



City Council Meeting Schedule January 2019

January 1, 2019 Tuesday, 6:30 p.m.	REGULAR COUNCIL MEETING - Cancelled due to holiday
January 8, 2019 Tuesday, 6:30 p.m.	WORKSHOP MEETING 1. Hanford Communities Update 2. TRIDEC Update 3. Historic Downtown Kennewick Partnership 4. Executive Session RCW 42.30.110(ii) Potential Litigation (15 minutes)
January 12, 2019 Saturday, 7:00 a.m.	SPECIAL COUNCIL MEETING - Interviews for Council Vacancy
January 15, 2019 Tuesday, 6:30 p.m.	REGULAR COUNCIL MEETING
January 22, 2019 Tuesday, 6:30 p.m.	WORKSHOP MEETING 1. Columbia-Snake Rivers Study 2. Video Recording Update 3. OPMA and PRA Training
January 29, 2019 Tuesday, 6:30 p.m.	NO MEETING

To assure disabled persons the opportunity to participate in or benefit from City services, please provide twenty-four (24) hour advance notice for additional arrangements to reasonably accommodate special needs.

Please be advised that all Kennewick City Council Meetings are Audio Taped

January 2019
Updated 01/17/19

Council Workshop Coversheet



Agenda Item Number	1.	Meeting Date	01/22/2019
Agenda Item Type	Presentation		
Subject	Lower Snake River Dams		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Manager		

Info Only	☐
Policy Review	☒
Policy DevMnt	☐
Other	☐

Summary

The City of Kennewick has been asked to sign onto a letter to Governor Inslee requesting that he remove from his proposed budget \$750,000 to study breaching or removal of the Lower Snake River Dams. During the Council workshop on January 22nd, Chad Bartram, General Manager of Benton PUD, will be providing an update to the Council on efforts relating to the dams. Staff will be seeking general direction from Council on if we are interested in having the Mayor sign onto the letter. Attached to this packet is the draft letter and talking points on this topic. The following is a link to the Benton PUD website where there are additional items relating to this topic.

<https://www.bentonpud.org/About/Your-PUD/Special-Interests/Snake-River-Dams>

Through

Dept Head Approval

City Mgr Approval

Attachments:

Talking Points
Letter

Marie Mosley
Jan 17, 11:04:23 GMT-0800 2019



Governor Inslee's proposed lower Snake River dams study

Background:

Governor Inslee's operating, capital and transportation budgets for the next biennium include a combined \$1.1 billion to support the recovery efforts of the Southern Resident orcas. **It includes \$750,000 for an unnecessary study associated economic and social impacts – as well as mitigation costs – of the potential breaching or removal of the Lower Snake River Dams.**

Concerns:

The proposed study is a duplicate effort - The study would essentially be duplicating the effort that is already several years underway by the federal agencies in the Columbia River Systems Operations Environmental Impact Statement (CRSO EIS). The CRSO EIS is a regional, comprehensive effort to evaluate a range of operations alternatives for the 14 federal hydropower facilities that exist along the Columbia and Snake Rivers. This includes an evaluation of the four lower Snake River dams, along with an economic impact analysis and stakeholder input. A state-level effort would not be as comprehensive as the current federal effort.

The Lower Snake River Dams are not the problem - National Oceanic and Atmospheric Administration (NOAA) Fisheries - the agency with the expertise and responsibility for the recovery of the Southern Resident orcas has assessed the operation of the four lower Snake River dams and their effects on listed salmon and steelhead in the 2008 and 2014 Biological Opinions. Neither opinion concluded that breaching the dams is necessary for recovery of the Snake River salmon or Southern Resident orcas.

Investments in salmon restoration have been successful on the Snake and Columbia River dams -

More than \$2 billion has been invested in the federal dams to make them more fish friendly. "Fish slides" and other technologies are helping young fish migrate safely and swiftly with per-dam survival rates averaging 96% past the four lower Snake River dams. Due to the success of improved passage and dam operations, NOAA Fisheries and other scientists have stated that these survival levels are similar to those seen in undammed rivers such as the Fraser River in British Columbia.

Recovery efforts should focus on what would benefit the orcas – While prey is important to long term orca recovery, to help orcas in the immediate term logical and much quicker solutions should be pursued including restrictions on boat traffic and noise in Puget Sound, reducing and preventing urban pollution contaminating the Puget Sound, and increasing and expanding current habitat restoration efforts on the Snohomish and Skagit rivers and in other rivers contributing directly to the Puget Sound where salmon spawn.

The four Lower Snake River dams provide more than just power – The dams are a part of a complex system of federal dams that provide 60% of the Pacific Northwest's carbon free power. Because of their location, size and ability to help meet peak power loads, they are key to keeping the electric system reliable. The dams also provide navigation for shipping, recreation opportunities and irrigation for over seven million acres of farmland. Barging on the inland Columbia Snake River system moves, on average, approximately 9 million tons of cargo values at over \$3 billion each year.

The study proposed in Governor Inslee's budget is a duplicative effort of federal agencies and should not lie on the backs of Washington taxpayers.

January 28, 2019

Governor Jay Inslee
Office of the Governor
Southern Resident Orca Task Force
Olympia, WA 98504



RE: Removing \$750,000 from your proposed budget to study the associated economic and social impacts – as well as mitigation costs – of the potential breaching or removal of the Lower Snake River Dams

Dear Governor Inslee,

Improving orca habitat is a topic of discussion across the State of Washington. It is safe to say that all Washingtonians care about the health and future of the unique and iconic Southern Resident whale population. No one disagrees that this group of orcas is in trouble. The Tri-Cities has always strongly supported robust salmon recovery efforts, including improvements to hydro, habitat, harvest and hatchery programs, all of which also benefit orcas. We support many of the elements outlined in the Southern Resident Orca Task Force report and recommendations dated November 16, 2018.

We are very concerned with your funding request for the Southern Resident Orca Task Force to study potential breaching or removal the four lower Snake River dams. Your budget priorities include a \$750,000 proposal to fund a stakeholder process on the associated economic and social impacts as well as mitigation costs of Snake River dam removal. The task force would essentially be duplicating the same information-gathering effort that is already several years underway by the federal agencies in the Columbia River Systems Operations Environmental Impact Statement (CRSO EIS). The CRSO EIS is a regional, comprehensive effort to evaluate a range of operations alternatives for the 14 federal hydropower facilities that exist along the Columbia and Snake Rivers. The EIS process has multiple opportunities for public engagement. All Northwest states and tribes are already cooperating in this EIS process, which includes an evaluation of the four lower Snake River dams, along with an economic impact analysis and stakeholder input.

A state-level effort would not be as comprehensive as the current federal effort, would not comport with the National Environmental Policy Act (NEPA), and thus would not result in a product that can be relied upon by decision-makers or inform the CRSO EIS process or other science-based species recovery activities in the Northwest. Given the relative size and limited scope of such an effort as compared to the CRSO EIS process, it is reasonable to question whether the recommendations generated by such an effort would result in real help for the orcas. Simply put, this study would not be the best use of limited taxpayer resources.

Additionally, National Oceanic and Atmospheric Administration (NOAA) Fisheries - the agency with the expertise and responsibility for the recovery of these pods - has increased efforts to inform the region about fish, orcas, and dams. NOAA has released three fact sheets recently (one in 2016 and two in 2018) specifically on the four lower Snake River dams and the orcas. They assessed the operation of the four lower Snake River dams and their effects on listed salmon and steelhead in the 2008 Biological Opinion. In 2014, their supplemental Biological Opinion re-examined the issues, including consequences for Southern Resident killer whales. Neither opinion concluded that breaching the dams is necessary for recovery of the Snake River salmon or Southern Resident

killer whales. The biological opinions concluded that hatchery production of salmon and steelhead in the Columbia and Snake River systems more than offsets any losses of salmon from the killer whale prey base caused by the dams.

However, after decades of using other arguments in their attempts to justify removing the four lower Snake River dams, some environmental groups have latched on to the plight of the orcas. They are now stating that removing the four lower Snake River dams is the solution to improving the orcas' diminished Chinook salmon supply. Despite the availability of accurate information from NOAA and other reputable sources, these groups are using the orcas to play on the public's sympathies and promote their real goal: removal of the four lower Snake River dams.

Fish from the Snake and Columbia Rivers are just one part of the list of Chinook runs which are important for orcas in Puget Sound. These orcas consume many different salmon stocks, including Fraser River Chinook, Puget Sound Chinook, and Coho salmon. In winter, the whales consume Chinook from many different stocks up and down the coast, including but not limited to fish from the Columbia and Snake Rivers. While increasing overall salmon abundance is likely to help the whales, it is important to understand that NOAA Fisheries has concluded that because orcas feed on many different stocks at different times, one narrow approach to fish recovery, such as breaching dams on the Snake River, will not make a measurable improvement for orca survival.

It is instructive to note that in his May 2017 ruling, U.S. District Judge Michael Simon accepted NOAA Fisheries' conclusion that hatchery production of salmon and steelhead in the Columbia and Snake River systems is more than sufficient to offset any reduction in salmon abundance caused by federal hydropower dams. Judge Simon did not rule in favor of plaintiffs on this issue, who had argued that hydro system operations endanger orcas.

While prey is important to long term orca recovery, to help orcas in the immediate term we should focus on the more logical and much quicker solutions including further restrictions on boat traffic and noise in Puget Sound, reducing and preventing urban pollution contaminating the Puget Sound, and increasing and expanding current habitat restoration efforts on the Snohomish and Skagit rivers and in other rivers contributing directly to the Puget Sound where salmon spawn.

In addition, all ways to improve salmon populations should be explored and implemented; e.g. further restrictions on commercial salmon harvest and greater control of natural marine predators. The latest research concludes that booming populations of sea lions, harbor seals and West Coast marine predators are eating more Chinook salmon than ever, competing directly with orcas for this food supply. In short, the most immediate way to improve salmon numbers is to stop killing them ourselves.

Investments in salmon restoration have included a complete overhaul of the federal dams to make them more fish friendly, at a cost of more than \$2 billion. For example, every one of the federal dams on the Columbia and Snake Rivers have been retrofitted with state of the art downstream fish passage technologies. These "fish slides" and other technologies are helping young fish migrate safely and swiftly with per-dam survival rates averaging 96% past the four lower Snake River dams. Due to the success of improved passage and dam operations, ***NOAA Fisheries and other scientists have stated that these survival levels are similar to those seen in undammed rivers such as the Fraser River in British Columbia.***

The Northwest is home to the largest fish and wildlife restoration program anywhere in the nation, and likely the world. Nearly \$17 billion has been spent to mitigate for the impacts of the dams on fish and wildlife since the late 1970's. It is important to point out that the Northwest is unique in this respect too: almost all these costs are borne by Northwest families and businesses through their electric bills – not U.S. taxpayers.

While the federal hydro system provides 60% of the Pacific Northwest's clean power, it does much more. The system of federal dams protects rural communities and big cities alike from devastating floods, creates a river highway that links the Northwest to the rest of the nation, and provides recreational opportunities and irrigation for over 7 million acres of farmland producing \$8 billion in agricultural income. Barging on the inland Columbia Snake River System moves, on average, approximately 9 million tons of cargo valued at over \$3 billion each year. In fact, most years see nearly 10% of the nation's wheat exports travel through our lower Snake River dams. There is no question that the federal hydro system is the backbone of the region's carbon free energy supply and the lifeblood of its economy.

Because of their location, size and ability to help meet peak power loads, the four lower Snake River dams do much more than generate electricity – they are key to keeping the system reliable and help support wind energy. These dams lie east of the other federal generators, so they provide a significant contribution to transmission grid reliability. BPA markets power from 31 federal dams, but only the 10 largest of these dams keep the federal power system operating smoothly through the use of automatic generation control, AGC. Those 10 dams include the four lower Snake River dams. When total electricity being consumed differs from the generation in the power system, automatic signals go to these few dams with AGC to instantly increase or decrease generation. This maintains the constant balance of generation and loads, or electrical demand, which is necessary for power system reliability, critical to keeping the lights on, every minute, every day.

We believe that your carbon reduction goals are in conflict with dam removal. The four lower Snake River dams are strategic clean energy assets and maintaining them is an important component of a clean energy future. We will be working with the legislature to request removal of the \$750,000 proposal to fund the study. It is a duplicate effort of federal agencies, and should not lie on the backs of Washington taxpayers.

Sincerely,

Carl Adrian, CEO, TRIDEC

Jeff Hall, Benton PUD, Commission President

Roger Wright, Franklin PUD, Commission President

Matt Watkins, City of Pasco Mayor

Don Britain, City of Kennewick Mayor

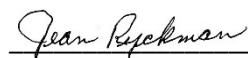
Robert Thompson, City of Richland Mayor

Brent Gerry, City of West Richland Mayor

Randy Taylor, City of Prosser Mayor

Shon Small, Chair, Benton County Commissioners

Bob Koch, Chair, Franklin County Commissioners



Jean Ryckman, Port of Pasco, Commission President

Roy D. Keck, Port of Benton Commission President

Lori Mattson, CEO,
Tri-City Regional Chamber of Commerce



Colin Hastings, CEO, Pasco Chamber of Commerce

Dan O'Neill, President,
West Richland Chamber of Commerce

Nikki Torres, President,
Tri-Cities Hispanic Chamber of Commerce

Deb Heintz, Executive Director,
Prosser Economic Development Association

Cc:

WA State Senate Ways and Means:

Senator Christine Rolfes (D) District 23
Senator David Frockt (D) District 46
Senator Mark Mullet (D) District 5
Senator John Braun (R) District 20
Senator Sharon Brown (R) District 8
Senator Jim Honeyford (R) District 15

WA State House Appropriations:

Rep. Timm Ormsby (D) District 3
Rep. June Robinson (D) District 38
Rep. Steve Bergquist (D) District 11
Rep. Drew Stokesbary (R) District 31
Rep. Skyler Rude (R) District 16
Rep. Drew MacEwen (R) District 35

WA State House Capital Budget:

Rep. Steve Tharinger (D) District 24
Rep. Beth Doglio (D) District 22
Rep. Strom Peterson (D) District 21
Rep. Richard DeBolt (R) District 20
Rep. Norma Smith (R) District 10
Rep. Mike Steele (R) District 12

Others:

George Caan, CEO, WPUDA
Kent Lopez, CEO, WRECA
Kris Johnson, President, AWB
Candice Bock, Director, AWC
Eric D. Johnson, Executive Director, WA Public Ports Association
Scott Hutsell, President, WA State Association of Counties

Other Legislators:

Senator Mark Schoesler (R) District 9
Senator Maureen Walsh (R) District 16
Rep. Brad Klippert (R) District 8
Rep. Matt Boehnke (R) District 8
Rep. Mary Dye (R) District 9
Rep. Joe Schmick (R) District 9
Rep. Bill Jenkin (R) District 16

Council Workshop Coversheet



Agenda Item Number	2.	Meeting Date	01/22/2019
Agenda Item Type	Presentation		
Subject	Televising Council Meetings		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Management Services		

Info Only	☒
Policy Review	☐
Policy DevMnt	☐
Other	☐

Summary

City staff presented a recommended solution for televising City Council meetings at the May 22, 2018 Council Workshop. The funding for this project was included in the 2019/2020 Adopted Budget. During this workshop, staff will review this solution for Council as well as a recommended implementation plan.

Through

Dept Head Approval

City Mgr Approval

Christina Palmer
Jan 17, 12:05:04 GMT-0800 2019

Marie Mosley
Jan 17, 21:10:37 GMT-0800 2019

Attachments: Presentation

Televising City Council Meetings

City Council Workshop
January 22, 2019



Hosted Services

- Broadcasting, video streaming and integrating documents with video (indexing) requires staff time and expertise not currently available within existing staffing.
- Utilizing hosted “hands-free” solution allows us to provide this access to our citizens without additional staffing or substantial ongoing infrastructure requirements.



SWAGIT'S HANDS-FREE SOLUTIONS

- ❑ No additional work staff – Meeting Content will be indexed and accessible shortly after it is adjourned.
- ❑ Our editors take the text for the indexed points right from your agenda
- ❑ Swagit does all the indexing, uploading and publishing of your content
- ❑ Hosted Solution – Swagit provides all the bandwidth and storage for you.
- ❑ Unlimited Bandwidth for the Public
- ❑ Unlimited Meeting Storage
- ❑ Unlimited Specialty Content Storage
- ❑ No Training Time or Training Cost



SWAGIT'S AVIOR AV-SYSTEM

AVIOR is a complete package of cameras and pro video-switching equipment that enables any client to fully outsource the production and operation of a multiple camera broadcast system to **Swagit**.

This system allows for local and remote control of the cameras

- Utilizes Pan/Tilt/Zoom (PTZ) cameras with pre-defined shots
- Allows client to outsource production of meetings

Our system will accommodate up to 8 inputs and can have dedicated inputs for Power Point Presentations.



KENNEWICK
WASHINGTON

SWAGIT'S AVIOR DIAGRAM



Agencies Using Swagit

- **City of Austin**

<http://austintx.swagit.com/play/05032016-614/4/?ts=1182>

- **City of Richland**

<https://richlandwa.swagit.com/play/01152019-2197>

- **City of Brea**

<http://www.ci.brea.ca.us/812/Government-Access-Channel>

- **Santa Clara County Office of Education**

<https://www.sccoe.org/countyboard/Pages/Minutes-Agendas.aspx>



Cost Estimates

All costs include sales tax

Service	Cost
Avior System (3 cameras, streaming appliance & storage) <i>One Time Cost</i>	\$ 42,000
Annual Hosting for 50 meetings per year	\$ 17,600 (per year)

Year 1	On-Going Annual
\$59,600	\$17,600



Timeline

Deliverable	Duration
Phase 1 – Hardware Provisioning & Development	2–4 Weeks
• Hardware ordered • Hardware assembled by Swagit engineers • Operating system installed and configured • Swagit EASE™ streaming appliance software installed • System burn-in testing conducted under fail-test load • Hardware sign-off by Swagit • Welcome packet information (meeting schedule, IP info, etc.) returned to Swagit	
Phase 2 – Web Element Design	4 Weeks
• Video library and player designed by Swagit in consultation with Client • Linking instructions provided to Client Webmaster/IT • Design sign-off by Client	
Phase 3 – Deployment/Implementation	2–4 Weeks
• Assembled hardware shipped • Remote configuration and testing of audio/video feed quality by Swagit • Confirmation of correct video library linking and integration with Client website • Installation sign-off by Swagit	
Phase 4 – Acceptance Testing	2 Weeks
• Dry run of meeting capture, indexing and encoding process using next available meeting rebroadcast, alternate content or live meeting • Final signoff by Client	

Est. Implementation Schedule

Phase	
Contract Signing	Feb 1, 2019
Lead Time (60-days after contract execution)	April 2019
Phase 1 – Hardware Provisioning & Development	May 2019
Phase 2 – Web Element Design	June 2019
Phase 3 – Deployment/Implementation	July 2019
Phase 4 – Acceptance Testing	Mid-July 2019

Questions?



Council Workshop Coversheet



Agenda Item Number	3.	Meeting Date	01/22/2019
Agenda Item Type	Presentation		
Subject	OPMA and PRA Training		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Attorney		

Info Only	☒
Policy Review	☐
Policy DevMnt	☐
Other	☐

Summary

Per state law, City Council Members are required, within 90 days of being appointed or elected, and every four years thereafter, to attend training regarding the Open Public Meetings Act and the Public Records Act. Attorney Ken Harper will present on these important Open Government Laws and provide practical guidelines to assist City Council.

Through

Bonnie Lanning
Jan 17, 12:01:51 GMT-0800 2019

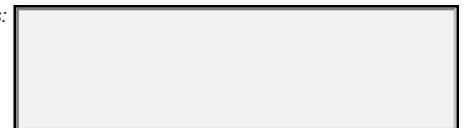
Attachments:

Dept Head Approval

Lisa Beaton
Jan 17, 12:04:06 GMT-0800 2019

City Mgr Approval

Marie Mosley
Jan 17, 21:07:56 GMT-0800 2019



City of Kennewick

January 22, 2019



Open Government Laws in Washington State

Open Public Meetings Act

Public Records Act

*OPMA and PRA training is required within 90 days of being appointed / elected, and every four years thereafter.
ESB 5964 (Laws of 2014)

Open Public Meetings Act (OPMA)



RCW 42.30, 1971

Meetings must be open to the public.

Quorum + Action = Meeting

Meeting = Notice + The right of the public to attend.

Purpose Statement of the OPMA



“The people of this state do not yield their sovereignty to the agencies which serve them.

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.

The people insist on remaining informed so that they may retain control over the instrument they have created.”

RCW 42.30.010 (1971)

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

OPMA applies to multi-member public state and local agencies including:



- Any county, city, school district, special purpose district, or other municipal corporation or political subdivision.
- Any sub-agency of a public agency ... including but not limited to planning commissions, library or park boards, commissions...
- Appointed committees acting on behalf of the governing body.
- *Does not apply to courts, the legislature, private organizations, or agencies governed by a single individual.*
- *Does not apply to quasi-judicial matters. RCW 42.30.020*

OPMA Definition of “Meeting”



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

- A “**retreat**”, “**workshop**”, or “**study session**” fitting this definition is a meeting.
- **Email conversations, serial phone calls, texting and messaging** involving quorum and city/county 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
- Final action

Final action is a decision or vote by the board or by a committee acting on behalf of the board.

Final action must be taken in public.

How to Comply if Meeting:



Easy!

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

Right to attend



- **Right to attend does not mean right to testify.** No “public comment period” is required by OPMA.
- **Right to attend does not mean right to disrupt.** Reasonable rules of conduct may be set. OPMA includes procedures for dealing with disruptions. RCW 42.30.050
- Cameras and tape recorders are permitted unless disruptive. AGO 1998 No. 15
- **Right to attend is not conditioned.** Attendees can not be compelled to sign in.

All meetings must be advertised as to the time, place and agenda items.



Effective June 12, 2014, the agenda of all regular meetings must be available on line 24 hours in advance of a meeting.

This law does not:

- Apply to agencies that do not have websites.
- Apply to agencies that employ fewer than 10 full-time employees.
- Restrict agencies from later modifying an agenda.
- Invalidate otherwise legal actions taken at a regular meeting where agenda was not posted 24 hours in advance.

Minutes of public meetings must be promptly recorded and open to public inspection. (No format specified in law) RCW 42.32.030

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



Special Meeting = Not regularly scheduled.

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

- Given to each member of the governing body.
- Given to each local newspaper of general circulation, radio, and TV station which has a notice request on file
- Posted on the agency's website.
- Prominently displayed at the main entrance and meeting site.

Continuing Meetings:



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

OPMA Executive Sessions



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

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

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 within a meeting.
- **Secret ballots** are not allowed. RCW 42.30.060

Penalties for Violating the OPMA



- A court can impose a **\$500 civil penalty against each member** (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

Real-Life OPMA

Thursday, June 12, 2008

SPOKESMANREVIEW.COM

Officials accused of violating open-meetings law

Spokane Center for Justice, private attorneys file five lawsuits

Richard Roesler
Staff writer
March 18, 2008

OLYMPIA – Spokane's Center for Justice and two Puget Sound area attorneys on Monday filed five lawsuits across the state, accusing local officials – including some in Spokane – of repeatedly violating open-public-meeting laws.

"The open public meetings act says you don't get to make public decisions in closed meetings," said Breean Beggs, an attorney with the public-interest law firm.

Among the targets: the Spokane Regional Clean Air Agency, for allegedly wrongly voting behind closed doors to hire director William Dameworth III in 2006. The group didn't publicly vote to hire him, the complaint alleges, until four days after he started work. (There are no allegations of any wrongdoing by Dameworth.)



Real-Life OPMA



Covering the Nisqually Valley since 1922

Thursday, June 12, 2008

yelmonline.com

Commissioners slapped with suit

Open meetings violations may result in fines

Posted 24 Mar 2008. E-mail this article to a friend.

By Megan Hansen
Nisqually Valley News

Repercussions against three fire commissioners who violated the Open Public Meetings Act came to a head with a lawsuit filed Monday.

The lawsuit, filed in Thurston County Superior Court against the Yelm Fire District, seeks personal liability for violations.

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)



RCW 42.56, 1972

Requires close cooperation between elected officials and public records officers, other staff.

“Public record” is **any writing** containing information relating to the conduct of government. RCW 42.56.010(3)

Real Life PRA

Kitsap Sun

The Northwest's Best News Site
2008, Society of Professional Journalists

County Settles Lawsuit Over Jail Video for \$125,000

By Josh Farley
Friday, May 30, 2008

PORT ORCHARD

Kitsap County has agreed to pay \$125,000 to a Bremerton man to settle a lawsuit that alleged violations of the state's public records act.

While housed in the Kitsap County Corrections Center in September 2006, Jeffery McKee, 51, requested all records involving his case since he'd been booked into jail that June. He was charged with delivery of methamphetamine.

He was provided copies of 130 documents by the county, but McKee claimed he did not receive specific records, including videos of him when he was placed in a "crisis cell," where inmates who get out of control are typically placed.

Real Life PRA

tricityherald.com

Sunday, Aug. 24, 2008

[Comments \(0\)](#)

Court finds in favor of former Mesa mayor

By Franny White, Herald staff writer

MESA -- A Superior Court judge has ruled that a small Franklin County town must pay its former mayor about \$230,000 after losing a long-running dispute over public records.

After a five-year court fight, Judge William Acey found Mesa city officials incorrectly handled document requests by former mayor and councilwoman Donna Zink.

Now the town of about 440 people must figure out how it'll pay the large penalty, which could total more than two-thirds of the city's annual general fund budget.

The dispute began in 2002 when Zink began requesting public records after the city said a building permit to repair her fire-damaged home had expired.

Zink, whose council term had ended the year before, requested 172 records, including correspondence and phone and fax logs, over a 2 1/2-year span.

The Open Public Records Act (PRA)



Public records of government agencies are presumed open.

Purpose: The “free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.” RCW 42.56.550 (3)

Public Records Act (PRA)



PRA Applies to Records of:

- State and local government agencies
- Agencies that are the functional equivalent of public agencies
- Limited extent to Legislature

PRA Does Not Apply to:

- Court records (court files)
- Private organizations or persons, unless the records are used or retained by a government agency.

RCW 42.56.010

Under Public Records Act (PRA),



Agencies must:

- **Appoint a public records officer**
- **Adopt procedures to:**
 - Protect public records from damage and disorganization.
 - Provide full access to public records, such as by providing an index of available records (e.g., statements of policy, planning goals and policies, staff reports, interim and final planning decisions).
 - Provide timely action on public records requests.

RCW 42.56.040, RCW 42.56.070, PRA Model Rules at WAC 44-14

A “public record” is broadly defined:



“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

Persons Making a Request for Public Records



Should be specific and request identifiable records from public agencies.

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

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

Responding to Records Requests



The agency has five business days to respond to a public records request – responses may include:

- Seek clarification if the request is not reasonably clear.
- Provide a reasonable estimate of time for further research, response, or installments of records.
- Provide requested records wholly, or in installments. Provide an internet address with a link to records.
- Deny the request with specific written reasons.

RCW 42.56.520

When Searching for Records, Agencies Must:



- **Read the request carefully** to understand what records are requested. Clarify request if needed, or ask requester to suggest search terms.
- **Conduct an adequate search** for responsive records.
 - Consider all formats (paper, electronic, etc.).
 - Consider records of current and former staff/officials.
 - Consider possible locations (e.g., paper files, agency website, audio files, etc.).

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

When Fulfilling Records Requests



Agencies must:

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

RCW 42.56.040, RCW 42.56.070 - .090

PRA Exemptions are Narrowly Construed



- **If a record, or part of a record, is withheld from the public, the agency must cite an exemption in the law, and explain why it applies.** Common exemptions include personal information in student or employment records, attorney-client privileged information, pending investigative records, and protected health care information.
- **When withholding part (redacting) or all of a record, agency must describe the record** by date, type, authors/recipients, and total number of pages.
- **“Privacy” is invaded only if** 1) privacy is a factor in the exemption, 2) release of the information would be highly offensive, and 3) is the information is not of legitimate concern to the public.

Enforcement and Penalties



- **PRA enforced by courts** for claims listed in PRA.
- 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



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

Create clear electronic records. WAC 434-662-150

- Emails on agency business are public records.
- Save agency business-related e-mails from private e-mail accounts or personal devices to agency servers.
- Use descriptive subject lines.
- Shorten e-mail strings and limit cc's.
- Limit volume of records (delete unimportant emails, don't "reply all").

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 computer to conduct agency business.
- Use your personal computer to remotely access your agency file server and email server.
- 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



DO:

- Avoid all agency-related texting, unless your agency has a policy regarding management of agency related text messages with non-agency devices.
- Try to post only secondary copies of content on agency social media sites.
- Avoid discussing agency business on your personal social media accounts.

Focus on Electronic Records



DON'T:

- Delete records from your agency computer.
- Use your personal computer 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:

- Delete emails sent or received from your agency email account.
- Use your personal email account for agency business.
- Text in violation of your agency policy, or text for agency-related business without a clear understanding of how those messages are being retained by the phone company and by your agency.

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 for PRA



- **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.
 - **Retain important records** by transferring them to State Archives.
 - **Promptly destroy records** that have met their retention schedule.

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

Public Records Retention

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



City Council Meeting Schedule February 2019

February 5, 2019
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

February 12, 2019
Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Affordable Housing: 2060 & 2163 Funds Overview
2. Collective Bargaining Process Update

February 19, 2019
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

February 26, 2019
Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Workplace Safety Update
2. City Manager's 2019 Goals

To assure disabled persons the opportunity to participate in or benefit from City services, please provide twenty-four (24) hour advance notice for additional arrangements to reasonably accommodate special needs.

Please be advised that all Kennewick City Council Meetings are Audio Taped

February 2019
Updated 01/17/19