

# The Open Public Meetings Act

How it Applies to Washington Cities,  
Counties, and Special Purpose Districts



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**The Center for Government Innovation, a service of the Washington State Auditor's Office**



## **THE OPEN PUBLIC MEETINGS ACT**

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# Revision History

MRSC updates this publication as needed to reflect new legislation and other changes. Below is a summary of significant recent changes. If you are aware of any other sections that you think need to be updated or clarified, please contact [mrsc@mrsc.org](mailto:mrsc@mrsc.org). To make sure you have the most recent version, please go to [mrsc.org/publications](https://mrsc.org/publications).

DATE	SUMMARY
<b>June 2023</b>	Updated publication to reflect legislative changes to the OPMA current through the 2023 legislative session and up-to-date case law.

# Contents

<b>Introduction</b>	<b>1</b>
<b>Applicability</b>	<b>2</b>
In General	2
Governing Bodies and Subagencies	3
Selected Questions on Applicability	4
<b>What Is a “Meeting”?</b>	<b>6</b>
In General	6
Serial Meetings	6
Hybrid and Remote Meetings	7
Selected Questions On Meetings Under the OPMA	7
<b>Exemptions</b>	<b>9</b>
Selected Questions on Exemptions	10
<b>Procedural Requirements</b>	<b>11</b>
Types of Meetings	11
Procedural Requirements for All Meetings	11
Procedural Requirements Specific to Regular Meetings	12
Procedural Requirements Specific to Special Meetings	13
Procedural Requirements Specific to Emergency Meetings	14
Location of Meetings	14
Public Comment	15
Meeting Adjournments or Cancellations	15
Selected Questions on Procedural Requirements	17
<b>Executive Sessions</b>	<b>19</b>
Attendance at Executive Sessions	19
Procedural Requirements for Holding Executive Sessions	19
Allowed Purposes for Holding Executive Sessions	20
Selected Questions on Executive Sessions	26

<b>Penalties and Enforcement</b>	<b>27</b>
<b>Training Requirements</b>	<b>28</b>
<b>Appendix: Recommended Resources</b>	<b>29</b>
Municipal Research and Services Center (MRSC)	29
Washington State Office of the Attorney General (AGO)	29

# Introduction

In 1971, the state legislature enacted the Open Public Meetings Act (OPMA) to make the conduct of government more accessible and open to the public. The OPMA begins with a strongly worded statement of purpose ([RCW 42.30.010](#)):

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 chapter 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 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 publication comprehensively reviews the OPMA as it applies to Washington cities, towns, counties, and special purpose districts. It also provides answers to selected questions that have been asked of MRSC staff concerning the application of the OPMA. However, we find that new questions constantly arise concerning the OPMA. So, if you have questions that are not addressed by this publication, do not hesitate to contact your legal counsel or MRSC legal staff.



# Applicability

Codified in [chapter 42.30 RCW](#), the OPMA applies to all city and town councils,<sup>1</sup> to all county councils and boards of county commissioners, and to the governing bodies of special purpose districts, as well as to many subordinate city, county, and special purpose district commissions, boards, and committees. It requires that all “meetings” of such bodies be open to the public and that all “action” taken by such bodies be done at meetings that are open to the public. The terms “meetings” and “action” are defined broadly in the OPMA and, consequently, the OPMA can have daily significance for cities, counties, and special purpose districts even when no formal meetings are being conducted.

## IN GENERAL

The basic mandate of the Open Public Meetings Act in [RCW 42.30.030](#) is as follows:

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.

The OPMA applies to “meetings” of a “governing body” of a “public agency.” In [RCW 42.30.020](#) a “public agency” is defined as including a city, county, and special purpose district and a “governing body” is defined as follows:

“Governing body” means 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.

The legislative bodies of cities and counties<sup>2</sup> clearly are governing bodies under this definition, as are the boards or commissions that govern special purpose districts. However, they are not the only bodies to which the OPMA applies. The OPMA also applies to any “subagency” of a city, county, or special purpose district,<sup>3</sup> because the definition of “public agency,” per [RCW 42.30.020\(1\)\(c\)](#), includes:

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.

Under this definition, the subagency must be created by some legislative act of the legislative body, such as an ordinance or resolution. A group established by a mayor to advise the mayor on a particular issue could not, for example, be a subagency, because a mayor does not act legislatively. However, a legislative act alone does not create a subagency. According to the Washington State Attorney General's Office (AGO), a board or a commission or other body is not a subagency governed by the OPMA unless it actually possesses some aspect of policy or rulemaking authority. As explained by the AGO, “its “advice,” while not binding upon the agency with which it relates [...], must nevertheless be legally a necessary antecedent to that agency's action.” See [AGO 1971 No. 33](#)<sup>4</sup>.

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1 For convenience, the term “city council” will in this publication also refer to town councils and to city commissions under the commission form of government.

2 The legislative bodies of cities are the city councils or city commissions, and the legislative bodies of counties are the boards of county commissioners or county councils.

3 Most special purpose district governing bodies do not have the authority to create such subagencies.

4 The Attorney General's Office bases its conclusion on this issue on the language “or other policy or rulemaking body of a public agency” in the definition of “governing body” in [RCW 42.30.020\(2\)](#). See also [AGLO 1972 No. 48](#).



**Certain advisory boards are not subject to the OPMA:** If a board or commission (or whatever it may be termed) established by legislative action is merely advisory and its advice is not necessary for the city, county, or district to act, the OPMA generally does not apply to it. However, the governing body can always choose to make the advisory boards that it creates subject to the OPMA, even if that board would not otherwise be subject to the OPMA.

## GOVERNING BODIES AND SUBAGENCIES

Given the definition of “governing body” and “subagency”, the following are governing bodies within city and county government that are subject to the OPMA:

- City council or commission
- County council or board of commissioners
- Planning commission
- Civil service commission
- Board of adjustment
- Lodging Tax Advisory Committee

Other boards or commissions will need to be evaluated individually to determine whether the OPMA applies to them. For example, the definition of a subagency identifies library boards, but, in some cities (particularly those without their own libraries), library boards function as purely advisory bodies, without any policymaking or rulemaking authority. That type of library board would not be subject to the OPMA. In cities where library boards function under statutory authority and possess policymaking and rulemaking authority, those boards must follow the requirements of the OPMA ([RCW 27.12.210](#)).

Most special purpose districts have only one “governing body” under the meaning of that term in the OPMA.

### Committees subject to the OPMA

The OPMA also applies to a committee created by a governing body in the following circumstances:

- When it acts on behalf of the governing body<sup>5</sup>
- When it conducts hearings, or
- When it takes testimony or public comment.

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<sup>5</sup> In a 2015 decision, the State Supreme Court adopted the reasoning of [AGO 1986 No. 16](#) in concluding that a committee acts on behalf of the governing body “when it exercises actual or de facto decision-making authority.” See [Citizens Alliance v. San Juan County](#) (2015). A committee when it is exercising actual or de facto decision-making authority should be distinguished from the situation where a committee simply provides advice or information to the governing body and is not subject to the OPMA. See [Citizens Alliance v. San Juan County](#) (2015).



When a committee is not doing any of those things, it is not subject to the OPMA.<sup>6</sup>

Keep in mind that it is usually good public policy to open the meetings of local government boards, commissions, and committees to the public, even if it is uncertain or doubtful that the OPMA applies to them. This approach would be consistent with the OPMA's focus on transparency and its basic intent that the actions of governmental bodies "be taken openly and that their deliberations be conducted openly" ([RCW 42.30.010](#)).

## SELECTED QUESTIONS ON APPLICABILITY

Below are additional questions and answers addressing the topic of OPMA applicability. For more questions and answers about the OPMA, see MRSC's page on [Open Public Meetings Act FAQs](#).

### **May four councilmembers-elect of a seven-member council meet before taking their oaths of office without procedurally complying with the OPMA?**

Yes. Councilmembers-elect are not yet members of the governing body and cannot take "action" within the meaning of the OPMA, and so they are not subject to the OPMA. See [Wood v. Battle Ground School Dist.](#) (2001).

### **Must a committee of the governing body be composed solely of members of the governing body for it to be subject to the OPMA under the circumstances identified in RCW 42.30.020(2)?**

No. [RCW 42.30.020](#)(2) defines a "governing body" to include a "committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment." The State Supreme Court has held that a "committee thereof," an entity created or specifically authorized by the governing body, may include or consist of individuals who are not members of the governing body. See [Citizens Alliance v. San Juan County](#) (2015).

### **If a committee of a governing body is subject to the OPMA and it forms a subcommittee, is that subcommittee also subject to the OPMA?**

If the subcommittee consists of a quorum of committee members, then it is subject to the OPMA. If the subcommittee consists of less than a quorum of committee members, then it is subject to the OPMA if it performs any of the following functions:

- It acts on behalf of the committee (i.e., it is exercising actual or de facto decision-making authority);
- It conducts hearings; or
- It takes testimony or public comment.

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<sup>6</sup> While the definition of "governing body" speaks of "when" a committee acts so as to come within that definition, the courts have not been clear about whether a committee is subject to the OPMA for all of its meetings when it is only at some that it is acting in that manner. See [Clark v. City of Lakewood](#) (9th Cir. 2001).

**Does the OPMA apply to meetings of department directors or other staff? Does the answer change if the public is invited to attend these meetings?**

The OPMA does not apply to meetings of department directors or staff meetings because those are not meetings of the “governing body” to which the OPMA applies. The meeting is still not subject to the OPMA even if the public is invited to attend. If a quorum of the council or commission attends the department director or staff meeting, whether the meeting is subject to the OPMA depends on the participation of the council or commission members. Passive receipt of information by a quorum of the governing body does not violate the OPMA, so mere attendance is allowed by the OPMA. However, for transparency reasons and to avoid any liability under the OPMA, MRSC recommends noticing all meetings at which a quorum of the council or commission attends.

# What Is a “Meeting”?

## IN GENERAL

There must be a “meeting” of a governing body for the OPMA to apply. Sometimes it is very clear that a “meeting” must be open to the public, but other times it isn't. To determine whether a governing body is having a “meeting” that must be open, it is necessary to look at the OPMA's definitions. [RCW 42.30.020\(4\)](#) defines “meeting” as follows: “Meeting’ means meetings at which action is taken.” “Action,” as referred to in that definition of “meeting,” is defined in [RCW 42.30.020\(3\)](#) as follows:

“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. “Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

Since a governing body can only transact business when a quorum (majority) of its members are present (e.g., [RCW 35A.12.120](#), [35.23.270](#), [35.27.280](#), [36.32.010](#)), it is conducting a meeting subject to the requirements of the Open Public Meetings Act whenever a majority of its members gathers with the collective intent of transacting the governing body's business ([Citizens Alliance v. San Juan County](#) (2015)). This includes simply discussing any matter having to do with agency business. Because members of a governing body may discuss the business of that body by telephone and other electronic means (including email, text message, social media or chat), it is not necessary that the members be in the physical presence of each other for there to be a meeting subject to the OPMA ([Wood v. Battle Ground School Dist.](#) (2001)). Also, it is not necessary that a governing body take “final action” for a meeting subject to the OPMA to occur. See [RCW 42.30.020\(3\)](#).

Note that it does not matter if the meeting is called a “workshop,” a “study session,” or a “retreat”; it is still a meeting subject to the Open Public Meetings Act if a quorum is addressing the business of the city, county, or special purpose district. If a quorum of the governing body just meets socially or travels together, it is not having a meeting subject to the OPMA as long as the members do not discuss agency business or otherwise take “action.” See [RCW 42.30.070](#), [In re Recall of Roberts](#) (1990).

## SERIAL MEETINGS

Members of a governing body must avoid communicating with each other in a way that eventually turns into a majority of the body collectively taking action, even if the majority is never part of any one communication or are not in the physical presence of one another ([Citizens Alliance v. San Juan County](#) (2015), [Wood v. Battle Ground School Dist.](#) (2001), [Egan v. City of Seattle](#) (2020)). This can happen if the members discuss city, county, or district business together in a series of in-person meetings, phone calls, emails, and other electronic means (including text messages, chat, social media posts and comments, and shared documents). These types of meetings are referred to as “serial” or “rolling” meetings and violate the OPMA when they involve a majority of members having the collective intent to take action. They are a violation because the public could not, as a practical matter, attend these “serial” or “rolling” meetings.

Washington’s Supreme Court has said that, for a serial meeting to occur in violation of the OPMA, there must be a “collective intent to take action.” In discussing collective intent, the Court said that in-person meetings, emails, phone calls, and text messages between and among the city councilmembers could constitute a “meeting” under the OPMA if there was evidence that at least five members (a majority of the nine-member city council) participated in and were aware that four others were participating in conversations about repealing the head tax. See [Egan v. City of Seattle](#) (2020).

It is not an illegal serial meeting if one member communicates with the other members merely for the purpose of providing relevant information to them. For example, one member can email the other members about an agency issue, so long as the other members only “passively receive” the information and no email or other type of discussion regarding that information takes place ([Egan v. City of Seattle](#) (2020)). MRSC recommends using the “blind carbon” function in these types of emails which prevents a recipient from replying to all the other recipients. MRSC also recommends having agency staff distribute materials to members of the governing body; this can also help avoid situations where OPMA violations may occur.

## HYBRID AND REMOTE MEETINGS

Local governments are encouraged under [RCW 42.30.030](#) to hold meetings of the governing body as hybrid meetings, where the physical location of the meeting is coupled with a remote access option, but this is not a requirement. A local government can choose to offer its meetings at a physical location or as a hybrid meeting, but it cannot choose to offer a remote-only meeting unless certain circumstances apply. Fully remote meetings with no physical location are permitted under the OPMA only if a local, state, or federal emergency has been declared and the public agency determines it cannot hold an in-person meeting.<sup>7</sup> See [RCW 42.30.230](#).

While the public must be provided the option to attend meetings of the governing body at a physical location (absent an emergency declaration), the OPMA specifically permits members of the governing body to attend their meetings by phone or other electronic means that allow for real-time verbal communication. See [RCW 42.30.230](#)(5). However, some local governments have adopted local policies placing rules on remote attendance by members of the governing body, such as allowing members to remotely attend only three meetings per year or only in special circumstances (e.g., traveling out-of-town, illness).

## SELECTED QUESTIONS ON MEETINGS UNDER THE OPMA

Below are additional questions and answers addressing the topic of meetings under the OPMA. For more questions and answers about the OPMA, see MRSC’s page on [Open Public Meetings Act FAQs](#).

### **May a quorum of a city or county legislative body attend, as members of the audience: (1) a citizens’ group meeting; or (2) an advisory board or other committee meeting?**

Yes, a quorum of the legislative body may attend a citizen’s group meeting or an advisory board/committee meeting without that meeting being subject to the OPMA so long as the members attending the meeting do not

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<sup>7</sup> The OPMA provides an additional exception to the physical meeting location requirement, but this exception does not apply to local governments. The OPMA allows those governing bodies that held some of their regular meetings remotely prior to March 1, 2020, to continue to hold fully remote meetings with no declared emergency so long as the public may also attend remotely.

discuss, as a group, agency business or otherwise take “action” within the meaning of the OPMA ([AGO 2006 No. 6](#)). That possibility could in most circumstances be avoided by not sitting as a group and not engaging with each other in any way during the meeting.

If the legislative body will be expected to participate in the citizens’ group meeting, then either a quorum should not attend, or the meeting should be noticed as a special meeting of the legislative body. Given the nature of the advisory board and committee meetings, the agency may want to notice the meeting as a special meeting of the legislative body to avoid any risk of the members taking action that would violate the OPMA. Further, some agencies may have local rules addressing legislative body attendance at such meetings and may choose to limit attendance or participation for various reasons, including avoiding any undue influence that may occur from the presence or participation by members of the legislative or potential complications with the appearance of fairness doctrine.

### **May an entire county council attend a private dinner in honor of the out-going county official without complying with the Open Public Meetings Act?**

This issue comes down to whether the council will be dealing with county business. It can be argued that honoring the county official is itself county business. On the other hand, it could be argued that honoring an individual who is leaving county employment does not involve the functioning of the county. Additionally, the OPMA provides that there is no violation if “a majority of the members of a governing body [...] gather for purposes other than a regular meeting or a special meeting” (and do not take action at the gathering) ([RCW 42.30.070](#)). Even so, this is a gray area where caution should be exercised.

### **Must the public be allowed to attend the annual city council retreat?**

Yes. A retreat attended by a quorum of the council where issues of city business are addressed constitutes a meeting subject to the OPMA.

### **May all members of the governing body remotely attend their own meeting?**

Yes. The OPMA allows all members of the governing body to remotely attend their own meeting. Remote attendance can be by phone or other electronic means and must allow for real-time verbal communication. Local policies may place restrictions or additional rules on remote meeting attendance by members of the governing body.

# Exemptions

[RCW 42.30.140](#) sets out four situations where a governing body may meet and not be subject to any requirements of the Open Public Meetings Act. That statute provides that the OPMA does not apply to:

1. “The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary.”

This provision, for the most part, has little, if any, application to any city, county, or special district governing body. One type of proceeding where it has been used is where a city provides for a hearing before revoking a business license. See [Cohen v. Everett City Council](#) (1975).

2. “That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group;”

This exception applies when a governing body is acting in a quasi-judicial capacity. Typically, a city or county governing body is acting in a quasi-judicial capacity in certain land use actions such as site-specific rezones, conditional use applications, variances, and preliminary plat applications. Other examples include the civil service commission when it is considering an appeal of a disciplinary decision and the LEOFF disability board when it is considering an application for disability benefits.

However, where a public hearing is required for a quasi-judicial matter, only the deliberations by the body considering the matter can be in closed session.

3. “Matters governed by [chapter 34.05 RCW](#), the Administrative Procedures Act;”

This exception has no application to cities, counties, or special purpose districts, but it has been held to apply to removal hearings for elected state conservation district supervisors (who may be removed from office by the state conservation commission upon notice and hearing pursuant to [RCW 89.08.200](#)). See [Johnson v. Washington State Conservation Commission](#) (2021).

4. “(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.”

The language of this exception is basically self-explanatory.<sup>8</sup> However, the term “professional negotiations” must be interpreted in the context of collective bargaining; it should not be interpreted to apply generally to negotiations for professional services.

## SELECTED QUESTIONS ON EXEMPTIONS

Below are additional questions and answers addressing the topic of exemptions to the OPMA. For more questions and answers about the OPMA, see MRSC’s page on [Open Public Meeting Act FAQs](#).

### **Does the OPMA require that a civil service commission hearing regarding a police officer's appeal of disciplinary action be open to the public?**

Such a hearing would fall under the exception from the OPMA in [RCW 42.30.140](#)(2) for quasi-judicial matters. However, since [RCW 41.12.090](#) requires that such a hearing be public, the OPMA’s exemption does not apply. The commission may nevertheless deliberate in private.

### **Must a local government give any notice under the OPMA when the governing body is meeting to discuss the strategy to be taken during collective bargaining with an employee union?**

No. Under [RCW 42.30.140](#)(4), this meeting is exempt from the OPMA. The council or commission may therefore meet without notifying anyone. Of course, each member of the governing body must be notified.

### **Can a local government unilaterally require that collective bargaining negotiations occur at an open public meeting?**

No. The Washington Supreme Court held that a city ordinance requiring that all collective bargaining between city and union representatives occur at an open public meeting was preempted by state law and unconstitutional under article XI, section 11 of the Washington State Constitution. See [Washington State Council of County and City Employees v. City of Spokane](#) (2022).

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<sup>8</sup> City, county, and special district governing bodies should be aware that this exemption from the OPMA does not protect the public from accessing documents that are introduced at such a meeting through a Public Records Act request. See [ACLU of WA v. City of Seattle](#) (2004).



# Procedural Requirements

The OPMA establishes some basic procedural requirements that apply to all meetings of a governing body, whether they are regular or special meetings. All meetings of a governing body are, under the Open Public Meetings Act, either regular or special meetings. It does not matter if it is called a “study session” or a “workshop” or a “retreat,” it is either a regular or special meeting.

## TYPES OF MEETINGS

### What is a regular meeting?

A regular meeting is one that is held according to a schedule adopted by ordinance, resolution, order, or rule, as may be appropriate for the governing body. See [RCW 42.30.060](#), [.070](#), [.080](#).<sup>9</sup>

### What is a special meeting?

A special meeting is any meeting that is not a regular meeting. In other words, special meetings are not held according to a fixed schedule. Under the OPMA, special meetings have specific notice requirements, as discussed below. Also, governing bodies may be subject to specific limitations about what may be done at a special meeting.<sup>10</sup>

### What is an emergency meeting?

An emergency meeting is one that is held because the governing body needs to take expedited action to meet an unexpected emergency (such as a fire, flood or earthquake). As discussed in more detail below, emergency meetings have no notice requirements. To qualify for an emergency, the situation must be one that involves, or has the likelihood to involve, injury or damage to persons or property, when time requirements of meeting notice make notice impractical and increases the likelihood of such injury or damage or when notice cannot be posted with reasonable safety. See [RCW 42.30.070](#), [.080](#), [Mead School District v. Mead Ed. Ass'n](#) (1975).

## PROCEDURAL REQUIREMENTS FOR ALL MEETINGS

The following requirements and prohibitions apply to both regular and special meetings of a governing body:

- All meetings must be open to the public ([RCW 42.30.030](#)).

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<sup>9</sup> Also, state law, though not the OPMA, may require the governing body of a city, county, or special district to meet with a certain regularity, such as monthly. For example, second class and code city councils, town councils, and the board of directors of any school district must meet at least once a month. See [RCW 35.23.181](#), [35.27.270](#), [35A.12.110](#), [28A.343.380](#).

<sup>10</sup> For example, second class city councils may not pass an ordinance or approve a contract or a bill for the payment of money at a special meeting ([RCW 35.23.181](#)). Town councils may not pass a resolution or order for the payment of money at a special meeting ([RCW 35.27.270](#)). Many special purpose districts are subject to requirements that certain actions can be taken only at a regular meeting, i.e., not at a special meeting. See, e.g., [RCW 54.16.100](#) (appointment and removal of public utility district manager); [RCW 85.05.410](#) (setting compensation of board of diking district commissioners). The councils of first class and code cities and county legislative bodies have no specific limitations on actions that may be taken at a special meeting, other than those imposed by the Open Public Meetings Act.

- Meetings must be held in a physical location, with remote access optional, unless a local, state or federal emergency has been declared and the agency determines it cannot hold an in-person meeting with reasonable safety because of the emergency ([RCW 42.30.230](#)).
- Minutes are required for all regular and special meetings except executive sessions (although the announced purpose of the executive session must be included in the minutes). See [RCW 42.30.035](#) and [42.30.110\(2\)](#). Minutes must be made available for public inspection but are not required to be posted online.
- A member of the public may not be required as a condition of attendance to register their name or other information, or complete a questionnaire, or be required to fulfill any other condition to be allowed to attend ([RCW 42.30.040](#)).
- The governing body may require the removal of members of the public who disrupt the orderly conduct of a meeting. This ability to remove disruptive attendees applies to both in-person and remote meetings, although agencies have more tools available in remote meetings to prevent disruption (e.g., muting microphones, disabling chat and video). If order cannot be restored by removal of individuals, the governing body may order the meeting room cleared and may continue in session or it may adjourn and reconvene the meeting at another location, subject to the limitations in [RCW 42.30.050](#). These limitations include that final disposition may be taken only on matters appearing in the agenda and that the press and news media shall be allowed to attend the reconvened session (unless they were disruptive).
- Votes may not be taken by secret ballot. Votes taken by secret ballot are null and void. See [RCW 42.30.060\(2\)](#).
- Meetings may be adjourned (rescheduled) or continued subject to the procedures in [RCW 42.30.090](#), as discussed below.
- The governing body may exclude members of the public and meet either (1) in executive session for one of the reasons specified in and in accordance with the procedures identified in [RCW 42.30.110](#) or (2) in a closed session if the purpose of the meeting is not subject to the requirements of the OPMA under [RCW 42.30.140](#). See discussion on [executive sessions](#) and closed sessions.

## PROCEDURAL REQUIREMENTS SPECIFIC TO REGULAR MEETINGS

- The date and time of regular meetings must be established by ordinance, resolution, order, or rule, as may be required for the particular governing body. The location of the regular meeting should also be designated.
- If the regular meeting date falls on a holiday, the meeting must be held on the next business day ([RCW 42.30.070](#)).
- Most agencies must post the regular meeting agenda online at least 24 hours in advance of the published start time of the regular meeting ([RCW 42.30.077](#)). This requirement does not prohibit the agency from subsequently modifying the agenda and failure to post the agenda will not invalidate otherwise legal action taken at the meeting. Cities, towns, and special purpose districts that meet the following criteria are not required to post their regular meeting agendas online:
  - Have a population within its jurisdiction of under 3,000; and
  - Have 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; and

- Provide 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 1% of the district's, city's, or town's budget.

### **May a regular meeting agenda be modified prior to the meeting?**

While the regular meeting agendas must be posted online at least 24 hours prior to the published start time of the meeting, this requirement does not preclude governing bodies from making subsequent changes to a regular meeting agenda. Governing bodies may modify the agenda by adding new items or modifying or removing items, either before or during the meeting. The OPMA does not prohibit taking final action on matters that are added to the preliminary regular meeting agenda. Agencies must be mindful of any restrictions in their local rules of procedures as those rules may affect the timing of agenda modifications and whether the agency can take final action on matters added to the agenda.

## **PROCEDURAL REQUIREMENTS SPECIFIC TO SPECIAL MEETINGS**

The procedural requirements that apply to special meetings deal primarily with the notice that must be provided. These requirements, contained in [RCW 42.30.080](#), are as follows:

- A special meeting may be called by the presiding officer or by a majority of the members of the governing body.<sup>11</sup>
- Written notice must be delivered personally, by mail, by fax, or by email at least 24 hours before the time of the special meeting to:
  - Each member of the governing body, and to
  - Each local newspaper of general circulation and each local radio or television station that has on file with the governing body a written request to be notified of that special meeting or of all special meetings.<sup>12</sup>
- Notice of the special meeting must be provided to the public as follows:
  - “Prominently displayed” at the main entrance of the agency’s principal location, and at the meeting site if the meeting will not be held at the agency’s principal location and is not held as a remote meeting; and
  - Posted on the agency’s website. Website posting is not required if the agency:
    - Does not have a website or does not share a website with another agency;
    - Does not employ any full-time equivalent employees; or
    - Does not employ personnel whose job it is to maintain or update the website.

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<sup>11</sup> There is a conflict between the provision in [RCW 42.30.080](#) authorizing a majority of the members of a governing body to call a special meeting and the provision for code cities in [RCW 35A.12.110](#) authorizing three members of the city council to call a special meeting. This conflict occurs only with respect to a code city with a seven-member council, because three members is less than a majority. Since [RCW 42.30.140](#) provides that the provisions of the OPMA will control in case of a conflict between it and another statute, four members of a seven-member code city council, not three, are needed to call a special meeting.

<sup>12</sup> Note also that statutes relating to each class of city require that cities: “[...] establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city’s official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement.” See [RCW 35A.12.160](#), [35.22.288](#), [35.23.221](#), [35.27.300](#). There are no similar statutes that apply to counties or special purpose districts. Nevertheless, we recommend that counties and special districts establish like procedures for notifying the public.

- The notice must specify:
  - The time and place of the special meeting, and
  - The business to be transacted at the special meeting.
- The governing body may take final action only concerning matters identified in the notice of the special meeting. This does not prevent a governing body from discussing or otherwise taking less than final action with respect to a matter not identified in the notice.
- Written notice to a member or members of the governing body is not required when:
  - A member files at or prior to the meeting a written waiver of notice or provides a waiver by telegram, fax, or email; or
  - The member is present at the meeting at the time it convenes.

## PROCEDURAL REQUIREMENTS SPECIFIC TO EMERGENCY MEETINGS

Special meeting notice requirements may be dispensed with when a special meeting is called to deal with an emergency<sup>13</sup> involving injury or damage to persons or property or the likelihood of such injury or damage, when the time requirements of the notice would make notice impractical and increase the likelihood of such injury or damage or when notice cannot be posted or displayed with reasonable safety.

If the local, state or federal government declares an emergency and the local government determines it cannot hold a meeting of the governing body with in-person attendance with reasonable safety, the agency may hold a fully remote meeting or hold a meeting at which physical attendance by some or all members of the public is limited ([RCW 42.30.230](#)). In the event of such a meeting, notice must be posted on the agency website even if the agency does not employ full-time-equivalent employees or does not employ personnel whose duty is to maintain or update the website ([RCW 42.30.080\(2\)\(b\)](#)).

## LOCATION OF MEETINGS

The OPMA does not require that a city, county or, special district governing body hold its meetings within the city or in a particular place in the county or district. However, other statutes require governing bodies to meet in specific locations in order to conduct business.

The councils of code cities, second class cities, and towns may take final actions on ordinances and resolutions only at a meeting within the city or town ([RCW 35.23.181](#), [35.27.270](#), [35A.12.110](#)). Also, as a general matter, county legislative bodies must hold their regular meetings at the county seat ([RCW 36.32.080](#)). However, county legislative bodies can hold regular meetings outside the county seat but within the county if the legislative body determines that “holding a meeting at an alternate location would be in the interest of supporting greater citizen engagement in local government,” as follows: (1) once per calendar month in a city with a greater population than the city in which the county seat is located; and (2) once per calendar quarter in any other location. No more than one meeting per calendar month may be held at an alternate

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<sup>13</sup> The type of emergency contemplated here is a severe one that “involves or threatens physical damage” and requires urgent or immediate action. See [Mead Sch. Dist. No. 354 v. Mead Educ. Ass’n](#) (1975).

location. County legislative bodies may hold special meetings in the county outside of the county seat if there are agenda items that “are of unique interest or concern” to the residents of the area of the county in which the meetings are held ([RCW 36.32.090](#)). And joint meetings – regular or special – of two or more county legislative authorities may be held in the county seat of a participating county if the meeting agenda includes an item or items that “relate to actions or considerations of mutual interest or concern to the participating legislative authorities.”

Some special purpose district governing bodies, such as school district boards of directors, are specifically required to hold their regular meetings within the district, while others, such as irrigation districts, are specifically required to hold meetings in the county where the district is located. See [RCW 28A.330.070](#) (school districts) and [RCW 87.03.115](#) (irrigation districts). Where the statutes are silent as to where meetings must be held for a particular type of district, they should be held within the district or, at the very least, within the county in which the district is located.

## **PUBLIC COMMENT**

Except in an emergency situation, the OPMA requires the governing body to provide an opportunity for public comment “at or before every regular meeting at which final action is to be taken” ([RCW 42.30.240](#)). The comment can be given verbally or in writing. This does not mean that the governing body must allow public comment at every meeting. First, it must be a “regular” meeting. While there is no specific definition of “regular meeting,” a conservative interpretation of the statute is that any meeting that is on the adopted meeting schedule is a “regular meeting.” It does not matter if your agency refers to the meeting as a “business meeting” or a “study session,” if the meeting is on a schedule that is adopted by ordinance, resolution, order, or rule then it is a regular meeting. Second, it must be a meeting at which “final action” is to be taken. “Final action” is defined in [RCW 42.30.020](#)(4):

“Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

The governing body has flexibility in deciding when and how it will accept public comment. For example, it can decide that it will only take written comment submitted in advance of the meeting or that it will only take oral comment at the beginning of the meeting. However, if a person notifies the governing body that the person will have “difficulty attending a meeting” because of “disability, limited mobility, or for any other reason that will make physical attendance at a meeting difficult” the governing body must (if feasible) provide an opportunity for that person to provide oral testimony remotely if it is taking oral testimony in-person during the meeting.

## **MEETING ADJOURNMENTS OR CANCELLATIONS**

### **Meeting Adjournment**

The OPMA provides that a meeting can be adjourned – or rescheduled – to a specified time and place ([RCW 42.30.090](#)).<sup>14</sup>

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<sup>14</sup> While the term “adjournment” in the OPMA refers to rescheduling a meeting, it is a common and acceptable practice for local governments to end their regular or special meetings by indicating that the meeting is “adjourned.”

There are a few circumstances under which a meeting might be adjourned:

- When the governing body does not achieve a quorum. In that circumstance, less than a quorum may adjourn a meeting to a specified time and place; or
- When all members are absent from a regular meeting or an adjourned regular meeting. In that instance, the clerk or secretary of the governing body may adjourn the meeting to a stated time and place, with notice provided as required for a special meeting, unless notice is waived as provided for special meetings. However, the resulting meeting is still considered a regular meeting.

## Meeting Cancellation

The OPMA does not specifically address cancellation of a regular meeting.<sup>15</sup> Technically, a regular meeting can only be adjourned under [RCW 42.30.090](#). But MRSC is aware that local governments often use the term “cancel” when a meeting must be rescheduled (or not held) because of weather, holidays, or knowledge that a quorum is not going to be present. If an agency is not aware of the need to cancel in advance of the meeting but a quorum is not present for a meeting, then those members present (or the clerk or secretary of the governing body if no members are present) can adjourn the meeting to the next regularly scheduled meeting or to an alternative date and time.

## Notice Requirements

While not specifically authorized by the OPMA, if an agency knows in advance of the meeting that it must be rescheduled or not held, then MRSC recommends that the notice of “cancellation” should state that the regular meeting is cancelled and rescheduled to the next regular meeting date. Or if the meeting is being rescheduled to a date/time other than that for the next regular meeting, then it should be noticed as a special meeting. In either case notice should be given in the same manner that notice is given for a special meeting under [RCW 42.30.080](#).

Except in the case of remote meetings without a physical location, notice of an adjourned or cancelled meeting is to be provided as follows:

- An order or notice of adjournment or cancellation, specifying the time and place of the meeting to be adjourned or cancelled, must be “conspicuously posted” immediately following adjournment on or near the door of the place where the meeting was held.
- Members of the governing body must receive written notice by mail, fax, or email.
- The order or notice must be posted on the agency’s website unless the agency meets the exception criteria in [RCW 42.30.080\(2\)\(b\)](#).
- If the notice or order of an adjourned or cancelled meeting fails to state the hour at which the adjourned or cancelled meeting is to be held, it must be held at the hour specified for regular meetings by ordinance, resolution, or other rule ([RCW 42.30.090](#)).

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<sup>15</sup> When cancelling a regular meeting, be mindful of any state law requirements that the governing body meet a specified number of times per month (for example second class and code city councils and town councils must meet at least once a month. See [RCW 35.23.181](#), [35.27.270](#), [35A.12.110](#)).

## Hearings

If the governing body is holding a hearing, the hearing may be continued at a later date by following the same procedures for adjournment of meetings ([RCW 42.30.100](#)).

## SELECTED QUESTIONS ON PROCEDURAL REQUIREMENTS

Below are additional questions and answers addressing the OPMA's procedural requirements. For more questions and answers about the OPMA, see MRSC's page on [Open Public Meetings Act FAQs](#).

### **Must a city, county, or special purpose district provide published notice of a special meeting?**

While notice of a special meeting does not need to be published in the newspaper, the agency must post the special meeting notice on its website unless it does not have a website or does not share a website with another agency. See [RCW 42.30.080\(2\)\(b\)](#). If an agency does not employ any full-time equivalent employees or does not employ personnel whose duty it is to maintain or update the website, it also does not need to post special meeting notice on its website except for the following circumstances:

- The meeting is a fully remote meeting; or
- The meeting is one in which physical attendance by some or all members of the public is limited due to a declared emergency.

### **May notice to the media of a special meeting be provided by mail, fax, or email?**

Yes. [RCW 42.30.080](#) allows notice by mail, fax, or email.

### **Is an agency required to audio or video record a regular or special meeting?**

The OPMA encourages but does not require that agencies record their regular meetings.<sup>16</sup> The OPMA does not encourage recording of special meetings. This is true even if the meeting is held either fully or partially remote. See [RCW 42.30.220](#).

There is also no requirement that the recordings be posted to the agency's website. The recordings must be retained for the period required by the Washington State Archives' [Local Government Records Retention schedule](#) and must be made available to the public under the Public Records Act ([Ch. 42.56 RCW](#)).

### **May a governing body prohibit a member of the public from recording a meeting of the governing body?**

No, there is no legal basis for prohibiting the audio or video recording of a meeting of the governing body, unless the recording disrupts the meeting. If the governing body enacted such a rule, it essentially would be conditioning attendance at a meeting on not recording the meeting. This would be contrary to [RCW 42.30.040](#), which prohibits a governing body from imposing any condition on attending a public meeting. See [AGO 1998 No. 15](#).

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<sup>16</sup> The one exception to this is that school district boards of directors must audio record all regular and special meetings at which final action is taken or formal public testimony is accepted. [RCW 42.30.035](#).



### **How can a majority of the governing body agree outside of a formal meeting to call a special meeting without violating the OPMA?**

Since a majority of the governing body, under [RCW 42.30.080](#), may call a special meeting “at any time,” it would indeed be an anomaly if, in calling for that meeting, the majority would be considered to have violated the OPMA. In MRSC’s opinion, the only way to give effect to this statutory provision is to allow a majority to communicate as a group in some way (e.g., by phone, email, in person, or through the clerk’s office) to decide whether to have a special meeting, when to have it, and what matters it will deal with. The members could not discuss anything else, such as the substance of the matters to be discussed at the special meeting.

### **May the agency change the date and time or location of a regular meeting?**

The OPMA does not address a one-time change to the date and time or location of a regular meeting. If an agency wants to make a one-time change to the date and time or the location of its regular meeting schedule, it should notice the new meeting as a special meeting pursuant to [RCW 42.30.080](#).

### **How should the agency notice a joint meeting of the legislative body (such as the city council) and a subagency (such as the planning commission)?**

If the subagency is joining the legislative body at its regular meeting, the meeting should be noticed as a special meeting of the subagency. The agenda should include “joint meeting” as an agenda item. If the legislative body and subagency are not meeting during a regular meeting, then the meeting should be noticed as a special meeting of the two bodies.

# Executive Sessions

“Executive session” is not expressly defined in the Open Public Meetings Act, but the term is commonly understood to mean that part of a regular or special meeting of a governing body that is closed to the public. A governing body may hold an executive session only for specified purposes, which are identified in [RCW 42.30.110\(1\)\(a\)-\(p\)](#),<sup>17</sup> and only during a regular or special meeting. Nothing, however, prevents a governing body from holding a meeting, which complies with the OPMA’s procedural requirements, for the sole purpose of having an executive session. A governing body should always follow the basic rule that it may not take final action in an executive session.

Information shared in a properly convened executive session is confidential and participants have a duty to keep it so. Disclosure of confidential information from an executive session by a municipal officer violates [RCW 42.23.070\(4\)](#), which prohibits municipal officers from disclosing confidential information gained by reason of the officer’s position. See [AGO 2017 No. 5](#). Confidentiality does not apply to executive session information that was previously publicly discussed or that fell outside the meeting scope.

## ATTENDANCE AT EXECUTIVE SESSIONS

Attendance at an executive session need not be limited to the members of the governing body. Persons other than the members of the governing body may attend the executive session at the invitation of that body. Those invited should have some relationship to the matter being addressed in the executive session, or they should be attending to otherwise provide assistance to the governing body. For example, when the governing body is meeting in executive session to discuss litigation or potential litigation, legal counsel must be present and participate in the discussion. Another example of attendance by individuals other than the governing body is when staff of the governing body or of the governmental entity may be needed to present information or to take notes or minutes. Minutes are not required to be taken at an executive session, and because they would be subject to disclosure under the Public Records Act, we recommend that agencies do not take executive session minutes. See [RCW 42.32.030](#).

## PROCEDURAL REQUIREMENTS FOR HOLDING EXECUTIVE SESSIONS

Before a governing body may convene in executive session, the presiding officer must publicly announce the executive session to those attending the meeting by stating two things:

- The purpose of the executive session, and
- The time when the executive session will end.

The announced purpose of the executive session must be one of the statutorily-identified purposes for which an executive session may be held and the purpose must be included in the regular or special meeting minutes.

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<sup>17</sup> There is at least one statute outside of the Open Public Meetings Act that authorizes an executive session for a purpose not identified in [RCW 42.30.110\(1\)\(a\)-\(p\)](#). [RCW 70.44.062](#) authorizes the board of commissioners of a public hospital district to meet in executive session “concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider” or “to review the report or the activities of a quality improvement committee.”

The announcement must contain enough detail to identify the purpose as falling within one of those identified in [RCW 42.30.110\(1\)](#).

If the executive session is not over at the stated time, it may be extended only if the presiding officer announces to the public at the meeting place that it will be extended to a stated time. If the governing body concludes the executive session *before* the time that was stated it would conclude, it may not reconvene in open session until the time stated. Otherwise, the public may, in effect, be excluded from that part of the open meeting that occurs between the close of the executive session and the time that was announced for the conclusion of the executive session.

After conclusion of the executive session, the presiding officer returns to the open session even if it is just to adjourn the meeting.

## ALLOWED PURPOSES FOR HOLDING EXECUTIVE SESSIONS

An executive session may be held only for one or more of the purposes identified in [RCW 42.30.110\(1\)](#). Identified below are selected purposes which have practical application to cities, counties, and special purpose districts. The complete list of purposes is set forth in the statute.

- **National Security** ([RCW 42.30.110\(1\)\(a\)\(i\)](#))

“To consider matters affecting national security.”

Until the events of September 11, 2001, the provision allowing for consideration of matters affecting national security in executive session had little, if any, practical application to cities, counties, or special districts. However, since the events of September 11, 2001, it has become clear that local security issues may in some instances have national security implications. So, discussions by city, county, or district governing bodies of security matters relating to possible terrorist activity should come within the ambit of this executive session provision. This would include discussions of vulnerability or response assessments relating to criminal terrorist activity.

- **Data Security Breach** ([RCW 42.30.110\(1\)\(a\)\(ii\)](#))

“To consider, if in compliance with any required data security breach disclosure under [RCW 19.255.010](#) and [RCW 42.56.590](#), and with legal counsel available, information regarding the infrastructure and security of computer and telecommunications networks, security and service recovery plans, security risk assessments and security test results to the extent that they identify specific system vulnerabilities, and other information that if made public may increase the risk to the confidentiality, integrity, or availability of agency security or to information technology infrastructure or asset.”

This provision permits executive session discussion of cybersecurity concerns, so long as legal counsel is present, and the discussion meets the provision’s criteria.

- **Purchase or Lease of Real Estate** ([RCW 42.30.110\(1\)\(b\)](#))

“To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price.”

This provision has two elements:

- The governing body must be considering either purchasing or leasing real property; and
- Public knowledge of the governing body’s consideration would likely cause an increase in the price of the real property.

The consideration of the purchase of real property under this provision can involve condemnation of the property, including the amount of compensation to be offered for the property. See [Port of Seattle v. Rio](#) (1977).

Since this provision recognizes that the process of purchasing or leasing real property or selecting real property to purchase or lease may justify an executive session, it implies that the governing body may need to reach some consensus in executive session as to the price to be offered or the particular property to be selected. See [Port of Seattle v. Rio](#) (1977) at 723-25. However, the State Supreme Court has emphasized that “only the action explicitly specified by [an] exception may take place in executive session.” See [Miller v. Tacoma](#) (1999). See also, [Feature Realty, Inc. v. Spokane](#) (9th Cir. 2003). Taken literally, this limitation would preclude a governing body in executive session from actually selecting a piece of property to acquire or setting a price at which it would be willing to purchase or lease property, because such action would be beyond mere “consideration.” Yet, the purpose of allowing this type of consideration in an executive session would be seemingly defeated by requiring a vote in open session to select the property or to decide how much to pay for it, where public knowledge of these matters would likely increase its price. While this issue awaits judicial or legislative resolution, city and county legislative bodies and special district governing bodies should exercise caution.

- **Sale or Lease of Agency Real Estate** ([RCW 42.30.110\(1\)\(c\)](#))

“To consider 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. However, final action selling or leasing public property shall be taken in a meeting open to the public.”

This subsection, the reverse of the previous one, also has two elements:

- The governing body must be considering the minimum price at which real property belonging to the city or county will be offered for sale or lease; and
- Public knowledge of the governing body's consideration will likely cause a decrease in the price of the property.

The requirement here of taking final action selling or leasing the property in open session may seem unnecessary, since all final actions must be taken in a meeting open to the public. However, its probable purpose is to indicate that, although the decision to sell or lease the property must be made in open session, the governing body may decide in executive session the minimum price at which it will do so. However, see the discussion under the previous provision for meeting in executive session and taking any action in executive session that is not expressly authorized.

If there would be no likelihood of a change in price if these real property matters are considered in open session, then a governing body should not meet in executive session to consider them.

Washington’s Supreme Court has said that this section is to be used sparingly. Only actual price can be discussed in executive session. In a case involving a port’s lease of its property to a private party, the Court said that factors such as potential impacts on local jobs, local spending, environmental risks, public safety, and risks to neighboring tenants should have been discussed in an open session. These types of factors comprising value must be discussed in open session, though “their specific dollars-and-cents impact on price” may be discussed in executive session. See [Columbia Riverkeeper v. Port of Vancouver USA](#) (2017).

- **Review Negotiations on Performance of Bid Contracts** ([RCW 42.30.110\(1\)\(d\)](#))

“To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs.”

This subsection indicates that when a city, county, or special district and a contractor performing a publicly bid contract are negotiating over contract performance, the governing body may “review” those negotiations in executive session if public knowledge of the review would likely cause an increase in contract costs. There is no case law on this provision and it is not clear what circumstances would result in a governing body meeting in executive session under this provision.

- **Complaints and Charges Against Officer or Employee** ([RCW 42.30.110\(1\)\(f\)](#))

“To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge.”

For purposes of meeting in executive session under this provision, a “charge” or “complaint” must have been brought against a city, county, or special district officer or employee. A “public officer” includes members of the governing body and volunteers who serve in public officer positions, such as a member of a subagency like the planning commission. The complaint or charge could come from within the city, county, or district or from the public, and it need not be a formal charge or complaint. The bringing of the complaint or charge triggers the opportunity of the officer or employee to request that the discussion be held in open session.

As a general rule, city governing bodies that are subject to the OPMA do not deal with individual personnel matters.<sup>18</sup> For example, the city council should not be involved in individual personnel decisions, as these are within the purview of the administrative branch under the authority of the mayor or city manager.<sup>19</sup> This provision for holding an executive session should not be used as a justification for becoming involved in personnel matters which a governing body may have no authority to address.

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<sup>18</sup> A civil service commission is an obvious exception. It, however, addresses personnel actions taken against a covered officer or employee, and it does so in the context of a formal hearing. Another exception is where the governing body may be considering a complaint against one of its members. Also, when a city council has confirmation authority over a mayoral appointment, it may discuss the appointment that is subject to confirmation in executive session.

<sup>19</sup> An exception is where the council, in a council-manager city, may be considering a complaint or charge against the city manager.

- **Evaluate Applicants for Employment or Review Performance of Employees** ([RCW 42.30.110\(1\)\(g\)](#))

“To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to [RCW 42.30.140\(4\)](#), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public.”

There are two different purposes under this provision for which a governing body may meet in executive session: (1) to evaluate qualifications of applicants for public employment; and (2) to review the performance of a public employee. This means that a governing body may evaluate in executive sessions persons who apply for appointive office positions, such as a city manager, as well as those who apply for appointive office or employee positions.<sup>20</sup> But, they would not evaluate in executive session:

- The performance of a member of the legislative body (who is not considered a public employee in most circumstances). As mentioned above, complaints or charges against a member of the governing body can be discussed in an executive session under [RCW 42.30.110\(1\)\(f\)](#).
- Applicants for or the performance of uncompensated, appointed offices (like the planning commission) or general volunteer positions (such as a parks department volunteer).

The first purpose under this provision involves evaluating the qualifications of applicants for public employment. This could include personal interviews with an applicant, discussions concerning an applicant's qualifications for a position, and discussions concerning salaries, wages, and other conditions of employment personal to the applicant.

This authority to “evaluate” applicants in executive session allows a governing body to discuss the qualifications of applicants, not to choose which one to hire (to the extent the governing body has any hiring authority). Although this subsection expressly mandates that “final action hiring” of an applicant for employment be taken in open session, this does not mean that a governing body may take preliminary votes in executive session that eliminate candidates from consideration. See [Miller v. Tacoma](#) (1999).

The second part of this provision concerns reviewing the performance of a public employee. Typically, this is done where the governing body is considering a promotion or a salary or wage increase for an individual employee or where it may be considering disciplinary action.<sup>21</sup>

The result of a governing body's executive session review of the performance of an employee may be that the body will take some action either beneficial or adverse to the officer or employee. That action, whether raising a salary of or disciplining an officer or employee, must be made in open session.

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<sup>20</sup> The courts have, for various purposes, distinguished between a public "office" and a public "employment." See, e.g., [Oceanographic Comm'n v. O'Brien](#) (1968); [State ex rel. Hamblen v. Yelle](#) (1947); [State ex rel. Brown v. Blew](#) (1944). A test used to distinguish between the two is set out in [Blew](#) at 51.

<sup>21</sup> In general, a city council has little or no authority regarding discipline of public officers or employees. An exception would be a city manager over which the council has removal authority. See [RCW 35A.13.130](#) and [35.18.120](#).

Any discussion involving salaries, wages, or conditions of employment to be “generally applied” in the city, county, or district must take place in open session. However, discussions that involve collective bargaining negotiations or strategies are not subject to the Open Public Meetings Act and may be held in closed session without being subject to the procedural requirements for an executive session ([RCW 42.30.140\(4\)](#)).

- **Evaluate Candidates for Appointment to Elective Office** ([RCW 42.30.110\(1\)\(h\)](#))

“To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public.”

This provision applies to a city, county, or district governing body only when it is filling a vacant elective position. Under this provision, the governing body may meet in executive session to evaluate the qualifications of applicants for the vacant position. However, any interviews with the candidates must be held in open session. As with all other appointments, the vote to fill the position must also be in open session.

This provision does not allow evaluation in executive session of a candidate for a nonelected, appointive positions because this provision is limited to evaluations of candidates for elective office.

- **Discuss Enforcement Actions and Litigation with Legal Counsel** ([RCW 42.30.110\(1\)\(i\)](#))

“To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), “potential litigation” means matters protected by RPC 1.6<sup>22</sup> or [RCW 5.60.060\(2\)\(a\)](#)<sup>23</sup> concerning:

- (i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;
- (ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or
- (iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency.”

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<sup>22</sup> RPC 1.6 is part of the Rules of Professional Conduct for attorneys, and it deals specifically with client confidentiality, generally prohibiting disclosure of client confidences except in certain specific situations.

<sup>23</sup> [RCW 5.60.060\(2\)\(a\)](#) provides that an attorney may not be compelled to be a witness at trial and reveal client confidences.



Three basic requirements must be met before this provision can be used by a governing body to meet in closed session:<sup>24</sup>

- The attorney or special legal counsel representing the city, county, or special district must attend the executive session to discuss the enforcement action or the litigation or potential litigation;
- The discussion with legal counsel must concern either an enforcement action or litigation or potential litigation to which the city, county, district, a governing body, or one of its members is or is likely to become a party; and
- Public knowledge of the discussion would likely result in adverse legal or financial consequence to the city, county, or district.

**The potential litigation issue.** This provision allows governing bodies to discuss in executive session the legal risks of a proposed or existing practice or action, when discussing those risks in open session would likely have an adverse effect on the agency’s financial or legal position. This allows a governing body to freely consider the legal implications of a proposed decision or an existing practice without the attendant concern that some future litigation position might be jeopardized.

**The probability of adverse consequence to the city or county.** It is probable that public knowledge of most governing body discussions of existing litigation would result in adverse legal or financial consequence to the city, county, or district. Knowledge by one party of the communications between the opposing party and its attorney concerning a lawsuit will almost certainly give the former an advantage over the latter. The same probably can be said of most discussions that qualify as involving potential litigation.

The State Supreme Court has held that a governing body is not required to determine beforehand whether public knowledge of the discussion with legal counsel would likely have adverse consequences; it is sufficient if the agency, from an objective standard, should know that the discussion is not benign and that public knowledge of it will likely result in adverse consequences. See [Recall of Lakewood City Council](#) (2001).

**Again, no final action in executive session.** The purpose of this executive session provision is to allow the governing body to discuss litigation or enforcement matters with legal counsel; the governing body is not authorized to take final action regarding such matters in an executive session. See [Miller v. Tacoma](#) (1999) and [Feature Realty, Inc. v. Spokane](#) (9th Cir. 2003) (emphasizing that, in order for any action to take place legally in executive session, authority must be “explicitly specified” in an exemption under [RCW 42.30.110\(1\)](#)). The only action that is specifically authorized in this exemption is discussion.

However, since a basic purpose of shielding these discussions from public view is to protect the secrecy of strategic moves concerning litigation, the scope of a governing body's authority in executive session should be interpreted to afford that protection. So, for example, while this provision does not authorize a governing body to approve a settlement agreement in executive session, it should provide authority for that body to authorize its legal counsel to settle a case for no higher than a certain amount. An interpretation supporting the council's authority to take such action appears warranted, but such an interpretation may not be supported by the strict language in case law.

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<sup>24</sup> This provision for holding an executive session is based on the legislative recognition that the attorney-client privilege between a public agency governing body and its legal counsel can co-exist with the Open Public Meetings Act. See [Final Legislative Report, Forty-Ninth Legislature, 1985 Regular and 1st Special Sessions](#) (SSB 3386); see also [Recall of Lakewood City Council](#) (2001); [Port of Seattle v. Rio](#) (1977); [AGO 1971 No. 33](#). However, that privilege is not necessarily as broad as it may be between a private party and legal counsel.

## SELECTED QUESTIONS ON EXECUTIVE SESSIONS

Below are additional questions and answers addressing executive sessions. For more questions and answers about the OPMA, see MRSC's page on [Open Public Meetings Act FAQs](#).

### **May an executive session be called to discuss “personnel matters”?**

No, this would not be a legally sufficient reason to hold an executive session. The purpose for holding an executive session must be within those specifically identified in [RCW 42.30.110\(1\)](#). Although there are personnel issues that may be addressed in an executive session under this statute, such as complaints or charges against an employee or an employee's performance, “personnel matters” is too broad a purpose and could include purposes not authorized by the statute.

### **May a city council meet in executive session to ask the mayor to resign?**

No. Although the council could meet in executive session to discuss complaints or charges against the mayor, the council should take the action of asking for the mayor's resignation in open session. (Of course, a mayor is not legally bound by the council's wishes.)

### **May a governing body meet in executive session at a special meeting if the notice of the special meeting did not identify that an executive session would be held?**

Yes. But [RCW 42.30.080](#) would prevent the governing body from taking final action on a matter that was discussed in executive session when the body reconvenes the open session, unless that action was already on the published agenda. As well, from a policy standpoint, the meeting notice should identify the executive session if the governing body knows at the time of giving the notice that it will be meeting in executive session at the special meeting.

### **If three members of a seven-member city council interview candidates for a council vacancy, must those interviews be open to the public?**

Yes. Although they do not represent a quorum of the council, the three councilmembers would be acting on behalf of the entire council in conducting these interviews. As such, they would be considered a “governing body” subject to the OPMA. Since interviews by a governing body of candidates for appointment to elective office must occur in an open meeting under [RCW 42.30.110\(1\)\(h\)](#), this three-member committee may not meet in executive session for the purpose of interviewing the candidates.

# Penalties and Enforcement

The only avenue provided by the Open Public Meetings Act to enforce its provisions or to impose a penalty for a violation of its provisions is by an action in superior court. “Any person” may bring that action in superior court. If a superior court determines that a violation has occurred, liability may be imposed as follows:

- **Individual Liability**

Members of a governing body who attend a meeting where action is taken in violation of the OPMA are subject to a \$500 penalty for the first violation, if they attend with knowledge that the meeting is in violation of the OPMA ([RCW 42.30.120\(1\)](#)). Subsequent knowing violations of the OPMA carry a \$1,000 penalty. Violation of the OPMA is not a criminal offense. The penalty is assessed by the superior court, and any person may bring an action to enforce the penalty ([RCW 42.30.120\(2\)](#)).

Also, a knowing or intentional violation of the OPMA may provide a legal basis for recall of an elected member of a governing body, although recall is not a penalty under the OPMA. See [Recall of Lakewood City Council](#) (2001), [In re Recall of Kast](#) (2001).

- **City, County, or District Liability**

The city, county, or district is liable for all costs, including reasonable attorney fees. However, if a court determines by written findings that an action for violation of the OPMA was “frivolous and advanced without reasonable cause,” a city, county, or district may be awarded reasonable expenses and attorney fees ([RCW 42.30.120\(4\)](#)).

In addition to the above, any person may bring an action by mandamus or injunction to stop violations of the OPMA or to prevent threatened violations ([RCW 42.30.130](#)).

**Actions in violation of the OPMA are null and void.** Any ordinance, resolution, rule, regulation, order, or directive that is adopted at a meeting that does not comply with the OPMA, and any secret vote taken, is null and void ([RCW 42.30.060](#)). This does not, however, mean that a subsequent action that complies with the OPMA is also invalidated. See [OPAL v. Adams County](#) (1996), [Clark v. City of Lakewood](#) (9th Cir. 2001), and [AGO 1971 No. 33](#). But, where action taken in open session merely ratifies an action taken in violation of the OPMA, the ratification is also null and void. See [Clark v. City of Lakewood](#) (2001) and [Miller v. Tacoma](#) (1999).

# Training Requirements

The OPMA requires that all members of governing bodies, state and local, receive training on the requirements of the Open Public Meetings Act ([RCW 42.30.205](#)).

The training must be completed within 90 days after a governing body member takes the oath of office or otherwise assumes the duties of the position. The training must be repeated at intervals of no longer than four years, as long as an individual is a member of the governing body. This legislation does not specify the training that must be received, other than it is to be on the requirements of the OPMA and that it may be completed remotely. No penalty is provided for the failure of a member of a governing body to receive the required training.

For more information on this training requirement, see the Attorney General's [Open Government training](#) page.

# Appendix: Recommended Resources

## MUNICIPAL RESEARCH AND SERVICES CENTER (MRSC)

- [Open Public Meetings Act Basics](#) – Basic OPMA overview.
- [Executive Session Basics](#) – Basic overview of executive sessions as allowed by the OPMA.
- [Open Public Meetings Act FAQs](#) – Browse answers to frequently asked questions (FAQs) from local governments regarding the Open Public Meetings Act.
- [Executive Session FAQs](#) – Browse answers to frequently asked questions (FAQs) from local governments regarding executive sessions as allowed by the Open Public Meetings Act.
- [OPMA Practice Tips and Checklists](#) – Developed in partnership with the State Auditor’s Center for Government Innovation, these practice tips and short checklists provide practical guidance for local agencies.
- [OPMA Court Decisions and AG Opinions](#) – Key court decisions and attorney general opinions regarding the OPMA organized by topic.
- [Public Hearings](#) – Provides an overview of the legal requirements for conducting public hearings in Washington State and describes the basic procedures that should be followed for a proper public hearing.
- [Recent blog posts about OPMA](#) – Articles written by MRSC staff and contributors about specific aspects of the OPMA, including executive sessions, new legislation, and court decisions. Articles are listed in reverse chronological order, with the most recent first.
- [PRA and OPMA E-Learning Course for City/Town Elected Officials](#) – MRSC partners with the Association of Washington Cities (AWC) to produce two free e-learning courses for city and town councilmembers and mayors, one dealing with the with the Open Public Meetings Act (OPMA) and the other with the Public Records Act (PRA).
- [Upcoming Trainings](#) – MRSC produces webinars every month and several virtual and in person workshops throughout the year, many related to open government.

## WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (AGO)

- [Open Government](#) – Provides links to OPMA trainings and other AGO resources on the OPMA and PRA.
- [OPMA Guidance on Frequently Asked Questions About Processes to Fill Vacant Positions by Public Agency Governing Boards](#) (2016) – This guidance is intended to assist public agency governing bodies in complying with the OPMA when filling vacant positions in their agencies.


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