



**City Council Special Meeting
Planning Conference Day 1 Agenda
Friday, January 27, 2023, 1:00 PM
Lacamas Lake Lodge, 227 NW Lake RD**

TO OBSERVE MEETING (no public comment ability): The public is invited to attend in person at Lacamas Lake Lodge, 227 NW Lake Road.

CALL TO ORDER

ROLL CALL

WORKSHOP TOPICS

1. Parameters Around Public Bodies
Presenters: Shawn MacPherson, City Attorney, and Jeff Swanson, Exigy Consulting
Time Estimate: 60 minutes
2. [Council as Part of the City Team](#)
[Presenters: Shawn MacPherson, City Attorney, and Jeff Swanson, Exigy Consulting](#)
[Time Estimate: 90 minutes](#)
3. [Overview of City Strategic Priorities](#)
[Presenters: Jeff Swanson, Exigy Consulting, and Doug Quinn, City Administrator](#)
[Time Estimate: 60 minutes](#)
4. Conclusion and Goals for Day 2
Presenter: Jeff Swanson, Exigy Consulting, and Doug Quinn, City Administrator
Time Estimate: 30 Minutes

CLOSE OF MEETING

City Council Annual Planning Conference

Shawn MacPherson
City Attorney
January 2023



TOPICS:

and Further Discussion

- OPMA and Serial Meetings
- Council, Mayor and City Staff Roles
- Confidential Information
- Council Members – Duty to the City
- Council Members and the Public

Meetings

- “Meeting” does not require members to be present in one location; or even interact simultaneous
- Conference call with a majority
- Email exchange that includes substantive input from a majority
- “Serial” meetings such as a phone tree
- “Rolling” a topic along in repeated discussions

BUT simply receiving information *without comment* is not a meeting

Item 2.

Did We Just Have a Meeting?

- Meetings may take place in person, by phone, by email, by text, etc.
- Travel & social gatherings excepted only if no “action” is taken
- Texting during meetings is not an “open” discussion



Serial Meetings



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Wood v. Battle Ground School Dist. 107 Wn. App. 550 (2001)

- Exchange of emails between school district board members regarding the performance of two employees
- “...the active exchange of information and opinions in these e-mails, as opposed to the mere passive receipt of information, suggests a collective intent to deliberate and/or to discuss Board business”

Serial Meetings

Citizens Alliance v. San Juan County 184 Wn.2d 428, 359 P.3d 753 (2015)

- There must be a “collective intent” to meet
- Where there was no evidence that commissioners were aware that communications included a majority of the commission, there was no “collective intent”

Serial Meetings

City of Seattle v. Kasberg 13 Wn. App. 2d
322 (2018)

- Council was considering condemning beach front property for public access
- Emails sent between councilmembers and members of the public
- Communications between individual councilmembers and members of the public do not trigger serial meeting concerns
- No evidence in *Kasberg* that a majority of the governing body communicated with each other





Serial Meetings

Egan v. City of Seattle *Division 1 Ct. App. (2020)*

- Illustrates the potential complexity of serial meeting scenarios
- Council was considering repeal of Seattle's head tax of employees
- Multiple communications over 3 days via multiple methods
 - In-person meetings, phone calls, emails, texts, distribution of draft press releases
- Court found that a meeting could occur if a majority of the council members were aware of communications among a quorum even if a majority is not
- Returned to trial court for further proceedings

Scenario 1

- A. City Administrator Doug Quinn sends email to all Council Members with summary of contractor bid dispute that's up for vote at next Council meeting - *No OPMA Violation*
- B. Leslie and Tim email each other on this topic - *No OPMA Violation; Public Records*
- C. Don and John are now part of the above email discussion – *OPMA Violation*
- D. Marilyn sends a group email with information from a conference she attended on this topic; noting “Do Not Reply All” – *No OPMA Violation*
- E. During the Council meeting, Don and Tim communicate by text about what is being presented on the issue – *Public Records Discoverable on Personal Devices; Fairness*

Council and City Staff Roles

Council Authority – In General

- It is the council's role to adopt **policies** for the city and it is the mayor's role to administer or carry out those policies
- The council, being legislative, has the power to enact **laws and policies**, consistent with state law, usually through the enactment of ordinances and resolutions

Item 2.

Council Authority – In Detail

RCW 35A.12.190 and RCW 35A.11.020

- Enact a city budget
- Enact ordinance to protect public health, safety and welfare
- Define the powers, functions, and duties of city officers and employees
- Fix the compensation of officers and employees
- Establish the working conditions of officers and employees
- Enter into contracts
- Impose taxes, if not prohibited by state law
- Regulate the acquisition and disposition of real property
- Provide governmental, recreational, educational, cultural, and social services
- Cause the city to own and operate utilities
- Approve claims against the city
- Grant franchises for the use of public ways
- License, for the purpose of revenue and regulation, most any type of business

Mayor's Authority – In General

- As the chief executive and administrative officer of the city, the mayor or city manager is in charge of carrying out the policies set by the council
- The mayor or city manager is basically in charge of the day-to-day operation of the city, including the supervision of all appointed officials and employees
- The mayor oversees the hiring and firing of all appointed officers and employees



Mayor's Authority – In Detail

RCW 35A.12.090 and 100

- Chief executive and administrative officer of the city
- In charge of all departments and employees
- Enforces contracts
- Bring lawsuits, with council approval
- Preside over council meetings
- Exercise some tie-breaking authority with respect to council votes
- Veto authority over ordinances
- Call special meetings of the council
- Prepare a proposed budget
- Report to the council on the financial and other affairs and needs of the city
- The mayor performs as ceremonial head of the city

City Staff

- **Provide guidance, subject to the standards of their license or profession**
- **Employees of the city under the supervision of the Mayor and Administration**

Scenario 2

The City is considering a major street project. John is advocating wider bike lanes as well as a lane solely designated for 'Pet Walking'. John has met with engineering to discuss the design changes. John has researched online and discovered a report which questions the design to be presented by staff. John's preferred design changes may not be consistent with the technical standards and may cause the City to lose grant funding.

John should...

John should... (cont.)

- A. Direct staff to make the design changes – *Assuming Role Outside Authority*
- B. Email staff and all Council Members with his position on the matter and indicate how he plans to vote on the issue when it comes before Council – *Prejudging Matter*
- C. At the Council meeting, without notice, John introduces the alternative design report and extensively questions the City Engineer on the matter – *Staff Relations; Purpose of Meeting*
- D. At the Council meeting, make a motion to terminate the City Engineer – *Role of Mayor*

CONFIDENTIAL INFORMATION: Executive Sessions

- **Common Grounds**
 - Acquisition of real estate
 - Sale/lease of real estate* (final decision in open meeting)
 - Evaluate charges against a public officer or employee
- *Must be focused on price, not factors affecting value
- *Columbia Riverkeepers v. Port of Vancouver USA*, 188 Wn.2d 421 (June 8, 2017)

Executive Sessions (*cont.*)

- To evaluate the qualifications of, review applicant / performance
- To evaluate the qualifications of a candidate for appointment to elective office (interviews and selection in public)
- To discuss with legal counsel enforcement action or potential litigation
- Discussion of labor negotiations is not subject to the OPMA

Confidentiality of Executive Session

- Legal obligation to not disclose information discussed in properly convened executive session
- Disclosure would violate Code of Ethics of Municipal Officers; could also constitute
 - Misdemeanor offense under RCW 42.20.100,
 - Official misconduct under RCW 9A.80.010, and
 - Forfeiture of office and grounds for recall. RCW 42.23.050



So,
We Took
Action
in a
Closed
Meeting,
Now what?

Unintentional violation?

- Nullification of action RCW 42.30.060.
- Attorney's fees and costs RCW 42.30.120(2)

Knowing violation?

- Add personal liability. RCW 42.30.120(1)
- \$500 civil fine for first violation
- \$1,000 civil fine for any subsequent violation
- Potential forfeiture of office or recall



Curing an OPMA Violation

- Later action in OPMA compliance will “cure” the violation
- But the subsequent action must be open, otherwise conform to the OPMA, and not simply be a “summary approval” of the earlier discussions
- Approval in “consent agenda” insufficient
Feature Realty v. Spokane, 331 F.3d 1082 (9th Cir. 2003)
- Must provide opportunity for community / opposing party input
OPAL v. Adams County, 128 Wn.2d 869 (1996)

Code of Ethics

RCW 42.52.010

Prohibits disclosure of confidential information and its use for personal gain or benefit.

‘Confidential Information’: Specific information not available to the general public

As elected officials, have duty of loyalty to City and fiduciary duty which may limit actions which may be taken as a private citizen.

Scenario 3

Bonnie works as a realtor and is representing a property owner. The sale is contingent on approval of a subdivision application from the City. The application is being considered before the Hearings Examiner. Bonnie has met with staff and been informed of various concerns about the proposal.

Bonnie should...

Bonnie should... (cont.)

- A. Meet individually with opponents of the subdivision to convince them of the merits of the development – *Appearance of Fairness?; Code of Ethics*
- B. Promise supporters of the development that it will be approved – *Duty to the City; Appearance of Fairness*
- C. Send an email to the Hearings Examiner expressing her support for the application – *Code of Ethics*
- D. Share the City staff concerns with the property owner – *Code of Ethics*

The proposal is approved and a LUPA action filed by a neighbor opposing the decision. An Executive Session is held to update Council and Bonnie relates the legal strategy the City intends to pursue to the owner and others – *Executive Session Violation*

Resources:

MRSC: Knowing the Territory
<https://mrsc.org/getmedia/1e641718-94a0-408b-b9d9-42b2e1d8180d/Knowing-The-Territory.pdf.aspx?ext=.pdf>

Attorney General's Office:
Open Government Training
<https://www.atg.wa.gov/open-government-training>



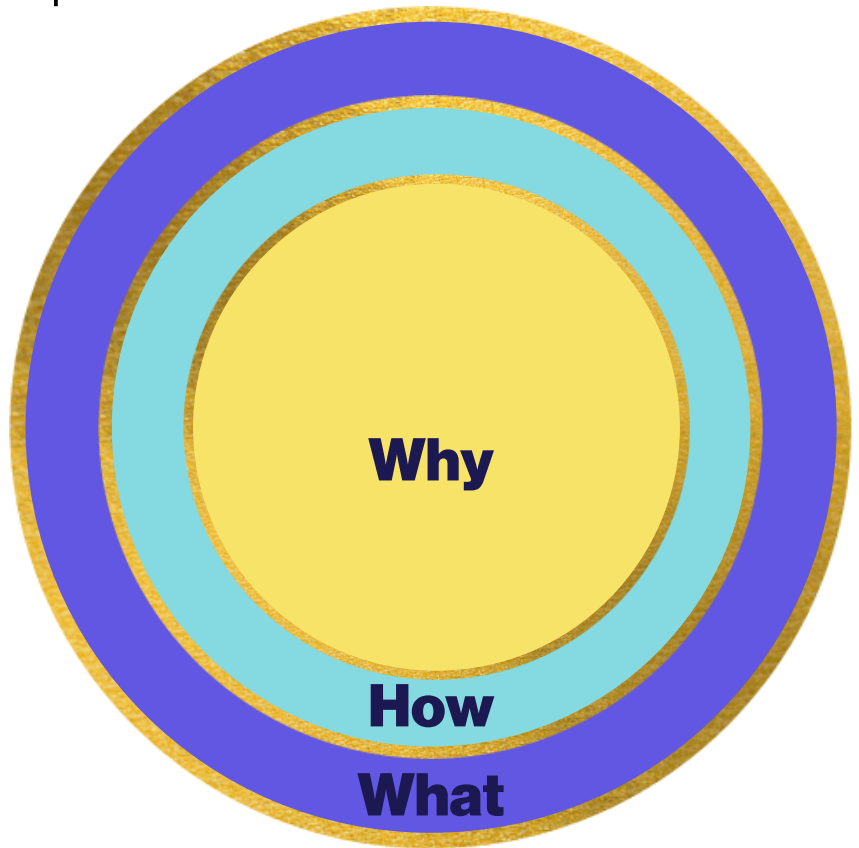
What's Your WHY?

Annual Planning Item 3.
Conference
January 27-28, 2023

Work on this exercise alone first,
then discuss in a small group.

The Golden Circle

*Answer questions from most
detailed to broadest.*



1. **What** do you do at/for the City of Camas?
2. **How** do you do this work?
3. **Why** do you do this work?