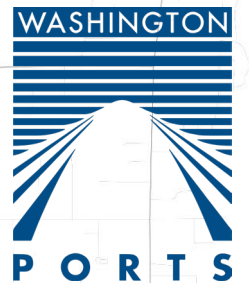


# Managing Your Public Meeting

**Best Practices and  
Roberts Rules of Order**

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**WPPA Commissioner Seminar 2024**  
**Richland, WA**



# Why Are We Here

- OPMA
- Conducting a Well-Run Meeting and Using Robert's Rules
- Ideas About Public Comment
- Tough Times - Anticipating and Addressing Contentious Issues

## **BUT ULTIMATELY**

- Preserving the Port's "Political Bank Account."

# Longview residents to foot legal bills in public meetings lawsuit

- May 20024

**A Pacific County Superior Court judge ordered the city to pay the legal fees for the four councilors who recently ousted the city's top employee.**

Longview, Washington, residents will foot the legal bills for their city councilors who are accused of working behind closed doors to fire their top administrator. A Pacific County Superior Court judge ordered the city to pay the legal fees for four councilors — Erik Halvorson, Kalei LaFave, Keith Young and Mayor Spencer Boudreau — who moved suddenly last month to replace the city's top employee. Three residents contend in court filings that the councilors acted as a de facto subcommittee to hire one of their campaign supporters to a \$176,000-a-year job. Washington laws require elected officials to have such discussions out in the open. “We have mounting evidence of blatant violations,” said Mike Wallin, one of the plaintiffs and a former city councilor.

# The OPMA

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# Open Government Training



RCW 42.30.205 and 42.56.152 require members of governing bodies to receive training on the Open Public Meetings Act and Public Records Act.

Refresher training must occur no later than every 4 years.

Training can be taken online, in person, or by other means.

Training resources, videos, and more information about the Act (and “Q & A”) are available on the Attorney General's Office Open Government Training Web Page:

<http://www.atg.wa.gov/OpenGovernmentTraining.aspx>.



# OPMA Purpose – RCW 42.30.010

“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.”

Effective June 9, 2022, ESHB 1329 added “informing the people’s public servants of their views.”

Added “encouragements” in ESHB 1329  
Encourage public comment.  
Encourage telephonic and video participation.



# OPMA Applies To:

- Port Districts.
  - Any time a quorum of elected officials discuss Port business, whether they are in the same room, on the phone, exchanging emails or acting through executive director or lawyer.

# Who Is the Governing Body

The elected officials of the government.

Also, a committee that acts on behalf of the governing body (i.e., exercises actual or de facto decision-making authority); or takes testimony or public comment on behalf of the governing body.





# What is an Action?

“Action” means the transaction of the official business of the public agency and includes, **but is not limited to:**

Public testimony;

All deliberations;

Discussions;

Reviews;

Evaluations;

Site visits; and

Work study sessions.



# What is a Final Action?

“Final action” is a collective positive or negative decision, or an actual vote, by a majority of the governing body, or by the “committee thereof.”

## **Motions, Resolutions, etc.**

Must be taken in public, even if deliberations were in closed session.

Secret ballots are not allowed.

Public comment required before any “final action.”  
(New in 2022.)



# What is a Meeting?

“Meeting” means meetings at which the public agency takes “action.”

Physical presence not required—can occur by phone or email.



- An exchange of email could constitute a meeting if, for example, a quorum of the members participate in the email exchange & discuss agency business. Simply receiving information without comment is not a meeting. *Citizens Alliance v. San Juan County*.

Does not need to be titled “meeting” – OPMA also applies to “retreats,” “workshops,” “study sessions,” etc.

No meeting occurs if the governing body lacks a quorum.

# “Regular” Meetings



“Regular meetings” are recurring meetings held in accordance with a periodic schedule established by motion or resolution.

Should have a resolution on file at the beginning of each year setting forth the meeting dates for the year.

Must publish the agenda at least 24 hours in advance of your meeting and be posted on a website.

- But not limited to items on the agenda.

Requires a physical location

Subject to “adjournments” to a specified time and place or “continuances” to a subsequent meeting.

# “Special” Meetings



A “special meeting” is *any* meeting that is not a regular meeting.

Called by presiding officer or majority of the members.

Requires a physical location.

Notice / Timing: 24 hours before the special meeting, written notice must be:

Given to each member of the governing body (unless waived);

Given to each local newspaper of general circulation, radio, and TV station which has a notice request on file;

Prominently displayed at the main entrance of the Port's principal location and the meeting site, if different; and

Agenda posted on the website and limited to items on the agenda.



# Emergency Special Meetings



Notice is not required when a special meeting is called to deal with an emergency.

Emergency involves injury or damage to persons or property or the likelihood of such injury or damage.

Where time requirements of notice make notice impractical and increases likelihood of such injury or damage.



# Executive Session



Part of a regular or special meeting that is closed to the public.

Limited to specific purposes set out in the OPMA.

Purpose of the executive session and the time it will end must be announced by the presiding officer before it begins; time may be extended by further announcement.

New in 2022: the announced purpose of excluding the public must be entered into the meeting minutes.

Practice Tip: Be precise about the purpose and the statutory exemption.

~ *RCW 42.30.110*

# Interruptions

In the event that any meeting is interrupted by a group or groups of persons 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.

- Clear the room
- Adjourn to a new location
- But limited to only items on the agenda
- News media can always attend

# Common Executive Session Purposes

To review negotiations on the performance of publicly bid contracts where public knowledge would likely increase the agency's costs.

Review performance of existing employees.

Evaluate qualifications of applicant for public employment.

Meet with legal counsel regarding litigation or potential litigation.

# Common Executive Session Purposes

Buying or selling real estate and public knowledge would likely adversely affect the price from the agency's perspective.

Washington State Supreme Court held in *Columbia Riverkeepers v. Port of Vancouver*:

Executive session discussions related to the sale or lease of real estate must be limited to the minimum acceptable price to sell or lease the property.

Any general discussion of factors that are the basis for the minimum price must occur in an open public meeting.

After this occurs, the governing body may then discuss, in executive session, how those various factors directly impact the minimum price.

Practice Tip: Adopt policy in open session about “price” and keep track in executive session.





# Executive Session Myths

Executive Sessions cannot be used for:

“Personnel” issues;

Conference with attorney *unless* there is actual or threatened litigation being discussed;

Discuss interlocal agreement negotiation strategy or other contract negotiation strategy with third parties;

Interview potential board candidates.

# New 2022 – Remote Meetings

“Remote meetings” may occur after a declaration of emergency by a local, state or federal agency.

If, the public agency determines it cannot hold a meeting of the governing body with the public in attendance in person with reasonable safety because of the emergency – **then:**

- Hold a remote meeting of the governing body without a physical location; or
- Hold a meeting of the governing body at a physical location where attendance of some or all of the public is limited.

But, the public agency must:

- Provide an option for the public to listen telephonically or “readily available alternative” at no cost.  
(Otherwise, no action may be taken at the remote meeting).

On that:

- Participation requires that all may simultaneously hear each other and participate
- Commissioner, staff, and public must clearly identify themselves
- Participation *shall constitute a presence in a meeting*, for purpose of quorum, voting, etc.

# Minutes – RCW 42.30.035

Minutes of public meetings must be promptly recorded and open to public inspection.

Minutes of an executive session are not required.

No format specified in law.

## Practical Issues:

- How detailed should minutes be?
- Tape recording issues.
- “Draft” minutes.



# Telephonic and Virtual Participation

- Participation requires that all may simultaneously hear each other and participate
- Commissioner, staff, and public must clearly identify themselves
- Participation shall constitute a presence in a meeting, for purpose of quorum, voting, etc.

# “Best Practices” for Common Situations

- A majority of the commission may travel together to a meeting
- Attending at Conference (a WPPA conference for example)
  - Consider the political impact and appearance;
  - Post on website
  - Report in next public meeting
- City or County Council Meetings
  - Special meeting notice or at least a notice
- Tour of a Business
  - Special meeting or sequential tours
- Legislative or Congressional Visits
  - Never a majority except a special meeting at the Port





# Requirements for All Meetings

A physical location where the public can attend – except “remote meetings.”

Governing bodies are required to make the agenda of each regular meeting of the governing body available online no later than 24 hours in advance of the published start time of the meeting.



# Public Attendance

Public comment period is not required by OPMA except (new in 2022) before a “final” action is taken.

- “Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body
- So, public comment is now required at all meetings where any vote will be taken.

An agency may not impose conditions on the public to attend meetings subject to OPMA:

For example, it cannot require people to register their names or other information, complete a questionnaire, or otherwise fulfill any condition precedent to attendance.

What about sign-up sheets for public comment?

Time limits (soft or hard)

# RCW 42.30.077 – Applicability and Limitations

The law does not:

Prohibit agencies from later modifying a regular meeting agenda;

Provide a basis for a person to recover their attorney's fees or to seek a court order against the agency if an agenda is not posted in accordance with the law.

# Penalties for Violating the OPMA

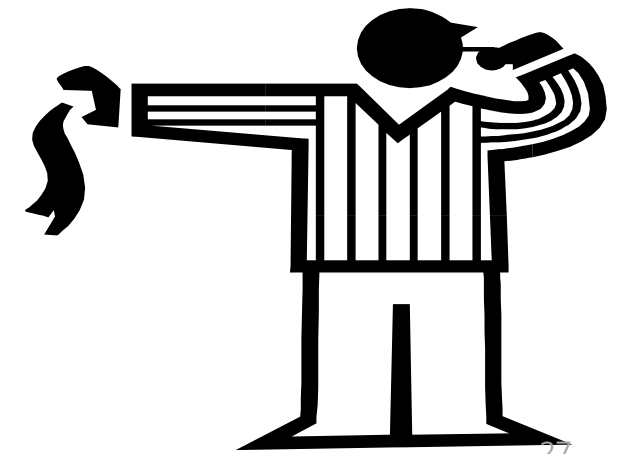
A court can impose a \$500 civil penalty against each member (personal liability) for the first violation. The penalty increases to \$1000 for any subsequent violation(s).

Court will award costs and attorneys' fees to a successful party seeking the remedy.

Action taken at meeting where violation occurred shall be null and void.

And, penalties for talking about what occurred in an executive session.

~ RCW 42.23.070.



# Conducting a Well-Run Meeting

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# Adopt a Set of Written Rules

## RCW 53.12.245

### **Organization of commission—Powers and duties—Record of proceedings.**

The port commission shall organize by the election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the port commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records.

But NEED NOT be so cumbersome

Re-visit each year and educate new commissioners

# Roberts Rules of Order – a Refresher

## Guiding Principles:

- A quorum must be present
- All commissioners have equal rights, privileges and obligations
- All commissioners have the right to participate in discussion if they wish, before anyone may speak a second time.
- Only one person can speak at a time
- Only one thing (motion) can be discussed at a time
- “Negative” motions are generally not permitted
- Each item presented is entitled to a full and free debate
- The rights of the minority must be protected but the will of the majority must prevail

# Motions

- Motion – A formal proposal made to bring a subject before an assembly for its consideration and action
- After being recognized by the president of the board, any commissioner can introduce a motion when no other motion is on the table
- Begins with “I move that...(saying “so move” is not correct – so move what??)”
- Second – A statement by a member who agrees that the motion made by another member be considered. Stated as “Second,” or “I second the motion.”
- Amendment – Before the vote is taken on a motion, it may be amended by:
  - Striking out words
  - Inserting or adding words or Striking out words and inserting others in their place
  - Substituting one (1) paragraph or resolution for another



# Motions Continued...

- Negative” motions are generally not permitted
- The president of the board may call the motions be read from agenda
- Amendment motions must be related to the original motion and are decided before the underlying motion.
- Motion to table moves a matter to be considered at a later date
- “Postpone Indefinitely” to kill a motion

# Ideas About Public Comment

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# Ideas on Public Comment

- The public expects a polite commission
- The public wants to be heard and considered
  - Even when a speaker is clearly trying to annoy
- It is usually a very bad idea to engage in a discussion or answer a question
- The commission can set time limits
  - Not a commissioner as a timekeeper and be flexible
  - Cameras and tape recorders are permitted unless disruptive (signs too). ~ AGO 1998 No. 15.

# Tough Times – What Can You Do?

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# The Central Thesis of Contentious Meetings

Identify controversial items early and *plan ahead!*

- Keep the issue in perspective – how does it fit within your overall strategic vision
- Create a plan – how and when will the commission address the issues being raised?

Through ED, staff, and attorney, ensure that all commissioners are prepped for *their role*

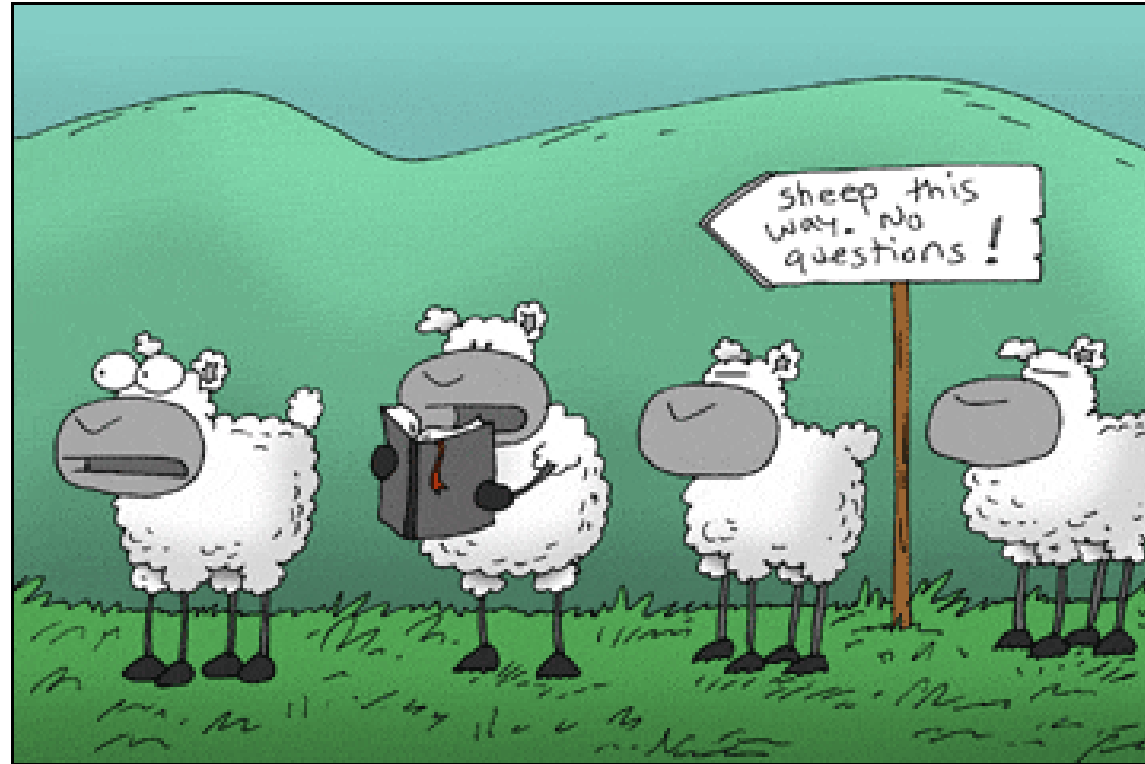
- There will be a large crowd, how will you interact?
- There will be personal criticism and attacks, will you respond?
- Will the issue receive a vote at this meeting, or be briefed and voted at next meeting?

# At Commission Meetings, the Commissioners See This:



# And the Public Might See This:

REVERENDFUN.COM COPYRIGHT BIBLE GATEWAY



(See Acts 8:32)

02-10-2012

HERE IT IS, "LED LIKE A SHEEP TO THE SLAUGHTER" ... WHAT THE HECK IS THAT SUPPOSED TO MEAN?

# Plan Ahead

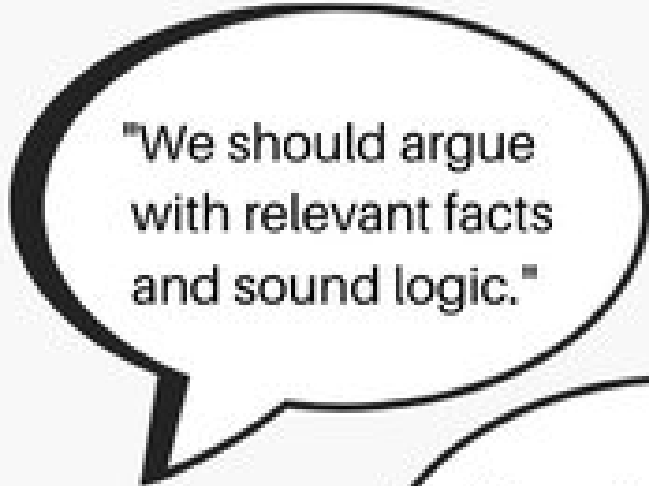
- Identify controversial items early and plan ahead
  - *Keep the issue in perspective – how does it fit within your overall strategic vision*
  - *Communicate the plan – how and when will the commission address the issues being raised?*
- Through ED, staff, and attorney, ensure that all commissioners are prepped for their role
  - *There will be a large crowd, how will you interact?*
  - *There will be personal criticism and attacks, will you respond?*
  - *Will the issue receive a vote at this meeting, or be briefed and voted at next meeting?*
- Take your time
- Invoke a community standard
- Do not allow ad hominem attacks



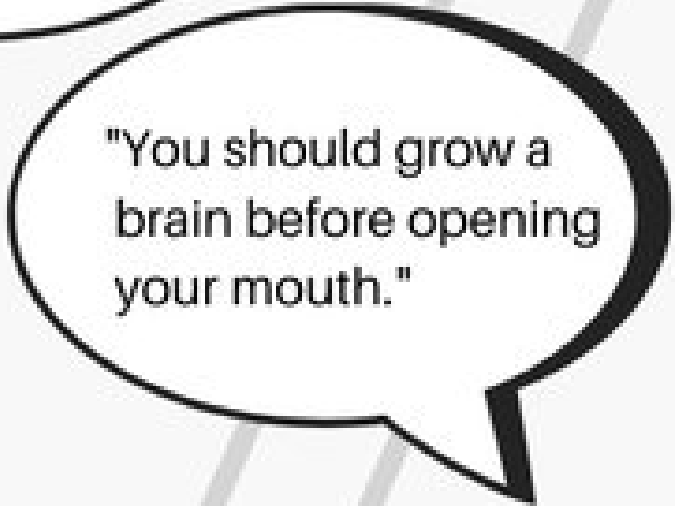
# Ad Hominem

## The Abusive Fallacy

An abusive attack against someone making an argument, instead of addressing the argument itself.



"We should argue with relevant facts and sound logic."



"You should grow a brain before opening your mouth."

# At Each Meeting on the Issue

- Welcome and thank the public for attending and for those who will comment
- Recognize it is a contentious issue with +/- on each side of the issue
- Note that the commission will listen to all concerns and make a decision on behalf of all residents of the district
- Inform the public of the timeline for a decision and the opportunities to comment
- Invoke a community standard
- Ask that a time limit of be respected (for example 3 minutes for each speaker)
- Get a bell – but it is not a gong.

# GET A ROOM – A Large Enough Room

- Too small a room leads to high emotional energy
  - *Create some distance and elevate*
  - *Consider using a city or county council chambers (interlocal ahead of time)*
- ADA compliant room
- Now video capable
- Get a podium for speakers
- Make sure the PA system is up to the task and loud enough



# GET A ROOM – A Large Enough Room



# Conclusion and Questions

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# The Key Issues

- Follow the rules on the OPMA
- Adopt sensible rules of procedure
- Prepare for contentious meetings

**AND**

- Remember the Port's "Political Bank Account"

QUESTIONS