

**5 GCA GOVERNMENT OPERATIONS
CH. 8 OPEN GOVERNMENT LAW**

**CHAPTER 8
OPEN GOVERNMENT LAW**

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§ 8101. Citation.

This Chapter may be cited as the *Open Government Law of Guam*.

SOURCE: GC § 3225 added by P.L. 13-35.

A.G. OPINION 77-47: The Open Government Law applies to the elected school board.

§ 8102. Policy.

The Legislature declares it is the policy of this Territory that the formation of public policy and decisions is public and shall not be conducted in secret. The people of Guam do not yield their individual rights to the public agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

SOURCE: GC § 3226 added by P.L. 13-35.

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§ 8103. Open Meetings.

(a) Every meeting of a public agency *shall* be open and public, and any person *shall* be permitted to attend any public agency meeting, *except* as otherwise provided in this Chapter. A member of the public *shall not* be required, as a condition to attendance at a meeting of a public agency, to register his name and other information, to complete a questionnaire or otherwise to fulfill any condition precedent to his attendance.

(b) This Chapter does *not* require that a person who is admitted to a meeting of a public agency shall, because of his mere presence, be accorded an opportunity to participate in such a meeting. Each public agency retains the right to reserve areas for the public, and to exclude the public from any area necessary for the orderly conduct of its business.

(c) *Except* for executive sessions and other meetings expressly authorized by public law to be closed, *no* board, commission or public officer of the government of Guam may prevent or deny the recording (audio and/or video) of any public meeting.

SOURCE: GC § 3227 added by P.L. 13-35. Amended by P.L. 31-052:1 (May 23, 2011).

§ 8104. Definitions.

(a) (1) *Public agency* includes any board, commission or comparable unit of government, any of whose members are elected, appointed by *I Maga'lahaen Guåhan* or appointed by *I Liheslatura*; any non-profit corporation created by one (1) or more public agencies or *I Liheslatura*, and whose board of directors is appointed by such public agencies or by *I Maga'lahaen Guåhan* or *I Liheslatura*, and which is formed to acquire, construct, reconstruct, maintain or operate any public work project, or any board, commission, committee or other body on which officers of a public agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation.

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(2) *Public agency* also includes any advisory commission, advisory committee or advisory body of a public agency, created by law, resolution or any similar formal action of a public agency.

(3) The *Legislature* is a *public agency* when it is holding a daily session but meetings of political caucuses composed of members of the Legislature are not required to be conducted in public.

(4) A *Committee of a Legislature* is a *public agency* when it is holding a hearing but committee meetings other than hearings are not required to be conducted in public.

(5)(i) *Public Notice*, as used in this Chapter, means a publication by newspaper of general circulation or by radio or television which is reasonably calculated to provide notice of the facts it announces to the public at large.

(ii) As used in this item, *newspaper of general circulation* means a newspaper which is printed and distributed not less than once a week, at regular intervals, throughout the territory of Guam, which has a paid circulation and holds a valid second class mailing permit from the United States Post Office, and which contains news, articles of opinion, features, and other matters of current interest published for public dissemination.

(b) *Meeting* means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. Meeting does not include any on-site inspection of any project or program.

(c) *Action* taken means a collective decision made by a majority of the members of a public agency, a collective commitment or promise by a majority of the members of a public agency to make a positive or a negative decision, or an actual vote by a majority of the members of a public agency when sitting as a body or entity, upon a motion, proposal, resolution or order.

SOURCE: GC § 3228 added by P.L. 13-35; sub-item (a)(5) added by P.L. 15-86:1. Sub-item (a)(1) amended by P.L. 27-93:1.

A.G. OPINION GHPDA 92-1244: Although the foregoing [subsection c] is merely a definition and not substantive law, it seems unlikely that the Legislature would allow circumvention of the Open Government Law by not addressing action

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taken by less than a majority. Therefore, it is our conclusion that the Legislature intended that action taken by boards be by a majority of the body.

CROSS-REFERENCES: P.L. 27-18:2 added the following to the coverage of this Chapter:

Notwithstanding any other provision of law, the Guam Economic Development and Commerce Authority shall be subject to the Freedom of Information Law and the Sunshine Information Act of 1999, 5 GCA Chapter 10, and the Open Government Law, 5 GCA Chapter 8.

§ 8105. Exception.

A chance meeting of two or more members of a public agency shall not be considered a public meeting. No chance meeting, informal assemblage or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this Chapter.

SOURCE: GC § 3229 added by P.L. 13-35.

§ 8106. Regular Meetings.

A public agency shall provide by appropriate administrative action rules to govern the conduct of its business. Such rules shall provide for the time for holding an agency's regular meetings. If at any time a regular meeting falls on a holiday, such regular meeting shall be held on the next business day unless continued until some other publicly announced date by action of the agency. If, by reason of an emergency, it shall be unsafe to meet at the time designated, the meetings may be held for the duration of the emergency at such other time as is designated by the presiding officer of the public agency.

SOURCE: GC § 3230 added by P.L. 13-35.

§ 8107. Notices:

(a) Notice of Regular Meetings. Any public agency which holds a meeting required by statute, regulation or resolution, shall give five (5) working days public notice, and a second public notice at least forty-eight (48) hours prior to the start of the meeting. The public agency must comply with the Title II of the Americans with Disabilities Act ('ADA') requirements for effective communication for people with disabilities and include information in the notice that individuals requiring special accommodations, auxiliary aids or services shall contact and submit their request to the designated agency or department representative or ADA

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Coordinator. The public agency shall make available the name, office address and telephone number, including Telecommunications Device for the Deaf ('TDD'), of the designated ADA Coordinator.

(b) Notice of Special Meetings. Any public agency which holds a meeting not previously scheduled by statute, regulation or resolution, or for which notice is not already provided by law, shall give five (5) working days public notice of such meeting, and a second notice at least forty-eight (48) hours, prior to the start of such meeting as required by this Chapter. The public agency must comply with the Title II of the ADA requirements for effective communication for people with disabilities and include information in the notice that individuals requiring special accommodations, auxiliary aids or services shall contact and submit their request to the designated agency or department representative or ADA Coordinator. The public agency shall make available the name, office address and telephone number, including TDD, of the designated ADA Coordinator.

(c) The notice requirements of this Chapter are in addition to and not in substitution of any other notice required by law.

SOURCE: GC § 3231 added by P.L. 13-35. Subsections (a) and (b) amended by P.L. 24-109:1.

A.G. OPINION 78-2: Public notice of any time, place and agenda of any special meeting must be given by delivery of such notice to the news media 24-hours before the beginning of the meeting. Emergencies are exempted from these requirements.

A.G. OPINION DLM 93-1724: The public notice of the October 28 meeting, which showed an agenda item of a "status report" on a conditional use application for the Bubulao Golf Course Project adequate notice so as to allow approval of the application by the Territorial Land Use Commission at that meeting, was not adequate notice and therefore the action was void.

§ 8108. Special Meeting.

A special meeting may be called at any time by a public agency, by delivering personally, or by mail, written notice to each member of a public agency. Notice shall also be given to each newspaper of general circulation and broadcasting station which airs a regular local news program within Guam. Such notice must be delivered personally or by mail at least five (5) working days, and a second public notice at least forty-eight (48) hours, before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special

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meeting and the business to be transacted. No other business shall be considered at such meetings by the public agency. The five (5) days notice and the forty-eight (48) hours notice may be waived in the event of an emergency certified to in writing by a public agency. A public agency may also consider all necessary business in the event of an emergency. This Section shall not require a public agency to give notice of its meetings by paid advertisements in any newspaper or over any broadcasting station. Written notice may be dispensed with as to any member who at, prior to or subsequent to the time the meeting convenes, files with the clerk or secretary of the public agency a written waiver of notice. Such written notice may be dispensed with as to any member who is actually present at a meeting at the time it convenes.

SOURCE: GC § 3232 added by P.L. 13-35. Amended by P.L. 24-109:2.

§ 8109. Adjournments.

A public agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the public agency may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in § 8108 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within twenty-four (24) hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this Section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held it shall be held at the hour specified for regular meetings.

SOURCE: GC § 3233 added by P.L. 13-35.

§ 8110. Adjournment: Same.

Any hearing being held or noticed or ordered to be held by a public agency at any meeting may by order or notice of continuance be continued or recontinued by any subsequent meeting of the public agency in the same manner and to the same extent set forth in § 8109 for

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the adjournment of meetings; provided, that if the hearing is continued to a time less than twenty-four (24) hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

SOURCE: GC § 3234 added by P.L. 13-35.

§ 8111. Executive Sessions.

(a) No public agency is prohibited because of this Chapter from holding executive sessions with the Attorney General, Chief of Police or the respective designated representatives of each on a matter which poses a threat to the public health, safety or welfare or from holding executive sessions during a regular or special meeting to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee by another public officer, person or employee unless such officer or employee requests a public hearing. Under no circumstances, however, shall a public agency hold an executive or closed meeting to discuss salaries, salary levels or salary adjustments of any employee or officer. All such discussions or decisions must be held in a public meeting and minutes shall be kept and opened to the public. A public agency may exclude from any public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the public agency, but may not exclude a party, complainant or the subject of an adverse action.

(b) Notwithstanding any other provision of law, a public agency may hold executive sessions with its staff to consider matters with the scope of the Public Employee-Management Relations Act.

(c) Under no circumstances shall a public agency hold an executive or closed meeting to discuss legal matters, impending legal matters or legal strategies with an attorney, except as herein provided below. All such discussions must be held in a public meeting and minutes shall be kept and opened to the public, except as herein provided:

(1) No such meeting may be closed except on the written recommendation of the attorney, and an affirmative vote of a majority of the members of the Board of the Public Agency to go into executive session.

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(2) Only matters directly relating to ongoing litigation or litigation which has been threatened as is reasonably expected may be discussed. Only the attorney(s), court reporter, board members, and the Executive Director or managing officer of the agency may attend such a meeting.

(3) A verbatim transcript by an authorized court reporter must be taken of all meetings which are closed to discuss litigation or possible litigation and such transcript shall promptly be reduced to writing.

(4) Notice of the meeting shall be given as required for any other meeting. The notice shall indicate the place and time of the meeting, and shall indicate the general subject matter to be discussed, (if not confidential) as well as the specific exemption permitting an executive or closed meeting.

(5) After such meeting, the attorney or attorneys involved must file an affidavit with the Agency, which shall be a public document, that only matter relating to litigation or pending litigation have been discussed.

(6) There shall be public minutes made of all such executive sessions indicating the existence of the transcript, the subject matter of the meeting (if not confidential), the names of all persons attending the closed meeting, their capacities and the date and times the meeting started and closed.

(7) The transcript of such meeting shall be sealed for a period of six (6) months, and shall thereafter be a public document unless there is a court order, further sealing the transcript. Before issuing such an order, the court must read the transcript in camera and determine that the Agency would be unduly prejudiced by the release of the transcript, taking into account the public's right to know. In such event, the court may order the transcript released and made public, or may order the transcript sealed for a period not exceeding six (6) months only if there is ongoing litigation over the matters discussed and release would prejudice the Agency, or if the court finds there is a strong likelihood of litigation concerning the subject matters within six (6) months. Unless the court orders otherwise all transcripts concerning litigation or potential litigation shall become public immediately upon the termination of litigation

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or the threat of litigation. Under no circumstances may a matter concerning litigation be sealed for more than three (3) months after the conclusion of the litigation. In the case of expected litigation, all such transcripts cannot be sealed for more than one (1) year after the closed hearing if no litigation results.

(d) Under no circumstances shall a public agency vote on any matter before it during an executive or closed meeting. All voting must be held in a public meeting and minutes shall be kept and opened to the public.

SOURCE: GC § 3235 enacted by P.L. 13-35. R/R by P.L. 19-5:138. Subsection (d) added by P.L. 25-171:1.

§ 8112. Disturbances.

In any event that any person willfully interrupts a meeting of a public agency so that a meeting may not be conducted in an orderly fashion and order cannot be restored by the removal of the person who is wilfully interrupting the meeting, the members of the public agency conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such session. Duly accredited news reporters and photographers shall be allowed to attend any session held pursuant to this Section, provided that any such person who wilfully interrupts a meeting of a public agency may be removed, in the same manner as any other person.

SOURCE: GC § 3236 added by P.L. 13-35.

§ 8113. Minutes.

The minutes of every meeting of each public agency shall be promptly and fairly recorded, shall be open to public inspection and shall include but not be limited to a record of all motions, proposals and resolutions offered, the results of any votes taken and a record of individual votes in event of roll call. Insofar as it may do so without violating § 8103 of this Chapter, an agency may also maintain a record of persons present at a meeting.

SOURCE: GC § 3237 added by P.L. 13-35.

§ 8114. Action Voided.

Any action taken at a meeting in violation of any Section of this Chapter shall be void and of no effect, provided that this nullification of actions taken at such meetings shall not apply to any commitment, otherwise legal, affecting the public debt of the entity concerned.

SOURCE: GC § 3238 added by P.L. 13-35.

§ 8115. Penalties and Court Jurisdiction.

(a) The Superior Court shall have jurisdiction to enforce any action brought as a result of a violation of this Chapter. Any person shall have standing to sue for the enforcement of this Chapter.

(b) Each member of a public agency who attends a meeting of a public agency where action is taken in violation of any provision of this

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Chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

(c) Any interested persons may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing a violation or threatened violation of this Chapter by members of an agency or to determine the applicability of this Chapter to actions or threatened future action of an agency.

(d) In each suit brought under the Chapter, the court shall file a written Findings of Fact and Conclusions of Law and final judgment which shall also be recorded in the minutes of body involved.

(e) The court shall permanently enjoin any person adjudged to have violated this Chapter from further violating this Chapter. Each separate action taken which is not in accordance with this Chapter shall constitute a separate violation.

(f) The final judgment or decree in each suit shall state that the court shall retain jurisdiction over the parties and subject matter for a period of one (1) year from date of entry and the court shall order the defendants to report in writing twice annually to the court of their compliance with this Chapter.

SOURCE: GC § 3239 added by P.L. 13-35.

§ 8116. Severability.

If any provision of this Chapter or the application of any Section thereof, to any person or circumstance is held invalid, the validity of the remainder of said Chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

SOURCE: GC § 3240 added by P.L. 13-35.
