

Open Public Meetings Act (OPMA) Training

Boards, Commissions, and Committees
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Seattle
City Attorney's Office

**To All Members of Boards, Commissions, and
Committees:**

Thank You for Your Service



Purpose of this Training

(Washington State Open Public Meetings Act, Chapter 42.30 RCW)

The OPMA in one sentence:

Meetings of the City of Seattle's governing bodies (the City Council, Council Committees, and Boards/Commissions/Committees) must be open to the public, unless exceptions apply.

Why are we doing this?

- You are members of a “governing body” under the OPMA.
- Such training is mandatory within 90 days of taking the oath of office or assuming duties.
- Refresher training is required every four years.
- Transparency obligations – See OPMA Legislative Declaration and Purpose.

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Purpose of the OPMA

(First Adopted in 1971)

The State Legislature sets forth the OPMA's purpose in RCW 42.30.010.

- All public commissions, boards, councils, committees, subcommittees, ... and all other public agencies of this state ... exist to aid in the conduct of the people's business.
- Their actions are to be taken openly and their deliberations are to be conducted openly.
- The people of this state do not yield their sovereignty to the agencies which serve them.



Purpose of the OPMA (continued)

(First Adopted in 1971)

- The people ... 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.



Potential Consequences for Violating the OPMA

- As a general matter, OPMA violations can lead to a loss of public trust in the City's commitment to transparency and open government.
- Any ordinance, resolution, rule, regulation, order, or directive adopted at an illegal meeting is null and void.
- OPMA violations could potentially serve as a basis to remove a member of a board, commission, or committee from that governing body.
- A court could impose individual penalties for knowing violations:
 - \$500 fine for the first violation
 - \$1,000 for any subsequent violation
 - Costs and attorney fees



What is a Meeting?

- “Meeting” means meetings at which the governing body takes “action.” RCW 42.30.020.
- In practice, a meeting is:
 1. A gathering of a quorum (i.e., a majority) or more of the board, commission, or committee; and
 2. At such a gathering, the participating members of the governing body have the collective intent of transacting the business of the board, commission, or committee.
- By extension, key questions to consider are:
 1. Is there a quorum of the board, commission, or committee participating in the gathering?
 2. If so, do those members have the collective intent to transact business on behalf of the board, commission, or committee?

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“Meeting” - Further Considerations

- The OPMA can apply even if a quorum of the governing body gathers by email, telephone, or video conference.
- If the prerequisites for a meeting are present (i.e., a quorum and the collective intent to conduct business on behalf of the governing body), the gathering is a “meeting” under the OPMA, regardless of how it is titled (e.g., workshop, retreat, study session).



Action

- “Action” means the transaction of the official business of the City by a governing body.
- It includes but is not limited to:
 - Receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.
- Note that the requirements of the OPMA can apply even if the governing body is not taking final action on a matter. (See upcoming slide on “Final Action.”)



Final Action

- “Final action” means a collective positive or negative decision, or an actual vote, by a majority of the governing body, on a motion, proposal, resolution, order, or ordinance.
- “Final action” can also occur via a subcommittee of a board, commission, or committee if that subcommittee is acting on behalf of the governing body.
- Secret ballots are prohibited.
- Final action must occur publicly in open session.
- “Final action” has significance as well related to public comment requirements (see upcoming slide).



Regular Meetings

Regular meetings are recurring meetings held in accordance with a periodic and fixed schedule as established ordinance, resolution, bylaw, or rule.

- The agenda must be posted online to a City website at least 24 hours in advance.
- The agenda can be modified subsequently.
- There are no restrictions on legally transacted business.
- Public comment may be required (see upcoming slide).

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Special Meetings

A **Special** meeting is any other type of meeting of the board, commission, or committee which is not a Regular meeting.

- May be called by the presiding officer, OR by a majority of members of the board, commission, or committee.
- It is permissible under the OPMA for a majority of the members of a board, commission, or committee to communicate with each other for the limited purpose of scheduling a special meeting.



Special Meetings (continued)

- Notice for a Special meeting must be provided at least 24 hours in advance of the meeting.
- A key difference between a Regular meeting and a Special meeting is that for a Special meeting:
 - Final disposition (i.e., final action) shall not be taken on any matter that is not included on the agenda that is published 24 hours in advance of the meeting.



Special Meetings (continued)

- The notice for a Special meeting must (and see following slide):
 - Be in writing;
 - State the time and place of the meeting; and
 - State the business to be transacted (agenda).
 - Limited Exception*: Not required if the Special meeting is called to deal with certain emergencies in certain situations, or when the required notice cannot be posted or displayed with reasonable safety.



Special Meetings (continued)

- The Special meeting notice must also:
 - Be provided to each member of the board, commission, or committee (unless waived);
 - Be provided to each local newspaper of general circulation, radio, and TV station which has a notice request on file with the City;
 - Be posted on the City's website; and
 - Be prominently displayed at the main entrance of the City's principal location, as well as at the meeting site if it is not the same location and is not held as a remote meeting.

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Rolling or Serial Meetings

- Such a meeting can occur if “action” is taken by a majority of the board, commission, or committee, even if the members are not in the same place at the same time.
- A key consideration is whether the members at issue had a collective intent to meet to transact the governing body’s business.
- Communication exchanges between board, commission, or committee members on social media can implicate the OPMA.
- Passive receipt of information is acceptable (see upcoming slides).

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Serial Meetings (Caselaw Insights)

- In *Citizens Alliance v. San Juan County*, 184 Wn.2d 428 (2015), the Court found no OPMA violation where:
 - The Commissioners were not aware that the communications included a majority of members, there was not a collective intent to meet to transact the governing body's business, and passive receipt of information is not action under the OPMA.
- In *Egan v. City of Seattle*, 14 Wn.App.2d 594 (2020), the Court raised OPMA concerns regarding:
 - Multiple communications between Councilmembers over a few days, including in-person meetings, emails, phone calls, text messages, and distribution of a draft press release.



Serial Meetings & Drafts

- Recommendations related to situations in which members of a board, commission, or committee (i.e., “governing body” or “body”) are working on a draft document:
 - It is legally acceptable for a subcommittee or working group of less than a majority of the body to work together on a draft document and to communicate with each other about it.
 - The draft from that subgroup can then be included on a meeting agenda for the full board, commission, or committee to consider and discuss.
 - In such a situation, the intent would be that the subgroup’s draft would be a recommendation for the full body to consider, with the understanding that the recommendation from the subgroup is purely advisory.



Serial Meetings - Practice Tips

- Passive receipt of information via email is permissible, but work from the presumption that discussion of board/commission/committee business via email by a majority of the body would constitute a meeting.
- An email to a majority or more of your colleagues on the board/commission/committee is allowable when the message is to provide only documents or factual information, such as emailing a document to all members for their review prior to the next meeting.
- If you as a board/commission/committee member provide information or documents via email to a majority of members of the board/commission/committee, especially regarding a matter that may come before the body for a vote, have the first line of the email clearly state: **“For informational purposes only. Do not reply.”**

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Serial Meetings - Practice Tips (continued)

- Unless for informational purposes only, don't send an email to all or a majority of the governing body, and don't use "reply all" when the recipients are all or a majority of the members of the governing body.
- Alternatively, instead of emailing materials to your colleagues on the governing body in preparation for a meeting, have a designated staff member email the documents or provide hard copies to each member.
- A staff member can communicate via email with members of the governing body in preparation for a meeting, but the staff member needs to take care not to share any email replies with the other members of the governing body as part of that email exchange.



Meeting Formats

Required – Physical Meeting Locations:

- Absent an emergency (see upcoming slide), in-person attendance must be an option for the public.
- All board, commission, or committee members can attend remotely if the bylaws allow for such participation.

Remote attendance is in addition to, and not instead of, in-person attendance at meetings.

- If remote attendance is allowed, it should be free and offer real-time observation and participation.
- Allow for telephone or other electronic means to access the meeting (e.g., video via computer and internet).

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Public Attendance at Meetings

A board, commission, or committee cannot require:

- Attendees to register their name and other information, to complete a questionnaire, or otherwise fulfill a condition precedent to their attendance.
- Attendees to provide their mask or vaccination status, unless required by law.

However, the governing body may:

- Adopt generally applicable conditions determined by the governing body to be reasonably necessary to:
 - Protect the public health or safety, or
 - Protect against interruption of the meeting.



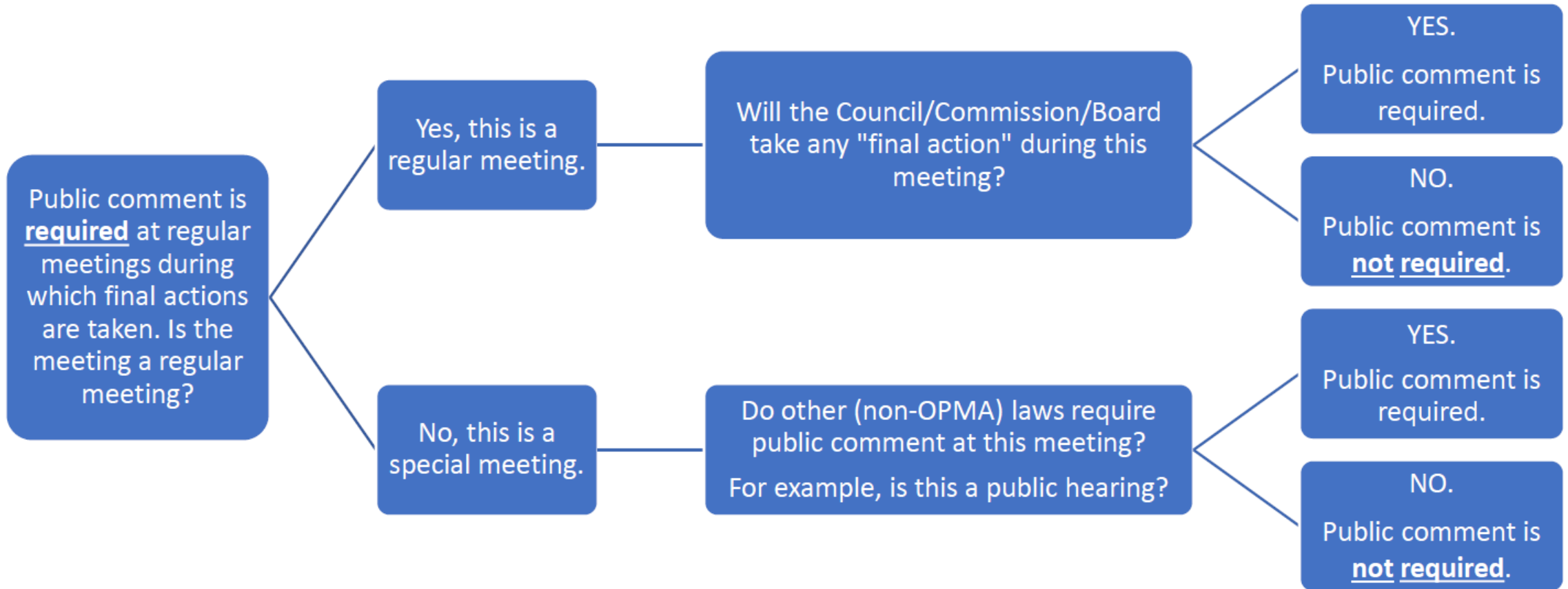
Public Comment

- Public Comment is required for regular meetings at which “**final action**” is taken (see previous slide on that topic).
- The decision tree on the next slide provides helpful guidance.
- The governing body is authorized to deal with interruptions, and is not required to accept public comment that renders orderly conduct of the meeting unfeasible (see upcoming slide).



IS PUBLIC COMMENT REQUIRED?

(ESHB 1329, effective June 9, 2022)



Public Comment (continued)

Except in an emergency situation, oral or written public comment is required prior to taking final action at a regular meeting.

Oral Public Comment – If allowed:

- May limit comment to items on the agenda.
- May place time limits on speakers (e.g., 3 minutes)
- Upon request, the governing body shall, when feasible, provide people with a disability, limited mobility, or another reason making physical attendance difficult, the opportunity to make oral comment remotely.

Written Public Comment:

- May limit comment to items on the agenda.
- Written testimony must be distributed to the governing body.
- The governing body may set a reasonable deadline for the submission of written testimony before the meeting.



Executive Session

- Not open to the public.
- **Confidential**, with or without attorneys.
- Part of a regular or special meeting.
- Only allowed for the **specific purposes** set forth in RCW 42.30.110 (*see MRSC guide*).
- Not the same as a “Closed Session” (quasi-judicial proceedings like appeals – see upcoming slide).



Executive Session (continued)

- The **purpose** of the executive session and **the time it will end** must be announced by the presiding officer before it begins.
- What if the Executive Session requires **more time** than announced?
 - Time may be extended by further announcement.
- What if the Executive Session requires **less time** than announced?
 - Do not start the open session earlier than the stated end time.
- The announced purpose of the executive session must be entered into the minutes for the regular or special meeting.



Executive Session (continued)

- Only persons necessary for the executive session are to attend the executive session.
- If the regular or special meeting that the executive session is a part of is a hybrid or remote meeting, utilize technological options to ensure only those who are necessary for the executive session are included in the session.
 - For example, the “waiting room” function could be utilized to admit participants.



Closed Session

- Not applicable to every board, commission, or committee.
- When applicable (see next slide), a closed session is a type of meeting of a board, commission, or committee in which “this chapter shall not apply” under RCW 42.30.140.
- This means that the requirements of the OPMA do not apply to such sessions or meetings.



The OPMA Does Not Apply To, and Closed Sessions Are Allowed Related To:

1. Quasi-judicial proceedings.
 - 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.
2. Collective bargaining sessions and labor negotiations.
3. Certain licensing proceedings.
4. Matters governed by Chapter 34.05 RCW, the Administrative Procedures Act.



Minutes

- Minutes of regular and special meetings must be promptly recorded and open to public inspection.
 - “Recorded” here does not mean via an audio or video recording. Rather, “recorded” means the preparation of a written document that constitutes the minutes for the meeting.
- Minutes of an executive session are not required. However, the purpose of each executive session must be recorded in the minutes of the regular or special meeting.
- State law does not require that minutes be prepared in a specified format.



Meeting Interruptions and Disruptions

- May stop people from speaking to the governing body when not recognized by the governing body to speak. RCW 42.30.050.
- In the event a meeting is interrupted by an individual or individuals so as to render the orderly conduct of such meeting unfeasible, and order cannot be restored by the removal of individuals who are interrupting the meeting, the OPMA has a process for addressing such situations.
- Under that process, the meeting room may be cleared and the meeting may continue, or the meeting may be adjourned and reconvened at another location.
- Final disposition may be taken only on matters appearing on the agenda.
- Members of the media who did not participate in the disturbance shall be allowed to attend any such session.
- The governing body may establish a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting.

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Emergencies and Remote Meetings

If the federal government, the state, or the City declares an emergency; and

If the City determines it cannot hold a meeting in person with reasonable safety where members or the public are in attendance because of the emergency;

Then, the meeting can be fully remote, or have limited physical attendance.

- The public must have real-time, free listening access.
- Notice of the meeting (if required) must include remote participation instructions.



Five Key Takeaways

1. A primary purpose of the OPMA is to provide for **transparency** to the public related to the City's business. In the interest of transparency, you may find that the work of the board, commission, or committee on which you serve is not as efficient as you would like.
2. This OPMA training is not only an important guide regarding your role for the City, but it is also a **legal requirement**.
3. It is important that you know the difference between a **regular** meeting and a **special** meeting.
4. It is important for you to be aware of what constitutes a **rolling** or **serial** meeting.
5. It is important for you to be aware of how to lawfully use **technology** in a manner that complies with the OPMA.

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Questions?

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