

Agenda

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20230510 SWAC Agenda.docx

OPMA-Electronic-Communications-Practice-Tips.pdf

OPMA-Agency-Obligations-Practice-Tips.pdf

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Pierce County Solid Waste Advisory Committee

May 10, 2023, 5:30 p.m.

Zoom & TMP Conference Room 212

ITEM	APPROXIMATE DURATION	LEAD	DESCRIPTION
Call To Order	5 minutes	SWAC Chair-Lewis Griffith	<ul style="list-style-type: none"> Roll Call Approve minutes from the date of previous meeting
SHWMP Actions Update	10 minutes	Kari Ann or Chris	<p>Tonight's presentation addresses the following actions in the SHWMP:</p> <ul style="list-style-type: none"> Chapter 1: Administration 1.2.6; The Pierce County Solid Waste Advisory Committee (SWAC) serves in an advisory and technical capacity to the Pierce County Council and PPW on matters relating to management of recycling services and solid waste disposal. SWAC members are community members, members of public interest groups, professionals from the business community, operators of solid waste collection and recycling companies, and representatives of local governments. For a description of how the SWAC was involved in the creation of the SHWMP, see Appendix B
OPMA (Open Public Meetings Act) Training	45 min	Kari Ann Elling-Solid Waste Recycling Analyst	<p>Topics to be covered:</p> <ul style="list-style-type: none"> Washington State Office of the Attorney General Open Government Training webpage http://www.atg.wa.gov/OpenGovernmentTraining.aspx View: Open Public Meetings video produced by the Washington State Office of the Attorney General http://www.youtube.com/watch?feature=player_embedded&v=n3B7_Xm3l8c Introduction to Municipal Research and Services Center Open Public Meetings Act and Public Records Act webpage https://mrsc.org/explore-topics/legal/open-government/open-public-meetings-act Handouts: <ul style="list-style-type: none"> OPMA – Agency Obligations: A Starting Point handout prepared by the Auditor of the State of Washington, Local Government Performance Center, and the Municipal Research and Services Center (MRSC) OPMA – Electronic Communications handout prepared by the Auditor of the State of Washington, Local Government Performance Center, and the Municipal Research and Services Center (MRSC) Frequently Asked Questions: MRSC - Open Public Meetings Act FAQs Documenting the training

Round Table	10 minutes	SWAC Chair-Lewis Griffith	Members have an opportunity to share items of interest
Public Comments	10 minutes	SWAC Chair-Lewis Griffith	<p>Members of the public may briefly comment on:</p> <ul style="list-style-type: none"> • Agenda topics covered this meeting, unless the Chair allowed for public comment at the time the agenda item was discussed • Other SWAC-related issues not already discussed <p>Please direct all comments & questions to the SWAC Chair</p>

All SWAC meetings are open public meetings and conducted in compliance with the Open Public Meeting Act. A map and directions to the meeting are available on the SWAC website at piercecounitywa.gov/swac.

If the meeting is cancelled, Planning & Public Works staff will place an announcement on the SWAC website: piercecounitywa.gov/swac by 3 p.m. on the day of the meeting.

For more information about the Solid Waste Advisory Committee or this agenda, please contact Pierce County Planning & Public Works at (253) 798-2179 or by e-mail at pcrecycle@piercecounitywa.gov.

Practice Tips FOR LOCAL GOVERNMENTS



These practice tips are intended to provide practical information to local government officials and staff about electronic communications and requirements under the Open Public Meetings Act (OPMA), [chapter 42.30 RCW](#). Electronic communications between members of an agency’s governing body can implicate the OPMA, and these practice tips will help guide you in identifying and addressing key issues in this regard. For more information and resources visit mrsc.org/opma.

ELECTRONIC COMMUNICATIONS CAN CREATE AN ILLEGAL “SERIAL” MEETING

If you, as a member of the governing body (e.g., city council, board of commissioners, planning commission), communicate with other members of the governing body by email or using social media, keep in mind that exchanges involving a majority of members of the governing body can be considered an illegal “meeting” under the OPMA. This principle also applies to text messaging, instant messaging, and the “chat” feature of video-conferencing software.

What types of email exchanges can constitute a meeting?

If a majority of the members of the governing body takes “action” on behalf of the agency through an email or other electronic exchange such as social media, that would constitute a meeting under the OPMA. “Action” under the OPMA includes mere discussion of agency business, and that any “action” may be taken only in a meeting open to the public. The participants in the email exchange don’t have to be participating in that exchange at the same time, as a “serial” or “rolling” meeting happens when a majority of the body are involved in the exchange. However, the participants must collectively intend to meet to conduct agency business.



Tips: As a member of the governing body, consider the following to avoid potential OPMA violations:

- Passive receipt of information via email is permissible, but discussion of issues via email by the governing body can constitute a meeting.
- An email message to a majority or more of your colleagues on the governing body is allowable when the message is to provide only documents or factual information, such as emailing a document to all members for their review prior to the next meeting.
- If you want to provide information or documents via email to a majority of members of the governing body, especially regarding a matter that may come before the body for a vote, have the first line of the email clearly state: “For informational purposes only. Do not reply.” Consider using the “BCC:” email line for all those who should not “reply all.”
- Unless for informational purposes only, don’t send an email to all or a majority of the governing body, and don’t use “reply all” when the recipients are all or a majority of the members of the governing body.
- Alternatively, instead of emailing materials to your colleagues on the governing body in preparation for a meeting, have a designated staff member email the documents or provide hard copies to each member. A staff member can communicate via email with members of the governing body in preparation for a meeting, but the staff member needs to take care not to share any email replies with the other members of the governing body as part of that email exchange.

PHONE CALLS AND VOICE MESSAGES CAN CONSTITUTE A MEETING

As with email exchanges, if a majority of the members of the governing body is taking “action” (see above) on behalf of the agency through phone calls or a voice mail exchange, that would constitute a meeting. Such a “telephone tree” occurs, for example, when members call each other to form a majority decision. As above, the calls and messages can constitute a serial or rolling meeting if the members collectively intend to meet and conduct agency business.



Tip: Be on the look out for mixed media. A conversation need not be held entirely in the same format for a rolling or serial meeting to occur. For example, an in-person conversation might be continued on via email and then transition to text.

KEY CONSIDERATION RELATED TO CONFERRING TO CALL A SPECIAL MEETING

Under [RCW 42.30.080](#), a special meeting (in contrast to a regular meeting) may be called at any time by the presiding officer of the governing body or by a majority of the members of the governing body. In order to give effect to this authority granted under [RCW 42.30.080](#), we believe it’s permissible for a majority of the members of the governing body to confer outside of a public meeting for the sole purpose of discussing whether to call a special meeting. This includes conferring for that purpose via phone, email or other electronic means.

USE OF SOCIAL MEDIA CAN IMPLICATE THE OPMA

If members of the governing body use social media (e.g., through a Facebook page or Twitter feed) to host a discussion about issues related to the agency and the discussion includes comments from a majority of the members of the governing body, that discussion could constitute a public meeting under the OPMA. There’s no authority under the OPMA regarding what would constitute adequate public notice – if that’s even possible – for this kind of virtual meeting, so it’s best to avoid this type of discussion on social media.



Tip: Social media can be an effective tool to solicit comments from the public, but social media shouldn’t be used by your agency’s governing body to collectively formulate policy or accept public testimony.

FAILURE TO COMPLY WITH THE OPMA CAN BE COSTLY

Violation of the OPMA can result in personal liability for officials who knowingly violate the OPMA and in invalidation of agency actions taken at a meeting at which an OPMA violation occurred. Attorney fees and court costs are awarded to successful OPMA plaintiffs. OPMA violations can also lead to a loss of public trust in the agency’s commitment to open government.

DISCLAIMER: These practice tips are meant to provide practical information to local government officials and staff about electronic records and requirements under the OPMA. The tips aren’t intended to be regarded as specific legal advice. Consult with your agency’s attorney for guidance on specific situations.

Practice Tips FOR LOCAL GOVERNMENTS



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 mrsc.org/opma.

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 gathering of the members of a governing body is subject to the OPMA when a quorum (majority) of the governing body is in attendance with the collective intent to take action, 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 disorderly attendees may be removed ([RCW 42.30.040](#) & [.050](#)).
- **No secret ballots.** Votes may not be taken by secret ballot ([RCW 42.30.060](#)(2)).
- **Adoption of ordinances.** Ordinances, resolutions, rules, regulations, and orders must be adopted at a public meeting or they are invalid ([RCW 42.30.060](#)(1)).

POSITION IN AGENCY	REQUIRED TO COMPLY
Member of a governing body* <ul style="list-style-type: none"> • City or Town Councilmember or Mayor* • County Commissioner or County Councilmember • Special Purpose District Commissioner/Board Member 	Yes Yes Yes
Member of a subagency created by ordinance or legislative act, e.g.: <ul style="list-style-type: none"> • Planning Commission • Library Board • Parks Board • Civil Service Commission 	Yes Yes Yes Yes
Member of a committee <ul style="list-style-type: none"> • Committees that act on behalf of (exercise actual or de facto decision-making authority for) the governing body, conduct hearings, or take testimony or public comment • Committees that are purely advisory 	Yes No
Agency staff	No, unless agency employee is a member of a committee that is required to comply

* In a city with a “strong” mayor, the mayor does not count towards a quorum and is only subject to the OPMA when presiding over a council meeting or serving on a committee that is required to comply.

PENALTIES FOR NONCOMPLIANCE

- **Actions null and void.** Any action taken at a meeting which fails to comply with the provisions of the OPMA is null and void. [RCW 42.30.060\(1\)](#).
- **Personal liability.** Potential personal liability of \$500 for any member of a governing body who attends a meeting knowing that it violates the OPMA and \$1,000 for any subsequent OPMA violation. [RCW 42.30.120\(1\)\(2\)](#).
- **Agency liability.** Any person who prevails against an agency in any action in the courts for a violation of the OPMA will be awarded all costs, including attorney fees, incurred in connection with such legal action. [RCW 42.30.120\(2\)](#).

MEETINGS NOT SUBJECT TO OPMA

- **Quasi-judicial proceedings.** 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. See [RCW 42.30.140](#).
- **Collective bargaining sessions.** Collective bargaining sessions with employee organizations are not subject to OPMA requirements and may occur in closed session without following OPMA procedures. This exemption applies to contract negotiations, grievance meetings, and discussions about the interpretation or application of a labor agreement or to that portion of a meeting when the governing body is planning or adopting its strategy during the course of any collective bargaining, professional negotiations, grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings in progress. See [RCW 42.30.140](#).
- **Note:** Jurisdictions may choose to conduct these proceedings in an open meeting despite the statutory exemption.

OPMA TRAINING REQUIREMENTS

- Every member of a governing body of a public agency must complete training requirements on the OPMA within 90 days of assuming office or taking the oath of office. [RCW 42.30.205\(1\)](#).
- In addition, every member of a governing body must complete training at intervals of no more than four years as long as they remain in office. [RCW 42.30.205\(2\)](#).

DISCLAIMER: These practice tips are meant to provide summary information on basic agency obligations of the OPMA; the practice tips are not intended to be regarded as specific legal advice. Consult with your agency's legal counsel for guidance on specific situations.