
M E M O R A N D U M

DATE: January 2, 2007
TO: City Council Members
FROM: Russell Weeks
RE: Open and Public Meetings Act Training
CC: Cindy Gust-Jenson, Rocky Fluhart, Steve Fawcett, Ed Rutan, Sam Guevara, Boyd Ferguson

Attached is an outline provided by the City Attorney's Office for the annual review of the Utah *Open and Public Meetings Act*.

Utah Law now requires that 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").

The Attorney's Office is scheduled to conduct the annual training at the City Council meeting January 4, 2007.

Open Meeting Law – Training

Statutory Obligation to Train

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”). (52-4-104)

A. Basic Principle (52-4-201(1))

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

B. Definitions (52-4-103)

1. “Public Body”

The City 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 or (b) acting upon a matter over which the body has jurisdiction or advisory power.

Chance and social “meetings” 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 of a meeting 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 a person to “call” a meeting 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 statute.’]

C. Notice of Meetings (52-4-202)

The City 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 at the principal office of the City Council; and
2. provided either to a newspaper of general circulation in Salt Lake City or to a local media correspondent.

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

The City Council is encouraged to:

1. develop and use electronic means of providing notice of its meetings;
2. provide notice to all other media agencies that make a periodic written request to receive meeting notices; and
3. post public notice of its meetings on the Internet.

The notice requirement does not apply to emergency meetings, as long as the Council gives the best notice practicable. 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 consider a topic in an open meeting that is not (a) listed under an agenda item and (b) included in the public notice.

However, a topic not listed on the agenda that is raised during an open meeting may be discussed by the Council, but no final action on that matter may be taken during that meeting. *This concept was added in 2006.* (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.

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 City Council is holding the regularly scheduled public meeting unless:

(i) the workshop or executive session is held at the location where the City 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 City Council's open meetings due to an emergency or extraordinary circumstances.

F. Closed Meetings (52-4-204, 205)

The City Council sometimes refers to closed meetings as "executive sessions." However, the 2006 amendments to the Act use the term "executive session" to refer to something other than a closed 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 in the future 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 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 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 Council approves the sale;

f. Discussion regarding deployment of security personnel, devices, or systems; and

g. Investigative proceedings regarding allegations of criminal misconduct.

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

a. A quorum must be 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)

In a change from the past, 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 council meetings as “meetings,” at least to the extent of providing public notice of the dinners. However, if those dinners are really meetings, they need to be recorded.]

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 body 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; (d) a record, by individual Council member, of votes taken; (e) the name of each person who provided testimony and the substance in brief of his or her testimony [*We believe that “testimony” is not limited to sworn testimony, but includes any statements (including “public comment”) made to the Council by persons other than Council members*]; and (f) 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.

The written minutes (not the recording) are the official record of action taken at the meeting.

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 keep 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.

H. Electronic Meetings (52-4-207)

1. Resolution, Rule, or Ordinance

The City 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.

2. Notice

The City 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 City Council must establish one or more anchor locations for the meeting, at least one of which is in the City & County Building.

The City 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 the meeting includes a public hearing, the City 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.

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 52-4-308)

Any final action taken in violation of the Act is voidable by a court. The suit must be commenced within 90 days (30 days in the case of action concerning the issuance of bonds) after the date of the action.

The Attorney General and county attorneys shall enforce the Act. At least annually, the Attorney General's Office must give notice of the City 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 City 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. 2006 Changes

1. Requirement that all open meetings be recorded.
2. Encouragement to post meeting notices on the Internet.
3. Specificity of agendas and discussion of items not on agenda.
4. Written minutes as the official record of a meeting.
5. Definition of “public body” includes only public bodies created by statute, rule, ordinance, or resolution.
6. Requirement that closed meetings be recorded (with exceptions).
7. Requirement that the public body publicly announce the location of a closed meeting.
8. Provisions about workshops and executive sessions.
9. Training requirement.
10. Requirement that Attorney General’s Office provide yearly notice of material changes to the Act.
11. Making violations of the Act a misdemeanor.
12. Requiring public body to adopt a resolution, rule, or ordinance governing electronic meetings.