

Open Public Meetings Act

RCW 42.30



February 2019
Washington Association of County Officials
Prepared by Washington State Attorney General's Office



Public Trust & Government

Public trust in government remains near historic lows

Trust the federal government to do what is right just about always/most of the time...



Notes: From 1976-2016 the trend line represents a three-survey moving average.

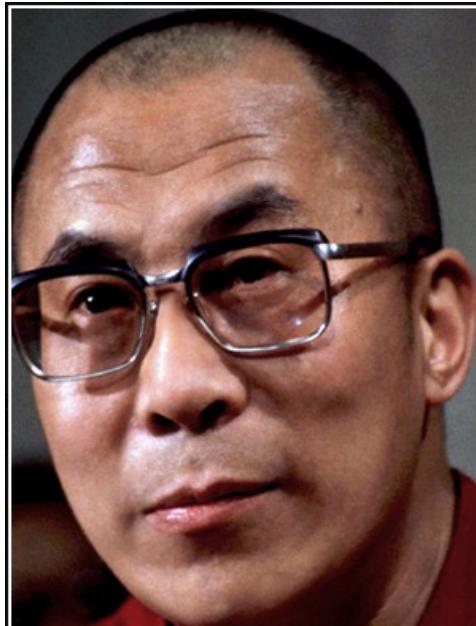
Source: Survey conducted April 5-11, 2017.

Trend sources: Pew Research Center, National Election Studies, Gallup, ABC/Washington Post, CBS/New York Times, and CNN polls.

PEW RESEARCH CENTER

Public Trust and Leadership

“Earn trust, earn trust, earn trust. Then you can worry about the rest.” – SETH GODIN



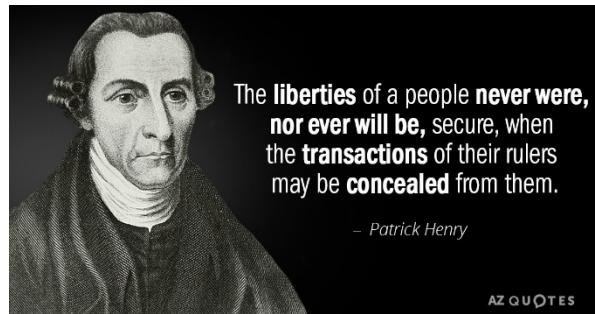
A lack of transparency results in distrust and a deep sense of insecurity.

— *Dalai Lama* —

AZ QUOTES

Historical Open Government Principles

"A popular Government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance...." ~ *James Madison*



"...a nation that is afraid to let its people judge the truth and falsehood in an open market is afraid of its people." ~ *John F. Kennedy*



"It has been said time and again in our history by political and other observers that an informed and active electorate is an essential ingredient, if not the *sine qua non** in regard to a socially effective and desirable continuation of our democratic form of representative government."

~ *Washington State Supreme Court*

Open Government Laws are Often Called “Transparency Laws” or “Sunshine Laws”



This is because they “shine light” on government. U.S. Supreme Court Justice Louis Brandeis once famously said, *“Sunlight is the best disinfectant.”*



Transparency builds public confidence in government.

Before We Begin... Some Open Meetings Transparency Headlines



Open Public Meetings Act



Local News | Local Politics | Project Homeless

Lawsuit accuses Seattle of violating open-meetings law before head-tax repeal vote; anti-tax campaign turns in signatures just in case

By JESSICA LEE / JANUARY 29, 2018 / 0 COMMENTS



Vancouver Port to Pay \$500K to Settle Open Meetings Lawsuit

The Port of Vancouver has agreed to pay \$500,000 to settle a lawsuit over open meetings laws that the port admitted to violating while commissioners debated a lease for an oil terminal.



Yakima agrees to \$13,000 settlement in complaint alleging city violated Open Public Meetings Act

Phil Ferolito
pferolito@yakimaherald.com Oct 15, 2018 Updated Oct 15, 2018



COURT FINDS PEPPER, MORGAN AND WEBER VIOLATED OPEN PUBLIC MEETINGS ACT A COMBINED 13 TIMES

BY VOICE OF THE VALLEY / 0 COMMENTS / JANUARY 29, 2018 / 0 VOTES



PEPPER RECALL OFFICIALLY BEGINS

BY VOICE OF THE VALLEY / 0 COMMENTS / MAY 24, 2017 / 0 VOTES



City Of Black Diamond Ballot Synopsis of Recall Charges Against Councilmember Patricia Pepper, City of Black Diamond City of Black Diamond Councilmember Patricia Pepper Response to the Recall Charges

Measure	Vote	Vote %
Recall Yes	845	66.64%
Recall No	423	33.36%
Total Votes (not including write-ins)	1,268	

(7)

Washington State History – 1970s

Open Public Meetings

WASHINGTON LAWS, 1971 1st Ex. Sess. Ch. 249

in the enforcement of the provisions of this section.

Passed the Senate May 10, 1971.

Passed the House May 10, 1971.

Approved by the Governor May 20, 1971.

Filed in Office of Secretary of State May 21, 1971.

CHAPTER 250

[Engrossed Senate Bill No. 485]

OPEN PUBLIC MEETINGS ACT OF 1971

AN ACT Relating to public officers and agencies; amending section 3, chapter 237, Laws of 1967 and RCW 34.04.024; repealing section 1, chapter 216, Laws of 1953 and RCW 42.32.010; repealing section 2, chapter 216, Laws of 1953 and RCW 42.32.020; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this act that their actions be taken openly and that their deliberations be conducted openly.

The 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 so that they may retain control over the instruments they have created.

NEW SECTION. Sec. 2. As used in this act unless the context indicates otherwise:

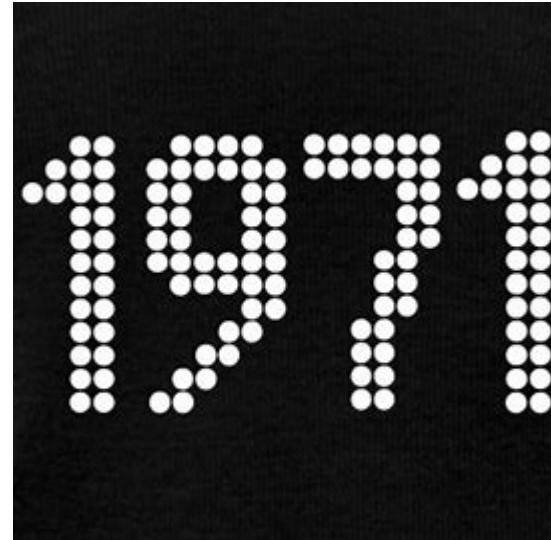
(1) "Public agency" means:

(a) 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.

(b) Any county, city, school district, special purpose district or other municipal corporation or political subdivision of the state of Washington;

(c) 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, and other boards, commissions and agencies.

(2) "Governing body" means the multimember board, commission,



Washington's Open Public Meetings Act (OPMA)

- Passed in 1971
- Requires meetings to be open to the public, gavel to gavel
- RCW 42.30



Purpose

- “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.”
- “The people insist on remaining informed so they may retain control over the instruments they have created.”

~ *RCW 42.30.010*



Purpose (Cont.)

- Public commissions, boards, councils, etc. listed in OPMA are agencies of this state that exist to aid in the conduct of the people's business.
- Their actions are to be taken openly and deliberations conducted openly.

~ *RCW 42.30.010*



- Act is to be “liberally construed.”

~ *RCW 42.30.910*

- The purpose of the OPMA is to allow the public to view the “decisionmaking process.”

~ *Washington State Supreme Court*



OPMA Applies To:

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

- 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.

~ RCW 42.30.020

These are the “public agencies” subject to the OPMA.



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
- 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



~ RCW 42.30.020(1), RCW 42.30.140

Governing Body

- 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.

~ *RCW 42.30.030*



What is a Governing Body?

- The **multimember board or other policy or rule-making body**

OR

- Any **committee** of such public agency *when*:
 - the committee acts on behalf of the governing body,
 - conducts hearings, or
 - takes testimony or public comment

~ *RCW 42.30.020*



What is a Meeting?

- “**Meeting**” means meetings at which the public agency takes “**action**” ~ RCW 42.30.020
- “**Action**” means the **transaction of the official business of the public agency** and includes but is not limited to:
 - Public testimony
 - All deliberations
 - Discussions
 - Considerations
 - Reviews
 - Evaluations
 - Final actions



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

- A “meeting” of a governing body occurs when a **majority of its members (quorum) gathers with the collective intent of transacting the governing body’s business.**

~ Citizens Alliance for Property Rights Legal Fund v. San Juan County

“Meeting” (Cont.)



- **Physical presence not required – a meeting can occur by phone or email, or text.**
 - An exchange of e-mail could constitute a meeting if, for example, a quorum of the members participate in the e-mail exchange & discuss agency business. Simply receiving information without comment is not a meeting.
 - ~ *Wood v. Battle Ground School District; Citizens Alliance for Property Rights Legal Fund v. San Juan County*
 - ~ **Be careful about “reply all.”**
- **Does not need to be titled “meeting”** – OPMA also applies to “retreats,” “workshops,” “study sessions,” etc.
- No meeting occurs if the governing body lacks a **quorum**.
 - In *Eugster v. City of Spokane* (2002) the Court of Appeals described that when the facts show members are “polled” outside of a meeting and have knowledge they are acting in concert with others, that activity may lead to a conclusion that the members knowingly violated the OPMA.
 - Issue: Serial meetings.



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 closed session.
- Secret ballots are not allowed.

~ *RCW 42.30.060, RCW 42.30.020*



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, triggering the requirements of the OPMA.

~ *RCW 42.30.070*



“Regular” Meetings



- “**Regular meetings**” are recurring meetings held in accordance with a periodic schedule by ordinance, resolution, bylaws or other rule.
- A state public agency must:
 - Yearly, file with Code Reviser a schedule of regular meetings, including time and place
 - Publish changes to regular meeting schedule in state register at least 20 days prior to rescheduled date

~ *RCW 42.30.070; RCW 42.30.075; RCW 42.30.077*

“Regular” Meetings (Cont.)

- Agenda notice requirements apply to regular meetings.
- RCW 42.30.077 requires governing bodies to make the agenda of each regular meeting of the governing body available online no later than 24 hours in advance of the published start time of the meeting.



- This law does not:
 - *Apply to agencies that do not have websites.*
 - *Apply to agencies that employ fewer than 10 full-time employees.*
 - 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.
 - Satisfy public notice requirements established under other laws.
 - Provide a basis to award attorneys fees or seek court order under OPMA if agenda is not posted in accordance with this law.

“Special” Meetings



- A **“special meeting”** is a meeting that is not a regular meeting (not a regularly scheduled meeting).
- Called by presiding officer or majority of the members
- Notice - timing: 24 hours before the special meeting, written notice must be:
 - Given to each **member** of the governing body (unless waived)
 - Given 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), for example, if the agency does not have a website)]
 - Prominently **displayed at the main entrance** of the agency’s principal location and the meeting site (if not that same location)

~ *RCW 42.30.080*

“Special” Meetings (Cont.)

- Notice - contents: The special meeting notice must specify:
 - Time
 - Place
 - Business to be transacted (agenda)
 - Final disposition shall not be taken on any other matter at such meeting

~ *RCW 42.30.080*



Emergency Special Meetings

- Notice is not required when special meeting called to deal with an emergency
 - Emergency involves injury or damage to persons or property or the likelihood of such injury or damage
 - Where time requirements of notice make notice impractical and increase likelihood of such injury or damage

~ *RCW 42.30.080(4)*



Public Attendance

- A public agency can't place conditions on public to **attend** meeting subject to OPMA:
 - For proceedings governed by OPMA, cannot require people to register their names or other information, complete a questionnaire, or otherwise fulfill any condition precedent to attendance

~ *RCW 42.30.040*

- Reasonable rules of conduct can be set
- Cameras and tape recorders are permitted unless disruptive
 - ~ AGO 1998 No. 15
- No “public comment” period required by OPMA



Interruptions and Disruptions

- The OPMA provides a procedure for dealing with situations where a meeting is being interrupted so the orderly conduct of the meeting is unfeasible, and order cannot be restored by removal of the disruptive persons.
- Meeting room can be cleared and meeting can continue, or meeting can be moved to another location, but final disposition can occur only on matters appearing on the agenda. More details set out in the OPMA.

~ RCW 42.30.050



Executive Session

- Part of a regular or special meeting that is closed to the public
- Limited to specific purposes set out in the OPMA
- 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 by further announcement

~ *RCW 42.30.110*



Executive Sessions

Specified purposes set out in OPMA.

Includes, for example:

- National security
- Real estate
 - Site selection or acquisition of real estate
 - Lease or purchase
 - Public knowledge would likely increase price
 - Sale or lease
 - Public knowledge would likely decrease price
 - Final action selling or leasing public property must be take at open meeting
- Publicly bid contracts
 - Review negotiations on performance
 - Public knowledge would like increase costs
- Evaluate qualifications of applicant for public employment
- Meet with legal counsel regarding enforcement actions, litigation or potential litigation
- Other purposes listed in RCW 42.30.110



~ RCW 42.30.110

Executive Session to Discuss Agency Enforcement Actions, Litigation or Potential Litigation

- This executive session is not permitted just because legal counsel is present
- This executive session must address:
 - Agency enforcement action
 - Agency litigation or
 - Potential litigation

~ RCW 42.30.110



Executive Session to Discuss Agency Enforcement Actions, Litigation, or Potential Litigation: Three Requirements

- Legal counsel representing the agency is present
- Purpose is to discuss agency enforcement action, litigation or potential litigation to which the agency, governing body, or a member acting in official capacity is, or is likely to become, a party
- Public knowledge regarding discussion likely to result in an adverse legal or financial consequence to the agency

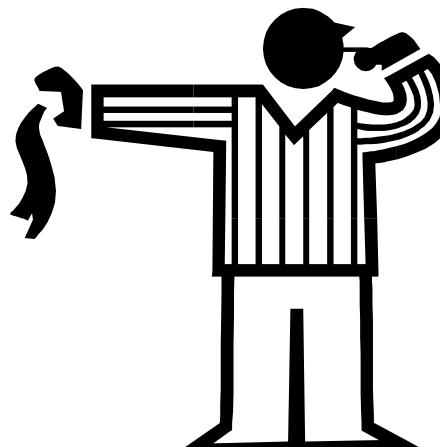
~ *RCW 42.30.110*



Penalties for Violating the OPMA

- A court can impose a \$500 civil penalty against each member (personal liability) who knowingly attends a meeting in violation of OPMA; and \$1000 for a subsequent knowing violation.
- Court will award costs and attorney fees to a successful party seeking the remedy
- Action taken at meeting can be declared null and void

~ *RCW 42.30.120; RCW 42.30.130; RCW 42.30.060*



Minutes – RCW 42.30.035

- 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
- State Supreme Court: Deliberate delay in approving minutes was sufficient basis for a recall of an elected official. *In re Recall of Pepper.*
- *Formerly at RCW 42.32.030.*



Risk Management Tips

- Establish a culture of compliance with the OPMA.
- Receive training on the OPMA.
- Review available resources; institute best practices.
- Keep updated on current developments in OPMA; correctly apply law.
 - *Remember: the OPMA can change through amendments, or develop through case law.*
 - *Remember: other laws can govern an agency's meeting procedures.*
- Consult with agency's legal counsel.



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 4 years.
- Training can be taken online, in person, or by other means.



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

OPMA Assistance

- The Washington State Attorney General's Office may provide information, technical assistance, and training on the OPMA. Contact Assistant Attorney General for Open Government.
- The Attorney General's Office may issue formal opinions about the OPMA for qualified requesters.
- The Attorney General's Office has helpful materials about the OPMA and on other open government topics and resources, on its website at <http://www.atg.wa.gov/Open-Government>.
 - One example is the *Open Government Resource Manual* (see *next slide*).

~ RCW 42.30.210



AGO Open Government Resource Manual – Available on AGO Website*

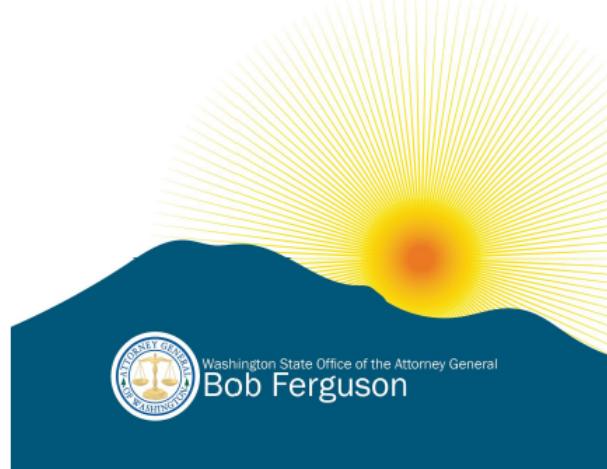


WASHINGTON STATE



Sunshine Laws 2016

An Open Government Resource Manual



* <http://www.atg.wa.gov/open-government-resource-manual>

**Does not yet include statutory changes resulting from 2017-18 sessions.

AGO Guidance Document on Filling Vacant Positions

WASHINGTON STATE

Open Public Meetings Act Guidance

On Frequently Asked Questions About Processes to Fill
Vacant Positions By Public Agency Governing Boards*

**And Some Suggested Practice Tips*

June 1, 2016



Municipal Research & Services Center – Another Resource

OPMA – AGENCY OBLIGATIONS: A STARTING POINT

PRACTICE TIPS

For Local Government Success

The basic requirement of the Open Public Meetings Act (OPMA) is that meetings of governing bodies be open and public. Use these practice tips to guide your agency's OPMA compliance.* For more information and resources visit www.mrsc.org/opmapra.

Basic Requirements

- All meetings open and public. All meetings of governing bodies of public agencies must be open to the public, except for certain exceptions outlined in the OPMA. RCW 42.30.030.
- Quorum. Generally, a meeting occurs when a quorum (majority) of the governing body is in attendance and action is taken, which includes discussion or deliberation as well as voting. RCW 42.30.020(2) & (3).
- Attendees. All persons must be permitted to attend and attendees cannot be required to register their names or other information as a condition of attendance. Disruptive and disruptive behavior is prohibited. RCW 42.30.060(1).
- No secret ballots. Votes may not be taken by secret ballot. RCW 42.30.060(2).
- Adoption of ordinances. Ordinances, resolutions, rules, regulations, and policies are invalid if they are adopted in secret. RCW 42.30.060(1).

Position in Agency

Member of a governing body

- City or Town Councilmember or Mayor
- County Commissioner or County Councilmember
- Special Purpose District Commissioner/Board Member

Member of a subagency created by ordinance or legislative act,

- Planning Commission
- Library Board
- Parks Board
- Civil Service Commission

Member of a committee

- Committees that act on behalf of the governing body, committee of the whole, or public comment

Agency staff

Penalties for Noncompliance

- Actions null and void. Any action taken at a meeting which fails to be open and public is null and void. RCW 42.30.060(1).
- Personal liability. Potential personal liability of \$100 for any action taken at a meeting which fails to be open and public that violates the OPMA. RCW 42.30.120(1).
- Agency liability. Any person who prevails against an agency in a civil action for noncompliance with the OPMA is awarded all costs, including attorney fees, incurred in connection with the action. RCW 42.30.120(2).

OPMA Training Requirements, Effective July 1, 2014

- Every member of a governing body of a public agency must complete training on the OPMA before assuming office or taking the oath of office.
- In addition, every member of a governing body must complete training on the OPMA while they remain in office.

*DISCLAIMER: These practice tips are meant to provide summary information on the notice requirements of the OPMA; these tips are not intended to be regarded as specific legal advice. Consult with your agency's legal counsel about this topic as well.

OPMA – NOTICE REQUIREMENTS

PRACTICE TIPS

For Local Government Success

Under the Open Public Meetings Act (OPMA), to ensure that agency deliberations and other actions are conducted and taken openly, agencies are required to provide sufficient public notice of their meetings. Use these practice tips as a starting guide for OPMA notice requirements.* For more information and resources visit www.mrsc.org/opmapra.

Definition	Regular Meetings (RCW 42.30.070)	Special Meetings (RCW 42.30.080)
Notice and Agendas	<p>Effective June 12, 2014, agendas must be made available on the agency's website at least 24 hours in advance of the meeting unless the agency:</p> <ul style="list-style-type: none"> 1. Doesn't have a website; or 2. Employs fewer than 10 full-time equivalent employees. <p>There are no other notice requirements for regular meetings in the OPMA. However, other relevant laws apply to some local governments. For example, cities and towns are required to establish a procedure for notifying the public of the preliminary agenda for the forthcoming council meeting (although not necessarily online) as well as regarding upcoming hearings. RCW 35A.12.150; RCW 35.22.280; RCW 35.23.221; RCW 35.27.300. There are no similar requirements for counties or special purpose districts related to preliminary agendas.</p>	<p>Anything other than a regular meeting. May be called by the presiding officer or a majority of the members of the governing body.</p> <p>The special meeting notice must specify the date, time, and place of the special meeting, and the business to be transacted.</p> <ul style="list-style-type: none"> ▪ Presiding officer: written notice must be delivered personally, by mail, fax, or e-mail at least 24 hours before the meeting to: <ul style="list-style-type: none"> 1. Each member of the governing body, unless the member submits a written waiver of notice in advance with the clerk, or the member is actually present at the meeting; and 2. Each member of the news media who has on file with the governing body a written request for notice of special meetings. ▪ Website notice: Notice must be posted on the agency's website 24 hours in advance of the meeting, unless the agency: <ul style="list-style-type: none"> 1. Doesn't have a website; or 2. Employs less than 10 full-time equivalent employees; or 3. Doesn't employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the website. ▪ Notice at agency's principal location: Notice must be prominently displayed at the main entrance of the agency's principal location and the meeting site if the meeting isn't held at the agency's principal location.
Emergencies	<p>In an emergency situation (e.g., fire, flood, earthquake, or other emergency), a meeting may be held at a site other than the regular meeting site, and the notice requirements under the OPMA are suspended during such an emergency.</p>	<p>The notices required for special meetings aren't required if a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.</p>
Holidays	<p>Regular meetings shall not be held on holidays. If a regular meeting falls on a holiday, the meeting must be held on the next business day.</p>	<p>Although not specifically addressed by the OPMA, we recommend that special meetings not be held on holidays out of consideration for public participation.</p>
Business Transacted	<p>There are no restrictions on the type of business that may be transacted at regular meetings.</p>	<p>Final disposition cannot be taken on any matter not listed in the special meeting notice.</p>

*DISCLAIMER: These practice tips are meant to provide summary information on the notice requirements of the OPMA; these tips are not intended to be regarded as specific legal advice. Consult with your agency's legal counsel about this topic as well.

OPMA – EXECUTIVE SESSIONS

CHECKLIST

For Local Government Success

The Open Public Meetings Act (OPMA) requires specific steps be taken in order to hold an executive session. Use this checklist to guide your agency's compliance with the OPMA related to executive sessions.* For more information and resources visit www.mrsc.org/opmapra.

	Requirement	Completed/ Applicable
Meeting	An executive session can only be held as part of a regular or special meeting.	<input type="checkbox"/>
Purpose	The presiding officer announces in open session the purpose of the executive session.	<input type="checkbox"/>
End Time	The presiding officer announces in open session the time the executive session will end.	<input type="checkbox"/>
Legal Counsel	Legal counsel is present during the executive session, if required. (See topics below and on the next page for discussions that require the presence of legal counsel.)	<input type="checkbox"/>
Confidentiality	At the start of the executive session, participants are reminded that discussions are confidential.	<input type="checkbox"/>
Topics	Related to local governments, the following topics set forth in RCW 42.30.110(1) can be discussed in executive session:	<input type="checkbox"/>
	▪ Matters affecting national security. RCW 42.30.110(1)(a).	<input type="checkbox"/>

disclosure would increase the use of real estate if there's a 2.30.110(1)(c).	<input type="checkbox"/>
be taken in open session. 42.30.110(1)(d). See back of page.	<input type="checkbox"/>
employee. RCW 42.30.110(1)(f).	<input type="checkbox"/>
session. See back of page.	<input type="checkbox"/>
o elective office. See back of page.	<input type="checkbox"/>
of page. See back of page.	<input type="checkbox"/>
See back of page.	<input type="checkbox"/>
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checklist is not intended to be regarded as specific legal May 2014

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May 2014



THANK
YOU!

