

OPEN GOVERNMENT TRAINING



OPEN PUBLIC MEETINGS ACT CHAPTER 42.30 RCW

Prepared by the Washington State Attorney General's Office
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OUTLINE

Significance of Open Government & Transparency
The Open Public Meetings Act

DISCLAIMER

This presentation is educational only and is not legal advice or a legal opinion. The OPMA changes over time. Later court decisions, or changes in statutes, can impact the law, an agency's obligations and the expectations on individuals.

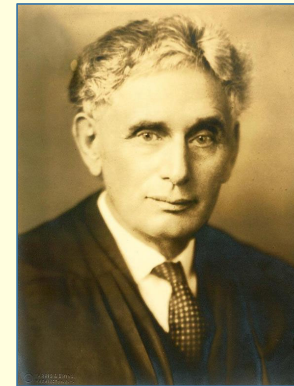
THE OPMA IS ONE OF WASHINGTON'S “TRANSPARENCY LAWS” OR “SUNSHINE LAWS”

Washington's Open Public Meetings Act

Passed in 1971.

Requires meetings to be open
to the public, gavel to gavel.

"Sunlight is the best disinfectant."



U.S. Supreme Court Justice
Louis Brandeis

Transparency builds public confidence in government.

THE OPMA – STARTING POINT

“The people do not yield their sovereignty to the agencies which serve them.”

“The people, in delegating authority, do not give public servants the right to decide what is good for the people to know and what is not good for them to know.”

OPMA POLICY

It is the intent of this chapter that the actions of a governing body be taken openly and that their deliberations be conducted openly.

The people insist on remaining informed and informing the people's public servants of their views so that they may retain control over the instruments they have created.

The OPMA, ch. 42.30 RCW, is our comprehensive transparency statute. The act seeks “to ensure public bodies make decisions openly.”

OPMA POLICY

The OPMA is to be liberally construed to effectuate its purpose, exceptions are narrowly confined. It's intended to guarantee public access to and participation in the activities of their representative agencies.

OPMA APPLIES TO:

Multi-member public state and local agencies, such as boards and commissions:

- Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature.
- Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of Washington.
- Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.
- Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

“Public Agencies” subject to the OPMA.

THE OPMA DOES NOT APPLY TO:

These entities:

- ☐ Courts
- ☐ Legislature
- ☐ Agencies not defined as “public agency” in OPMA, such as agencies governed by a single individual.
- ☐ Private organizations, i.e., HOA’s, Youth Sports Clubs.

These activities:

- ☐ Licensing/permitting for businesses, occupations or professions or their disciplinary proceedings (or proceedings to receive a license for a sports activity, or to operate a mechanical device or motor vehicle).
- ☐ Quasi-judicial matters.
- ☐ Matters governed by the Washington Administrative Procedure Act, RCW 34.05.
- ☐ Collective bargaining.

BASIC REQUIREMENTS

All meetings of the **GOVERNING BODY** of a **PUBLIC AGENCY** shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in RCW 42.30.

Public agencies are *encouraged* to provide for the increased ability of the public to observe and participate in the meetings of governing bodies through real-time telephonic, electronic, internet, or other readily available means of remote access that do not require an additional cost to access the meeting.

WHAT IS A GOVERNING BODY?

Multimember boards, commissions, councils, or other policy or rule-making bodies of a public agency.

INCLUDES

– Committees and Subcommittees –
Acting on behalf of governing body, taking testimony or public comment, or conducting hearings.

– Advisory Bodies –
If the body's advice is necessary for the governing body to act, and the body was created by the legislative body.

MEETING



- Meeting means meetings at which the public agency takes “action.”
- Requires a majority of its members (quorum). No meeting if less than a quorum.
- Physical presence not required – an exchange of e-mail could constitute a meeting.
- Does not need to be titled “meeting” – may be a “retreat,” “workshop,” “study session,” etc.
- Simply receiving information without comment is not a meeting.



MEETING REQUIRES A COLLECTIVE INTENT TO MEET

Citizens Alliance v. San Juan County,
184 Wn.2d 428, 359 P.3d 753 (2015).

No OPMA violation because the commissioners were not aware that the communications included a majority, and passive receipt of information is not “action” under the OPMA.

Egan v. City of Seattle,
14 Wn. App.2d 594, 471 P.3d 899 (2020).

OPMA violation found. Over two dozen communications occurred between individual councilmembers, as well as city staff, during a three-day period. Communications included in-person meetings, emails, phone calls, text messages, and distribution of hard copies of a draft press release.

ACTION

The transaction of the official business of the public agency
and includes but is not limited to:

Public Testimony
Considerations

All Deliberations
Reviews
Final Action

Discussions
Evaluations

See upcoming slide on Final Action.

The requirements of the OPMA are triggered
whether or not “final” action is taken.



FINAL ACTION

- “**Final action**” is a collective positive or negative decision, or an actual vote, by a majority of the governing body, or by the “committee thereof.”
- Must be taken in public, even if deliberations were in executive session.
- Secret ballots are not allowed.

VOTE



PUBLIC ATTENDANCE

- A public agency can't place conditions on public to **attend** meetings subject to OPMA.
- Reasonable rules of conduct can be set.
- Governing body may adopt generally applicable conditions determined to be reasonably necessary to protect public health or safety, or to protect against interruptions.
- Agencies encouraged to provide remote access.
- Cameras and tape recorders are permitted unless disruptive.

REMOTE OBSERVATION AND PARTICIPATION

Agencies are encouraged to:

- Provide remote access that does not require an additional cost to access the meeting.
- Provide an online streaming option for all regular meetings.
- Make audio or video recordings and make recordings available online for a minimum of six months. (This does not alter recordkeeping requirements under chapter 42.56 RCW. Additional requirements for School Boards.)

PUBLIC COMMENT

Oral or written public comment required at or before every regular meeting at which final action is taken.

Oral Comment

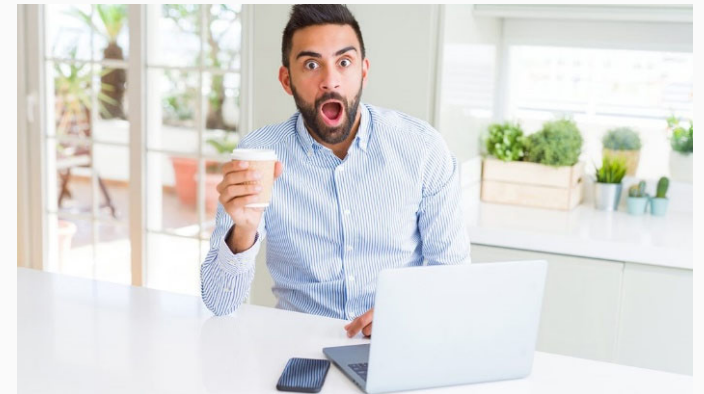
- The governing body shall, when reasonable, provide people with a disability, limited mobility or any other reason that makes physical attendance difficult, the opportunity to make oral comment.
- May put guidelines in place for public comment i.e., time limits.

Written Comment

- Written testimony must be distributed to the governing body.
- May have reasonable deadlines for submission of written testimony.

INTERRUPTIONS AND DISRUPTIONS

- May stop individuals from speaking when not recognized to speak.
- The OPMA provides a procedure for dealing with situations where a meeting is being interrupted, the orderly conduct of the meeting is unfeasible, and order cannot be restored by removal of the disruptive persons.
- OPMA provides hierarchy for restoration of an orderly meeting, through removal of individuals who are interrupting the meeting, clearing the meeting room, or moving the meeting to another location. Final disposition can occur only on matters appearing on the agenda. More details set out in the OPMA.



REGULAR MEETINGS



- Recurring meetings held in accordance with a periodic schedule by ordinance, resolution, bylaws or other rule.
- Must have an agenda available online at least 24 hours in advance of the published start time of the meeting. Agency may share or have website hosted by another public agency.
- Agenda may be modified.
- Any otherwise legal action taken at a regular meeting, where agenda was not posted 24 hours in advance, is not invalidated. Failure to post agenda is not the basis for attorney fees, mandamus or injunction.



REGULAR MEETINGS – SMALL AGENCY AGENDA EXEMPTION

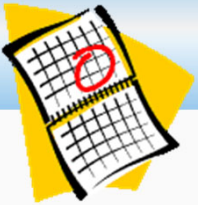


A special purpose district, city, or town is not required to post an agenda online if the district, city, or town:

- (a) Has an aggregate valuation of the property subject to taxation by the district, city, or town of less than \$400,000,000, as placed on the last completed and balanced tax rolls of the county preceding the date of the most recent tax levy;
- (b) Has a population within its jurisdiction of under 3,000 persons; and
- (c) Provides confirmation to the state auditor at the time it files its annual reports under RCW 43.09.230 that the cost of posting notices on a website of its own, a shared website, or on the website of the county in which the largest portion of the district's, city's, or town's population resides, would exceed one-tenth of one percent of the district's, city's, or town's budget.



SPECIAL MEETINGS



A “**special meeting**” is a meeting that is not a regular meeting. Can be called by presiding officer OR majority of the members.

Notice of Meeting

Written notice, 24 hours before the meeting of the Time, Place and Business to be Transacted.

Exception: not required when the notice cannot be posted with reasonable safety.

How Notice is Provided

- To each member of the governing body (unless waived).
- To each local newspaper of general circulation, radio, and TV station which has a notice request on file.
- Posted on the agency’s website [with certain exceptions in RCW 42.30.080(2)(b)].
- Prominently displayed at the main entrance of the agency’s principal location and the meeting site (if not at the same location, or not remote).

EMERGENCY SPECIAL MEETINGS

Notice is not required for a special meeting called to deal with an emergency* when:

Time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

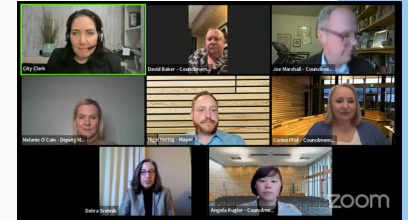
OR

The required notice cannot be posted or displayed with reasonable safety, including but not limited to declared emergencies in which travel to physically post notice is barred or advised against.



* Emergency means circumstances involving injury or damage to persons or property or the likelihood of such injury or damage.

REMOTE EMERGENCY MEETINGS



Requirements for a remote meeting:

- Declared emergency at the local, state or federal level AND the agency determines it cannot hold a meeting in person with reasonable safety where members or public are in attendance.
- Public must be able to listen, if not, meeting prohibited - except executive session.
- Notice of meeting must include remote participation instructions and otherwise comply with the OPMA notice requirements.

Structure for an emergency remote meeting:

- *Option 1: Hold an all remote meeting without a physical location.*
- *Option 2: Hold a meeting with governing body present but some or all of the public excluded.*

Members of a governing body may participate in a meeting remotely, with no declared emergency, if otherwise permitted by agency policy or practice.

EXECUTIVE SESSION



- Part of a regular or special meeting that is closed to the public.
- Limited to specific purposes set out in the OPMA, RCW 42.30.110.
- Purpose of the executive session and the time it will end must be announced by the presiding officer before it begins.
- Time may be extended. Must be announced by presiding officer.
- Purpose of executive session must be entered into the minutes.

EXECUTIVE SESSION

Sample of allowed purposes for an Executive Session.

- To evaluate qualifications of applicant for public employment.
- Consideration of the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. Final action selling or leasing public property must be taken at open meeting.
- Review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs.
- Meet with legal counsel regarding enforcement actions, litigation or potential litigation.
- National Security.

Examples above may be summaries. Please review the statute's actual provisions.

Other purposes are identified in RCW 42.30.110(1).

TRAVEL AND GATHERING

- A majority of the members of a governing body may travel together or gather for purposes other than a regular meeting or a special meeting, so long as no action is taken.
- Discussion or consideration of official business would be action; action triggers the OPMA's requirements.



MINUTES

- Minutes of public meetings must be promptly recorded and open to public inspection.
- Minutes of an executive session are not required.
- No format specified in law.
- Executive session's purpose must be recorded in the minutes.
- If meeting provides remote option, add relevant information to the minutes like links & phone numbers.



OPMA PENALTIES

- Penalty may be imposed against individual members of the governing body for knowing violations by the courts.
 - **\$500** fine for the first violation.
 - **\$1,000** for subsequent violation.
 - **Costs and attorney fees.**
- Final action at illegal meetings may be declared void.
- Mandamus or injunctive action to stop violations.



OPMA TRAINING

- The “Open Government Trainings Act” requires OPMA training for every member of a governing body within 90 days of taking their oath or assuming their duties. RCW 42.30.205.
- Refresher training occurs no later than every four years.
- Training can be taken online, in person, or by other means.



- Training resources, videos, and more information about the Act are available on the Attorney General’s Office Open Government Training Web Page:
<http://www.atg.wa.gov/OpenGovernmentTraining.aspx>

Open Government Training



OPMA Training

