Gary Richard Herbert

Governor

EXECUTIVE ORDER

Suspending the Enforcement of Provisions of Utah Code §§ 52-4-202 and 52-4-207, and Related State Agency Orders, Rules, and Regulations, Due to Infectious Disease COVID-19 Novel Coronavirus

WHEREAS, On March 6, 2020, Governor Gary R. Herbert issued an Executive Order declaring a state of emergency due to novel coronavirus disease 2019 (COVID-19);

WHEREAS, On March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic;

WHEREAS, On March 13, 2020, President Donald J. Trump declared a national state of emergency based on the continuing spread of COVID-19;

WHEREAS, Federal, state, and local authorities have recommended that individuals limit public gatherings and that individuals experiencing symptoms of COVID-19 self-isolate to prevent and control the continuing spread of COVID-19;

WHEREAS, The public monitoring and participation requirements in the Open and Public Meetings Act, Utah Code § 52-4-101 et seq. (OPMA), will gather interested persons, members of the public, and members of a public body in a single, confined location where the risks of further spreading COVID-19 are far greater;

WHEREAS, Utah Code § 52-4-207(2) prohibits a public body from holding an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings;

WHEREAS, Utah Code §§ 52-4-207(3)(a)(ii), (c), (d), and (e) require a public body to take certain actions regarding anchor locations associated with an electronic meeting where members of the public body, interested persons, or the public are required or permitted to gather;

WHEREAS, Utah Code § 52-4-202(3)(a)(i)(A), requires a public body to give public notice of a meeting by posting written notice at the principal office of the public body or specified body, or if no principal office exists, at the building where the meeting is to be held;

WHEREAS, Utah Code §§ 52-4-202(3)(a)(i)(A), 207(2), 207(3)(a)(ii), 207(3)(c), 207(3)(d), and 207(3)(e) limit the ability of public bodies to hold electronic meetings and thereby implement the recommendations of federal, state, and local authorities to limit gatherings and encourage self-isolation in order to prevent and control the continuing spread of COVID-19;

WHEREAS, Strict compliance with the provisions of any order, rule, or regulation of any state agency implementing or conforming with Utah Code §§ 52-4-202(3)(a)(i)(A), 207(2), 207(3)(a)(ii), 207(3)(c), 207(3)(d), and 207(3)(e) would substantially prevent, hinder, or delay necessary action in coping with the continuing spread of COVID-19;

WHEREAS, Suspending the enforcement of Utah Code §§ 52-4-202(3)(a)(i)(A), 207(2), 207(3)(a)(ii), 207(3)(c), 207(3)(d), 207(3)(e), and any provision of any order, rule, or regulation of any state agency to the extent that the order, rule, or regulation implements or conforms with

these subsections is directly related to and necessary to address the state of emergency declared due to COVID-19;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related to and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-209(3) authorizes the governor to suspend the provisions of any order, rule, or regulation of any state agency, if the strict compliance with the provisions of the order, rule, or regulation would substantially prevent, hinder, or delay necessary action in coping with the emergency or disaster;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to part 2 of the Emergency Management Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of enforcement of Utah Code §§ 52-4-202(3)(a)(i)(A), 207(2), 207(3)(a)(ii), 207(3)(c), 207(3)(d), and 207(3)(e), and the suspension of any provision of any order, rule, or regulation of any state agency to the extent that the order, rule, or regulation implements or conforms with these subsections.

Accordingly, a public body governed by OPMA may hold an electronic meeting even if the public body has not adopted a resolution, rule, or ordinance governing the use of electronic meetings. Furthermore, a public body that convenes or conducts an electronic meeting is not required to:

1. post written notice at the principal office of the public body or specified body, or if no principal office exists, at the building where the meeting is to be held;

2. post written notice at an anchor location;

3. establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not holding an electronic meeting;

4. provide space and facilities at an anchor location so that interested persons and the public may physically attend and monitor the open portions of the meeting; or

5. if comments from the public will be accepted during the electronic meeting, provide space and facilities at an anchor location so that interested persons and the public may physically attend, monitor, and participate in the open portions of the meeting.

Notwithstanding the foregoing, a public body that holds an electronic meeting shall:

1. provide a means by which interested persons and the public may remotely hear or observe, live, by audio or video transmission the open portions of the meeting;

2. if comments from the public will be accepted during the electronic meeting, provide a means by which interested persons and the public participating remotely may ask questions and make comments by electronic means in the open portions of the meeting; and

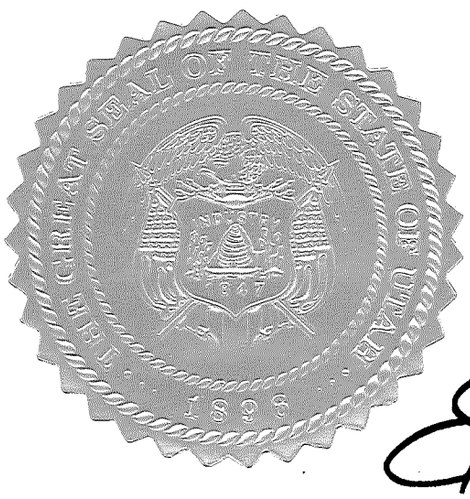
3. if the public body has not adopted a resolution, rule, or ordinance governing the use of electronic meetings, adopt as soon as practicable a resolution, rule, or ordinance, which may be adopted at an electronic meeting pursuant to this Order,

governing the use of electronic meetings in accordance with Utah Code § 52-4-207.

A public hearing governed by OPMA may be conducted electronically according to the exemptions and conditions in this Order.

Except for provisions specifically suspended above, nothing in this Order shall be construed to exempt or excuse a public body from giving public notice of an electronic meeting as otherwise required by Utah Code §§ 52-4-207(3)(a)(i) and (3)(b).

This Order shall remain in effect until the termination of the state of emergency declared in Executive Order 2020-1.



IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 18th day of March 2020.

Gary R. Herbert
Governor

Attest:

Spencer J. Cox
Lieutenant Governor