Prescribe uniform accounting procedures for local districts
  - Board member training programs (with the Utah Association of Special Districts) – Id. § 17B-1-312
  - Analyze and evaluate fiscal practices
  - Qualifying local districts must file certified audits with the State Auditor
  - Perform detailed financial and performance audits
- Personnel Management – Id. §§ 17B-1-801 *et seq.*
- State Construction Registry – Id. § 38-1a-201 *et seq.*
- Government Construction Projects – Id. § 38-1b-101 *et seq.*



## 12. Partial List of Laws Applicable To Special Districts (Cont.)

- Accounting Reports from Political Subdivisions, Interlocal Organizations, and other Local Entities Act – Id. §§ 51-2a-101 *et seq.*
- State Money Management Act – Id. §§ 51-7-1 *et seq.*
- Anti-Nepotism – Id. §§ 52-3-1 *et seq.*
- GRAMA (Government Records Access and Management Act) – Id. §§ 63G-2-101 *et seq.*
- Utah Procurement Code – Id. §§ 63G-6a-101 *et seq.*
- Employment Status Verification (E-Verify) – Id. 63G-12-302
- Utah Public Officers' and Employees' Ethics Act – Id. §§ 67-16-1 *et seq.*

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"...AND HERE IS YOUR FREE MARKET WATER & SEWER SYSTEM!"