

# City of Langley Open Public Meetings Act Training

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# Legislative Declaration

The legislature ... 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.**

RCW 42.30.010

# Meetings declared open and public

All meetings of the governing body of a public agency shall be open and public ..., except as otherwise provided in this chapter.

RCW 42.30.030

# Today's Format

- What is considered a “meeting” subject to the OPMA?
- When can a meeting be closed to the public?
- Impact of technology on OPMA.
- What are ramifications of “meeting” held in violation of the OPMA?

# Definitions

“**Meeting**” means meetings at which **action** is taken.

RCW 42.30.020(4)

# Definitions

“**Action**” is defined by statute as:

**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.

RCW 42.30.020 (3)

# Transitive Property

Remember this?

$$A = B$$

$$B = C$$

$$A = C$$

# Transitive Property of the OPMA

Meeting = Action

Action = Discussion of official  
business

Meeting = Discussion of official  
business



## Meetings of whom?

All meetings of the governing body of a public agency shall be open and public ..., except as otherwise provided in this chapter.

RCW 42.30.030

# Definitions

(2) “**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.

RCW 42.30.020

# Definitions

(1) “Public agency” means:

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

RCW 42.30.020

# Definitions

(1) “Public agency” means:

(c) 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;

RCW 42.30.020

# Governing Body?

Can the task force of a planning board be considered a governing body?

# Clark v. City of Lakewood

Yes. Court held that due to the actions taken by task force, it was a governing body subject to the OPMA.

## Facts:

- Planning Board formed a subcommittee, the Lakewood Adult Entertainment Task Force (“Task Force”), to analyze all aspects of adult entertainment in the city.

# Clark v. City of Lakewood

## Facts:

- Task Force drafted a report on the regulation of adult businesses.
- According to the report itself, it “constitutes the background, findings and conclusions of the Task Force. It represents the basis for which the City may, if it deems it appropriate, amend adult entertainment regulations pertaining to both business and land use operations now or in the future.”

# Clark v. City of Lakewood

So, was the task force a  
“governing body?”

Here's the court...



# Clark v. City of Lakewood

“Based upon these predicates and the statute, we conclude that the **Task Force** is a “governing body of a public agency.” The Task Force was created **as a committee of** the Planning Advisory Board (a “governing body”) and it **took testimony and public comments, conducted hearings and acted on behalf of the Board and the City Council** (both “public agencies”). This places it squarely within the ambit of RCW § 42.30.020(2).”

# Can a meeting occur in private without violating OPMA?

- Yes.
- Permitted to meet in a closed session, referred to as executive session, but only under certain limited circumstances set forth in RCW 42.30.110.

# Cannot Vote in Executive Session

No governing body of a public agency at any meeting required to be open to the public shall vote by **secret ballot**.

RCW 42.30.060

# Procedure for Holding an Executive Session

- Presiding officer must announce in open session purpose of executive session (usually cites to RCW provision) and the time the executive session will end.
- If executive session runs later than planned, Presiding officer must announce the extended time in open session before returning to executive session.
- If end early, open session is not resumed until after the announced time is ended.

# When can an executive session be held?

- Listed in RCW 42.30.110(1).
- Examples:
  - Matters affecting national security. RCW 42.30.110(1)(a)
  - Lease or purchase of real estate if there's a likelihood that disclosure would increase the price. RCW 42.30.110(1)(b).
  - Performance of a public employee. RCW 42.30.110(1)(g).

# Is City Attorney ever required to be part of an executive session?

- Yes.
- Only when discussing legal risks of current or proposed action, agency enforcement actions, or current or potential litigation. RCW 42.30.110(1)(i).
- No other provisions require presence of anyone other than governing body in an executive session.

# Are minutes of an executive session required?

- No.
- Not recommended as purpose of executive session is to meet in confidence and if minutes are taken, the minutes could be subject to disclosure under PRA.

# Can a “meeting” be created via email?

- Yes.
- Email discussions of agency business among majority of members can constitute a “meeting” under the OPMA.
- The majority of the members do not have to be participating in discussion at the same time.
- Unintentional **rolling** quorum can be created.



# Tips when using email

- Passive receipt of information via email is permissible. Discussion of agency business, however, can constitute a meeting.
- If need to email majority of group, do so, but use **blind copy** to prevent responses.
- Or have staff member forward materials to and from majority of council.

# What if a quorum attends a conference or training together?

- Assembly of a quorum is not in violation of the Act when attending a conference, convention or training session, as long as the members do not discuss the information being received or otherwise discuss agency business.

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- Concept of active v. passive receipt.

# Non-Compliance with OPMA

Any action taken at meetings failing to comply with the provisions of this subsection shall be **null and void**.

RCW 42.30.060

# Personal Liability

(1) Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him or her, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars.

RCW 42.30.120

# Agency Liability

- Any person who prevails against an agency in any action in the courts for a violation of the OPMA will be awarded all costs, including attorneys fees, incurred in connection with such legal action. RCW 42.30.120(2)

# Other possible consequences?

- Recall?
- Loss of public trust.

# Questions?