

UTAH OPEN & PUBLIC  
MEETINGS ACT  
UTAH CODE TITLE 52, CHAPTER 4

Clearfield City Council and  
Planning Commission

May 19, 2021



## Purpose of this presentation:

- General explanation about the purpose of the Open and Public Meetings Act (“OPMA”)
- Review of OPMA notice requirements for meetings
- Review closed meetings and meeting minute requirements.

WHAT IS OPMA?

# WHAT IS OPMA?

Open and  
Public  
Meetings  
Act

# 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

# 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 people's 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.*

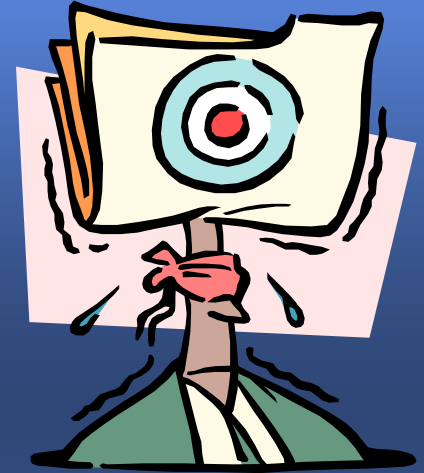


# UTAH OPEN & PUBLIC MEETINGS ACT

- 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?

- “Public Body” defined by Utah Code § 52-4-103(9)
- A Public Body means 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;
  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 authority to make decisions regarding the public’s business.





# Who Is Not Subject to the Open Meetings Act Law?

- Political parties, political groups and political caucuses
- State Legislative conference, rules and sifting committees
- School community council or charter land trust council as defined in 53G-7-1203
- A taxed interlocal entity, or
- Specified Legislative Management subcommittees



*...in other words*

When in doubt, hold a public meeting.



# 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.**”

# 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

# So why is notice so important?

- If the meeting is a public meeting, it really can't be a public meeting if the public doesn't know about the meeting.





So what are the essential elements for notice?



So what are the essential elements for notice?

## #1 24 Hours Notice

“A public body shall give not less than 24 hours public notice of each meeting.”

- Utah Code § 52-4-202(1)(a)(i)

Remember: This is the minimum requirement.



# So what are the essential elements for notice?

## #2 Notice shall include the following:

- The Agenda
- The Date
- The Time
- The Place
  - Utah Code § 52-4-202(1)(b)

So what are the essential elements for notice?

#3 The notice shall provide “reasonable specificity” to notify the public as to the topics to be considered at the meeting.

- Utah Code § 52-4-202(6)(a)

# “Reasonable Specificity”

- Enough information to allow the public to know what is being considered during the meeting.

# Capital City Council Agenda

- Welcome
- Discussion about city stuff
- Discussion about some property
- Voting about something
- Public comment
- Adjournment

# Capital City Council Agenda

- Welcome
- Discussion and public comment about road construction of Main Street
- Action item: Council discussion and vote on award of contract for State Street roundabout.
- Public comment
- Adjournment

# How important is notice?

A public body may not take final action on a topic in an open meeting unless the topic is:

- Listed under an agenda item as required by -202(6)(a), and
- Included with the advance public notice.
  - Utah Code § 52-4-202(6)(c)

# So what about public comment?

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.

- Utah Code § 52-4-202(6)(b)

# So what about public comment?

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.

- Utah Code § 52-4-202(6)(b)



# So what are the essential elements for notice?

#4 If the public body holds regular meetings that are scheduled in advance over the course of a year, it shall give public notice at least once each year of its annual meeting schedule.

- Utah Code § 52-4-202(2)(a)

# So what are the essential elements for notice?

#5 A public body satisfies a requirement for public notice by posting written notice:

1. At the principal office of the public body/building where meeting is to be held;
2. On the Public Notice Website; and
3. A newspaper of general circulation or a local media correspondent.

- Utah Code § 52-4-202(2)(a)

# 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



**Enrolled**

**S.B. 125**

Printer Friendly

1

**OPEN AND PUBLIC MEETINGS ACT AMENDMENTS**

2

2021 GENERAL SESSION

3

STATE OF UTAH

4

**Chief Sponsor: David G. Buxton**

5

House Sponsor: Timothy D. Hawkes

6

**LONG TITLE**

**General Description:**

This bill modifies the Open and Public Meetings Act.

**Highlighted Provisions:**

This bill:

- 12   ▶ modifies provisions relating to the convening of an electronic meeting;
- 13   ▶ requires a public body convening an electronic meeting to provide facilities at an
- 14 anchor location for the public to attend the meeting;
- 15   ▶ makes exceptions to the requirement to provide facilities at an anchor location; and
- 16   ▶ makes technical changes.

**Bill Sponsor:**



Sen. Buxton, David G.

**Floor Sponsor:**



Rep. Hawkes, Timothy D.

**Substitute Sponsor:** Sen. Buxton, David G.

**Drafting Attorney:** Robert H. Rees

**Fiscal Analyst:** Alexander R. Wilson

**Bill Tracking**

[Tracking Page](#)

**Bill Text**

[Introduced](#)

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WORLD

THE WORLD IS  
TEMPORARILY CLOSED



## Utah Code § 52-4-207(4) (2021)

- A public body that convenes and conducts an electronic meeting shall provide space and facilities at an anchor location for members of the public body to attend the open portions of the meeting.
- A public body that convenes and conducts an electronic meeting may provide means by which members of the public who are not physically present at the anchor location may attend the meeting remotely by electronic means.

# Utah Code § 52-4-207(5)(a) (2021)

- An anchor location is not necessary if it “presents a substantial risk to the health or safety of those present...” or the anchor location “has been ordered closed to the public for health or safety reasons.”
- The public notice needs to include a statement of the chair’s determination including facts upon which the determination is based.
- The public notice must include how the public can attend remotely by electronic means

# Utah Code § 52-4-207(5)(b) (2021)

- (5)(b) applies to “during the course of the electronic meeting, the chair...”
- Determines that conducting an electronic meeting with an anchor location presents a substantial risk to the health and safety of those present at the anchor location.
- Announces the determination and states a summary of the facts upon which the determination was made.



# The Grand Take away is...?

- Legislature recognizes the need to have public meetings but also the need to keep the public safe.
- Notice and easy access to electronic meetings are essential.
- Anchor location is necessary unless there is a substantial risk to the health or safety of those present.

# 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

## Closed Meetings (Cont.)

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

# 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
  - 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 (except as allowed specifically by statute)**





## Enrolled

S.B. 72

**Bill Sponsor:**



Sen. Fillmore, Lincoln

**Floor Sponsor:**



Rep. Pulsipher, Susan

**Drafting Attorney:** Robert H. Rees

**Fiscal Analyst:** Emily Willis

### Bill Tracking

[Tracking Page](#)

### Bill Text

[Introduced](#)

[Enrolled](#) (Currently Displayed)

### Related Documents

## OPEN AND PUBLIC MEETINGS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lincoln Fillmore**

House Sponsor: Susan Pulsipher

### LONG TITLE

#### General Description:

This bill modifies a provision relating to open and public meetings.

#### Highlighted Provisions:

This bill:

- prohibits a vote in a closed meeting, except to end the closed portion of the meeting;
- and
- provides that a motion to end the closed portion of a meeting may be approved by a majority vote.





66 (3) (a) An ordinance, resolution, rule, regulation, contract, or appointment may not be  
67 approved at a closed meeting.

68 (b) (i) A public body may not take a vote in a closed meeting, except for a vote on a  
69 motion to end the closed portion of the meeting and return to an open meeting.

70 (ii) A motion to end the closed portion of a meeting may be approved by a majority of  
71 the public body members present at the meeting.

## Utah Code § 52-4-204(3)

# What about Emergencies??



# What about Emergencies??

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

Courts probably will not look kindly on made up emergencies...

# 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.

# 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.

# Common Violations Of OPMA

- Failing to properly provide notice of a public meeting
- 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



# WHO CAN ENFORCE OPMA?

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

# The Grand Take away is...?

- The purpose of OPMA is to allow the public to know what their public officials are doing during meetings.
- The notice provisions allow the public to know beforehand what their public officials are going to do during meetings.

A photograph of the Utah State Capitol building in Salt Lake City, Utah. The building is a large, classical-style structure with a prominent central dome and a portico with columns. The sky is blue with some clouds. In the foreground, there are green lawns and several cherry blossom trees in full bloom, with pink and white flowers. A few people are sitting on the grass in the lower right. A semi-transparent white circle is overlaid on the left side of the image, containing text.

# UTAH OPEN & PUBLIC MEETINGS ACT

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- QUESTIONS?