

**October 22, 2009**

**Utah Open and Public Meetings Act Requirements for the Public Utilities Advisory Committee**

**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”). (Utah Code, Section 52-4-104)

**A. Basic Principle** (Section 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** (Section 52-4-103)

1. “Public Body”

The Public Utilities Advisory Committee (the “Committee”) 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 and social “meetings” are not subject to the open meeting law. However, they may not be used to circumvent the Act. (Section 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.

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

The Committee 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 Committee and (b) beginning April 1, 2008, on the Utah Public Notice Website created under Section 63F-1-701, Utah Code; and
2. provided either to a newspaper of general circulation in Salt Lake City or to a local media correspondent.

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

The Committee 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 Committee 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 Committee attempts to notify all members and a majority of the members approve holding the meeting.

**D. Agendas** (Section 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 of the topics to be considered at the meeting. Each topic must be listed under an agenda item on the agenda. (Section 52-4-202(6)(a))

2. Consideration of Matters Not On the Agenda

Generally, the Committee 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.

At the discretion of the presiding member of the Committee, 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 Committee at that time. (Section 54-2-202(6)(b))

**E. Open Meetings** (Section 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 Committee is holding the regularly scheduled public meeting unless:

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

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

The Committee may close meetings for certain purposes if they follow the procedure set forth in the Act.

### 1. Purposes of Closed Meetings (Section 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 Committee 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 (Section 52-4-204)

a. A quorum must be present.

b. Two-thirds of the Committee 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 Committee member, either for or against the motion to close the meeting.

## **G. Record of Meetings** (Sections 52-4-203, 206)

### 1. Open Meetings (Section 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.

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 members present and absent; (c) the substance of all matters proposed, discussed, or decided by the Committee which may include a summary of comments made by members; (d) a record, by individual member, of each vote taken by the Committee; (e) the name of

each person who is not a member of the Committee and who, upon recognition by the presiding member of the Committee, provided testimony or comments to the Committee; (f) the substance, in brief, of the testimony or comments provided by the public under (e); and (g) any other information that any 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 one change in 2009 related to the Open Meetings Act concerns the written minutes of the meeting. The written minutes (not the recording) are the official record of action taken at the meeting. The Committee must establish and implement procedures for the approval of the written minutes of each meeting. Either the written minutes or the recording must be retained permanently in a format that meets long-term records storage requirements.

Under GRAMA, written minutes that have been prepared but not yet approved by the Committee are public records but should be marked as “unapproved” or “awaiting approval” or something similar. Written minutes should be available to the public within a reasonable time following the meeting. The recording must be available for listening within three business days after the meeting.

## 2. Closed Meetings (Section 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 Committee 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 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** (Section 52-4-207)

The Committee may not hold an electronic meeting unless it has adopted a resolution or rule, or the City has adopted an ordinance governing the Committee's use of electronic meetings. For more information about electronic meetings, see Section 52.4.207.

**I. Disruption of Meetings** (Section 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 the Act** (Sections 52-4-302 to 52-4-305)

Any final action taken in violation of the Act is voidable by a court, if a lawsuit is commenced within 90 days (30 days in the case of action concerning the issuance of bonds) after the date of the action. 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 Committee 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 City 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 Committee.

A 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.