



City Council Meeting Schedule January 2023

The City broadcasts City Council meetings on the City's website

<https://www.go2kennewick.com/CouncilMeetingBroadcasts>.

January 3, 2023 Tuesday, 6:30 p.m.	REGULAR COUNCIL MEETING
January 10, 2023 Tuesday, 6:30 p.m.	SPECIAL COUNCIL MEETING NEW BUSINESS 3.a. Horse Heaven Clean Energy Center Letter
Tuesday, 6:45 p.m.*	WORKSHOP MEETING (<i>*Meeting will commence immediately following adjournment of Special Meeting as described above.</i>) 1. Stormwater Code Revisions 2. Housing and Public Facility Zoning 3. Legislative Sessions Update
January 17, 2023 Tuesday, 6:30 p.m.	REGULAR COUNCIL MEETING
January 24, 2023 Tuesday, 6:15 p.m.	CLOSED SESSION RCW 42.30.140(4)(b) Collective Bargaining (beginning before workshop)
Tuesday, 6:30 p.m.	WORKSHOP MEETING 1. TRIDEC Reconveyance 2. Public Records & Open Public Meetings Act (OPMA) Compliance
January 31, 2023 Tuesday	NO MEETING SCHEDULED

To assure disabled persons the opportunity to participate in or benefit from City services, please provide twenty-four (24) hour advance notice for additional arrangements to reasonably accommodate special needs.

Please be advised that all Kennewick City Council Meetings are Audio and Video Taped

**Council Workshop
Coversheet**



Agenda Item Number	1.	Meeting Date	01/24/2023
Agenda Item Type	Presentation		
Subject	TRIDEC Reconveyance Update		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Finance		

Info Only

Policy Review

Policy DevMnt

Other

Summary

TRIDEC will provide Council a status update on the work being done to develop legislative language for local reconveyance of identified shoreline areas from federal control to local control. TRIDEC has been the lead in coordinating the development of the legislative language and standardized Memorandums of Understanding between the local jurisdictions in both Benton and Franklin Counties and the Confederated Tribes of the Umatilla Reservation (CTUIR).

Through

Evelyn Lusignan Jan 18, 15:19:05 GMT-0800 2023

Attachments:

Dept Head Approval

Dan Legard Jan 18, 15:23:08 GMT-0800 2023
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City Mgr Approval

Marie Mosley Jan 19, 13:43:54 GMT-0800 2023
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**Council Workshop
Coversheet**



Agenda Item Number	2.	Meeting Date	01/24/2023
Agenda Item Type	Presentation		
Subject	OPMA and PRA Training		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Attorney		

Info Only	<input type="checkbox"/>
Policy Review	<input type="checkbox"/>
Policy DevMnt	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>

Summary

The Open Government Training Act requires newly elected or appointed local officials to complete training regarding the provisions of the Public Records Act and the Open Public Meetings Act within in 90 days of taking office. Thereafter officials are required to complete refresher training at intervals of no more than four years for as long as they hold office. At the beginning of 2022, Council attended the State Attorney General video training for the OPMA and PRA. These videos covered the bare minimum required to comply with the statute. As this area of the law is ever changing, it is recommended that elected officials receive refresher training on a regular basis rather than every four years. Through the City's membership in the Washington Cities Insurance Authority, the City has arranged for in person training. Attorney Ken Harper will be presenting on the OPMA and PRA, he will discuss the dos and don'ts as well as best practices for council moving forward.

Through	Kristi Johnson Jan 18, 11:01:04 GMT-0800 2023	Attachments: <input type="text" value="Presentation"/>
Dept Head Approval	Lisa Beaton Jan 18, 11:14:19 GMT-0800 2023	
City Mgr Approval	Marie Mosley Jan 19, 13:55:04 GMT-0800 2023	

City of Kennewick

January 24, 2023



Open Government Laws in Washington State

Open Public Meetings Act

Public Records Act



Open Public Meetings Act (OPMA)

Meetings must be open to the public.

Quorum + Action = Meeting

Meeting = Notice + The right of the public to attend



Purpose Statement of the OPMA

“The people of this state do not yield their sovereignty to the agencies which serve them.

The people, in delegating authority, 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 so that they may retain control over the instrument they have created.”

RCW 42.30.010 (1971)

Open Public Meetings Act



- **The Act is to be “liberally construed.”** RCW 42.30.910
- **The purpose of the OPMA is to allow the public to view the decision making process.**
- **All meetings of the governing body** of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter. RCW 42.30.030
- **Recently updated** and expanded in HB 1329

OPMA Definition of “Meeting”



A meeting is any regularly scheduled meeting or special meeting where a **quorum of members are present and take action.**

- A “retreat,” “workshop,” or “study session” fitting this definition is a meeting.
- **Email conversations, serial phone calls, texting, and messaging** involving a quorum and city/county business will probably be considered a meeting.
- A **quorum at a parking lot, late night diner, cocktail party, or site visit** will probably be considered a meeting.

OPMA Definition of “Meeting”



A meeting occurs when the public agency takes “action” *including*:

- Hearing public testimony
- Deliberating and discussing
- Considerations and review and evaluations



How to Comply if Meeting:

Easy!

1. Provide notice of meeting.
2. Public has right to attend without conditions.



OPMA Executive Sessions

Agencies may hold an executive session during a regular or special meeting only for limited purposes:

- **Personnel issues** to review complaints/charges, qualifications and performance.
- **Litigation, potential litigation and legal risks.** As to legal risks, an open discussion must present a danger of adverse legal or financial risk to agency.
- **Real estate negotiations or publicly bid contracts** when public discussion would increase costs.



Executive sessions may only occur if:

- Before convening the executive session, the presiding officer must announce **the purpose and the time the executive session is over.**
RCW 42.30.110 (2)
- **Discussion** may take place behind closed doors, but **decisions** must occur within a meeting.
- **Secret ballots** are not allowed. RCW 42.30.060



Executive Session Information

- **Confidential!**
- **Legal obligation** to not disclose information from proper executive session.
- **Potential violation** of Code of Ethics of Municipal Officers. RCW 42.30.020 and .070(2)
- May also subject jurisdiction to significant legal risks.

Penalties for Violating the OPMA



- A court can impose a **\$500 civil penalty against each member, \$1,000 for subsequent violations** (personal liability).
- Court will **award costs and attorney fees** to a successful party seeking the remedy (except for failure to post agenda on-line).
- **Action** taken at meeting **can be declared null and void** (except for failure to post agenda on-line).
- **Loss of the public trust.**

Real-Life OPMA

Thursday, June 12, 2008

SPOKESMANREVIEW.COM

Officials accused of violating open-meetings law

Spokane Center for Justice, private attorneys file five lawsuits

Richard Roesler
Staff writer
March 18, 2008

OLYMPIA – Spokane's Center for Justice and two Puget Sound area attorneys on Monday filed five lawsuits across the state, accusing local officials – including some in Spokane – of repeatedly violating open-public-meeting laws.

"The open public meetings act says you don't get to make public decisions in closed meetings," said Breean Beggs, an attorney with the public-interest law firm.

Among the targets: the Spokane Regional Clean Air Agency, for allegedly wrongly voting behind closed doors to hire director William Dameworth III in 2006. The group didn't publicly vote to hire him, the complaint alleges, until four days after he started work. (There are no allegations of any wrongdoing by Dameworth.)



Real-Life OPMA



Covering the Nisqually Valley since 1922

Thursday, June 12, 2008

yelmonline.com

Commissioners slapped with suit

Open meetings violations may result in fines

Posted 24 Mar 2008. E-mail this article to a friend.

By Megan Hansen
Nisqually Valley News

Repercussions against three fire commissioners who violated the Open Public Meetings Act came to a head with a lawsuit filed Monday.

The lawsuit, filed in Thurston County Superior Court against the Yelm Fire District, seeks personal liability for violations.

OPMA Risk Management Tips



Avoid even the *appearance* of an OPMA violation.

- **Socializing:** Be careful when a quorum of your board is together outside of a meeting. Don't sit together. Don't talk business.
- **Group travel:** Bus trips and site visits may appear as meetings. If part of your work, notice as a meeting. If not, don't do it.
- **Notice:** When in doubt, treat it like a meeting and do the notice.
- **Email:** Don't "reply all" to group emails.

The Public Records Act (PRA)



RCW 42.56, 1972

Requires close cooperation between elected officials and public records officers, other staff.

“Public record” is **any writing** containing information relating to the conduct of government. RCW 42.56.010(3)

Real Life PRA

Kitsap Sun

The Northwest's Best News Site
2008, Society of Professional Journalists

County Settles Lawsuit Over Jail Video for \$125,000

By Josh Farley
Friday, May 30, 2008

PORT ORCHARD

Kitsap County has agreed to pay \$125,000 to a Bremerton man to settle a lawsuit that alleged violations of the state's public records act.

While housed in the Kitsap County Corrections Center in September 2006, Jeffery McKee, 51, requested all records involving his case since he'd been booked into jail that June. He was charged with delivery of methamphetamine.

He was provided copies of 130 documents by the county, but McKee claimed he did not receive specific records, including videos of him when he was placed in a "crisis cell," where inmates who get out of control are typically placed.

Real Life PRA

tricityherald.com

Sunday, Aug. 24, 2008

[Comments \(0\)](#)

Court finds in favor of former Mesa mayor

By Franny White, Herald staff writer

MESA -- A Superior Court judge has ruled that a small Franklin County town must pay its former mayor about \$230,000 after losing a long-running dispute over public records.

After a five-year court fight, Judge William Acey found Mesa city officials incorrectly handled document requests by former mayor and councilwoman Donna Zink.

Now the town of about 440 people must figure out how it'll pay the large penalty, which could total more than two-thirds of the city's annual general fund budget.

The dispute began in 2002 when Zink began requesting public records after the city said a building permit to repair her fire-damaged home had expired.

Zink, whose council term had ended the year before, requested 172 records, including correspondence and phone and fax logs, over a 2 1/2-year span.

The Public Records Act (PRA)



Public records of government agencies are presumed open.

Purpose: The “free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.” RCW 42.56.550 (3)



A “public record” is broadly defined:

“Includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function **prepared, owned, used, or retained** by any state or local agency regardless of physical form or characteristics.”

- Includes email, paper files, recordings, web content.
- Includes public records created on **personal electronic devices or non-agency email accounts.**

RCW 42.56.030



When Searching for Records, Agencies Must:

- **Read the request carefully** to understand what records are requested.
- **Conduct an adequate search** for responsive records.
 - Consider all formats (paper, electronic, etc.).
 - Consider records of current and former staff/officials.
 - Consider possible locations (e.g., paper files, agency website, audio files, etc.).

The agency bears the **burden of proof** to show the adequacy of the search, so it is a good idea to **document search efforts** (locations, search terms used).



PRA Exemptions are Narrowly Construed

- **If a record, or part of a record, is withheld from the public, the agency must cite an exemption in the law and explain why it applies.** Common exemptions include attorney-client privileged information and pending investigative records.
- **No general privacy exemption.**
- **“Privacy” is invaded only if:** 1) release of the information would be highly offensive, and 2) the information is not of legitimate concern to the public.

RCW 42.56.050, RCW 42.56.210 - .510



Enforcement and Penalties

- A court can impose **civil penalties**. No proof of “damages” required.
- A court is to consider certain **mitigating or aggravating factors** in requiring an agency to pay a penalty.
- A court will also award the requester’s **attorney fees and costs**.



Focus on Electronic Records

Social media sites are records. Agencies must keep a copy of previous web site when updating.
WAC 434-662-140

Other electronic records. WAC 434-662-150

- Emails on agency business are public records.
- Texts on agency business are public records.

Don't make records you don't want to see on the front page of the paper.



Focus on Electronic Records

DO:

- Use your agency computer to conduct agency business.
- Use your personal computer to remotely access your agency file server and email server.
- Use your agency email account to conduct agency business.
- Forward any agency-related emails received on your personal email account to your agency email account. Notify the sender that you do not conduct agency business on your personal email account and to send future agency-related email to your agency email address.



Focus on Electronic Records

DO:

- Use descriptive subject lines.
- Shorten e-mail strings and limit cc's.
- Limit volume of records (don't carelessly "reply all").



Focus on Electronic Records

DON'T:

- Delete records from your agency computer.
- Use your personal computer to conduct agency business.
 - Unless simply accessing your agency server remotely.
 - If you must, then retain all records.
 - Provide those records to your agency so that the agency can retain them appropriately and make them available if requested.



Focus on Electronic Records

DON'T:

- Delete emails sent or received from your agency email account.
- Use your personal email account for agency business.
- Text in violation of your agency policy.



Focus on Electronic Records

DON'T:

- Set up and use an agency-related social media site, and don't edit or delete content on your agency's social media site.
- Conduct agency business via your personal social media site (and don't mix your election activities with agency business via social media).



Risk Management Strategies

- **Establish a culture of compliance** starting with agency leadership.
- **Know the law.** Ensure staff and officials are trained about the PRA's requirements and ensure they know how to respond to a records request.
- **Protect the records.** Ensure there are agency systems in place to file, track, retrieve and preserve records, especially with changes in personnel.



Open Government Resources

Open Public Meetings Act (OPMA)

RCW 42.30, 1971

Public Records Act (PRA)

RCW 42.56, 1972

www.atg.wa.gov/OpenGovernmentTraining.aspx

Public Records Retention

[www.sos.wa.gov/archives/
recordsretentionschedules.aspx](http://www.sos.wa.gov/archives/recordsretentionschedules.aspx)



City Council Meeting Schedule February 2023

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February 7, 2023

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

February 14, 2023

Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. CourseCo & Columbia Park Tri-Plex Update
2. Behavioral Health and Recovery Center Update
3. Public Employee Benefits

February 21, 2023

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

February 28, 2023

Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Economic Development Strategic Plan

To assure disabled persons the opportunity to participate in or benefit from City services, please provide twenty-four (24) hour advance notice for additional arrangements to reasonably accommodate special needs.

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