

# OPEN AND PUBLIC MEETINGS ACT

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“THE SUNSHINE LAW”

# Summary of the Open and Public Meetings Act

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- Goals of Sunshine Laws
- Public Policy
- When is OPMA applicable?
- Meetings
- Notice of Meetings
- Agenda
- Minutes and Recordings
- Closed Meetings
- Consequences of violating OPMA.



# GOALS OF SUNSHINE LAWS

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- Gain trust in government
- Prevent corruption
- Provide forum to discuss public issues

# DECLARATION OF PUBLIC POLICY

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- State agencies exist to aid in the conduct of the people's business.
- State agencies must:
  - (1) take their actions openly; and
  - (2) conduct their deliberations openly.

# When is OPMA applicable?

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- GENERAL ANSWER: When public bodies convene meetings.
- Definitions:
  - “Public bodies”
  - “Convening”
  - “Meeting”



# “Public body” means

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1. any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:
  - A. is created by the Utah Constitution, statute, rule, ordinance, or resolution;
  - B. consists of two or more persons;
  - C. expends, disburses, or is supported in whole or in part by tax revenue; and
  - D. is vested with the authority to make decision regarding the public’s business;or
2. any administrative, advisory, executive, or policymaking body of an association, as that term is defined in Section 53G-7-1101, that . . .

# “Meeting” means:

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- the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session, whether 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 or specified body has jurisdiction or advisory power.

## “Convening” means:

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- the calling together 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.
- “Convening” does not include the initiation of a routine conversation between members of a board of trustees of a large public transit if the members involved in the conversation do not, during the conversation, take a tentative or final vote on the matter that is the subject of the conversation.



# A meeting is not

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- a chance gathering;
- a social gathering; or
- other meetings that are specified in the statute.

# Attendance at Meetings

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- Meetings can be held by phone, computer or other electronic means.
- Notice requirements still apply.
- The public must have a means to attend or participate.
- A public body may not hold electronic meetings unless it has adopted a resolution, rule, ordinance governing the use of electronic meetings.

# Public Notice of Meetings

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- A public body must give not less than 24 hours public notice of each meeting.
- This notice must be published on the Utah Public Notice Website and other specified places.
- The notice shall include the meeting:
  - agenda
  - date;
  - time; and
  - place.



# What notice is required when there are emergencies?

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- The OPMA allows for meetings when, because of “unforeseen circumstances, it is necessary for a public body to hold an emergency meeting to consider matters of an “emergency or urgent matter” and the public body:
  - gives the best notice practicable;
  - attempts to notify all members of the public body; and
  - a majority of the members approve of the meeting.

# Agenda Requirements

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- An agenda must be included with the notice.
- The agenda, including all action items, must be stated with “reasonable specificity” to notify the public as to the topics to be considered.
- A topic raised by the public may be discussed even if not included in the agenda.
- Action cannot not be taken on a topic unless the topic is:
  - Listed under an agenda item; and
  - Included in the Notice.

# Minutes Requirements

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- Written minutes and a recording are required of all open meetings.
- Written minutes of an open meeting must include:
  - The date, time, and place of the meeting;
  - The names of the members present and absent;
  - The substance of the matters discussed or decided by the public body;
  - Record of each vote taken;
  - Name of each person who is not a member of the public body and provided testimony or comments to the public body;
  - Substance of testimony or comments provided by the public; and
  - Any other information that is a record of the proceedings that is requested by a member of the public body.



# Recording Requirements

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- Must be complete and unedited.
- Must be properly labeled and identified with the date, time, and place of meeting.

# Closed Meetings

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- OPMA permits closed meetings for:
  - 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;
  - Strategy sessions to discuss the purchase, exchange, or lease of real property;
  - Strategy sessions to discuss the sale of real property;
  - Discussion regarding deployment of security personnel, devices, or systems;
  - Investigative proceedings regarding allegations of criminal misconduct;
  - As it relates to the Utah Higher Education Savings Board, discussing fiduciary or commercial information
- Although a closed meeting is permitted for these matters, a closed meeting is not required.
- In addition, OPMA requires certain meetings to be closed

# Closed Meeting Requirements

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- The public body must first hold a public meeting with proper notice before entering into the closed meeting.
- A quorum must be present.
- 2/3 of the members must vote to close meeting (majority if the meeting is required to be closed).
- A complete and unedited recording of the closed meeting is required, but written minutes are not required.
- The public body must publicly disclose
  - The vote by name of each member;
  - The reasons for holding the closed meeting; and
  - The location of the closed meeting.



# What is forbidden during a closed meeting?

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- A public body must not:
  - Approve any ordinance, resolution, rule, regulation, contract, or appointment.
  - Interview a person to fill an elected position.
  - Take final action, except in case of judicial or quasi-judicial decision.
  - Generally, final votes and decisions must be made during open meeting.

# Consequences of violating OPMA

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- A member of a public body who intentionally violates or intentionally abets or advises a violation of the closed meeting provisions is guilty of a Class B misdemeanor, punishable by a fine not exceeding \$2,500 and confinement of not more than 6 months in jail.
- A court may void any action taken in violation of OPMA. A violation can be “cured” by discussing the voided action and taking a public vote in a subsequent meeting.
- May have to pay court costs and attorney fees.

# Common Violations of OPMA

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- Holding a closed meeting without first voting in an open meeting to close the meeting.
- Failing to provide the required disclosures when going into a closed meeting.
- Conducting a closed meeting for reason other than those permitted by OPMA.
- Taking action in a closed meeting.
- Failing to provide proper notice.
- Failing to describe topics on agenda with reasonable specificity.



# Who can enforce OPMA?

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- County Attorney
- Attorney General
- Private Citizen

If there is a violation of OPMA, how long does a party have to bring an action?

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- 90 days after discovery of the violation.
- 30 days if it involves bonds, notes, or debt.

# Utah State Auditor OPMA Training

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- <https://resources.auditor.utah.gov/s/article/Training-All>