



## **City Council Workshop Agenda**

**January 23, 2024 at 6:30 PM**

**City Hall Council Chambers - 210 W. 6th Ave and Virtual**

The City of Kennewick broadcasts Council meetings via Zoom and on the City's website at  
<https://www.go2kennewick.com/CouncilMeetingBroadcasts>.

No public comment is taken at workshops.

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1. CALL TO ORDER
2. OPEN PUBLIC MEETINGS ACT (OPMA) & PUBLIC RECORDS ACT (PRA)
3. ADJOURN



# City of Kennewick

January 23, 2024



## Open Government Laws in Washington State

Open Public Meetings Act

Public Records Act

# Open Public Meetings Act (OPMA)



**Meetings must be open to the public.**

Quorum + Action = Meeting

Meeting = Notice + The right of the public to  
attend

# Open Public Meetings Act



- **The Act is to be “liberally construed.”** RCW 42.30.910
- **The purpose of the OPMA is to allow the public to view the decision making process.**
- **All meetings of the governing body** of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter. RCW 42.30.030
- **Recently updated** and expanded in HB 1329

# OPMA Definition of “Meeting”



**A meeting** is any regularly scheduled meeting or special meeting where a **quorum of members is present and takes action.**

- A “retreat,” “**workshop**,” or “**study session**” fitting this definition is a meeting.
- **Email conversations, serial phone calls, texting, and messaging** involving a quorum and city business will probably be considered a meeting.
- A **quorum at a parking lot**, late night diner, cocktail party, or site visit will probably be considered a meeting.

# OPMA Definition of “Meeting”



**A meeting occurs when the public agency takes “action” *including*:**

- Hearing public testimony
- Deliberating and discussing
- Considerations and review and evaluations

# How to Comply if Meeting:



**Easy!**

1. Provide notice of meeting.
2. Public has right to attend without conditions.

# OPMA Executive Sessions



**Agencies may hold an executive session during a regular or special meeting only for limited purposes:**

- **Personnel issues** to review complaints/charges, qualifications and performance.
- **Litigation, potential litigation, and legal risks.** As to legal risks, an open discussion must present a danger of adverse legal or financial risk to agency.
- **Real estate negotiations or publicly bid contracts** when public discussion would affect price or cost.

# Executive Sessions May Only Occur If:



- Before convening the executive session, the presiding officer must announce **the purpose and the time the executive session is over.**  
RCW 42.30.110 (2)
- **Discussion** may take place behind closed doors, but **decisions** must occur in an open meeting.
- **Secret ballots** are not allowed. RCW 42.30.060

# Executive Session Information



- **Confidential!**
- **Legal obligation** to not disclose information from proper executive session.
- **Potential violation** of Code of Ethics of Municipal Officers. RCW 42.30.020 and .070(2)
- May also subject jurisdiction to significant legal risks.

# Penalties for Violating the OPMA



- A court can impose a **\$500 civil penalty against each member, \$1,000 for subsequent violations** (personal liability).
- Court will **award costs and attorney fees** to a successful party seeking the remedy (except for failure to post agenda on-line).
- **Action** taken at meeting **can be declared null and void** (except for failure to post agenda on-line).
- **Loss of the public trust.**

RCW 42.30.120; RCW 42.30.130; RCW 42.30.060

# OPMA Risk Management Tips



**Avoid even the *appearance* of an OPMA violation.**

- **Socializing:** Be careful when a quorum of your board is together outside of a meeting. Don't sit together. Don't talk business.
- **Group travel:** Bus trips and site visits may appear as meetings. If part of your work, notice as a meeting. If not, don't do it.
- **Notice:** When in doubt, treat it like a meeting and do the notice.
- **Email:** Don't "reply all" to group emails.

# The Public Records Act (PRA)



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

Includes email, paper files, recordings, web content.

Includes public records created on **personal electronic devices or non-agency email accounts**.

RCW 42.56.030

# When Searching for Records, Agencies Must:



- **Conduct an adequate search** for responsive records.
  - Consider all formats (paper, electronic, etc.).
  - Consider records of current and former staff/officials.
  - Consider possible locations (e.g., paper files, agency website, audio files, etc.).
- **Requires close cooperation** between elected officials and public records officers, other staff.

RCW 42.56.520

# Enforcement and Penalties



- A court can impose **civil penalties**. No proof of “damages” required.
- A court is to consider certain **mitigating or aggravating factors** in requiring an agency to pay a penalty.
- A court will also award the requester’s **attorney fees and costs**.

# Focus on Electronic Records



**Social media sites are records.** Agencies must keep a copy of previous web site when updating.  
WAC 434-662-140

**Other electronic records.** WAC 434-662-150

- Emails on agency business are public records.
- Texts on agency business are public records.

**Don't make records** you don't want to see on the front page of the paper.

# Focus on Electronic Records



## DO:

- Use your agency device to conduct agency business.
- Use your agency email account to conduct agency business.
- Forward any agency-related emails received on your personal email account to your agency email account. Notify the sender that you do not conduct agency business on your personal email account and to send future agency-related email to your agency email address.

# Focus on Electronic Records



## DON'T:

- Delete records from your agency computer.
- Use your personal device to conduct agency business.
  - Unless simply accessing your agency server remotely.
  - If you must, then retain all records.
  - Provide those records to your agency so that the agency can retain them appropriately and make them available if requested.

# Focus on Electronic Records



## DON'T:

- Set up and use an agency-related social media site, and don't edit or delete content on your agency's social media site.
- Conduct agency business via your personal social media site (and don't mix your election activities with agency business via social media).

# Risk Management Strategies



- **Establish a culture of compliance** starting with agency leadership.
- **Know the law.** Ensure staff and officials are trained about the PRA's requirements and ensure they know how to respond to a records request.
- **Protect the records.** Ensure there are agency systems in place to file, track, retrieve and preserve records, especially with changes in personnel.

# Open Government Resources



## **Open Public Meetings Act (OPMA)**

RCW 42.30, 1971

## **Public Records Act (PRA)**

RCW 42.56, 1972

[www.atg.wa.gov/OpenGovernmentTraining.aspx](http://www.atg.wa.gov/OpenGovernmentTraining.aspx)

## **Public Records Retention**

[www.sos.wa.gov/archives/  
recordsretentionschedules.aspx](http://www.sos.wa.gov/archives/recordsretentionschedules.aspx)