

# Planning Commission Protocols: Open Public Meetings, Public Records, & Appearance of Fairness Doctrine

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# Presentation Overview:

- Open Public Meetings Act (OPMA) Requirements
  - Chapter 42.30 RCW
- Public Records Act (PRA) Requirements/Retention
  - Chapter 42.56 RCW
- Appearance of Fairness Doctrine requirements
  - Chapter 42.36 RCW



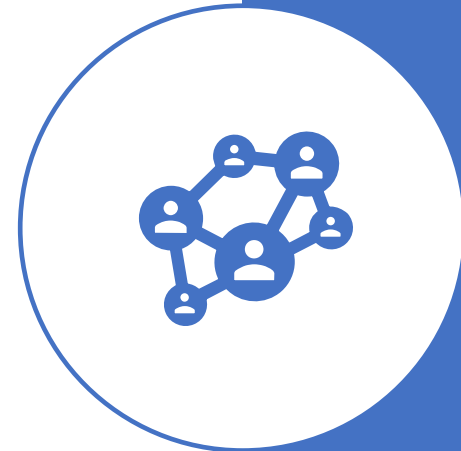
# Open Public Meetings Act (OPMA) Chapter 42.30 RCW

## Legislative Declaration

- “The people, in delegating authority, do not give public servants the right to decide what is good for the people to know and what is not good for them to know.”
- “The people insist on remaining informed so they may retain control over the instruments they have created.”

## Rules

- Meetings declared open and public.
- All Meetings of the Governing Body Shall be Open and Public – Gavel to Gavel
- All Persons Shall be Permitted to Attend any Meeting of the Governing Body, Except as Otherwise Provided by Law
- The Purpose of the OPMA is to Allow the Public to View the “Decision-making Process”



# Open Meetings

## Important Definitions:

- **Meetings** – All meetings under State Statute are considered Regular Meetings if codified at a regular date, place, and time. Any other meeting is considered a Special Meeting. Meetings are considered to occur when a quorum of the Membership takes “Action.”
- **Action** – Means the Transaction of Official Business
  - Public Testimony; All Deliberations; Discussions; Considerations; Reviews; Evaluations
  - Final Actions – the OPMA is in Effect Whether or Not “Final” Action is Taken



- Regular Business Meetings
- Special Meetings
- Executive Sessions
- Attendance at Others' Meetings
- Attendance at Social Events
- Serial Meetings

## Open Meetings: Types of Meetings



# Open Meetings

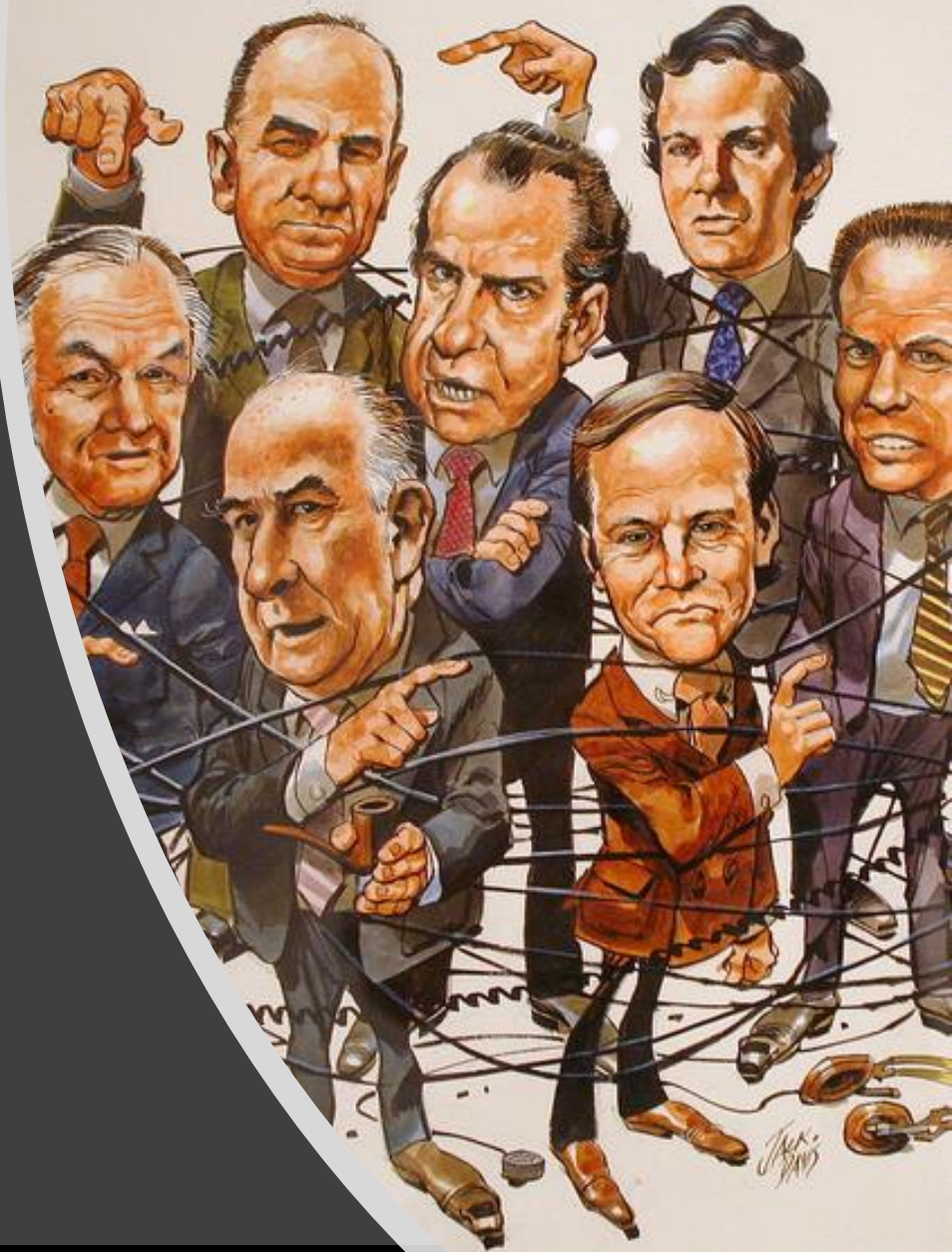
## Use of Social Media

- When conducting city business using social media, use disclaimers (or link)
- Clearly distinguish your personal view from official City / entire Council position on a topic
- Avoid a quorum of the Council discussing city business using the same social media platform or post



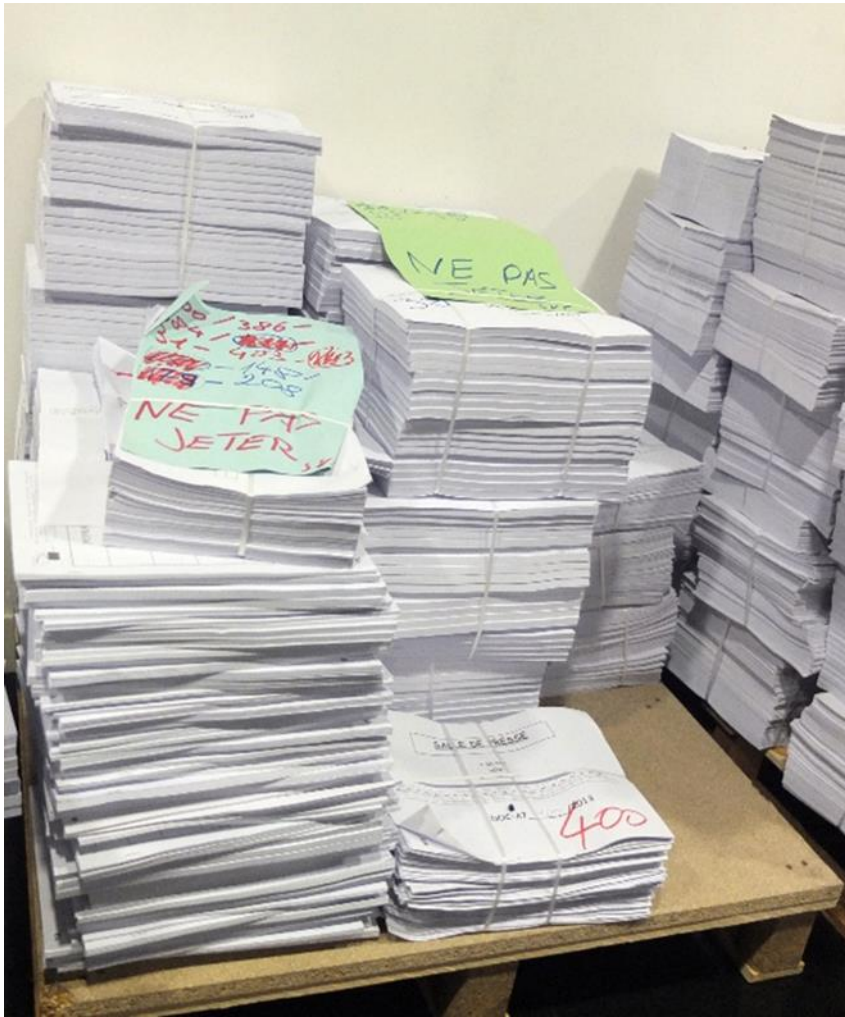
# Public Records Act Chapter 42.56 RCW

- PRA is “a strongly worded mandate for broad disclosure of public records.” *Hearst v. Hoppe*, 90 Wn. 2d 123 (1978).
- Requires all agencies to disclose public records unless an exemption applies.
- Imposes fines for non-compliance.
- Act requires strict compliance





# What does the PRA require agencies to do?



- Appoint a Public Records Officer
- Adopt rules of procedure that address production, proper keeping, and fullest and timely assistance in response
- Publish procedures describing certain agency organization, operations, rules, and other items listed in PRA
- Publish PRA fee schedules
- Provide for a review
- Procedure for any denial of records
- Publish information related to where requests must be submitted



# Searching and Providing Records

- Searches
  - Agency must conduct adequate search – consider all forms, all locations, all possible search terms, all possible forms of records
  - Search criteria; time taken to produce records, and areas searched must all be documented
- Installments
  - Records can and should be provided in installments if the request is very large or time-consuming



# Statutory Exemptions



- Exemptions
  - Not all records, or parts of records, are disclosable – depends on the information contained in the record and if a legal exemption applies
  - Exemptions are narrowly construed
  - An Exemption Log must be prepared and given to requestor noting legal reason record/part of record was redacted
- Privacy:
  - There is no general “privacy” exemption in the PRA
    - Privacy is considered invaded only if (1) highly offensive to the reasonable person and (2) not of legitimate concern to the public



# Duty to Preserve Records

## Legal Penalties, Including Fines and Imprisonment

**RCW 40.16.010 Injury to public record.** Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office, or with any public officer, by authority of law, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both.



# Enforcement and Penalties

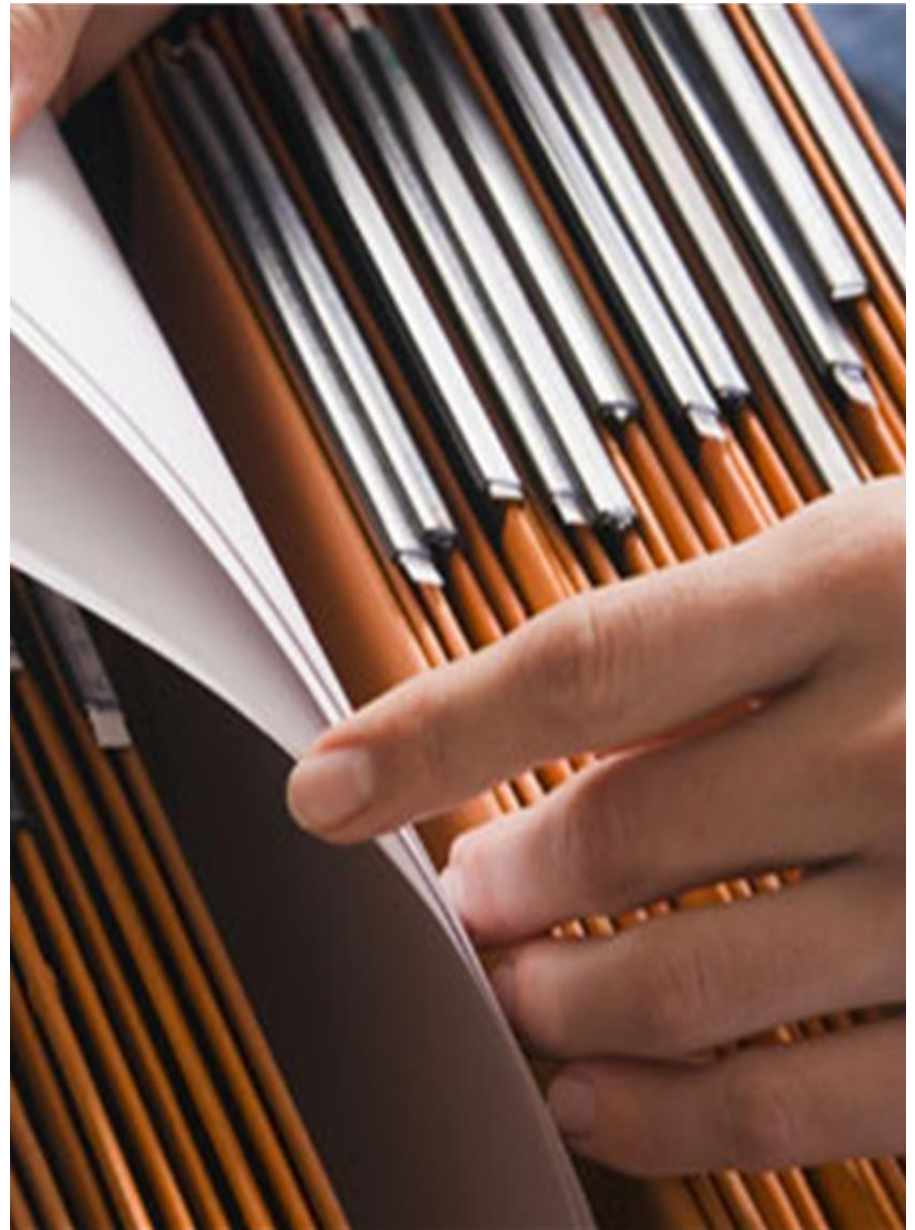


RCW 42.56.550(4) Judicial review of agency actions.

- Requestors – Awarded Attorney Fees
- Discretion of the court to award such person an amount not-to-exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

# Records Retention

- Maintenance of Records:  
<https://www.sos.wa.gov/archives/recordsmanagement/managing-city-records.aspx>
- Local Gov't Common Records Retention Schedule (CORE)
- Records in Native File Format
- Records Born Electronically
- As noted earlier, there can be criminal liability for willful destruction or alteration



# Duty to Produce Records

- **Business Records (Public) vs. Personal Records (Private)**
  - When Creating a Record as a Member vs. as an Individual
  - Records Kept on City Equipment vs. Personal Equipment
  - Business Records Received or Sent Outside of City Resources
- **What Do You Need to Keep?**
  - Primary Records vs. Secondary Records
  - Cc'd Copies That You Do Not Proliferate as a New Record
  - Transitory Records – Have No Retention Value
  - What About Everything Else?
  - Commission Archive



# APPEARANCE OF FAIRNESS DOCTRINE

## Chapter 42.36 RCW

- Codified RCW Chapter 42.36 (1982)
- Only 11 Sections
- No Purpose Statement
- Limited to Quasi-Judicial Matters
- Creates Objective & Subjective Standards

### Legal Standard

- Would a reasonable person
- Apprised of the totality of a member's personal interest or involvement
- Be reasonably justified in thinking
- That the involvement might affect the member's judgment?

*Swift v. Island Co.*, 87 Wn. 348 (1976)

# APPEARANCE OF FAIRNESS DOCTRINE

## Applies to Quasi-judicial Actions

- Acting like a judge
- Making judicial-like decisions

## Quasi-judicial Characteristics

- Retrospective
- Specific parties
- Applies existing law or rules to conform conduct
- Hearing or other contested forum/action
- Determines rights, duties or privileges

# FUNDAMENTAL DISTINCTION

## Legislative Decisions

- Prospective: Make Law to Achieve Broad Policy Objectives
- Set Direction and Policy; Dynamic Behavioral/Conduct Changes
- Limited Procedural Safeguards

## Quasi-Judicial Decisions

- Retrospective: Conform Conduct to Existing Law
- Contested Case Setting with Identified Parties
- Procedural and Substantive Due Process Safeguards

# APPEARANCE OF FAIRNESS DOCTRINE

RULE: No *ex parte* contacts with opponents or proponents during pendency of quasi-judicial action

REMEDY: (1) Disclose the substance of communication, (2) Offer an opportunity for rebuttal & objection

# APPEARANCE OF FAIRNESS DOCTRINE

## AFD Violations; Consequences

- Action Taken Will be Void
- Civil Damages May be Available
  - Bad intent
  - Abuse/misuse of authority
  - Delay of decision/action

QUESTIONS?

