



MRSC



PRACTICE TIPS

For Local Government Success

The basic requirement of the Open Public Meetings Act (OPMA) is that meetings of governing bodies be open and public. Use these practice tips to guide your agency's OPMA compliance.*

Basic Requirements

- **All meetings open and public.** All meetings of governing bodies of public agencies must be open to the public, except for certain exceptions outlined in the OPMA. [RCW 42.30.030](#).
- **Quorum.** Generally, a meeting occurs when a quorum (majority) of the governing body is in attendance and action is taken, which includes discussion or deliberation as well as voting. [RCW 42.30.020\(2\) & \(3\)](#).
- **Attendees.** All persons must be permitted to attend and attendees cannot be required to register their names or other information as a condition of attendance. Disruptive and 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

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

Yes

Member of a subagency created by ordinance or legislative act, e.g.:

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

Yes

Member of a committee

- Committees that act on behalf of the governing body, conduct hearings, or take testimony or public comment

Yes

Agency staff

No

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 \$100 for any member of a governing body who attends a meeting knowing that it violates the OPMA. [RCW 42.30.120\(1\)](#).
- **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\(2\)](#).

OPMA Training Requirements, Effective July 1, 2014

- 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.
- 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.

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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 www.mrsc.org/opmapra.*

An Email Exchange Can Constitute a 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, keep in mind that email exchanges involving a majority of members of the governing body can constitute a "meeting" under the OPMA. This principle also applies to text messaging and instant messaging.

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 exchange**, that would constitute a meeting under the OPMA. Note that taking "action" under the OPMA can occur through 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 can occur in violation of the OPMA.

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

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- 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 other 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."
- 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, rather than 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. It's permissible, for example, for a staff member to 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.

OPMA – NOTICE REQUIREMENTS

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

	Regular Meetings (RCW 42.30.070)	Special Meetings (RCW 42.30.080)
Definition	Held in accordance with a schedule fixed by ordinance, resolution, bylaws, or other rule.	Anything other than a regular meeting. May be called by the presiding officer or a majority of the members of the governing body.
Notice and Agendas	<p>Agendas must be made available on the agency's website at least 24 hours in advance of the meeting unless the agency:</p> <ol style="list-style-type: none"> Doesn't have a website; or Employs fewer than 10 full-time equivalent employees. <p>There are no other notice requirements for regular meetings in the OPMA. However, other relevant laws apply to some local governments. For example, cities and towns are required to establish a procedure for notifying the public of the preliminary agenda for the forthcoming council meeting and any upcoming hearings (although not necessarily online). RCW 35A.12.160; RCW 35.22.288; RCW 35.23.221; RCW 35.27.300. There are no similar requirements for counties or special purpose districts related to preliminary agendas.</p>	<p>The special meeting notice must specify the date, time, and place of the special meeting, and the business to be transacted.</p> <ul style="list-style-type: none"> Personal notice. Written notice must be delivered personally, by mail, fax, or e-mail at least 24 hours before the meeting to: <ol style="list-style-type: none"> Each member of the governing body, unless the member submits a written waiver of notice in advance with the clerk, or the member is actually present at the meeting; and Each member of the news media who has on file with the governing body a written request for notice of special meetings. Website notice. Notice must be posted on the agency's website 24 hours in advance of the meeting, unless the agency: <ol style="list-style-type: none"> Doesn't have a website; or Employs less than 10 full-time equivalent employees; or Doesn't employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the website. Notice at agency's principal location. Notice must be prominently displayed at the main entrance of the agency's principal location and the meeting site if the meeting isn't held at the agency's principal location.
Emergencies	In an emergency situation (e.g., fire, flood, earthquake, or other emergency), a meeting may be held at a site other than the regular meeting site, and the notice requirements under the OPMA are suspended during such an emergency.	The notices required for special meetings aren't required if a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.
Holidays	Regular meetings shall not be held on holidays. If a regular meeting falls on a holiday, the meeting must be held on the next business day.	Although not specifically addressed by the OPMA, we recommend that special meetings not be held on holidays out of consideration for public participation.
Business Transacted	There are no restrictions on the type of business that may be transacted at regular meetings.	Final disposition cannot be taken on any matter not listed in the special meeting notice.

*DISCLAIMER: These practice tips are meant to provide summary information on the notice requirements of the OPMA; these tips are not intended to be regarded as specific legal advice. Consult with your agency's legal counsel about this topic as well. May 2016

LEAST IMPORTANT

OPMA – EXECUTIVE SESSIONS

CHECKLIST

For Local Government Success



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

	Requirement	Completed/ Applicable
Meeting	An executive session can only be held as part of a regular or special meeting.	<input type="checkbox"/>
Purpose	The presiding officer announces in open session the purpose of the executive session.	<input type="checkbox"/>
End Time	The presiding officer announces in open session the time the executive session will end.	<input type="checkbox"/>
Legal Counsel	Legal counsel is present during the executive session, if required. (See topics below and on the next page for discussions that require the presence of legal counsel.)	<input type="checkbox"/>
Confidentiality	At the start of the executive session, participants are reminded that discussions are confidential.	<input type="checkbox"/>
Topics	Related to local governments, the following topics set forth in RCW 42.30.110(1) can be discussed in executive session:	
	• Matters affecting national security. RCW 42.30.110(1)(a).	<input type="checkbox"/>
	• Lease or purchase of real estate if there's a likelihood that disclosure would increase the price. RCW 42.30.110(1)(b).	<input type="checkbox"/>
	• Consideration of the minimum offering price for sale or lease of real estate if there's a likelihood that disclosure would decrease the price. RCW 42.30.110(1)(c). □ Note: Final action selling or leasing public property must be taken in open session.	<input type="checkbox"/>
	• Negotiations on the performance of a publicly bid contract. RCW 42.30.110(1)(d). See back of page.	<input type="checkbox"/>
	• Complaints or charges brought against a public officer or employee. RCW 42.30.110(1)(f). □ Note: At accused's request, discussion must be in open session.	<input type="checkbox"/>
	• Qualifications of an applicant for public employment. RCW 42.30.110(1)(g). See back of page.	<input type="checkbox"/>
	• Performance of a public employee. RCW 42.30.110(1)(g). See back of page.	<input type="checkbox"/>
	• Qualifications of an applicant/candidate for appointment to elective office. RCW 42.30.110(1)(h). See back of page.	<input type="checkbox"/>
	• Agency enforcement actions. RCW 42.30.110(1)(i). See back of page. □ Note: Requires presence of legal counsel.	<input type="checkbox"/>
	• Current or potential litigation. RCW 42.30.110(1)(i). See back of page. □ Note: Requires presence of legal counsel.	<input type="checkbox"/>
	• Legal risks of current or proposed action. RCW 42.30.110(1)(i). See back of page. □ Note: Requires presence of legal counsel.	<input type="checkbox"/>
	Extended End Time	If the executive session is not completed by the originally announced end time, the presiding officer announces the extended end time in open session before returning to executive session.
Resumption	Open session is not resumed until after the announced end time.	<input type="checkbox"/>

Meeting Date _____ Form Completed By _____
Attendees _____

*DISCLAIMER: This checklist is meant to provide summary information on executive sessions; the checklist is not intended to be regarded as specific legal advice. Consult with your agency's attorney about this topic as well.