



Kitsap County Planning Commission



Public Service Training
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Planning Commission

- State Planning Enabling Act
 - Chapter 36.70 RCW
 - Enacted in the 1950's
- Authorizes planning departments and planning commissions
- Provides various structures
 - Boards of Adjustment, Hearing Examiner etc.



Planning Commission

- ▶ Kitsap County
 - ▶ Planning department & commission model
 - ▶ KCC 2.56.035
- ▶ Department of Community Development = “planning agency”
- ▶ Planning Commission:
 - ▶ *shall conduct such hearings as are required . . .*
 - ▶ *shall make findings and conclusions . . .*
 - ▶ *which shall be transmitted to the department which shall transmit the same on to the board with such comments and recommendation it deems necessary.*

Planning Commission

- ▶ Planning Agency (DCD) prepares comprehensive plan
- ▶ Board of Commissioners may also initiate changes
- ▶ Planning Commission conducts public hearings on comprehensive plan
- ▶ Planning Commission makes recommendations on comprehensive plan



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Growing for a Better Tomorrow

Planning Commission

- Approval of a proposed comprehensive plan shall be by majority vote by all members RCW 36.70.400.
- Changes by the Board of County Commissioners subject to notice and comment procedures
 - Changes must be in the scope of initial notice and SEPA review
 - If meet above, BOCC does not need to send changes back through Planning Commission

Planning Commission

- Findings of Fact:
 - Based on evidence presented Commission
 - In the record or reasonable inference.
 - If disputed, should weigh evidence, and make finding based upon preponderance of evidence
 - Not opinions
 - Should not be conclusory – need to provide a basis for fact

Planning Commission

- Conclusions of Law:
 - “Reasoning” for the recommendation
 - Based on findings of fact, controlling law, and judgment.
 - Based solely on evidence in the record.
 - Decisive and conclusive.

It's All Public



- All actions taken by the Planning Commission are open to the public
 - Open meetings
 - Open records
 - Record retention
 - Neutrality/impartiality

Open Public Meetings Act OPMA

- State Law -- Chapter 42.30 RCW
- All meetings must be open and transparent
- Specifically applies to Planning Commission meetings

Open Public Meetings Act

- What constitutes a meeting?



Open Public Meetings Act

- A meeting is one where “**Action**” is taken



Open Public Meetings Act

➤ "Action":

- *the transaction of the official business . . . including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.*

➤ "Final action"

- *a collective positive or negative decision, or an actual vote by a majority of the members . . . upon a motion, proposal, resolution, order, or ordinance*

Open Public Meetings Act

- ▶ In order to take “action” – must have a quorum
- ▶ Once a quorum is present, and “action” is taken → must comply with the OPMA
 - ▶ Open to public
 - ▶ Notice
 - ▶ Minutes (made available upon request)
Any action taken at meetings failing to comply with the provisions of the OPMA shall be null and void

Open Public Meetings Act



- Regular Meetings
 - regularly scheduled
 - do not need special notice or agendas

- Special Meetings
 - Minimum 24 hour notice
 - restriction to business specified in notice
 - Posting Requirements

Open Public Meetings Act

- Care must be taken not to hold inadvertent meetings.
- Electronic Mail communications
 - Dialog can rise to the level of a meeting & OPMA violation
- Other social events:
 - OPMA allows members to travel together or engage in other activity, such as attending social functions, so long as they do not take action

Open Public Meetings Act

- Telephonic participation in Planning Commission meetings allowed:
 - Speaker phone is available at the official location of the meeting so as to afford the public the opportunity to hear the member's input.
 - Should be limited in use
 - Should not include "telephone trees"
- A quorum may attend another organization's meeting if no action is taken.
- May have "joint" Planning Commission/BOCC meetings so long as both meet OPMA requirements

Open Public Meetings Act

- Closed "study sessions," "retreats," or similar efforts not allowed.
- Study sessions, work sessions, retreats must all be advertised and open to the public
- No secret ballots or "polling." Any vote taken in violation of this prohibition is null and void.

Open Public Meetings Act

- Exceptions:
 - No Quorum
 - No Action
 - Individually distribution and review of materials in advance
 - Executive Sessions
 - Strictly limited to specific topics
 - Requirements for announcements prior to session
 - No final action may be taken in executive session

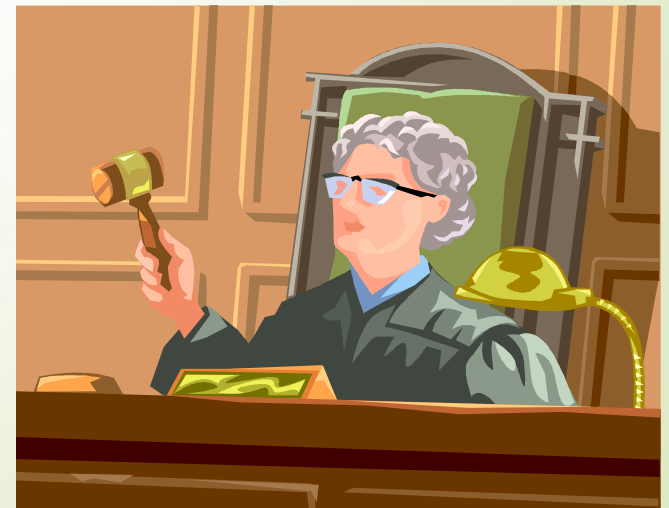
Open Public Meetings Act

- Public Hearing vs. Public Meeting
 - Both require compliance with OPMA
 - A public hearing is one where the public is “heard”
 - Testimony taken
 - It is allowable to limit such testimony



Open Public Meetings Act

- ▶ Planning Commission – Legislative Role
 - ▶ Recommendations on land use comprehensive plan and development regulations
- ▶ Planning Commission – Quasi-Judicial
 - ▶ Current use assessments



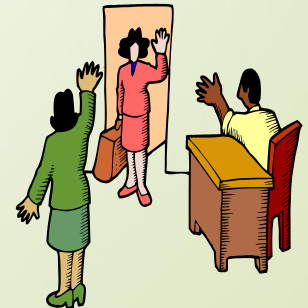
Open Public Meetings Act

- Conduct of Meetings/Hearings
 - Open to the public
 - Can not require attendee to register, to complete questionnaire, or otherwise any condition precedent to his attendance.
 - Can have person disrupting meeting removed.
 - adjourn the meeting to another place;
 - media entitled to attend the adjourned meeting and meeting is limited to only on those matters on the agenda.



Open Public Meetings Act

- ▶ Adjourning/Continuances
 - ▶ Meeting may be adjourned or continued to specified time and place
 - ▶ Less than a quorum may adjourn
 - ▶ If no members present → clerk may adjourn
 - ▶ Notice must be posted about the adjournment
 - ▶ If not adjourned to a stated time or place → will continue to regular meeting time & place
 - ▶ Adjourned regular meeting continues as regular meeting



Open Public Meetings Act

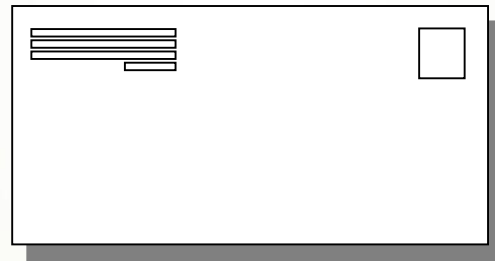
➤ Violations/Penalties

- Action may be void
- \$100 civil penalty
 - Knowing violation
- Injunction/Mandamus
- Attorney fees



PUBLIC RECORDS

- Public records are subject to disclosure & retention.



Public Records Act

- What Is A “Public Record”?
- "Public record" includes any **writing** . . . 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.

Public Records Act

- What is a “writing”?
 - **“Writing”** = handwriting, typewriting, printing, photostating, photographing, and **every other means of recording any form of communication or representation**, including, but not limited to, 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.

Public Records Act

- (1) There must be a "writing,"
- (2) The writing must relate to the conduct of government or the performance of any governmental or proprietary function.

- (3) The writing must be prepared, owned, used or retained by the agency.
 - May include data compiled for the issuance of a report
 - An agency need not possess a record for it to be a "public record."

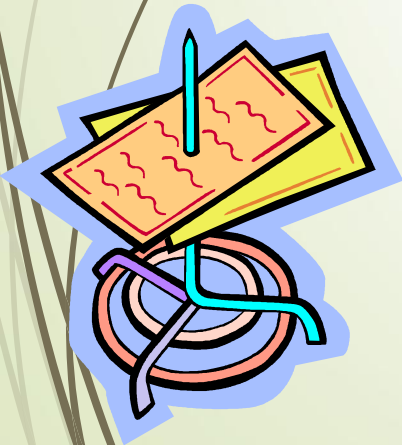
Public Records Act

- ▶ Liberal construction of the statute
- ▶ Best to err on the side of promptly disclosing requested records



Public Records Act

- ▶ Exemptions:
 - ▶ Numerous exemptions, but strictly construed
 - ▶ Personal notes
 - ▶ Certain telephone messages
 - ▶ Calendars



Public Records Act

- ▶ Responding to a public records request
 - ▶ 5 business day limit for initial response
 - ▶ Must create “exemption log” listing any records not disclosed, citing exemption
 - ▶ Generally cannot ask why a record is requested
 - ▶ But do not have to provide lists for commercial purposes

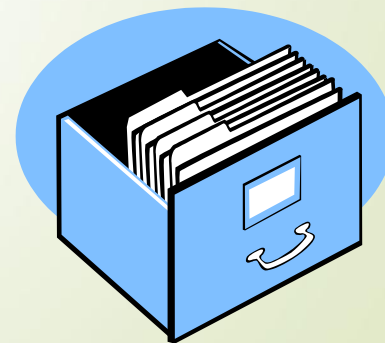
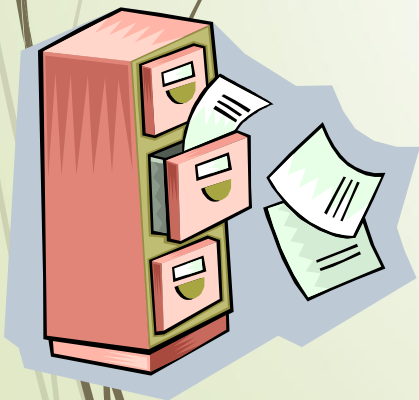
Public Records Act

- Noncompliance:
 - Potentially severe daily penalties
 - Fines & attorney fees
 - Even where nondisclosure was inadvertent
 - Even where third party sued to prevent disclosure.



Public Records

- ▶ Record Retention
- ▶ State law requires keeping certain records for varying lengths of time depending on the content of the record.



Public Records

- ▶ All retained and existing records are subject to disclosure, even if past the retention period.
- ▶ Requires reasonable practices to allow agency to promptly locate and produce requested documents if they are reasonably identifiable.
- ▶ Cannot destroy retained record under retention schedule if there is a pending PRA request

Public Records

- ▶ DCD retains records for planning commission
 - ▶ Ensure that staff have any records you believe are public records
 - ▶ Also important in maintaining “official record” of action
 - ▶ Take care in using home computers
 - ▶ Metadata issues



Appearance of Fairness Doctrine

- Must not only be fair in proceeding, must “appear” fair as well
- Applies to Quasi-Judicial Land use Proceedings



Appearance of Fairness Doctrine

- ▶ Judicially created
- ▶ Limited and codified in Ch. 42.36 RCW.
 - ▶ Applies to land use actions of commissioners, planning commission, hearing examiner.
- ▶ “Quasi-judicial” = actions that
 - ▶ “determine the legal rights, duties, or privileges of **specific parties** in a hearing or other contested case proceeding.”
- ▶ Statute specifically excludes three categories of actions:
 - ▶ adopting or revising comprehensive plans,
 - ▶ adopting area-wide zoning ordinances, and
 - ▶ adopting zoning amendments of area-wide significance.

Appearance of Fairness Doctrine

- ▶ Does not apply to legislative matters but:
 - ▶ Site-specific comprehensive plan amendments and zoning amendments can meet quasi-judicial definition
 - ▶ Proceed cautiously regarding such issues.
 - ▶ Care regarding ex parte contacts
 - ▶ Abstentions not necessary unless challenged; even if challenged, abstention may not be required.

Appearance of Fairness Doctrine

- ▶ Quasi Judicial Action –
 - ▶ Current use assessment applications



Appearance of Fairness Doctrine

- No ex-parte contacts
- No prejudgment



Appearance of Fairness

- ▶ If have a conflict, or appearance of:
 - ▶ Place on record
 - ▶ Challenge must be made immediately or is waived
- ▶ If recuse → cannot participate at all on that topic, even as a member of the public



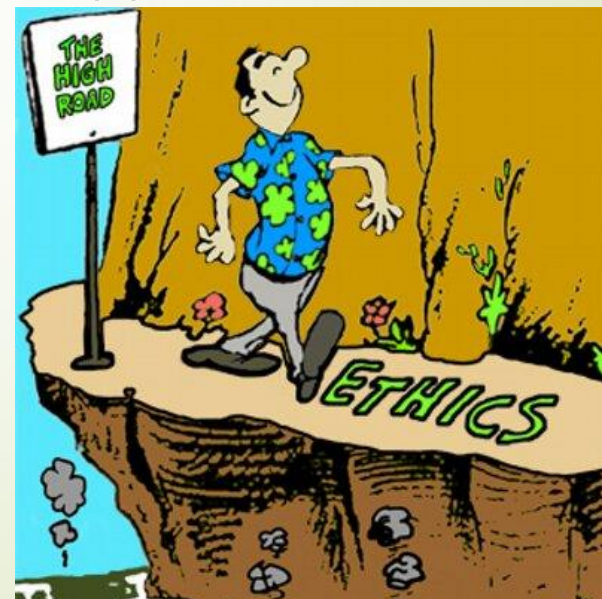
Ethics in Government

- State Statute: Code of Ethics for Municipal Officers
- "Municipal officer" = all elected *and appointed officers* of a municipality . . . , and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer.



Ethics in Government

- General rule: a public official may not exercise his or her office to confer a personal benefit upon him or herself.
 - public officers hold a public trust.
 - public officers are held to a standard of behavior that does not undermine, provide an opportunity to undermine, or appear to undermine that trust.



Ethics in Government

- ▶ No . . . beneficial interest, directly or indirectly, in any contract . . . made under the **supervision** of such officer, or which is made for the **benefit of his or her office**
- ▶ **May not accept**, directly or indirectly, any **compensation, gratuity or reward** in connection with such contract from any other person beneficially interested therein.
- ▶ No municipal officer may use his or her position to **secure special privileges** or **exemptions** for himself, herself, or others.



Ethics in Government

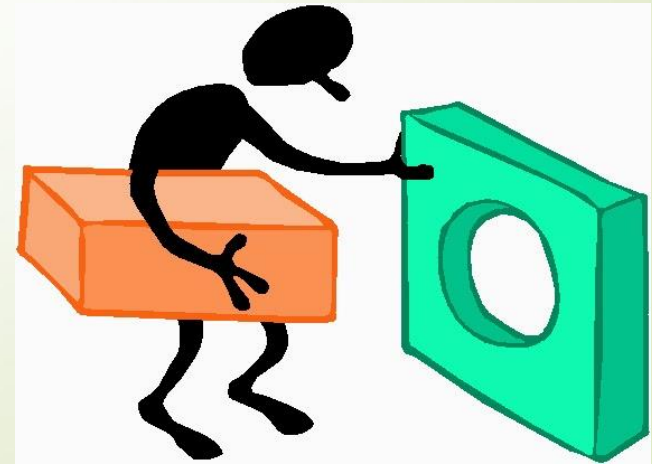
Additional Provisions

- ✓ May not receive **compensation or gratuity** for anything related to services as planning commissioner.
- ✓ May not **disclose confidential information** gained as planning commissioner.
- ✓ May not **accept employment** that would **require disclosing confidential information** gained as planning commissioner.



Ethics in Government

- ▶ One should not judge his or her own cause *Smith v. Centralia*, 55 Wash. 573, 104 P. 797 (1909)
 - ▶ Only would apply to site specific or current use applications – not to area-wide or text amendments.
- ▶ Doctrine of Incompatible Offices
 - ▶ Where there is a conflict of holding two different positions



Any Questions?



REFERENCES

- Municipal Services Research Council
 - www.mrsc.org
- Attorney General
 - www.atg.wa.gov
- Washington State Ass'n of Counties
 - www.wacounties.org
- Ass'n of Washington Cities
 - www.awcnet.org

References

- ▶ Chapter 36.70 RCW (Planning Enabling Act)
- ▶ Chapter 36.70A RCW (Growth Management Act)
- ▶ Kitsap County Code Ch. 2.56
- ▶ Chapter 42.30 RCW (Open Public Meetings Act)
- ▶ Chapter 42.56 (Public Records)

References

- Ch. 40.14 RCW (Record Retention)
- Ch. 42.36 (Appearance of Fairness)
- Ch. 42.23 (Ethics for Municipal Officers)
- <http://apps.leg.wa.gov/RCW/default.aspx>