

# South Weber City

## Open & Public Meetings Act

### Robert's Rules

### Ethics

*Presented by:*

Jayne Blakesley  
HAYES GODFREY BELL, P.C.  
2118 East 3900 South, Suite 300  
Holladay, UT 84124  
(801) 272-8998  
email: [jblakesley@hgblaw.net](mailto:jblakesley@hgblaw.net)



HAYES  
GODFREY  
BELL  
LAWYERS

# Utah Open and Public Meetings Act

Utah Code Ann. § 52-4-101, *et. seq*

**“conducts its deliberations openly.”**

# *All meetings are open unless lawfully closed*

## **Meetings**

Utah Code Ann. § 52-4-201

- All meetings open to the public unless closed
- Includes “work meetings” and “executive sessions”

## **Quorum**

Utah Code Ann. § 52-4-103(11)

- Quorum in Vineyard = 3
- Members present in person or by electronic telecommunications

# *A public meeting requires:*

## **Public Notice**

Utah Code Ann. § 52-4-202

- 24 hours notice: agenda; date; time & place
  - Exception: emergencies
- Agenda: “reasonable specificity of topics”
- Topic raised by the public – discretion of chair
- Notice: post at principal office; Utah Public Notice Website; and to newspaper or local media correspondent. Other electronic means encouraged.
- Annual notice of scheduled meetings

## **Orderly Conduct**

Utah Code Ann. § 52-4-301

- Disruption of meeting: may remove person if “orderly conduct is seriously compromised”

# ***Electronic Meetings Allowed***

## **Electronic Meeting**

Utah Code Ann. § 52-4-207

- Prior formal authorization of the City is required
- Public notice required
- Anchor location – offices
- Facilities so all can attend, monitor, participate

# *Minutes and Recording Required of All Meetings*

## **Written Minutes Required**

Utah Code Ann. § 52-4-203(1)

## **Written Minutes Include:**

Utah Code Ann. § 52-4-203(2)

- Written minutes and a recording shall be kept of every meeting
- Date, Time and Place
- Names of members present and absent
- The “substance” of all matters proposed, discussed or decided
- Record (by person) of votes – Roll Call vote for Ordinances, Resolutions, and matters where liability is incurred.
- Name of each person providing comments & the substance of comments received
- Any other information from meeting that a member requests be included
- Pending minutes – reasonable time
- Approved minutes – 3 business days after approval → official record
- Permanently retained

# *Minutes and Recording Required of All Meetings*

## **Recording**

Utah Code Ann. § 52-4-203(3)

- **“COMPLETE UNEDITED RECORD”** of all open portions – from beginning to end
- Properly labeled: date, time & place
- Available within 3 business days of meeting
- **PERMANENTLY RETAINED**

# ***Closed Meetings: Purposes and Record***

## **Closed Meeting**

Utah Code Ann. § 52-4-204

- Quorum + 2/3 vote
- Must meet subject matter requirements §205
- Publicly announced and record: the reason for closed meeting; location; and each member's vote for or against the closed meeting

## **Closed Meeting – Purpose**

Utah Code Ann. § 52-4-205

- Discuss individual's character, professional competence, or physical or mental health
- Strategy session – litigation
- Strategy session – real property (value, best possible terms); Sale = prior notice; terms disclosed before final
- Deployment security measures
- Investigative proceedings – criminal misconduct
- Deliberations; procurement evaluation committee; protest; appeals
- Procurement: trade secrets; misc.



# ***Closed Meetings: Purposes and Record***

## **Prohibitions**

Utah Code Ann. § 52-4-205(3)

- Interview – elected position; discuss filling interim or temporary vacancy

## **Closed Meeting – Record**

Utah Code Ann. § 52-4-206

- Recording required: beginning to end; date, time, place; names present and absent & names of others who attend
- Minute allowed (if taken, details above)
- Permanently retained

Exceptions: Recording/minutes not required: character, competence, health; security measures. Presiding officer - affidavit

# *Emergency Meeting*

## **Emergency Meeting**

Utah Code Ann. § 52-4-202(5)

- “Emergency” is not defined
- Attempt to notify all members
- Best notice practicable
- Majority members approve of the meeting

## *Other issues . . .*

### **Chance Meeting – Social Gathering**

§ 52-4-208

- Act does not apply
- Don't conduct any City business

### **Criminal Penalty for Violation**

- Class B misdemeanor: 6 months jail; \$1,000 fine

### **Electronic Messaging?**

Utah Code Ann. § 52-4-210

- Text messages? Emails?
- Purposes of act
- Not restricted when meeting not convened
- Interplay with the Government Records Access and Management Act

# Rules of Order

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# Basic Parliamentary Rules

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- 1) The meeting is governed by the agenda and the agenda constitutes the agreed-upon roadmap for the meeting.
- 2) Any matter that requires a decision (must be on agenda) shall be brought by motion.
- 3) One question at a time and one speaker at a time.
- 4) The chairperson may use General Consent (aka Unanimous Consent) with all motions except those where the votes are used for purposes of the meeting minutes and require a roll call of the council.
- 5) There are only three basic forms of motions allowed: initial motions, motions to amend, and substitute motions.
- 6) There should be no more than three motions on the floor at the same time.
- 7) The debate/discussion can continue as long as members wish to discuss an item, subject to the chairperson determining it is time to move on and take action by using General Consent to limit debate or by a proper motion by a council member to limit the debate

# Basic Parliamentary Rules (cont'd)

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- 8) Three yes votes are required to pass any item, with certain items requiring more than three votes (e.g., 2/3 for closed session).
- 9) A motion to reconsider any item requires a majority vote to pass (NOTE: there are very specific rules for a motion to reconsider).
- 10) The chairperson and members shall adhere to bylaws and code of conduct.

# Types of motions

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- **Main motion** – Introduce a new item
- **Subsidiary Motion** (motions to amend or substitute motions) – Change or affect how to handle a main motion (vote on this before main motion)
- **Incidental Motion** – Questions procedure of other motions (must consider before the main motion)
- **Motion to Table** – Kills a motion
- **Motion to Continue/Postpone** – Delays a vote (can reopen debate on the main motion).

# Every motion has (at least) six steps

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- 1) **Motion** – A member rises or raises a hand to signal the chairperson
- 2) **Second** – Another member seconds the motion
- 3) **Restate motion** – the chairperson restates the motion
- 4) **Debate/Discussion** – the members debate/discuss the motion
- 5) **Vote** – the chairperson restates the motion, and then first asks for affirmative votes, and then negative votes
- 6) **Announce the vote** – The chairperson announces the result of the vote and any instructions



# How the vote is taken

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- **Role call vote:**
  - Ordinances;
  - Resolutions; or
  - Any action which would create a liability against the City
- **Simple “yes” or “no”:**
  - All other matters

# Points of things

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- **Point of order** – Draws attention to breach of rules, improper procedure, etc.
- **Point of information** – A member may need to bring up an additional point or additional information so that the other members can make fully informed votes
- **Point of inquiry** – A member may ask for clarification to make better voting decisions
- **Point of personal privilege** – A member may address the physical comfort of the setting, such as temperature or noise

# Public Hearings

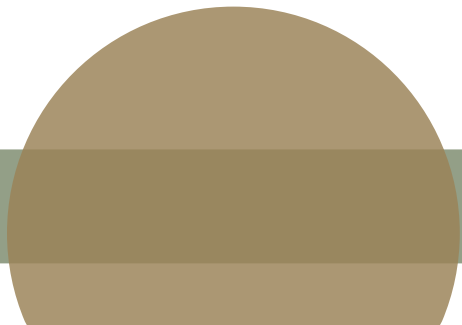
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- Residents of the City have a right to be heard.
- Members of the public body are not required to respond to questions or comments.
- Public hearings are opened by motion and vote.
- On land use decisions, the applicant has a right to respond to public comment with information and argument.
- Public comment may be limited to a reasonable amount of time (e.g., a few minutes per person/topic)
- Public hearings are closed by motion and vote.
- No member of the public shall be heard until recognized by the chairperson.
- Speakers must state their name and address for the record.
- Any resident requesting to speak shall limit their comments to matters of fact regarding the issue of concern.
- Personal attacks made publicly toward any person, official, or employee are not allowed and are grounds for removal.

# Ethics

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If you ask, “where is the line?”,  
you are asking the wrong  
question.





# Municipal Officers & Employees Ethics Act

Establishes the MINIMUM standards

Sets up a disclosure system for conflicts of interest

Describes crimes you can now commit as a public officer or employee

# When is disclosure required?

## Written

Regulated Business

Doing Business w/ City

Personal Interest or Investment

Assist/Advise on City Transaction\*

## Oral

Any of items on left

Open Meeting

BEFORE Discussion on Topic

\*Disclosure must occur 10 days before agreement w/  
City or 10 days before receipt of compensation  
(whichever is earlier)

# ● What crimes are available?

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**INFORMATION**: Disclose or improperly use private, controlled, or protected information

**PRIVILEGES**: Use or attempt to use office for economic gain or to secure special privileges

**GIFTS**: Knowingly receive, accept, take, seek, or solicit a gift of substantial value or a substantial economic benefit tantamount to a gift.

**ACCESS/ADVICE**: Be paid to help someone w/ City business (w/o disclosure)



# Questions?

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**SOUTH WEBER CITY**

# LAND USE TRAINING

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JAYME BLAKESLEY  
HAYES GODFREY BELL, P.C.  
2118 EAST 3900 SOUTH, SUITE 300  
HOLLADAY, UT 84124  
(801) 272-8998  
EMAIL: [JBLAKESLEY@HGBLAW.NET](mailto:JBLAKESLEY@HGBLAW.NET)



HAYES  
GODFREY  
BELL  
LAWYERS

# OBJECTIVES

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- Understand the legal framework for making land use decisions in the City
- Identify the powers and duties of the City Council, Planning Commission, and Staff for making land use decisions
- Know how to avoid illegal, arbitrary, or capricious decisions by establishing a thorough record for each and every land use decision
- Consider the best framework for making, applying, and enforcing land use decisions

# State V. Hutchinson, 624 P.2d 1116 (1980)

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- “... When the State has granted general welfare power to local governments, those governments have independent authority apart from, and in addition to, specific grants of authority to pass ordinances which are reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety, health, morals, and welfare. ... **And the courts will not interfere with the legislative choice of the means selected unless it is arbitrary, or is directly prohibited by, or is inconsistent with the policy of, the state or federal laws or the constitution of this State or of the United States.”**

# Bradley v. Payson City Corp., 70 P.2d 47 (2003)

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- Municipal land use decisions should be upheld unless ... arbitrary and capricious or illegal.
- The determination of whether a particular land use decision is arbitrary and capricious has traditionally depended on whether the decision involves the exercise of legislative, administrative, or quasi-judicial powers.
- When a municipality makes a land use decision as a function of its **legislative** powers, we have held that such a decision is not arbitrary and capricious so long as the grounds for the decision are “**reasonably debatable.**”
- When a land use decision is made as an exercise of **administrative or quasi-judicial** powers, however, we have held that such decisions are not arbitrary and capricious if they are supported by “**substantial evidence.**”

# LAND USE REGULATION v. LAND USE DECISION

Utah Code Ann. § 10-9a-103 (32)

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- (32) **"Land use regulation":**
  - (a) means a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land;
  - (b) includes the adoption or amendment of a zoning map or the text of the zoning code; and
  - (c) does not include:
    - (i) a land use decision of the legislative body acting as the land use authority, even if the decision is expressed in a resolution or ordinance; or
    - (ii) a temporary revision to an engineering specification that does not materially:
      - (A) increase a land use applicant's cost of development compared to the existing specification; or
      - (B) impact a land use applicant's use of land.

# LAND USE REGULATION v. LAND USE DECISION

Utah Code Ann. § 10-9a-103 (30)

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- (30) **"Land use decision"** means an administrative decision of a land use authority or appeal authority regarding:
  - (a) a land use permit;
  - (b) a land use application; or
  - (c) the enforcement of a land use regulation, land use permit, or development agreement.

# REGULATION-DECISION / APPEAL STANDARDS:

## UTAH CODE ANN. §10-9A-801

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(3)

(a) A court shall:

- (i) presume that a land use regulation properly enacted under the authority of this chapter is valid; and
- (ii) determine only whether:

(A) the land use regulation is expressly preempted by, or was enacted contrary to, state or federal law; and

(B) it is reasonably debatable that the land use regulation is consistent with this chapter.

(b) A court shall:

- (i) presume that a final decision of a land use authority or an appeal authority is valid; and
- (ii) uphold the decision unless the decision is:

(A) arbitrary and capricious; or

(B) illegal.

(c)

(i) A decision is arbitrary and capricious if the decision is not supported by substantial evidence in the record.

(ii) A decision is illegal if the decision is:

(A) based on an incorrect interpretation of a land use regulation; or

(B) contrary to law.



# STATE LAW – LAND USE DEVELOPMENT AND MANAGEMENT ACT (“LUDMA”)

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- The City is a political subdivision of the State of Utah
- All land use decisions in the City must comply with LUDMA

# WHAT DOES LUDMA DO?

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## AUTHORIZES

- The City may adopt its own land use standards so long as they are consistent with federal and state law

## MANDATES

- Creation of a Planning Commission
- Establishment of a Land Use & Appeal Authorities
- Adoption of a General Plan & a process for considering land use applications

# LUDMA – GENERAL THEMES

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- Respect for private property rights
- Cities may regulate private property
- Once written and duly established, land use regulations are binding
- Land use ordinances must be plainly written to be enforceable
- Process matters
- Tie goes to the applicant/property owner

# LUDMA – ROLES & RESPONSIBILITIES

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LEGISLATIVE  
BODY

LAND USE  
AUTHORITY

APPEAL  
AUTHORITY

# LEGISLATIVE BODY (CITY COUNCIL)

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- Only a Legislative Body may enact a land use regulation
- Shall adopt a land use regulation to create or amend a zoning district and designate general uses allowed in each zoning district
- May establish or modify other restrictions or requirements, including the configuration or modification of uses or density, through a land use decision that applies certain criteria or policy elements
- Shall consider (but may adopt, reject, or revise) each proposed land use regulation that the planning commission recommends
- May establish a land use ordinance that includes conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

# LAND USE AUTHORITY

## (CITY COUNCIL, PLANNING COMMISSION, OR STAFF)

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- Shall apply the plain language of land use regulations
- In the absence of a “plain” restriction, shall interpret and apply the land use regulation to favor the land use application.
- Shall approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

# APPEAL AUTHORITY

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- Hears and decides requests for variances and appeals from decisions applying the land use ordinances/fees
- May not entertain an appeal of a matter in which the Appeal Authority, or any participating member, had first acted as the Land Use Authority
- May be an individual or a multi-person board, body, or panel

# MUNICIPAL LAND USE ACTIONS

	LEGISLATIVE	ADMINISTRATIVE	QUASI-JUDICIAL
<b>CHARACTERISTICS</b>	<ul style="list-style-type: none"> <li>- Promulgation of laws of general applicability</li> <li>- Based on the weighing of broad, competing policy considerations</li> <li>- Subject to voter referendum</li> </ul>	<ul style="list-style-type: none"> <li>- Applying the law to particular individuals or groups based on individual facts and circumstances</li> <li>- Decision is bound by the law and cannot be based on public opinion</li> </ul>	<ul style="list-style-type: none"> <li>- Defers to established law and Legislative/Land Use Authority</li> <li>- Review limited to error, illegality, or abuse of authority</li> </ul>
<b>RESPONSIBLE BODY</b>	<b>City Council or General Electorate</b>	<b>City Council, Planning Commission, or Staff</b>	<b>Appeal Authority or Court</b>
<b>EXAMPLES</b>	<ul style="list-style-type: none"> <li>- Zoning Ordinances (including a site-specific zoning ordinance)</li> <li>- General Plan</li> <li>- Rezones</li> <li>- Annexation</li> </ul>	<ul style="list-style-type: none"> <li>- Conditional Uses</li> <li>- Site Plans</li> <li>- Development Agreements</li> <li>- Subdivisions</li> </ul>	<ul style="list-style-type: none"> <li>- Variance</li> <li>- Appeal</li> <li>- Judicial Review</li> </ul>



# LIMITATIONS ON LAND USE DECISIONS/REGUALTIONS

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- Only a legislative body may amend the number, shape, boundaries, area, or general uses of any zoning district; any regulation of or within the zoning district; or any other provision of a land use regulation
- A legislative body may not make any amendments to a zoning district unless it first submits the amendment to the planning commission for the planning commission's recommendation

# LAND USE ACTIONS

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## APPEAL

- The City establishes the standard of review (“de novo” or “on the record”)
- Applicant has the burden of proving that the Land Use Authority erred
- To be overturned, the decision must have been illegal, or arbitrary and capricious

## VARIANCE

- Any person or entity with an interest in a parcel of property may apply to the Appeal Authority for a variance
- The Appeal Authority may grant a variance only if all five of the statutory criteria are met

# JUDICIAL REVIEW

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- A party may not appeal for judicial review unless it has exhausted all administrative remedies
- Petition for review may come from a land use applicant or an adversely affected party



# JUDICIAL REVIEW

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## VALIDITY OF THE ORDINANCE

- A court shall presume that a properly enacted land use regulation is valid
- A challenge will hinge on whether the regulation is expressly preempted by, or was enacted contrary to, state or federal law

## APPLICATION OF THE ORDINANCE

- A court shall presume that a final decision of a Land Use Authority or an Appeal Authority is valid
- It will uphold the decision unless it is found to be (a) arbitrary and capricious, or (b) illegal
- A decision is arbitrary and capricious if it is not supported by substantial evidence in the record of the proceeding

# JUDICIAL REVIEW OF LAND USE DECISIONS: ARBITRARY & CAPRICIOUS

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- A decision is arbitrary and capricious if it is not supported by substantial evidence found in the record of the proceeding

# BEST PRACTICES

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- Understand the nature of the decision (administrative/legislative/quasi-judicial)
- Know your role and responsibility (legislative body/land use authority/appeal authority)
- Follow procedural requirements exactly
- Document your decision in writing
- State the reasons for your choices
- For legislative decisions, consider public hearings as opportunities to learn
- For administrative decisions, know the law and apply it exactly
- Delegate whenever reasonable
- If you are delegating authority, give clear directions

# PRACTICAL PITFALLS

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- “that’s outside the scope of our review tonight”
- Site visits
- Hi, I’m the developer of the site that’s on the agenda tomorrow night. Can we talk for second?
- I get that this meets the ordinance standard, but I really prefer...
- “I’ve had so many people from this neighborhood call and talk to me about this”
- Text communication during a meeting
- Pre-meeting commitments

**QUESTIONS?**

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