

# 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.\* *For more information and resources visit [www.mrsc.org/opmapra](http://www.mrsc.org/opmapra).*

## 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 <ul style="list-style-type: none"> <li><input type="checkbox"/> City or Town Councilmember or Mayor</li> <li><input type="checkbox"/> County Commissioner or County Councilmember</li> <li><input type="checkbox"/> Special Purpose District Commissioner/Board Member</li> </ul>	Yes
Member of a subagency created by ordinance or legislative act, e.g.: <ul style="list-style-type: none"> <li><input type="checkbox"/> Planning Commission</li> <li><input type="checkbox"/> Library Board</li> <li><input type="checkbox"/> Parks Board</li> <li><input type="checkbox"/> Civil Service Commission</li> </ul>	Yes
Member of a committee <ul style="list-style-type: none"> <li><input type="checkbox"/> Committees that act on behalf of the governing body, conduct hearings, or take testimony or public comment</li> </ul>	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](http://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:

1

- 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.

2

## 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.

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## 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 electronic communications (e.g., email).

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## Use of Social Media Can Implicate the OPMA

**Question:** 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 members of the governing body, could that violate the OPMA?

**Answer:** If 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.

**Recommendation:** 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.

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## 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 about this topic as well.

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# 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](http://www.mrsc.org/opmapra).*

	Requirement	Completed/ Applicable
<b>Meeting</b>	An executive session can only be held as part of a regular or special meeting.	<input type="checkbox"/>
<b>Purpose</b>	The presiding officer announces in open session the purpose of the executive session.	<input type="checkbox"/>
<b>End Time</b>	The presiding officer announces in open session the time the executive session will end.	<input type="checkbox"/>
<b>Legal Counsel</b>	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"/>
<b>Confidentiality</b>	At the start of the executive session, participants are reminded that discussions are confidential.	<input type="checkbox"/>
<b>Topics</b>	Related to local governments, the following topics set forth in <a href="#">RCW 42.30.110(1)</a> can be discussed in executive session:	
	• Matters affecting national security. <a href="#">RCW 42.30.110(1)(a)</a> .	<input type="checkbox"/>
	• Lease or purchase of real estate if there's a likelihood that disclosure would increase the price. <a href="#">RCW 42.30.110(1)(b)</a> .	<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. <a href="#">RCW 42.30.110(1)(c)</a> . □ <b>Note:</b> 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. <a href="#">RCW 42.30.110(1)(d)</a> . See back of page.	<input type="checkbox"/>
	• Complaints or charges brought against a public officer or employee. <a href="#">RCW 42.30.110(1)(f)</a> . □ <b>Note:</b> At accused’s request, discussion must be in open session.	<input type="checkbox"/>
	• Qualifications of an applicant for public employment. <a href="#">RCW 42.30.110(1)(g)</a> . See back of page.	<input type="checkbox"/>
	• Performance of a public employee. <a href="#">RCW 42.30.110(1)(g)</a> . See back of page.	<input type="checkbox"/>
	• Qualifications of an applicant/candidate for appointment to elective office. <a href="#">RCW 42.30.110(1)(h)</a> . See back of page.	<input type="checkbox"/>
	• Agency enforcement actions. <a href="#">RCW 42.30.110(1)(i)</a> . See back of page. □ <b>Note:</b> Requires presence of legal counsel.	<input type="checkbox"/>
	• Current or potential litigation. <a href="#">RCW 42.30.110(1)(i)</a> . See back of page. □ <b>Note:</b> Requires presence of legal counsel.	<input type="checkbox"/>
	• Legal risks of current or proposed action. <a href="#">RCW 42.30.110(1)(i)</a> . See back of page. □ <b>Note:</b> Requires presence of legal counsel.	<input type="checkbox"/>
<b>Extended End Time</b>	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.	<input type="checkbox"/>
<b>Resumption</b>	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.

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An executive session must begin after a regular or special meeting is convened and adjourn before the meeting ends. While an executive session will therefore always be a part of a regular or special meeting, it is possible to hold a special meeting for the sole purpose of holding an executive session.

To start, the chair must announce the executive session to those in attendance at the meeting, including: (1) the purpose of the executive session; and (2) the time when the executive session will end.

**Announced Purpose and Topics of Discussion:** The announced purpose of the executive session must be one of the statutorily-identified purposes for which an executive session may be held. The announcement must contain enough detail to identify the purpose as falling within the limits of the law.

***It would not be sufficient, for example, for a meeting chair to declare simply that the governing body will now meet in executive session to discuss "personnel matters."*** Discussion of personnel matters, in general, is not an authorized purpose for holding an executive session; only certain specific issues relating to personnel may be addressed in executive session.

**Attendance of legal counsel** – Legal counsel must be present at an executive session, either in person or remotely via a device that allows two-way communication, to discuss enforcement actions, current or potential litigation, or the legal risks of current or proposed action. “Potential litigation” means 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; or the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity. Discussion of the “legal risks” of a current or proposed action can only occur in executive session if public discussion of those legal risks is likely to result in an adverse legal or financial consequence to the agency.

### Notes for Specific Discussion Topics

- **Contract Performance** – Review of contract performance of publicly bid contracts may only be discussed in executive session when public knowledge of such consideration would likely cause increased costs.
- **Qualifications of an applicant for public employment or review of performance of a public employee** – If the governing body elects to take final action regarding hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action must be taken in open session.
- **Qualifications of candidate for appointment to elective office** – Candidate interviews and final action appointing a candidate to elective office must be in an open public meeting.
- **Collective bargaining sessions** – Collective bargaining sessions with employee organizations are not subject to the requirements of the OPMA. This means that discussions of these topics may occur in closed session, and it's not necessary for the governing body to follow the OPMA procedures before such discussions. This exemption applies to contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement or to that portion of a meeting during which the governing body is planning or adopting the strategy to be taken by the governing body during the course of any collective bargaining, professional negotiations, grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

**Length of Session:** Another issue that may arise concerning these procedural requirements for holding an executive session involves the estimated length of the session. If the governing body concludes the executive session before the time that was stated, it should 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 when the chair announced the executive session would conclude. If the executive session is not over at the stated time, it may be extended only if the chair announces to the public at the meeting place that it will be extended to a stated time.

**Attendance:** Attendance at an executive session need not be limited to the members of the governing body. Persons other than elected members may attend the executive session at the invitation of the governing body. Those invited should have some relationship to the matter being addressed in the executive session, or they should be in attendance to otherwise provide assistance to the governing body. Note that if the stated purpose for the executive session is to discuss litigation or potential litigation with the governing body's attorney, the presence of persons at the session who are not governing body members or agency staff may waive the attorney-client privilege.

**Minutes:** Minutes are not required to be taken at an executive session. If minutes or notes are taken during an executive session, they may be subject to the disclosure requirements of the Public Records Act.

## 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](http://www.mrsc.org/opmapra).*

	Regular Meetings (RCW 42.30.070)	Special Meetings (RCW 42.30.080)
<b>Definition</b>	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.
<b>Notice and Agendas</b>	<p>Effective June 12, 2014, 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"> <li>1. Doesn't have a website; or</li> <li>2. Employs fewer than 10 full-time equivalent employees.</li> </ol> <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 (although not necessarily online) as well as regarding upcoming hearings. <a href="#">RCW 35A.12.160</a>; <a href="#">RCW 35.22.288</a>; <a href="#">RCW 35.23.221</a>; <a href="#">RCW 35.27.300</a>. 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"> <li>• <b>Personal notice.</b> 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"> <li>1. 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</li> <li>2. Each member of the news media who has on file with the governing body a written request for notice of special meetings.</li> </ol> </li> <li>• <b>Website notice.</b> 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"> <li>1. Doesn't have a website; or</li> <li>2. Employs less than 10 full-time equivalent employees; or</li> <li>3. Doesn't employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the website.</li> </ol> </li> <li>• <b>Notice at agency's principal location.</b> 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.</li> </ul>
<b>Emergencies</b>	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.
<b>Holidays</b>	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.
<b>Business Transacted</b>	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.