

OPEN GOVERNMENT OVERVIEW: OPEN PUBLIC MEETINGS ACT & PUBLIC RECORDS ACT

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OPEN PUBLIC MEETINGS ACT

OPMA – Chapter 42.30 RCW

The purpose of the OPMA is to allow the public to view the “decision making process.”

Washington State Supreme Court

Meetings Must Be Open

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 this chapter.

RCW 42.30.030

The Barest of Basics

1. QUORUM + ACTION = MEETING
2. MEETING = NOTICE AND RIGHT OF PUBLIC TO ATTEND

Definitions

“Governing Body:”

the **multimember** board, commission, committee, council, or other **policy or rule-making body** of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

RCW 42.30.020(2)

Definitions

“Action:”

means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.

RCW 42.30.020(3)

Definitions

“Final action” not required to be a meeting:

- “Final action” (i.e. votes, or collective decision making) has a separate definition than “action” under the OPMA
- Definition of action is broad
 - includes discussion, receipt of public testimony, considerations, reviews, and evaluations

RCW 42.30.020(3)



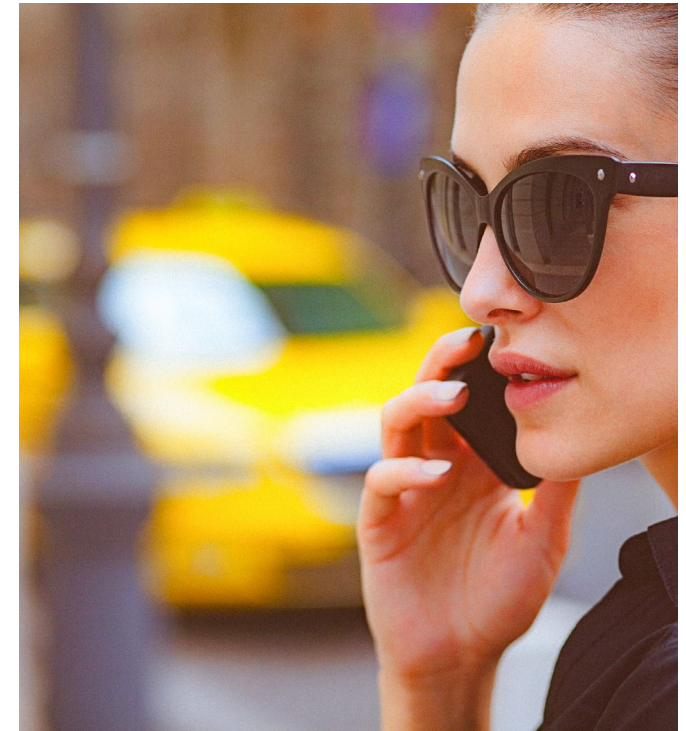
Meeting Examples

1. Regular City Council Meetings
2. Special City Council Meetings

Meeting Examples

3. Email conversations, serial phone calls, texting and messaging involving a quorum and city business will probably be considered a meeting.

4. Attendance by a quorum at a webinar or third-party event.



Compliance for Nonconventional Meetings

Easy!

1. Provide notice of meeting.
2. Public has right to attend.

Right to Attend:

1. Right to Attend Not = Right to Testify.
2. Right to Attend Not = Right to Disrupt.
3. Can't condition attendance on signing in, filling out questionnaire or requiring any other information.
4. Recording allowed unless disruptive

Notice: Two Types of Meetings

1. Regular (set by bylaws, resolution or ordinance).
2. Special.

Special meetings may be called by presiding officer or by a majority of the members.

Special Meeting = Not regularly scheduled.

24 hours before a special meeting, written notice of meeting time, place and agenda must be:

- Given to each member of the governing body.
- Given to each local newspaper of general circulation, radio, and TV station which has a notice request on file
- Posted on the City's website.
- Can only take final action on agenda items.

Notice is not required for a meeting to address an emergency if impending injury or damage. RCW 42.30.080(4)

Agendas Must Be Posted On-line.

Agenda of all regular meetings must be available on line 24 hours in advance of a meeting. RCW 42.30.077.

Does not:

- Restrict agencies from later modifying an agenda.
- Invalidate otherwise legal actions taken at a regular meeting where agenda was not posted 24 hours in advance.

Continuing Meetings:

1. Governing body may continue meeting to specific time and place.
2. Less than a quorum may continue. Clerk may continue if no member present.
3. Notice of time and place shall be conspicuously placed at or near door to meeting room.
4. Notice shall be provided as for special meeting.

Executive Sessions

Council may hold an executive session during a regular or special meeting only for limited purposes listed in OPMA, including:

Personnel issues to review complaints/charges, qualifications and performance.

Litigation, potential litigation and legal risks. As to legal risks, an open discussion must present a danger of adverse legal or financial risk to City.

Real estate negotiations or publicly bid contracts when public discussion would increase costs.

Executive Sessions: Required Elements

Before convening the executive session, the presiding officer must announce **the purpose and the time the executive session is over.**
RCW 42.30.110 (2)

Discussion may take place behind closed doors, but **decisions** must occur within a meeting.

Secret ballots are not allowed.

RCW 42.30.060

OPMA Penalties

A court can impose a \$500 civil penalty against each member (personal liability) for knowing first violation and \$1,000 per knowing subsequent violation.

Court will award costs and attorney fees to a successful party seeking the remedy (except for failure to post agenda on-line).

Action taken at meeting can be declared null and void (except for failure to post agenda on-line).

Loss of the public trust.

RCW 42.30.120

OPMA Risk Management

Avoid even the *appearance* of an OPMA violation.

Socializing: Be careful when a quorum of your board is together outside of a meeting. Don't sit together. Don't talk business.

Group travel: Bus trips and site visits may appear as meetings. If part of your work, notice as a meeting. If not, don't do it.

Notice: When in doubt, treat it like a meeting and do the notice!

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PUBLIC RECORDS ACT

PRA – Chapter 42.56 RCW

Public records of government agencies are presumed open.

Purpose: The “free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.”

RCW 42.56.550 (3)

PRA – Definitions

“Public Record:”

“any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function **prepared, owned, used, or retained** by any state or local agency regardless of physical form or characteristics.”

- Includes email, **paper files**, recordings, web content.
- Includes public records created on **personal electronic devices or non-City email accounts**.

RCW 42.56.010(3)

Duties of PRA Requestors

Should be specific and request identifiable records from public agencies.

- Use a City public records request form, or if form is not used, requester must provide “fair notice” that he/she is seeking public records.
- A request for “information” is not a request for “records” under the PRA.
- Requesters can ask to inspect records, or request copies of records.

RCW 42.56.520; RCW 42.56.080, RCW 42.56.040, RCW 42.56.100.

Duties of City When Responding

The City has 5 business days to respond to a public records request – responses may include:

- Seek clarification if the request is not reasonably clear.
- Provide a reasonable estimate of time for further research, response, or installments of records.
- Provide requested records wholly, or in installments.
- Provide an Internet address with a link to records (must be on the City's own website).
- Deny the request with specific written reasons.

RCW 42.56.520

Duties of City When Responding

Read the request carefully to understand what records are requested. Clarify request if needed, or ask requester to suggest search terms.

Conduct an adequate search for responsive records.

- Consider all formats (paper, electronic, etc.).
- Consider records of current and former staff/officials
- Consider possible locations (e.g., paper files, City website, audio files, etc.).

The City bears the **burden of proof** to show the adequacy of the search, so it is a good idea to **document search efforts** (locations, search terms used).

RCW 42.56.520

Duties of City When Responding

Cities must:

- Make non-exempt records available for inspection and copying during customary business hours for a minimum of 30 hours per week, excluding holidays.
- Publish a fee schedule if charging for copy or mailing costs. Fees cannot be charged for searching, reviewing or redacting records.

RCW 42.56.040, RCW 42.56.070 - .090

PRA Exemptions Narrowly Construed

If a record, or part of a record, is withheld from the public, the City must cite an “exemption” in the law, and explain why. When withholding part (redacting) or all of a record, City must describe the record by date, type, authors/recipients, and total number of pages.

“Privacy” is invaded only if 1) privacy is a factor in the exemption, 2) release of the information would be highly offensive, and 3) is the information is not of legitimate concern to the public.

RCW 42.56.050, RCW 42.56.210 - .510, RCW 42.56.550



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RCW 42.56.050, RCW 42.56.210 - .510, RCW 42.56.550

Enforcement and Penalties

- PRA enforced by courts for claims listed in PRA.
- A court can impose civil penalties up to \$100 per day per record. No proof of “damages” required.
- A court is to consider certain mitigating or aggravating factors in requiring a city to pay a penalty.
- A court will also award the requester’s attorney fees and costs.
- Special provisions apply to inmate requests.

RCW 42.56.550, RCW 42.56.565; *Yousoufian v. Sims*

PRA Risk Management Strategies

- Establish a culture of compliance starting with City leadership.
- Know the law. Ensure staff and officials are trained about the PRA's requirements and ensure they know how to respond to a records request.
- Protect the records. Ensure there are City systems in place to file, track, retrieve and preserve records, especially with changes in personnel.
- Retain important records by transferring them to State Archives.
- Promptly destroy records that have met their retention schedule.

Additional Resources

Open Public Meetings Act (OPMA)

RCW 42.30, 1971

Public Records Act (PRA)

RCW 42.56, 1972

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Questions?



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