

MEMORANDUM

TO: CAMAS PLANNING COMMISSION
FROM: David Schultz, Assistant City Attorney
DATE: March 12, 2025
RE: General Meeting Management

The following is a review of the key rules and laws that affect the planning commission meetings. The topics addressed in this memorandum include: general background for the planning commission, a review of open public meetings, the appearance of fairness doctrine, and parliamentary procedure.

(1) General Information: Chapter 2.32 of the Camas Municipal Code sets forth the powers and duties of the Planning Commission. The planning commission acts as a research and fact finding agency for the city. The planning commission serves in an advisory capacity to the city council and mayor. It makes such surveys, analyses, researches and reports as are required of it by the ordinances of the city and as are requested by the council or mayor. It has the authority to make inquiries, investigations, and to conduct such hearings as may be necessary as to enable it to make recommendations from time to time to the council as to the best methods of conservation, utilization, planning and development within the city.

(2) The Open Public Meetings Act:

The legislative declaration at the beginning of the Open Public Meeting Act provides that public commissions such as ours, and all other public agencies of this state, exist to aid in the conduct of the people's business. RCW 42.30.010 further states that “[t]he people of this state do not yield their sovereignty to the 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 and informing the people's public servants of their views so that they may retain control over the instruments they have created. For these reasons, even when not required by law, public agencies are encouraged to incorporate and accept public comment during their decision-making process.” This strongly worded intent affects how we as a commission must function.

“No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.” RCW 42.30.060(1).

“It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for purposes

Memorandum

To: Camas Planning Commission

Page - 2

other than a regular meeting or a special meeting as these terms are used in this chapter: provided, that they take no action as defined in this chapter.”
RCW 42.30.070.

In order for an exchange between members of the Planning Commission to qualify as a meeting subject to the OPMA, the exchange must qualify both as a meeting and also contain action. When the Planning Commission meets at City Hall for a hearing, it is clearly under Chapter 42.30 RCW. However, "action" is broadly defined, and include the receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations and final actions. RCW 42.30.020(3). As such, "action" can involve many other interactions outside of our meetings. Essentially, Planning Commission officials should consider any discussion or deliberation of City of Camas Business as constituting an "action". The issue then becomes whether a "meeting" has occurred. A meeting occurs when the majority of the Planning Commission meets to take action.

The bottom line is the OPMA does not apply if less than a majority of the Planning Commission meet. There have also been rulings that have recognized that the OPMA does not apply, even when a majority gather, if no official business is conducted. For example, traveling to and attending a conference by a majority of the Council would generally not implicate the OPMA.

However, the OPMA can apply even if members of the Planning Commission are not in the same room. For example, a conference call could amount to a meeting subject to the OPMA. In like manner, there can be circumstances where e-mail exchanges can arise to the level of a meeting subject to the OPMA. In *Wood v. Battle Ground School District*, 107 Wn. App. 550 (2001), the Washington State Court of Appeals held an e-mail exchange between a majority of school board members amounted to a meeting. The particular details of the *Battle Ground School District* case are as follows:

1. A majority of school board members sent e-mails to each other on a single topic over a relatively short period of time (six days); and
2. The participating members apparently intended to vote on the subject of the e-mails.

To qualify as a meeting, the e-mail exchange must involve active participation in the exchange by a majority of the governing body. Merely passively receiving an e-mail does not automatically constitute a meeting per the *Battle Ground School District* case. In fact, the Washington Supreme Court has specifically recognized that "independent and individual examination of documents by public officials prior to an open meeting does not violate the act." See *Equitable Shipyards, Inc. v. State*, 93 Wn. 2d 465 (1980).

In other words, if you receive an e-mail from the City Administrator or other staff which includes documents which are necessary for review prior to a meeting then, as long as a majority of the Commission does not respond between themselves, the exchange will not violate the OPMA. Further, e-mails between all of the governing body members which do not discuss official Planning Commission business will not implicate the OPMA. You should ask yourself the following question: would the subject of this e-mail someday come before the Planning Commission for a vote? If the

answer could possibly be in the affirmative, then members should avoid sending group e-mails to the other Planning Commission members. In general, it is our recommendation that members of the Planning Commission avoid e-mail communication with other members. If e-mail is used, please note there are risks associated with sending group e-mails. Any e-mails to members of the Planning Commission should be sent to each member individually. There is the risk, however, that if a majority responds to the e-mail, and especially if these responses are shared, it could create the risk of a meeting. Planning Commission members should not reply to informational type e-mails as a group e-mail. Further, at an open meeting a majority of the Planning Commission should never decide to continue or complete discussion of an agenda item by e-mail. Finally, please note that e-mail exchanges are subject to the Open Public Records Act. The City has a policy relating to the retention of e-mails which members must also comply.

(3) Appearance of Fairness: Camas Municipal Code 2.32.070, provides that “[i]f any member of the planning commission has a conflict of interest or an appearance of fairness problem with respect to a matter pending before the commission, he shall disqualify himself from participating in the deliberations and decision making process with respect to such matter.”

The Appearance of Fairness Doctrine is set forth in Chapter 42.36 of the Revised Code of Washington, and applies to local land use decisions before the Planning Commission and the City Council. There are the following specific rules under the Appearance of Fairness Doctrine:

- a) **No Ex-Parte Contacts:** The record in a quasi-judicial proceeding should solely consist of the staff report and that evidence submitted at the hearing itself which might consist of documents and testimony from the applicant, proponents, opponents, and interested members of the public. The rule prohibits Planning Commission members from discussing the application with both the applicant and any opponents, such as neighbors to the proposed development. The rule further prohibits Planning Commission members from soliciting their own information about the site, such as visiting the site or performing independent research on the issues which might be raised as part of the application.
- b) **Bias:** It is important not to give the appearance of bias in any meeting. To that end, the Planning Commission members should have some degree of formality with all of the speakers. Hostile, rude, or antagonistic comments or any statements that show the decision maker has prejudged the merits of a land use action should be avoided.
- c) **Community Displeasure:** Land use decisions in the quasi-judicial context cannot be based on general community pleasure or displeasure. As Planning Commission members, you will most likely see circumstances where neighbors have organized to voice their displeasure to a pending land use application. In *Mission Springs v. Spokane*, 134 Wn. 2d. 1947

(1998), the Washington Supreme Court ruled that the City of Spokane City Council had inappropriately based a land use decision on community displeasure. The city attorney had advised the council that the council had no administrative authority to make the decision. However, neighboring property owners had organized to oppose the application and had hired an attorney to resist the project. Notwithstanding the advice of the city attorney, the council directed the city manager not issue a particular permit. In its ruling, the Supreme Court noted that the arbitrary or irrational refusal or interference with processing land use permit violates substantive due process. The city and the individual council members were subject to a claim for damages as a result.

While the *Mission Springs* case is an extreme example, the lesson to be learned is to remain objective and not let community displeasure guide your decision making. Further, it is important to listen to legal advice. In reviewing your analysis of a contested land use action, you should ask yourself whether your decision would be the same if there was **no** opposition.

- d) **Proximity to Site:** As a general rule, if you reside or own property within 300 feet of a site coming before the planning commission then you should announce this fact and recuse yourself. This general rule fits in with the intent that actions not only be fair in reality but also "appear" to be fair. You may in fact have the intention of being objective on this type of land use decision but for appearance sake if you do reside or own property in close proximity to a site then this should be revealed.
- e) **Duties:** What is the process should an ex-parte communication occur or there be in your mind a potential Appearance of Fairness violation?
 - 1) First, disclose at the beginning of the meeting the communication or other issue which might be present. You might want to give me a call prior to the meeting if you have any specific questions about the issue so we can work through the matter prior to the meeting itself.
 - 2) Once you have disclosed the communication then those in attendance can challenge your sitting as a Planning Commission member for the hearing.
 - 3) If this occurs, then the decision as to whether to sit on the Planning Commission for the hearing is entirely up to you.

- 4) If you do decide that the communication or other issue is substantial enough then you can recuse yourself, which will require you to leave the hearing room.

(4) Parliamentary Procedure. In the course of conducting business the Planning Commission should adhere to the rules of parliamentary procedure. Following parliamentary procedure rules also aids in complying with the Open Public Meetings Act, notice requirements, and other procedural aspects of the commission's work. The main motions generally will consist of those topics set out in the agenda. It is the chairperson's role to announce the business in the proper sequence as set forth in the agenda. The chairperson introduces the agenda item, and requests staff provide input (summarization of written report). Then the commission has the opportunity to ask staff questions. The chairperson will then open the hearing to the public, and call for comment from the audience. At the podium, speakers must state their name, city of residence, and provide testimony. After everyone has had the opportunity to speak, the chairperson will close the public hearing and open the subject for the commission's discussion and decision.

In order to begin the discussion of the agenda item, a motion to pass the item on to council with the recommendation to adopt the proposal or reject the proposal should be made, and seconded. It may be helpful to read the staff recommendation or summary of report to properly phrase the proposal. Commission members should be conscientious not to speak over the party making the motion. The purpose of this is to provide structure to the debate. Once the item has a main motion, it yields only to privileged, subsidiary and incidental motions, and discussion/debate can begin. This commission has been historically effective in this endeavor.

Next the chair opens the main motion up for discussion. The chair should state that the motion has been moved and seconded, and is open for debate. Generally, the party making the motion has the opportunity to speak first. The members should avoid speaking twice in a row, in order to permit every member who wishes to speak the opportunity. The chair should encourage each of the members to comment. For example, one could state "now that we have heard from a number of our members, would others whom have not spoken care to comment," or "you have made several good points, I am wondering if someone else would care to comment." The chair or members can focus the discussion as well. For example, one could state "that is a good point, but I wonder if the topic is too far afield for this item," or "should we take a look back at what our original objective for this discussion was, to see we are in relation to the objective." The chair or members can encourage the group to move along. For example, one could state "now that we have addressed this aspect of the problem sufficiently, should we shift our attention to consider this additional area..." The goal should be for a fair, orderly, and thorough debate. If there are portions of the proposal which members of the commission disagree with, they can make a motion to amend the motion, which must be seconded. For example, a member after obtaining the floor could state "I move to amend the motion by striking out...adding...having staff correct...etc." Again, once the motion has been moved and seconded, the chair should open

the motion to amend up for debate. Multiple motions to amend may be made, and they all may or may not pass. They do not all need to be made by the same member. Another way of reaching the same result is for the member making the motion to move to withdraw the motion, and restate the proposed motion. This requires a second, discussion and normally a voice vote, and should be done quickly, as the new motion will open up debate again. There are many different ways to reach the same result, and every commission develops its own approach.

Once it appears that discussion has been completed or a member feels the matter is ready for a vote on the main motion and subsidiary motions, a member can move to end debate and amendments and effectively call for a vote. For example, a member can state “It appears that we have had the opportunity to fully debate this item, therefore, I move that we end debate and amendments.” The motion requires a second, there is no debate, and requires a two-thirds majority vote to pass. If this motion passes, the chair should restate the motion, as amended if necessary, and call for a vote. Or if there is no more debate, the chair may simply call for a vote.

A proper restatement of the motion or proposed action to be taken is an important aspect in making a clean record. For example, “it has been moved that the Planning Commission [insert proposed action as amended] be passed on to the City Council and Mayor with the recommendation that it be approved/denied.” The chair can call for the vote by: roll call, show of hands, voice, or ballot. For our purposes, roll call should be used on the final motion directing action. Following the vote, the chair should then announce the result.

DHS