

# Utah Open & Public Meetings Act

Utah Code Ann. §§ 52-4-101 to -305

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## Declaration of Public Policy

- The state, its agencies, and its political subdivisions exist to aid in the conduct of the peoples' business.
- And they must take their actions and conduct their deliberations openly.

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## What is a meeting?

- “Meeting” means the convening of a public body, with a quorum present, whether held in person or electronically, to discuss, receive comments from the public about, or act upon a matter over which the public body has jurisdiction or advisory power.

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## What is a quorum?

- “Quorum” means a simple majority of the membership of a public body, unless otherwise defined.

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## Notice requirements

- Notice must be:
  - Posted as a written notice at the meeting location;
  - Given to a local newspaper or local media correspondent;
  - Posted to the “Utah Public Notice Website”; and
  - Posted at least 24 hours prior to meeting, and include the date, time, and place of the meeting.

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## Notice requirements

- The agenda must include ***all action items stated with reasonable specificity*** to notify the public as to the topics to be considered at the meeting.
- A public body holding regular meetings scheduled in advance over the year shall give public notice at least once a year of its annual meeting schedule.

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## Electronic meetings

- A board may meet by phone or other electronic means allowing all participants to hear or observe communications.
- The board must adopt rules to meet electronically.
- Public notice requirements still apply.
- Public must have a means to attend or participate.

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## Records of open meetings

- Board must keep minutes *and* recordings.
- **All minutes must include:**
  - Date/time
  - Place of meeting
  - Names of all members present or absent.
- In addition, **minutes of open meetings must include:**
  - Substance of all matters proposed, discussed, or decided.
  - All names and substance of information from individuals giving testimony.
  - A record, by individual member, of each vote taken.

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## Records of open meetings

- Written draft minutes must be available to the public before final approval, and within 30 days after holding the open meeting.
- The approved written minutes will be the official record.
- Written minutes and recordings of **open meetings** are public records under GRAMA and must be released within a reasonable time.

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## Records of open meetings

- The recording of an open meeting must be made available within three business days.
- A 2017 OPMA amendment allows a public body to satisfy some written minutes requirements by maintaining a publicly available online version of the minutes that provides a link to the meeting recording (§ 52-4-203(2)(b)).

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## Closed meetings

- An open meeting can be closed for ***certain, limited purposes***.
- A meeting is open to the public unless closed under statute.
- A closed meeting may be held if:
  - a quorum is present;
  - two-thirds of the members present vote to approve closing the meeting;
  - and the meeting is an open meeting for which notice has been given.

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## Closed meetings

- § 52-4-205 lists the *only* allowable reasons to close a meeting. Some include:
  - Discussing an individual's character, professional competence, or physical, or mental health.
  - Strategy session to discuss pending or reasonably imminent litigation.
  - Discussion regarding security personnel, devices or systems.
  - Investigative proceedings regarding allegations of criminal misconduct.
  - Strategy sessions to discuss the purchase, exchange, lease or sale of real property
  - Other reasons related to the legislature and higher education.

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## Closed meetings

- During a closed meeting, a board may not:
  - Approve any ordinance, resolution, rule, regulation, contract, or appointment.
  - Take final action: ***Final votes must be open and on the record.***
- During the closed portion of the meeting, the board must make a recording and keep detailed written minutes disclosing the content of the closed portion of the meeting.
- In some circumstances, the chairperson must sign a sworn statement affirming the purpose for closing the meeting.

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## Electronic messages

- OPMA 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.
- Do not text or email during meetings!

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## OPMA violations

- The courts, the Attorney General, a county attorney, or an aggrieved member of the public can enforce OPMA.
- **A court can void any action in violation of the law.**
- The Board may have to pay court costs and attorney fees.

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## OPMA violations

- 90 days to pursue corrective action.
  - (or 30 days if the issue involves bonds, notes or debts).
- Sometimes a violation can be “cured” by discussing and taking a public vote in a subsequent meeting.
- In a suit challenging a closed meeting, a court will review the record of the closed meeting in camera.
  - If the court determines the board did not violate OPMA, it must dismiss the case without disclosing any portion of the closed meeting.
  - If the court determines the board did violate OPMA, it must publicly disclose the recording and minutes about the portion of the meeting illegally closed.

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## OPMA violations

- Common OPMA violations:
  - 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 statute.
  - Taking official or final action in a closed meeting.
  - Failing to properly provide adequate notice of a public meeting.

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## OPMA violations

- “[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 months jail and/or \$1,000.00 fine)

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