

Open Public Meetings Act

PRACTICE TIPS

For Local Government Success



The basic requirement of the Open Public Meetings Act (OPMA) is that meetings of governing bodies be open and public. Use these practice tips to guide your agency's OPMA compliance.* *For more information and resources visit www.mrsc.org/opmapra.*

Basic Requirements

- **All meetings open and public.** All meetings of governing bodies of public agencies must be open to the public, except for certain exceptions outlined in the OPMA. *RCW 42.30.030.*
- **Quorum.** Generally, a meeting occurs when a quorum (majority) of the governing body is in attendance and action is taken, which includes discussion or deliberation as well as voting. *RCW 42.30.020(2) & (3).*
- **Attendees.** All persons must be permitted to attend and attendees cannot be required to register their names or other information as a condition of attendance. Disruptive and disorderly attendees may be removed. *RCW 42.30.040 & .050.*
- **No secret ballots.** Votes may not be taken by secret ballot. *RCW 42.30.060(2).*
- **Adoption of ordinances.** Ordinances, resolutions, rules, regulations, and orders must be adopted at a public meeting or they are invalid. *RCW 42.30.060(1).*

Position in Agency	Required to Comply
Member of a governing body <ul style="list-style-type: none"> <input type="checkbox"/> City or Town Councilmember or Mayor <input type="checkbox"/> County Commissioner or County Councilmember <input type="checkbox"/> Special Purpose District Commissioner/Board Member 	Yes
Member of a subagency created by ordinance or legislative act, e.g.: <ul style="list-style-type: none"> <input type="checkbox"/> Planning Commission <input type="checkbox"/> Library Board <input type="checkbox"/> Parks Board <input type="checkbox"/> Civil Service Commission 	Yes
Member of a committee <ul style="list-style-type: none"> <input type="checkbox"/> Committees that act on behalf of the governing body, conduct hearings, or take testimony or public comment 	Yes
Agency staff	No

Penalties for Noncompliance

- **Actions null and void.** Any action taken at a meeting which fails to comply with the provisions of the OPMA is null and void. *RCW 42.30.060(1).*
- **Personal liability.** Potential personal liability of \$100 for any member of a governing body who attends a meeting knowing that it violates the OPMA. *RCW 42.30.120(1).*
- **Agency liability.** Any person who prevails against an agency in any action in the courts for a violation of the OPMA will be awarded all costs, including attorney fees, incurred in connection with such legal action. *RCW 42.30.120(2).*

OPMA Training Requirements, Effective July 1, 2014

- Every member of a governing body of a public agency must complete training requirements on the OPMA within 90 days of assuming office or taking the oath of office.
- In addition, every member of a governing body must complete training at intervals of no more than four years as long as they remain in office.

PRACTICE TIPS

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These practice tips are intended to provide practical information to local government officials and staff about electronic communications and requirements under the Open Public Meetings Act (OPMA), chapter 42.30 RCW. Electronic communications between members of an agency’s governing body can implicate the OPMA, and these practice tips will help guide you in identifying and addressing key issues in this regard.* *For more information and resources visit www.mrsc.org/opmapra.*

An Email Exchange Can Constitute a Meeting

If you, as a member of the governing body (e.g., city council, board of commissioners, planning commission), communicate with other members of the governing body by email, keep in mind that email exchanges involving a majority of members of the governing body can constitute a “meeting” under the OPMA. This principle also applies to text messaging and instant messaging.

What types of email exchanges can constitute a meeting? If a majority of the members of the governing body takes “action” on behalf of the agency through an **email exchange**, that would constitute a meeting under the OPMA. Note that taking “action” under the OPMA can occur through mere discussion of agency business, and that any “action” may be taken only in a meeting open to the public. The participants in the email exchange don’t have to be participating in that exchange at the same time, as a “serial” or “rolling” meeting can occur in violation of the OPMA.

Recommendations: As a member of the governing body, consider the following tips to avoid potential OPMA violations:

1

- Passive receipt of information via email is permissible, but discussion of issues via email by the governing body can constitute a meeting.
- An email message to a majority or more of your colleagues on the governing body is allowable when the message is to provide only documents or factual information, such as emailing a document to all members for their review prior to the next meeting.
- If you want to provide information or documents via email to other members of the governing body, especially regarding a matter that may come before the body for a vote, have the first line of the email clearly state: “For informational purposes only. Do not reply.”
- Unless for informational purposes only, don’t send an email to all or a majority of the governing body, and don’t use “reply all” when the recipients are all or a majority of the members of the governing body.
- Alternatively, rather than emailing materials to your colleagues on the governing body in preparation for a meeting, have a designated staff member email the documents or provide hard copies to each member. It’s permissible, for example, for a staff member to communicate via email with members of the governing body in preparation for a meeting, but the staff member needs to take care not to share any email replies with the other members of the governing body as part of that email exchange.

2

Phone Calls and Voice Messages Can Constitute a Meeting

As with email exchanges, if a majority of the members of the governing body is taking "action" (see above) on behalf of the agency through phone calls or a voice mail exchange, that would constitute a meeting. Such a "telephone tree" occurs, for example, when members call each other to form a majority decision. As above, the calls and messages can constitute a serial or rolling meeting.

3

Key Consideration Related to Conferring to Call a Special Meeting

Under RCW 42.30.080, a special meeting (in contrast to a regular meeting) may be called at any time by the presiding officer of the governing body or by a majority of the members of the governing body. In order to give effect to this authority granted under RCW 42.30.080, we believe it's permissible for a majority of the members of the governing body to confer outside of a public meeting for the sole purpose of discussing whether to call a special meeting. This includes conferring for that purpose via electronic communications (e.g., email).

4

Use of Social Media Can Implicate the OPMA

Question: If members of the governing body use social media (e.g., through a Facebook page or Twitter feed) to host a discussion about issues related to the agency, and the discussion includes comments from members of the governing body, could that violate the OPMA?

Answer: If the discussion includes comments from a majority of the members of the governing body, that discussion could constitute a public meeting under the OPMA. There's no authority under the OPMA regarding what would constitute adequate public notice – if that's even possible – for this kind of virtual meeting, so it's best to avoid this type of discussion on social media.

Recommendation: Social media can be an effective tool to solicit comments from the public, but social media shouldn't be used by your agency's governing body to collectively formulate policy.

5

Failure to Comply with the OPMA Can Be Costly

Violation of the OPMA can result in personal liability for officials who knowingly violate the OPMA and in invalidation of agency actions taken at a meeting at which an OPMA violation occurred. Attorney fees and court costs are awarded to successful OPMA plaintiffs. OPMA violations can also lead to a loss of public trust in the agency's commitment to open government.

*DISCLAIMER: These practice tips are meant to provide practical information to local government officials and staff about electronic records and requirements under the OPMA. The tips aren't intended to be regarded as specific legal advice. Consult with your agency's attorney about this topic as well.

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Addressing Disruptions at Public Meetings

April 18, 2012 by [Ramsey Ramerman \(/Home/Stay-Informed/MRSC-Insight.aspx?aid=92\)](/Home/Stay-Informed/MRSC-Insight.aspx?aid=92)
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By Ramsey Ramerman, Assistant City Attorney, City of Everett

When members of the public disrupt a public meeting, the disruption poses several challenges for the governing body. A recent incident at a local school district highlights the procedural hoops a governing body must go through if they attempt to address the disruption by adjourning the meeting and reconvening it in another location. A recent federal case from California exposes liability risks when the governing body seeks to have a person removed from the meeting. Both incidents provide lessons for governing bodies seeking to comply with the Open Public Meetings Act (OPMA).

Mechanics of Adjourning and Reconvening a Public Meeting After a Disruption

The local school district board was facing a crowd of nearly 500 attendees angry about the board's proposed action of accepting the resignation of a popular school principal. The crowd erupted with the board prepared to vote, disrupting the meeting preventing the vote. The board then voted to adjourn the meeting and reconvened at the district offices to conclude the meeting. The press was provided notice of the new location and was in attendance.

The OPMA expressly provides that adjournment as one of the three possible remedies for addressing disruptions. Removing the disrupters and having the room cleared are the other two options. See [RCW 42.30.050 \(http://app.leg.wa.gov/rcw/default.aspx?cite=42.30.050\)](http://app.leg.wa.gov/rcw/default.aspx?cite=42.30.050). But for the adjournment option to work, the governing body must take several actions:

- First, governing body must vote to adjourn the meeting and vote on the new location. [RCW 42.56.050 \(http://app.leg.wa.gov/rcw/default.aspx?cite=42.56.050\)](http://app.leg.wa.gov/rcw/default.aspx?cite=42.56.050).
- Second, governing body must provide the media in attendance with notice of the new location, who have a right to attend unless they were part of the disruption. [RCW 42.56.050 \(http://app.leg.wa.gov/rcw/default.aspx?cite=42.56.050\)](http://app.leg.wa.gov/rcw/default.aspx?cite=42.56.050).
- Third, governing body must post an order of adjournment, citing the new time and location, at the doorway of the location of the disrupted meeting. [RCW 42.56.090 \(http://app.leg.wa.gov/rcw/default.aspx?cite=42.56.090\)](http://app.leg.wa.gov/rcw/default.aspx?cite=42.56.090).
- Fourth, governing body may only take final action on items listed on the agenda for the adjourned meeting. [RCW 42.56.050 \(http://app.leg.wa.gov/rcw/default.aspx?cite=42.56.050\)](http://app.leg.wa.gov/rcw/default.aspx?cite=42.56.050).

- Finally, governing body is authorized to adopt procedures for allowing members of the public into the reconvened meeting. [RCW 42.56.050](http://app.leg.wa.gov/rcw/default.aspx?cite=42.56.050) (<http://app.leg.wa.gov/rcw/default.aspx?cite=42.56.050>).

Implicit in this final point is that, other than the media, the reconvened meeting may be held without the public in attendance. Unless the entire crowd was involved in the disruption, however, keeping the meeting closed to the public will likely undercut public trust in the governing body's actions. Therefore, the best practice would be to have procedures adopted ahead of time to address re-admittance.

The governing body must be careful, however, that the rules do not allow, and are not administered to allow, the governing body to discriminate on who is allowed to attend based on the attendee's viewpoint. The only factor should be whether the attendee was involved in the prior disruption. Otherwise, some of the First Amendment concerns discussed below will arise.

The failure to follow the OPMA's procedures for disruptions and adjournment can have serious consequences. Any actions taken in violation of the OPMA are considered "null and void." [RCW 42.30.060](http://app.leg.wa.gov/rcw/default.aspx?cite=42.30.060) (<http://app.leg.wa.gov/rcw/default.aspx?cite=42.30.060>). Moreover, members who knowingly violate the OPMA can be personally fined. Finally, the entity will be liable for any attorney fees.

Risks of Having Disruptive Persons Removed from a Meeting

As noted, a governing body can also address disruptions by having the disrupting audience members removed. But the case of *Norse v. City of Santa Cruz*, 629 F.3d 966 (2010), the Ninth Circuit Federal Court of Appeals, shows that such actions should be taken cautiously. In that case, the court held that city councilmembers can be held personally liable for ordering the ejection of an attendee at a city council meeting. Washington State is in the Ninth Circuit, so this case is binding authority. Moreover, although the case involves the ejection of a single individual, the holding could also apply when a governing body ejects all attendees.

In *Norse*, the attendee was ejected after making a silent Nazi salute. The councilmembers said this action violated the dignity and decorum of the city council. The city council asserted that its rules classified violations of dignity and decorum as "disruptions" that justified the ejection. The court rejected this claim.

The court held that city council meetings are considered limited public forums, so First Amendment protections apply. Under the First Amendment, time, place and manner restrictions are permissible as long as they are viewpoint neutral. Such restrictions can allow for the ejection of an attendee, but only if the attendee's actions disrupt, disturb or otherwise impede the orderly conduct of the meeting.

In this case, there was no evidence that the Nazi salute caused a disruption - instead it appeared that the attendee was ejected because the councilmembers did not like the viewpoint the attendee expressed with his action. An ejection based on the attendee's expressed viewpoint would violate the attendee's First Amendment rights.

In rejecting the city's claims, the court made two important points. First, it held that the First Amendment protections apply throughout the entire meeting - not just during a time designated for public comment. Second, for an ejection to be proper, there must be an actual disruption - the city could not define disruption to mean something less than a disruption.

Several lessons can be learned from this case.

- The entire open meeting is a limited public forum where First Amendment protections apply.

- Governing body rules should clearly provide the governing body with the authority to eject members of the public who disrupt meetings.
- The governing body should tolerate offensive conduct by attendees as long as the conduct does not cause an actual disruption.
- The governing body should attempt other methods to address a perceived disruption before resorting to ejection.
- The governing body should treat all disruptions in a similar manner so it cannot be claimed that a decision to eject was based on the viewpoint expressed rather than the disruption itself.
- The governing body should never limit an attendee's speech because it does not like the viewpoint expressed.
- All time, place and manner restrictions, including time limits for comments, should be enforced in a uniform manner so persons with unpopular viewpoints cannot claim that they are being limited based on their viewpoint.

Governing bodies are far from helpless when faced with disruptive attendees at public meetings. The OPMA provides for three separate options governing bodies can take to re-assert control over their meetings. But they must be careful to follow all procedural requirements in the OPMA and take care NOT to prejudice any attendee based on the attendee's viewpoint, rather than any actually disruptive conduct.

About Ramsey Ramerman

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