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## Welcome

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Greetings and welcome to the Spokane Regional Health District (SRHD). Your decision to serve as a member of the SRHD Board of Health is one that has great significance for our community.

You will find that public health challenges are both simple and complex. Funding is an essential element of successful programming – simple. Identification and securing of sustainable funding sources to ensure consistent and reliable programming – complex.

How do you define health? The World Health Organization defines it as, “a state of complete physical, social and mental well-being, and not merely the absence of disease or infirmity. Health is a resource for everyday life, not the object of living. It is a positive concept emphasizing social and personal resources as well as physical capabilities” (World Health Organization, 2000). SRHD is dedicated to preventing disease and promoting health (i.e., the process of enabling people to increase control over and to improve their health). We take on this strategy in addition to issues such as clean air and water, safe sources of food, and immunization services– all of which affect the health of everyone in our community.

The provision of optimum public health services is dependent on the involvement of knowledgeable and concerned local citizens. The Board of Health (BOH) is obligated by RCW 70.05.060 to safeguard and promote the public health and wellbeing of citizens in its community. To assist you in your role as a board member, this manual will help orient you to SRHD, and provide you with useful reference materials.

Your decisions, as a BOH member, and engagement in the process of delivering public health services will affect the health of the Spokane region and ensure its long-term vitality. Your time and expertise as a Board of Health member is valued and appreciated.

Thank you and welcome.



Amelia E. Clark  
Administrative Officer

## SRHD Historical Timeline

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YEAR	EVENT
1970	Spokane County Health District formed
1974	Provided Food inspections at Expo '74
1977	Spokane County Health District Building completed
1989	Outreach Center opens
1991	Washington Supreme Court upholds needle exchange services provided by SRHD School health safety and water recreation programs begin
1992	HIV/AIDS case management services begin
1994	Adolescent health, youth tobacco prevention, early childhood education, physical activity programs begin
1995	Assessment/Epidemiology Center is created
1997	Spokane County Health District becomes Spokane Regional Health District Breast and Cervical Health program begins
2002	Public Health Emergency Preparedness and Response program begins after 9/11
2003	City of Spokane Valley represented on Board of Health Community Health Intervention & Prevention Services (later known as Treatment Services) and Medical Reserve Corps of Eastern Washington begins
2005	No smoking in public places enforcement begins
2006	Disease Prevention and Response division formed
2007	Mayor from small cities represented on BOH
2011	Agency is accredited by the Public Health Accreditation Board (PHAB)
2012	Health District building ownership transferred from Spokane County to SRHD
2013	SRHD Public Health clinic closes due to funding losses
2014	SRHD traveled to Shanghai, China to receive the Global Healthy Workplace Award
2015	Youth Marijuana Prevention programs begin
2016	District governance changed from Health Officer to Administrator
2020	First SPU activation due to COVID-19
2022	Change in Board of Health governance structure related to House Bill 1152

# What is Public Health?

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## What Is Public Health?

Public health is an interdisciplinary field that involves a variety of professionals: sanitarians and inspectors, public health physicians and nurses, dental professionals, nutritionists, environmental specialists, health educators, social workers, epidemiologists and biostatisticians, laboratory specialists, and lawyers. No discipline dominates the field and each is essential in ensuring the health of a community.

“Health care is vital to all of us some of the time, but public health is vital to all of us all of the time.”

*-Former Surgeon General  
C. Everett Koop*

Public health is sometimes referred to as the “invisible profession” because most people are not aware of it until an emergency occurs. However, public health functions proactively around the clock to ensure public safety and health, in contrast to clinical medicine that is often reactive to an individual’s health issues.

Public health practice emphasizes prevention and education. Disease prevention can be accomplished by reducing potential health hazards at the individual, population, or environmental levels. For example, childhood immunizations, smoking cessation programs, and remediating PCB contamination in the Spokane River all serve as examples of prevention efforts. There are three types of prevention.

1. Primary prevention seeks to address problems before they occur by eliminating hazardous exposures, addressing unhealthy behaviors, i.e., risk factors, and improving disease resistance. Vaccination is the most common example. Education about the benefits of regular physical activity and healthy eating to prevent heart disease serves as primary prevention. Primary prevention can also be achieved through policies, e.g., school and worksite wellness policies.
2. Secondary prevention lessens the impact of a disease that has already or potentially occurred. For example, disease screening for cholesterol and elevated blood pressure to prevent potential heart disease would be an example. The U.S. Dietary Guidelines on dietary fat and sodium consumption represent a policy approach of a secondary prevention.
3. Tertiary prevention attempts to lessen the impact of existing disease. This could occur through dietary changes and medications to decrease progression of heart disease.

# Three Core Functions of Public Health

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The 1988 Institute of Medicine (IOM) report, *The Future of Public Health*, discussed the three core functions of public health:

- Assessment
- Policy development
- Assurance

## Assessment

Assessment includes activities, such as surveillance, needs assessment, cause analysis, data collection and interpretation, case-finding, monitoring, and forecasting trends, research, and outcomes evaluation. It is inherently a public health function because health policy formulation, to be legitimate, must objectively evaluate relevant information. Private sector entities may have self-interests, so the information they generate, while frequently useful, may not be objective.

The public sector has an important responsibility to develop a broad base of knowledge in order to ensure health policy is not driven by purely short-range issues constrained by current knowledge. Assessment activities include supporting and conducting research on fundamental determinants of health - behavioral, environmental, biological, and socioeconomic - as well as monitoring health status and trends of the community.

## Policy Development

Policy formulation takes place as the result of interactions among a wide range of public and private organizations and individuals. It is a process that involves problem identification and decision making, choosing goals and the proper means to reach them, managing conflicting views, identifying solutions, and allocating resources. The public sector provides overall guidance in this process and it alone has the power to give binding answers. Therefore, although it joins with the private sector to arrive at decisions, it has a special obligation to ensure the public interest is served by whatever measures are adopted. As with other governmental entities, the public health agency bears this responsibility.

Examples of the governmental policy development role include planning and priority-setting, policy leadership and advocacy, convening, negotiating, and brokering, mobilizing resources, training, constituency building and provision of public information, and encouragement of private and public sector action through incentives and persuasion.

The public health agency's special role in policy development means it must pay attention to the quality of the process itself, in addition to that of decisions. It must raise crucial questions missed elsewhere; initiate communication with all affected parties, including the public-at-large; consider long-range issues in addition to crises; plan ahead as well as react; speak on behalf of persons and groups who have difficulty being heard in the process; build bridges between fragmented concerns; and strive for fairness and balance.

The public health agency should be equipped for this role by its technical knowledge and professional expertise. Used judiciously, the public health knowledge base tempers the excesses of partisan politics and makes for more just decisions. Technical knowledge will have the best effect, however, when used in the context of a positive appreciation for the democratic political process by professionals who are politically as well as technically astute.

### Assurance

A core public sector function ensures necessary services are provided to reach agreed-upon goals, either by encouraging/requiring private sector action, or by providing services directly. Assurance implies maintaining a level of service needed to attain an intended impact or outcome that is achievable given the resources and techniques available.

The assurance function in public health involves implementing legislative mandates, as well as maintaining statutory responsibilities. It includes developing adequate responses to crises and supporting crucial services that have worked well for so long they are now taken for granted. It includes regulating services and products provided in both the private and public sectors, as well as maintaining accountability to the people by setting objectives and reporting on progress. As such, it requires the exercise of authority and is not a responsibility that can be delegated to the private sector. Citizens expect government to provide adequate safety and security. The public health agency must be able to exercise authority consistent with fulfilling their expectations and must account to them for its actions with equal energy.

As a part of the assurance function, in the interest of public health justice, agencies should guarantee certain health services. Such a guarantee expresses a measurable public commitment to each member of society. In operational terms, this implies guaranteeing both the services are available, i.e., present somewhere in the community and, in the case of providing services to individuals, costs will be borne by the government for those unable to afford them. When these services are not and/or cannot be present in the larger community, it is the public health agency's responsibility to provide them directly. Such a guarantee reflects a community consensus that access to certain health services is necessary to maintain our notion of a decent society. A guarantee acts as a barrier to service cuts in hard times, which tend to fall on the most vulnerable.

Governmental public health provides the necessary context for private sector activity. It strives to achieve a balance between the two great concerns in the American public philosophy – individual liberty and free enterprise on the one hand, just and equitable action for the good of the community on the other.

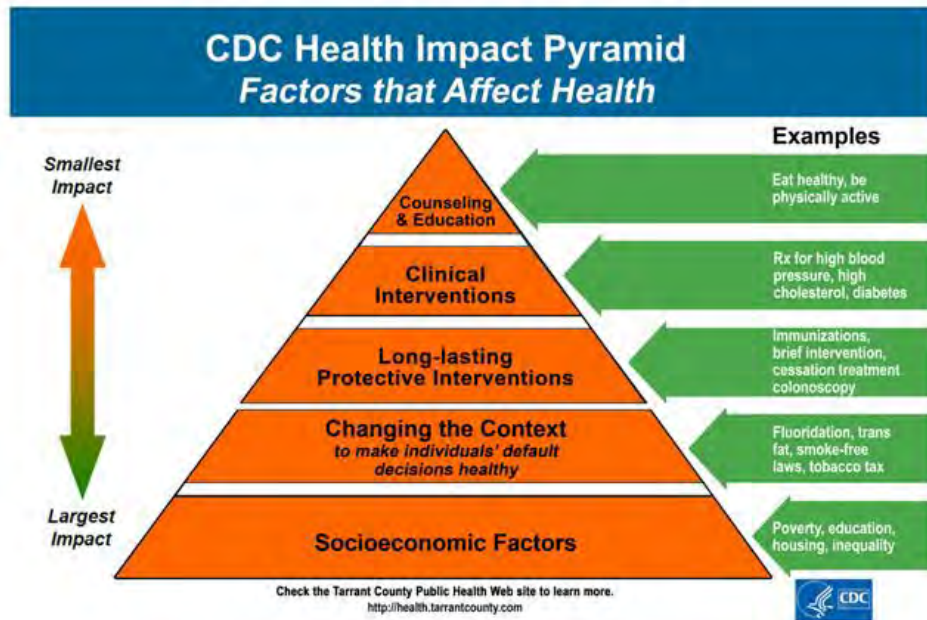
Recognition of the shortcomings or indifference of the private sector for certain crucial needs acts as the rationale and catalyst for government action. This can take various forms – encouraging the development of financial incentives where they do not exist, so the care of the uninsured could be made attractive to private providers; building relationships between public and private personnel, as when public health nurses complement the work of private practice providers serving indigent patients; or imposing sanctions for failure to abide by regulatory requirements. Where incentives cannot be mobilized, the public health agency must and should provide necessary services directly – the concept of assurance.

At any level of government, the public-sector responsibility for the health of the people must have a focal point with one agency charged with taking the lead in assuring that necessary obligations are fulfilled. Although it may sometimes be appropriate for public health-related responsibilities to be allocated among more than one public agency, in addition to the health department, fulfilling the assurance function adequately requires there be one place of ultimate responsibility and accountability.



10 Essential Public Health Services  
National Association of County and City Health Officials  
[www.naccho.org](http://www.naccho.org)

The Centers for Disease Control (CDC) identifies the conditions in the places where people live, learn, work, and play that affect a wide range of health risks and outcomes as “social determinants of health.” It provides the following infographic to demonstrate the greatest impact on the public’s health is achieved when factors, such as educational attainment, safe and affordable housing, economic security, and equity are achieved, in contrast to specific interventions aimed at individuals.





# Foundational Public Health Services

Revised Code of Washington (RCW 43.70.512), states:

(1) Protecting the public's health across the state is a fundamental responsibility of the state and is accomplished through the governmental public health system. This system is comprised of the state department of health, state board of health, local health jurisdictions, sovereign tribal nations, and Indian health programs.

(2)(a) The legislature intends to define a limited statewide set of core public health services, called foundational public health services, which the governmental public health system is responsible for providing in a consistent and uniform way in every community in Washington. These services are comprised of foundational programs and cross-cutting capabilities.

(b) These governmental public health services should be delivered in ways that maximize the efficiency and effectiveness of the overall system, make best use of the public health workforce and evolving technology, and address health equity.

(c) Funding for the governmental public health system must be restructured to support foundational public health services. In restructuring, there must be efforts to both reinforce current governmental public health system capacity and implement service delivery models allowing for system stabilization and transformation. [ 2019 c 14 § 1; 2007 c 259 § 60.]



## Foundational Public Health Services

[www.doh.wa.gov](http://www.doh.wa.gov)

FPHS aligns with the NACCHO 10 essential functions of public health and additional information can be found by going to the Department of Health website ([www.doh.wa.gov](http://www.doh.wa.gov)).



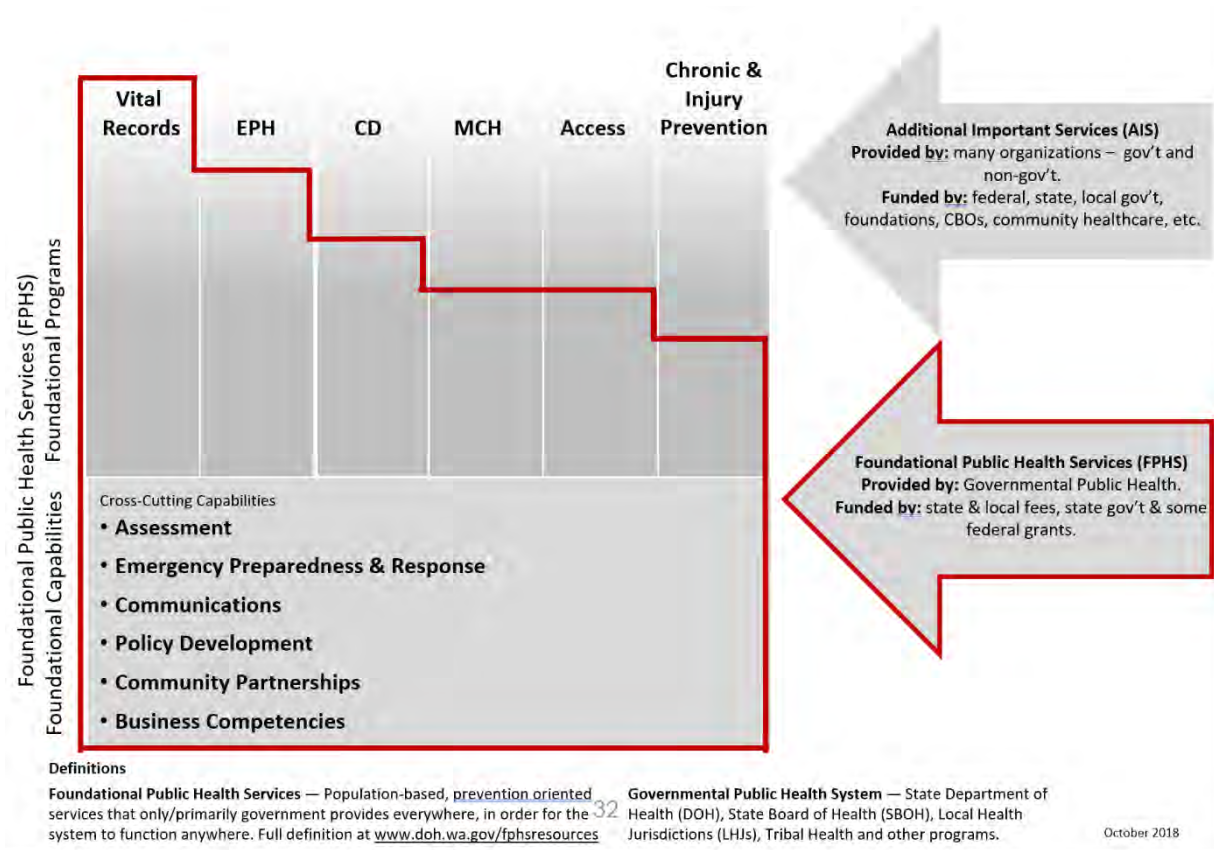
PROGRAMS



CAPABILITIES



MEETING LOCAL NEEDS



Examples of FPHS functions are in the table below. Please note that these examples are not exhaustive of all FPHS program areas but provide an overview of the importance of FPHS in the community.

Foundational Area	Example
Communicable Disease Control	<p>Promote immunization through evidence-based strategies and collaboration with schools, healthcare providers and other community partners to increase immunization rates.</p> <p>Conduct disease investigations and respond to cases and outbreaks/clusters of communicable diseases.</p> <p>Assure the appropriate treatment of individuals who have active tuberculosis.</p>
Chronic Disease and Injury Prevention	<p>Identify local chronic disease (including behavioral health) and injury prevention community assets, develop and implement a prioritized prevention plan, seek resources for and advocate for high priority policy initiatives.</p> <p>Reduce community rates of tobacco use through programs that conform to standards set by Washington laws and CDC's Office on Smoking and Health.</p> <p>Work actively to increase community rates of healthy eating and active living through a prioritized program of best and emerging practices.</p>

<p>Environmental Public Health</p>	<p>Develop and implement a prevention plan to protect the public's health by preventing and reducing exposures to health hazards in the environment.</p> <p>Conduct testing, inspections, and oversight to protect food, water recreation, drinking water, and liquid and solid waste streams in accordance with federal, state, and local laws and regulations.</p> <p>Identify and address priority notifiable zoonotic conditions (e.g., those transmitted by birds, insects, rodents, etc.), air-borne conditions, and other public health threats related to environmental hazards.</p>
<p>Maternal, Child, Family Health</p>	<p>Provide communities on emerging and on-going maternal child health trends, considering the importance of Adverse Childhood Experiences (ACEs) and health disparities.</p> <p>Promote emerging and evidence-based information about early interventions in the prenatal and early childhood period that optimize lifelong health and social-emotional development.</p>
<p>Access to Clinical Care</p>	<p>Participate in collaborative efforts to improve health care quality and effectiveness, reduce healthcare costs and improve population health.</p> <p>Develop and implement prioritized plans for assuring access to specific clinical services of public health importance, such as family planning, key services for pregnant women and their infants (i.e., maternity support, WIC), and STD and HIV testing and treatment; seek resource for and advocate for high priority policy initiatives.</p>
<p>Vital Records</p>	<p>Provide certified birth and death certificates in compliance with state law and rule.</p>

## BOARD OF HEALTH

### Spokane County Commissioners

**Amber Waldref** awaldref@spokanecounty.org  
**Josh Kerns** jkerns@spokanecounty.org  
**Mary Kuney** mkuney@spokanecounty.org

### Cities & Towns Representative: Mayor, City of Millwood

**Kevin Freeman** mayor@millwoodwa.us

### Representing Public Health, Health Care Facilities or Providers

**Alycia Policani** apolicani@srhd.org

### Representing Public Health Consumers

**Chris Patterson** cpatterson@srhd.org

### Representing Community Stakeholders

**Charlie Duranona** cduranona@srhd.org

### Representing Tribal Communities

Coming soon...

**Administrative Officer**  
Vacant

**Francisco Velázquez**  
MD, SM, FCAP

**Health Officer**  
fvelazquez@srhd.org  
509.324.1469

FINANCE	COMMUNITY HEALTH	ADMINISTRATION	ENVIRONMENTAL PUBLIC HEALTH	TREATMENT SERVICES	DISEASE PREVENTION & RESPONSE
<p><b>Kim Kramarz</b> Director kkramarz@srhd.org 509.324.1662</p> <p>Finance Financial Services Vital Records</p>	<p><b>Melissa McDaniel</b> Director mmdaniel@srhd.org 509.324.1641</p> <p>Health Equity Healthy Families Healthy Living HIV Case Management Nurse-Family Partnership Women, Infants &amp; Children (WIC) Nutrition</p>	<p><b>Lola Phillips</b> Deputy Administrative Officer lphillips@srhd.org 509.324.1452</p> <p>Healthcare Coalition Health Policy Human Resources HIPAA &amp; Records Management Immunization Records Information Technology Maintenance Media &amp; Communications Procurement &amp; Contracts</p>	<p><b>Ray Byrne</b> Director rbyrne@srhd.org 509.324.1588</p> <p>Environmental Resources Food Safety Liquid/Solid Waste School Safety Water Recreation Zoonotic Disease</p>	<p><b>Misty Challinor</b> Director mchallinor@srhd.org 509.324.1647</p> <p>Opioid Treatment</p>	<p>Communicable Disease Investigation &amp; Prevention Data Center Emergency Preparedness &amp; Response HIV/STD Prevention Homeless Outreach Immunization Assessment &amp; Promotion Tuberculosis</p>



## Access to Baby & Child Dentistry (ABCD)

509.324.1687

Expanded dental services and case management for children under the age of 6 with Medicaid.



## Birth/Death Certificates

509.324.1601

[srhd.org/birth-death-certificates](http://srhd.org/birth-death-certificates)

Washington state birth certificates and Spokane County death certificates.



## Communicable Disease Investigation & Prevention

509.324.1442

Monitoring, tracking, and response to infectious disease in the community to prevent spread of illness.



## Animal & Insect Disease Prevention

509.324.1560, x7

Investigate reports of animal bites and contact with bats in order to prevent the spread of rabies.



## Children & Youths with Special Needs Health Care Needs (CYSHCN)

509.324.1665

Support for children, ages 4 to 18 with special health care needs.



## Early Support for Infants & Toddlers (ESIT)

509.324.1651

Serves children, ages birth to 3, who are at risk of developing, serious chronic physical, developmental, behavioral, or emotional conditions. Provides families support via resources and links to community services, care coordination, and health information.

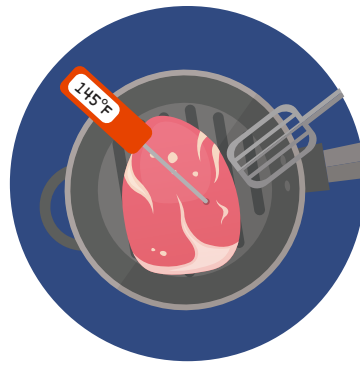




## Emergency Preparedness & Response

**509.324.1673**

Preparation, response, and assistance in recovery from natural and human-caused public health incidents and threats.



## Food Safety

**509.324.1560, x2**

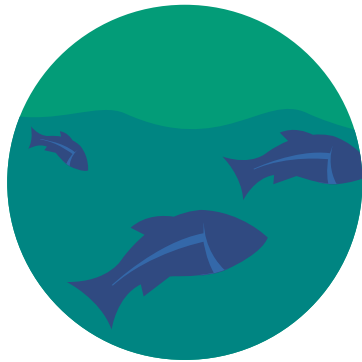
Restaurant inspections, permits, and food handler's permits.



## Nurse-Family Partnership

**509.324.1621**

Connects pregnant people with a personal nurse for support, advice, and information needed in order to have a healthy pregnancy, a healthy baby and be a great parent. To enroll, a woman must be pregnant, meet income criteria, and live in Spokane County.



## Environmental Resources

**509.324.1560**

Offers consultations for private well owners, reviews land development, conducts visits to identify and control contaminants entering groundwater, fish advisory on the Spokane River, Pollution Prevention technical assistance for small business owners and provides solid waste complaint consultation.



## HIV/STD Prevention

**509.324.1542**

Support, advocacy, referrals, and linkage to health insurance and community resources, information and education, skill building and coordination of services around their health condition.



## Opioid Treatment Program

**509.324.1420**

Outpatient treatment, counseling, medication, mental health services and referral services for adults with opioid use disorder.



## Liquid Waste Program

**509.324.1560, x1**

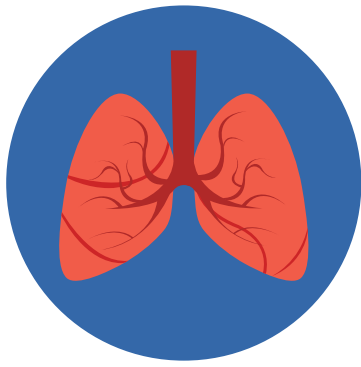
Offers consultation and permitting for on-site sewage systems in Spokane County. Provides complaint consultation for sewage on the ground.



## Syringe Services

Provides one-for-one exchange of used syringes for new ones.





## Tuberculosis Program

509.324.1613

Provides education and consultation to local medical providers and community partners about screening, latent case management and infection control.



## Women, Infants & Children Nutrition Program (WIC)

Supplemental food program for infants, children and women who are pregnant or breastfeeding. WIC also provides services that help address health needs during and after pregnancy and in early childhood.

**509.324.1620**

**Deer Park : 509.276.3770**

United Methodist Church  
113 E. 2nd St., 99006

**East Central: 509.323.2830**

500 S. Stone, 99202

**Northeast: 509.323.2828**

Northeast Community Center,  
4001 N. Cook, 99207

**Spokane Valley: 509.323.2800**

12213 E Broadway, Ste 5, 99206



## Vaccines & Immunization

509.324.1611

Immunization facilitation, outreach, and resources.



## Water Safety

509.324.1560, x4

Permits, inspections, and drowning prevention.



## Youth Cannabis & Commercial Tobacco Program

509.232.1707

Advocates for tobacco and cannabis cessation, prevention of youth initiation of tobacco and cannabis product use, and community protection from secondhand smoke exposure.



*We are your*  
**PUBLIC HEALTH  
CONCIERGE**



Spokane Regional Health District  
1101 W. College Ave.,  
Spokane, WA 99201  
509.324.1500 | srhd.org



# Administration

Administration provides internal services for SRHD staff and external services that support our community. This division includes all SRHD's core support services, including Human Resources, Finance, Procurement and Contracts, Information Technology, Public Information and Government Affairs, Maintenance,

and HIPAA and Records Management.

Administration also includes two public-facing programs: Emergency Preparedness and Response (EPR) and Financial Services and Vital Records. EPR provides emergency preparedness and response support to 10 public health jurisdictions including Spokane County and administers the REDi Healthcare Coalition, an organization that connects healthcare systems throughout Eastern Washington with disaster preparedness and response training, services and support before and during emergencies and response efforts. Financial Services and Vital Records provides access to birth and death certificates and processes payment for services rendered by the health district.

## Recent Achievements

- *Finance successfully implemented cloud-based timekeeping and budget systems and transitioned all staff to lag payroll with a 10-day pay lag.*
- *Medical Reserve Corps supported SRHD's COVID-19 response; contributing 12,448 hours, which translates to an economic value of \$500,615.*
- *Vital Records issued 46,987 certified records.*
- *Financial Services processed over 17,000 financial transactions.*
- *Human Resources hired 88 new employees, onboarded 65 volunteers and supported 61 employees per month with commute alternatives for a total of 732 commute alternatives annually.*





# Community Health

Community Health programs enhance the well-being of our community. The Healthy Families, Nurse-Family Partnership and WIC programs benefit individuals at every life stage, providing critical services such as pre- and post-natal education and support; assistance, education and support related to breastfeeding, nutrition, and dental care; health

screenings for and education about breast, cervical and colon cancer; and assistance and education for families with children living with developmental delays, disabilities, special needs, or other special healthcare needs.

Apart from direct services, these programs also approach community well-being, with support from the Health Equity program, at the systems level to bridge the gap between communities and health and social service systems and improve access to external community resources. The Healthy Living program works to inform, shape or create policies and systems that promote nutrition security, physical activity, healthy environments for teens and young adults, and safe and nurturing environments for young families.

The HIV Case Management program supports individuals living with HIV by providing coordinated care and access to supportive services including medical care, health insurance and community resources, such as housing, education, and skill building.

## Recent Achievements

- *The Healthy Living program has made our parks healthier environments by helping to update Spokane's Tobacco Free Parks policy to include nicotine and vapor products, and program staff provided training and support to local organizations to enhance family and community resilience.*



# Disease Prevention & Response

Programs within the Disease Prevention and Response Division work to monitor, prevent and respond to disease outbreaks in Spokane County. The Communicable Disease Investigation and Prevention Program provides disease surveillance, case investigation, education and resources for patients and healthcare providers.

The Immunization Assessment and Promotion program works to reduce barriers to immunization services and provides education for informed decision making about vaccines. The program conducts local vaccine supply oversight and monitoring for Vaccines for Children (VFC) providers, community immunization events, medical office-based quality improvement projects, and vaccinator training programs. In 2021, the program coordinated with local partners to offer COVID-19 vaccines in the county and now serves as a COVID-19 vaccine depot.

The HIV/STD Prevention program offers HIV, STD, and hepatitis C testing services to high-risk populations, as well as partner notification services, needle exchange, and education and resources for patients and healthcare providers.

The Data Center collects, analyzes and uses health-related data to inform the community about current local health issues through reports, fact sheets and data-centric websites and applications. The program also provides data and technical assistance to partners and SRHD program staff for grants, community work, needs assessments, program planning, performance monitoring, and evaluations.

## Recent Achievements

- *The Communicable Disease Investigation and Prevention program investigated 228 general communicable disease cases, 421 cases of hepatitis C, and 10,055 cases of COVID-19.*
- *The Immunization Assessment and Promotion (IAP) team hosted, facilitated, or coordinated over 800 COVID-19 vaccination clinics, providing 38,875 COVID-19 vaccines; and as the vaccine depot for Spokane County, IAP filled 274 individual community partner requests, accounting for 29,618 doses redistributed or transferred.*
- *The Data Center conducted the LGBTQIA2S+ Health and Well-Being in Eastern Washington Community Survey and completed and published the Spokane County Quality of Life Survey.*



# Environmental Public Health

Environmental Public Health staff keep Spokane County's food establishments, schools and pools running safely while also working with residents and businesses to manage well water, wastewater and septic systems. The Food Safety program works with the food service industry and community to prevent food-borne illness, provide food worker education, and investigate complaints and illnesses associated with food establishments.

The Living Environment program partners with K-12 schools to ensure safe, healthy learning environments and with water recreation facilities to prevent illnesses and injuries. The team consults with pet shops and petting zoos, responds to animal bite reports, and sends specimens for testing to prevent disease transmission from animals and insects to people. The program also provides consultation on issues such as potentially hazardous sites and the possible health effects of exposure to PFAS (polyfluoroalkyl substances), wildfire smoke, hazardous algae blooms, lead, and mold.

The Liquid Waste and Environmental Resources program inspects and permits septic systems and reviews new developments that will use septic systems to ensure they do not create a public health risk. Program staff work with the Washington State Department of Ecology to inspect new and decommissioned wells and protect groundwater. The program ensures solid waste is properly managed by issuing permits and conducting inspections of disposal facilities. The program also provides education on proper handling and management of hazardous waste.

## Recent Achievements

- *The Food Safety program completed ≈3,000 routine inspections, over 200 plan reviews for food establishments, and addressed over 300 complaints.*
- *The Liquid Waste and Environmental Resources program received 711 new septic system applications (an increase of 16% over pre-pandemic levels), approved 651 septic system installation permits (an increase of 15% over pre-pandemic levels) and completed 1,431 liquid waste inspections (an increase of 20% over pre-pandemic levels).*
- *The School Health and Safety program is part of SRHD's COVID-19 education team that recently received Central Valley School District's 2022 Meritorious Service Award.*



# Treatment Services

The Treatment Services division includes the Opioid Treatment Program (OTP) and the Tuberculosis Program. OTP uses an interdisciplinary approach that includes medication management therapy, counseling, and health monitoring to provide customized treatment for individuals who are dependent on opioids. Medication management therapy

helps patients manage withdrawal symptoms with methadone or buprenorphine. In addition to medication-assisted therapy, individuals enrolled in the program also receive access to integrated behavioral healthcare intervention, which addresses both mental health and substance use.

The Tuberculosis (TB) Program provides education and consultation to local medical practitioners and community partners about TB screening, latent tuberculosis case management, and infection control.

## Recent Achievements

- *Treatment Services provided services to 1,957 unduplicated individuals in 2021 and mental health services were provided to 264 individuals who did not have external mental health coverage in 2021.*
- *Distributed 430 Narcan kits, resulting in a documented 167 overdose reversals.*

## Board of Health and Agency Roles & Responsibilities

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AREA	BOARD OF HEALTH (Policy)	ADMINISTRATOR (Operations)
Long-term goals (taking more than one year)	Approves	Recommends and provides input
Short-term goals (taking one year or less)	Monitors	Establishes and carries out
Annual report and plan	Approves	Assesses, develops and carries out
News media releases	Adopts policy; supports public health position	Approves all media releases
Day-to-day operations	No role	Responsible for all management decisions
Budget	Approves	Develops and recommends
Capital purchases	Approves	Prepares requests
Decisions on building renovation, leasing, expansion, etc.	Make decisions; assumes responsibility	Recommends; signs contracts after Board approval
Purchases of supplies	Establishes policy and budget for supplies	Purchases according to Board policy; maintains an adequate audit trail
Major repairs	Approves	Obtains estimates and prepares recommendations
Minor repairs	Establishes policy, including amount that can be spent without Board approval	Authorizes repairs up to predetermined amount
Emergency repairs	Works with Administrator	Notifies and acts with concurrence from Chair
Cleaning and maintenance	No role (oversight only)	Sets up schedule
Fees	Adopts policy	Develops and sets fee schedules
Billing, credit and collections	Adopts policy	Proposes policy and implements
Hiring of staff	Hires Administrator and approves of Health Officer	Approves hiring of all subordinate staff
Staff development and assignment	No role	Establishes
Firing of staff	Fires Administrator only	Approves firing of all subordinate staff
Staff grievances	Establishes a grievance committee	Follows grievance procedures
Personnel policies	Adopts	Recommends and administers
Staff salaries	Allocates budget line item for salaries; approves yearly percentage increase	Approves salaries with recommendations from supervisory staff
Staff evaluations	Evaluates Administrator	Evaluates supervisory staff and health officer

**BOARD OF HEALTH  
SPOKANE REGIONAL HEALTH DISTRICT  
BYLAWS**

**ARTICLE I  
NAME**

The name of this governing body shall be the Spokane Regional Health District Board of Health, hereafter referred to as "Board" or "Board of Health."

**ARTICLE II  
PURPOSE**

The primary purpose of the Board of Health is (1) to serve as the governing body of the Spokane Regional Health District, hereafter referred to as "Health District"; (2) to unite the community in a cooperative effort to supervise all matters pertaining to the preservation of the life and health of the citizens within its jurisdiction; (3) to comply fully with the requirements of all applicable chapters of Title 70, Revised Code of Washington; (4) to create and promote prudent public health policy within the District; and (5) to make possible and invite the active participation of all professions, persons and organizations interested in public health.

**ARTICLE III  
MEMBERSHIP**

(RCW 70.46.031 and Spokane County Resolution No. 21-0791)

- 3.1 In accordance with Chapter 70.46 of the Revised Code of Washington, and Spokane County Resolution No. 21-0791, the Board of Health shall consist of the following eight (8) voting members:
  - 3.1.1 Three (3) Spokane County Commissioners;
  - 3.1.2 One (1) elected official from a city/town within Spokane County;
  - 3.1.3 Three (3) members appointed by the Board of County Commissioners who are not serving in public office, one representing each of the following groups:
    - (a) public health, health care facilities, and providers;
    - (b) consumers of public health; and
    - (c) community stakeholders;
  - 3.1.4 One (1) tribal member.
- 3.2 The three (3) nonelected members appointed by the Board of County Commissioners for Spokane County shall serve two-year terms and shall not participate in any decisions related to the setting or modification of permit, licensing, or application fees, which shall be set solely by those members of the Board who are elected officials.
- 3.3 All new appointments shall be made prior to first Board meeting in January following the process set forth in Chapter 246-90 of the Washington Administrative Code and Spokane County.

- 3.4 Vacancies on the Board of Health shall be filled by appointment within sixty (60) days and made in the same manner as the original appointment.
- 3.5 The term "elected official" as used in these Bylaws shall mean any person elected at a general or special election to fill public office representing a city or county, and any person appointed to fill a vacancy in any such office.

ARTICLE IV  
LEGISLATIVE POWERS, DUTIES AND FUNCTIONS (RCW 70.05)

- 4.1 The authority of the Board of Health shall be as prescribed by the laws of the State of Washington.
- 4.2 The Board of Health shall appoint an Administrator who shall serve at the pleasure of the Board. The Administrator shall be the Director of the Health District and shall report directly to the Board. The Administrator's compensation package shall be set by the Board on an annual basis and be based on the Administrator's performance and the financial condition of the Health District.
- 4.3 The Administrator shall recommend appointment of a person to be Health Officer to the Board of Health. The Board of Health shall approve or reject the Administrator's recommendation. Termination of the Health Officer shall be in accordance with RCW § 70.05.050. The Health Officer shall be a qualified physician who meets the requirements of RCW § 70.05.051. The Health Officer reports to the Administrator in all matters other than confirmation of his or her appointment and termination. The Board shall approve the compensation package for the Health Officer.
- 4.4 The Administrator is authorized to hire, supervise, and terminate such technical and other personnel as approved in the budget to carry out the functions of the Health District.
- 4.5 The Board of Health will review and decide the necessary finances and budget to carry on public health services.
- 4.6 At least annually, the members of the Board of Health who are elected officials shall review and approve a fee schedule for services provided by the District in accordance with a fee policy that is periodically reviewed and updated by the members of the Board of Health who are elected officials.
- 4.7 The Board of Health will receive reports from and through the Administrator on the activities of the District.
- 4.8 The Board of Health will promulgate resolutions for the control of communicable diseases and other public health concerns in conformity with the provisions of the laws of United States, the State of Washington, and the State Board of Health.

- 4.9 The Board of Health may also issue nonbinding guidelines and recommendations expressing its collective opinion on issues impacting public health for the advice and benefit of SRHD's community partners. Proposed guidelines and recommendations shall be addressed in the same manner as any other action item coming before the Board for its consideration.
- 4.10 In accordance with Article VIII of these by-laws, the Board of Health will only receive written public comment from members of the public.
- 4.11 The Board of Health will review plans and requests for public health services from individuals, organizations, and agencies.
- 4.12 The Board of Health will cooperate with and coordinate activities with its community partners and solicit their cooperation and services in carrying out sound public health programs within the jurisdiction of the Health District.
- 4.13 The Board shall contract with an attorney licensed to practice in the State of Washington whose duties shall be to advise and assist the Board and the District in routine legal matters. The Board may contract with special counsel for specific litigation by or against the Health District.

ARTICLE V  
OFFICERS AND THEIR DUTIES

- 5.1 The presiding officer of the Board shall be the Chair, who shall serve for a term of one (1) year. The Board shall elect the Chair from the members of the Board by a majority vote of the Board members present at the last regular meeting of each year. No Chair shall succeed him/herself for more than two (2) full consecutive terms. If a vacancy occurs, the Vice Chair shall become Chair of the Board.
- 5.2 The Board shall elect a Vice Chair, who shall serve for a term of one year, from the members of the Board by a majority vote of the Board members present at the last regular meeting of each year. If a vacancy occurs, a new Vice Chair shall be elected to fill the unexpired term at the next regular or special meeting of the Board. No Vice Chair shall succeed him/herself for more than two (2) full consecutive terms. The Vice Chair shall perform the duties of the Chair in the event of the Chair's absence or inability to perform the duties of Chair.
- 5.3 In accordance with RCW § 70.05.050, the District Administrative Officer shall serve as Executive Secretary to the Board.
  - 5.3.1 It shall be the duty of the Executive Secretary, or his or her designee, to (1) record minutes of all meetings of the Board, including the basis for any executive session but not the substance; (2) maintain a book of numbered and dated motions/resolutions passed by the Board; (3) be custodian of all records, books and papers belonging to the Board; (4) carry on the usual correspondence of the Board, including such matters as notifying members of public meetings dealing with public health matters and making written recommendations thereon.



- 5.3.2 The Executive Secretary, or his or her designee, shall prepare a list of vouchers for monthly presentation to the Board. All accounts shall be reviewed by the Board or its representative members.

ARTICLE VI  
DISTRICT HEALTH OFFICER (RCW § 70.05.070)

The District Health Officer shall perform such duties as are provided by law and directed by the Administrator. He/she shall be responsible to the Administrator for his/her official actions.

ARTICLE VII  
MEETINGS AND QUORUM

- 7.1 The Board of Health shall meet monthly on the fourth Thursday of each month at 12:30 p.m. except during the months of August and November. The dates and times of meetings for the year will customarily be established at the January meeting of the Board. Meetings will be held at Spokane Regional Health District, 1101 W. College Ave., Spokane, WA 99201. Scheduled meeting dates, times and places may be revised to accommodate the needs of the Board; in such instances, public notice at least ten (10) calendar days in advance will be provided.
- 7.2 Special meetings may be called by the Chair at his/her discretion, at the request of the Executive Secretary, or on the written request of a majority of the members, provided that written notice to each board member and the media is given at least twenty-four (24) hours prior to the proposed meeting concerning the time, place and subject, except in an emergency, in accordance with RCW § 42.30.080.
- 7.3 Four (4) members of the Board shall constitute a quorum for the dispatch of business.
- 7.4 Approval of all actions taken by the Board, other than setting or modifying a permit, licensing, or application fees, shall be by a majority of the votes cast. Approval of actions pertaining to the setting or modifying of a permit, licensing or application fees shall be limited to a majority of the votes cast by those members of the Board who are elected officials in accordance with RCW 70.46.031(1)(l).
- 7.5 In accordance with RCW § 42.30.110, the Board shall call executive sessions as necessary.
- 7.6 Any or all Board members may attend the meeting in person, via telephone, by video link or other electronic means that allows for real time verbal communication. In the event all Board members are appearing remotely, there will also be a physical location where the meeting may be viewed by the public.
- 7.7 If, after the declaration of an emergency by a local or state government or agency, or by the federal government, SRHD determines that it cannot hold a Board meeting with members or public attendance in person with reasonable safety because of the emergency, the Board will either cancel the meeting or hold the meeting remotely and notify the public through a

posting on its website that the meeting will be held using a video platform and provide information on how to access the meeting.

#### ARTICLE VIII BUSINESS OF REGULAR MEETINGS

- 8.1 The business at all regular meetings, unless changed by a majority vote of members present, shall include: Call to Order; Roll Call; Approval of Minutes; Approval of Vouchers; Chair's Report; Agency Report;; Action Items; Discussion Items/Reports; Board Member Check-In; Announce the Date and Time of the Next Board of Health Meeting; Adjourn.
- 8.2 Members of the public may submit written comments for the Board's consideration. Written comments must be received no later than twenty-four (24) hours prior to the start of the regular meeting. All written comments timely received will be provided to the Board members in advance of the regular meeting.
- 8.3 For purposes of these bylaws, adjournment of a meeting shall mean that the business of the Board for that meeting is concluded. If a board meeting is "continued," that means the business of the Board is not concluded and will be carried forward to another date and time.

#### ARTICLE IX COMMITTEES

- 9.1 The Executive Committee of the Board shall consist of the Board Chair, Vice Chair, and one other member appointed by the Chair of the Board, so long as there is no violation of the Open Public Meetings Act. The Chair of the Board shall serve as Chair of the Executive Committee.
- 9.2 The Executive Committee shall meet prior to each Board meeting to determine the agenda, review agenda items and other issues, and decide on recommendations to the full Board.
- 9.3 Agenda items or other issues requiring action by the Board shall first be submitted to the Executive Committee of the Board for consideration and recommendation unless the Board by majority vote of those present agrees to hear an issue and make a decision without Executive Committee recommendation.
- 9.4 The Executive Committee shall serve as an advisory committee to the Health Officer and the Administrator when necessary.
- 9.5 The Chair of the Board may appoint other committees of the Board from time to time as deemed necessary. The Chair shall be an ex-officio member of all committees.

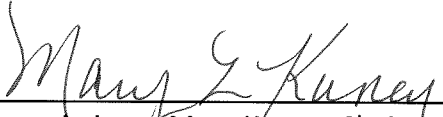
ARTICLE X  
RULES OF BUSINESS

Business shall be conducted in accordance with the most current edition of Robert's Rules of Order, so long as they are consistent with these By-laws or any amendments thereto. The Health District counsel shall serve as parliamentarian.

ARTICLE XI  
AMENDMENTS TO THE BYLAWS

These Bylaws may be amended at a second reading during any regular or special meeting of the Board by a majority vote of members present, provided that the amendment has passed a first reading after being presented in writing to members of the Board of Health at least five (5) calendar days prior to the meeting at which the first reading is included on the agenda. Members may waive the second reading and adopt the amendment at the first reading by two thirds majority vote of the members present.

ADOPTED this 28th day of July 2022.

  
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Commissioner Mary Kuney, Chair  
Spokane Regional Health District Board of Health

BEFORE THE BOARD OF HEALTH  
SPOKANE REGIONAL HEALTH DISTRICT

RESOLUTION # 05-06

RE: WAIVER/VARIANCE APPEAL PROCEDURE

WHEREAS, on March 24, 2005, the Spokane Regional Health District Board of Health (the Board), requested that a waiver/variance appeal procedure be developed with respect to espresso stands by Spokane Regional Health District (the District); and

WHEREAS, currently there are several similar, but not identical, waiver/variance appeal procedures available in different divisions of the District; and

WHEREAS, it may be beneficial to the District and the public to have standardized waiver/variance appeal procedures for applicable activities performed by the District:

NOW, THEREFORE, BE IT RESOLVED that the Board does hereby adopt the following waiver/variance appeal procedures for applicable activities performed by the District:

Any person or entity aggrieved by a decision of the District to grant or deny a waiver/variance may appeal that decision through utilization of the following procedure.

1. Review by Health Officer

- a. Within ten (10) working days of the waiver/variance decision, the aggrieved party shall file a written notice of appeal with the Health Officer. The notice of appeal shall contain the appellant's name, address and telephone number, a summary of the dispute and attach a copy of the decision being appealed.
- b. No later than ten (10) working days after the receipt of the appeal, the Health Officer shall issue a written determination on the appeal or a written notification that additional time is necessary and the reasons therefore.
- c. The Health Officer's decision shall be mailed to the appellant via certified mail, return receipt requested.
- d. Persons or entities dissatisfied with the Health Officer's written determination of the appeal may then seek review by the Board of Health as set forth in paragraph 2 below.

2. Review by the Board


- a. A person or entity seeking review by the Board shall submit a written notice of appeal to the Board. The appeal must be received by the Health Officer within ten (10) working days of the receipt of the Health Officer's decision. The notice of appeal shall contain the appellant's name, address and


telephone number, a summary of the dispute and attach a copy of the decision being appealed.

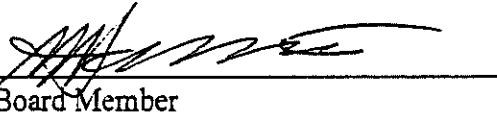
- b. Upon receipt of the notice of appeal, a hearing will be scheduled to occur within thirty (30) working days, or such longer time as is agreed to by the parties.
- c. The hearing will be conducted by a quorum of the elected members of the Board.
- d. During the hearing, the parties may present testimony and exhibits, from which the appeal will be determined.
- e. The hearing will be audio recorded.
- f. Within a reasonable time after the hearing, those members of the Board present at the hearing shall issue their decision, including findings of fact and conclusions of law supported by a majority of those present at the hearing.
- g. Appeals from a decision of the Board are governed by the Administrative Procedures Act, RCW 34.05.

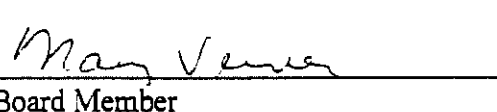
Signed this 23rd day of June, 2005 in Spokane, Washington.

SPOKANE REGIONAL HEALTH DISTRICT  
BOARD OF HEALTH

  
Chair (acting chair)

  
Board Member

  
Board Member

  
Board Member

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Board Member

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Board Member

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Board Member

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Board Member

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Board Member

BEFORE THE BOARD OF HEALTH  
SPOKANE REGIONAL HEALTH DISTRICT  
RESOLUTION #12-03

RE: ADOPTING A BOARD OF HEALTH MEMBER PERFORMANCE EXPECTATIONS POLICY

WHEREAS, it is the desire of the Board of Health of Spokane Regional Health District to maintain the highest standard of member participation in order to promote an orderly system of holding public meetings and conducting efficient and effective work of the Board of Health.


WHEREAS, a Board of Health performance expectations policy will instruct and guide Board Members to a standard agreed upon by all members;

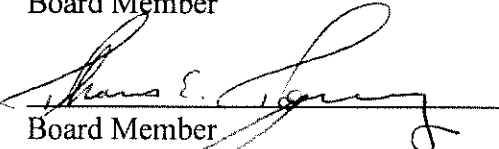
NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF HEALTH, that the attached policy on Board of Health Performance Expectations is hereby adopted, and

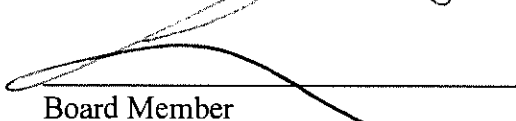
BE IT FURTHER RESOLVED, that the provisions of the attached policy shall be effective immediately upon adoption.


Signed this 23<sup>rd</sup> day of February 2012 in Spokane, Washington.

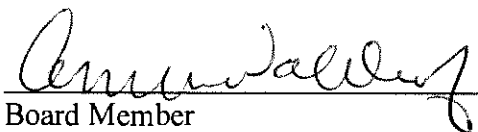
SPOKANE REGIONAL HEALTH DISTRICT  
BOARD OF HEALTH

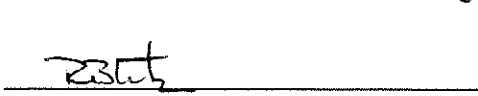
  
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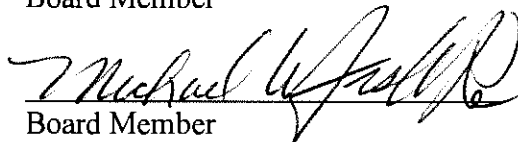
  
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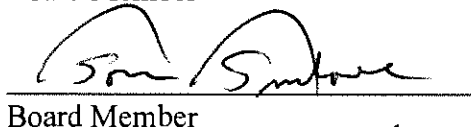
  
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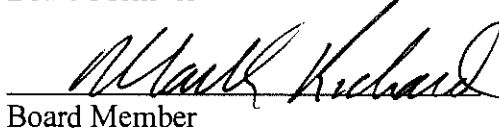
  
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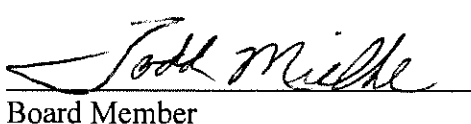
  
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Board Member

## **SPOKANE REGIONAL HEALTH DISTRICT POLICY ON BOARD OF HEALTH PERFORMANCE EXPECTATIONS**

### **1) PURPOSE**

- a. This policy is intended to promote an orderly system of holding a public meeting and to provide expectations for Board Member conduct.

### **2) EXPECTATIONS FOR BOARD MEMBER PERFORMANCE**

- a. Attendance. Board members are expected to attend at least eight of the ten regularly scheduled monthly meetings and all special meetings.
  - i. Any absence should be communicated to the Recording Secretary of the Board or Chair in advance of the meeting.
- b. Be prepared.
- c. Be respectful of other Board Members and Staff.
- d. Relationships with Health Officer and Staff:
  - i. Call the Recording Secretary for routine information (meeting times, dates, agendas)
  - ii. Contact assigned staff for committee-related topics.
  - iii. All other requests should be made to the Health Officer.
- e. Actively participate in Board and Committee assignments.

BEFORE THE BOARD OF HEALTH  
SPOKANE REGIONAL HEALTH DISTRICT

RESOLUTION # 14-04

RE: ADOPTING BOARD OF HEALTH GOVERNANCE RESPONSIBILITIES

WHEREAS, it is the desire of the Board of Health of Spokane Regional Health District to strengthen and improve its public health governance in order to promote an efficient and effective public health system in Spokane County; and

WHEREAS, Board of Health Governance Responsibilities will instruct and guide the Board of Health to a set of responsibilities agreed upon by all members; and

WHEREAS, Board of Health Governance Responsibilities will provide a standard against which the Board of Health can assess the performance of its responsibilities; and

WHEREAS, the Board of Health Governance Responsibilities are modeled on the National Association of Local Boards of Health's *Six Functions of Public Health Governance*, developed to assist local boards of health in guiding their organizations to fulfill *The 10 Essential Public Health Services* developed by the Centers of Disease Control and Prevention to describe the public health activities that all communities should undertake; and

WHEREAS, a Glossary of Terms for the Board of Health Governance Responsibilities has been developed to clarify the meaning of several terms used in the Board of Health Governance Responsibilities; and


WHEREAS, the Glossary of Terms for the Board of Health Governance Responsibilities will assist the Board of Health in having a common understanding of the Board of Health Governance Responsibilities;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF HEALTH, that the attached Board of Health Governance Responsibilities and associated Glossary of Terms are adopted, and

BE IT FURTHER RESOLVED, that the provisions of the attached Board of Health Governance Responsibilities and associated Glossary of Terms shall be effective immediately upon adoption.

Signed this 25th day of September 2014 in Spokane, Washington.

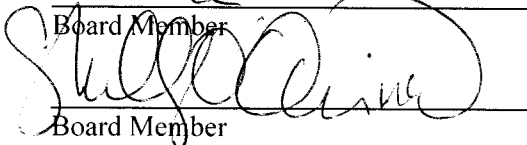
SPOKANE REGIONAL HEALTH DISTRICT  
BOARD OF HEALTH

  
Board Member


  
Board Member

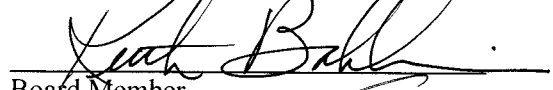
  
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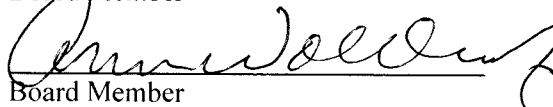
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Spokane Regional Health District  
**Board of Health Governance Responsibilities**

**Organizational excellence** Assume ultimate responsibility for public health performance in the community by providing necessary leadership, strategic planning and evaluation in order to support the public health agency in achieving measurable outcomes. Responsibilities include, but are not limited to:

- Participating in short- and long-range strategic planning
- Using mission, vision and strategic plan to guide decision-making
- Ensuring use of scientific information by district administration, staff and Board of Health to guide decision-making
- Monitoring progress towards achievement of goals

**Policy\*** Lead and contribute to the development of policies that protect, promote and improve public health and health equity while ensuring that the agency remains consistent with its statutory responsibilities\*. Governance responsibilities include, but are not limited to:

- Ensuring that the governing body understands and acts within its statutory responsibilities
- Analyzing the health and equity impacts of policy recommendations being considered by the Board of Health
- Adopting a policy agenda
- Recommending the adoption of policies by other governing entities to address public health priorities
- Encouraging the evaluation of health and equity impacts of policies

**Health equity\*** Ensure that everyone in the community has an equal opportunity to reach his or her health and well-being potential regardless of social, economic or other characteristics. Responsibilities include, but are not limited to:

- Engaging the community regarding public health issues
- Using community input to guide decision-making
- Promoting an understanding of social determinants\* on health outcomes
- Advocating\* for equitable health outcomes for all in the community

**Collaboration\*** Assist administration and staff in building and strengthening community partnerships, encouraging linkages and sharing information to ensure the collaboration of all relevant stakeholders in promoting and protecting the community's health. Responsibilities include, but are not limited to:

- Encouraging collaboration and facilitating linkages among stakeholders to identify and address public health and equity issues
- Working with others in the community to reduce barriers to health care
- Advocating for the collection, analysis and sharing of data among stakeholders

**Funding** Ensure the availability of adequate resources (financial, human, technological and legal) to perform essential public health services. Responsibilities include, but are not limited to:

- Advocating for necessary funding to sustain public health agency activities
- Engaging in long-range fiscal planning
- Promoting opportunities to leverage agency funding and other resources
- Exercising fiduciary care of the funds entrusted to the agency

Based on Board of Health Governance Functions developed by the National Association of Local Board of Health (NALBOH)

\* Refer to Glossary of Terms for additional information

Spokane Regional Health District  
**Board of Health Governance Responsibilities**  
Glossary of Terms

**Statutory Responsibilities:** Sources of authority include the Washington State Constitution, Revised Code of Washington and Spokane Regional Health District bylaws.

- *Article 11, § 11 of Constitution* – Under the State Constitution, a county government may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with the general laws.
- *Revised Code of Washington (RCW)* – Under the RCW, a county may opt to create a health department that is part of the county government structure (RCW 70.05) or form a health district that is a municipal corporation legally independent of county government (RCW 70.46). Health districts are formed and dissolved by the legislative authority of a county.
- *RCW 70.05.060: Powers and Duties of Local Board of Health:* Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction. Powers and duties include:
  - Enact rules and regulations necessary to “preserve, promote and improve the public health”
  - Provide for the control of “dangerous, contagious or infectious disease”
  - Provide for the prevention, control and abatement of nuisances
  - Establish fee schedules
  - Issue nonbinding guidelines and recommendations

**Policy:** In broad terms, policy is an agreement on issues, goals or a course of action by the people with power to carry it out and enforce it. Public policy is a course of action adopted and pursued by governments or quasi-governmental entities in the form of laws, regulations, decisions, funding priorities, programs and other system and environmental changes. Public policies are implemented and enforced by public agencies. The Board of Health has authority to directly enact policies to carry out its statutory responsibilities. It also has the ability to issue guidelines, recommendations or resolutions to influence the adoption of policies by other entities.

**Collaboration:** Public health issues are generally complex and require action by multiple entities, including government agencies, health care sector and nonprofit social service organizations. This is particularly true when addressing the social determinants of health. The position and influence of Board of Health members can be instrumental in assisting in the development of effective collaboration among partners to address specific public health issues.

**Advocate:** The position and influence of Board of Health members can be useful to urge or recommend actions by others. For example, BOH members can advocate for the adoption of policies they are recommending through resolution or can advocate for partner participation in collaborative efforts.

**Health Equity (Health Inequity):** Health equity concerns those differences in population health that can be traced to unequal economic and social conditions and are systemic and avoidable, and thus inherently unjust and unfair. (Source: [www.unnaturalcauses.org](http://www.unnaturalcauses.org)). Health equity is the concept that all people have an equal right to the conditions and resources that assure optimal health and safety. Health equity is distinct from health disparity. The interchangeable use of the terms "health disparities" and "health inequities" seems to be a source of confusion. They both can mean differences in the health of populations, but more consistently the term "health equity" encompasses the concept that the differences are unjust and unfair and traces the source of the differences in health being due to differences in socioeconomic circumstances. Health disparities are differences in the incidence, prevalence, mortality, and burden of diseases and other adverse health conditions that exist among specific population groups. (Source: National Institute of Health). Many different populations are affected by disparities. These include racial and ethnic minorities, residents of rural areas, women, children, the elderly, persons with disabilities, etc. Health disparities don't necessarily imply the disparities are unjust and inequitable.

**Social Determinants of Health:** Social, economic and physical conditions in the environments in which we are born, live, learn, work and play. They influence health, functioning and quality-of-life outcomes and risks. Social determinants include: income and income distribution; education; unemployment and job security; employment and working conditions; early childhood development; food security; housing and housing security; neighborhood; social safety network; race/ethnicity; and access to health care.

BEFORE THE BOARD OF HEALTH  
SPOKANE REGIONAL HEALTH DISTRICT

RESOLUTION #14-05

RE: ADOPTING BOARD OF HEALTH LEADERSHIP RESPONSIBILITIES AND SELECTION GUIDELINES

WHEREAS, the Board of Health recognizes that skillful leadership of the Board of Health is essential to the management, development and effective performance of the Board of Health in carrying out its Governance Responsibilities in support of the public health system in Spokane County; and

WHEREAS, Board of Health Leadership Responsibilities and Selection Guidelines will clearly articulate the expectations of the Chair and Vice Chair; and

WHEREAS, Board of Health Leadership Responsibilities and Chair and Vice Chair Selection Guidelines will instruct and guide the Board of Health in nominating and electing effective leaders and provide a standard against which to assess the performance of its leadership; and

WHEREAS, the Board of Health Governance Committee recommended that the Board of Health adopt Leadership Responsibility and Selection Guidelines;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF HEALTH, that the attached Board of Health Leadership Responsibilities and Selection Guidelines are adopted, and

BE IT FURTHER RESOLVED, that the provisions of the attached Board of Health Leadership Responsibilities and Selection Guidelines shall be effective immediately upon adoption.

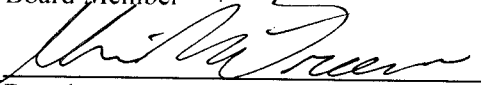
Signed this 25th day of September 2014 in Spokane, Washington.

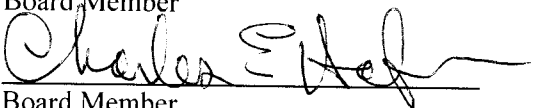
SPOKANE REGIONAL HEALTH DISTRICT  
BOARD OF HEALTH

  
Board Member

  
Board Member

  
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Spokane Regional Health District  
**Board of Health Leadership Responsibilities and  
Chair and Vice Chair Selection Guidelines**

**Chair Responsibilities:** The Chair is responsible for the management, development and effective performance of the Board of Health, and provides leadership to the Board for all aspects of the Board's work. Specific responsibilities include:

- Chair all meetings, unless unavailable, and then coordinate with Vice Chair
- Work with Health Officer to set agenda for meetings
- Conduct the meetings in an orderly, fair, open and efficient manner
- Guide and mediate Board actions and integrity of deliberations
- Facilitate discussion and decision-making
- Call special meetings if necessary
- Ensure committee reports are made to the full Board
- The Chair of the Board may appoint other committees of the Board from time to time as deemed necessary.
- The Chair may participate as a non-voting member of all Board committees.
- Counsel and consult with the Health Officer
- Speak for the Board as delegated by the Board
- Represent the Board to other groups
- Participate in new Board member orientation
- Consult with Board members who are not fulfilling their responsibilities or who are violating law, policy or practice
- Initiate annual evaluation of the Health Officer
- Oversee searches for a new Health Officer
- Initiate annual evaluation of the Board

**Vice Chair Responsibilities:** The Vice Chair supports the Chair in the management, development and effective performance of the Board of Health, and participates in the leadership of the Board for all aspects of the Board's work. Specific responsibilities include:

- Serve on the executive committee
- Carry out special assignments as requested by the Chair
- Understand the responsibilities of the Chair and be able to perform these duties in the Chair's absence
- Provide consultation to the Chair in the performance of his/her duties
- Assist the Chair with his/her duties, as requested
- Perform other governance and management duties as may be necessary for effective Board leadership

### **Chair and Vice Chair Selection Guidelines:**

The Chair of the Board must exhibit leadership ability and provide direction to the Health Officer and the Health District staff. When selecting a Chair, the Board should identify someone who is actively engaged and concerned with the issues of the Health District. The Chair may be called on to go to county governing bodies to support Health District concerns and issues. The person selected for this leadership position should be someone who has the time, energy and savvy to work throughout the county to represent the concerns of the Board and the Health District. Given the responsibilities of the Vice Chair to perform the responsibilities of the Chair in his absence and otherwise support the Chair, the Board should consider similar qualities in selecting a Vice Chair. As specified in the Board of Health bylaws, the Chair and Vice Chair must be elected officials.

In selecting members for the Chair and Vice Chair positions, the Board of Health will consider the following qualifications:

- Sufficient experience on the Board of Health
- Working understanding of Spokane Regional Health District operations and scope of work
- Actively engaged in the Board of Health and Spokane Regional Health District
- Ability to facilitate meetings, encourage open dialogue among Board of Health members and generate engagement of other Board of Health members
- Ability to develop the necessary relationships and represent Spokane Regional Health District and the Board of Health community
- Ability to commit necessary time to the position
- Interested in serving in the position

The Board of Health will consider the mix of representation from member jurisdictions in its leadership positions and will consider rotating the positions among the member jurisdictions. While not required, the Chair is encouraged to serve two consecutive terms and the Vice Chair is encouraged to seek the Chair position.

**BEFORE THE BOARD OF HEALTH  
SPOKANE REGIONAL HEALTH DISTRICT**

**RESOLUTION # 17-03**

RE: ADOPTING BOARD OF HEALTH COMMUNICATION POLICY

WHEREAS, the Board of Health recognizes that communication regarding SRHD business is accomplished, in part, through the use of Board Members' mobile devices; and

WHEREAS, the Board of Health recognizes that its communications are subject to federal and state laws requiring preservation and retention of records; and

WHEREAS, RCW 42.56.100 authorizes and requires the adoption of reasonable rules and regulations to preserve and retain public records; and

WHEREAS, pursuant to RCW 42.56.010, communications with and between Board Members regarding District business may constitute disclosable public records; and

WHEREAS, at this time SRHD cannot capture or retain certain types of mobile device messaging;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF HEALTH, that the attached Board of Health Communication Policy is adopted, and

BE IT FURTHER RESOLVED, that the provisions of the attached Board of Health Policy shall be effective immediately upon adoption.

Signed this 27th day of April, 2017 in Spokane, Washington.


SPOKANE REGIONAL HEALTH DISTRICT  
BOARD OF HEALTH

  
BREEAN BEGGS, COUNCILMEMBER

  
LORI KINNEAR, COUNCILMEMBER

  
SUSAN BOYSEN, BOARD MEMBER

  
BOB LUTZ, BOARD MEMBER


  
KEVIN FREEMAN, CHAIR

  
MIKE MUNCH, COUNCILMEMBER

 **ABSENT**  
AL FRENCH, COMMISSIONER

**ABSENT**  
SHELLY O'QUINN, COMMISSIONER

  
CHUCK HAFNER, BOARD MEMBER

  
KAREN STRATTON, COUNCILMEMBER

  
JOSH KERNS, COMMISSIONER

  
SAM WOOD, COUNCILMEMBER



# Board of Health Communication Policy

## **1. INTRODUCTION:**

Spokane Regional Health District (SRHD) is subject to state and federal laws governing the preservation and retention of District records. Due to technological advances, an increasing number of the SRHD Board of Health members are using mobile devices to communicate, receive information and schedule meetings. Through this Communication Policy, SRHD seeks to balance its obligation to preserve and retain records with the use of mobile devices by board members.

## **2. PURPOSE:**

The purpose of this SRHD Board of Health (BOH) Communication Policy is to define acceptable communication methods for BOH members relating to District business and meetings.

## **3. SCOPE:**

This policy applies to current and future SRHD BOH members conducting SRHD business, receiving SRHD information or scheduling meetings.

## **4. POLICY:**

Currently, SRHD is unable to capture, preserve and retain the following types of mobile device messaging, and therefore BOH members should not conduct SRHD business using any of the listed types of mobile device messaging: Short Message Service (SMS), Multimedia Messaging Service (MMS) text messages, and social media messaging. Board members should also ensure that their electronic mail address used for SRHD business is set up to be captured and maintained by SRHD systems or services or other governmental systems or services.

## **5. TRAINING:**

To ensure awareness, understanding, and compliance with the policy, SRHD will:

- Provide initial training to all current and future BOH members
- Provide periodic reminders of this policy

## **6. MONITORING:**

The HIPAA Officer will conduct regular risk assessments to monitor compliance with this policy.

## **7. POLICY REVIEW/UPDATES:**

This policy will be reviewed periodically as needed.

## **8. COMPLIANCE:**

Failure to abide by this policy may result in corrective action by the Chair of the SRHD BOH as necessary to ensure compliance.

**BEFORE THE BOARD OF HEALTH  
SPOKANE REGIONAL HEALTH DISTRICT  
RESOLUTION #20-01**

RE: ADOPTION OF A REVISED BOARD OF HEALTH COMMITTEE DESCRIPTIONS AND OPERATING GUIDELINES

WHEREAS, Resolution #12-02 establishes the Board of Health of Spokane Regional Health District committee descriptions and operating guidelines to provide clear understanding of Board committees and their functions to assure well-organized and effective working groups.

WHEREAS, the Board of Health of Spokane Regional Health District appointed the Board of Health Policy committee to assist the Board in performing its governance responsibilities of policy through the development of Board legislative agendas and policies for Board consideration.

WHEREAS, the Board of Health Education and Communication committee's purpose is to educate the Board on public health issues including policies and to make recommendations to the Spokane Regional Health District regarding communication with the Spokane community.

WHEREAS, the duties and goals of the Board of Health Policy committee and the Board of Health Education and Communication committee are often parallel and succinct; and it is the desire of the Board of Health of Spokane Regional Health District to be well-organized, effective and mindful of Board Member time.

WHEREAS, Resolution #16-06 the Board of Health amended its bylaws to reflect a change in the governance structure from the to the administrator as the director of the agency; and

WHEREAS, the Board of Health at the December 6, 2018 meeting amended the title of the Spokane Regional Health District Administrator to Spokane Regional Health District Administrative Officer.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF HEALTH, that the Board of Health for Spokane Regional Health District hereby rescinds Resolution #12-02 and hereby updates the Board of Health committee descriptions and operating guidelines to reflect the Spokane Regional Health District governance structure and director title and merges the Board of Health Education and Communication and Board of Health Policy committees into one committee.

BE IT FURTHER RESOLVED that the committee will be named Board of Health Policy and Education Committee and will follow the revised committee description and operating guidelines hereunto attached, and

BE IT FURTHER RESOLVED that the provisions of the attached descriptions and guidelines shall be effective immediately upon adoption.

Signed this 30th day of January 2020 in Spokane, Washington.

SPOKANE REGIONAL HEALTH DISTRICT  
BOARD OF HEALTH


  
\_\_\_\_\_  
CHAIR, MAYOR BEN WICK

  
\_\_\_\_\_  
BREEAN BEGGS, COUNCILMEMBER

  
\_\_\_\_\_  
KEVIN FREEMAN, MAYOR

**ABSENT**

\_\_\_\_\_  
AL FRENCH, COMMISSIONER

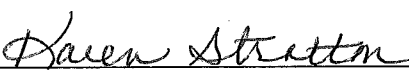
  
\_\_\_\_\_  
ANDREA FROSTAD, BOARD MEMBER

  
\_\_\_\_\_  
CHUCK HAFNER, BOARD MEMBER

  
\_\_\_\_\_  
VICE CHAIR, COMMISSIONER MARY KUNEY

  
\_\_\_\_\_  
JOSH KERNS, COMMISSIONER

  
\_\_\_\_\_  
JASON KINLEY, BOARD MEMBER

  
\_\_\_\_\_  
KAREN STRATTON, COUNCILMEMBER

  
\_\_\_\_\_  
LINDA THOMPSON, COUNCILMEMBER

  
\_\_\_\_\_  
BETSY WILKERSON, COUNCILMEMBER



SPOKANE REGIONAL HEALTH DISTRICT COMMITTEE  
DESCRIPTIONS AND OPERATING GUIDELINES

**PURPOSE**

These descriptions and operating guidelines are intended to provide clear understanding of the committees held by the Board of Health and establish guidelines for operating those individual committees.

**DESCRIPTIONS OF COMMITTEES**

**1. EXECUTIVE COMMITTEE**

Headed by the Board Chair and consisting of the Vice-Chair, chairs of Policy and Education Committee and Budget and Finance Committee, the immediate past Chair, and the Administrative Officer in an ex-officio capacity, so long as there are no violations of the Open Public Meetings Act. The Executive Committee is responsible for the effective functioning of the Board of Health including the development and maintenance of the Board/ Administrative Officer working relationship, and coordinating the Board's participation in strategic planning, in this capacity:

- a) Assisting in Board of Health meeting agenda development.
- b) Coordinating the functioning of the Board of Health and its committees, developing Board member performance standards, and monitoring the performance of the Board.
- c) Recommending revisions to Board by-laws in the interest of stronger governance.
- d) Assisting the Administrative Officer and Executive Team in designing any strategic planning processes and ensuring the Board participates fully and proactively.
- e) Reviewing and recommending to the Board critical planning products such as updated values, vision, and mission statements that merit Board attention.
- f) Ensuring that the Administrative Officer's employment contract and position description are updated, as necessary, to reflect Health District needs and priorities.
- g) Annually negotiating Administrative Officer performance targets and recommending full Board approval, designing the process for annual Board evaluation of progress in achieving these targets, and recommending the Administrative Officer's compensation to the Board.

**2. BUDGET AND FINANCE COMMITTEE**

Budget and Finance Committee is accountable for designing and coordinating the Board's participation in annual budget preparation, in this capacity:

- a) Committee members are expected to understand the sources of public health funding, issues surrounding public health funding, and program expenses to be fully engaged in the development of a recommended budget to the Board of Health.
- b) Reaching agreement with the Administrative Officer on the design of the budget development cycle.
- c) Overseeing preparation for, and hosting, any BOH-Executive Team strategic work sessions related to the budget.
- d) Coordinating with the Administrative Officer and Comptroller to present a final recommended budget to the Board.

**3. POLICY AND EDUCATION COMMITTEE**

Policy and Education Committee is accountable for assisting the Board of Health in policy education, development, public health education and for maintaining relationships with the community at large and key stakeholders, in this capacity:

- a) Coordinating with SRHD staff to cultivate Board member participation in public education, media opportunities and speaking in appropriate forums on behalf of the Health District.
- b) Developing for Board consideration, a yearly Board of Health legislative agenda.
- c) Working with agency staff to identify health and equity issues facing Spokane county and policies that the Board of Health could enact to positively address these issues.

**OPERATING GUIDELINES OF COMMITTEES**

1. Board Chair will appoint the chairs and members of the Budget and Finance and Policy and Education Committees to an annual term (minimum of 3 and maximum of 5 members per committee).

2. The Executive Committee consists of the Chair, Vice-Chair, previous Board Chair and the chairs of two other committees. All other Board members are strongly encouraged to serve on one of the two other committees.
3. The Administrative Officer is an ex officio member of all Board Committees and should whenever feasible, attend committee meetings or appoint a designated staff person in his/her absence.
4. Board members should make a commitment to attend committee meetings regularly, be prompt and be prepared.
5. Whenever a committee believes that the full Board should be involved in-depth in dealing with an issue, the committee should take the initiative in recommending to the Executive Committee that a special full Board work session be held as part of the regular Board meeting.
6. Committee chairs are appointed annually and should be rotated among Board members regularly – when feasible, no committee chair should serve more than 2 consecutive years
7. The committees should receive strong staff support, including the preparation of agendas and reports to the Board. The Administrative Officer and his/her Executive Team should work closely together to ensure the committees each have appropriate staff assistance.

BEFORE THE BOARD OF HEALTH  
SPOKANE REGIONAL HEALTH DISTRICT

RESOLUTION #20-12

RE: ADOPTING A SPOKANE REGIONAL HEALTH DISTRICT CONFLICT OF INTEREST POLICY

WHEREAS, Washington State law, Chapter 42.23 RCW, prohibits municipal officers from using their positions to secure special privileges or special exemptions for themselves or others, and from entering into certain contracts or having other personal financial interests with their jurisdictions; and

WHEREAS, the provisions addressing conflicts of interest for municipal officials currently exist in state law, the Board of Health desires to adopt a conflict of interest policy that incorporates these statutory requirements and assists its appointed officials in recognizing, disclosing, and avoiding conflicts of interests; and

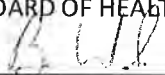
WHEREAS, adopting a conflict of interest policy will clarify expectations for appointed officials, directors, staff, and agents who conduct agency business; and

WHEREAS, the Spokane Regional Health District deems it is in the best interest of the agency to adopt this conflict of interest policy for the Board of Health and for all officials, directors, staff and agents operating on behalf of Spokane Regional Health District;

NOW, THEREFORE, BE IT RESOLVED, that the Spokane Regional Health District Board of Health adopts the Spokane Regional Health District conflict of interest policy as presented in the attached document.

Signed this 29th day of October 2020 in Spokane, Washington.


SPOKANE REGIONAL HEALTH DISTRICT  
BOARD OF HEALTH

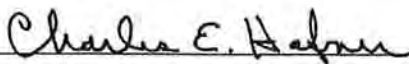
  
CHAIR, MAYOR BEN WICK

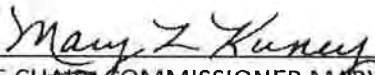
  
BREEAN BEGGS, COUNCIL PRESIDENT

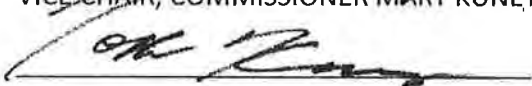
  
KEVIN FREEMAN, MAYOR


  
AL FRENCH, COMMISSIONER

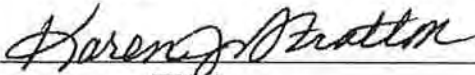
  
ANDREA FROSTAD, BOARD MEMBER

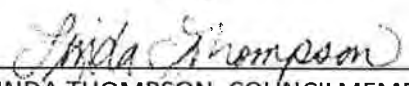
  
CHUCK HAFNER, BOARD MEMBER

  
VICE CHAIR, COMMISSIONER MARY KUNEY

  
JOSH KERNS, COMMISSIONER

  
JASON KIMLEY, BOARD MEMBER

  
KAREN STRATTON, COUNCILMEMBER

  
LINDA THOMPSON, COUNCILMEMBER

**ABSENT**

BETSY WILKERSON, COUNCILMEMBER

	<b>POLICY:</b> Conflict of Interest	<b>NUMBER:</b> 100-121-0066
	<b>DATE ENACTED:</b> 08/01/2020	<b>REVIEW DUE:</b> 08/01/2021
	<b>DIVISION:</b> Agency-Wide	<b>APPROVER:</b> <i>Amelia E. Clark</i>

**PURPOSE:** The purpose of this policy is to establish a mechanism to address real and potential conflicts of interest for the Spokane Regional Health District officers, directors, and staff.

**SCOPE:** Board of Health and all agency staff.

**POLICY:**

Officers, directors, staff and agents of Spokane Regional Health District shall not use their positions with the Health District or its relationship with its vendors or other businesses for personal gain or to obtain benefits for themselves or members of their family. For purposes of this policy, a potential conflict of interest exists when an employee’s outside interests (for example financial or personal) interfere or conflict with the Health District’s interests or the employee’s work-related duties. Any employee with a question about whether a situation is a potential conflict of interest should contact Human Resources for guidance. By way of example, officers, directors, and employees should not:

- Use or give the appearance of using their positions for personal gain for themselves or for those with whom they have family, business, or other personal interests.
- Receive, accept, take, seek or solicit directly or indirectly, any material considerations, gratuities, favors, or anything of monetary value for private financial gain from such contractors that could be perceived to serve as inducements to solicit business relationship with the organization.
- Have a beneficial interest, directly or indirectly, in any contract, sale, lease or purchase that may be made by, through or under their authority as a Health District employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any such person beneficially interested in such a transaction.
- Use any Health District personnel, money, equipment or property under their official control, custody or direction for their own private gain or benefit.
- Participate in the selection and/or award administration of a contract on purchase of services or goods if he or she has a real or apparent personal or professional conflict of interest.

In addition to the above, elected, and appointed officers of SRHD, including persons exercising any of the powers or functions of an elected or appointed officer, shall comply with the provisions of RCW 42.23 et seq.

**Required Disclosure**

Whenever a Board member has a personal or professional interest that presents a real or apparent conflict with the organization’s interests, the Board member shall fully disclose this conflict to the rest of the Board during a public meeting and refrain from voting, participating in any discussion related to the issue, making any decision related to the conflict, or seeking to persuade other Board members with respect to the issue.

Whenever a member of staff has a conflict of interest that presents a real or apparent conflict with the organization’s interests, the staff member shall fully disclose this conflict to the Administrative Officer or designee for review.

As a matter of procedure, everyone under the scope of this policy will be asked to complete the conflict of interest acknowledgement form on an annual basis. Completing the annual conflict of interest form does not exempt anyone from reporting a conflict as soon as it is known.

Should the Administrative Officer have a personal interest that presents a real or apparent conflict with the organization’s interests, the Administrative Officer shall fully disclose this conflict to the Board of Health and refrain from participating in the decision-making process relating to this conflict. In this situation, the Board will designate an alternate administrative contact for the conflicted issue.

Failure to disclose conflicts of interest shall be subject to disciplinary action in accordance with the Health District’s personnel policies and procedures.

	<b>POLICY:</b> Conflict of Interest	<b>NUMBER:</b> 100-121-0066
	<b>DATE ENACTED:</b> 08/01/2020	<b>REVIEW DUE:</b> 08/01/2021
	<b>DIVISION:</b> Agency-Wide	<b>APPROVER:</b> <i>Amelia Elank</i>

1. This policy shall not be interpreted as prohibiting business transactions between the organization and Board or staff members, but rather to assure that any and all such transactions are fair, equitable and able to tolerate the scrutiny of the public through full disclosure and decisions which demonstrate that organization's interests are primary.
  
2. Board members, agents and any other individuals involved in the selection, award, or administration of a contract, purchase or procurement of goods or services supported by federal funds shall also complete an annual written conflict of interest disclosure.

# Knowing the Territory

Basic Legal Guidelines for  
Washington City, County and  
Special Purpose District Officials

## **KNOWING THE TERRITORY**

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# Revision History

MRSC updates this publication as needed to reflect new legislation and other changes. To make sure you have the most recent version, please go to [mrsc.org/publications](http://mrsc.org/publications).

DATE	SUMMARY
<b>January 2022</b>	<b>City Attorney, Prosecuting Attorney and Legal Counsel Roles:</b> Added new case citation, <i>Koler v Black Diamond</i> (2021)
<b>November 2021</b>	<p><b>Potential Conflicts and Ethical Guidelines:</b></p> <ul style="list-style-type: none"> <li>• <i>Statutory Prohibition against Private Interests in Public Contracts</i> – RCW 42.43.030 exempts public contracts employing any person for unskilled day labor at wages now not exceeding \$1,000, instead of \$200, in any month, with some statutory exceptions (<a href="#">SB 6326</a>)</li> </ul> <p><b>Open Public Meetings Act:</b></p> <ul style="list-style-type: none"> <li>• <i>Minutes</i> – RCW 42.32.030 recodified as RCW 42.30.035</li> </ul>
<b>September 2019</b>	<p><b>Potential Conflicts and Ethical Guidelines:</b> <i>Spouses and Relatives Also Serving as Officers</i> – New section added (RCW 42.23.030; AGO 1978 No. 22)</p> <p><b>Open Public Meetings Act:</b></p> <ul style="list-style-type: none"> <li>• <i>Two Kinds of Meetings, Regular Meetings</i> – Added note on online availability of agendas per RCW 42.30.077</li> <li>• <i>Executive Sessions</i> – Added section regarding public hospitals (section i) per RCW 42.30.110(l)</li> </ul> <p><b>Public Records:</b> <i>Records that May Be Withheld</i> – Added section regarding child victims of sexual assaults (section r) per RCW 10.97.130</p>
<b>October 2017</b>	<p><b>Open Public Meetings Act:</b> <i>Executive Sessions</i></p> <p><b>Public Records:</b> <i>Agency Duties - Charges for Providing Electronic Records</i> – RCW 42.56.120(2)</p>



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# Basic Powers

## THE SEPARATION AND DISTRIBUTION OF GOVERNMENTAL POWERS

It is essential for effective local government that municipal officials, especially county commissioners, mayors, councilmembers, city managers, and special purpose district board members or commissioners, understand the roles of their respective offices and their inter-relationships with others. This brief discussion is meant to provide some basic guidelines in order to promote harmony and avoid unnecessary conflicts.

## NATURE AND POWERS GENERALLY

### Counties, Cities and Special Purpose Districts

Cities and towns are created under our constitution and general laws as municipal corporations. Wash. Const. art. XI, § 10; [RCW 35.02.010](#); McQuillin, *Municipal Corporations*, § 1.21. (Because their nature and structure are essentially the same, this publication will refer to both cities and towns, generally, as cities.) Counties are also established under the state constitution as political subdivisions of the state. Wash. Const. art. XI, §§ 1, 3. They are considered municipal corporations, or, at least, quasi-municipal corporations. [King County v. Tax Commission](#), 63 Wn.2d 393, 398, 387 P.2d 756 (1963). Special purpose districts are authorized by state legislation and are considered to be municipal corporations.<sup>1</sup>

As corporate entities, cities, counties and special purpose districts are capable of contracting, suing, and being sued, like private corporations. As municipal corporations, however, their functions are wholly public. They are, in a sense, incorporated agencies of the state, exercising local governmental powers. McQuillin, *supra*, § 2.8.

Counties, cities, and special purpose districts are creatures of the state, exercising only powers delegated to them by the constitution and laws of the state. Under article 11, section 11 of the state constitution, cities and counties possess broad police power to legislate for the safety and welfare of their inhabitants, consistent with general law. (Charter cities incorporated under article 11, section 10 of the state constitution, code cities under [Title 35A RCW](#), and charter counties under article 11, section 4 of the state constitution exercise a broader degree of self-government or home rule than do others.) Additionally, when exercising a proprietary (business) function, such as the operation of electrical or water service, a government's powers are more liberally

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<sup>1</sup>[Lauterbach v. Centralia](#), 49 Wn.2d 550, 554, 304 P.2d 656 (1956); [King County Water District No. 54 v. King County Boundary Review Board](#), 87 Wn.2d 536, 540, 554 P.2d 1060 (1976).

construed than when exercising a governmental function, such as taxation. [Tacoma v. Taxpayers](#), 108 Wn.2d 679, 693-96, 743 P.2d 793 (1987). All counties, cities, and special purpose districts, however, are subject to limitations imposed expressly or impliedly by state law. [Snohomish County v. Anderson](#), 123 Wn.2d 151, 158-59, 868 P.2d 116 (1994); [Massie v. Brown](#), 84 Wn.2d 490, 492, 527 P.2d 476 (1974).

While cities and counties are general purpose municipal corporations and exercise general governmental authority, special purpose districts are created for special purposes and their powers are limited to those areas within their jurisdiction.

### Officers

Regardless of how broad the powers of a municipal corporation may be, its officers have only those powers that are prescribed by law. McQuillin, *Municipal Corporations*, § 12.173.8; [State v. Volkmer](#), 73 Wn. App. 89, 93, 867 P.2d 678 (1994); [Brougham v. Seattle](#), 194 Wash. 1, 6, 76 P.2d 1013 (1938). For example, the powers of a mayor or city manager are, even in a code city, limited to those powers that are delegated by law to that particular officer.

When statutes are unclear as to whether or why the board of county commissioners, city council, special purpose district board member, or the chief executive officer should exercise a particular power or function, resorting to fundamental principles may be helpful. One such principle is embodied in the separation of powers doctrine, described in the next section.

## THE SEPARATION OF POWERS DOCTRINE

### Background

Under our political system at both federal and state levels, governmental powers are distributed among three separate branches or departments: legislative, executive, and judicial. In that respect, as in many others, city government is structured like state government. The city council's role is analogous to that of the legislature in establishing local public policy; the mayor or manager, like the governor, heads the executive branch. The municipal court exercises essentially judicial functions; however, its role is more limited than those of state courts.

The board of county commissioners possesses both legislative and executive powers. Some of the charter counties have established a board of county commissioners or county council with legislative powers only and have created a county executive position that exercises executive powers.

City and county – and, to a more limited degree, special purpose district – governmental structure reflects the philosophy now firmly embedded in our society known as the separation of powers doctrine. Under that doctrine, each of the three branches exercises certain defined powers, free from unreasonable interference by the other branches; yet, all branches interact with and upon each other as a part of a check and balance system. *In re Juvenile Director*, 87 Wn.2d 232, 238-44, 552 P.2d 163 (1976).

The separation of powers doctrine is embraced in the philosophy of our founding fathers and has been embodied since in the constitutions of all of the states and of the United States. It is an essential part of our form of government, one which is flexible and adaptable to change. While not a definitive guide to intergovernmental relations, it is a dominant principle in our political system.

### Doctrine Application

The issue in *In re Juvenile Director*, supra, involved the authority of a board of county commissioners, under its generally expressed legislative power, to establish (and, accordingly, limit) the salaries of superior court personnel, as well as the salaries in other county departments. The supreme court held that the board possessed that authority, and that the superior court had not succeeded in demonstrating (as it must) that the board's action in this particular instance had interfered unreasonably with the court's essential judicial function.

In Washington cities, counties and special purpose districts, the council, board or commission, as the legislative body, establishes local laws and policies, consistent with state law, usually through the enactment of ordinances, orders and resolutions. The council, board or commission also exercises general oversight and control over the jurisdiction's finances, primarily through the budget process.

In cities, it is ordinarily the council's function to create subordinate positions, prescribe duties,

and establish salaries. See, e.g., [RCW 35.23.021](#); [35.27.070](#); [35A.12.020](#); and [35A.13.090](#). However, the appointment of such subordinate officers is usually, if not always, the express prerogative of the executive. See, e.g., [RCW 35.23.021](#); [35.27.070](#); [35A.12.090](#); and [35A.13.080](#). And, although the council has general supervision over the city's operations, neither that body nor its committees or individual councilmembers should attempt to exercise powers that are assigned by law to the executive branch. In fact, in cities operating under the council-manager form of government, the law expressly forbids councilmembers from interfering in certain administrative matters, although the council may discuss those matters with the city manager in open session. [RCW 35.18.110](#) and [35A.13.120](#).

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## The separation of powers doctrine is embraced in the philosophy of our founding fathers and has been embodied since in the constitutions of all of the states and of the United States.

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The executive branch of a city, headed by the mayor (or the manager in those cities having a council-manager form of government), is responsible for the day-to-day administration of city affairs. Generally, the responsibility for employing, disciplining, and dismissing department heads and employees is assigned to the chief executive officer, subject to any applicable civil service provisions, such as [chapters 41.08](#) and [41.12 RCW](#). However, in some instances, the law may expressly authorize the city council to appoint or approve (confirm) the appointment of a particular officer. For instance, the council appoints and discharges the city manager. [RCW 35A.13.010](#); [35A.13.130](#); [35.18.010](#); and [35.18.120](#). Certain mayoral appointments are or may be made subject to confirmation by the council. See for example,

[RCW 35.23.021](#) and [35A.12.090](#). On the other hand, a council's power to confirm an appointment does not include the power to *veto* a subsequent *dismissal* of that appointee.

The scheme is somewhat different in counties. The various county elected officials (commissioners, prosecutor, assessor, auditor, clerk, treasurer, coroner, and sheriff) have the authority to establish subordinate positions and appoint people to fill those positions; however, this can be done only with the consent of the board of commissioners.<sup>2</sup> [RCW 36.16.070](#). The commissioners fix the salaries for those positions. *Id.* Each elected official (and the commissioners as a body) has executive authority and supervises the day-to-day administration of their departments. The board of county commissioners has no authority with respect to the daily operation of the offices of the other elected county officials.

The application of the separation of powers doctrine to special purpose districts is more difficult to generalize, since the operation of special purpose districts is more limited and varied. Unlike what is true for cities and counties, special purpose districts do not have judicial departments. Some districts are sufficiently small that their boards may, by statute or necessity, perform both legislative and executive or administrative functions. On the other hand, in some districts, such as school districts, the board exercises authority over policy matters while the superintendent is in charge of executive or administrative duties. And, as to some districts, governance is through the county legislative body.

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<sup>2</sup>The board of county commissioners may create and fund employee positions in the offices of the other elected county officers, but it may not decide who can be hired to fill those positions. [Osborn v. Grant County](#), 130 Wn.2d 615, 622, 926 P.2d 911 (1996).

# 2

## Basic Duties, Liabilities and Immunities of Officers

Holding a public office requires the trust of the public. Actions that betray that trust can result in liability, either for the municipality or the officeholder. However, court decisions have carved out exceptions to strict liability, allowing officeholders and government employees to exercise some discretion in their actions without undue fear of incurring personal liability. And local governments are able to defend officials against lawsuits, and indemnify them if an adverse decision is reached in a lawsuit, provided the officials perform their official duties in good faith.

### DUTIES

Courts have held public office to be synonymous with public trust and that a public officer's relationship with the public is that of a fiduciary. [Northport v. Northport Townsite Co.](#), 27 Wash. 543, 548-50, 68 Pac. 204 (1902). The state legislature expressly recognizes that relationship in various statutes discussed in this work: e.g., [chapter 42.23 RCW](#) (Code of Ethics for Municipal Officers); and the Open Public Meetings Act, [chapter 42.30 RCW](#). The people themselves, in passing Initiative 276 by a 72 percent popular vote in 1972, likewise declared trust to be the public policy of the State of Washington. For example, [RCW 42.17A.001](#) states in part:

- (2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty and fairness in their dealings.
- (3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the *public trust* and private interests. (Emphasis supplied.)

### LIABILITY

Public officers and employees are generally accountable for their actions under civil and criminal laws. See [Babcock v. State](#), 112 Wn.2d 83, 105-06, 768 P.2d 481 (1989). There are additional statutory provisions and case law governing the conduct of public officials, including: state and federal civil rights laws such as 42 U.S.C. § 1983; ethics and conflict of interest laws ([chapters 42.20](#) and [42.23 RCW](#)); penalties for violations of the Open Public Meetings Act ([chapter 42.30 RCW](#)), or for violations of competitive bid laws ([RCW 39.30.020](#)), to name only some of them.

Under the common law principle that “The king can do no wrong,” which prevailed in Washington until 1961, the state and its municipalities were themselves immune from civil liability for their negligent acts or omissions (“torts”). [Kelso v. Tacoma](#), 63 Wn.2d 913, 914, 390 P.2d 2 (1964). However, by a series of enactments between 1961 and 1967, the legislature virtually abolished that concept. Section 1, chapter 164, Laws of 1967 ([RCW 4.96.010](#)) provides:

All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

Case law continued to recognize a narrow ground of immunity for a municipality and its officials from tort actions, but only for what was described as a “discretionary act involving a basic policy determination by an executive level officer which is the product of a considered policy decision” (e.g., a decision by a city council to enact a particular ordinance). [Chambers-Castanes v. King County](#), 100 Wn.2d 275, 282, 669 P.2d 451 (1983).

In 1987, the state legislature enacted what is now [RCW 4.24.470](#), providing in part as follows:

(1) An appointed or elected official or member of the governing body of a public agency is immune from civil liability for damages for any discretionary decision or failure to make a discretionary decision within his or her official capacity, but liability shall remain on the public agency for the tortious conduct of its officials or members of the governing body.

This statutory language appears to grant somewhat broader immunity to officials than the supreme court’s

language did in previous cases summarized earlier in this section.

## PUBLIC DUTY DOCTRINE

Some additional immunity is provided in case law by the “public duty doctrine.” Under that doctrine, when a city, county, or special purpose district’s duty is owed to the public at large (such as for general law enforcement), an individual who is injured by a breach of that duty has no valid claim against the city, county, or district, its officers, or employees. There are certain exceptions; e.g., in cases where a special relationship is created (such as when an officer or employee makes direct assurances to a member of the public under circumstances where the person justifiably relies on those assurances); or when an officer or employee, such as a building official, knows about an inherently dangerous condition, has a duty to correct it, and fails to perform that duty. [Taylor v. Stevens County](#), 111 Wn.2d 159, 171-72, 759 P.2d 447 (1988).

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## Public officers and employees are generally accountable for their actions under civil and criminal laws.

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There are other protections from tort liability, such as insurance and indemnification, which are available to municipal officers and employees, even though the municipality itself may be liable. These other protections will be discussed under a later heading.

## CUSTODIANS OF PUBLIC FUNDS

Understandably, the law places upon treasurers and other custodians of public funds the strictest of all duties. Case law in Washington and other states holds that custodians of public funds are actually insurers; they and their bonding companies are absolutely liable for any losses of public funds in their custody, except for “acts of God” (floods and similar natural catastrophes), or “acts of a public enemy” (war). [State ex rel. O’Connell v. Engen](#), 60 Wn.2d 52, 55, 371 P.2d

638 (1962). The surety bonds (“official” bonds) that must be posted by those and other officers are to protect the public, not the officer. [RCW 42.08.080](#); [Nelson v. Bartell](#), 4 Wn.2d 174, 185, 103 P.2d 30 (1940).<sup>3</sup> For personal protection, insurance may be available for officers and employees who act in good faith. This subject will be discussed in more detail in a later section of this handbook.

## IMMUNITIES FROM TORT LIABILITY

Appointed and elected officials (mayors, councilmembers, commissioners, board members) are immune from civil liability under state law to third parties for making or failing to make a discretionary decision in the course of their official duties. [RCW 4.24.470](#). See also [Evangelical United Brethren Church v. State](#), 67 Wn.2d 246, 255, 407 P.2d 440 (1965). However, be aware that, for other than legislative officials, this immunity is qualified, because damages can be assessed for violation of the Federal Civil Rights Act (42 U.S.C. §1983) if their conduct violates clearly established statutory or constitutional rights of which a reasonable person should have known. [Sintra v. Seattle](#), 119 Wn.2d 1, 25, 829 P.2d 765 (1992). The U.S. Supreme Court has held that local legislators are entitled to absolute immunity from civil liability for their legislative activities under 42 U.S.C. § 1983. [Bogan v. Scott-Harris](#), 523 U.S. 44, 1185 S. Ct. 966, 140 L. Ed.2d 79 (1998).

Courts have also recognized certain immunities under the Federal Civil Rights Act (42 U.S.C. § 1983) such as absolute prosecutorial immunity, e.g., when a city attorney prosecutes a defendant for allegedly violating a city ordinance or when a county prosecutor does so for violation of a state or county law. [Tanner v. Federal Way](#), 100 Wn. App. 1, 997 P.2d 932 (2000). That absolute immunity is limited, however, to when the criminal prosecutor is performing the traditional functions of an advocate. [Kalina v. Fletcher](#), 522 U.S. 118 (1997).

However, the municipal corporation itself may be held liable even though those individual officers may be protected. [RCW 4.24.470\(1\)](#) and [4.96.010\(1\)](#). See also [Babcock v. State](#), 116 Wn.2d 596, 620, 809 P.2d 143 (1991).

Cities, counties, and special purpose districts, like the state, have the authority to provide liability insurance to protect their officers and employees from loss due to their acts or omissions in the course of their duties. See [RCW 35.21.205](#); [35.21.209](#); [36.16.138](#) and, e.g., as to special purpose districts, [RCW 52.12.071](#) (fire protection districts); [53.08.205](#) (port districts); and [54.16.095](#) (public utility districts).

There is an indemnification provision in state law for good faith actions of officers, employees and volunteers while performing their official duties. [RCW 4.96.041](#). This statute provides that when an action or proceeding for damages is brought against any past or present officer, employee, or volunteer of a city, county, or special purpose district, which arises from an act or omission while performing their official duties, then such officer, employee, or volunteer may request the city, county, or special purpose district, to authorize the defense of the action at public expense. If the legislative body finds that the actions or omissions were within the scope of their official duties, then the request for payment of defense expenses must be granted. In addition, any monetary judgment against the officer, employee, or volunteer shall also be paid.

Local governments should adopt local ordinances or resolutions providing terms and conditions for the defense and indemnification of their officials, employees, and volunteers.

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<sup>3</sup>The law requires the premiums on such official bonds to be paid by the county, city, or other public agency served. [RCW 48.28.040](#).



# 3

## Potential Conflicts and Ethical Guidelines

Holding the public trust requires maintaining high ethical standards. To help assure the public's trust, court decisions, state laws and local codes have placed limits on the personal interests and relationships officeholders can have with subjects and actions under their control. Violations can have serious consequences, both to the officeholders and their local jurisdictions.

### PROHIBITED USES OF PUBLIC OFFICE

Our state supreme court, citing principles “as old as the law itself,” has held that councilmembers may not vote on a matter where they would be especially benefitted. [Smith v. Centralia](#), 55 Wash. 573, 577, 104 Pac. 797 (1909) (vacation of an abutting street). With some limited exceptions statutory law strictly forbids municipal officials from having personal financial interests in municipal employment or other contracts under their jurisdiction, regardless of whether or not they vote on the matter.

### CODE OF ETHICS

State law, codified at [RCW 42.23.070](#), provides a code of ethics for county, city, and special purpose district officials. The code of ethics has four provisions, as follows:

1. No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself or others;
2. No municipal officer may, directly or indirectly, give or receive any compensation, gift, gratuity, or reward from any source, except the employing municipality, for a matter connected with or related to the officer's services unless otherwise provided by law;
3. No municipal officer may accept employment or engage in business that the officer might reasonably expect would require him or her to disclose confidential information acquired by reason of his or her official position;
4. No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer use such information for his or her personal gain.

This last provision is particularly significant because it potentially applies to disclosure of information learned by reason of attendance at an executive session. Clearly, executive sessions are meant to be confidential, but the Open Public Meetings Act does not address this issue. Arguably, [RCW 42.23.070\(4\)](#) is applicable to information received in an executive session. See the section of this booklet on Open Public Meetings for more information on executive sessions.

## STATUTORY PROHIBITION AGAINST PRIVATE INTERESTS IN PUBLIC CONTRACTS

### Basics

The principal statutes directly governing the private interests of municipal officers in public contracts are contained in [chapter 42.23 RCW](#), which is entitled “Code of Ethics for Municipal Officers – Contract Interests.” [RCW 42.23.030](#) sets out the general prohibition that:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through, or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein ...

### General Application

1. [Chapter 42.23 RCW](#) applies to all municipal and quasi-municipal corporations, including cities, towns, counties, special purpose districts, and others. As to a charter city or county, however, charter provisions are permitted to control in case of conflict, if the charter provisions are more stringent. The standards contained in the chapter are considered to be minimum requirements. [RCW 42.23.060](#).
2. Although the chapter refers to “officers,” rather than employees, the word “officers” is broadly defined to include deputies and assistants of such an officer, such as a deputy or assistant clerk, and any others who undertake to perform the duties of an officer. [RCW 42.23.020\(2\)](#).

**Question:** Does the statute prohibit local officials from accepting gifts of minimal intrinsic value from someone who does or may seek to do business with their office?

**Answer:** Many officials, either because of the broad language of that statute or on principle, refuse to accept even a business lunch under those circumstances. Others regard items of only token or trivial value to be *de minimis*; i.e., of insufficient amount to cause legal concern.

3. The word “contract” includes employment, sales, purchases, leases, and other financial transactions of a contractual nature. (There are some monetary and other exceptions and qualified exceptions, which will be described in later paragraphs.)

4. The phrase “contracting party” includes any person or firm employed by or doing business with a municipality. [RCW 42.23.020\(4\)](#).

### Interpretation

1. The beneficial interests in contracts prohibited by [RCW 42.23.030](#) are financial interests only. [Barry v. Johns](#), 82 Wn. App. 865, 868, 920 P.2d 222 (1996).
2. The statutory language of [RCW 42.23.030](#), unlike earlier laws, does not prohibit an officer from being interested in *any and all* contracts with the municipality. However, it does apply to the control or supervision over the making of those contracts (whether actually exercised or not) and to contracts made for the benefit of their particular office. In other words, assuming that the clerk or treasurer of a particular city has been given no power of supervision or control over that city’s contracts, they would be prohibited from having an interest only in contracts affecting their own office, such as the purchasing of supplies or services for that office’s operation. Members of a council, commission, or other governing body are more broadly and directly affected, because the municipality’s contracts are made, as a general rule, by or under the supervision of that body, in whole or in part. It does not matter whether or not the member of the governing body voted on the contract in which they had a financial interest; the prohibition still applies.

[City of Raymond v. Runyon](#), 93 Wn. App. 127, 137, 967 P.2d 19 (1998). The employment and other contracting powers of executive officials, such as city managers, mayors, and county or other elected officials, also are generally covered by the broad provisions of the act.

3. Subject to certain “remote interest” exceptions, explained later in this section, a member of a governing body who has a forbidden interest may not escape liability simply by abstaining or taking no part in the governing body’s action in making or approving the contract. See [AGO 53-55 No. 317](#).

**Question:** May a city, county or special purpose district official accept a valuable gift from a foreign dignitary in connection with a visit?

**Answer:** A common policy is to allow the acceptance of such a gift on behalf of the jurisdiction, but not for personal use. Arguably, under the wording of RCW 42.23.070(2), a jurisdiction may adopt a formal policy by local “law” governing such occasions, allowing exceptions in appropriate cases involving essentially personal items, subject to disclosure and other procedures to guard against abuse.

4. Both direct and indirect financial interests are prohibited, and the law also prohibits an officer from receiving financial benefits from anyone else having a contract with the municipality, if the benefits are in any way connected with the contract. In an early case involving a similar statute, where a mayor had subcontracted with a prospective prime contractor to provide certain materials, the state supreme court struck down the entire contract with the following eloquent expression of its disapproval:

Long experience has taught lawmakers and courts the innumerable and insidious evasions of this salutary principle that can be made, and therefore the statute denounces such a contract if a city officer shall be interested not only directly, but indirectly. However devious and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, the contract is void.

[Northport v. Northport Townsite Co.](#), 27 Wash. 543, 549, 68 Pac. 204 (1902).

**Question:** May local officials permit an individual or company to pay their expenses for travel to view a site or plant in connection with business related to the official’s office?

**Answer:** The statute can be construed to prevent an official from being “compensated” in that manner. On the other hand, payment of expenses for a business trip arguably does not constitute compensation. Prudence suggests that if the trip is determined to be meritorious (and assuming that there is no potential violation of the appearance of fairness doctrine, described in a later chapter), the city, county, or district itself should pay the expenses and any payment or reimbursement from a private source should be made to the jurisdiction.

5. The statute ordinarily prohibits public officers from hiring their spouse as an employee because of the financial interest each spouse possesses in the other’s earnings under Washington community property law. However, a bona fide separate property agreement between the spouses may eliminate such a prohibited conflict if the proper legal requirements for maintaining a separate property agreement are followed. [State v. Miller](#), 32 Wn.2d 149, 157-58, 201 P.2d 136 (1948). Because of a similar financial relationship, a contract with a minor child or other dependent of the officer may be prohibited. However, [chapter 42.23 RCW](#) is not an anti-nepotism law and, absent such a direct or indirect *financial* interest, does not prohibit employing or contracting with an official’s relatives. A mere emotional or sentimental interest is not the type of interest prohibited by that chapter. [Mumma v. Town of Brewster](#), 174 Wash. 112, 116, 24 P.2d 438 (1933).

As indicated in earlier paragraphs, individual local jurisdictions commonly adopt supplementary codes of ethics.

A question often arises when the spouse of a local government employee or contractor is elected or appointed to an office of that local government that has authority over the spouse’s employment or other contract:

**Question:** Must the existing employment or contract be terminated immediately?

**Answer:** The answer to the question is, ordinarily, “no”; however, any subsequent renewal or modification of the employment or other contract probably would be prohibited. For example, in a letter opinion by the attorney general to the state auditor, the question involved the marriage of a county commissioner to the secretary of another official of the same county. If the employment had occurred after the marriage, the statute would have applied because of the community property interest of each spouse in the other’s earnings. The author concluded that the statute was not violated in that instance because the contract (employment) pre-existed and could not have been made “by, through, or under the supervision of” the county commissioner or for the benefit of their office. However, the letter warned, the problem would arise when the contract first came up for renewal or amendment. That might be deemed to occur, for instance, when the municipality adopts its next budget. Or, in a case where the spouse is an employee who serves “at the pleasure of” the official in question, the employment might be regarded as renewable at the beginning of the next monthly or other pay period after the official takes office. Attorney General’s letter to the State Auditor, dated June 8, 1970.

## Exceptions

[RCW 42.23.030](#) exempts certain types of contracts, such as:

1. The furnishing of electrical, water, or other utility services by a municipality to its officials, at the same rate and on the same terms as are available to the public generally.
2. The designation of public depositories for municipal funds. Conversely, this does not permit an official to be a director or officer of a financial institution which contracts with the city or county for more than mere “depository” services.
3. The publication of legal notices required by law to be published by a municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public.

4. Except in cities with a population of over 1,500, counties with a population of 125,000 or more, irrigation district encompassing more than 50,000 acres, or in a first-class school district; the employment of any person for unskilled day labor at wages not exceeding \$1,000 in any calendar month.
5. Other contracts in cities with a population of less than 10,000 and in counties with a population of less than 125,000, except for contracts for legal services, other than for the reimbursement of expenditures, and *except sales or leases by the municipality as seller or lessor*,<sup>4</sup> provided:

That the total amount received under the contract or contracts by the municipal officer or the municipal officer’s business does not exceed \$1,500 in any calendar month.

However, in a second class city, town, noncharter code city, or for a member of any county fair board in a county which has not established a county purchasing department, the amount received by the officer or the officer’s business may exceed \$1,500 in any calendar month but must not exceed \$18,000 in any calendar year. The exception does *not* apply to contracts with cities having a population of 10,000 or more or with counties having a population of 125,000 or more. This exemption, if available, is allowed with the following condition:

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract.

It is important to note that the language of this section is so structured that the statute cannot

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<sup>4</sup>The statute allows no exception, based on value or otherwise, for a sale or lease by the city or county to an official under whom the contract would be made or supervised.

be evaded by making a contract or contracts for larger amounts than permitted in a particular period and then spreading the payments over future periods.

6. In a rural public hospital district (see [RCW 70.44.460](#)) the total amount of a contract or contracts authorized may exceed \$1,500 in any calendar month, but shall not exceed \$24,000 in any calendar year, with the maximum calendar year limit subject to additional increases determined according to annual changes in the consumer price index (CPI).<sup>5</sup>
7. The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers and the superior court in the county where the property is situated finds that all terms and conditions of such lease are fair to the port district and are in the public interest.
8. Other exceptions apply to the letting of contracts for: school bus drivers in a second class school district; substitute teachers or substitute educational aid in a second-class school district; substitute teachers, if the contracting party is the spouse of an officer in a school district; certificated or classified employees of a school district, if the contract is with the spouse of a school district officer and the employee is already under contract (except, in second class districts, the spouse need not already be under contract).<sup>6</sup>
9. Under certain defined circumstances, any employment contract with the spouse of a public hospital district commissioner.

If an exception applies to a particular contract, the municipal officer may not vote for its authorization, approval, or ratification and the interest of the municipal officer must be disclosed to the governing body and noted in the official minutes or other similar records before the contract is formed.

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<sup>5</sup>See [RCW 42.23.030](#)(6)(c)(ii).

<sup>6</sup>[RCW 42.23.030](#)(8)-(11).

## Qualified Exceptions

[RCW 42.23.040](#) permits a municipal officer to have certain limited interests in municipal contracts, under certain circumstances. Those types of interest are as follows:

1. The interest of a nonsalaried officer of a nonprofit corporation.
2. The interest of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salaries (i.e., without commissions or bonuses). For example, councilmembers may be employed by a contractor with whom the city does business for more than the amounts allowed under [RCW 42.23.030](#)(6) (if they apply), but not if any part of their compensation includes a commission or year-end bonus.
3. That of a landlord or tenant of a contracting party; e.g., a county commissioner who rents an apartment from a contractor who bids on a county contract.
4. That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

The conditions for the exemption in those cases of “remote interest” are as follows:

1. The officer must fully disclose the nature and extent of the interest, and it must be noted in the official minutes or similar records before the contract is made.
2. The contract must be authorized, approved, or ratified after that disclosure and recording.
3. The authorization, approval, or ratification must be made in good faith.
4. Where the votes of a certain number of officers are required to transact business, that number must be met without counting the vote of the member who has a remote interest.

5. The officer having the remote interest must not influence or attempt to influence any other officer to enter into the contract.

It is accordingly recommended that the officer with a remote interest should not participate, or even appear to participate, in any manner in the governing body's action on the contract.

## Penalties

1. A public officer who violates [chapter 42.23 RCW](#) may be held liable for a \$500 civil penalty “in addition to such other civil or criminal liability or penalty as may otherwise be imposed.”
2. The contract is void, and the jurisdiction may avoid payment under the contract, even though it may have been fully performed by another party.
3. The officer may have to forfeit their office.

## DUAL OFFICE-HOLDING

### Basics

The election or appointment of a person to public office, unlike “public employment,” is not considered to be a “contract” within the meaning of [chapter 42.23 RCW](#) and similar statutes. McQuillin, *Municipal Corporations*, § 12.59; see also [Powerhouse Engineers v. State](#), 89 Wn.2d 177, 184, 570 P.2d 1042 (1977). Under case law, however, it is unlawful for a public officer to appoint himself or herself to another public office unless clearly authorized by statute to do so. See McQuillin, *Municipal Corporations*, § 12.123.<sup>7</sup> There are also statutory provisions and case law governing the holding of multiple offices by the same person. To apply those general principles, it is necessary to know the distinction between a public “office” and “employment.” See, for a detailed analysis, McQuillin, *Municipal Corporations*, § 12.59. In [State ex rel. Brown v. Blew](#), 20 Wn.2d 47, 51, 145 P.2d 554 (1944), the Washington State Supreme Court, quoting from another source, held the following five elements to be indispensable in order to make a public employment a “public office”:

1. It must be created by the constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature;
2. It must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;
3. The powers conferred and the duties to be discharged must be defined, directly or impliedly, by the legislature or through legislative authority;
4. The duties must be performed independently and without control of a superior power, other than the law, unless they be those of an inferior or subordinate office created or authorized by the legislature and by it placed under the general control of a superior officer or body; and
5. It must have some permanency and continuity and not be only temporary or occasional.

As the cases also point out, usually a public officer is required to execute and file an official oath and bond.

### Statutory Provisions

There is no single statutory provision governing dual office-holding. In fact, statutory law is usually silent on that question except where the legislature has deemed it best either to prohibit or permit particular offices to be held by the same person regardless of whether they may or may not be compatible under common law principles. For example, see [RCW 35.23.142](#), [35A.12.020](#), and [35.27.180](#), which expressly permit the offices of clerk and treasurer to be combined in certain cases. On the other hand, [RCW 35A.12.030](#) and [35A.13.020](#) prohibit a mayor or councilmember in a code city from holding any other public office or employment within the city's government “except as permitted under the provisions of [chapter 42.23 RCW](#).”

A statute expressly permits city councilmembers to hold the position of volunteer fire fighter (but not chief), volunteer ambulance personnel, or reserve law enforcement officer, or two or more of such positions,

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<sup>7</sup>As an exception to this general rule, however, a councilmember may vote for himself or herself for appointment to a position, such as mayor pro tem, which must be filled from the membership of the council. See [Gayder v. Spiotta](#), 206 N. J. Super. 556, 503 A.2d 348, 351-52 (1985).

but only if authorized by a resolution adopted by a two-thirds vote of the full city council. [RCW 35.21.770](#) and [RCW 35A.11.110](#); see also [RCW 35.21.772](#) which allows volunteer members of a fire department, except a fire chief, to be candidates for elective office and be elected or appointed to office while remaining a fire department volunteer.

In addition, [RCW 35A.13.060](#) expressly authorizes a city manager to serve two or more cities in that capacity at the same time, but it also provides that a city council may require the city manager to devote their full time to the affairs of that code city.

### **Incompatible Offices**

In the absence of a statute on the subject, the same person may hold two or more public offices unless those offices are incompatible. A particular body of judicial decisions (case law “doctrine”) prohibits an individual from simultaneously holding two offices that are “incompatible.”

Although the Washington State Supreme Court has never had the occasion to apply the doctrine in a situation actually involving two “offices,” the court in [Kennett v. Levine](#), 50 Wn.2d 212, 310 P.2d 244 (1957) cited the doctrine approvingly and applied it in a different context. The court explained in its opinion:

Offices are incompatible when the nature and duties of the offices are such as to render it improper, from considerations of public policy, for one person to retain both.

The question is whether the functions of the two are inherently inconsistent or repugnant, or whether the occupancy of both offices is detrimental to the public interest.

(Citations omitted.) [Kennett v. Levine](#), supra, at 216-217.

Other authorities point out that the question is not simply whether there is a physical impossibility of discharging the duties of both offices at the same time, but whether or not the functions of the two offices are inconsistent, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both. Incompatibility may arise where the holder cannot *in*

*every instance* discharge the duties of both offices. McQuillin, *Municipal Corporations*, § 12.112.

Applying those tests, the Washington State Attorney General’s Office has found various offices to be incompatible with each other, such as mayor and county commissioner ([AGO 57-58 No. 90](#)), county engineer and city engineer (letter to the Prosecuting Attorney of Douglas County, July 16, 1938), mayor and port commissioner ([AGO 1978 No. 12](#)), commissioner of a fire protection district and the district’s civil service commission ([AGO 1968 No. 16](#)), and others. Courts in other jurisdictions have held incompatible the positions of mayor and councilmember, mayor and city manager, city marshal and councilmember, to mention only a few. McQuillin, *Municipal Corporations*, § 12.114.

### **Spouses and Relatives Also Serving as Officers**

Nothing under state law prohibits either a spouse or a relative of a current officeholder from seeking or serving as an elected or appointed official for that same jurisdiction. For example, a husband and wife may serve simultaneously as councilmembers, or the sister of the county auditor may serve as a county commissioner. There might be a conflict of interest problem, if one spouse contracts with the jurisdiction for which the other spouse serves as an officer, but that does not prevent spouses from simultaneously serving as officers for that jurisdiction.

The state conflict of interest law, [RCW 42.23.030](#), prohibits an officer from having an interest in a contract made by, through, or under the supervision of that officer, with some exceptions. Since, under Washington community laws, one spouse has an interest in the other spouse’s contracts, if the spouse of a councilmember sells supplies to the city for which their spouse is a councilmember, there might be a conflict of interest if the value of the contract exceeds a limit set by statute. But there is no conflict when both spouses serve as officers for the same jurisdiction, since officers receive their compensation by reason of their office, not by contract ([AGO 1978 No. 22](#)), and nothing else under state law prohibits both from serving.

### **Prohibition Against Pay Increases**

As a means of preventing the use of public office for self-enrichment, the state constitution (article

11, section 8) initially prohibited any changes in the pay applicable to an office having a fixed term, either after the election of that official or during their term. However, by Amendment 54 (article 30), adopted in 1967, and an amendment to article 11, section 8 (Amendment 57) in 1972, the rule was modified to permit pay increases for officials *who do not fix their own compensation*. More recently, the ability to receive mid-term compensation increases was expanded to include councilmembers and commissioners, provided a local salary commission is established and the commission sets compensation at a higher level. See [RCW 35.21.015](#) and [36.17.024](#). Otherwise, members of governing bodies who set their own compensation still cannot, during the terms for which they are elected, receive any pay increase enacted by that body *either* after their election *or* during that term. The prohibition is not considered to apply, however, to a mayor's compensation, unless the mayor actually casts the tie-breaking vote on the question. Mid-term or post-election *decreases* in compensation for elective officers are entirely forbidden by article 11, section 8 of the constitution.

The term "compensation," as used in that constitutional prohibition, includes salaries and other forms of "pay," but does not include rates of reimbursement for travel and subsistence expenses incurred on behalf of the municipality. [State ex rel. Jaspers v. West](#), 13 Wn.2d 514, 519, 125 P.2d 694 (1942); see also [State ex rel. Todd v. Yelle](#), 7 Wn.2d 443, 461, 110 P.2d 162 (1941). The cost of hospitalization and medical aid policies or plans is not considered additional compensation to elected officials. [RCW 41.04.190](#).

## APPEARANCE OF FAIRNESS DOCTRINE IN HEARINGS

Until 1969, Washington law dealing with conflicts of interest generally applied only to financial interests, as opposed to emotional, sentimental, or other biases. The "appearance of fairness doctrine," however, which governs the conduct of certain hearings, covers broader ground. That doctrine was first applied in this state in 1969. In two cases decided in that year, the Washington State Supreme Court concluded that, when boards of county commissioners, city councils,

planning commissions, civil service commissions, and similar bodies are required to hold hearings that affect individual or property rights ("quasi-judicial" proceedings), they should be governed by the same strict fairness rules that apply to cases in court. See [Smith v. Skagit County](#), 75 Wn.2d 715, 453 P.2d 832 (1969); [State ex rel. Beam v. Fulwiler](#), 76 Wn.2d 313, 456 P.2d 322 (1969). Basically, the rule requires that for justice to be done in such cases, the hearings must not only be fair, they must also be free from even the appearance of unfairness. The cases usually involve zoning matters, but the doctrine has been applied to civil service and other hearings as well.

For additional information on this doctrine, see the MRSC publication entitled [The Appearance of Fairness Doctrine in Washington State](#).

As the listing also indicates, the appearance of fairness doctrine has been used to invalidate proceedings for a variety of reasons; for example, if a member of the hearing tribunal has a personal interest of *any* kind in the matter or takes evidence improperly outside the hearing (*ex parte*). In those cases, that member is required to completely disassociate him or herself from the case, or the entire proceeding can be overturned in court.

In 1982, the legislature reacted to the proliferation of appearance of fairness cases involving land use hearings by enacting what is now [chapter 42.36 RCW](#). This RCW chapter defines and codifies the appearance of fairness doctrine, insofar as it applies to local land use decisions.<sup>8</sup> In substance, those statutes now provide that in land use hearings:

1. The appearance of fairness doctrine applies only to "quasi-judicial" actions of local decision-making bodies. "Quasi-judicial" actions are defined as:

actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding.

[RCW 42.36.010](#).

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<sup>8</sup> However, in [Bunko v. Puyallup Civil Service Commission](#), 95 Wn. App. 495, 975 P.2d 1055 (1999), the state court of appeals applied the statutory doctrine to the proceedings of a civil service commission.



2. The doctrine does not apply to local “legislative actions”

adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

[RCW 42.36.010.](#)

3. Candidates for public office may express their opinions about pending or proposed quasi-judicial actions while campaigning (but see paragraph 9 below), without being disqualified from participating in deciding those matters if they are later elected;
4. Acceptance of campaign contributions by candidates who comply with the public disclosure and ethics laws will not later be a violation of the appearance of fairness doctrine. [Snohomish County Improvement Alliance v. Snohomish County](#), 61 Wn. App. 64, 73-74, 808 P.2d 781 (1991) (but see paragraph 9 below);
5. During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte (outside the hearing) communications with proponents or opponents about a proposal involved in the pending proceeding, unless that member:
  - a. Places on the record the substance of such oral or written communications; and
  - b. Provides that a public announcement of the content of the communication and of the parties’ rights to rebut the substance of the communication shall be made at each hearing where action is taken or considered on that subject. This does not prohibit correspondence between citizens and their elected official if the correspondence is made a part of the record (when it pertains to the subject matter of a quasi-judicial proceeding).

6. Participation by a member of a decision-making body in earlier proceedings that result in an advisory recommendation to a decision-making body does not disqualify that person from participating in any subsequent quasi-judicial proceedings (but see paragraph 9 below);
7. Anyone seeking to disqualify a member of a decision-making body from participating in a decision on the basis of a violation of the appearance of fairness doctrine must raise the challenge as soon as the basis for disqualification is made known or reasonably should have been known prior to the issuance of the decision; upon failing to do so, the doctrine may not be relied on to invalidate the decision;
8. Challenged Officials may participate and vote in proceedings if their absence would cause a lack of a quorum, or would result in failure to obtain a majority vote as required by law, provided a challenged official publicly discloses the basis for disqualification prior to rendering a decision; and
9. The appearance of fairness doctrine can be used to challenge land use decisions where a violation of an individual’s right to a fair hearing is demonstrated. For instance, certain conduct otherwise permitted by these statutes may nevertheless be challenged if it would actually result in an unfair hearing (e.g., where campaign statements reflect an attitude or bias that continues after a candidate’s election and into the hearing process). [RCW 42.36.110.](#) Unfair hearings may also violate the constitutional “due process of law” rights of individuals. State ex rel. [Beam v. Fulwiler](#), 76 Wn.2d 313, 321-22, 456 P.2d 322 (1969) (cited in Appendix). Questions of this nature may still have to be resolved on a case-by-case basis.



# Prohibited Uses of Public Funds, Property or Credit

To help safeguard the public treasury, the state constitution limits the use of public monies, prohibiting gifts and the lending of credit. State laws prohibit the use of public office facilities for the support or opposition of ballot measures and the political campaigns of those who seek elected office.

## CONSTITUTIONAL PROHIBITIONS

### Basics

Article 7, section 1 (Amendment 14) of the Washington State Constitution requires that taxes and other public funds be spent only for public purposes. See also [State ex rel. Collier v. Yelle](#), 9 Wn.2d 317, 324-26, 115 P.2d 373 (1941); AGO 1988 No. 21.

Article 11, section 15 further provides as follows:

The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

Suits or prosecutions involving violations of that policy are ordinarily brought under specific civil or criminal statutes.

### Prohibition Against Gifts or Lending of Credit

On the other hand, article 8, section 7 of the state constitution has been the direct basis of several lawsuits against local governmental entities. That provision is as follows:

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

Local governments are often asked to use their funds, property, or borrowing power (credit) to subsidize or assist endeavors by individuals or private organizations, such as the construction or operation of recreational facilities, economic development, or tourist promotion, and other civic or charitable works. However, the Washington State Supreme Court has long held that no matter how public the purpose may be, it may not be accomplished by public gifts or loans to private persons or organizations except certain aid to the poor or infirm.<sup>9</sup> *Johns v. Wadsworth*, 80 Wash. 352, 354-55, 141 Pac. 892 (1914) (the legislature may not authorize the use of public funds to aid a private fair); *Lassila v. Wenatchee*, 89 Wn.2d 804, 812-13, 576 P.2d 54 (1978) (a city may not buy a building for resale to a private movie theater operator).

In recent years, by constitutional amendment or judicial decision, municipalities have been authorized to engage in several programs that previously were held or thought to be unconstitutional under article 8, section 7. For example, by several elections in 1979, 1988, and 1989, the electorate approved and added section 10 to article 8 of the Washington Constitution, permitting counties, cities, towns, and similar operators of municipal electric and water utilities, as authorized by the legislature, to use their operating revenues from the sale of energy or water to assist homeowners in financing conservation measures on a charge-back basis. In 1981, the people adopted a constitutional amendment authorizing the legislature to permit the state, counties, cities, towns, and port districts, and public corporations established thereby, to issue non-recourse revenue obligations (not funded or secured by taxes or state or municipal credit) to finance industrial development projects. Wash. Const. art. 32, § 1.

Other programs utilizing non-recourse revenue bond funding may be authorized by the legislature without violating the constitution. However, municipal corporations (including “home rule” cities and counties) may need such express statutory authorization to do so (see attorney general’s advisory memorandum to the state auditor dated March 10, 1989).

Our supreme court also has found that some expenditures for economic development are made for a public purpose. See *Anderson v. O’Brien*, 84

Wn.2d 64, 70, 524 P.2d 379 (1974). Accordingly, our state legislature has declared certain economic development programs to be a “public purpose.” See [chapter 43.160 RCW](#). However, the characterization of a program as a “public purpose” may not justify a gift or loan of credit to a private entity for that purpose, except in aid of the poor or infirm.

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## Public gifts or loans to private persons or organizations are not permitted except certain aid to the poor or infirm.

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As a measure of “aid to the poor,” the legislature has authorized cities and counties to assist in low income housing by loans or grants to owners or developers of such housing. See [RCW 35.21.685](#); [RCW 36.32.415](#); see also [RCW 84.38.070](#) (all municipal corporations to provide their utility services at reduced rates for low income senior citizens). In *Tacoma v. Taxpayers*, 108 Wn.2d 679, 743 P.2d 793 (1987), the Washington State Supreme Court also upheld, on statutory grounds, a Tacoma ordinance authorizing Tacoma’s electric utility to finance energy conservation measures in private buildings. The ordinance was also held constitutional even though it did not fall within the authorization of article 8, section 10, discussed earlier. The court accepted the cities’ arguments (several cities joined as intervenors in the case) that the installation of conservation measures involved a repurchase of electric energy by the city and was not an unconstitutional gift to the private owner. *Tacoma v. Taxpayers*, 108 Wn.2d 679 at 703-05.

Often in cases where a loan or where a grant to a private organization may be prohibited, an appropriate contract can often accomplish the desired outcome by which the private organization provides the services in question as an agent or contractor for the county, city or district. For instance, a city, having authority to provide recreational programs for its residents, may do so by contracting with a youth agency or senior citizens’ organization to operate recreational

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<sup>9</sup>Although the language in the constitution reads “poor and infirm” (emphasis added), the courts have held that this should be interpreted in the disjunctive (“poor or infirm”). *Health Care Facilities v. Ray*, 93 Wn.2d 108, 115-16, 605 P.2d 1260 (1980).

programs for those groups, under appropriate city supervision. The contract should be carefully drawn, however, so that the program or project remains the city's own operation and is not an unlawfully broad delegation of city authority, or grant of city funds, to a private agency. Payments should be made pursuant to vouchers reflecting the satisfactory performance of services, as provided in [chapter 42.24 RCW](#).

## **PUBLIC FACILITIES USE FORBIDDEN FOR POLITICAL PURPOSES**

There is a special statutory provision, somewhat similar to the constitutional prohibitions just discussed, which forbids the use of public facilities for certain political purposes. [RCW 42.17A.555](#), a section of the open government law, provides as follows:

No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition.<sup>10</sup> Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: Provided, That the foregoing provisions of this section shall not apply to the following activities:

- (1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required

notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

- (2) A statement by an elective official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;<sup>11</sup>
- (3) Activities which are a part of the normal and regular conduct of the office or agency.<sup>12</sup>

Elected municipal officers are prohibited from speaking or appearing in a public service announcement that will be broadcast, shown, or distributed in any form during the period beginning January 1st and continuing through the general election, if that official or officer is a candidate. [RCW 42.17A.575](#).

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<sup>10</sup>The facilities of a public office may be made available on a non-discriminatory, equal access basis, for political uses. [WAC 390-05-271\(2\)\(a\)](#).

<sup>11</sup>A city, county, or special district may, however, make "an objective and fair presentation of facts relevant to a ballot proposition," if such an action is part of the normal and regular conduct of the agency. [WAC 390-05-271\(2\)\(b\)](#).

<sup>12</sup>The term "normal and regular conduct" is defined by regulation. See [WAC 390-05-273](#) (conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner).

# 5

## Competitive Bidding Requirements

To help assure fairness in the award of public contracts and to achieve lower prices for the goods and services the local government requires, the state has adopted procedures that must be followed for the construction of public works and the purchase of supplies, materials, and equipment and for the acquisition of some services.

The procedural requirements for municipal purchasing and public works projects are extensive and varied; consequently, they are treated separately and in depth in other publications. See, e.g., MRSC's *City Bidding Book – Washington State* and *County Bidding Book – Washington State*. The following discussion is to acquaint readers generally with those requirements and the penalties for intentionally not following them.

### BASICS

Even when it is not legally required, the submission of municipal purchases and contracts to competitive bidding is generally favored in order to secure the best bargain for the public and to discourage favoritism, collusion, and fraud. [Edwards v. Renton](#), 67 Wn.2d 598, 602, 409 P.2d 153 (1965). Accordingly, requirements in statutes, charter provisions, and ordinances to that effect are liberally construed in favor of bidding, and exceptions are narrowly construed. See [Gostovich v. West Richland](#), 75 Wn.2d 583, 587, 452 P.2d 737 (1969).

In this state, most major purchases and public works projects by local governments are subject to statutory competitive bidding requirements. See, e.g., as to purchases and public works by second class cities, towns, and code cities, [RCW 35.23.352](#) and [RCW 35A.40.210](#); as to purchases and public works by counties, see [RCW 36.32.235](#)-.270. A county's or a city's charter or ordinances may provide additional bidding requirements. Other statutes set out the bid requirements for special purpose districts. See, e.g., [RCW 54.04.070](#) and .082 for public utility districts; [RCW 70.44.140](#) for public hospital districts; [RCW 28A.335.190](#) for school districts; [RCW 53.08.120](#) for port districts.<sup>13</sup>

In cases where competitive bidding is not required, the law still may necessitate notice or other less stringent procedures. See, e.g., [chapter 39.04 RCW](#) and also, in connection with the procurement of architectural and engineering services, [chapter 39.80 RCW](#).

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<sup>13</sup> See, also [RCW 52.14.110](#) for fire protection districts; and [RCW 57.08.050](#) for water-sewer districts.

## COMPETITIVE BID LAW VIOLATION PENALTIES

[RCW 39.30.020](#) provides as follows:

In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution or other enactment, any municipal officer by or through or under whose supervision, in whole or in part, any contract is made in wilful and intentional violation of any law, municipal charter, ordinance, resolution or other enactment requiring competitive bidding upon such contract shall be held liable to a *civil penalty of not less than \$300* and may be held liable, jointly and severally with any other such municipal officer, for *all consequential damages* to the municipal corporation. If, as a result of criminal action, the violation is found to have been intentional, the municipal officer shall *immediately forfeit his office*. For purposes of this section, “municipal officer” shall mean an “officer” or “municipal officer” as those terms are defined in [RCW 42.23.020\(2\)](#). (Emphasis supplied.)

# 6

## Open Public Meetings Act

The days of backroom decisions made in smoke-filled rooms are over. Today, the public demands that the decisions reached by their officials occur in meetings open to the public, thus providing an opportunity for those decisions to be scrutinized and for the officials who have made them to be held accountable for their actions.

### BASICS

Before 1971, this state had an “open meetings” law which was then codified as [chapter 42.32 RCW](#). It was ineffective, however, because it required only the “final” action of the council, board, or other body to be taken in public (such as the final vote on an ordinance, resolution, motion, or contract). The Open Public Meetings Act of 1971 (now [chapter 42.30 RCW](#)) made significant changes. Most importantly, it requires that *all* meetings of state and municipal governing bodies be open and public, with the exception of courts and the legislature.

Furthermore, a “meeting” generally includes any situation in which a majority (a quorum) of the council, board of commissioners, or other “governing body” (including certain kinds of committees) meets and discusses the business of that body. Social gatherings are expressly excepted, unless the body’s business is discussed at the gatherings. What follows is an outline of the 1971 Act, [chapter 42.30 RCW](#). For a more detailed treatment of the Open Public Meetings Act, see the MRSC publication, *The Open Public Meetings Act – How it Applies to Washington Cities, Counties, and Special Purpose Districts*.

### OPEN PUBLIC MEETINGS ACT PURPOSE

The declared purpose of the Act is to make all meetings of the governing bodies of public agencies, even informal sessions, open and accessible to the public, with only minor specific exceptions.

1. The legislature intends that public agencies’ actions and deliberations be conducted openly. [RCW 42.30.010](#).
2. Meetings must be open and public; all persons must be allowed to attend unless otherwise provided by law. [RCW 42.30.030](#).

3. Ordinances, resolutions, rules, regulations, orders, and directives must be adopted at public meetings; otherwise they are invalid. [RCW 42.30.060](#).<sup>14</sup>
4. A vote by secret ballot at any meeting that is required to be open is also declared null and void. [RCW 42.30.060](#)(2).

The act must be liberally construed to accomplish its purpose. [RCW 42.30.910](#).

## APPLICATIONS

The Act applies to all meetings of, among others:

1. All multi-member governing bodies of state and local agencies, and their subagencies. [RCW 42.30.020](#).

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## The days of backroom decisions made in smoke-filled rooms are over.

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- a. “Subagency” means a board, commission, or similar entity created by or pursuant to state or local legislation, including planning commissions and others. [RCW 42.30.020](#)(1)(c).<sup>15</sup>
- b. “Governing body” includes a committee of a council or other governing body “when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.” [RCW 42.30.020](#).<sup>16</sup>
- c. Certain policy groups representing participants who have contracted for the output of an operating agency’s (WPPSS) generating plant. [RCW 42.30.020](#)(1) (d).

The Act does not apply to:

1. Courts or the state legislature. [RCW 42.30.020](#)(1)(a).
2. Proceedings expressly excluded by [RCW 42.30.140](#), namely:
  - a. Certain licensing and disciplinary proceedings.
  - b. Certain quasi-judicial proceedings that affect only individual rights; e.g., a civil service hearing affecting only the rights of an individual employee, and not the general public.
  - c. Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; also, that portion of a meeting held during labor or professional negotiations, or grievance or mediation proceedings, to formulate strategy or to consider proposals submitted.
  - d. Generally, matters governed by the State Administrative Procedure Act ([chapter 34.05 RCW](#)).
3. Social gatherings, if no “action” (as defined in [RCW 42.30.020](#)(3)) is taken. [RCW 42.30.070](#). Note, however, the ensuing explanation of the term “action.”

## KEY DEFINITIONS

“**Meeting**” means meetings at which “**action**” is taken. [RCW 42.30.020](#)(4).

“**Action**” means all transacting of a governing body’s business, including receipt of public testimony, deliberations, discussions, considerations, reviews, and evaluations, as well as “final” action. [RCW 42.30.010](#); [42.30.020](#)(3).

<sup>14</sup> [Slaughter v. Fire District No. 20](#), 50 Wn. App. 733, 738, 750 P.2d 656 (1988), rev. denied, 113 Wn.2d 1014 (1989). The court of appeals, in a later case, also held invalid a labor agreement that had been negotiated at meetings that violated the Act. [Mason County v. PERC](#), 54 Wn. App. 36, 40-41, 771 P.2d 1185 (1989). In apparent reaction to that case, however, section 1, chapter 98, Laws of 1990 (RCW 42.30.140(4)) broadened the Act’s exemptions to include all collective bargaining sessions and related meetings and discussions with employee organizations.

<sup>15</sup> The term “subagency” does not include a purely advisory body unless it is legally required that its recommendations be considered by the parent body. AGO 1971 No. 33.

<sup>16</sup> A committee “acts on behalf of the governing body” only when it exercises delegated authority, such as fact finding. AGO 1986 No. 16.



## TWO KINDS OF MEETINGS

### Regular Meetings<sup>17</sup>

1. Definition: A recurring meeting held according to a schedule fixed by statute, ordinance, or other appropriate rule.
2. If the designated time falls on a holiday, the regular meeting is held on the next business day.
3. There is no statutory limitation as to the kind of business that may be transacted at a “regular” (as distinguished from “special”) meeting.

The Open Public Meetings Act itself does not require any special notice of a regular meeting. Other statutory enactments require municipal governing bodies to establish a procedure for notifying the public of all meeting agendas. [RCW 35.27.300](#); [35.23.221](#); [35.22.288](#); [35A.12.160](#).<sup>18</sup> Additionally, agencies are to post their regular meeting agendas on their websites unless they do not have a website or they employ fewer than ten full-time equivalent employees. [RCW 42.30.077](#).

### Special Meetings<sup>19</sup>

1. Definition: Any meeting other than “regular.”
2. May be called by the presiding officer or a majority of the members.
3. Must be announced by written notice to all members of the governing body; also to members of the news media who have filed written requests for such notice. The notice of a special meeting:

- a. Must specify the time and place of the meeting and the business to be transacted.<sup>20</sup>
- b. Must be delivered personally, by mail, by fax, or by e-mail 24 hours in advance.
- c. Must be posted on agency's website, if any, so long as agency has at least ten full time employees and has a designated employee or contractor responsible for updating the website.
- d. May be waived by a member.
- e. Is not necessary in specified emergencies. See also [RCW 42.30.070](#).

## MEETING PLACE

1. As far as the Open Public Meetings Act is concerned, a meeting may be held at any place within or outside the territorial jurisdiction of the body unless otherwise provided in the law under which the agency was formed. [RCW 42.30.070](#).<sup>21</sup> However, the meeting place should not be selected so as to effectively exclude members of the public. [RCW 42.30.030](#).
2. The place of a special meeting must be designated in the notice. [RCW 42.30.080](#).
3. In certain emergencies requiring expedited action, the meeting or meetings may be held in such place as is designated by the presiding officer and notice requirements are suspended. [RCW 42.30.070](#) and [42.30.080](#).

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<sup>17</sup> [RCW 42.30.060-075](#).

<sup>18</sup> Failure to provide public notice of the preliminary agenda of a city council or board of county commissioners meeting and even of an item which is to be considered at the meeting may, in certain circumstances, invalidate action taken at that meeting. *Port of Edmonds v. Fur Breeders*, 63 Wn. App. 159, 166-67, 816 P.2d 1268 (1991). The notice given must fairly apprise the public of the action to be taken at the meeting.

<sup>19</sup> [RCW 42.30.080](#).

<sup>20</sup> Other business may be discussed but final action may be taken only on matters specified in the notice of the special meeting.

<sup>21</sup> Note that the restrictions on holding city and town council meetings within the corporate limits were removed by the state legislature in 1994. However, all final actions on resolutions and ordinances must take place within the corporate limits of the city.

A board of county commissioners or county council must hold its regular meetings at the county seat. [RCW 36.32.080](#). Also, based upon 2015 legislation (chapter 179, Laws of 2015) regular meetings may be held elsewhere in the county, no more than once a quarter, if doing so will increase citizen engagement in government. However, it may hold special meetings at some other location in the county “if the agenda item or items are of unique interest or concern to the citizens of the portion of the county in which the special meeting is to be held.” [RCW 36.32.090](#).

4. An unintended meeting may occur by telephone or e-mail if a quorum of the body discusses a topic of business through an active exchange of information and opinions by telephone or e-mail.<sup>22</sup>
5. Notice must be posted on the agency's website unless the agency does not have a website, has fewer than 10 full-time equivalent employees; or does not employ personnel whose job it is to maintain or update the website.
  - c. The clerk or secretary may adjourn a meeting to a stated time and place, if no members are present, thereafter giving the same written notice as required for a special meeting.
  - d. A copy of the order or notice must be posted immediately on or near the door where the meeting was being (or would have been) held.
  - e. An adjourned regular meeting continues to be a regular meeting for all purposes.

## MEETING CONDUCT

1. All persons must be permitted to attend ([RCW 42.30.030](#)) except unruly persons as provided in [RCW 42.30.050](#).
2. Attendance may not be conditioned upon registration or similar requirements. [RCW 42.30.040](#). (The Act does not prohibit a requirement that persons identify themselves prior to testifying at hearings.)
3. In cases of disorderly conduct:
  - a. Disorderly persons may be expelled.
  - b. If expulsion is insufficient to restore order, the meeting place may be cleared and/or relocated.
  - c. Non-offending members of the news media may not be excluded.
  - d. If the meeting is relocated, final action may be taken only on agenda items. [RCW 42.30.050](#).
4. Adjournments/Continuances ([RCW 42.30.090](#)-[.100](#)):
  - a. Any meeting (including hearings) may be adjourned or continued to a specified time and place.
  - b. Less than a quorum may adjourn.

## EXECUTIVE SESSIONS

1. Definition (as commonly understood): That portion of a meeting from which the public may be excluded.
2. Permissible when:<sup>23</sup>
  - a. To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;
  - b. To consider, if in compliance with any required data security breach disclosure under [RCW 19.255.010](#) and [42.56.590](#), and with legal counsel available, information regarding the infrastructure and security of computer and telecommunications networks, security and service recovery plans, security risk assessments and security test results to the extent that they identify specific system vulnerabilities, and other information that if made public may increase the risk to the confidentiality, integrity, or availability of agency security or to information technology infrastructure or assets
  - c. To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of

<sup>22</sup>See [Battle Ground School District v. Wood](#), 107 Wn. App. 550, 27 P.3d 1208 (2001).

<sup>23</sup> The listing of matters for which a local governing body may meet in executive session includes here only those that such a body would address. There are others identified in the statute (e.g., financial and commercial information supplied by private persons to an export trading company) not identified here.

decreased price. However, final action selling or leasing public property must be taken in a meeting open to the public;

- d. To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;
- e. To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or meeting open to the public must be conducted upon such complaint or charge;
- f. To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee.<sup>24</sup> However, “[except when certain exempted labor negotiations are involved], discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public . . . .” Furthermore, the final action of hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, must also be taken in an open public meeting;
- g. To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;
- h. To discuss with legal counsel representing the agency matters relating to: agency enforcement actions; or litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is,

or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency. [RCW 42.30.110\(1\)](#).

- i. Public hospitals may conduct executive sessions regarding staff privileges and quality improvement, similar to the authority granted to public hospital districts. Meetings concerning the granting, denial, revocation, restriction, or other consideration of the clinical staff privileges of a health provider are confidential and may be conducted in executive session. Final action, however, must be taken in public. Meetings, proceedings and deliberations of a quality improvement committee of a public hospital and all meetings, proceedings, and deliberations to review the activities of a quality improvement committee may, at the discretion of the governing body of the hospital, be confidential and conducted in executive session. [RCW 42.30.110\(l\)](#).

Potential litigation is defined as being matters protected under the attorney-client privilege and as either: specifically threatened; reasonably believed and may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or as litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency. The mere presence of an attorney at a session does not in itself allow the meeting to be held as an executive session.<sup>25</sup>

### 3. Conduct of Executive Sessions:

- a. An executive (closed) session must be part of a regular or special meeting. [RCW 42.30.110](#).<sup>26</sup>

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<sup>24</sup>A 1985 amendment (chapter 366, Laws of 1985), together with some contemporaneous circumstances (See AGO 1985 No. 4), raised a question as to whether or not this section continued to allow executive sessions to review applications for appointive public offices that are not also employee positions, or the performance of such appointees, as distinguished from “public employment” or “employees”. However, attorneys for many public agencies, including members of the attorney general’s staff, take the position that the Act continues to allow executive sessions for those purposes. (Memorandum to MRSC’s general counsel from Senior Assistant Attorney General Richard M. Montecucco, dated March 15, 1990.)

<sup>25</sup>[RCW 42.30.110\(1\)\(i\)](#).

<sup>26</sup> There is no prohibition against holding a special meeting solely to consider one or more subjects in executive session, but the subject matter must be identified at least in general terms in the meeting notice; e.g., “to consider a building site,” or “to consider applicants for employment.” [RCW 42.30.080](#).

- b. Before convening an executive session, the presiding officer must publicly announce the purpose for excluding the public and the time when the executive session will conclude. The executive session may be extended by announcement of the presiding officer. [RCW 42.30.120\(2\)](#).
- c. Final adoption of an “ordinance, resolution, rule, regulation, order or directive” must be done in the “open” meeting. [RCW 42.30.120](#).

4. Improper Disclosure of Information Learned in Executive Session:

- a. It is the clear intent of the provisions relating to executive sessions that information learned in executive session be treated as confidential. However, there is no specific sanction or penalty in the Open Public Meetings Act for disclosure of information learned in executive session.
- b. A more general provision is provided in [RCW 42.23.070](#) prohibiting disclosure of confidential information learned by reason of the official position of a city officer. This general provision would seem to apply to information that is considered confidential and is obtained in executive sessions.

## MINUTES

- 1. Minutes of regular and special meetings must be promptly recorded and open to public inspection. (The statute does not specify any particular kind of “recording.”) [RCW 42.30.035](#).
- 2. No minutes are required to be recorded for executive sessions. If minutes are kept for an executive session, be aware that there is no categorical exemption for executive session minutes under the Public Records Act. (The Public Records Act is discussed in the next chapter.)

## VIOLATIONS

- 1. Ordinances, rules, resolutions, regulations, orders, or directives adopted or secret ballots taken, in violation of the Act, are invalid. [RCW 42.30.060](#). Agreements negotiated or adopted in closed meetings held in violation of the act also may be invalid. *Mason County v. PERC*, 54 Wn. App. 36, 40-41, 771 P.2d 1185 (1989). (But see footnote 19, supra, regarding collective bargaining and related matters.)
- 2. A member of a governing body who knowingly participates in violating the Act is subject to a \$500 civil penalty for the first violation and \$1,000 for a subsequent one. [RCW 42.30.120](#).
- 3. Mandamus or injunctive action may be brought to stop or prevent violations. [RCW 42.30.130](#).
- 4. Any person may sue to recover the penalty or to stop or prevent violations. [RCW 42.30.120-130](#).
- 5. A person prevailing against an agency is entitled to be awarded all costs including reasonable attorneys’ fees. However, if the court finds that the action was frivolous and advanced without reasonable cause, it may award to the agency reasonable expenses and attorney fees. [RCW 42.30.120\(2\)](#).
- 6. A knowing or intentional violation of the Act may provide a legal basis for recall of an elected member of a governing body, although recall is not a penalty under the Act.<sup>27</sup>

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<sup>27</sup>See *In re Recall of Ward*, 175 Wn.2d 429 (2012); *In re Beasley*, 128 Wn.2d 419 (1996); *In re Roberts*, 115 Wn.2d 556 (1990); *Estey v. Dempsey*, 104 Wn.2d 597 (1985); *Teaford v. Howard*, 104 Wn.2d 580 (1985); *In re Recall Charges Against Davis*, 164 Wn.2d 361 (2008).



# Public Records

The public, through legislation originally adopted by Initiative 276 in 1972, requires that records prepared, owned, used or retained by their government officials and employees be made available for inspection and copying. The rules that have been developed by the courts and through legislative amendments to help gain the required openness are sometimes complex; they balance the public's need to know with the protection for certain records that an agency can keep confidential for valid reasons specified in state law. Failure to provide records as required by law can be expensive, both monetarily and in the loss of public trust.

## BASICS

In addition to a subchapter on public records disclosure which was modeled after the federal "Freedom of Information Act," Initiative 276 also dealt with the subjects of campaign financing, legislative lobbying (including lobbying by municipal and other governmental agencies), and personal financial disclosure by public officials and candidates. The regulations on campaign finance, legislative lobbying and personal finance disclosure are covered in [chapter 42.17A RCW](#). The Public Disclosure Commission has extensive information available to candidates and public officials on campaign finance, legislative lobbying and personal financial disclosure; this publication will not duplicate that information.

The following discussion is intended to supply a basic working knowledge of the "freedom of information" provisions in the Public Records Act (PRA), codified at [chapter 42.56.RCW](#).<sup>28</sup> For a more detailed treatment of the public records disclosure law, see the MRSC publication, *Public Records Act for Washington Cities, Counties and Special Purpose Districts*.

## PURPOSE

The PRA is "a strongly worded mandate for broad disclosure of public records." [Hearst Corp. v. Hoppe](#), 90 Wn.2d 123, 127, 580 P.2d 246 (1978).

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people

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<sup>28</sup> Although not discussed here, local officials should have some familiarity with the Criminal Records Privacy Act, [chapter 10.97 RCW](#). This Act provides for the dissemination (or withholding) of criminal history record information.

to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. [RCW 42.56.030](#).

The PRA is to be “liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.” [RCW 42.56.030](#).

Courts frequently cite these principles in deciding public records cases and it is important to recognize that the principles behind the PRA all favor disclosure of records to the public.

## DEFINITIONS

1. “‘Public record’ 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.” [RCW 42.56.010](#)(3).
2. “‘Writing’ means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents, including existing data compilations from which information may be obtained or translated.” [RCW 42.56.010](#)(4).

## AGENCY DUTIES

1. Agencies (this term expressly includes all counties, cities, towns, and special purpose districts) shall make all public records available for public inspection and copying unless the record falls within a specific exemption. [RCW 42.56.070](#). Agencies must rely solely on statutory exemptions for withholding public records and may not

withhold records based solely upon the identity of the requestor<sup>29</sup>. [RCW 42.56.070](#) and [42.56.080](#).

2. Agencies are required to establish procedures for access to their records. Indexes should be developed and published, unless to do so would be unduly burdensome. [RCW 42.56.040](#) and .070.
3. Agencies must appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency’s compliance with the public records disclosure requirements. The name and contact information of the public records officer shall be publicized in a way reasonably calculated to provide notice to the public, including posting at the local agency’s place of business, posting on its website, or included in its publications. [RCW 42.56.580](#).

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## Failure to provide records as required by law can be expensive, both monetarily and in the loss of public trust.

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4. Records must be made available for public inspection and copying during customary office hours. [RCW 42.56.090](#).
5. Agencies must make their facilities available for copying their records, or make copies upon request; they must also honor requests by mail. They may charge for the copies, but only a “reasonable charge” representing the amount necessary to reimburse the city or town for the actual costs incident to the copying. [RCW 42.56.080](#) and [RCW 42.56.120](#).

Charges for photocopying must be imposed in accordance with the actual per page cost or other costs established and published by the agency. If the agency has not determined actual per page costs, the

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<sup>29</sup> Except, see [RCW 42.56.565](#), which allows an agency to withhold records from prisoners if the agency secures a court injunction, after proving the prisoner has a bad faith intent, such as an intent to harass agency employees.

agency may not charge in excess of fifteen cents per page. [RCW 42.56.120](#). Agencies may impose a charge for providing electronic records. [RCW 42.56.120\(2\)](#).

If the requesting person makes a request for a large amount of records, the agency may respond on a partial or installment basis, providing the records as they are assembled or made ready for inspection or disclosure. [RCW 42.56.080](#).

If a person requests copies of records, an agency may require the person make a deposit for the cost of the copies, in an amount not to exceed ten percent of the estimated cost. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request. [RCW 42.56.120](#).

Also, agencies may not charge for staff time in locating records or mere inspections of records. [RCW 42.56.100](#); [RCW 42.56.120](#); see also AGO 1991 No. 6.

## RECORDS THAT MAY BE WITHHELD

1. [RCW 42.56.070\(9\)](#) forbids public agencies from providing lists of individuals “requested for commercial purposes” unless specifically authorized or directed by law. For example, in a 1975 letter opinion, the attorney general concluded that a request by a business promotional organization for a list of individuals’ names to enable that organization to distribute advertising materials had to be denied. AGLO 1975 No. 38.

However, lists of professional licensees and applicants are available to recognized professional associations or educational organizations.

2. There is no general “right of privacy” exemption; rather, a few specific exemptions incorporate privacy as one of the elements of the exemptions. Furthermore, a right of privacy is violated only

if disclosure (1) would be highly offensive to a reasonable person and (2) is not of legitimate concern to the public. [RCW 42.56.050](#). Mere inconvenience or embarrassment is not sufficient in itself to constitute a violation of privacy. [Police Guild v. Liquor Control Board](#), 112 Wn.2d 30, 38, 769 P.2d 283 (1989).

3. [RCW 42.56.210](#)-480 grant qualified exemptions from public inspection for certain specific types of records. Some of the more important exemptions from the standpoint of a municipality include the following:

- a. Personal information in files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers, or parolees.
- b. Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.<sup>30</sup>
- c. Certain taxpayer information.
- d. Intelligence and investigative records compiled by investigative, law enforcement and penology agencies.
- e. Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies (other than the Public Disclosure Commission) if disclosure would be a danger to a person’s life, safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, that desire shall govern.

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<sup>30</sup> Whether information is “personal” depends mainly on whether or not the information pertains to the public’s business versus the individual’s business. AGO 1973 No. 4. In [Tacoma Public Library v. Woessner](#), 90 Wn. App. 205, 951 P.2d 357, rev. denied, 136 Wn.2d 1030 (1998), the court of appeals explained that the determination on whether this exemption applies focuses on whether the requested file contains personal information that is normally maintained for the benefit of employees, disclosure of which would “violate their right to privacy.” For example, records showing salaries, fringe benefits, and numbers of hours worked by named employees are not exempt, but private information such as employee non-public job evaluations, charitable contributions, private addresses, and phone numbers can be withheld to protect privacy. 90 Wn. App. at 218-223.

- f. Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.
  - g. Certain real estate appraisals and documents prepared for the purpose of considering the selection of site or related to the acquisition, sale or lease of property.
  - h. Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.
  - i. Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record is not exempt when publicly cited by an agency in connection with any agency action. (Referred to as the “deliberative process” exemption.)
  - j. Records that are relevant to a controversy to which the agency is a party but which would not be available to another party under pre-trial court discovery rules.
  - k. Records of archeological sites.
  - l. Certain library information.
  - m. Financial information required in connection with prequalifying bidders on certain state contracts.
  - n. All applications for public employment including names, resumes, and other related information.
  - o. Residential addresses and residential telephone numbers, electronic mail addresses, social security numbers, emergency contact information of employees or volunteers of a public agency held in personnel records and other employment related records or volunteer rosters, or are included in any mailing list of employees or volunteers.
  - p. Residential addresses and telephone numbers of utility customers.
  - q. Credit and debit card numbers, electronic check numbers, and card expiration dates.
  - r. Information regarding the specific details that describe an alleged or proven sexual assault of a child victim under age 18 years, or the contact information of the of the alleged or proven victim. [RCW 10.97.130](#).
- These exemptions are qualified, however. If a record contains both exempt and non-exempt information, the agency cannot withhold the entire record. Instead, the agency may redact only that portion of the record that falls within a specific exemption and must release the remainder. [Mechling v. Monroe](#), 152 Wn. App 830, 853, 222 P.3d 808 (2009). Furthermore, when the reason for the exemption ceases, the records may lose their exemptions. For example, records which fall under the deliberative process exemption lose their exempt status once the policies or recommendations set forth in the records have been implemented. [West v. Port of Olympia](#), 146 Wn. App 108, 192 P.3d 926 (2008). Also, real estate appraisals are no longer exempt when the acquisition or sale is abandoned or the property has been acquired or sold. [RCW 42.56.260](#).
4. A law enforcement authority is prohibited from requesting disclosure of records belonging to a municipal utility unless the authority provides a written statement that it suspects the utility customer has committed a crime and the authority has a reasonable belief that the records could determine the truth of the suspicion. [RCW 42.56.335](#).
  5. Information on concealed pistol licenses is exempt from disclosure except that such information may be released to law enforcement or corrections agencies.
  6. Medical Records – Public inspection and copying of health care information of patients is covered by [chapter 70.02 RCW](#). That chapter generally provides that a health care provider, a person who assists as a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose information about



a patient to any other person without the patient's written authorization. [RCW 70.02.020](#). There are some exceptions to this rule, and, although not discussed here, these provisions may become applicable to cities and counties in some situations. See [RCW 70.02.050](#).

## RESPONDING TO RECORDS REQUESTS

Agencies are required to make their records available “promptly” on request. They must, within five business days of the request, either (1) provide the record, (2) provide a link to the specific page on the agency's website where the records are located (unless requestors notify the agency that they cannot access records through the internet), (3) acknowledge the request and give an estimate of when the response will be made,<sup>31</sup> or (4) deny the request. Agencies must give written reasons for denials of access or copies. There must be procedures for reviewing decisions denying requests. If a request is denied, the review of the denial is considered complete at the end of the second business day following the denial. [RCW 42.56.520](#).

Agencies should adopt procedures to protect their records and prevent interference with agency functions. An agency may seek a court order to protect a particular record. [RCW 42.56.540](#).

## VIOLATIONS

Persons whose request for inspection or copying is wrongly denied can sue on their own behalf. The lawsuit must be filed within one year of the agency's claim of exemption or last production of a record. The court may order the record(s) be produced. The successful citizen is then entitled to be reimbursed for all costs of the suit, including a reasonable attorney's fee, and will be awarded an amount which does not exceed \$100 per day for each day the request was denied.<sup>32</sup> The burden of proof is generally on the agency to justify its decision on the basis of a specific statutory exemption allowing for non-disclosure.<sup>33</sup>

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<sup>31</sup>Reasons justifying additional time to respond include time needed to clarify the intent of the request, to locate and assemble information requested, to notify third persons and agencies affected by the request, or to determine whether any of the information is exempt. [RCW 42.56.550](#). A person who believes the estimate of time required to respond is unreasonable may petition the superior court to have the agency justify the response time as reasonable. The burden of proof to show reasonableness is on the agency. [RCW 42.56.550\(2\)](#).

<sup>32</sup>See *Yousoufian v. Office of the King County Executive*, 168 Wn.2d 444 (2010).

<sup>33</sup>[RCW 42.56.550](#).



## City Attorney, Prosecuting Attorney and Legal Counsel Roles

City attorneys, county prosecuting attorneys, and legal counsel for special purpose districts have similar roles as legal advisors to their respective local governments. Also, such legal positions have duties relating to advising local officials, prosecuting actions on behalf of their jurisdictions, and defending actions against their jurisdictions.

Washington State law requires that every city and town in the state have a city or town attorney. In some cities, the attorney will be a full-time, in-house officer of the city. In other cities, the city attorney will maintain a private practice of law but be on retainer to the city to perform the required duties. In either case, the city attorney advises city officials and employees concerning all legal matters pertaining to the business of the city. The city attorney generally is to represent the city in all actions brought by or against the city or against city officials in their official capacity. Of course, other attorneys may be hired to handle specific cases because of the nature of the case or because the city attorney has a conflict or other reason they cannot become involved. The city attorney also is to perform such other duties as the city council may by ordinance direct.

All counties have an elected prosecuting attorney. Unlike the city attorney, the duties of the prosecuting attorney are extensively set out by statute. See [RCW 36.27.020](#). In addition to having the authority to appoint deputies, the county prosecuting attorney has the authority to contract with “special deputy prosecuting attorneys” for limited and identified purposes. [RCW 36.27.040](#). A county legislative authority may also appoint a “special attorney” “to perform any duty which any prosecuting attorney is authorized or required by law to perform,” but only if the appointment is approved by the presiding superior court judge. [RCW 36.32.200](#). The prosecuting attorney provides legal advice and assistance to some special purpose districts, such as school districts;<sup>34</sup> other special purpose districts may have in-house attorneys or hire outside legal counsel for assistance.<sup>35</sup>

Although there is no specific authority for a city council to hire outside legal counsel separate and apart from the city attorney, the courts have permitted a council to do so in certain circumstances. Normally, the city attorney advises all city officials, including councilmembers, and the city council should not hire separate

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<sup>34</sup>[RCW 36.27.020\(2\)](#).

<sup>35</sup> See, e.g. [RCW 70.44.060\(10\)](#) as to public hospital districts.

outside council to receive advice on city affairs. In rare cases, the city attorney may have a conflict and not be in a position to advise both the city council and the mayor. In [State v. Volkmer](#), 73 Wn. App. 89, 95 (1994), the court of appeals held:

If extraordinary circumstances exist, such that the mayor and/or town council is incapacitated, or the town attorney refuses to act or is incapable of acting or is disqualified from acting, a court may determine that a contract with outside counsel is both appropriate and necessary.

See also a discussion of this issue in the [Koler v. Black Diamond](#) (2021), [Tukwila v. Todd](#) (1977) and McQuillin, *Municipal Corporations*, § 29.16.

Recognize also that there are situations where the city attorney, county prosecutor, or the attorney for a special purpose district will not be in a position to advise all the officials who are or may be involved in a case or hearing. As an obvious example, if the police chief has been terminated by the city and requests a hearing before the civil service commission, the city attorney cannot ethically advise the city administration, the civil service commission, and the police chief. When analyzing a problem, the legal practitioner should always ask if there is more than one “client” involved (council, mayor, commissioners, board, and city manager) and whether there is a conflict between these “clients.”<sup>36</sup>

It is beyond the scope of this publication to review these issues in detail. For more information, see the *Public Law Ethics Primer for Government Lawyers*, Washington State Association of Municipal Attorneys (1998), which is available on the MRSC website. There have been a number of articles written on aspects of this subject that have been presented at meetings of the Washington State Association of Municipal Attorneys and the Washington Association of Prosecuting Attorneys over the years. Any of these articles may be obtained from MRSC on request.

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<sup>36</sup>The city attorney’s client is actually the city as an entity. Similarly, the county prosecutor’s client is the county as an entity. In both cases, the public attorney’s relationship to the local government is similar in a number of respects to that of an attorney who represents a corporation. See [Upjohn Co. v. U.S.](#), 449 U.S. 383, 66 L.Ed.2d 584, 101 S. Ct. 677 (1981) for a model of who is the lawyer’s client for purposes of the attorney-client privilege in the corporate context.



## Conclusion

The purpose of this publication is to help avoid certain trouble areas most frequently encountered by local officials. Although it is meant to be comprehensive, it does not necessarily include all statutes and regulations that possibly may apply. Furthermore, as is indicated at the outset, the law frequently changes with new enactments and interpretations, and even legal interpretations may vary depending upon the facts of a particular case. Do not hesitate to seek information and advice, especially on legal matters. The result may make the difference between success or failure in asserting a claim or defense, particularly when the good faith of the official may be an issue in the lawsuit.

We emphasize, in addition, that the legal and other professional staff of the Municipal Research and Services Center are constantly available to serve city attorneys, county prosecutors, attorneys representing special purpose districts, and all other city, county, and district officials and employees in this important work.

We are grateful for the continuing interest of public officials in this publication. We hope that these updated guidelines will continue to be a useful source of information and benefit.


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# Practice Tips FOR LOCAL GOVERNMENTS



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 [mrsc.org/opma](http://mrsc.org/opma).

## 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 gathering of the members of a governing body is subject to the OPMA when a quorum (majority) of the governing body is in attendance with the collective intent to take action, 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"> <li>• City or Town Councilmember or Mayor*</li> <li>• County Commissioner or County Councilmember</li> <li>• Special Purpose District Commissioner/Board Member</li> </ul>	Yes Yes Yes
Member of a subagency created by ordinance or legislative act, e.g.: <ul style="list-style-type: none"> <li>• Planning Commission</li> <li>• Library Board</li> <li>• Parks Board</li> <li>• Civil Service Commission</li> </ul>	Yes Yes Yes Yes
Member of a committee <ul style="list-style-type: none"> <li>• Committees that act on behalf of (exercise actual or de facto decision-making authority for) the governing body, conduct hearings, or take testimony or public comment</li> <li>• Committees that are purely advisory</li> </ul>	Yes No
Agency staff	No, unless agency employee is a member of a committee that is required to comply

\* In a city with a “strong” mayor, the mayor does not count towards a quorum and is only subject to the OPMA when presiding over a council meeting or serving on a committee that is required to comply.

## 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 \$500 for any member of a governing body who attends a meeting knowing that it violates the OPMA and \$1,000 for any subsequent OPMA violation. [RCW 42.30.120\(1\)\(2\)](#).
- **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\(2\)](#).

## MEETINGS NOT SUBJECT TO OPMA

- **Quasi-judicial proceedings.** Typically, a city or county governing body is acting in a quasi-judicial capacity in certain land use actions such as site-specific rezones, conditional use applications, variances, and preliminary plat applications. Other examples include the civil service commission when it is considering an appeal of a disciplinary decision and the LEOFF disability board when it is considering an application for disability benefits. However, where a public hearing is required for a quasi-judicial matter, only the deliberations by the body considering the matter can be in closed session. See [RCW 42.30.140](#).
- **Collective bargaining sessions.** Collective bargaining sessions with employee organizations are not subject to OPMA requirements and may occur in closed session without following OPMA procedures. This exemption applies to contract negotiations, grievance meetings, and discussions about the interpretation or application of a labor agreement or to that portion of a meeting when the governing body is planning or adopting its strategy during the course of any collective bargaining, professional negotiations, grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings in progress. See [RCW 42.30.140](#).
- **Note:** Jurisdictions may choose to conduct these proceedings in an open meeting despite the statutory exemption.

## OPMA TRAINING REQUIREMENTS

- 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. [RCW 42.30.205\(1\)](#).
- 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. [RCW 42.30.205\(2\)](#).

DISCLAIMER: These practice tips are meant to provide summary information on basic agency obligations of the OPMA; the practice tips are not intended to be regarded as specific legal advice. Consult with your agency's legal counsel for guidance on specific situations.

# Checklist FOR LOCAL GOVERNMENTS



The Open Public Meetings Act (OPMA) requires specific steps be taken in order to hold an executive session. Use this checklist to guide your agency’s compliance with the OPMA related to executive sessions. For more information and resources visit [mrsc.org/opma](http://mrsc.org/opma).

REQUIREMENT	COMPLETED
<p><b>Meeting</b></p> <p>An executive session can only be held as part of a regular or special meeting.</p>	<input type="checkbox"/>
<p><b>Purpose</b></p> <p>The presiding officer announces in open session the purpose/topic of the executive session.</p>	<input type="checkbox"/>
<p><b>End Time</b></p> <p>The presiding officer announces in open session the time the executive session will end. Note: Announce a specific time - announcing a length of time is not sufficient.</p>	<input type="checkbox"/>
<p><b>Legal Counsel</b></p> <p>Legal counsel is present during the executive session, if required.</p>	<input type="checkbox"/>
<p><b>Confidentiality</b></p> <p>At the start of the executive session, participants are reminded that discussions are confidential.</p>	<input type="checkbox"/>
<p><b>Discussion topics for local governments as set forth in RCW 42.30.110(1).</b> (See Notes for Specific Discussion Topics in <a href="#">Practice Tips</a> section.)</p> <ul style="list-style-type: none"> <li>• Matters affecting national security (<a href="#">RCW 42.30.110(1)(a)(ii)</a>).</li> <li>• Infrastructure and security of agency computer and telecommunications network (<a href="#">RCW 42.30.110(1)(a)(iii)</a>). Note: Requires presence of legal counsel.</li> <li>• Consideration of site selection or acquisition of real estate purchase or lease if likelihood that disclosure would increase price (<a href="#">RCW 42.30.110(1)(b)</a>).</li> <li>• Consideration of the minimum offering price for sale or lease of real estate if there’s a likelihood that disclosure would decrease the price (<a href="#">RCW 42.30.110(1)(c)</a>). Only minimum price may be discussed; factors influencing price must be discussed in public session. See <a href="#">Columbia Riverkeeper v. Port of Vancouver</a>. Note: Final action selling or leasing public property must also be taken in open session.</li> <li>• Complaints or charges brought against a public officer or employee (<a href="#">RCW 42.30.110(1)(f)</a>). Note: At accused’s request, discussion must be in open session.</li> <li>• Qualifications of an applicant for public employment (<a href="#">RCW 42.30.110(1)(g)</a>).</li> <li>• Performance of a public employee (<a href="#">RCW 42.30.110(1)(g)</a>).</li> <li>• Qualifications of an applicant/candidate for appointment to elective office (<a href="#">RCW 42.30.110(1)(h)</a>). Any interviews or votes must be held in open session.</li> <li>• Discussions with legal counsel regarding agency enforcement actions (<a href="#">RCW 42.30.110(1)(i)</a>).</li> <li>• Discussion with legal counsel about current or potential litigation (<a href="#">RCW 42.30.110(1)(i)</a>).</li> <li>• Discussion with legal counsel about legal risks of current or proposed action (<a href="#">RCW 42.30.110(1)(i)</a>).</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>



REQUIREMENT	COMPLETED
<p><b>Extended End Time</b></p> <p>If the executive session is not completed by the originally announced end time, the presiding officer announces the extended end time in open session before returning to executive session.</p>	<input type="checkbox"/>
<p><b>Resumption</b></p> <p>Open session is not resumed until after the announced end time.</p>	<input type="checkbox"/>

MEETING DATE

FORM COMPLETED BY

ATTENDEES

DISCLAIMER: This checklist is meant to provide summary information on executive sessions; the checklist is not intended to be regarded as specific legal advice. Consult with your agency's attorney for guidance on specific situations.

# Practice Tips FOR LOCAL GOVERNMENTS



An executive session must begin after a regular or special meeting is convened and adjourn before the meeting ends. You can hold a special meeting for the sole purpose of holding an executive session.

Before going into executive session, the chair must announce the executive session to those in attendance at the meeting, including: (1) the purpose of the executive session; and (2) the time when the executive session will end. Minutes should reflect the stated purpose of the executive session.

## ANNOUNCED PURPOSE

The announced purpose of the executive session must be one of the statutorily-identified purposes for which an executive session may be held. The announcement must contain enough detail to identify the purpose as falling within the limits of the law.

**It would not be sufficient, for example, for a meeting chair to declare simply that the governing body will now meet in executive session to discuss “personnel matters.”** Discussion of personnel matters, in general, is not an authorized purpose for holding an executive session; only certain specific issues relating to personnel may be addressed in executive session.



**Attendance of legal counsel:** Legal counsel must be present at an executive session, either in person or remotely via a device that allows two-way communication, to discuss enforcement actions, current or potential litigation, or the legal risks of current or proposed action ([RCW 42.30.110\(1\)\(l\)](#)). “Potential litigation” means litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party; or the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity. Discussion of the “legal risks” of a current or proposed action can only occur in executive session if public discussion of those legal risks is likely to result in an adverse legal or financial consequence to the agency. Legal counsel should also be present for considerations regarding infrastructure and security of computer and telecommunications networks ([RCW 42.30.110\(1\)\(a\)\(ii\)](#)).

## NOTES FOR SPECIFIC DISCUSSION TOPICS

(See Discussion topics for local governments as set forth in [RCW 42.30.110\(1\)](#) in [Checklist](#) section.)

- **Security of computer and telecommunications network.** Governing body may be briefed in executive session about agency cybersecurity issues or data breaches. If a data breach occurs, the agency must comply with breach notification requirements.
- **Contract Performance.** Review of contract performance of publicly bid contracts may only be discussed in executive session when public knowledge of such consideration would likely cause increased costs.
- **Qualifications of an applicant for public employment or review of performance of a public employee.** Be careful not to take any votes, straw polls, or anything that can be interpreted as making a collective decision while in executive session. If the governing body elects to take final action regarding hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action must be taken in open session.
- **Qualifications of candidate for appointment to elective office.** You can discuss the qualifications, but the candidate interviews and final action appointing a candidate to elective office must be in an open public meeting.

## LENGTH OF SESSION

If the governing body concludes the executive session before the time stated, it should not reconvene in open session until the time stated. Otherwise, public may, in effect, be excluded from that part of the open meeting that occurs between the close of the executive session and the time when the chair announced the executive session would conclude. If the executive session is not over at the stated time, it may be extended only if the chair announces to the public at the meeting place that it will be extended to a stated time.

## ATTENDANCE

Attendance at an executive session need not be limited to the members of the governing body. Persons other than elected members may attend the executive session at the invitation of the governing body. Those invited should have some relationship to the matter being addressed in the executive session, or they should be in attendance to otherwise provide assistance to the governing body. Note that if the stated purpose for the executive session is to discuss litigation or potential litigation with the governing body's attorney, the presence of persons at the session who are not governing body members or agency staff may waive the attorney-client privilege.

## MINUTES

Minutes are not required to be taken at an executive session. If minutes or notes are taken during an executive session, they may be subject to the disclosure requirements of the Public Records Act.

**DISCLAIMER:** These practice tips are meant to provide summary information on executive sessions; these tips are not intended to be regarded as specific legal advice. Consult with your agency's attorney for guidance on specific situations..

# Practice Tips FOR LOCAL GOVERNMENTS



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 [mrsc.org/opma](http://mrsc.org/opma).

## ELECTRONIC COMMUNICATIONS CAN CREATE AN ILLEGAL “SERIAL” 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 or using social media, keep in mind that exchanges involving a majority of members of the governing body can be considered an illegal “meeting” under the OPMA. This principle also applies to text messaging, instant messaging, and the “chat” feature of video-conferencing software.

### 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 or other electronic exchange such as social media, that would constitute a meeting under the OPMA. “Action” under the OPMA includes 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 happens when a majority of the body are involved in the exchange. However, the participants must collectively intend to meet to conduct agency business.



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

- 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 a majority of 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.” Consider using the “BCC:” email line for all those who should not “reply all.”
- 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.

## 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 if the members collectively intend to meet and conduct agency business.



**Tip:** Be on the look out for mixed media. A conversation need not be held entirely in the same format for a rolling or serial meeting to occur. For example, an in-person conversation might be continued on via email and then transition to text.

## 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 phone, email or other electronic means.

## USE OF SOCIAL MEDIA CAN IMPLICATE THE OPMA

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 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.



**Tip:** 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 or accept public testimony.

## 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 for guidance on specific situations.

# Practice Tips FOR LOCAL GOVERNMENTS



The Open Public Meetings Act (OPMA) requires agencies to provide sufficient public notice of their meetings and, in some cases, to post the agenda for the meeting in advance. Use these practice tips as a starting guide for OPMA notice requirements. For more information and resources visit [mrsc.org/opma](http://mrsc.org/opma).

REGULAR MEETINGS ( <a href="#">RCW 42.30.070</a> )	SPECIAL MEETINGS ( <a href="#">RCW 42.30.080</a> )
<p><b>Definition</b></p> <p>Held in accordance with a schedule fixed by ordinance, resolution, bylaws, or other rule.</p>	<p>Anything other than a regular meeting. May be called by the presiding officer or a majority of the members of the governing body.</p>
<p><b>Notice and Agendas</b></p> <p>Agendas must be made available on the agency’s website at least 24 hours in advance of the meeting unless the agency:</p> <ul style="list-style-type: none"> <li>❶ Doesn’t have a website; or</li> <li>❷ Employs fewer than 10 full-time equivalent employees.</li> </ul> <p>This requirement does not prohibit subsequent modifications to agendas. There are no other notice requirements for regular meetings in the OPMA. However, other relevant laws apply to some local governments. For example, cities and towns are required to establish a procedure for notifying the public of the preliminary agenda for the forthcoming council meeting and any upcoming hearings (although not necessarily online). See <a href="#">RCW 35A.12.160</a>; <a href="#">RCW 35.22.288</a>; <a href="#">RCW 35.23.221</a>; <a href="#">RCW 35.27.300</a>. There are no similar requirements for counties or special purpose districts related to preliminary agendas.</p>	<p>The special meeting notice must specify the date, time, and place of the special meeting, and the business to be transacted.</p> <ul style="list-style-type: none"> <li>• <b>Personal notice.</b> Written notice must be delivered personally, by mail, fax, or e-mail at least 24 hours before the meeting to: <ul style="list-style-type: none"> <li>❶ Each member of the governing body, unless the member submits a written waiver of notice in advance with the clerk, or the member is actually present at the meeting; and</li> <li>❷ Each member of the news media who has on file with the governing body a written request for notice of special meetings.</li> </ul> </li> <li>• <b>Website notice.</b> Notice must be posted on the agency’s website 24 hours in advance of the meeting, unless the agency: <ul style="list-style-type: none"> <li>❶ Doesn’t have a website; or</li> <li>❷ Employs less than 10 full-time equivalent employees; or</li> <li>❸ Doesn’t employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the website.</li> </ul> </li> <li>• <b>Notice at agency’s principal location.</b> Notice must be prominently displayed 24 hours in advance at the main entrance of the agency’s principal location and the meeting site if the meeting isn’t held at the agency’s principal location.</li> </ul>
<p><b>Emergencies</b></p> <p>In an emergency situation (e.g., fire, flood, earthquake, or other emergency), a meeting may be held at a site other than the regular meeting site, and the notice requirements under the OPMA are suspended during such an emergency.</p>	<p>The notices required for special meetings aren’t required if a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.</p>

REGULAR MEETINGS ( <a href="#">RCW 42.30.070</a> )	SPECIAL MEETINGS ( <a href="#">RCW 42.30.080</a> )
<p><b>Holidays</b></p> <p>Regular meetings shall not be held on holidays. If a regular meeting falls on a holiday, the meeting must be held on the next business day.</p>	<p>Although not specifically addressed by the OPMA, we recommend that special meetings not be held on holidays out of consideration for public participation.</p>
<p><b>Business Transacted</b></p> <p>There are no restrictions on the type of business that may be transacted at regular meetings. The agency can go into executive session even if one was not noticed.</p>	<p>The agency can add matters for discussion to the agenda including an executive session. But, final disposition cannot be taken on any matter not listed in the special meeting notice.</p>

DISCLAIMER: These practice tips are meant to provide summary information on the notice requirements of the OPMA; these tips are not intended to be regarded as specific legal advice. Consult with your agency’s legal counsel for guidance on specific situations.