

Closed Meetings

A public body may “close” an open and public meeting under limited circumstances to discuss:

1. The character, professional competence, or physical or mental health of an individual;
2. To strategize with respect to collective bargaining;
3. To discuss pending or reasonably imminent litigation;
4. To discuss land sale or acquisition; or
5. To deliberate as an appeal authority.

Closed meeting are highly regulated.

Checklist

Conducting a Closed Meeting

- _____ 1. Determine if the entity holding a meeting is a “public body” which consists of two or more persons who:
- _____ a. Are part of a body created by rule, ordinance, or resolution; and
 - _____ b. Expend, disburse, or is supported in whole or in part by tax revenue; and
 - _____ c. Are vested with the authority to make decisions regarding the public’s business.
- _____ 2. Determine if the entity is holding a “public meeting.” A public meeting is in the presence of a quorum or majority of the members of a public body who meet for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which they have jurisdiction. (A public meeting is not a chance meeting or a social gathering.)
- _____ 3. Prepare an agenda with reasonable specificity of the topics to be considered. List each topic as a separate agenda item. Indicate on the agenda that the public body may also conduct a closed meeting and generally state the topic of the closed meeting, but do not provide a statement that violates the confidential purpose of the closed meeting. The location of the closed meeting must be announced.
- _____ 4. Place a public notice of the meeting 24 hours in advance, including the date, time, place, and agenda of the meeting:

- _____ a. At the principal office of the public body, or, if there is no principal office, at the building where the meeting is to be held; and
 - _____ b. By providing notice to at least one newspaper of general circulation within the jurisdiction of the public body or a local media correspondent; and
 - _____ c. For public bodies associated with a municipality with an annual budget of more than \$1 million, on the Utah Public Meeting Notice website.
- _____ 5. For all but personnel discussions, make an audio or video recording of the closed meeting from beginning to end.
- _____ 6. The presiding officer should make a statement at the beginning of the meeting identifying the date, time, and place of the meeting for the tape.
- _____ 7. Allow any member of the public to also make an audio or video recording of the open portion of the meeting, so long as the recording does not interfere with the conduct of the meeting.
- _____ 8. During the open meeting, a member of the public body must make a motion to close the public meeting:
- _____ a. The motion should state the specific justification for the closed meeting by citing one of the purposes provided for in statute. A closed meeting is only justified to discuss:
 - i. The character, professional competence, or physical or mental health of an individual;
 - ii. Strategy sessions to discuss collective bargaining;
 - iii. Strategy sessions to discuss pending or reasonably imminent litigation;
 - iv. Strategy sessions to discuss the purchase, exchange, or lease of real property if public discussion of the transaction would:
 - A. Disclose the appraisal or estimated value of the property under consideration; or
 - B. Prevent the public body from completing the transaction on the best possible terms;
 - v. Strategy sessions to discuss the sale of real property if public discussion of the transaction would:
 - A. Disclose the appraisal or estimated value of the property under consideration; or

B. Prevent the public body from completing the transaction on the best possible terms

- vi. Discussion regarding deployment of security personnel, devices, or systems;
- vii. Investigative proceedings regarding allegations of criminal misconduct; and
- viii. Discussion by a county legislative body of commercial information as defined in 59-1-404.

_____ b. The presiding officer must then ask for a vote to approve the holding of a closed meeting.

_____ c. Two-thirds of the public body must vote to approve closing the meeting or it cannot be closed.

_____ d. The vote of each person for or against holding the closed meeting is to be noted in the minutes of the open meeting.

_____ 9. For all but personnel discussions, make an unedited audio or video recording of the entire meeting, from beginning to end.

_____ a. The date, time, and place of the meeting;

_____ b. The names of members present and absent; and

_____ c. The names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of the closed meeting.

_____ d. Written minutes of a closed meeting are optional.

_____ 10. During the closed meeting:

_____ a. Only discuss matters that are allowed as topics of a closed meeting; and

_____ b. No official vote taking any action may be conducted in a closed meeting. No ordinance, resolution, rule, regulation, contract, or appointment can be officially approved in a closed meeting.

_____ 11. At the end of the closed meeting, adjourn the public body, or go back into a public meeting and finish the public meeting in the normal manner. If an official action is to be taken, adjourn the closed meeting and reconvene in the public meeting before taking a motion and conducting a vote on the action.

_____ 12. Prepare written minutes of the open portion of the meeting that 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 in the public portion of the meeting, which may include a summary of comments made by members of the public body;
 - _____ d. A record, by individual member, of each vote taken;
 - _____ e. The name of each person recognized by the presiding member of the public body to provide testimony or comments;
 - _____ f. The substance, in brief, of the testimony or comments provided by the public; and
 - _____ g. Any other information that any member requests be entered in the minutes or recording.
- _____ 13. Make the recording and minutes of the open meeting available to the public within a reasonable time after the meeting.
- _____ 14. Preserve the recording of the closed meeting, and minutes (if prepared) as a protected record under the GRAMA statute. The recording and minutes (if prepared) are only to be disposed of in conformity with the approved records retention schedule adopted by the municipality and approved by the appropriate state authorities. The recording and minutes (if prepared) are available to the court if litigation is filed and access to the record of the closed meeting is requested.

Notes and Practice Tips

Closed Meeting – Purposes. Purposes of a closed meeting:

1. **Individuals.** Discussion of the character, professional competence, or physical or mental health of an individual. 52-4-205(1)(a) But only if the person presiding signs a sworn statement affirming that the sole purpose for closing the meeting was for this purpose. No recording need be made of a closed meeting held for this purpose; 52-4-206(6)
2. **Collective Bargaining.** Strategy sessions to discuss collective bargaining; 52-4-205(1)(b)
3. **Litigation.** Strategy sessions to discuss pending or reasonably imminent litigation; 52-4-205(1)(c)
4. **Purchase of Property.** Strategy sessions to discuss the purchase, exchange, or lease of real property, but only if public discussion would:
 - a. Disclose the appraisal or estimated value of the property under consideration;
 - or

- b. Prevent the public body from completing the transaction on the best possible terms;
52-4-205(1)(d)
- 5. **Sale of Property.** Strategy sessions to discuss the sale of real property if public discussion of the transaction would:
 - a. Disclose the appraisal or estimated value of the property under consideration;
or
 - b. Prevent the public body from completing the transaction on the best possible terms; and
 - c. The public body previously gave public notice that the property would be offered for sale; and
 - d. The terms of the sale are publicly disclosed before the public body approves the sale;
52-4-205(1)(e)
- 6. **Security.** Discussion regarding deployment of security personnel, devices or systems;
52-4-205(1)(f), but only if the person presiding signs a sworn statement affirming that the sole purpose for closing the meeting was for this purpose. No recording need be made of a closed meeting held for this purpose; 52-4-206(6)
- 7. **Criminality.** Investigative proceedings regarding allegations of criminal misconduct;
52-4-205(1)(g)
- 8. **Quasi-Judicial Deliberations.** A public body acting in a quasi-judicial manner may deliberate behind closed doors. In the land use context, this would apply to an appeal authority, which acts in a quasi-judicial manner 10-9a-701(3)(a)(i), which therefore may exclude the public from its deliberations much as a jury would when making a decision about the facts or law of a given matter. Other public bodies acting in a judicial manner also qualify for this exception to the Open and Public Meetings Act. It is important to note, however, that the information gathering phase of a quasi-judicial process must take place in an open meeting. *Dairy Product Services v. Wellsville*, 2000 UT 81, par 60