CLALLAM COUNTY CHARTER REVIEW COMMISSION
MINUTES OF SEPTEMBER 8, 2025

MEETING OF THE CHARTER REVIEW COMMISSION (CRC)

Chair Susan Fisch called the meeting to order at 5:30 p.m., Monday, September 8, 2025. Also present were Commissioners Jim Stoffer, Jeff Tozzer, Alex Fane, Patti Morris, Ron Richards, Rod Fleck, Cathy Walde, Bill Benedict, Mark Hodgson, Ron Cameron, Paul Pickett, and Nina Sarmiento. Chris Noble and Christy Holy were excused.

REQUEST FOR MODIFICATIONS/APPROVAL OF AGENDA

ACTION TAKEN: Adopted as presented

APPROVAL OF THE MINUTES

- Minutes August 25, 2025

ACTION TAKEN: Adopted as presented

PUBLIC COMMENT – Please limit comments to three minutes

- Ed Telenick, Sequim, commented on BOCC Townhall Committee

CORRESPONDENCES

Gores noted receipt of correspondences from Commissioner Richards, Commissioner Ozias, Dr. Sarah Huling, Ed Telenick, Clerk Gores (see attached).

BUSINESS ITEMS

- **County Clerk proposed Amendment (Step 2): Commissioner Richards**

Fisch reminded the Commission the County Clerk proposed amendment is at step 2. She read the following into the record:

Step 2:

HOLD MEETING TO CONSIDER AMENDMENT: The proposed Charter Amendment will be considered by the Commission for their vote. If the Commission approves a final draft of the proposed amendment, the Commission shall schedule a final vote at a subsequent meeting scheduled by the Commission.

Proposed amendment:

The Clerk of the Superior Court shall be appointed by the County Commissioners from a list of at least three candidates submitted to them by the Superior Court Judges. The Clerk shall be vested with the powers, authority, duties, and functions as provided by law of a County Clerk and/or a Clerk of the Superior Court, except that t((~~T~~))he Clerk shall be subject to the personnel, budgeting, purchasing, property control and records management systems as provided in this Charter, ordinance or resolution as the Commissioners may direct. Notwithstanding the provisions of Section 5.10 of this Charter, and except for being subject to the systems referred to in the preceding sentence, the Clerk shall be vested with no powers, authority, duties, or functions by ordinance or resolution.

ACTION TAKEN: Richards moved to advance the Resolution to step 3 and 4 as written, Walde seconded

Richards provided a briefing on the proposed amendment regarding County Clerk and feedback he received from the Judges and Board of Commissioners. CRC Members provided pro and con feedback on the proposed amendment.

ACTION TAKEN: Hodgson moved to table, Cameron seconded, motion passed

(11 voted in favor and 2 voted opposed)

<u>ACTION TAKEN</u>: Richards moved to ask the Prosecuting Attorney, Judges and Clerk on the accuracy, the need for and any suggestions on the 3rd version, Walde seconded, motion failed (5 voted in favor and 8 voted opposed)

- **BOCC Townhall proposed amendment (Step 1): Commissioner Sarmiento**

Fisch reminded the Commission the County Clerk proposed amendment is at step 1. She read the following into the record:

<u>Step 1:</u>
GIVE NOTICE TO COMMISSION: A member or Committee shall provide a draft of the proposed Charter amendment to the Commission at a meeting. The proposed amendment shall be placed on the agenda at a subsequent meeting scheduled by the Commission.

<u>Proposed amendment:</u>
<u>Each member of the Board of County Commissioners shall conduct at least one town hall meeting in their Commissioner District each year, and all members of the Board of County Commissioners shall conduct at least one town hall meeting in each commissioner's district each year, said meetings to occur outside of normal working hours. Notice of such meetings must be posted at least 30 days in advance of the meeting.</u>

Sarmiento provided a briefing on the proposed amendment regarding BOCC Townhall meetings. CRC Members held discussion regarding the proposed amendment. The amendment moves to step 2 at the September 22 meeting.

- **Ethics Review Board proposed Amendment (Step 1): Commissioner Cameron**

Fisch reminded the Commission the County Clerk proposed amendment is at step 1. She read the following proposed amendment into the record:

<u>Proposed amendment:</u>
<u>The County Administrator shall appoint one citizen from each of the County Commissioner Districts to collectively serve, without compensation, as an Ethics Review Board to receive complaints of violations of the county Code of Ethics by elected county officials. The Ethics Review Board will consider the evidence presented to it supporting the complaint and the evidence presented to it refuting the complaint and make a determination as to whether or not the preponderance of evidence supports the complaint. Findings of the Ethics Review Board shall be made public. The Ethics Review Board shall establish procedures for due process and for appeal of its findings by either the complainant or the official against whom the complaint was made.</u>

Cameron provided a briefing on the proposed amendment regarding Ethics Review Board. CRC Members held discussion regarding the proposed amendment. The Ethics Committee will meet again to make revisions prior to moving to step 2.

- **Duties of the Department of Public Works regarding the County Road Fund proposed amendment (Step 1): Commissioner Tozzer**

Fisch read the following proposed amendment into the record:

<u>Proposed amendment:</u>
The Department of Public Works shall utilize the County Road Fund and dedicate such resources solely to the county road system for maintenance and capital improvements. This essential service is established for emergency response, public transportation, and private vehicle use for which license and registration is required.

Non-road related programs—including county trails and non-motorized vehicle services—shall be funded through the county general fund, a designated fund of their own, or outside revenue sources. These programs shall not be included as requirements of the six-year transportation improvement program.

Infrastructure that serves both road and non-road purposes may be jointly used; however, the prioritization of non-road programs may not override or reduce the primary purpose of the road program as an essential service.

Tozzer commented the proposed amendment regarding Public Works was brought up by an engaged citizen. CRC Members held discussion regarding the proposed amendment. The amendment moves to step 2 at the September 22.

SUBCOMMITTEE REPORTS

- Ethics Committee

Cameron reported the Ethics Committee will be meeting on September 16, 2025.

- Land Acquisition Committee

Richards provided a report on land acquisition. He commented there will be a Land Acquisition Committee Meeting in Forks on September 9, 2025 at 1 p.m. to listen to any concerns the citizens might have.

REPORTS

- **Chair Report – Commissioner Fisch**

No Chair report.

PUBLIC COMMENT – Please limit comments to three minutes

- Eric Fehrmann, Sequim, commented on the County Clerk proposal
- Denise Lapio, Sequim, commented on the BOCC Townhall meetings, security attending the meeting
- Ed Bowen, Clallam Bay, commented on BOCC Townhall meeting, outside working hours, trails, Land Acquisition Committee Meeting in Forks

GOOD OF THE ORDER/FUTURE AGENDA ITEMS

- BOCC Townhall – Step 2
- Public Works – Step 2
- Land Acquisition
- Recommendation for microphone system in board room – Fleck – October meeting

ADJOURNMENT - Meeting concluded at 7:19 p.m.

Respectfully submitted,

L. Gores

Loni Gores, MMC
Clerk of the Charter Review Commission

Approved: 9/22/25

CLALLAM COUNTY CHARTER REVIEW COMMISSION 2025 – Roll Call Voting – September 9, 2025
Y – Yes, N- No, A-Absent

	Motion to forward County Clerk Proposal for legal, Judge review
Susan Fisch	N
Bill Benedict	Y
Jim Stoffer	N
Jeff Tozzer	Y
Alex Fane	N
Ron Cameron	N
Pattie Morris	N
Chris Noble	A
Paul Pickett	Y
Ron Richards	Y
Rod Fleck	N
Mark Hodgson	N
Christy Holy	A
Cathy Walde	Y
Nina Sarmiento	N
Yes	5
No	8
Pass or Fail	Failed

CHARTER REVIEW COMMISSION PUBLIC COMMENT SIGN-UP SHEET

Public Comment on Agenda Items – 1st Session

I declare under penalty of perjury under the laws of the State of Washington that any testimony that I give is true and accurate. Please print name and address clearly.

№	PRINTED NAME	SIGNATURE	ADDRESS
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CHARTER REVIEW COMMISSION PUBLIC COMMENT SIGN-UP SHEET

General Public Comment – 2nd Session

I declare under penalty of perjury under the laws of the State of Washington that any testimony that I give is true and accurate. Please print name and address clearly.

№	PRINTED NAME	SIGNATURE	ADDRESS
1	Eric Fehrmann	Eric Fehrmann	Sequim
2	Denise Lapio	Denise Lapio	Sequim
3	Ed Bowen	Ed	CB
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CHARTER REVIEW COMMISSION

CORRESPONDENCES RECEIVED

Gores, Loni

From: Richards, Ron
Sent: Tuesday, August 26, 2025 10:10 PM
To: Gores, Loni
Subject: Jamestown S'Klallam Tribal Properties Map

Loni,

Following is a link to a map of the Jamestown S'Klallam Tribal Properties that the Land Acquisitions Committee decided today should be shared with the whole CRC. I believe it is current through 3/31/25. Red is reservation property, green is trust property, yellow is fee property, and pink shows property in the process of being acquired as of 3/31. This is an interactive map with links to county websites for details on the properties.

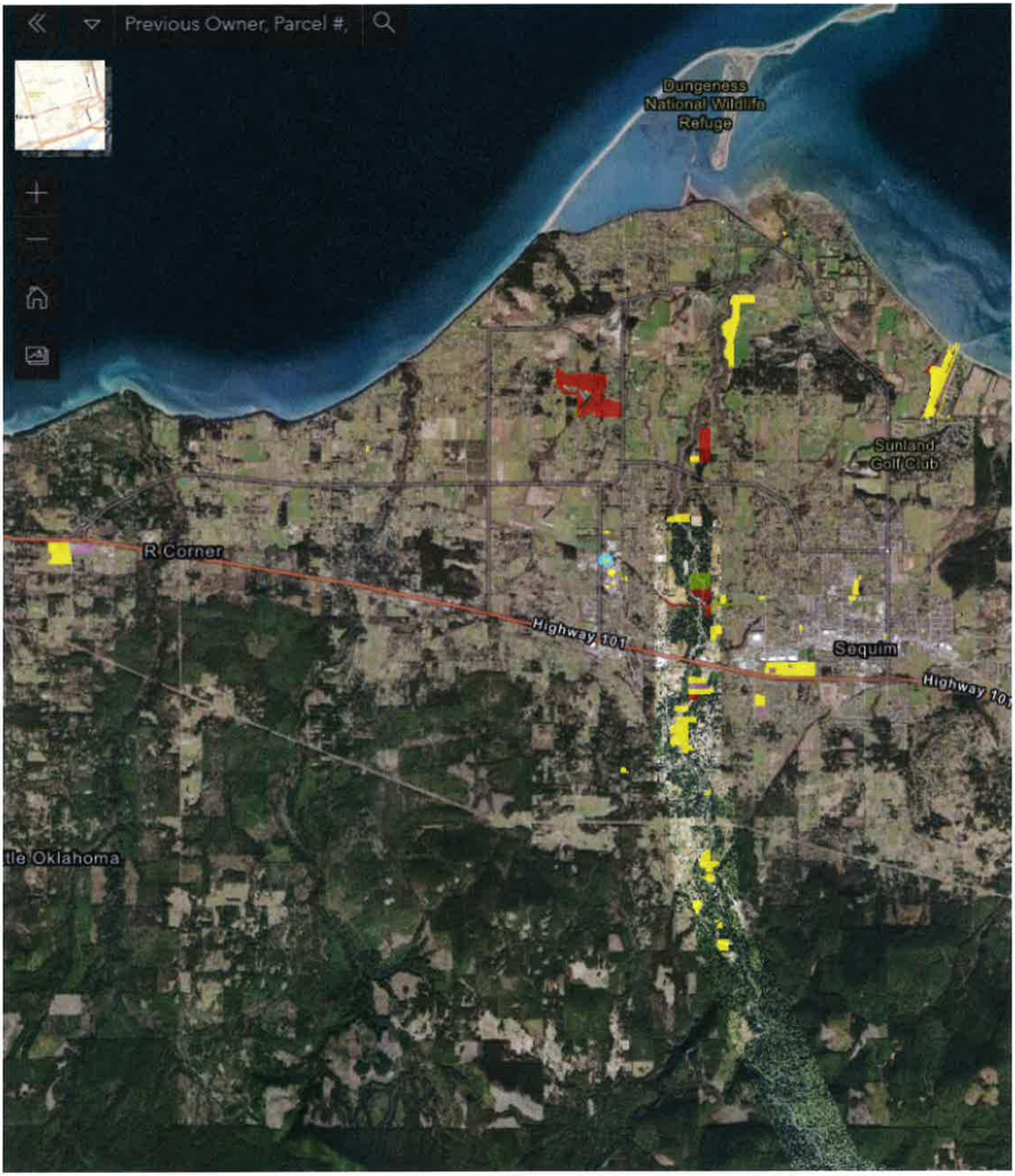
Jamestown S'Klallam Tribal Properties Webmap

Copied below is a screen shot of the map on a small scale.

Please forward this to the whole commission.

Thank you,

Ron


Previous Owner, Parcel #,
Dungeness
National Wildlife
Refuge
Sunland
Golf Club
R Corner
Highway 101
Sequim
Highway 101
tle Oklahoma

Gores, Loni

From: Ozias, Mark
Sent: Wednesday, August 27, 2025 10:10 AM
To: Gores, Loni
Subject: RE: Resolution Proposing County Clerk Charter Amendment - RESPONSE NEEDED

Charter Review Commissioners,

Thank you for the opportunity to provide comment on your draft Resolution related to the Clerk of the Superior Court. As the power and duties of Court Clerks are clearly enumerated in RCW 2.32.050, and as the Clallam County Charter simply outlines the process by which our Court Clerk is appointed and describes how this position (like every other) must adhere to county budgeting, personnel, etc. policy, it seems to me that any additional language in our Charter would be repetitive and unnecessary.

Sincerely,

Mark Ozias

Clallam County Commissioner

** Please note my new email address: mark.ozias@clallamcountywa.gov*

** This correspondence may be subject to disclosure under the Public Records Act.*

From: Gores, Loni <loni.gores@clallamcountywa.gov>
Sent: Tuesday, August 26, 2025 5:02 PM
To: Ozias, Mark <mark.ozias@clallamcountywa.gov>; Johnson, Randy <randy.johnson@clallamcountywa.gov>; French, Mike <Mike.French@clallamcountywa.gov>; Mielke, Todd <Todd.Mielke@clallamcountywa.gov>; Boughton, Dee <dee.boughton@clallamcountywa.gov>; Nichols, Mark <mark.nichols@clallamcountywa.gov>; Basden, Brent <Brent.Basden@clallamcountywa.gov>; Barnhart, Simon <simon.barnhart@clallamcountywa.gov>; Stanley, Elizabeth A. <elizabeth.a.stanley@clallamcountywa.gov>; Clayton, Kaysey <kaysey.clayton@clallamcountywa.gov>; Halberg, Lacey <lacey.halberg@clallamcountywa.gov>; Parker, Brian <Brian.Parker@clallamcountywa.gov>; Botnen, Nikki <nikki.botnen@clallamcountywa.gov>
Cc: Gores, Loni <loni.gores@clallamcountywa.gov>
Subject: FW: Resolution Proposing County Clerk Charter Amendment - RESPONSE NEEDED

Superior Court Judges, Superior Court Clerk, Prosecuting Attorney and Board of Commissioners:

The Charter Review Commission requested that I forward you the attached proposed Charter amendment regarding the Clerk of the Superior Court position. If you have any comments to make regarding the proposed amendment, please send those comments to me **no later than Wednesday, September 3**. The Charter Review Commission will be discussing the proposed amendment and any comments received at their next meeting on Monday, September 8.

Loni

"My email address has changed! The new format is ***Loni.Gores@clallamcountywa.gov*** Please update my contact card as your earliest convenience, Thank you!"

Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

From: Richards, Ron <ron.richards@clallamcountywa.gov>
Sent: Sunday, August 24, 2025 11:44 PM
To: Gores, Loni <loni.gores@clallamcountywa.gov>
Cc: Fisch, Susan <susan.fisch@clallamcountywa.gov>
Subject: Resolution Proposing County Clerk Charter Amendment

Hi Loni,

Attached is the resolution I told Susan I would draft proposing a charter amendment to vest powers in the Clerk of the Superior Court.

Ron

Gores, Loni

From: Sarah <triplesconsultants2025@gmail.com>
Sent: Wednesday, August 27, 2025 4:42 PM
To: Gores, Loni
Subject: Follow-up on 8/27: For BOCC "Town Hall Meetings" Subcommittee — quick OPMA clarifications to support charter drafting
Attachments: County-Commissioner-Guide.pdf; Open-Public-Meetings-Act (2).pdf

Hi Loni — could you please forward the note below to the Town Hall Meetings Subcommittee? Thank you!

Dear Subcommittee Members,

Thank you again for the thoughtful 8/27 discussion. I listened to the recording and wanted to share a short, citation-based clarification on two points you raised—what counts as $B!H (Jaction $B!I (J/a meeting, and whether recording or virtual access is required (J— (Jso any charter language we draft fits cleanly with state law.

1) When does OPMA treat a $B!H (Jtown hall $B!I (J as a meeting?

- Under OPMA, a gathering of a governing body is either a regular or special meeting; $B!H (Jtown hall, $B!I (J $B!H (Jworkshop, $B!I (J or $B!H (Jlistening session $B!I (J are just labels and don $B!G (Jt change the legal requirements. A meeting occurs whenever a majority gathers with the intent to transact agency business (J— (Jeven if no vote is taken (J— (Jand $B!H (Jaction $B!I (J includes **DISCUSSIONS**, deliberations, receiving testimony, reviews/evaluations, and final action. (For a 3-member BOCC, two commissioners = a meeting.) (Snohomish County)
- If a $B!H (Jtown hall $B!I (J is on the BOCC $B!G (Js adopted schedule $B"* (J it $B!G (Js a regular meeting. If not $B"* (J it $B!G (Js a special meeting and must meet the 24-hour notice/agenda limits; any final action is limited to the items listed in the notice. (MRSC)

2) Minutes, recordings, and virtual (remote) access

- Minutes are required for all regular and special meetings (except executive sessions). (Washington State Legislature)
- Audio recording is not generally required for counties. The only OPMA mandate to audio-record applies to school district boards at meetings where final action is taken or formal public testimony is accepted (and those recordings must be retained at least one year). (Washington State Legislature)
  - MRSC also notes this school-board-only recording rule; for other agencies, recordings are optional but, if made, become public records subject to retention and disclosure. (MRSC)
- Virtual access: OPMA encourages agencies to provide real-time remote access (phone/internet) at no additional cost to the public. This is not a hard requirement, but a strong policy nudge. (Washington State Legislature)
  - Remote-only (no physical location) is allowed only during a declared emergency when an in-person meeting cannot be safely held. (Washington State Legislature)

- Public comment: OPMA requires an opportunity for public comment at or before every regular meeting where final action is taken (oral or written; and, when feasible, an oral remote option upon request if a person cannot reasonably attend in person). (Washington State Legislature)

3) Charter-friendly phrasing that stays consistent with OPMA

- Define BOCC □ $B!H□ (Jtown halls□ $B!I□ (J as listening sessions (no final action unless the item is listed on the agenda/notice). (MRSC)
- Require minutes; allow optional recording with retention per PRA if used. (Washington State Legislature, MRSC)
- Encourage hybrid access when feasible, tracking OPMA□ $B!G□ (Js □ $B!H□ (Jencouraged□ $B!I□ (J language, while preserving the emergency-only rule for fully remote meetings. (Washington State Legislature)

I hope this is helpful as you refine ballot-ready charter language.

With appreciation for your work,

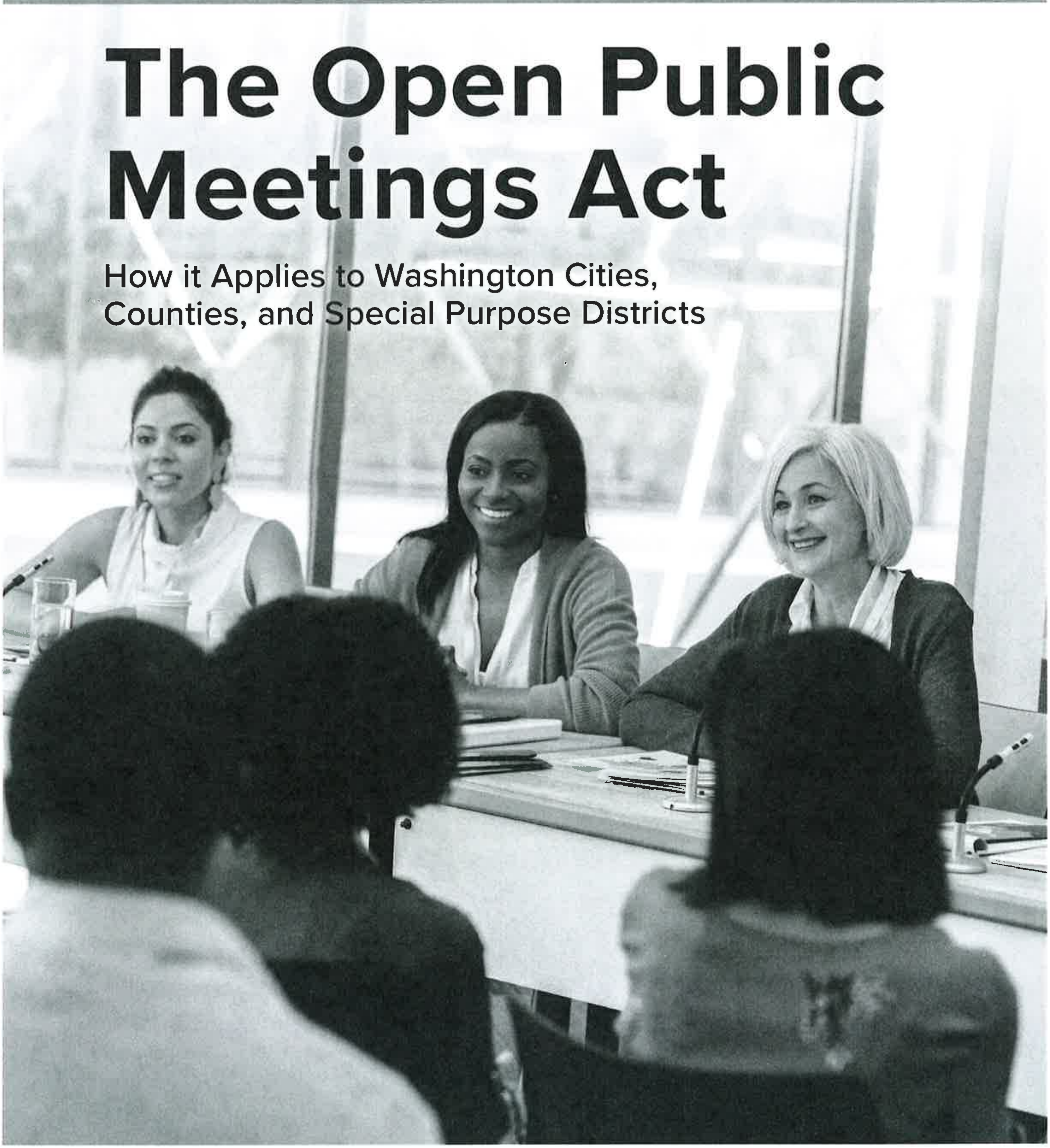
Dr. Sarah H. Huling, EdD, MBA
District 3 – Forks
Triple S Consultants, LLC

P.S. Drafted in part with AI support to ensure concise, accurate summaries of OPMA requirements.

JULY 2024

The Open Public Meetings Act

How it Applies to Washington Cities, Counties, and Special Purpose Districts



MRSC

2023 update created in partnership with

The Center for Government Innovation, a service of the Washington State Auditor's Office

THE OPEN PUBLIC MEETINGS ACT

MRSC thanks the Washington State Auditor's Office for their funding and support of this update.

DISCLAIMER

The content of this publication is for informational purposes only and is not intended as legal advice, nor as a substitute for the legal advice of an attorney. You should contact your own legal counsel if you have a question regarding your legal rights or any other legal issue.

MRSC MISSION

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MRSC

OFFICE: 225 Tacoma Ave S., Tacoma, WA 98402

MAIL: 1712 6th Ave, Suite 100, PMB 1330, Tacoma, WA 98405

(206) 625-1300 | (800) 933-6772

www.MRSC.org

Revision History

MRSC updates this publication as needed to reflect new legislation and other changes. Below is a summary of significant recent changes. If you are aware of any other sections that you think need to be updated or clarified, please contact mrsc@mrsc.org. To make sure you have the most recent version, please go to mrsc.org/publications.

DATE	SUMMARY
July 2024	**Procedural Requirements:** • Public Comment: Added new public comment notice requirement (RCW 42.30.250).
June 2023	Updated publication to reflect legislative changes to the OPMA current through the 2023 legislative session and up-to-date case law.

Contents

Introduction

In 1971, the state legislature enacted the Open Public Meetings Act (OPMA) to make the conduct of government more accessible and open to the public. The OPMA begins with a strongly worded statement of purpose (RCW 42.30.010):

> The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.
>
> 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 and informing the people's public servants of their views so that they may retain control over the instruments they have created. For these reasons, even when not required by law, public agencies are encouraged to incorporate and accept public comment during their decision-making process.

This publication comprehensively reviews the OPMA as it applies to Washington cities, towns, counties, and special purpose districts. It also provides answers to selected questions that have been asked of MRSC staff concerning the application of the OPMA. However, we find that new questions constantly arise concerning the OPMA. So, if you have questions that are not addressed by this publication, do not hesitate to contact your legal counsel or MRSC legal staff.

Applicability

Codified in chapter 42.30 RCW, the OPMA applies to all city and town councils,[1] to all county councils and boards of county commissioners, and to the governing bodies of special purpose districts, as well as to many subordinate city, county, and special purpose district commissions, boards, and committees. It requires that all "meetings" of such bodies be open to the public and that all "action" taken by such bodies be done at meetings that are open to the public. The terms "meetings" and "action" are defined broadly in the OPMA and, consequently, the OPMA can have daily significance for cities, counties, and special purpose districts even when no formal meetings are being conducted.

IN GENERAL

The basic mandate of the Open Public Meetings Act in RCW 42.30.030 is as follows:

> 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.

The OPMA applies to "meetings" of a "governing body" of a "public agency." In RCW 42.30.020 a "public agency" is defined as including a city, county, and special purpose district and a "governing body" is defined as follows:

> "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

The legislative bodies of cities and counties[2] clearly are governing bodies under this definition, as are the boards or commissions that govern special purpose districts. However, they are not the only bodies to which the OPMA applies. The OPMA also applies to any "subagency" of a city, county, or special purpose district,[3] because the definition of "public agency," per RCW 42.30.020(1)(c), includes:

> Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.

Under this definition, the subagency must be created by some legislative act of the legislative body, such as an ordinance or resolution. A group established by a mayor to advise the mayor on a particular issue could not, for example, be a subagency, because a mayor does not act legislatively. However, a legislative act alone does not create a subagency. According to the Washington State Attorney General's Office (AGO), a board or a commission or other body is not a subagency governed by the OPMA unless it actually possesses some aspect of policy or rulemaking authority. As explained by the AGO, "its "advice," while not binding upon the agency with which it relates [...], must nevertheless be legally a necessary antecedent to that agency's action." See AGO 1971 No. 33[4].

1 For convenience, the term "city council" will in this publication also refer to town councils and to city commissions under the commission form of government.

2 The legislative bodies of cities are the city councils or city commissions, and the legislative bodies of counties are the boards of county commissioners or county councils.

3 Most special purpose district governing bodies do not have the authority to create such subagencies.

4 The Attorney General's Office bases its conclusion on this issue on the language "or other policy or rulemaking body of a public agency" in the definition of "governing body" in RCW 42.30.020(2). See also AGLO 1972 No. 48.

Certain advisory boards are not subject to the OPMA: If a board or commission (or whatever it may be termed) established by legislative action is merely advisory and its advice is not necessary for the city, county, or district to act, the OPMA generally does not apply to it. However, the governing body can always choose to make the advisory boards that it creates subject to the OPMA, even if that board would not otherwise be subject to the OPMA.

GOVERNING BODIES AND SUBAGENCIES

Given the definition of "governing body" and "subagency", the following are governing bodies within city and county government that are subject to the OPMA:

- City council or commission
- County council or board of commissioners
- Planning commission
- Civil service commission
- Board of adjustment
- Lodging Tax Advisory Committee

Other boards or commissions will need to be evaluated individually to determine whether the OPMA applies to them. For example, the definition of a subagency identifies library boards, but, in some cities (particularly those without their own libraries), library boards function as purely advisory bodies, without any policymaking or rulemaking authority. That type of library board would not be subject to the OPMA. In cities where library boards function under statutory authority and possess policymaking and rulemaking authority, those boards must follow the requirements of the OPMA (RCW 27.12.210).

Most special purpose districts have only one "governing body" under the meaning of that term in the OPMA.

Committees subject to the OPMA

The OPMA also applies to a committee created by a governing body in the following circumstances:

- When it acts on behalf of the governing body[5]
- When it conducts hearings, or
- When it takes testimony or public comment.

5 In a 2015 decision, the State Supreme Court adopted the reasoning of AGO 1986 No. 16 in concluding that a committee acts on behalf of the governing body "when it exercises actual or de facto decision-making authority." See *Citizens Alliance v. San Juan County* (2015). A committee when it is exercising actual or de facto decision-making authority should be distinguished from the situation where a committee simply provides advice or information to the governing body and is not subject to the OPMA. See *Citizens Alliance v. San Juan County* (2015).

When a committee is not doing any of those things, it is not subject to the OPMA.[6]

Keep in mind that it is usually good public policy to open the meetings of local government boards, commissions, and committees to the public, even if it is uncertain or doubtful that the OPMA applies to them. This approach would be consistent with the OPMA's focus on transparency and its basic intent that the actions of governmental bodies "be taken openly and that their deliberations be conducted openly" (RCW 42.30.010).

SELECTED QUESTIONS ON APPLICABILITY

Below are additional questions and answers addressing the topic of OPMA applicability. For more questions and answers about the OPMA, see MRSC's page on Open Public Meetings Act FAQs.

May four councilmembers-elect of a seven-member council meet before taking their oaths of office without procedurally complying with the OPMA?

Yes. Councilmembers-elect are not yet members of the governing body and cannot take "action" within the meaning of the OPMA, and so they are not subject to the OPMA. See *Wood v. Battle Ground School Dist.* (2001).

Must a committee of the governing body be composed solely of members of the governing body for it to be subject to the OPMA under the circumstances identified in RCW 42.30.020(2)?

No. RCW 42.30.020(2) defines a "governing body" to include a "committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment." The State Supreme Court has held that a "committee thereof," an entity created or specifically authorized by the governing body, may include or consist of individuals who are not members of the governing body. See *Citizens Alliance v. San Juan County* (2015).

If a committee of a governing body is subject to the OPMA and it forms a subcommittee, is that subcommittee also subject to the OPMA?

If the subcommittee consists of a quorum of committee members, then it is subject to the OPMA. If the subcommittee consists of less than a quorum of committee members, then it is subject to the OPMA if it performs any of the following functions:

- It acts on behalf of the committee (i.e., it is exercising actual or de facto decision-making authority);
- It conducts hearings; or
- It takes testimony or public comment.

6 While the definition of "governing body" speaks of "when" a committee acts so as to come within that definition, the courts have not been clear about whether a committee is subject to the OPMA for all of its meetings when it is only at some that it is acting in that manner. See *Clark v. City of Lakewood* (9th Cir. 2001).

Does the OPMA apply to meetings of department directors or other staff? Does the answer change if the public is invited to attend these meetings?

The OPMA does not apply to meetings of department directors or staff meetings because those are not meetings of the "governing body" to which the OPMA applies. The meeting is still not subject to the OPMA even if the public is invited to attend. If a quorum of the council or commission attends the department director or staff meeting, whether the meeting is subject to the OPMA depends on the participation of the council or commission members. Passive receipt of information by a quorum of the governing body does not violate the OPMA, so mere attendance is allowed by the OPMA. However, for transparency reasons and to avoid any liability under the OPMA, MRSC recommends noticing all meetings at which a quorum of the council or commission attends.

What Is a “Meeting”?

IN GENERAL

There must be a “meeting” of a governing body for the OPMA to apply. Sometimes it is very clear that a “meeting” must be open to the public, but other times it isn't. To determine whether a governing body is having a “meeting” that must be open, it is necessary to look at the OPMA's definitions. RCW 42.30.020(4) defines “meeting” as follows: “'Meeting' means meetings at which action is taken.” “Action,” as referred to in that definition of “meeting,” is defined in RCW 42.30.020(3) as follows:

> “Action” means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. “Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

Since a governing body can only transact business when a quorum (majority) of its members are present (e.g., RCW 35A.12.120, 35.23.270, 35.27.280, 36.32.010), it is conducting a meeting subject to the requirements of the Open Public Meetings Act whenever a majority of its members gathers with the collective intent of transacting the governing body's business (*Citizens Alliance v. San Juan County* (2015)). This includes simply discussing any matter having to do with agency business. Because members of a governing body may discuss the business of that body by telephone and other electronic means (including email, text message, social media or chat), it is not necessary that the members be in the physical presence of each other for there to be a meeting subject to the OPMA (*Wood v. Battle Ground School Dist.* (2001)). Also, it is not necessary that a governing body take “final action” for a meeting subject to the OPMA to occur. See RCW 42.30.020(3).

Note that it does not matter if the meeting is called a “workshop,” a “study session,” or a “retreat”; it is still a meeting subject to the Open Public Meetings Act if a quorum is addressing the business of the city, county, or special purpose district. If a quorum of the governing body just meets socially or travels together, it is not having a meeting subject to the OPMA as long as the members do not discuss agency business or otherwise take “action.” See RCW 42.30.070, *In re Recall of Roberts* (1990).

SERIAL MEETINGS

Members of a governing body must avoid communicating with each other in a way that eventually turns into a majority of the body collectively taking action, even if the majority is never part of any one communication or are not in the physical presence of one another (*Citizens Alliance v. San Juan County* (2015), *Wood v. Battle Ground School Dist.* (2001), *Egan v. City of Seattle* (2020)). This can happen if the members discuss city, county, or district business together in a series of in-person meetings, phone calls, emails, and other electronic means (including text messages, chat, social media posts and comments, and shared documents). These types of meetings are referred to as “serial” or “rolling” meetings and violate the OPMA when they involve a majority of members having the collective intent to take action. They are a violation because the public could not, as a practical matter, attend these “serial” or “rolling” meetings.

Washington's Supreme Court has said that, for a serial meeting to occur in violation of the OPMA, there must be a "collective intent to take action." In discussing collective intent, the Court said that in-person meetings, emails, phone calls, and text messages between and among the city councilmembers could constitute a "meeting" under the OPMA if there was evidence that at least five members (a majority of the nine-member city counci) participated in and were aware that four others were participating in conversations about repealing the head tax. See *Egan v. City of Seattle* (2020).

It is not an illegal serial meeting if one member communicates with the other members merely for the purpose of providing relevant information to them. For example, one member can email the other members about an agency issue, so long as the other members only "passively receive" the information and no email or other type of discussion regarding that information takes place (*Egan v. City of Seattle* (2020)). MRSC recommends using the "blind carbon" function in these types of emails which prevents a recipient from replying to all the other recipients. MRSC also recommends having agency staff distribute materials to members of the governing body; this can also help avoid situations where OPMA violations may occur.

HYBRID AND REMOTE MEETINGS

Local governments are encouraged under RCW 42.30.030 to hold meetings of the governing body as hybrid meetings, where the physical location of the meeting is coupled with a remote access option, but this is not a requirement. A local government can choose to offer its meetings at a physical location or as a hybrid meeting, but it cannot choose to offer a remote-only meeting unless certain circumstances apply. Fully remote meetings with no physical location are permitted under the OPMA only if a local, state, or federal emergency has been declared and the public agency determines it cannot hold an in-person meeting.[7] See RCW 42.30.230.

While the public must be provided the option to attend meetings of the governing body at a physical location (absent an emergency declaration), the OPMA specifically permits members of the governing body to attend their meetings by phone or other electronic means that allow for real-time verbal communication. See RCW 42.30.230(5). However, some local governments have adopted local policies placing rules on remote attendance by members of the governing body, such as allowing members to remotely attend only three meetings per year or only in special circumstances (e.g., traveling out-of-town, illness).

SELECTED QUESTIONS ON MEETINGS UNDER THE OPMA

Below are additional questions and answers addressing the topic of meetings under the OPMA. For more questions and answers about the OPMA, see MRSC's page on Open Public Meetings Act FAQs.

May a quorum of a city or county legislative body attend, as members of the audience: (1) a citizens' group meeting; or (2) an advisory board or other committee meeting?

Yes, a quorum of the legislative body may attend a citizen's group meeting or an advisory board/committee meeting without that meeting being subject to the OPMA so long as the members attending the meeting do not

7 The OPMA provides an additional exception to the physical meeting location requirement, but this exception does not apply to local governments. The OPMA allows those governing bodies that held some of their regular meetings remotely prior to March 1, 2020, to continue to hold fully remote meetings with no declared emergency so long as the public may also attend remotely.

discuss, as a group, agency business or otherwise take "action" within the meaning of the OPMA (AGO 2006 No. 6). That possibility could in most circumstances be avoided by not sitting as a group and not engaging with each other in any way during the meeting.

If the legislative body will be expected to participate in the citizens' group meeting, then either a quorum should not attend, or the meeting should be noticed as a special meeting of the legislative body. Given the nature of the advisory board and committee meetings, the agency may want to notice the meeting as a special meeting of the legislative body to avoid any risk of the members taking action that would violate the OPMA. Further, some agencies may have local rules addressing legislative body attendance at such meetings and may choose to limit attendance or participation for various reasons, including avoiding any undue influence that may occur from the presence or participation by members of the legislative or potential complications with the appearance of fairness doctrine.

May an entire county council attend a private dinner in honor of the out-going county official without complying with the Open Public Meetings Act?

This issue comes down to whether the council will be dealing with county business. It can be argued that honoring the county official is itself county business. On the other hand, it could be argued that honoring an individual who is leaving county employment does not involve the functioning of the county. Additionally, the OPMA provides that there is no violation if "a majority of the members of a governing body [...] gather for purposes other than a regular meeting or a special meeting" (and do not take action at the gathering) (RCW 42.30.070). Even so, this is a gray area where caution should be exercised.

Must the public be allowed to attend the annual city council retreat?

Yes. A retreat attended by a quorum of the council where issues of city business are addressed constitutes a meeting subject to the OPMA.

May all members of the governing body remotely attend their own meeting?

Yes. The OPMA allows all members of the governing body to remotely attend their own meeting. Remote attendance can be by phone or other electronic means and must allow for real-time verbal communication. Local policies may place restrictions or additional rules on remote meeting attendance by members of the governing body.

Exemptions

RCW 42.30.140 sets out four situations where a governing body may meet and not be subject to any requirements of the Open Public Meetings Act. That statute provides that the OPMA does not apply to:

1. "The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary."

   This provision, for the most part, has little, if any, application to any city, county, or special district governing body. One type of proceeding where it has been used is where a city provides for a hearing before revoking a business license. See *Cohen v. Everett City Council* (1975).

2. "That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group;"

   This exception applies when a governing body is acting in a quasi-judicial capacity. 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.

3. "Matters governed by chapter 34.05 RCW, the Administrative Procedures Act;"

   This exception has no application to cities, counties, or special purpose districts, but it has been held to apply to removal hearings for elected state conservation district supervisors (who may be removed from office by the state conservation commission upon notice and hearing pursuant to RCW 89.08.200). See *Johnson v. Washington State Conservation Commission* (2021).

4. "(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress."

The language of this exception is basically self-explanatory.[8] However, the term "professional negotiations" must be interpreted in the context of collective bargaining; it should not be interpreted to apply generally to negotiations for professional services.

SELECTED QUESTIONS ON EXEMPTIONS

Below are additional questions and answers addressing the topic of exemptions to the OPMA. For more questions and answers about the OPMA, see MRSC's page on Open Public Meeting Act FAQs.

Does the OPMA require that a civil service commission hearing regarding a police officer's appeal of disciplinary action be open to the public?

Such a hearing would fall under the exception from the OPMA in RCW 42.30.140(2) for quasi-judicial matters. However, since RCW 41.12.090 requires that such a hearing be public, the OPMA's exemption does not apply. The commission may nevertheless deliberate in private.

Must a local government give any notice under the OPMA when the governing body is meeting to discuss the strategy to be taken during collective bargaining with an employee union?

No. Under RCW 42.30.140(4), this meeting is exempt from the OPMA. The council or commission may therefore meet without notifying anyone. Of course, each member of the governing body must be notified.

Can a local government unilaterally require that collective bargaining negotiations occur at an open public meeting?

No. The Washington Supreme Court held that a city ordinance requiring that all collective bargaining between city and union representatives occur at an open public meeting was preempted by state law and unconstitutional under article XI, section 11 of the Washington State Constitution. See *Washington State Council of County and City Employees v. City of Spokane* (2022).

8 City, county, and special district governing bodies should be aware that this exemption from the OPMA does not protect the public from accessing documents that are introduced at such a meeting through a Public Records Act request. See *ACLU of WA v. City of Seattle* (2004).

Procedural Requirements

The OPMA establishes some basic procedural requirements that apply to all meetings of a governing body, whether they are regular or special meetings. All meetings of a governing body are, under the Open Public Meetings Act, either regular or special meetings. It does not matter if it is called a "study session" or a "workshop" or a "retreat," it is either a regular or special meeting.

TYPES OF MEETINGS

What is a regular meeting?

A regular meeting is one that is held according to a schedule adopted by ordinance, resolution, order, or rule, as may be appropriate for the governing body. See RCW 42.30.060, .070, .080.[9]

What is a special meeting?

A special meeting is any meeting that is not a regular meeting. In other words, special meetings are not held according to a fixed schedule. Under the OPMA, special meetings have specific notice requirements, as discussed below. Also, governing bodies may be subject to specific limitations about what may be done at a special meeting.[10]

What is an emergency meeting?

An emergency meeting is one that is held because the governing body needs to take expedited action to meet an unexpected emergency (such as a fire, flood or earthquake). As discussed in more detail below, emergency meetings have no notice requirements. To qualify for an emergency, the situation must be one that involves, or has the likelihood to involve, injury or damage to persons or property, when time requirements of meeting notice make notice impractical and increases the likelihood of such injury or damage or when notice cannot be posted with reasonable safety. See RCW 42.30.070, .080, *Mead School District v. Mead Ed. Ass'n* (1975).

PROCEDURAL REQUIREMENTS FOR ALL MEETINGS

The following requirements and prohibitions apply to both regular and special meetings of a governing body:

- All meetings must be open to the public (RCW 42.30.030).

9 Also, state law, though not the OPMA, may require the governing body of a city, county, or special district to meet with a certain regularity, such as monthly. For example, second class and code city councils, town councils, and the board of directors of any school district must meet at least once a month. See RCW 35.23.181, 35.27.270, 35A.12.110, 28A.343.380.

10 For example, second class city councils may not pass an ordinance or approve a contract or a bill for the payment of money at a special meeting (RCW 35.23.181). Town councils may not pass a resolution or order for the payment of money at a special meeting (RCW 35.27.270). Many special purpose districts are subject to requirements that certain actions can be taken only at a regular meeting, i.e., not at a special meeting. See, e.g., RCW 54.16.100 (appointment and removal of public utility district manager); RCW 85.05.410 (setting compensation of board of diking district commissioners). The councils of first class and code cities and county legislative bodies have no specific limitations on actions that may be taken at a special meeting, other than those imposed by the Open Public Meetings Act.

- Meetings must be held in a physical location, with remote access optional, unless a local, state or federal emergency has been declared and the agency determines it cannot hold an in-person meeting with reasonable safety because of the emergency (RCW 42.30.230).
- Minutes are required for all regular and special meetings except executive sessions (although the announced purpose of the executive session must be included in the minutes). See RCW 42.30.035 and 42.30.110(2). Minutes must be made available for public inspection but are not required to be posted online.
- A member of the public may not be required as a condition of attendance to register their name or other information, or complete a questionnaire, or be required to fulfill any other condition to be allowed to attend (RCW 42.30.040).
- The governing body may require the removal of members of the public who disrupt the orderly conduct of a meeting. This ability to remove disruptive attendees applies to both in-person and remote meetings, although agencies have more tools available in remote meetings to prevent disruption (e.g., muting microphones, disabling chat and video). If order cannot be restored by removal of individuals, the governing body may order the meeting room cleared and may continue in session or it may adjourn and reconvene the meeting at another location, subject to the limitations in RCW 42.30.050. These limitations include that final disposition may be taken only on matters appearing in the agenda and that the press and news media shall be allowed to attend the reconvened session (unless they were disruptive).
- Votes may not be taken by secret ballot. Votes taken by secret ballot are null and void. See RCW 42.30.060(2).
- Meetings may be adjourned (rescheduled) or continued subject to the procedures in RCW 42.30.090, as discussed below.
- The governing body may exclude members of the public and meet either (1) in executive session for one of the reasons specified in and in accordance with the procedures identified in RCW 42.30.110 or (2) in a closed session if the purpose of the meeting is not subject to the requirements of the OPMA under RCW 42.30.140. See discussion on executive sessions and closed sessions.

PROCEDURAL REQUIREMENTS SPECIFIC TO REGULAR MEETINGS

- The date and time of regular meetings must be established by ordinance, resolution, order, or rule, as may be required for the particular governing body. The location of the regular meeting should also be designated.
- If the regular meeting date falls on a holiday, the meeting must be held on the next business day (RCW 42.30.070).
- Most agencies must post the regular meeting agenda online at least 24 hours in advance of the published start time of the regular meeting (RCW 42.30.077). This requirement does not prohibit the agency from subsequently modifying the agenda and failure to post the agenda will not invalidate otherwise legal action taken at the meeting. Cities, towns, and special purpose districts that meet the following criteria are not required to post their regular meeting agendas online:
  - Have a population within its jurisdiction of under 3,000; and
  - Have an aggregate valuation of the property subject to taxation by the district, city or town of less than $400,000,000, as placed on the last completed and balanced tax rolls of the county preceding the date of the most recent tax levy; and

- Provide confirmation to the state auditor at the time it files it annual reports under RCW 43.09.230 that the cost of posting notices on a website of its own, a shared website, or on the website of the county in which the largest portion of the district's, city's, or town's population resides, would exceed one-tenth of 1% of the district's, city's, or town's budget.

May a regular meeting agenda be modified prior to the meeting?

While the regular meeting agendas must be posted online at least 24 hours prior to the published start time of the meeting, this requirement does not preclude governing bodies from making subsequent changes to a regular meeting agenda. Governing bodies may modify the agenda by adding new items or modifying or removing items, either before or during the meeting. The OPMA does not prohibit taking final action on matters that are added to the preliminary regular meeting agenda. Agencies must be mindful of any restrictions in their local rules of procedures as those rules may affect the timing of agenda modifications and whether the agency can take final action on matters added to the agenda.

PROCEDURAL REQUIREMENTS SPECIFIC TO SPECIAL MEETINGS

The procedural requirements that apply to special meetings deal primarily with the notice that must be provided. These requirements, contained in RCW 42.30.080, are as follows:

- A special meeting may be called by the presiding officer or by a majority of the members of the governing body.[11]
- Written notice must be delivered personally, by mail, by fax, or by email at least 24 hours before the time of the special meeting to:
  - Each member of the governing body, and to
  - Each local newspaper of general circulation and each local radio or television station that has on file with the governing body a written request to be notified of that special meeting or of all special meetings.[12]
- Notice of the special meeting must be provided to the public as follows:
  - "Prominently displayed" at the main entrance of the agency's principal location, and at the meeting site if the meeting will not be held at the agency's principal location and is not held as a remote meeting; and
  - Posted on the agency's website. Website posting is not required if the agency:
    - Does not have a website or does not share a website with another agency;
    - Does not employ any full-time equivalent employees; or
    - Does not employ personnel whose job it is to maintain or update the website.

11 There is a conflict between the provision in RCW 42.30.080 authorizing a majority of the members of a governing body to call a special meeting and the provision for code cities in RCW 35A.12.110 authorizing three members of the city council to call a special meeting. This conflict occurs only with respect to a code city with a seven-member council, because three members is less than a majority. Since RCW 42.30.140 provides that the provisions of the OPMA will control in case of a conflict between it and another statute, four members of a seven-member code city council, not three, are needed to call a special meeting.

12 Note also that statutes relating to each class of city require that cities: "[...] establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement." See RCW 35A.12.160, 35.22.288, 35.23.221, 35.27.300. There are no similar statutes that apply to counties or special purpose districts. Nevertheless, we recommend that counties and special districts establish like procedures for notifying the public.

- The notice must specify:
  - The time and place of the special meeting, and
  - The business to be transacted at the special meeting.
- The governing body may take final action only concerning matters identified in the notice of the special meeting. This does not prevent a governing body from discussing or otherwise taking less than final action with respect to a matter not identified in the notice.
- Written notice to a member or members of the governing body is not required when:
  - A member files at or prior to the meeting a written waiver of notice or provides a waiver by telegram, fax, or email; or
  - The member is present at the meeting at the time it convenes.

PROCEDURAL REQUIREMENTS SPECIFIC TO EMERGENCY MEETINGS

Special meeting notice requirements may be dispensed with when a special meeting is called to deal with an emergency[13] involving injury or damage to persons or property or the likelihood of such injury or damage, when the time requirements of the notice would make notice impractical and increase the likelihood of such injury or damage or when notice cannot be posted or displayed with reasonable safety.

If the local, state or federal government declares an emergency and the local government determines it cannot hold a meeting of the governing body with in-person attendance with reasonable safety, the agency may hold a fully remote meeting or hold a meeting at which physical attendance by some or all members of the public is limited (RCW 42.30.230). In the event of such a meeting, notice must be posted on the agency website even if the agency does not employ full-time-equivalent employees or does not employ personnel whose duty is to maintain or update the website (RCW 42.30.080(2)(b)).

LOCATION OF MEETINGS

The OPMA does not require that a city, county or, special district governing body hold its meetings within the city or in a particular place in the county or district. However, other statutes require governing bodies to meet in specific locations in order to conduct business.

The councils of code cities, second class cities, and towns may take final actions on ordinances and resolutions only at a meeting within the city or town (RCW 35.23.181, 35.27.270, 35A.12.110). Also, as a general matter, county legislative bodies must hold their regular meetings at the county seat (RCW 36.32.080). However, county legislative bodies can hold regular meetings outside the county seat but within the county if the legislative body determines that "holding a meeting at an alternate location would be in the interest of supporting greater citizen engagement in local government," as follows: (1) once per calendar month in a city with a greater population than the city in which the county seat is located; and (2) once per calendar quarter in any other location. No more than one meeting per calendar month may be held at an alternate

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13 The type of emergency contemplated here is a severe one that "involves or threatens physical damage" and requires urgent or immediate action. See *Mead Sch. Dist. No. 354 v. Mead Educ. Ass'n* (1975).

location. County legislative bodies may hold special meetings in the county outside of the county seat if there are agenda items that "are of unique interest or concern" to the residents of the area of the county in which the meetings are held (RCW 36.32.090). And joint meetings – regular or special – of two or more county legislative authorities may be held in the county seat of a participating county if the meeting agenda includes an item or items that "relate to actions or considerations of mutual interest or concern to the participating legislative authorities."

Some special purpose district governing bodies, such as school district boards of directors, are specifically required to hold their regular meetings within the district, while others, such as irrigation districts, are specifically required to hold meetings in the county where the district is located. See RCW 28A.330.070 (school districts) and RCW 87.03.115 (irrigation districts). Where the statutes are silent as to where meetings must be held for a particular type of district, they should be held within the district or, at the very least, within the county in which the district is located.

PUBLIC COMMENT

Except in an emergency situation, the OPMA requires the governing body to provide an opportunity for public comment "at or before every regular meeting at which final action is to be taken" (RCW 42.30.240). The comment can be given verbally or in writing. This does not mean that the governing body must allow public comment at every meeting. First, it must be a "regular" meeting. While there is no specific definition of "regular meeting," a conservative interpretation of the statute is that any meeting that is on the adopted meeting schedule is a "regular meeting." It does not matter if your agency refers to the meeting as a "business meeting" or a "study session," if the meeting is on a schedule that is adopted by ordinance, resolution, order, or rule then it is a regular meeting. Second, it must be a meeting at which "final action" is to be taken. "Final action" is defined in RCW 42.30.020(4):

> "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

The governing body has flexibility in deciding when and how it will accept public comment. For example, it can decide that it will only take written comment submitted in advance of the meeting or that it will only take oral comment at the beginning of the meeting. However, if a person notifies the governing body that the person will have "difficulty attending a meeting" because of "disability, limited mobility, or for any other reason that will make physical attendance at a meeting difficult" the governing body must (if feasible) provide an opportunity for that person to provide oral testimony remotely if it is taking oral testimony in-person during the meeting.

Notice of Public Comment Period

If the agency is required by state law to solicit public comment for a statutorily specified period of time and is required by state law to provide notice that it is soliciting public comment, then the notice must specify the first and last date and time by which written public comment may be submitted. See RCW 42.30.250.

MEETING ADJOURNMENTS OR CANCELLATIONS

Meeting Adjournment

The OPMA provides that a meeting can be adjourned – or rescheduled – to a specified time and place (RCW 42.30.090).[14]

There are a few circumstances under which a meeting might be adjourned:

- When the governing body does not achieve a quorum. In that circumstance, less than a quorum may adjourn a meeting to a specified time and place; or
- When all members are absent from a regular meeting or an adjourned regular meeting. In that instance, the clerk or secretary of the governing body may adjourn the meeting to a stated time and place, with notice provided as required for a special meeting, unless notice is waived as provided for special meetings. However, the resulting meeting is still considered a regular meeting.

Meeting Cancellation

The OPMA does not specifically address cancellation of a regular meeting.[15] Technically, a regular meeting can only be adjourned under RCW 42.30.090. But MRSC is aware that local governments often use the term "cancel" when a meeting must be rescheduled (or not held) because of weather, holidays, or knowledge that a quorum is not going to be present. If an agency is not aware of the need to cancel in advance of the meeting but a quorum is not present for a meeting, then those members present (or the clerk or secretary of the governing body if no members are present) can adjourn the meeting to the next regularly scheduled meeting or to an alternative date and time.

Notice Requirements

While not specifically authorized by the OPMA, if an agency knows in advance of the meeting that it must be rescheduled or not held, then MRSC recommends that the notice of "cancellation" should state that the regular meeting is cancelled and rescheduled to the next regular meeting date. Or if the meeting is being rescheduled to a date/time other than that for the next regular meeting, then it should be noticed as a special meeting. In either case notice should be given in the same manner that notice is given for a special meeting under RCW 42.30.080.

Except in the case of remote meetings without a physical location, notice of an adjourned or cancelled meeting is to be provided as follows:

- An order or notice of adjournment or cancellation, specifying the time and place of the meeting to be adjourned or cancelled, must be "conspicuously posted" immediately following adjournment on or near the door of the place where the meeting was held.
- Members of the governing body must receive written notice by mail, fax, or email.

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14 While the term "adjournment" in the OPMA refers to rescheduling a meeting, it is a common and acceptable practice for local governments to end their regular or special meetings by indicating that the meeting is "adjourned."

15 When cancelling a regular meeting, be mindful of any state law requirements that the governing body meet a specified number of times per month (for example second class and code city councils and town councils must meet at least once a month. See RCW 35.23.181, 35.27.270, 35A.12.110).

- The order or notice must be posted on the agency's website unless the agency meets the exception criteria in RCW 42.30.080(2)(b).
- If the notice or order of an adjourned or cancelled meeting fails to state the hour at which the adjourned or cancelled meeting is to be held, it must be held at the hour specified for regular meetings by ordinance, resolution, or other rule (RCW 42.30.090).

Hearings

If the governing body is holding a hearing, the hearing may be continued at a later date by following the same procedures for adjournment of meetings (RCW 42.30.100).

SELECTED QUESTIONS ON PROCEDURAL REQUIREMENTS

Below are additional questions and answers addressing the OPMA's procedural requirements. For more questions and answers about the OPMA, see MRSC's page on Open Public Meetings Act FAQs.

Must a city, county, or special purpose district provide published notice of a special meeting?

While notice of a special meeting does not need to be published in the newspaper, the agency must post the special meeting notice on its website unless it does not have a website or does not share a website with another agency. See RCW 42.30.080(2)(b). If an agency does not employ any full-time equivalent employees or does not employ personnel whose duty it is to maintain or update the website, it also does not need to post special meeting notice on its website except for the following circumstances:

- The meeting is a fully remote meeting; or
- The meeting is one in which physical attendance by some or all members of the public is limited due to a declared emergency.

May notice to the media of a special meeting be provided by mail, fax, or email?

Yes. RCW 42.30.080 allows notice by mail, fax, or email.

Is an agency required to audio or video record a regular or special meeting?

The OPMA encourages but does not require that agencies record their regular meetings.[16] The OPMA does not encourage recording of special meetings. This is true even if the meeting is held either fully or partially remote. See RCW 42.30.220.

There is also no requirement that the recordings be posted to the agency's website. The recordings must be retained for the period required by the Washington State Archives' Local Government Records Retention schedule and must be made available to the public under the Public Records Act (Ch. 42.56 RCW).

16 The one exception to this is that school district boards of directors must audio record all regular and special meetings at which final action is taken or formal public testimony is accepted. RCW 42.30.035.

May a governing body prohibit a member of the public from recording a meeting of the governing body?

No, there is no legal basis for prohibiting the audio or video recording of a meeting of the governing body, unless the recording disrupts the meeting. If the governing body enacted such a rule, it essentially would be conditioning attendance at a meeting on not recording the meeting. This would be contrary to RCW 42.30.040, which prohibits a governing body from imposing any condition on attending a public meeting. See AGO 1998 No. 15.

How can a majority of the governing body agree outside of a formal meeting to call a special meeting without violating the OPMA?

Since a majority of the governing body, under RCW 42.30.080, may call a special meeting "at any time," it would indeed be an anomaly if, in calling for that meeting, the majority would be considered to have violated the OPMA. In MRSC's opinion, the only way to give effect to this statutory provision is to allow a majority to communicate as a group in some way (e.g., by phone, email, in person, or through the clerk's office) to decide whether to have a special meeting, when to have it, and what matters it will deal with. The members could not discuss anything else, such as the substance of the matters to be discussed at the special meeting.

May the agency change the date and time or location of a regular meeting?

The OPMA does not address a one-time change to the date and time or location of a regular meeting. If an agency wants to make a one-time change to the date and time or the location of its regular meeting schedule, it should notice the new meeting as a special meeting pursuant to RCW 42.30.080.

How should the agency notice a joint meeting of the legislative body (such as the city council) and a subagency (such as the planning commission)?

If the subagency is joining the legislative body at its regular meeting, the meeting should be noticed as a special meeting of the subagency. The agenda should include "joint meeting" as an agenda item. If the legislative body and subagency are not meeting during a regular meeting, then the meeting should be noticed as a special meeting of the two bodies.

Executive Sessions

"Executive session" is not expressly defined in the Open Public Meetings Act, but the term is commonly understood to mean that part of a regular or special meeting of a governing body that is closed to the public. A governing body may hold an executive session only for specified purposes, which are identified in RCW 42.30.110(1)(a)-(p),[17] and only during a regular or special meeting. Nothing, however, prevents a governing body from holding a meeting, which complies with the OPMA's procedural requirements, for the sole purpose of having an executive session. A governing body should always follow the basic rule that it may not take final action in an executive session.

Information shared in a properly convened executive session is confidential and participants have a duty to keep it so. Disclosure of confidential information from an executive session by a municipal officer violates RCW 42.23.070(4), which prohibits municipal officers from disclosing confidential information gained by reason of the officer's position. See AGO 2017 No. 5. Confidentiality does not apply to executive session information that was previously publicly discussed or that fell outside the meeting scope.

ATTENDANCE AT EXECUTIVE SESSIONS

Attendance at an executive session need not be limited to the members of the governing body. Persons other than the members of the governing body may attend the executive session at the invitation of that body. Those invited should have some relationship to the matter being addressed in the executive session, or they should be attending to otherwise provide assistance to the governing body. For example, when the governing body is meeting in executive session to discuss litigation or potential litigation, legal counsel must be present and participate in the discussion. Another example of attendance by individuals other than the governing body is when staff of the governing body or of the governmental entity may be needed to present information or to take notes or minutes. Minutes are not required to be taken at an executive session, and because they would be subject to disclosure under the Public Records Act, we recommend that agencies do not take executive session minutes. See RCW 42.32.030.

PROCEDURAL REQUIREMENTS FOR HOLDING EXECUTIVE SESSIONS

Before a governing body may convene in executive session, the presiding officer must publicly announce the executive session to those attending the meeting by stating two things:

- The purpose of the executive session, and
- The time when the executive session will end.

The announced purpose of the executive session must be one of the statutorily-identified purposes for which an executive session may be held and the purpose must be included in the regular or special meeting minutes.

17 There is at least one statute outside of the Open Public Meetings Act that authorizes an executive session for a purpose not identified in RCW 42.30.110(1)(a)-(p). RCW 70.44.062 authorizes the board of commissioners of a public hospital district to meet in executive session "concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider" or "to review the report or the activities of a quality improvement committee."

The announcement must contain enough detail to identify the purpose as falling within one of those identified in RCW 42.30.110(1).

If the executive session is not over at the stated time, it may be extended only if the presiding officer announces to the public at the meeting place that it will be extended to a stated time. If the governing body concludes the executive session *before* the time that was stated it would conclude, it may 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 that was announced for the conclusion of the executive session.

After conclusion of the executive session, the presiding officer returns to the open session even if it is just to adjourn the meeting.

ALLOWED PURPOSES FOR HOLDING EXECUTIVE SESSIONS

An executive session may be held only for one or more of the purposes identified in RCW 42.30.110(1). Identified below are selected purposes which have practical application to cities, counties, and special purpose districts. The complete list of purposes is set forth in the statute.

- **National Security** (RCW 42.30.110(1)(a)(i))

  "To consider matters affecting national security."

  Until the events of September 11, 2001, the provision allowing for consideration of matters affecting national security in executive session had little, if any, practical application to cities, counties, or special districts. However, since the events of September 11, 2001, it has become clear that local security issues may in some instances have national security implications. So, discussions by city, county, or district governing bodies of security matters relating to possible terrorist activity should come within the ambit of this executive session provision. This would include discussions of vulnerability or response assessments relating to criminal terrorist activity.

- **Data Security Breach** (RCW 42.30.110(1)(a)(ii))

  "To consider, if in compliance with any required data security breach disclosure under RCW 19.255.010 and RCW 42.56.590, and with legal counsel available, information regarding the infrastructure and security of computer and telecommunications networks, security and service recovery plans, security risk assessments and security test results to the extent that they identify specific system vulnerabilities, and other information that if made public may increase the risk to the confidentiality, integrity, or availability of agency security or to information technology infrastructure or asset."

  This provision permits executive session discussion of cybersecurity concerns, so long as legal counsel is present, and the discussion meets the provision's criteria.

- **Purchase or Lease of Real Estate** (RCW 42.30.110(1)(b))

"To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price."

This provision has two elements:

- The governing body must be considering either purchasing or leasing real property; and
- Public knowledge of the governing body's consideration would likely cause an increase in the price of the real property.

The consideration of the purchase of real property under this provision can involve condemnation of the property, including the amount of compensation to be offered for the property. See *Port of Seattle v. Rio* (1977).

Since this provision recognizes that the process of purchasing or leasing real property or selecting real property to purchase or lease may justify an executive session, it implies that the governing body may need to reach some consensus in executive session as to the price to be offered or the particular property to be selected. See *Port of Seattle v. Rio* (1977) at 723-25. However, the State Supreme Court has emphasized that "only the action explicitly specified by [an] exception may take place in executive session." See *Miller v. Tacoma* (1999). See also, *Feature Realty, Inc. v. Spokane* (9th Cir. 2003). Taken literally, this limitation would preclude a governing body in executive session from actually selecting a piece of property to acquire or setting a price at which it would be willing to purchase or lease property, because such action would be beyond mere "consideration." Yet, the purpose of allowing this type of consideration in an executive session would be seemingly defeated by requiring a vote in open session to select the property or to decide how much to pay for it, where public knowledge of these matters would likely increase its price. While this issue awaits judicial or legislative resolution, city and county legislative bodies and special district governing bodies should exercise caution.

- **Sale or Lease of Agency Real Estate** (RCW 42.30.110(1)(c))

  "To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public."

  This subsection, the reverse of the previous one, also has two elements:

  - The governing body must be considering the minimum price at which real property belonging to the city or county will be offered for sale or lease; and
  - Public knowledge of the governing body's consideration will likely cause a decrease in the price of the property.

The requirement here of taking final action selling or leasing the property in open session may seem unnecessary, since all final actions must be taken in a meeting open to the public. However, its probable purpose is to indicate that, although the decision to sell or lease the property must be made in open session, the governing body may decide in executive session the minimum price at which it will do so. However, see the discussion under the previous provision for meeting in executive session and taking any action in executive session that is not expressly authorized.

If there would be no likelihood of a change in price if these real property matters are considered in open session, then a governing body should not meet in executive session to consider them.

Washington's Supreme Court has said that this section is to be used sparingly. Only actual price can be discussed in executive session. In a case involving a port's lease of its property to a private party, the Court said that factors such as potential impacts on local jobs, local spending, environmental risks, public safety, and risks to neighboring tenants should have been discussed in an open session. These types of factors comprising value must be discussed in open session, though "their specific dollars-and-cents impact on price" may be discussed in executive session. See *Columbia Riverkeeper v. Port of Vancouver USA* (2017).

- **Review Negotiations on Performance of Bid Contracts** (RCW 42.30.110(1)(d))

"To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs."

This subsection indicates that when a city, county, or special district and a contractor performing a publicly bid contract are negotiating over contract performance, the governing body may "review" those negotiations in executive session if public knowledge of the review would likely cause an increase in contract costs. There is no case law on this provision and it is not clear what circumstances would result in a governing body meeting in executive session under this provision.

- **Complaints and Charges Against Officer or Employee** (RCW 42.30.110(1)(f))

"To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge."

For purposes of meeting in executive session under this provision, a "charge" or "complaint" must have been brought against a city, county, or special district officer or employee. A "public officer" includes members of the governing body and volunteers who serve in public officer positions, such as a member of a subagency like the planning commission. The complaint or charge could come from within the city, county, or district or from the public, and it need not be a formal charge or complaint. The bringing of the complaint or charge triggers the opportunity of the officer or employee to request that the discussion be held in open session.

As a general rule, city governing bodies that are subject to the OPMA do not deal with individual personnel matters.[18] For example, the city council should not be involved in individual personnel decisions, as these are within the purview of the administrative branch under the authority of the mayor or city manager.[19] This provision for holding an executive session should not be used as a justification for becoming involved in personnel matters which a governing body may have no authority to address.

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18 A civil service commission is an obvious exception. It, however, addresses personnel actions taken against a covered officer or employee, and it does so in the context of a formal hearing. Another exception is where the governing body may be considering a complaint against one of its members. Also, when a city council has confirmation authority over a mayoral appointment, it may discuss the appointment that is subject to confirmation in executive session.

19 An exception is where the council, in a council-manager city, may be considering a complaint or charge against the city manager.

- **Evaluate Applicants for Employment or Review Performance of Employees** (RCW 42.30.110(1)(g))

  "To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public."

  There are two different purposes under this provision for which a governing body may meet in executive session: (1) to evaluate qualifications of applicants for public employment; and (2) to review the performance of a public employee. This means that a governing body may evaluate in executive sessions persons who apply for appointive office positions, such as a city manager, as well as those who apply for appointive office or employee positions.[20] But, they would not evaluate in executive session:

  - The performance of a member of the legislative body (who is not considered a public employee in most circumstances). As mentioned above, complaints or charges against a member of the governing body can be discussed in an executive session under RCW 42.30.110(1)(f).
  - Applicants for or the performance of uncompensated, appointed offices (like the planning commission) or general volunteer positions (such as a parks department volunteer).

  The first purpose under this provision involves evaluating the qualifications of applicants for public employment. This could include personal interviews with an applicant, discussions concerning an applicant's qualifications for a position, and discussions concerning salaries, wages, and other conditions of employment personal to the applicant.

  This authority to "evaluate" applicants in executive session allows a governing body to discuss the qualifications of applicants, not to choose which one to hire (to the extent the governing body has any hiring authority). Although this subsection expressly mandates that "final action hiring" of an applicant for employment be taken in open session, this does not mean that a governing body may take preliminary votes in executive session that eliminate candidates from consideration. See *Miller v. Tacoma* (1999).

  The second part of this provision concerns reviewing the performance of a public employee. Typically, this is done where the governing body is considering a promotion or a salary or wage increase for an individual employee or where it may be considering disciplinary action.[21]

  The result of a governing body's executive session review of the performance of an employee may be that the body will take some action either beneficial or adverse to the officer or employee. That action, whether raising a salary of or disciplining an officer or employee, must be made in open session.

20 The courts have, for various purposes, distinguished between a public "office" and a public "employment." See, e.g., *Oceanographic Comm'n v. O'Brien* (1968); *State ex rel. Hamblen v. Yelle* (1947); *State ex rel. Brown v. Blew* (1944). A test used to distinguish between the two is set out in Blew at 51.

21 In general, a city council has little or no authority regarding discipline of public officers or employees. An exception would be a city manager over which the council has removal authority. See RCW 35A.13.130 and 35.18.120.

Any discussion involving salaries, wages, or conditions of employment to be "generally applied" in the city, county, or district must take place in open session. However, discussions that involve collective bargaining negotiations or strategies are not subject to the Open Public Meetings Act and may be held in closed session without being subject to the procedural requirements for an executive session (RCW 42.30.140(4)).

- **Evaluate Candidates for Appointment to Elective Office** (RCW 42.30.110(1)(h))

  "To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public."

  This provision applies to a city, county, or district governing body only when it is filling a vacant elective position. Under this provision, the governing body may meet in executive session to evaluate the qualifications of applicants for the vacant position. However, any interviews with the candidates must be held in open session. As with all other appointments, the vote to fill the position must also be in open session.

  This provision does not allow evaluation in executive session of a candidate for a nonelected, appointive positions because this provision is limited to evaluations of candidates for elective office.

- **Discuss Enforcement Actions and Litigation with Legal Counsel** (RCW 42.30.110(1)(i))

  "To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

  This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6[22] or RCW 5.60.060(2)(a)[23] concerning:

  (i) 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;

  (ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

  (iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency."

22 RPC 1.6 is part of the Rules of Professional Conduct for attorneys, and it deals specifically with client confidentiality, generally prohibiting disclosure of client confidences except in certain specific situations.

23 RCW 5.60.060(2)(a) provides that an attorney may not be compelled to be a witness at trial and reveal client confidences.

Three basic requirements must be met before this provision can be used by a governing body to meet in closed session:[24]

- The attorney or special legal counsel representing the city, county, or special district must attend the executive session to discuss the enforcement action or the litigation or potential litigation;
- The discussion with legal counsel must concern either an enforcement action or litigation or potential litigation to which the city, county, district, a governing body, or one of its members is or is likely to become a party; and
- Public knowledge of the discussion would likely result in adverse legal or financial consequence to the city, county, or district.

The potential litigation issue. This provision allows governing bodies to discuss in executive session the legal risks of a proposed or existing practice or action, when discussing those risks in open session would likely have an adverse effect on the agency's financial or legal position. This allows a governing body to freely consider the legal implications of a proposed decision or an existing practice without the attendant concern that some future litigation position might be jeopardized.

The probability of adverse consequence to the city or county. It is probable that public knowledge of most governing body discussions of existing litigation would result in adverse legal or financial consequence to the city, county, or district. Knowledge by one party of the communications between the opposing party and its attorney concerning a lawsuit will almost certainly give the former an advantage over the latter. The same probably can be said of most discussions that qualify as involving potential litigation.

The State Supreme Court has held that a governing body is not required to determine beforehand whether public knowledge of the discussion with legal counsel would likely have adverse consequences; it is sufficient if the agency, from an objective standard, should know that the discussion is not benign and that public knowledge of it will likely result in adverse consequences. See *Recall of Lakewood City Council* (2001).

Again, no final action in executive session. The purpose of this executive session provision is to allow the governing body to discuss litigation or enforcement matters with legal counsel; the governing body is not authorized to take final action regarding such matters in an executive session. See *Miller v. Tacoma* (1999) and *Feature Realty, Inc. v. Spokane* (9th Cir. 2003) (emphasizing that, in order for any action to take place legally in executive session, authority must be "explicitly specified" in an exemption under RCW 42.30.110(1)). The only action that is specifically authorized in this exemption is discussion.

However, since a basic purpose of shielding these discussions from public view is to protect the secrecy of strategic moves concerning litigation, the scope of a governing body's authority in executive session should be interpreted to afford that protection. So, for example, while this provision does not authorize a governing body to approve a settlement agreement in executive session, it should provide authority for that body to authorize its legal counsel to settle a case for no higher than a certain amount. An interpretation supporting the council's authority to take such action appears warranted, but such an interpretation may not be supported by the strict language in case law.

24 This provision for holding an executive session is based on the legislative recognition that the attorney-client privilege between a public agency governing body and its legal counsel can co-exist with the Open Public Meetings Act. See Final Legislative Report, Forty-Ninth Legislature, 1985 Regular and 1st Special Sessions (SSB 3386); see also *Recall of Lakewood City Council* (2001); *Port of Seattle v. Rio* (1977); AGO 1971 No. 33. However, that privilege is not necessarily as broad as it may be between a private party and legal counsel.

SELECTED QUESTIONS ON EXECUTIVE SESSIONS

Below are additional questions and answers addressing executive sessions. For more questions and answers about the OPMA, see MRSC's page on Open Public Meetings Act FAQs.

May an executive session be called to discuss "personnel matters"?

No, this would not be a legally sufficient reason to hold an executive session. The purpose for holding an executive session must be within those specifically identified in RCW 42.30.110(1). Although there are personnel issues that may be addressed in an executive session under this statute, such as complaints or charges against an employee or an employee's performance, "personnel matters" is too broad a purpose and could include purposes not authorized by the statute.

May a city council meet in executive session to ask the mayor to resign?

No. Although the council could meet in executive session to discuss complaints or charges against the mayor, the council should take the action of asking for the mayor's resignation in open session. (Of course, a mayor is not legally bound by the council's wishes.)

May a governing body meet in executive session at a special meeting if the notice of the special meeting did not identify that an executive session would be held?

Yes. But RCW 42.30.080 would prevent the governing body from taking final action on a matter that was discussed in executive session when the body reconvenes the open session, unless that action was already on the published agenda. As well, from a policy standpoint, the meeting notice should identify the executive session if the governing body knows at the time of giving the notice that it will be meeting in executive session at the special meeting.

If three members of a seven-member city council interview candidates for a council vacancy, must those interviews be open to the public?

Yes. Although they do not represent a quorum of the council, the three councilmembers would be acting on behalf of the entire council in conducting these interviews. As such, they would be considered a "governing body" subject to the OPMA. Since interviews by a governing body of candidates for appointment to elective office must occur in an open meeting under RCW 42.30.110(1)(h), this three-member committee may not meet in executive session for the purpose of interviewing the candidates.

Penalties and Enforcement

The only avenue provided by the Open Public Meetings Act to enforce its provisions or to impose a penalty for a violation of its provisions is by an action in superior court. "Any person" may bring that action in superior court. If a superior court determines that a violation has occurred, liability may be imposed as follows:

- **Individual Liability**

  Members of a governing body who attend a meeting where action is taken in violation of the OPMA are subject to a $500 penalty for the first violation, if they attend with knowledge that the meeting is in violation of the OPMA (RCW 42.30.120(1)). Subsequent knowing violations of the OPMA carry a $1,000 penalty. Violation of the OPMA is not a criminal offense. The penalty is assessed by the superior court, and any person may bring an action to enforce the penalty (RCW 42.30.120(2)).

  Also, a knowing or intentional violation of the OPMA may provide a legal basis for recall of an elected member of a governing body, although recall is not a penalty under the OPMA. See *Recall of Lakewood City Council* (2001), *In re Recall of Kast* (2001).

- **City, County, or District Liability**

  The city, county, or district is liable for all costs, including reasonable attorney fees. However, if a court determines by written findings that an action for violation of the OPMA was "frivolous and advanced without reasonable cause," a city, county, or district may be awarded reasonable expenses and attorney fees (RCW 42.30.120(4)).

In addition to the above, any person may bring an action by mandamus or injunction to stop violations of the OPMA or to prevent threatened violations (RCW 42.30.130).

Actions in violation of the OPMA are null and void. Any ordinance, resolution, rule, regulation, order, or directive that is adopted at a meeting that does not comply with the OPMA, and any secret vote taken, is null and void (RCW 42.30.060). This does not, however, mean that a subsequent action that complies with the OPMA is also invalidated. See *OPAL v. Adams County* (1996), *Clark v. City of Lakewood* (9th Cir. 2001), and AGO 1971 No. 33. But, where action taken in open session merely ratifies an action taken in violation of the OPMA, the ratification is also null and void. See *Clark v. City of Lakewood* (2001) and *Miller v. Tacoma* (1999).

Training Requirements

The OPMA requires that all members of governing bodies, state and local, receive training on the requirements of the Open Public Meetings Act (RCW 42.30.205).

The training must be completed within 90 days after a governing body member takes the oath of office or otherwise assumes the duties of the position. The training must be repeated at intervals of no longer than four years, as long as an individual is a member of the governing body. This legislation does not specify the training that must be received, other than it is to be on the requirements of the OPMA and that it may be completed remotely. No penalty is provided for the failure of a member of a governing body to receive the required training.

For more information on this training requirement, see the Attorney General's Open Government training page.

Appendix: Recommended Resources

MUNICIPAL RESEARCH AND SERVICES CENTER (MRSC)

- Open Public Meetings Act Basics – Basic OPMA overview.
- Executive Session Basics – Basic overview of executive sessions as allowed by the OPMA.
- Open Public Meetings Act FAQs – Browse answers to frequently asked questions (FAQs) from local governments regarding the Open Public Meetings Act.
- Executive Session FAQs – Browse answers to frequently asked questions (FAQs) from local governments regarding executive sessions as allowed by the Open Public Meetings Act.
- OPMA Practice Tips and Checklists – Developed in partnership with the State Auditor's Center for Government Innovation, these practice tips and short checklists provide practical guidance for local agencies.
- OPMA Court Decisions and AG Opinions – Key court decisions and attorney general opinions regarding the OPMA organized by topic.
- Public Hearings – Provides an overview of the legal requirements for conducting public hearings in Washington State and describes the basic procedures that should be followed for a proper public hearing.
- Recent blog posts about OPMA – Articles written by MRSC staff and contributors about specific aspects of the OPMA, including executive sessions, new legislation, and court decisions. Articles are listed in reverse chronological order, with the most recent first.
- PRA and OPMA E-Learning Course for City/Town Elected Officials – MRSC partners with the Association of Washington Cities (AWC) to produce two free e-learning courses for city and town councilmembers and mayors, one dealing with the with the Open Public Meetings Act (OPMA) and the other with the Public Records Act (PRA).
- Upcoming Trainings – MRSC produces webinars every month and several virtual and in person workshops throughout the year, many related to open government.

WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (AGO)

- Open Government – Provides links to OPMA trainings and other AGO resources on the OPMA and PRA.
- OPMA Guidance on Frequently Asked Questions About Processes to Fill Vacant Positions by Public Agency Governing Boards (2016) – This guidance is intended to assist public agency governing bodies in complying with the OPMA when filling vacant positions in their agencies.

1.800.933.6772

MRSC@MRSC.org

MRSC.org

facebook.com/MRSCWA

@MRSC_WA

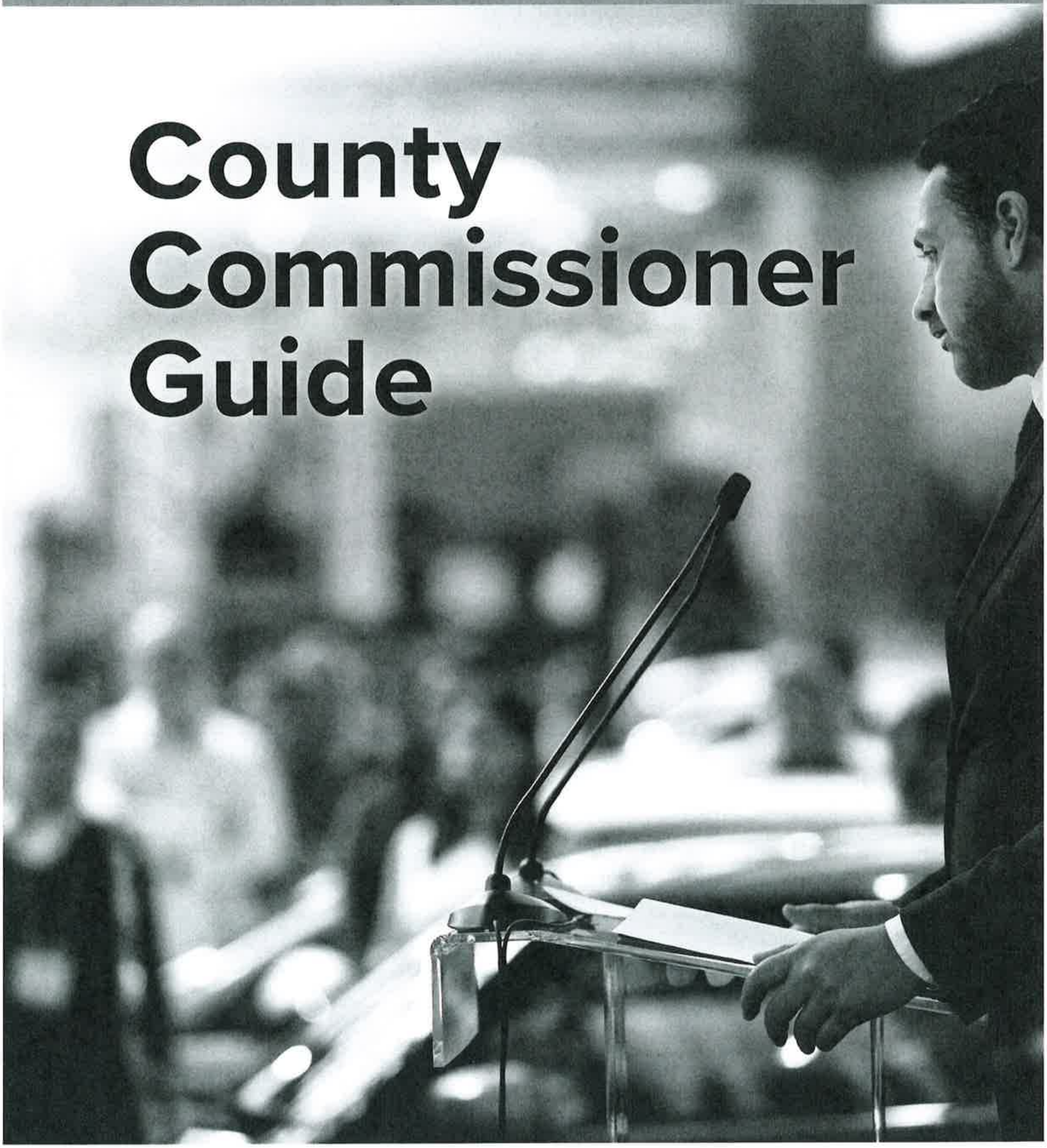
2601 Fourth Avenue, Suite 800
Seattle, WA 98121-1280

MRSC

PUB-22-0055

FEBRUARY 2025

County Commissioner Guide



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COUNTY COMMISSIONER GUIDE

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OFFICE: 225 Tacoma Ave S., Tacoma, WA 98405

MAILING: 1712 6th Ave, Suite 100, PMB 1330, Tacoma, WA 98405

(206) 625-1300 | (800) 933-6772

www.MRSC.org

Revision History

MRSC updates this publication as needed to reflect new legislation and other changes. Below is a summary of significant recent changes. If you are aware of any other sections that you think need to be updated or clarified, please contact mrsc@mrsc.org. To make sure you have the most recent version, please go to mrsc.org/publications.

DATE	SUMMARY
February 2025	*History of County Government*. Clarified "home rule" authority information and added references to sources.
December 2023	Updated publication to reflect legislative changes current through the 2023 legislative session and up-to-date case law.

Contents

Introduction

Being an effective leader is not something that simply happens the moment you're elected to office – you have to learn and hone leadership skills. As a county commissioner, you'll need to listen to the residents of the county, develop goals, and work effectively with the board of county commissioners to achieve these goals.

We hope this publication will serve as both a basic primer on the role and duties of a county commissioner and a resource with answers to some common questions.

You should use this publication to learn how to find information, assistance, and advice. While this text doesn't contain everything you'll need to know, it will guide you to the relevant statutes, resources, and people who can best answer your questions.

There are a lot of people counting on you in your role as county commissioner. They want you to succeed, and so do we. Good luck!

Origin of County

As a commissioner, it's important for you to understand the foundation and origin of county government. The organization of county government is provided in Article 11 of the Washington State Constitution. The counties of the Territory of Washington that existed at the time of statehood are recognized in sections 1 and 2 of this article; section 3 allowed for the creation of new counties. When the state constitution was adopted, 34 counties already existed. The remaining five counties were created by the legislature between 1899 and 1911. The same 39 Washington counties have existed since 1911 – no new counties have been created since, and the geographic boundaries of these counties are fixed by state statute. Keeping all of this in mind, let's move on to exploring a brief history of county government.

HISTORY OF COUNTY GOVERNMENT

Did you know county governments in America have their roots in Britain where the Shires were an administrative arm of the national government? In Washington, counties are the oldest form of government; the first counties were created by the "Provisional Government" set up by the Oregon Trail settlers before the territory was organized by Congress. By the time Washington achieved statehood, there were thirty four counties established. Since that time, only five additional counties have been created.

Like in Britain, Washington's counties were initially organized as administrative arms of the territory with responsibilities such as maintenance of vital records, providing courts and law enforcement, building and maintaining roads, assessing property values, collecting taxes, and conducting elections. The Territorial Legislature initially created counties with the theory that the county "seat" should be no more than one half day's journey by horseback, so citizens could conduct their business and return home in one day.

The form of county government chosen by the early Provisional Government Legislature, and later continued in the state constitution, was the same one that Iowa counties used. This model had many separately-elected officials independently performing specific functions like property assessment, law enforcement, and electoral processes. It continues to be the organizational form we use in Washington State today.

By 1854, the three county commissioners in each county were responsible for erecting and maintaining public buildings, constructing and repairing roads, granting licenses, levying and collecting taxes, approving bills charged to counties, and supporting the underserved. Also, before statehood was achieved, public health was added as a responsibility.

Later, in 1863, an important restriction of county powers was enacted by the Territorial Legislature. A single sentence was added at the end of the list of powers delegated to the board of commissioners, it read "and they shall have no other powers, except such as are, or may be given to them by law."

Despite this Territorial era restriction, the new state constitution of 1889 conveyed strong home rule authority to counties in the field of "police powers," i.e., regulatory powers. Article 11, section 11, provides:

> Any county, city, town, or township may make and enforce within its limits all such local police, sanitary, and other regulations as are not in conflict with general laws.

This provision grants all counties regulatory powers equivalent to those of the state, except to the extent that the Legislature has preempted or circumscribed that authority by statute. These "home rule" regulatory

Table of Contents

powers are equal to those of cities and towns. However, apart from the regulatory sphere, non-charter counties have only the powers expressly granted by the legislature. Interpretations by the state courts and the Attorney General's Office have not been favorable to broad "home rule" for non-charter counties for other than "police power" regulations.[1] So, in order to provide public services, including utility services, non-charter counties need to look to statutes for authority.

Whether charter counties have strong home rule authority outside of police powers was unclear until 2019, when in a case involving the power of King County to impose street franchise fees on water and sewer districts, the State Supreme Court held that counties that have opted for home rule charters under article 11, section 4, have as broad legislative powers as the state, at least when it comes to local affairs.[2]

COUNTY CLASSIFICATION AND ORGANIZATION

Now that we've finished the history lesson, we can move on to an overview of county classification and organization. Based on article 11, section 5 of the Washington State Constitution, the state legislature is authorized to provide for a system of county classification based on population. In 1991, the legislature abandoned the system of formal county classes and substituted the use of the most current county population figures to distinguish counties.

It's important to point out that official population determinations for counties and cities are made by the state Office of Financial Management (RCW 36.13.100 and Ch. 43.62 RCW). These population determinations are used to allocate certain revenues and to define governing law where the applicable law is based on total county population.

With few exceptions, the general state law governing counties and county government is set out in Title 36 RCW and applies equally to all counties.

Different provisions can apply based on county population. For example, the minimum annual salary for elected county officers varies depending on population (RCW 36.17.020), and counties with populations of at least 300,000 and less than 400,000 can expand the size of the board of commissioners from three to five members without needing to adopt a charter (RCW 36.32.055).

Counties with populations of 400,000 or more are subject to different purchasing and bidding laws than counties with populations under 400,000 (RCW 36.32.235 and RCW 36.32.240). In contrast to counties, there are several classifications of cities and towns (e.g., first class, second class, towns, optional municipal code, and unclassified cities).

CREATION OF NEW COUNTIES

Did you know the legislature is authorized to provide for the creation of new counties by general law (article 11, section 3 of the Washington State Constitution)? Interestingly, the state legislature has never adopted any laws to guide such a process.

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1 *Teter v. Clark County* (1985) at 233, explains that police power is "[...] broad enough to encompass all laws tending to promote the "health, peace, morals, education, good order and welfare of the people [...]." See also AGO 2003 No. 11, AGLO 1979 No. 8, AGO 1973 No. 18; and *Kittitas Cnty. v. Washington State Dep't of Transportation* (2020).

2 *King County v. King County Water Districts* (2019).

Table of Contents

After the adoption of the Growth Management Act in 1990, interest in new county formation increased, and some counties experienced "new county movements" by citizens dissatisfied with their efforts to implement state-mandated land use and environmental laws. As a result, there have been lawsuits over the procedures for formation of new counties. The state supreme court decided a case – *Cedar County Committee v. Munro* (1998) – involving a citizen petition for the creation of a new county, Cedar, in eastern King County. The court's decision made it clear that for counties to be created, the state legislature must enact legislation providing for their creation.

Over the years, various bills establishing procedures for creating new counties have been introduced, but none have been successful in gaining final passage.

Structure and Composition of County Government

Your job as county commissioner is far from simple because counties are complex organizations. They operate dozens of distinct business functions, are governed by 11 or more elected officials depending on the number of judges in a county, and are overseen by a board of commissioners that acts as the executive, legislative, and quasi-judicial branches of government. This means your job as commissioner is also complex. You must understand each level of your responsibility to effectively lead a county.

For counties that do not adopt a home rule charter, article 11, section 5 of the Washington Constitution makes the commission form the standard form of county government throughout the state. In general terms, article 11, section 5 sets forth the governmental structure that all commission counties must have. Of Washington's 39 counties, 32 "noncharter" counties operate under the commission form of government provided by state law. Commissioners serve as full-time executives and legislators (or policy makers) for the county. The number of commissioners that serve on the board of a commission county depends on the population of the county.

By comparison, seven Washington counties have successfully adopted home rule charters: King (1969), Clallam (1979), Whatcom (1979), Snohomish (1980), Pierce (1981), San Juan (2005), and Clark (2014). These are called charter counties because they're organized under a locally developed charter permitted by Washington's constitution. Charter counties have some freedom in developing alternate structures that typically result in larger county boards which are usually limited to legislative functions and are called county councils.

STRUCTURAL OVERVIEW

Part of your responsibility as county commissioner is to be familiar with the various forms of county government. So, it's important to note that the creation and governance of counties is controlled by article 11, sections 3 through 5 of the Washington Constitution. The constitution allows for three forms of county government: (1) the "commission" form; (2) the "home rule" charter form; and (3) the consolidated city-county form.

COMMISSION FORM OF COUNTY GOVERNMENT

First, let's look at the commission form of county government. Article 11, section 5 of the Washington Constitution makes the commission form the standard form of county government throughout the state for counties that do not adopt a home rule charter and sets forth, in general terms, the governmental structure that all commission counties must have.

The commission form is often referred to as the "plural executive" form of government. Under the commission form, the county governing body consists of a three- or five-member board of commissioners, elected on a partisan basis, who serve as the county's legislative body and perform executive functions. Counties with populations greater than 400,000 must have five-member boards. Counties with populations of less than 400,000 have three-member boards, although those with populations between 300,000 and 399,999 can increase the size of commissions from three to five members.

While you, as county commissioner, establish the budget and act as part of the county legislative body, you also share administrative functions with several other independently-elected county officials, including a clerk,

☰ Table of Contents

treasurer, sheriff, assessor, coroner (or medical examiner), and auditor (or recorder). The county prosecuting attorney and the judges of the superior and district courts are also independently-elected.

Although there is no constitutional or statutory requirement for you to delegate any of your executive authority to a separately-appointed administrator, many county commissioners do, to a limited degree.

Authority – Commission Form of County Government

- Ch. 36.32 RCW – Basic authority and procedures for board of county commissioners
- RCW 36.32.055, .0552, and .0554, – Provide for increasing the size of the board of county commissioners from three to five members

"HOME RULE" CHARTER FORM OF COUNTY GOVERNMENT

In contrast to the commission form of county government, there is the "home rule" charter form of county government. Home rule charters provide their own form of government, and their adoption is allowed by article 11, section 4 of the state constitution. Home rule charters can provide for any needed county officers to perform county functions, but they can't affect the election of the prosecuting attorney, the county superintendent of schools, the judges of the superior court, the justices of the peace, or the jurisdiction of the courts.

After adoption of a charter, the powers, authority, and duties of county officers provided for by state law (except for the prosecuting attorney) are vested in the county legislative authority, unless the charter expressly assigns powers and duties to specific officers. The duties of the board of county commissioners and other elected officers can also be changed by charter. Also, the commissioners and other elected officers can be replaced, though certain restrictions apply.

It's important to mention home rule charters can also provide the powers of initiative and referendum to the citizens of the county. Not surprisingly, all charter counties have adopted initiative and referendum powers.

Of the seven charter counties, four adopted the council-elected executive form (King, Whatcom, Snohomish, and Pierce). In the council-elected executive form, the county executive is elected by the voters and serves as the head of the executive branch of government. The county council is the legislative branch of government, and is responsible for enacting ordinances, adopting the budget, and overseeing the administration. Its role is like the role of a city council in a mayor-council city, and it must work closely with the county executive.

The power to veto legislation belongs to the county executive, though a veto can be overridden by the council with a two-thirds majority vote or greater. The county executive also holds the responsibility of proposing policies to the council, executing policies adopted by the council, preparing a budget, and providing general administration of the county. Additionally, and typically with the consent of the council, the county executive has the authority to appoint and dismiss department heads. Overall, the county executive's role is like the role of a mayor in a mayor-council city.

Of the three remaining charter counties, one county adopted a council-appointed administrator plan (San Juan), one adopted a commission-appointed administrator plan (Clallam), and one adopted a council-manager plan (Clark). In each of these plans, an elected body, be it a county commission or council, continues to have the policy-

☰ Table of Contents

making, legislative, and budget-adoption responsibilities. However, the council or commission delegates all, or a portion, of its administrative authority to an appointed professional administrator. As an appointed official, the county administrator/manager serves the council or commission with the goal of enhancing administrative functions.

Authority – "Home Rule" Charter Form of Government

- Article 11, section 4 of the Washington State Constitution

CONSOLIDATED CITY-COUNTY FORM OF GOVERNMENT

When we look at counties with a "home rule" charter, we see they can provide for the formation and government of a combined city and county municipal corporation under article 11, section 16 of the Washington State Constitution. This is known as a "city-county," and the same procedures that apply to the adoption of a county charter also apply to the adoption of a city-county charter, except for a couple of differences. For instance, the only method of beginning the combined city-county charter process is through a voter petition, and there is no minimum population requirement.

In addition to providing for an alternative form of county government, a city-county charter can also merge the county with cities and other municipal corporations within its boundaries. Consolidated city-county governments have been proposed to improve local government service provision by eliminating conflicts between competing levels of local government. Although a few Washington counties have explored this option, no combined city-county governments have been formed.

Authority – Consolidated City-County Form of Government

- Article 11, section 16 of the Washington State Constitution

COUNTY GOVERNMENT SERVICES

As you know, counties in Washington State provide a broad range of services, and most of them are mandated by the state as its agent or regional service provider. Criminal justice services like those provided by the prosecuting attorney, public defender, district and superior courts, juvenile detention, jail, and coroner are provided by counties as agents of the state. They account for a large portion of services paid for from the general fund, also known as the current expense fund. Public health services, which are a crucial regional service to all citizens of a county, are financed partly with local dollars and supplemented by locally-administered state and federal grants. Local government services for residents living in the unincorporated areas include law enforcement by the sheriff and construction and maintenance of roads and bridges. You'll find these services outlined later in this document.

The Washington State Association of Counties developed a useful overview of county services. It has been adapted for this guide in the table on the following page. While it's not a comprehensive list of all county services, the table organizes various services according to which role the government is playing: state agent, regional service provider, or local government. It's important to keep these roles in mind when you're making policy decisions for counties. Your ability to have an influence on service outcomes hinges on your ability to

Table of Contents

match strategies for constituents' needs with the county's role. For example, you have broader discretion and a narrower constituency when making decisions for county roads, since you're acting as a local government service provider serving the unincorporated area population. Influencing jail operation is much more complex: you must deal with state law, state administrative code, city police departments, constituents' attitudes about safety, the sheriff, the prosecuting attorney, and the county judges.

Counties Are Unique Because They Have Three Major Roles

State	Regional Government	Local Government
Prosecuting Attorney	Specialized Law Enforcement	Law Enforcement
Public Defender	District Court	Roads & Bridges
Superior Court	Domestic Violence	Land Use Planning
Juvenile Court	Medic 1 Ambulance	Zoning
Jail	E-911 & Central Dispatch	Building Permits
Juvenile Detention	Transit Programs	Parks & Recreation
Medical Examiner	County Airports	Garbage & Recycling
Mental Health	Public Health Services	Surface Water Management
Developmental Disabilities	Aging & Senior Services	Sewer Service
Alcoholism & Drug Abuse	Housing Programs	Water Service
Elections	Housing Repair Assistance	Weed Control
Treasurer	Energy & Weatherization	
Document Recording	Veterans Assistance	
Vital Statistics	Cooperative Extension	
Property Tax Admin.	Emergency Management	
Vehicle & Marriage Licenses	Search & Rescue	
	Sewer Service & Treatment	
	Growth Management Policies	
	River Basin Flood Plans	
	Solid Waste Management	
	Economic Development	
	Tourism & Facilities	
	Arts Commissions	
	County Fair	

Table of Contents

Job of a Commissioner

You now know that the roles and duties of county commissioners are numerous and varied. It is imperative that commissioners be knowledgeable about each level of responsibility they are expected to carry out as they guide the county decision-making process. This chapter covers some of those responsibilities.

LEGISLATIVE DUTIES

As a commissioner, you are authorized and required to make policy for the county. Policy-making means defining high-level goals and long-range outcomes for county government. This includes choosing the direction and the ways to achieve those outcomes, as well as guiding the decision-making process leading to them.

The primary legislative powers of the board of commissioners are found in RCW 36.32.120 and RCW 36.40.100. The powers include: budgeting and appropriation of funds for all county activities; building and maintaining county roads; making and enforcing civil and criminal resolutions and ordinances not in conflict with state law, including those for land use and building construction; supporting and implementing state and federal mandates; overseeing all appointed county agencies; constructing and maintaining public buildings; fixing the tax levies for the county and its subordinate jurisdictions; authorizing payments owed by the county and auditing all officers having control of county monies; managing county property and county funds; and prosecuting and defending all actions for and against the county.

GOAL-SETTING AND LONG RANGE PLANNING

County policies will impact citizens, and for that reason, those citizens expect county commissioners to influence the direction of county government. Policy-making is far more of an art than a science. The key to good policy-making is to see "the forest for the trees."

Keep in mind the mission of the organization, and whether the county is following that direction to realize your long-range outcomes. Policy-making describes outcomes; it describes what you want. How your ideas are realized is administration.

It is essential to recognize competing interests among the public and staff, and to cultivate support from these groups by involving them as stakeholders in your policy development. Doing this varies from county to county and from board to board. Policy development first requires you to affirm or define the county's mission and direction. In other words, make sure you can answer to your own satisfaction the question, "To what purpose is the county here and where must it be pointed to accomplish that purpose?" After that:

1. Identify issues and needs that are obstacles to your mission and direction.
2. Set goals and objectives to address obstacles and realize your mission.
3. Determine strategies to meet goals and objectives.
4. Set priorities and timelines for completing goals and objectives.
5. Accomplish the work.
6. Evaluate the results.

Table of Contents

Commissioners are responsible for the first two or three of these elements, and there are opportunities throughout for stakeholder involvement.

MAKING POLICY THROUGH THE BUDGET

The county will only do what commissioners authorize it to pay for; conversely, nothing that commissioners refuse to pay for will get done. The most basic definition of "policy" is "what you do," so the budget becomes the commissioners' main tool for affecting policy. Commissioners also provide overall organizational leadership and are expected to create paths to better management.

The budget is also a management tool; it is the only mechanism for managing all the manifold activities of county government at once. This comprehensive document sets the limits for spending for every program and department in the organization. The only way to see the complex relationship of all the county's moving parts is through the budget. State law requires the board of county commissioners to adopt a budget every year or every other year if the county opts to do a biennial budget.

The Budget Cycle

The county budget cycle typically starts in the spring or summer with an estimate of revenues for the next year. Based on this forecast, commissioners set guidelines for the budget. These include compensation targets for labor negotiations and whether budgets may grow or must be reduced. Spending proposals are submitted by elected officials and appointed managers in mid-August. These proposals are reviewed by the board of commissioners throughout the fall. Final adoption of the budget occurs in December.

Theory and Practice

In theory, broad goals are developed by the board early on as the framework for the annual budget process. Most budget decisions continue previously set policies or confirm policies adopted at other government levels. Decisions to set new policies are typically incremental and at the margins of the entire budget; most budgets are already committed to baseline activities and mandates. Department heads, elected officials, and community groups often come to the board of commissioners with unforeseen financial needs during the budget year. These "emergencies" can have more of an impact on policy than the annual budget development process. These isolated spending requests are difficult to link with spending priorities which have been considered during the formal budget process. So even though it may be occasionally necessary, making budget decisions out of the context of the larger budget process makes commissioners' jobs more difficult. Be sparing with budget promises and set aside funds for emergent issues, as well as aggregating emergent requests into quarterly or annual supplemental budgets. That way everyone knows the money is limited and the timing is not immediate.

Fund Structure

The complex fund structure of counties makes the overall weighing of priorities more difficult. There may be as many as 40 to 80 or more separate funds, most of which are dedicated for specific purposes. It is like having 40 or more separate companies, each with its own set of books. As a commissioner, you will benefit from studying your county's fund structure and learning which programs are funded from each fund.

The general fund is also referred to as the current expense fund. It typically funds most criminal justice functions, internal services, other elected officials' departments, parks, and portions of zoning and building code enforcement. It is where most of the "action" occurs in the budget process.

Table of Contents

The next most important fund is typically the road fund. It is referred to as a special revenue fund because its revenues are dedicated to the construction and maintenance of roads and bridges. Decision-making is often less contentious for this fund than it is for the current expense fund; it has far fewer officials competing for it because its revenues are dedicated for limited purposes. This is true for most other funds, except the general fund, as well.

Other Special Revenue Funds

Other common special revenue funds include veterans' relief, county fair, public health, law library, auditor's operations and maintenance, parks, elections, human services, and emergency management. Special revenue funds are internal service funds for separately financing internal operations.

Enterprise Funds

Activities in enterprise funds operate as separate businesses. These are self-sustaining, autonomous functions like sewer, water, and garbage.

Debt Service Funds

Debt service funds used to accumulate debt service payments, capital projects funds for major capital improvements, proprietary funds expected to develop equity and operate like a business, and internal service funds for financing internal service operations.

An occasional review of the BARS Manual published by the State Auditor's Office will familiarize you with the fund structure, accounting issues, and budgeting procedures mandated by the state for all local governments. MRSC has a Revenue Guide for Washington Counties, which is also a helpful resource.

County Finance Committee

Finally, in developing long-term financial goals and policies, consider using the county finance committee for recommendations. RCW 36.48.070 established the committee to approve county investment policies, and it consists of the chair of the board, the treasurer, and the auditor. It can be a creative vehicle for the development of other important financial policies to keep the county financially sound.

ENVIRONMENTAL AND LAND USE POLICY-MAKING

Setting environmental and land use policy, especially since the 1990s with the passage of the Growth Management Act (GMA), is another challenging issue area for county commissioners. A broad understanding of land use issues is essential if you wish to be an effective commissioner. In most mid-size to larger counties with urbanized areas, commissioners spend a great deal of time working on land use policy. Citizen participation is encouraged in shaping land use policies under the GMA, and much of the input from constituents will continue to be on environmental and land use issues. Difficulty with land use planning issues has been brought to the forefront with growth management, and it is likely to remain a difficult area for commissioners to find community consensus.

The civil staff of the prosecuting attorney's office is usually assigned to assist in land use matters. An informed and trusted legal advisor is one of a county commissioner's best assets. The county prosecutor is the legal advisor to the board. However, with approval from the prosecutor many counties hire legal firms that specialize in land use law to assist in negotiating the complexities of growth management.

Table of Contents

Another important asset in setting land use policy is trustworthy staff. With land use professionals, it is especially important that you make your expectations clear. If commissioners set a general direction and clear expectations about how to interpret the county's land use code, this staff will bring only those options to constituents, disarming many potential confrontations with the board.

POLICY MAKING ON NON-COUNTY BOARDS

State law requires that commissioners serve on boards of other public organizations. Public transit and health district boards both require commissioner participation. Regional support networks for mental health, regional transportation planning councils, housing authorities, air pollution control authorities, and area agencies on aging are all governed by county officials who compose all or part of their governing boards. There are many more such organizations, some unique to particular counties. Be sure to understand and discharge your fiduciary responsibilities when serving on these bodies. You are held to the same level of public trust as in your county responsibilities.

Each of these boards set a policy for complex and highly specialized services. Most are highly regulated by and receive money from the state and federal governments. The boards often meet monthly and usually have a wide diversity of membership.

Contact with management staff is often limited to board meetings or telephone. Given these characteristics, the traditional approach to goal-setting is most appropriate for these organizations. Set goals at an annual retreat, and let staff implement them. There is a danger you could overcommit on these boards. Before committing a lot of time, assess the benefits. Finally, communicate the activity of the boards in which you are involved with the other commissioners by providing clear updates at public meetings.

EXECUTIVE DUTIES

The board of commissioners not only sets policy but is also responsible for its implementation. Commissioners are the chief executives of the county organization. The executive role of a commissioner varies from county to county. The role may be determined by prior executive experience, or it might be tailored to the circumstances in the county. It may be defined by the existing commissioners or historical tradition.

Sometimes a long-tenured commissioner becomes quite skilled in the executive duties of the office and evolves into an unofficial county executive. In other instances, these executive duties may be delegated to a county administrator or a team of appointed department heads. Most counties have either a county administrator or a staff person who assists the commissioners with executive duties. These positions have different titles and sets of responsibilities; among the titles used are chief administrative officer (CAO, "administrator"), budget director, and administrative services director.

HIRING AND SUPERVISING MANAGEMENT STAFF

Regardless of the organizational structure, you and your board play a role in hiring and supervising management staff. Who you hire and how they perform reflects directly on the performance of the board. Remember, with skilled and trusted management staff running the day-to-day affairs of the county, you will have more time and energy available to work on challenging policy issues and other important leadership activities. It is also beneficial to have a person who can act as a sounding board for ideas and problem solving, since sharing your thinking with another commissioner may constitute a meeting under the Open Public Meetings Act.

☰ Table of Contents

Your management staff can be hired with the help of other county administrative staff, typically personnel or human resources support. Often a group interview process with other elected officials and managers is a good idea. Recruiting and selecting a county government administrator requires careful planning, astute evaluation of candidates, and a clear understanding of community needs and the style of manager who can best work with the elected officials. Patience is also important since recruitment can take months, from the time the process begins until the position is filled with a person on the job.

Once hired, your management staff requires active supervision. This includes setting clear expectations, encouraging teamwork and cooperation, and evaluating the work that is done. Supervision is most effective when done by the commissioners as a team. Team supervision of one or more employees can be a challenge. Conflict among commissioners is common when it comes to reviewing staff performance. It is preferable to invest the necessary time up front setting explicit staff and management expectations rather than reacting when unstated expectations are not met.

This investment means regularly spending time in formal work sessions, with every person reporting directly to the commissioners. In these work sessions, progress towards goals and performance problems can be discussed. A written performance evaluation, at least annually, is also recommended. The performance evaluation should address whether pre-established goals and expectations have been met and should cite areas of concern and need for improvement, if appropriate.

OTHER EXECUTIVE DUTIES

Other executive duties of the commissioners may vary greatly. They may include negotiating contracts with labor unions and vendors, interviewing and selecting consultants, or managing construction projects. A commissioner's executive and administrative responsibilities are very time consuming, and consequently, boards of commissioners should seriously consider hiring professional staff for managing the day-to-day affairs of the county.

QUASI-JUDICIAL DUTIES

Counties have the authority to regulate the division and use of property in the unincorporated areas. County regulatory action over land use is guided by federal, state, and local laws. The planning commission, the board of adjustment (if one has been established), and sometimes the commissioners consider these laws to approve or deny development proposals. If a development applicant or any other citizen disagrees with a decision on a development proposal, they often can appeal that decision to the board of commissioners if the board itself is not making the final decision on the proposal. As with all land use issues, legal and planning staff can provide information and assistance.

When deciding on a development proposal or considering an appeal, the actions and decisions of the board are considered "quasi- judicial." Commissioners must determine whether the development proposal is in accordance with the law. To accomplish this, they sit like judges to interpret how the relevant land use laws apply to the proposal before them. Quasi-judicial public hearings on development proposals involve the legal rights of specific parties, and the decisions made because of such hearings must be based upon and supported by the "record" developed at the hearing. Quasi-judicial hearings are subject to stricter procedural requirements than legislative hearings. Some counties use hearing examiners who hold hearings and make decisions that are either recommendations to the board or appealable to the board.

Table of Contents

When acting in a quasi-judicial capacity, county commissioners are subject to the appearance of fairness doctrine, which requires that hearings not only be fair but also *appear* to be fair. A commissioner can violate the appearance of fairness doctrine by prejudging a quasi-judicial matter or by having a prohibited personal interest in that matter. If the doctrine is violated, the courts can invalidate the quasi-judicial decision made by the board.

The appearance of fairness doctrine also prohibits ex parte (one-sided or outside the record of the hearing) communications between a commissioner and a proponent or opponent of the matter being considered in a pending quasi-judicial proceeding. A basic principle of fair hearings is that decisions are made entirely based on evidence presented at the proceedings, and ex parte communications violate that principle. Nevertheless, a commissioner may "cure" a violation caused by an ex parte communication by placing the substance of the communication on the hearing record, making a public announcement of the content of the communication, and allowing involved parties to rebut the substance of the communication.

FAQ – PERFORMANCE OF COMMISSIONER DUTIES

This section provides answers to some common questions relating to the performance of the duties of a county commissioner.

Question: How does a commissioner know the key laws?

The prosecuting attorney (PA) is a crucial working partner for the board since only the PA's office, or outside counsel with the consent of the superior court, is allowed to deliver legal advice. A board may find a PA very amenable to using outside counsel for specialized advice, but the cost per hour is far above that of a senior and experienced deputy prosecutor. For the defense of lawsuits, outside counsel is common for arcane subject matter or when insurance can cover the cost. A commissioner who follows legal advice effectively cuts off accusations of bad faith or of acting with misfeasance, defined as improper but legal actions, or malfeasance, defined as illegal actions, that interfere or interrupt official duty.

State law controls most of what counties do and how they do it. Each commissioner will benefit from having general knowledge of the laws that affect counties and their responsibilities. The following list is only a good starting point for the statutes relevant to county officers.

Title 42 RCW, "Public Officers and Agencies," provides the basic statutory law for conducting public business. These laws are designed to ensure fairness and an open, democratic process, but they are not necessarily designed for efficiency. The key provisions include:

- Ch. 42.36 RCW, Appearance of Fairness Doctrine, which restricts the communication and activities of elected officials when acting in a quasi-judicial capacity. It goes beyond a conflict of interest to prohibit participation in a decision where there appears to be a conflict of interest.
- Ch. 42.30 RCW, Open Public Meetings Act.
- Ch. 42.23 RCW, Code of Ethics for Municipal Officers – Contract Interests, which prohibits and/or restricts financial interests and specifies other prohibited conduct by county officers.
- Ch. 42.20 RCW, Misconduct of Public Officers, which sets out prohibited misconduct.
- Ch. 42.56 RCW, Public Records Act
- Ch. 42.17A, Campaign Disclosure and Contribution

☰ Table of Contents

Other constitutional, statutory, and common law doctrines may affect the conduct of the board of commissioners and the legislative choices and quasi-judicial actions of commissioners. For example, the common law doctrine of conflict of interest, constitutional and statutory provisions prohibiting private use or gifts of public funds and midterm pay increases, the doctrine of incompatible offices, and federal and state constitutional guarantees of private property rights and individual civil rights, may affect the actions of the board of commissioners. Understanding the legal requirements and constraints within which the board of commissioners must operate necessitates a partnership with the PA and other county legal advisors.

Legal advice is different from business advice. Legal advice answers specific questions, whereas business advice strategically weighs varying options, all of which must be legal. Legal advice tends to be narrow in scope and restrictive since the question asked will be reduced to more narrow legal issues, some of which may not have clear answers. A commissioner is well-advised to ask in writing for a legal opinion about how to legally accomplish a business goal; a clearly-stated question can help the PA provide a clearly-stated legal analysis. Each elected county official must decide how and with whom the lawful business options are to be weighed; the PA may be such a business advisor in addition to persons within and outside of government.

Question: How can a commissioner be recalled?

The procedure for the recall of elected officials is found in chapter 29A.56 RCW. As an elected official, a county commissioner may be recalled on grounds of malfeasance, misfeasance, or violation of the oath of office, as those terms are defined in the recall statutes. Under the recall procedure, a voter may file a charge stating the grounds for recall with the county auditor, a ballot synopsis is prepared regarding the charge by the prosecuting attorney, and the superior court then determines whether the charges are sufficient to meet the criteria for a recall and whether the ballot synopsis is adequate. Often, the recall process stops at the superior court review stage, with the court finding the charges legally insufficient. However, if the court finds the charges to be sufficient and the sponsors of the recall gather enough signatures on a recall petition, a recall election is held. The voters then decide by majority vote on whether to recall the commissioner or commissioners.

Upon a request by the commissioner subject to the recall, the board, with the approval of the prosecuting attorney, may agree to pay the expenses involved with the judicial proceeding to determine the sufficiency of the recall charge, including an appeal of the superior court decision.

Question: Can I be held liable for my actions as a commissioner?

State law provides immunity from civil liability for a county commissioner for any discretionary (legislative) decision or failure to make a discretionary decision made in the commissioner's official capacity. For decisions that are not considered discretionary, such as quasi-judicial and administrative or executive decisions, a county commissioner can be held liable for damages caused by tortious conduct under both state law and federal civil rights law 42 USC 1983.

Question: How can I protect myself? Who will pay to defend me?

Although a county commissioner can be held liable for nondiscretionary acts, RCW 4.96.041 requires that the county pay for the necessary expenses of defending a commissioner (as well any county official, employee, or volunteer) in an action for damages arising from acts made in good faith while performing official duties. "Good faith" is a legal term not easily defined but suffice it to say that the method must be lawful, and the goal must be for a public purpose, not a personal or self-serving one.

When a commissioner is defended at the expense of the county, the county is responsible for any nonpunitive damages awarded to the plaintiff. The board has the discretion to pay or not pay for an award of punitive damages.

☰ Table of Contents

Question: Where is the authority for county actions?

Title 36 RCW identifies many of the powers and duties of county officials. It is the basic body of statutory law cited for county jurisdiction, although county duties can be found throughout the RCWs.

Table of Contents

Legal Issues

Many actions of county commissioners are regulated or otherwise governed by state law. This chapter gives a brief overview of the Open Public Meetings Act, the Public Records Act, and the Appearance of Fairness Doctrine. Your county prosecutor should be consulted whenever a legal issue arises.

OPEN PUBLIC MEETINGS ACT[3]

The The Open Public Meetings Act (OPMA), Ch. 42.30 RCW, applies to the board of county commissioners, as well as to some subordinate commissions, boards, and committees, and it requires, basically, that all "meetings" of such bodies be open to the public and that all "action" taken by them be done at meetings that are open to the public. The terms "meetings" and "action" are defined broadly in the OPMA, and so it can have daily significance for commissioners, even when no formal meetings are being conducted.

A board of county commissioners is conducting a meeting subject to the requirements of the Open Public Meetings Act whenever a majority of its members (a quorum) meet and deal in any way with county business. This includes simply discussing matters having to do with county business. It doesn't matter if it's called a "workshop," a "study session," or a "retreat"; it is still a meeting if a quorum is addressing the business of the county. However, if the board just meets socially or travels together, it is not having a meeting subject to the OPMA if the commissioners do not discuss county business.

The OPMA thus presents practical difficulties for three-member boards of commissioners because a discussion of county business by two commissioners qualifies as a "meeting" and must be open to the public. Policy development can be hampered because of this. In most forms of government, an executive develops proposed policy behind closed doors and then presents the refined policy to the legislative body, which then addresses the proposal in public meetings. Since a board of commissioners acts both as the executive and legislative body, the commissioners are restricted in their ability to meet and confer on policy except in public meetings. Use of a county administrator with whom to bounce around ideas and discuss policy options can be beneficial and help avoid open meetings violations.

All meetings of the board are, under the OPMA, either "regular" or "special" meetings, even if they are called something else. A regular meeting is one that is held according to a schedule adopted by ordinance, resolution, order, or rule, as may be appropriate. As a general matter, regular meetings of the board must be held at the county seat. However, if the board determines that holding a meeting at a location outside of the county seat would be in the interest of supporting greater citizen engagement, then the board can hold regular meetings outside the county seat but within the county, as follows: (1) once per calendar month in a city with a greater population than the county seat city; and (2) once per calendar quarter in any other location. No more than one meeting per calendar month may be held at an alternate location.

A special meeting is any meeting that is not regular. In other words, special meetings are not held according to a fixed schedule. Under the OPMA, special meetings have specific notice requirements, including at least 24-hour notice to the media that have filed requests to be notified, board members, and the public. A special meeting may be held outside of the county seat, but inside the county, when issues to be addressed at the meeting are of unique interest or concern to citizens in the area where the meeting is held.

3 For more information see MRSC's Open Public Meetings Act publication.

Table of Contents

What Procedural Requirements Apply to All Meetings of the Board of Commissioners?

The following requirements apply to both regular and special meetings of the board:

- All meetings must be open to the public.
- Members of the public may not be required as a condition of attendance to register their names or other information, complete a questionnaire, or fulfill any other condition precedent.
- The board may require the removal of individuals, order meeting rooms cleared, and continue in session. Alternatively, it may adjourn and reconvene the meeting at another location, subject to certain limitations.
- Public comment must be accepted at regular meetings where final action is taken. The board can decide whether that comment is written, oral, or both.
- Votes may not be taken by secret ballot.
- Meetings may be adjourned or continued subject to the specific procedures.
- The board may meet in executive session, but only for one of the reasons specified in RCW 42.30.110.

What Procedural Requirements Apply Specifically to Regular Meetings?

The following requirements apply to regular meetings:

- The date and time of regular meetings must be established by ordinance, resolution, order, or rule.
- If the regular meeting date falls on a holiday, the meeting must be held on the next business day.
- The meeting agenda must be made available online at least 24 hours in advance.

What Procedural Requirements Apply to Special Meetings?

The procedural requirements that apply to special meetings deal primarily with the notice that must be provided. These requirements, contained in RCW 42.30.080, are as follows:

- A special meeting may be called by the presiding officer or by a majority of the members of the governing body.
- Written notice must be delivered by hand, mail, fax, or email at least 24 hours before the time of the special meeting to:
  - Each member of the governing body; and
  - Each local newspaper of general circulation and each local radio or television station that has a written request on file with the governing body to be notified of that special meeting or of all special meetings.
- Notice of the special meeting must be provided to the public as follows:
  - Prominently displayed at the main entrance of the agency's principal location, and at the meeting site if the meeting will not be held at the agency's principal location and is not held as a remote meeting; and
  - Posted on the agency's website.
- Website posting is not required if the agency:
  - Does not have a website;
  - Has fewer than 10 full-time equivalent employees; or
  - Does not employ personnel whose job it is to maintain or update the website.

- The notice must specify:
  - The time and place of the special meeting; and
  - The business to be transacted at the special meeting.
- The governing body may take final action only concerning matters identified in the notice of the meeting.
- Written notice to a member or members of the governing body is not required when:
  - A member files at or prior to the meeting a written waiver of notice or provides a waiver by telegram, fax, or email; or
  - The member is present at the meeting at the time it convenes.
- Special meeting notice requirements may be dispensed with when 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 the time requirements of the notice would make notice impractical and increase the likelihood of such injury or damage. An emergency meeting must, nevertheless, be open to the public.

What Is an Executive Session, and When May One Be Held?

"Executive session" is not expressly defined in the OPMA, but the term is commonly understood to mean that part of a regular certain procedures or special meeting that is closed to the public. The board may hold an executive session only for specified purposes, which are identified in RCW 42.30.110(1), and only during a regular or special meeting. However, nothing prevents the board from holding a meeting for the sole purpose of having an executive session.

Certain procedures must be followed before convening an executive session. The chair must announce the executive session to those attending the meeting by stating two things: (1) the purpose of the executive session; and (2) the time when the executive session will end. The announced purpose of the executive session must be one of the statutorily-identified purposes for which an executive session may be held. 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.

The board should always follow the basic rule that it may not take final action in an executive session. However, there may be circumstances where the board will need to reach an informal consensus concerning the matter being considered.

The board may meet in executive session for the following purposes identified in RCW 42.30.110(1):

- To consider information regarding the infrastructure and security of computer and telecommunications, security and service recovery plans, security risk assessments, and security test results to the extent they reveal vulnerabilities and other information that if made public may increase the risk to the confidentiality, integrity, or availability of agency security or to information technology infrastructure or asset.
- To consider the selection of a site or the acquisition of real estate when public knowledge would cause likelihood of increased price
- To consider the minimum price at which real estate will be offered for sale or lease when public knowledge would cause a likelihood of decreased price.

- To receive and evaluate complaints or charges brought against a county officer or employee, although the board must honor any request by the officer or employee to consider the complaints or charges in an open meeting;
- To evaluate the qualifications of an applicant for county employment or to review the performance of a county employee;
- To evaluate the qualifications of a candidate for appointment to elective office, such as when filling a board vacancy, although the interview of the candidate and final action must be in an open meeting;
- To discuss with legal counsel representing the county, matters relating to county enforcement actions, or litigation or potential litigation to which the county, the board, or one of its members acting in their official capacity is or is likely to become a party;
- To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs.

The OPMA mentions other purposes for which an executive session may be held, but these are not applicable to counties and therefore are not covered in this publication.

What Meetings are Exempt from the Open Public Meetings Act?

RCW 42.30.140 sets out three situations that have application to a board of commissioners where the board may meet and not be subject to any requirements of the Open Public Meetings Act:[4]

- Certain licensing proceedings;
- Quasi-judicial matters between named parties (although other state law requires hearings on such matters to be public hearings); and
- Collective bargaining sessions with employee organizations, when the board is developing or adopting strategies or positions to take in those sessions or in mediation grievance proceedings, or when the board is reviewing proposals made in the collective bargaining or professional negotiations.

What Happens if the Open Public Meetings Act is Violated?

There are several potential consequences for violating the procedural requirements of the Open Public Meetings Act. Actions, including ordinances and resolutions, taken in meetings held in violation of the OPMA are null and void. In addition, commissioners can be fined $500 if they attend improperly-held meetings knowing that they are in violation of the OPMA and $1,000 for subsequent violations. The party that prevails in an action for violation of the OPMA may recover reasonable expenses and attorneys' fees under certain circumstances.

What Training is Required by the OPMA?

All members of governing bodies, state and local, must receive training on the requirements of the Open Public Meetings Act. The training must be completed within 90 days after a governing body member takes the oath of office or otherwise assumes the duties of the position. The training must be repeated at intervals of no longer than four years. The law does not specify the training that must be received, other than it should be on the requirements of the OPMA and that it may be completed remotely. No penalty is provided for the failure of a member of a governing body to receive the required training.

4 RCW 42.30.140 also lists a fourth situation where the board may meet and not be subject to any requirements of the Open Public Meetings Act: "Matters governed by chapter 34.05 RCW, the Administrative Procedures Act." This exception has no application to counties.

☰ Table of Contents

THE OPEN PUBLIC MEETINGS ACT AND E-MAIL COMMUNICATIONS

Washington courts have found that email communications between members of a governing body – such as county commissioners – can, under certain circumstances, constitute a "meeting" under and in violation of the Open Public Meetings Act. Case law has concluded that such an email exchange violates the OPMA if:

> (1) the members participating constitute at least a majority of the governing body's members;
> (2) the participating members collectively intend to meet to transact the governing body's official business; and (3) the participating members communicate about issues that may or will come before the governing body for a vote (*Citizens Alliance v. San Juan County* (2015) and *Wood v. Battleground School District* (2001)).

The courts, however, have indicated that the passive receipt of email does not automatically constitute a meeting. Therefore, county commissioners can receive information about upcoming issues or communicate among themselves about matters unrelated to government business, without implicating the OPMA.

PUBLIC HEARINGS[5]

All public hearings are also public meetings, but additional rules and procedures apply. The main purpose of most public hearings is to obtain public testimony or comment. A public hearing may be part of a regular or special meeting, or it may be the sole purpose of a meeting, with no other matters addressed.

There are two types of public hearings, legislative and quasi-judicial, and it is important to understand the distinction between them. The purpose of a legislative public hearing is to obtain public input on legislative decisions on matters of policy. Legislative public hearings are required by state law when the board addresses such matters as comprehensive land use plans or the annual or biennial budget. This type of public hearing is less formal than a quasi-judicial public hearing. It does not involve the legal rights of specific, private parties but rather a wider range of citizens or the entire county.

Quasi-judicial public hearings, unlike legislative ones, involve the legal rights of specific parties. The decisions made as a result of such hearings must be based upon and supported by the "record" hearings held by boards of commissioners involving land use matters, including site-specific rezones, preliminary plats, variances, and conditional uses. A county commissioner's role in a quasi-judicial setting is much different than in a legislative setting.

PUBLIC RECORDS ACT[6]

Under the Public Records Act (PRA), most records maintained by state, county, city, and special purpose district governments are required to be made available to members of the public.

The PRA is "a strongly worded mandate for broad disclosure of public records" (*Hearst Corp. v. Hoppe* (1978)) and makes its purpose clear:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to

5 For further reading, see MRSC's Public Hearings page.

6 For further reading, see MRSC's, Public Records Act page and Public Records Act for Washington Cities, Counties, and Special Purpose Districts.

Table of Contents

know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created (RCW 42.56.030).

Although the PRA does not apply to judicial records (case files), the legislature has specifically extended their coverage to state legislative records. In addition, the PRA applies equally to "every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district or any office, department, division, bureau, board developed at the hearing. Quasi-judicial hearings are subject to stricter procedural requirements than legislative hearings. Most quasi-judicial commission, or agency thereof, or other local public agency" (RCW 42.56.010(1)).

WHAT ARE PUBLIC RECORDS?

The definition of a "public record" is quite broad. Public records include "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" (RCW 42.56.010(3)). Writing is defined to include "handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recording, and other documents, including existing data compilations from which information may be obtained or translated" (RCW 42.56.010(4)). Therefore, papers, photos, maps, videos, and electronic records including email, voicemail, and text messages are all covered by the Public Records Act.

Local governments are not required to create documents to comply with a request for specific information. Rather, they must produce existing records for review and copying. Also, they are not obligated to compile information from various records so that information is in a form that is more useful to the requester. In addition, county employees are not required to do research for private individuals.

COUNTY OBLIGATIONS UNDER THE PUBLIC RECORDS ACT

The Public Records Act establishes basic procedural requirements that each county must adopt.

Use this list as a starting point for Public Records Act compliance:

1. **Assign a Public Records Officer (PRO).** Post the PRO's contact information at the agency's place of business, on the agency's website (if any), and in any relevant publications (RCW 42.56.580).
2. **Adopt a local Public Records Act policy:** The local PRA policy should outline reasonable regulations for the county's handling of public records requests, such as when it receives a records request. The policy must be prominently displayed (RCW 42.56.040).
3. **Publish a list of exemptions and prohibitions found outside the PRA:** Publish a list of exemptions and prohibitions to disclosure other than those listed in the PRA (RCW 42.56.070).
4. **Maintain an index of public records:** Maintain a current index of many types of county records unless doing so would be unduly burdensome for the county. If it's unduly burdensome, the county must adopt a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations (RCW 42.56.070).

Table of Contents

5. **Adopt a PRA fee schedule:** Establish fees for PRA costs, including costs for hard copies, electronic copies, and mailing costs (RCW 42.56.070 and RCW 42.56.120).

6. **Stay up to date on PRA training requirements:** Every local elected official and local government PRO must receive records training (PRA training, chapter 42.56 RCW and records retention training, chapter 40.14 RCW). This training must be completed no later than 90 days after these elected officials and PROs take their oath of office or assume their duties. They must also receive "refresher" training at intervals of no more than four years (RCW 42.56.150).

DETERMINING WHAT MUST BE DISCLOSED UNDER THE PUBLIC RECORDS ACT

All local government records are available for review by the public unless they are specifically exempted or prohibited from disclosure by state statutes. If no statutory exemption or prohibition covers a requested record, it must be disclosed. A listing of the primary exemptions is found at RCW 42.56.230-.475. Numerous other exemptions and disclosure prohibitions are sprinkled throughout state statutes. Once an exemption is found to apply, the county must determine whether exempt information can be deleted from the record so that the rest of the record can be released. The requirement that exempt material be deleted and the rest of the record disclosed is referred to as "redaction."

RESPONDING TO A PUBLIC RECORDS REQUEST

County governments are required, within five days of receiving a public disclosure request, to respond by:

(1) Providing the requested record;
(2) Providing an internet address and link on the county's website to the specific records requested, except that if the requester notifies the county that they cannot access the records through the internet, then the county must provide copies of the record or allow the requester to view copies using a county computer;
(3) Acknowledging receipt of the request and providing a reasonable estimate of the time required to fill the request;
(4) Acknowledging receipt of the request and requesting clarification; or
(5) Denying the request.

Given limited budgets and staff, county governments tend to have all available resources invested in day-to-day county operations. Despite this extra burden, both the state legislature and voters believe citizens of this state have a right to know all the details of how local and state governments are run. The courts have enforced this policy by liberally construing the PRA's disclosure provisions and narrowly construing its exemptions.

THE APPEARANCE OF FAIRNESS DOCTRINE[7]

The appearance of fairness doctrine is a rule of law requiring government decision-makers to conduct non-court hearings and proceedings in a way that is fair and unbiased in both appearance and fact. It was developed by the courts as a method of ensuring that due process protections that apply in courtroom settings extend to certain types of administrative decision-making hearings, such as rezones of specific property. The doctrine aims to ensure all parties involved in a quasi-judicial matter receive equal treatment.

The doctrine requires that adjudicatory or quasi-judicial public hearings meet two requirements:

7 For further reading, see MRSC's Appearance of Fairness Doctrine page.

- They must be procedurally fair, and
- They must appear to be conducted by impartial decision-makers.

In 1982, the state legislature codified the requirements for the doctrine and applied them only to quasi-judicial actions of local decision-making bodies when a hearing is required by statute or local ordinance (Ch. 42.36 RCW). The following matters have been determined to be quasi-judicial if a public hearing must be held:

- Conditional uses
- Variances
- Subdivisions
- Rezoning of specific sites
- PUD approval
- Preliminary plat approval
- Discretionary zoning permits
- Appeals of rezone applications
- Other types of zoning changes involving fact-finding and the application of general policy to discrete situations

Legislative or policy-making decisions, such as the adoption or amendment of comprehensive plans or zoning decisions of area-wide significance, are not considered to be quasi-judicial actions (RCW 42.36.010).

By following appearance of fairness requirements, local governments have a method for disqualifying decision-makers from quasi-judicial hearings who have prejudged the issues, a bias towards one side, a conflict of interest, or other reasons for impartiality. "Ex parte" communications between a decision-maker and a proponent or opponent are prohibited (RCW 42.36.060). However, appearance of fairness concerns do not apply to statements made while campaigning for elective office, nor is it implicated by the receipt of campaign contributions (RCW 42.36.040-.050).

If a decision-maker's participation in a quasi-judicial decision violates the appearance of fairness doctrine and that participation is challenged in a timely manner, a court can invalidate the decision. A new hearing and decision will then need to be made without the disqualified decision-maker.

Appearance of fairness regulations apply to all local decision-making bodies including:

- Members of a governing board or council
- Hearing examiners
- Planning commissions
- Boards of adjustment
- Civil service boards
- Any other body that determines the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding.

Ethical Issues

Part of being a public official is subjecting yourself to public scrutiny. The public holds you to high standards. This section gives general tips on ethical best practices as well as a brief overview of state and local ethics laws.

GENERAL TIPS

The following list includes some of the more common problems that make the public lose trust in elected officials. At the very least, most will result in public criticism, while others could be terminal to your career.

- Using county credit cards for an unauthorized expenditure or to charge a personal item (even if the amount is repaid later).
- Submitting inflated or false travel expenses. This includes using agency funds for personal trips or vacations.
- Using official letterhead to endorse another political candidate or to achieve a personal or business gain.
- Using an agency vehicle for personal trips, vacations, or political campaign activities.
- Using official phones or computers for personal purposes.
- Using agency staff and resources for personal services or political campaigning.
- Divulging privileged personnel, legal, or executive session information.
- Telling off-color jokes at meetings, making improper comments, or touching staff.

STATE AND LOCAL ETHICS LAWS

State law provides a specific code of ethics for county officials. RCW 42.23.070 prohibits a municipal official from:

- Using their position to secure special privileges or exemptions for themselves or others.
- Directly or indirectly giving or receiving any compensation, gift, gratuity, or reward from any sources other than the employing city, for a matter related to the official's services.
- Accepting employment or engaging in business that the officer might expect would require them to disclose confidential information acquired by reason of their position.
- Disclosing confidential information gained by reason of the officer's position or using such information for personal gain.

Finally, be aware that your county may have a local ethics code that interprets or supplements the state laws. Ask the county clerk or county prosecutor for a copy of any local ordinances or guidelines relating to ethics and conflict of interest.

Table of Contents

CONFLICT OF INTEREST[8]

Washington law governing conflicts of interest regarding municipalities is derived from the State Constitution, statutes, and common law (defined as laws made from court decisions). The rule from which our state's conflict of interest law derives is that a municipal officer shall not use their position to secure special privileges or exemptions for themselves or others. As expressed by our state Supreme Court over a century ago, the common law principle that a municipal officer is prohibited from adjudicating their own cause is "a maxim as old as the law itself" (*Smith v. Centralia* (1909)).

State law forbids county officials from having personal financial interests in public contracts made by, through, or under their supervision, regardless of whether they vote on the matter. There are some exceptions, based on contract amounts. Review the statute carefully and, when in doubt, consult with your county prosecutor (RCW 42.23.030).

State law regarding conflicts of interest is based on the fundamental principle that municipal officers hold public trust and are required to uphold that trust. These rules apply to real and perceived conflicts of interest and as described below in more detail, include a prohibition against elected officials voting on matters in which they stand to benefit financially.

8 For a more detailed overview, see MRSC's Ethics and Conflicts of Interest page.

Table of Contents

Your County's Other Elected Officials

OVERVIEW

Counties serve as an administrative arm of the state by maintaining records, providing courts and law enforcement, building roads, assessing property, collecting taxes, and conducting elections. Counties perform these functions, as well as a growing list of other functions, under the supervision of various elected and appointed officials.

Of the 39 counties in Washington, 32 noncharter counties operate under the commission form of government provided by state law. In these counties, all the officials listed below are elected. Seven counties (King, Whatcom, Clallam, Snohomish, Pierce, San Juan, and Clark) have adopted "home rule" charters as provided for in the state constitution. Adoption of a home rule charter allows a county to choose a different form of government from the commission form specified by statute and to alter the status and functions of some of the county elected officials. In the seven charter counties, some of the elected positions listed below have been made appointive.[9]

The sections below contain brief descriptions of the basic powers and duties of elected county officials. Relevant constitutional provisions, statutes, and other helpful resources are also listed.

ASSESSOR

Statutes. Ch. 36.21 RCW; Ch. 84.41 RCW

Duties. The assessor determines the value of all taxable real and personal property in the county for the purpose of distributing tax liabilities in an equitable manner. State law requires that the assessor annually revalues taxable real property tax rolls used by the county treasurer for billing property owners. In addition to keeping records on all property appraisals, the assessor updates the parcel record and maintains a series of maps showing the location and characteristics of properties in the county. Each time a parcel of property is sold or segregated, or a new plat is filed, the assessor records the transaction. This information covers ownership, descriptions, tax codes, locations, and assessed values. Additionally, the assessor is responsible for processing and maintaining records regarding tax exemptions, including senior citizen, historical property, church, and public property exemptions, as well as programs such as open space and forest land.

Personnel. The assessor is an independent official elected on a partisan ballot for a four-year term.

Vacancies resulting in unexpired terms are filled by commissioner appointment from a list of qualified candidates submitted by the central committee of the political party from which the incumbent was a member. Thereafter, the successor must run for election at the next general election.

Other employees in the office are selected by the assessor.

Relationship to the Board of Commissioners. The board of commissioners establishes personnel positions and salaries, authorizes labor contracts and general personnel policies, and approves the annual operating budget. In many counties, elected officials also sign personnel policies.

9 See MRSC's County Forms of Government page.

Departmental Revenues. The assessor's office may generate minimal revenues through the sale of maps, photocopies, and other reports.

AUDITOR

Statutes. Chs. 36.22 and 36.40 RCW; Titles 29A and 65 RCW.

Duties. The county auditor provides a principal support function in the auditing, recording, and control of financial transactions as prescribed by state law. These functions include preparation of the county budget and annual financial reports. The auditor processes all financial claims against the county and the special purpose taxing districts. In the performance of these duties, the auditor serves ex officio as deputy supervisor under direction of the state auditor. The county auditor usually administers the county payroll.

The auditor serves as custodian of public records, including land records, and issues a variety of licenses. In particular, the auditor may operate as a vehicle/vessel licensing agent of the director of the state Department of Motor Vehicle Licensing and coordinates with vehicle/vessel licensing subagents.

The auditor is the ex officio supervisor of all primary, general, and special elections for all state, county, and special purpose districts under the direction of the Secretary of State. The elections division has three areas of responsibility including administration of elections, voter registration, and voter outreach. The county auditor also acts as clerk of the board of county commissioners unless the board designates one of its employees to attend board meetings and keep a record of its proceedings.

Personnel. The auditor is an independent official elected for a four-year term on a partisan ballot. The auditor may appoint a chief deputy auditor to act in their absence with the same powers.

Vacancies resulting in unexpired terms are filled by commissioner appointment from a list of qualified candidates submitted by the central committee of the political party from which the incumbent was a member. Thereafter, the successor must run for election at the next general election.

Other employees in the office are selected by the auditor.

Relationship to the Board of Commissioners. The board of county commissioners establishes personnel positions and salaries, authorizes labor contracts and personnel policies, and approves the annual operating budget. In many counties, elected officials also sign personnel policies.

Departmental Revenues. Revenues are from special taxing districts (schools, cities, and public utility districts, for example) for costs incurred in conducting elections, as well as filing fees for candidates in elections, fees from requests for voter lists and precinct maps, and recording fees (deeds of trust, quit-claim deeds, etc.). The auditor's office serves as an agent for the Department of Licensing and generates revenues from vehicle/vessel fees. Other revenues are also generated through charges for certified copies of legal documents such as marriage licenses or property titles.

CLERK (SUPERIOR COURT CLERK)

Legal Basis. Washington State Constitution article 4, section 26; article 11, section 5; Chs. 2.32 and 36.23 RCW.

Table of Contents

Duties. The clerk is the custodian of the seal and the records of the superior court, must be present or represented by a deputy at every court hearing, and assumes responsibility for all exhibits admitted in hearings and trials. The clerk administers oaths, usually manages juries and receives jury verdicts, records all documents, hearings, orders, judgments, and decrees issued by the court, and permanently preserves all records. The clerk has the authority to register witnesses and issue passport applications, writs of arrest and execution, commitments to prison, subpoenas, and letters of qualification for probates and guardianship. The clerk is responsible for case management, preparing calendars and cases for court hearings, and ensuring the superior court records are open to citizen inspection. The clerk files bonds from all other local officials, including commissioners and councilors.

Personnel. The clerk is an independent official elected on a partisan ballot for a four-year term. Unexpired term vacancies are filled by the board of commissioners or council from names submitted by the incumbent's political party's central committee. The successor then runs for election at the next general election.

The clerk appoints all employees to fill positions created by the board of commissioners.

Relationship to the Board of Commissioners. The board of county commissioners establishes personnel positions and salaries, authorizes labor contracts and personnel policies, and approves the annual operating budget.

Board expenses are filed with the clerk, approved by the judge, and certified by the clerk to the auditor.

Departmental Revenues. The clerk is responsible for all fees, court assessments, bail, restitution to victims, and all other money deposited. Daily fees are divided by statute between the county general fund, the state Public Safety & Education Account, and designated funds such as drug funds. The clerk's trust and investment accounts cannot be comingled with public funds; therefore, they are deposited and managed separately by the clerk.

CORONER (MEDICAL EXAMINER)

Statutes. Chs. 36.24, 68.50, and RCW 70.58.

Duties. The coroner's duties include three areas of responsibility: medical, administrative, and investigative. The coroner conducts autopsies, removes bodies and transports them, verifies causes of death, and signs death certificates. The coroner conducts investigations to determine the cause of death and may be required to identify the deceased and notify families. The coroner also maintains records related to these duties, provides for the custody and security of valuables, and delivers unclaimed property to the county treasurer.

For counties with populations greater than 250,000, the board of commissioners, with voter approval, may replace the elected coroner's position with an appointed medical examiner. In counties with fewer than 40,000 people, the prosecuting attorney acts as coroner. However, beginning on January 1, 2025, the prosecuting attorney will no longer serve as the ex officio coroner. Instead, the coroner will be separately elected, or the county legislative authority can appoint a corner or contract with an adjoining county. Home rule counties may adopt their own rules.

Personnel. The coroner is elected on a partisan ballot for a four-year term. Vacancies resulting in unexpired terms are filled by commissioner appointment from a list of qualified candidates submitted by the party's central committee from which the incumbent was a member. Thereafter, the successor must run for election at the next general election.

Table of Contents

Other employees in the office are selected by the coroner and appointed by the board of commissioners.

Relationship to the Board of Commissioners. The board of county commissioners establishes personnel positions and salaries, authorizes labor contracts and personnel policies, and approves the annual operating budget.

Departmental Revenues. The most significant revenues include reimbursement from the state from the Death Investigations Account. Up to 40% of the cost of contract autopsies or 30% of the salary of the coroner or personnel conducting autopsies is reimbursable according to RCW 68.50.104. Revenues for the department are deposited into the general fund.

DISTRICT COURT JUDGE(S)

Legal Basis. Washington State Constitution article 4, sections 6 and 12; article 27, section 8; Chs. 3.30-3.74 RCW; Chs. 7.80 and 12.40 RCW.

Duties. District courts hear and decide controversies and handle related hearings and proceedings regarding criminal misdemeanors and gross misdemeanors, civil proceedings up to $100,000, and small claims up to $10,000. The court also hears traffic and non-traffic civil infractions including mitigation and contested hearings, and parking cases. District courts may also hold preliminary felony hearings to determine whether to transfer cases to superior courts, as well as conducting weekend probable cause hearings.

Personnel. District court judges are elected on nonpartisan ballots for four-year terms. District court judges may appoint an individual to manage administrative matters for the court and district court and deputy clerks.

Relationship to the Board of Commissioners. The Office of the Administrator for the Courts, a state agency, establishes the number of full-time equivalent judges that courts may appoint based upon an analysis of the court's caseload. The salaries of the district court judges are established by the Washington Citizen's Commission on Salaries for Elected Officials, and the county pays the established salaries. Other employees in the office are appointed by the district court judges to fill positions approved by the board of commissioners. The board of county commissioners establishes personnel positions and salaries, authorizes labor contracts and personnel policies, and approves the annual operating budget.

Departmental Revenues. The district court collects revenues from criminal and non-criminal fees, fines, and forfeitures related to court matters. Revenue is also generated through filing fees for civil matters. Some district courts contract with municipalities to provide services and receive fees for those services.

PROSECUTING ATTORNEY

Legal Basis. Washington State Constitution article 11, section 5; Ch. 36.27 RCW.

Duties. The prosecuting attorney serves a dual role as a constitutionally-mandated state official who serves as an agent of the state and as the chief civil law enforcement officer and legal counsel for the county, its employees, all elected and appointed officials, and other agencies and districts. In the capacity as legal adviser to commissioners and other county officials, the prosecutor provides written legal opinions relating to the management of county affairs and drafts contracts, resolutions, ordinances, and other official instruments to be used by those officers.

Table of Contents

The prosecuting attorney and deputy prosecuting attorneys are authorized by law to appear for and represent the state and counties in actions and proceedings before the courts and judicial officers. The prosecutor appears for and represents the state, county, and all school districts subject to the supervisory control and direction of the attorney general, in all criminal and civil proceedings in which the state or the county or any school district in the county may be a party. They prosecute all criminal and civil actions in which the state or the county may be a party and defend all suits brought against the county. The prosecutor institutes and prosecutes felony proceedings.

Personnel. The prosecuting attorney is an independent official elected on a partisan ballot for a four-year term. The prosecutor may appoint one or more deputies who have the same power in all respects as the prosecutor, as well as other employees in the office. Vacancies resulting in unexpired terms are filled by commissioner appointment from a list of qualified candidates submitted by the party's central committee from which the incumbent was a member. Thereafter, the successor must run for election at the next general election. Half of the prosecutor's salary is paid by the state.

Relationship to the Board of Commissioners. The board of county commissioners establishes personnel positions and salaries, authorizes labor contracts and personnel policies, and approves the annual operating budget. The board may contract for legal services with approval of the prosecuting attorney and the presiding superior court judge. The prosecutor may appoint civil deputies to support the board and for land use hearings.

Departmental Revenues. As a rule, the prosecutor's office has no significant operating revenues. However, revenue may be generated through state and federal grants, the child support enforcement program, or the collections of judgments and settlements, all of which are reflected as general fund receipts.

SHERIFF

Legal Basis. Washington State Constitution article 11, section 5; Chs. 36.28 and 41.14 RCW.

Duties. "The sheriff is the chief executive officer and conservator of peace of the county" (RCW 36.28.010). In this capacity, the sheriff and deputies have the power of arrest and a duty to serve orders of the courts or judicial officers, investigate crimes, provide marine safety, and perform search and rescue operations. In most counties, the sheriff is also responsible for managing the 911 communications center, emergency service operations, and the county jail.

Personnel. The sheriff is an independent official elected on a partisan ballot for a four-year term unless the county charter provides otherwise.

Vacancies resulting in unexpired terms are filled by commissioner appointment from a list of qualified candidates submitted by the central committee of the political party from which the incumbent was a member. Thereafter, the successor shall run for reelection at the next general election.

Deputies are appointed by the sheriff in accordance with civil service procedures. The civil service laws provide that civil service employees be hired based on merit and can be fired only for cause. Chapter 41.14 RCW requires the civil service system for deputies. Three civil service commissioners are appointed to six-year terms by the county board of commissioners. By law, the sheriff may fill some positions that are exempt from civil service procedures.

Table of Contents

Relationship to the Board of Commissioners. The board of county commissioners establishes personnel positions and salaries, authorizes labor contracts and personnel policies, and approves the annual operating budget. Counties participate in several state and federal grants programs such as marine safety, community policing, and regional drug enforcement. The board approves contracts for such programs.

Departmental Revenues. As a rule, the sheriff's office has no significant operating revenues. However, revenue may be generated through state and federal grants, gambling taxes, gun permits, and sale of confiscated property, all of which are reflected as general fund receipts. In addition, the office may earn revenue through the operation of the jail, charges for other services provided, and civil fees.

SUPERIOR COURT JUDGE(S)

Legal Basis: Washington State Constitution article 4; Chs. 2.08, 2.24, 2.28, 2.32, 13.04, and RCW 26.12.

Duties. The superior court is the court of original jurisdiction for all felony criminal proceedings, contract disputes, landlord-tenant disputes, real estate matters, personal injury suits, domestic relations, probate, juvenile cases, and civil claims over $100,000. The superior court also has appellate jurisdiction in cases arising in courts of limited jurisdiction (municipal and district courts) and hears appeals involving decisions by an administrative law judge.

Juvenile court is a division of the superior court. Juvenile court services include a broad range of both offender and non-offender cases for juveniles, probation services, diversion programs, guardian ad litem programs, and counselors for at-risk and truant youth. Many juvenile service departments are responsible for operating juvenile detention centers or placing youth in appropriate secure facilities or programs. Juvenile court services can be administered by either the superior court or by local court rule and agreement with the board of commissioners, a juvenile services department.

When superior court is exercising jurisdiction involving certain family law proceedings, the court is referred to as "family court."

Personnel. Superior court judges are elected on a nonpartisan ballot for a four-year term. The number of judges in each county is set by statute.

Judges are considered employees of the state whose salaries are set by the state salary commission. Salaries, however, are paid 50% by the state and 50% by the county. Vacancies resulting in unexpired terms are filled by appointment of the governor.

Other personnel for the courts typically include court administrators, court commissioners, court reporters, and clerical staff who are selected and appointed by the superior court judges. All court positions must be authorized by the board of commissioners.

Relationship to the Board of Commissioners. The board of commissioners establishes positions and salaries and adopts the annual operating budget for the superior court and/or juvenile services department.

Departmental Revenues. As a rule, the superior court has no significant operating revenues. However, revenue generated through the department is typically reflected as general fund receipts. Juvenile Services generate revenues through state contracts with the Juvenile Rehabilitation Agency (JRA) and other state and

Table of Contents

federal grants. It may also generate revenue through fees charged to parents for youths' incarceration or other municipalities for facility rent.

TREASURER

Legal Basis. Chs. 36.29 and 84.56 RCW

Duties. The county treasurer is the custodian of all funds for the county and its governmental subdivisions, maintaining financial records reflecting the receipt and disbursement of funds in accordance with accepted accounting principles.

Funds are disbursed on warrants issued by the county auditor and other district authorities. The treasurer bills and collects all real and personal property taxes certified on the tax rolls of the county, including foreclosure proceedings against properties for the non-payment of tax. Funds held in the county treasury are invested for the benefit of the various funds in accordance with statutory guidelines. The treasurer accounts for and pays all bonded indebtedness for the county and its governmental subdivisions. In addition, the treasurer acts as agent for the Department of Revenue in the administration of real estate excise tax and administers all surplus property sales for the county.

Personnel. The treasurer is an independent official elected on a partisan ballot for a four-year term.

Vacancies resulting in unexpired terms are filled by commissioner appointment from a list of qualified candidates submitted by the central committee of the incumbent's party.

The employees in the treasurer's office are appointed by the treasurer.

Relationship to the Board of Commissioners. The board of commissioners approves the annual operating budget. This may include approving personnel positions, salaries, personnel policies, and labor contracts. In many counties elected officials also sign personnel policies.

Departmental Revenues. All monies collected by the treasurer are deposited into the appropriate funds. Receipts distributed by the treasurer include real and personal property taxes, timber taxes, excise and sales taxes, and state and federal shared revenues, as well as interest. Interest earned on all county funds and any funds not invested by the other districts are deposited in county current expense.

Resources

MUNICIPAL RESEARCH AND SERVICES CENTER (MRSC)

The Municipal Research and Services Center (MRSC) is the first place to start when you don't know where to go. Consultants at MRSC can answer your questions over the phone or via email. Staff experience includes municipal law, budgeting, finance, public works and utilities, planning, growth management, and public policy. In addition, MRSC maintains a website containing a wealth of information relevant to local governments in Washington State.

WASHINGTON STATE ASSOCIATION OF COUNTIES (WSAC)

Created in 1906, the Washington State Association of Counties (WSAC) is a voluntary, nonprofit association serving all of Washington's 39 counties. WSAC members include elected county commissioners, council members, and executives from all of Washington's 39 counties.

The association provides a variety of services to its member counties including legislative advocacy, trainings and workshops, a worker's compensation retrospective rating pool, and a forum to network and share best practices.

WASHINGTON ASSOCIATION OF COUNTY OFFICIALS (WACO)

The membership of the Washington Association of County Officials (WACO) includes elected county assessors, auditors, clerks, coroners and medical examiners, prosecuting attorneys, sheriffs, treasurers, and comparable appointed officials in charter counties. WACO provides legislative representation, education and training, informational publications, day-to-day assistance concerning a wide variety of issues of importance to counties, local, state, and federal agency liaison, an annual conference for training and to develop a legislative package, affiliate support, and other forums in which to develop ideas and build consensus.

NATIONAL ASSOCIATION OF COUNTIES (NACO)

The National Association of Counties (NACo) is the only national organization representing county governments in the United States. Founded in 1935, NACo assists America's 3,069 counties in pursuing excellence in public service to produce healthy, vibrant, safe, and resilient counties. NACo promotes sound public policies, fosters county solutions and innovation, promotes intergovernmental and public-private collaboration, and provides value-added services to save counties and taxpayers money. With its headquarters in Washington D.C., NACo is a full-service organization that delivers its services through its dedicated and skilled staff who comprise the following departments: Executive Management, Legislative Affairs, Public Affairs, County Solutions and Innovation, Information Technology, Finance and Administration and the Financial Service Corporation.

INTERNATIONAL CITY/ COUNTY MANAGEMENT ASSOCIATION (ICMA)

Founded in 1914, the International City/ County Management Association (ICMA) advances professional local government worldwide with a mission of advancing "excellence in local governance by developing and fostering professional management to build sustainable communities that improve people's lives worldwide." ICMA's primary audiences are the professional city, town, and county managers appointed by elected officials.

Table of Contents

The organization provides member support, publications, data and information, peer and results-oriented assistance, and training and professional development to nearly 9,000 city, town, and county experts and other individuals and organizations throughout the world.

Appendix A: Ideas for Commissioner Effectiveness

1. **Learn all you can about your county**, its history, its operations, its financing. Do your homework. Know your county code. Dust off your comprehensive plan.
2. **Devote sufficient time to your office** and studying the present and future problems of your county and its communities.
3. **Don't burn yourself out on the little things** but recognize that they are often important to the public. Save your energy and time for the important matters.
4. **Don't let differences of opinion** within the board degenerate into personality conflicts.
5. **Remember that you represent all the people** of your county and district, not just your neighbors and friends. Be wary of personal experiences coloring your public decisions.
6. **Don't act as a committee of one.** Governing a county requires a multiple team effort—practically and legally. Be a collaborator and leader.
7. **Take your budget preparation job seriously,** for it determines what your county does or does not do for the coming year and will also influence what happens in future years.
8. **Establish policy statements.** Written policy statements let the public and other county officials and staff know where they stand. Policy statements help the board govern and provide a process to develop consensus.
9. **Make decisions based on public policy and be consistent.** Treat similar situations similarly and avoid favoritism.
10. **Focus your attention on preventing problems,** rather than just trying to solve them as they occur. Filling potholes is one approach to governing; developing plans to prevent them is more effective.
11. **Don't be misled by the strong demands of special interest groups** that want something done now, their way.
12. **Don't be afraid of change.** Don't be content to just follow the routine of your predecessors. Charge your appointed officers and employees with being responsible for new ideas and better methods. Listen to what they have to say and support good ideas.
13. **Don't give quick answers when you are unsure of the real answer.** It may be embarrassing to appear unknowledgeable, but it can be more embarrassing, and damaging, to give incorrect information.
14. **Don't rush to judgment.** Few final actions must be taken at the first meeting at which they are considered. Avoid "crisis management."
15. As an individual commissioner, **don't make promises you can't deliver!** Most decisions and actions require approval of the entire board as well as other elected officials with an interest in the subject.
16. **Remember that you have legal authority** as a governing board member only when the board is in legal session.
17. **Don't spring surprises on fellow commissioners or your county staff,** especially at public meetings. If a matter is worth discussing, it's worth being on the agenda. Surprises may get you some publicity, at the embarrassment of others, tend to erode any "team" approach to governance.

Table of Contents

18. **Participate in official meetings with the dignity and decorum** fitting those who hold a position of public trust. Courteous behavior at meetings help create an environment for making sound public decisions.

19. **Conduct official public meetings with formality and follow rules of procedure.** Have an agenda and follow it. Most governing body members agree that formal meetings expedite the process and promote better decision making.

20. **Don't be afraid to ask questions.** Do your homework by studying the agenda material before meetings.

21. **Vote yes or no on motions.** Don't abstain except when you have a legitimate conflict of interest. A pass does not relieve you of responsibility when a decision must be made.

22. **Respect the official position** once a majority decision of the governing body has been made, even if you personally disagree.

23. **Respect the intent of the open meetings law,** but also keep private and confidential matters to yourself – don't gossip.

24. **Retain competent, key employees.** Pay them well, trust their professional judgment, and recognize their authority and responsibilities.

25. **Don't bypass the system** if you have an administrator responsible for day-to-day operations; respect the process.

26. **Don't let others bypass the system.** Insist that professionals such as equipment or service suppliers work with your purchasing staff. If direct contact with governing body members is necessary, it should be with the board.

27. **Don't pass the buck or responsibility** for a hot issue to the staff or employees when they are only following your policies or decisions.

28. **Don't always take no for an answer.** The right question may be "How can we do this?" instead of "Is it possible to do this?"

29. **Encourage imaginative solutions.** Learn to evaluate recommendations and alternative courses of action. Ask staff to provide options.

30. **Be concerned about the long-term future** of the county. Avoid taking short-term gains at the expense of long-term losses.

31. When determining the public interest, balance personal rights and property interests, **the possible harm to a few versus the good of the many.** Recognize in many situations, everyone can't be a winner.

32. **Provide leadership in the intergovernmental system.** Stay connected with and cooperate with your federal, state, city, and special district officials.

33. **Learn to listen** to your fellow commissioners, as well as other county officials and the public.

34. **Learn to be effective with the media.** Cultivate relationships and communicate successes. Consider funding a public information officer's position.

35. **Maintain your sense of humor.** Don't take yourself or the business of government so seriously that you don't enjoy it. It should be fun as well as a rewarding experience.

Table of Contents

Appendix B: Charter Counties

The following table is available online at County Forms of Government.

(P) indicates a partisan position while (NP) indicates a nonpartisan position.

County	Year	Form	Elected Officials	Appointed Officials
King	1969	Council-Elected Executive	Nine-member Council (NP) County Executive (NP) Assessor (NP) Prosecuting Attorney (NP) Director of Elections (NP)	Auditor County Administrative Officer Treasury Operations Manager Clerk Medical Examiner Sheriff
Clallam	1977	Commission-Appointed Administrator	Three-member Commission (P) Assessor (NP) Prosecuting Attorney/Coroner (P) Auditor (NP) Sheriff (NP) Treasurer (NP) Community Development Director (NP)	County Administrator Clerk
Whatcom	1979	Council-Elected Executive	Seven-member Council (NP) County Executive (NP) Assessor (NP) Prosecuting Attorney (P) Auditor (NP) Sheriff (NP) Treasurer (NP)	Clerk Deputy Administrator Medical Examiner

Table of Contents

County	Year	Form	Elected Officials	Appointed Officials
Snohomish	1980	Council-Elected Executive	Five-member Council (P) County Executive (P) Prosecuting Attorney (P) Assessor (NP) Auditor (NP) Sheriff (NP) Clerk (NP) Treasurer (NP)	Medical Examiner
Pierce	1981	Council-Elected Executive	Seven-member Council (P) County Executive (P) Prosecuting Attorney (NP) Sheriff (P) Assessor-Treasurer (P) Auditor (P)	Clerk Medical Examiner
San Juan	2006	Council-Appointed Administrator	Three-member Council (NP) Prosecuting Attorney /Coroner (P) Assessor (NP) Auditor (NP) Clerk (NP) Sheriff (NP) Treasurer (NP)	County Manager
Clark	2015	Council-Appointed Administrator	Five-member Council (NP) Assessor (NP) Auditor (NP) Clerk (NP) Prosecuting Attorney (NP) Sheriff (NP) Treasurer (NP)	County Manager Medical Examiner

Table of Contents

1.800.933.6772

MRSC@MRSC.org

MRSC.org

facebook.com/MRSCWA

linkedin.com/company/mrsc

@MRSC_WA

OFFICE 225 Tacoma Ave S., Tacoma, WA 98405
MAILING 1712 6th Ave, Suite 100, PMB 1330, Tacoma, WA 98405

MRSC

PUB-23-0066

Gores, Loni

From: Sarah <triplesconsultants2025@gmail.com>
Sent: Thursday, August 28, 2025 11:09 AM
To: Gores, Loni
Subject: Fwd: Charter Amendment Proposal for July 28 Vote – Ethics Code Enforcement and Public Accountability for Commissioners

Loni,
Please forward on to the crc ethics subcommittee:

Just a reminder of my thoughts I sent 7-28-25 when I thought it could have been added to the 2025 ballot, remember to add language that states the ethics panel to act within the county's d&o insurance coverage scope to make sure the panel doesn't act beyond what they are covered to make sure the county isn't putting itself at risk having to cover the panels actions.

I am happy to help however helpful,
Dr. Sarah Huling
District 3 Forks
Triple S Consultants, LLC

---------- Forwarded message ---------
From: **Gores, Loni** <loni.gores@clallamcountywa.gov>
Date: Mon, Jul 28, 2025 at 07:56
Subject: RE: Charter Amendment Proposal for July 28 Vote – Ethics Code Enforcement and Public Accountability for Commissioners
To: Sarah <triplesconsultants2025@gmail.com>

Your email has been received and forwarded to the Charter Review Commission.

From: Sarah <triplesconsultants2025@gmail.com>
Sent: Sunday, July 27, 2025 1:25 PM
To: Gores, Loni <loni.gores@clallamcountywa.gov>
Subject: Charter Amendment Proposal for July 28 Vote – Ethics Code Enforcement and Public Accountability for Commissioners

Dear Ms. Gores,

Please forward the following correspondence to the full Charter Review Commission in advance of the July 28, 2025, meeting. I respectfully request that this proposed Charter amendment be considered under "Business Items" and voted on at that meeting so it may, if adopted, be submitted to the Auditor by the August 5, 2025, deadline for the general election ballot.

Under Charter Section 14.30, the Commission has clear authority to propose amendments for the ballot by majority vote. This proposal includes full ballot language and explanatory rationale and responds directly to public concerns and ethics committee discussions regarding gaps in transparency and enforcement mechanisms related to County Commissioners' roles in nonprofit organizations receiving County support. SEE ATTACHED: PDF and Word Doc Formats

Addressing Potential Concerns

I recognize some Commissioners may have concerns about voting on an amendment brought forward by a public individual or about duplicating existing ethics laws. However:

- Charter Section 14.30 explicitly empowers the full Commission to vote to submit amendments regardless of origin provided there is clear language and rationale.
- This proposal is not duplicative of RCWs. While state law (e.g., RCW 42.23) prohibits personal financial gain, it does not provide a local mechanism for evaluating or recording substantiated conflicts involving influence, governance roles, or abstention failures.
- This amendment does not prohibit Commissioners from engaging in nonprofit service. It requires transparency and recusal where County funding or support is involved.
- This approach protects both the public and the officials, reducing the risk of legal exposure and clarifying when County-funded defense may be unavailable under D&O insurance if actions fall outside good faith official duties.
- This language includes no removal authority; all voter rights are preserved. The Ethics Panel cannot discipline or remove elected officials only document substantiated ethics violations for the public record.

Rather than generating unnecessary cost, this proposal reduces ambiguity, limits legal risk, and aligns Clallam County with ethics best practices supported by MRSC and NACO guidance.

Proposed Charter Amendment: Ethics Enforcement and Conflict Disclosure (County Commissioners)

Ballot Title (Suggested):
Shall the Clallam County Charter be amended to establish an independent Ethics Panel to review ethics complaints against County Commissioners, require public disclosure of substantiated violations, and require recusal in matters involving nonprofits they are affiliated with that receive county support?

New Section 12.70 – Ethics Enforcement and Conflict Disclosure (County Commissioners):

1. Independent Ethics Panel.
There shall be an independent Ethics Panel, established by ordinance, composed of Clallam County residents not currently holding elected or appointed county office. The panel shall be authorized to receive and review complaints involving elected County Commissioners only and determine whether actions violate the county's adopted ethics code required under Charter Section 12.60.

2. Complaint Process.
Any individual may file a written ethics complaint. The Ethics Panel shall review the complaint, notify the respondent, and issue findings. Substantiated violations shall be documented and filed in the public record by the Clerk of the Board of Commissioners.

3. Conflict Recusal.
Any Commissioner holding a fiduciary or governance role in a nonprofit receiving Clallam County funds, contracts, or in-kind support must recuse themselves from related votes, deliberations, or budget recommendations. Failure to recuse constitutes an ethics violation subject to documentation under this section.

4. Legal Representation Clarification.
This section shall not expand or alter Clallam County's obligations under law or insurance policies to defend Commissioners. Where the Ethics Panel determines that a Commissioner acted outside the scope of their official duties or not in good faith, legal representation may be declined under the county's D&O or other coverage policies, as allowed by law.

5. Voter Oversight Maintained.
Nothing in this section shall authorize removal of any elected official. Removal, recall, or disqualification from office remains the exclusive purview of the voters or processes established by state law.

Supporting References:

- **Clallam County Charter Section 12.60 (Ethics Code requirement):** https://clallam.county.codes/Charter/12.60
- **RCW 42.23 – Code of Ethics for Municipal Officers:** https://app.leg.wa.gov/rcw/default.aspx?cite=42.23
- **RCW 36.16 – County Officers Generally:** https://app.leg.wa.gov/RCW/default.aspx?cite=36.16
- **RCW 42.52 – Ethics in Public Service (State officers, for reference):** https://app.leg.wa.gov/RCW/default.aspx?cite=42.52
- **MRSC Guidance on Nonprofit Conflicts:** https://mrsc.org/explore-topics/governance/conflicts-of-interest/conflicts-of-interest-for-nonprofit-board-members

Procedural Note:

This proposal is fully drafted and ready for adoption, and there is sufficient time for the Commission to:

- **Vote to adopt** this amendment language at the July 28 meeting, and
- **Submit it to the County Auditor by August 5, 2025**, in accordance with Charter Section 14.30, to appear on the general election ballot.

I appreciate your time and attention to this matter and your continued work to improve transparency and accountability in county governance.

Kind regards,
Dr. Sarah Huling, EdD, MBA
Forks, WA
triplesconsultants2025@gmail.com

Gores, Loni

From: Gores, Loni
Sent: Thursday, August 28, 2025 2:45 PM
To: Benedict, Bill; Boughton, Dee; Cameron, Ron; Fane, Alex; Fisch, Susan; Fleck, Rod; Hodgson, Mark; Holy, Christy; Morris, Patti; Noble, Chris; Pickett, Paul; Richards, Ron; Sarmiento, Nina; Stoffer, Jim; Tozzer, Jeff; Walde, Cathy
Cc: Gores, Loni
Subject: Ethics Committee Notice 9-2-25
Attachments: Committee Notice Ethics 9-02-25 Full Copy.pdf

CRC,

Attached is the Ethics Committee meeting notice for September 2:

1) Ethics Committee meeting notice on September 2 at 1:30 p.m. at BOCC Board Room 160.

The notices have been posted on the County website at the following links:
CRC page: https://www.clallamcountywa.gov/210/Charter-Review-Commission-CRC
County homepage: https://www.clallamcountywa.gov/

I've also emailed to the press/media, posted on the BOCC office door and the courthouse public notice board.

Loni

"My email address has changed! The new format is ***Loni.Gores@clallamcountywa.gov*** Please update my contact card as your earliest convenience, Thank you!"

Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

COMMITTEE MEETING NOTICE
CLALLAM COUNTY CHARTER REVIEW COMMISSION

The Charter Review Commission Ethics Committee has scheduled an Ethics Committee meeting to be held on September 2, 2025 at 1:30 p.m. in the Board of Board Room 160, 223 East 4th Street, Port Angeles, WA.

The purpose of the meeting is to discuss ethics and what actions the CRC should consider regarding ethics in county governance.

Zoom:

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 836 9266 4344 and passcode: 12345 and use *9 to raise your hand.

If you would like to participate in the meeting via Zoom video conference, visit https://us06web.zoom.us/j/83692664344 and use meeting ID: 836 9266 4344 and passcode: 12345

Citizens with comments or questions regarding the Charter Review Commission may contact the Clerk of the Charter Review Commission at loni.gores@clallamcountywa.gov or 360-417-2256.

Dated 28th day of August 2025

Loni Gores

Loni Gores, MMC
Clerk to the Charter Review Commission

Clallam County Charter Review Commission Ethics Committee
September 2, 2025 at 1:30 p.m.
Board of Commissioner Board Room 160, 223 East 4th Street, Port Angeles, WA

Agenda

- Welcome and Roll Call
- Review and discussion of proposed Charter amendment creating an Ethics Review Board
- Public comment
- Next meeting

Zoom:
If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 836 9266 4344 and passcode: 12345 and use *9 to raise your hand.

If you would like to participate in the meeting via Zoom video conference, visit https://us06web.zoom.us/j/83692664344 and use meeting ID: 836 9266 4344 and passcode: 12345

Citizens with comments or questions regarding the Charter Review Commission may contact the Clerk of the Charter Review Commission at loni.gores@clallamcountywa.gov or 360-417-2256.

Gores, Loni

From: Gores, Loni
Sent: Friday, September 5, 2025 12:21 PM
To: Benedict, Bill; Boughton, Dee; Cameron, Ron; Fane, Alex; Fisch, Susan; Fleck, Rod; Hodgson, Mark; Holy, Christy; Morris, Patti; Noble, Chris; Pickett, Paul; Richards, Ron; Sarmiento, Nina; Stoffer, Jim; Tozzer, Jeff; Walde, Cathy
Cc: Gores, Loni
Subject: Land Acquisition Committee Meeting - September 9
Attachments: Committee Notice Land 9-9-25 Full Copy.pdf

CRC,

Attached is the Land Acquisition Committee meeting notice for September 9:

1) Land Acquisition Committee meeting notice on September 9 at 1 p.m. at **Forks City Council Chambers.**

The notices have been posted on the County website at the following links:
CRC page: https://www.clallamcountywa.gov/210/Charter-Review-Commission-CRC
County homepage: https://www.clallamcountywa.gov/

I've also emailed to the press/media, posted on the BOCC office door and the courthouse public notice board.

Loni

"My email address has changed! The new format is ***Loni.Gores@clallamcountywa.gov*** Please update my contact card as your earliest convenience, Thank you!"

Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

COMMITTEE MEETING NOTICE
CLALLAM COUNTY CHARTER REVIEW COMMISSION

The Charter Review Commission Land Acquisition Committee has scheduled a Land Acquisition Committee meeting to be held on September 9, 2025 at 1 p.m. at Forks City Council Chambers, 500 East Division Street, Forks, Washington 98331

The purpose of the meeting is to discuss the Land Acquisition issue raised by CRC Commissioners and Citizens and consider the possibility of a Charter amendment or recommendation.

<u>Zoom:</u>
If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 867 6308 5924 and passcode: 12345 and use *9 to raise your hand.

If you would like to participate in the meeting via Zoom video conference, visit https://us02web.zoom.us/j/86763085924?pwd=jUsyafSSZi2DBX33bNYHLJboJ1sZbI.
and use meeting ID: 867 6308 5924 and passcode: 12345

Dated 5th day of September, 2025

Loni Gores

Loni Gores, MMC
Clerk to the Charter Review Commission

Clallam County Charter Review Commission Land Acquisition Committee Meeting
September 9, 2025, at 1 p.m.
Forks City Council Chambers, 500 East Division Street, Forks, Washington 98331

Agenda

- Welcome and Roll Call
- Introduction of Committee Members / Brief Comments on Issue
- Approval of Minutes from 7/28/25, 8/13/25, and 8/26/25 Committee Meetings
- Public Comment
- Discussion of 9/3/25 Prosecuting Attorney's Advice on Trust Land Transfer Law
- Discussion of Next Steps / Proposed Charter Amendment
- Public Comment
- Schedule the Next Meeting
- Adjournment

Zoom:
If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 867 6308 5924 and passcode: 12345 and use *9 to raise your hand.

If you would like to participate in the meeting via Zoom video conference, visit https://us02web.zoom.us/j/86763085924?pwd=jUsyafSSZi2DBX33bNYHLJboJ1sZbI.
and use meeting ID: 867 6308 5924 and passcode: 12345

Citizens with comments or questions regarding the Charter Review Commission may contact the Clerk of the Charter Review Commission at loni.gores@clallamcountywa.gov or 360-417-2256

Correspondences
Ed Telenicy
9/8/25

Gores, Loni

From: emt@gmail.com <etelenick@gmail.com>
Sent: Monday, September 8, 2025 5:59 AM
To: Gores, Loni; Ozias, Mark; French, Mike; Johnson, Randy
Subject: Fwd: Public comment regarding Town Hall amendment propsal

Some people who received this message don't often get email from etelenick@gmail.com. Learn why this is important

Good morning Loni
I am trying to get this email included into the record as a public comment. I am unsure if it should go into the normal BOCC minutes or the CRC minutes but I would prefer that it ended up in both places if possible.
Thanks, ed

---------- Forwarded message ---------
From: **emt@gmail.com** <etelenick@gmail.com>
Date: Tue, Sep 2, 2025 at 6:24 AM
Subject: Public comment regarding Town Hall amendment propsal
To: <Ron.cameron@clallamcountywa.gov>, <ron.richards@clallamcountywa.gov>, <nina.sarmiento@clallamcountywa.gov>, <jeff.tozzer@clallamcountywa.gov>

Commissioners,

While I appreciate the time and effort you spent drafting this town hall amendment, I am very disappointed that concerns I raised at a previous general meeting were ignored and that you are limiting this amendment to a single department.

This Charter amendment proposal should have included other elected officials besides the 3 Commissioners. At least the public has the ability to engage the BOCC Commissioners once a week through public comment periods, whether they verbally respond or not. The eye rolls, yawns, heads bowed in shame, and angry stares are all non verbal responses that are instructive to those of us who have tried to engage them. They provide important feedback to citizens that will help guide future voting decisions.

Our other tax supported elected officials have zero requirements to engage their constituents or to EVER appear before citizens. Many of the problems brought before the BOCC aren't even in their wheelhouse and they have little control over these other elected officials.
Although some of these officials are accessible to individuals, the majority of the public doesn't have the luxury of benefitting from those private conversations or watching how they respond to real time interactions. A town hall requirement would make them more accountable to the voting public, which should be your priority! It would also be much simpler to organize because those officials are not district oriented. They represent ALL of us...or are supposed to.

The entire exercise of requiring a town hall with an amendment wouldn't even be necessary if our elected officials would just voluntarily do what they should be doing. Perhaps an MOU could accomplish the same thing without codifying it within the charter?
The recent quasi question and answer session after last week's BOCC meeting shows dialog is possible without an official amendment.

It will be a miracle if this amendment passes through this dysfunctional CRC without being edited, debated or whatever it is that happens when 15 different people with political or business agendas come together. Throw in the advice of lawyers whose sole purpose is to protect the County's interests and it's not hard to predict the outcome..

With only 4 months left in this session and then 5 more years to wait for another Commission, it is sad that so little substantive progress has been made while so many hours have been spent arguing Robert's Rules Of Order, nuances within the OPMA, bickering among yourselves about your rights, editing sentences, or drafting motions about whether you can ask the civil attorney a question about whether the commission can ask the civil attorney a question. It would be laughable if it wasn't squandering valuable time and resources.

Maybe I'm just too old and bitter at this point to expect common sense, but if these town halls do end up as a Charter requirement in 2026 I predict they will end up like most County business (court proceedings, advisory committee meetings, board meetings, work sessions) that I have spent the last 3 1/2 years and hundreds if not thousands of hours attending either in person or virtually; and that it will be a more productive use of time for citizens to watch funny cat videos than to attend.

Anyway, at least this subcommittee seems to be directed towards what I believe the primary purpose of a Home Rule Charter actually is! Please do your best to keep it out of the weeds and consider my suggestions.

Thanks again for the time you have committed. I just hope it isn't fruitless.

Ed telenick

p.s. I also echo Mr. Bowen's comment about the frustration of not having documents to look at and am thankful I didn't waste those two hours this week sitting in the audience watching you guys scribble notes on a piece of paper or a computer screen.

CHARTER REVIEW COMMISSION

Correspondences end page