



Agenda
Planning Commission Workshop Meeting
Wednesday, March 11, 2026
Richland City Hall ~ Council Chambers
625 Swift Boulevard

Regular Workshop - 6:00 p.m.

Call to Order/Attendance:

Agenda Items:

1. Comprehensive Plan Update - Middle Housing Discussion
 - Nicole Stickney AHBL
2. Discussion of Washington State Co-Living Housing Regulations
 - Jennifer Ballard, Senior Planner
3. Washington State Department of Commerce Short Course on Local Planning
 - Jennifer Ballard, Senior Planner

Adjournment



PLANNING COMMISSION AGENDA ITEM COVERSHEET

Meeting Date: 3/11/2026

Agenda Category: Agenda Items

Prepared By: Nicole Stickney
AHBL

Subject

Comprehensive Plan Update - Middle Housing Discussion

Strategic Priority

Strategic Priority 3 - Focused Development

Strategic Priority 5 - Engaged Workforce

Recommended Motion

None. Item is for informational purposes only.

Summary

Discussion of the State legislation regarding housing that will affect the Comprehensive Plan and Richland's Municipal Code such as Middle Housing, STEP Housing, ADUs, and more.

Attachments

1. Memo_Summary of Housing Engagement Display 2026.02.16
2. Middle Housing PowerPoint Presentation by AHBL

PROJECT MEMO



TO: Mike Stevens, City of Richland
FROM: Nicole Stickney
Pasco - (509) 380-5883

DATE: February 16, 2026
PROJECT NO.: 2240885.30
PROJECT NAME: Richland 2026 Comprehensive Plan Update

SUBJECT: Housing Engagement Display Summary

An interactive display focused on housing topics was recently featured at the Richland Public Library. This was designed and set up as a part of the ongoing effort to inform the community and provide an opportunity for comments about the comprehensive plan update effort. This display served as one of the several outreach strategies under the larger “Future in Focus” endeavor which aims to reach diverse segments of the community.

In this memo we detail what was accomplished and provide a summary outlining a review of the housing engagement display coordinated by the City of Richland staff and consultant team. The display was featured in the Richland Public Library lobby and available for public interaction from Wednesday, January 21, 2026, through Thursday February 5, 2026.

The purpose of the display was to inspire reflection, contemplation, and a support “community conversation” about housing in Richland in support of the city’s periodic update to its comprehensive plan. Specifically, we were attempting to capture the interest of people who passed by the exhibit to think of and consider how housing was provided in Richland in the past, which contrasts with present-day practices. The current circumstances surrounding housing and specific challenges that the community faces in providing housing is a broad and complex topic. We wanted to begin to generate ideas in the community about how the city’s future endeavors

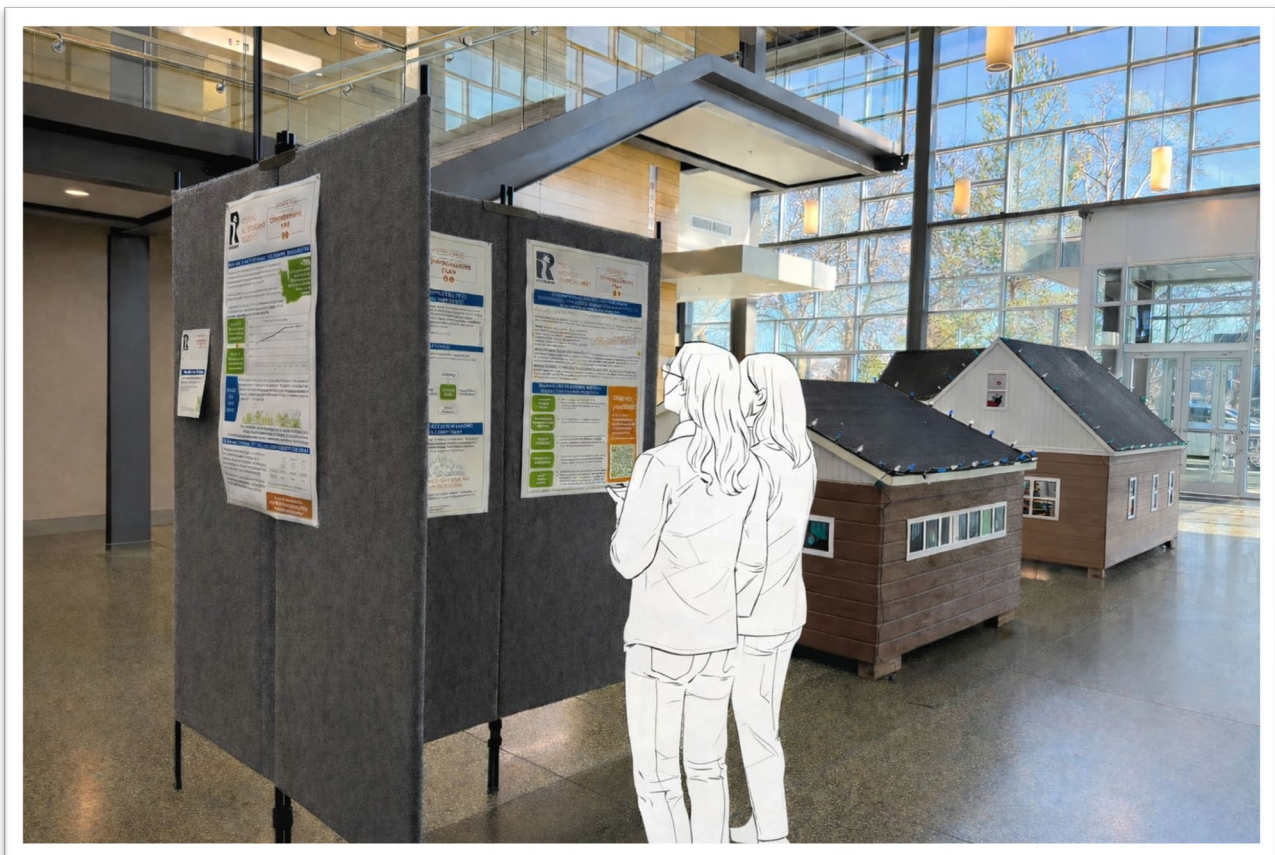


Figure 1: Posters and Alphabet Home Replicas at the Richland Public Library



and approaches to providing housing can best be articulated in its comprehensive plan to help ‘build a better Richland.’

This display was set up in the library lobby because it is a commonly used, visible, and familiar exhibition space within the community. Additionally, the library receives a high volume of foot traffic from families with children. Two of the city’s alphabet home replicas were placed by Public Services staff in the library. This was intended to “catch” the attention of children who were walking by with their families. Then, parents (and some children) would be encouraged to check the exhibit out and provide feedback about housing in Richland.

The display consisted of four larger posters hung upon portable art panels next to two scaled down replicas of Alphabet Homes, which were a common type of house built in Richland during the middle of the 20th century. The posters provided an overview on the following topics: (1) what accessory dwelling units (ADUs) are and how they can help address housing shortages in Richland; (2) why housing is so expensive in Richland; (3) how to increase the city’s housing supply to meet the needs of all economic income brackets, and (4) why disparities in home ownership exist among different racial groups. See *Figure 1 and Attachment B*.

We hung a simple clothesline on a nearby wall, next to the posters and Alphabet Home replicas. Several questions were typed on card stock and hung on the clothesline with clothespins, using the “Future in Focus” project colors and font. Visitors were encouraged to provide feedback by responding to the prompts and then affixing their responses on the clotheslines using the clothespins provided. See *Figure 2*

Visitors had the opportunity to respond to the following written prompts:

- What do you like about your house or neighborhood?
- What would you change about your house or neighborhood?
- For Housing, what does “Affordability” mean to you?
- What barriers to affordable housing do you think are most impactful?
- Why is it important for the community to expand housing options?
- What do you hope to see available to future generations living in Richland?

Simple written instructions were displayed explaining how to provide thoughts and ideas, and additionally a QR code for the project website was featured.

A total of 40 responses were received from the community. These responses are included at Attachment A to this memo.

Copies of the posters are included at Attachment B.





Figure 2: Community feedback clothesline

Copies of the posters are included at Attachment B.

- c: Jennifer Ballard, City of Richland
- Jennifer Cannon, ECONorthwest
- Mackenzie Visser, ECONorthwest
- MillieAnne VanDevender, AHBL
- Nick Edman, AHBL



Attachment A: Community Feedback

This list compiles all of the written feedback received from the housing engagement event held at the Richland public library from January 21, 2026 to February 5, 2026. The responses are organized according to the various prompts/ questions that were featured on cards.

What do you like about your house or neighborhood?

- Big trees, we always need more trees!!! Trees, Trees, Trees.
- Residential homes need to keep the size % the trees down. City would be wise to advise homeowners on tree selections.
- It has a bathroom.
- In my neighborhood, people talk to each other across the fence and standing [in] our driveways. We help each other and find common ground which builds a sense of trust and community. We may not all share the same political views, but I am grateful that we share many values and look out for each other. Tough times are better when we feel safe and seen and supported where we live.
- That there are many dog-walkers in our neighborhood.
- It's within walkable distance of multiple shops, parks, and trails. It's hard to imagine moving to a part of town where all of that would require a drive.
- The lack of garages and driveways.
- Access to multi use trails, sidewalks, access to downtown on foot or bike (could be better...).

What would you change about your house or neighborhood?

- Many streets through this part of Richland don't have sidewalks or have sidewalks but not curb cuts! Paving sidewalks and making them accessible will make things safer for everyone who happens to be out on the street but not in a car. [drawing]
- Smaller block sizes
- Sidewalks and repave the roads!
- City and police need to respond to noise and code violations within single family zones. Our neighborhood has some renters cutting and welding car parts at all hours the night making considerable noise. Police have been called several times and they haven't done anything. (Eastern Ave, N. Richland). Please enforce codes to preserve neighborhoods.
- Traffic calming design – chicanes, diverters, and islands.
- Streetlights
- I love the walkability of my South Richland neighborhood with restaurants and shopping nearby, but would love to see neighborhoods have community gathering spots that would encourage people getting to know each other – clubhouse, gym, etc.





- More diversity in zoning. More mixed use and different types of housing allowed and dedicated neighborhood greenways, safer biking, and pedestrian access.

For Housing, what does “Affordability” mean to you?

- Something my disability check covers with money left over for other expenses and leisure.
- Affordable housing costs (including insurance, taxes, and utilities) that are less than or equal to 50% of your average monthly household income.
- Less than 20% of one adult’s income!
 - *In different handwriting someone added “Here here!” to the card*
- Less than 25% of household income.
- Ability to access on a single income.

What barriers to affordable housing do you think are most impactful?

- The lack of it...
- People who aren’t working enough to live on their income. Solving the reasons why people aren’t working or aren’t working enough.
- Multi-use zoning. Less single-family, more diverse housing.
- Income limits are too low. More people need support than they have access. Not enough subsidized options.
- Parking requirements.
- The rich buying all the housing to turn around and charge thousands in rent to only benefit themselves
 - *In different handwriting someone added “Seconded” to the card*
 - *In other handwriting someone indicated “third”*
- Over-regulation.

Why is it important for the community to expand housing options?

- So that people of diverse professions and backgrounds can live in a common location. This drives diversity and allows humans to develop empathy and community.
- All neighborhoods need duplexes.
- Community and empathy!
- More choices for seniors keep families closer together.
- Rent went from \$1,650 in 2021 to now I’m paying \$2,183 a month for 3 bedrooms. Certain kinds of homes, apartments and trailers (manufactured homes) have a stigma attached to them. Single parents cannot afford so much. It puts extra pressure on our children.
- Because I want a big room for me and my dog.






What do you hope to see available to future generations living in Richland?

- More greenways! Affordable, diverse housing! Sidewalks!
- More interesting walkability.
- Older homes with reliable plumbing.
- Funding for ADUs so seniors can live in the ADU (in their neighborhood) and a family that needs housing can live in existing family home!

- Attachment A: Housing Information Posters




**"INFILL"
HOUSING
IN RICHLAND**

FUTURE IN FOCUS

CITY OF RICHLAND

**COMPREHENSIVE
PLAN**




ACCESSORY DWELLING UNITS (ADUs) AND OTHER FORMS OF RESIDENTIAL INFILL, SUCH AS MIDDLE HOUSING, ARE SOME WAYS TO MEET THE NEEDS FOR NEW HOUSING IN OUR COMMUNITY

NEW LAWS MAKE THE PROCESS TO BUILD MIDDLE HOUSING & ADUs EASIER

Accessory Dwelling Units (ADUs) are dwelling units added to a property that already has a house on it. An ADU has all the basic facilities needed for day-to-day living independent of the primary residence (a kitchen, bathroom, and sleeping area).

"Middle Housing" means buildings that are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes (examples include duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, stacked flats, courtyard apartments, and cottage housing).



RICHLAND MUST ALLOW TWO ADUs PER LOT: New state legislation (HB 1337; Laws of 2023) directs the city must update codes to generally allow 2 ADUs per lot. ADUs may be attached, detached, or a combination of both, or may be conversions of existing structures. The City may include code provisions for public health, safety, building code, and environmental permitting requirements to an ADU that would also be applicable to the principal unit.

MIDDLE HOUSING OPTIONS WILL BE EXPANDED IN RICHLAND: State legislation directs the city to update zoning codes to allow some types of middle housing (HB 1110; Laws of 2023). Middle housing is expected to be "house scale" with multiple units, generally in one building. The Planning Commission will review proposed amendments and options and consider community feedback.

ALLOWING AND ENCOURAGING NEW INFILL HOUSING CONSTRUCTION HAS BENEFITS:

- Improved Housing Variety

 - ▶ More variation in housing types better accommodates our state's changing demographics, with more aged adults (seniors) and smaller household sizes
- Accommodates People at Different Life Stages

 - ▶ Aging people may want different options to downsize without leaving their community
- Increased Affordability

 - ▶ Homeowners with ADUs could have an opportunity to rent out the unit (and offset their mortgage)
 - ▶ ADUs could provide a place for family members to stay with good privacy and proximity
- Neighborhood Compatibility

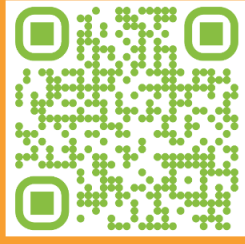
 - ▶ Opening up single-family neighborhoods to more diverse housing and household types may help remedy historic economic (and racial) exclusion
- Lower Climate Impacts

 - ▶ Smaller and attached units generally use less energy
 - ▶ When established neighborhoods add infill housing, it lowers demand for development occurring in the urban fringe (preventing long travel distances, and avoiding sprawl into undeveloped lands like farms)

What do you think?

Visit the City's Project Website to learn more about the FUTURE IN FOCUS planning efforts:

RichlandWa.gov/CompPlan



Adapted from "ACCESSORY DWELLINGS IN WASHINGTON STATE" Fact Sheet (2023) by the Wash. State Department of Commerce.



INCREASING OUR HOUSING SUPPLY AND OPTIONS



WASHINGTON'S POPULATION IS GROWING, BUT THE HOUSING SUPPLY HAS NOT KEPT UP!

There's so much we all love about Washington, from its natural beauty to our strong economy. The things we love have attracted a growing population and increased the demand for housing in our state.

With more people bidding on our short supply of existing housing, the price has increased. In the next 20 years, we expect the statewide population to increase by over 1.5 million people. The Dept. of Commerce projected we will need 1.1 million additional homes in Washington for the current housing gap and future population.

~36%
of Washington's households are cost-burdened, spending over 30% of their monthly income on housing costs like rent

PLANNING FOR HOUSING

The statewide Growth Management Act requires Richland to assess housing needs and plan for and accommodate housing for all economic segments of our population. Cities and towns break down housing needs by how much of the **Area Median Income (AMI)** a household earns. AMI is the household income for the median (or middle) household in a region (about \$105k in the Tri Cities area).

Today, only households earning above 120% AMI can generally afford a detached single-family house.

Townhouses or condominiums around natural amenities or downtowns may also be limited to top earners. Developers often focus on building homes for this group, leaving out the other income groups. The chart shows how the City should plan for including more housing type to accommodate for various households.

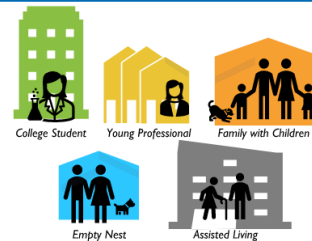
14,155
New homes will be Needed over the Next 20 years to meet Projected Population Growth in Richland

Apartments (subsidized and nonsubsidized)		Multi-plex		Traditional Single Family	
0 to ≤ 30% AMI*	> 30 to ≤ 50 % AMI	> 50 to ≤ 80 % AMI	> 80 to ≤ 100 % AMI	> 100 to ≤ 120 % AMI	> 120% AMI
2,919	2,817	1,988	1,092	1,237	4,102

* The 0 to ≤30% AMI group comprises 1,130 units of Permanent Supportive Housing (PSH) plus 1,789 units of non-PSH; PSH is an intervention for people who need housing assistance (Source: State of Washington / Benton County)

HOUSING FOR ALL, AT ALL STAGES OF LIFE IN RICHLAND

Many of the residential areas across Washington state solely consist of detached single-family housing, causing people to be priced out. As our state's population continues to grow, it's important to create communities that support people at any stage of life with diverse housing types. Building more housing of all shapes and sizes will help everyone find housing that fits their needs. In this way, people can choose to stay in their communities throughout the course of their lives, whether they're a young professional, a couple starting a family, or an elderly person wishing to downsize to a small home to age gracefully in place.



Housing provides a solid foundation on which residents can build a stable life. More housing in our neighborhoods will strengthen communities by supporting local businesses, such as grocery stores and restaurants. Housing at the high end can free up more affordable housing for those who might be cost-burdened. We can work together to create

Adapted from "WE NEED MORE HOUSING IN WASHINGTON STATE" Handout by the Wash. State Department of Commerce. Housing Income Graphic adapted from and inspired by Exhibit 3 in Washington Dept. of Commerce Book 2: Guidance for Updating your Housing Element (August 2023)



HOUSING ALL RICHLAND RESIDENTS

FUTURE IN FOCUS
CITY OF RICHLAND
COMPREHENSIVE PLAN

HOUSING IS VERY EXPENSIVE THROUGHOUT WASHINGTON

People who live in our state rank housing costs as one of the top problems here, according to a 2022 survey by the state Department of Commerce. The cost of homes in the United States has outpaced wage growth: home prices rose 74% from 2010 to 2022 while the average wage rose only 54%.

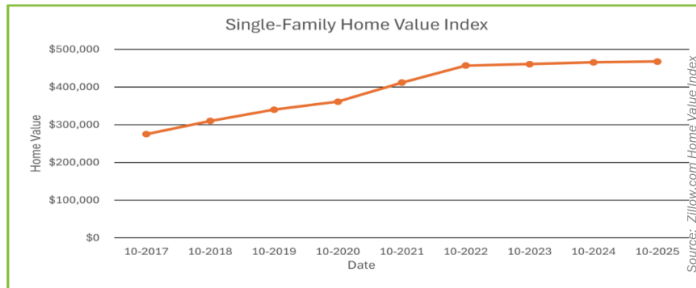
Rents are up, too: the U.S. Census Bureau reported the median gross rent in Washington to be nearly \$1,500/month, ranking it among the top 5 costly states.

The typical single-family home value in Richland is plotted below. Between October 2017, when the previous Comprehensive Plan was published, and October 2025, the typical value of a **single-family home increased by almost 70%.**

~76% of Washington residents say they have been directly impacted by, or know someone affected by housing cost and availability

In October 2017, the typical single-family home in Richland was valued at \$275,307

By October 2025, the typical single-family home in Richland was valued at \$467,672



HOUSING IS IN SHORT SUPPLY

Part of the reason for high housing costs is that our population has been steadily growing, but our housing supply has not kept up. To keep up, between 2000 and 2015, our state should have produced 225,600 more units than we did. In the next 20 years, we expect our population to continue to increase by more than 1.5 million people. The Dept. of Commerce projects the state needs 1.1 million new homes.



Many communities across Washington live in a variety of housing types, ranging from single family homes, to duplexes, to backyard cottages. A mix of housing types fosters more inclusive communities and thriving neighborhoods.

INCREASING HOUSING OPTIONS CAN HELP ADDRESS THE NEEDS

Demographics in our state have changed: according to the U.S. Census, Washington households are shrinking; 28% of households are now one-person households. By 2030 the Census Bureau predicts about 1 in 5 Americans will be 65 or older. These trends drive the need for more units that are sized smaller.

More than 3/4 of Washingtonians said they want more housing options for all people in their communities, including firefighters, teachers, childcare workers, healthcare workers and seniors.

	Teacher	Police Officer	Doctor
Annual Income	\$74,030	\$101,470	\$252,820
Detached Home Cost Burden	142%	104%	42%

Many working people in Washington can't afford housing costs.
Source: Cascadia Partners Market Analysis, January 2023

Learn more about the City's FUTURE IN FOCUS planning efforts: RichlandWa.gov/CompPlan

Adapted from "HOUSING ALL WASHINGTONIANS" handout by Commerce.; Source: Commerce's statewide 2022 Housing Survey



HOUSING DISPARITIES & RACE



THE HOUSING AFFORDABILITY CRISIS AFFECTS ALL OF US. YET SOME OF US ARE AFFECTED MORE THAN OTHERS

Today, communities of color are less likely to include homeowners, and as renters can be disproportionately impacted by housing scarcity and rising housing costs. In 2019, communities of color had a 19% lower home ownership rate in our state than non-Hispanic white households. Communities of color also experience a higher cost burden, paying a higher percentage of their income for housing than similar white households. As of 2018, 28% of white non-Hispanic households were cost burdened, compared to 35% for communities of color. Rising housing costs affect everyone, with renters particularly vulnerable to involuntary displacement, sometimes by foreclosure and eviction.

Looking at Richland, in 2019, the homeownership rate among white households was 69%, but the homeownership rate among households of color was at 50%.*

*Source: Washington State Department of Commerce

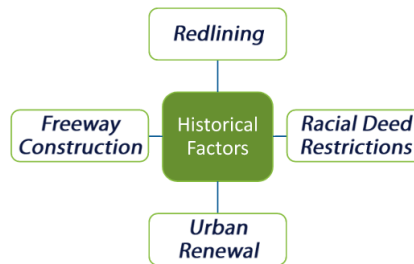
WHAT CAN EXPLAIN THE DISPARITIES?

Many people contend that what communities of color experience today is deeply rooted in our nation's history. Historically, people of color were intentionally kept out of certain neighborhoods or were forced to relocate from their neighborhoods.

Housing practices of the 20th century such as **redlining** made it difficult for households of color to gain access to mortgage financing. Next, **racial deed restrictions** prohibited people of color from purchasing homes in certain areas, creating exclusive areas where only white people could live and build generational wealth.

Other government programs like federal **urban renewal** and **interstate freeway construction** divided established neighborhoods and displaced residents, often communities of color.

Lack of access to the wealth-building benefits of homeownership has carried through to the next generation.



THE LEGACY AND PATTERNS OF RACIAL EXCLUSION IN HOUSING THAT WERE CREATED YEARS AGO STILL EXIST TODAY

The Civil Rights Act (1968) prohibits housing discrimination based on race, color, religion or national origin. Nonetheless, the legacy and patterns of racial exclusion in housing created years ago still exist. Disparate impacts and exclusion have been perpetuated by land use policies and practices such as large-lot single family zoning. These practices have kept housing prices high, making the purchase of homes by lower-income and minority households challenging.



ADDRESSING RACIALLY DISPARATE IMPACTS, EXCLUSION, AND DISPLACEMENT IN OUR STATE AND WITHIN RICHLAND:

The City must develop anti-displacement strategies to minimize displacement of low-income residents. Additionally, the state now requires local jurisdictions (including Richland) to examine racially disparate impacts in housing policies and regulations and also adopt policies that begin to undo the impacts.

Adapted from "RACIALLY DISPARATE IMPACTS IN HOUSING IN WASHINGTON" handout by the Wash. State Department of Commerce. Data source for homeownership rates: US HUD, 2015-2019 Comprehensive Housing Affordability Strategy (CHAS) (Table 9)



Richland Comprehensive Plan Update

PLANNING COMMISSION WORKSHOP
March 11, 2026

WHY ARE WE TALKING ABOUT “MIDDLE HOUSING” AND OTHER NEW HOUSING LEGISLATION?

Communities throughout Washington are facing a housing shortage and the City is working to address **housing needs**

The **Comprehensive Plan** is the City’s long-term vision over the next 20 years



HOUSING TARGETS

14,155

New homes will be needed over the next 20 years in Richland

HOUSING TARGETS



Apartments (subsidized and nonsubsidized)



Multi-plex



Traditional Single-Family

Apartments (subsidized and nonsubsidized)		Multi-plex			Traditional Single-Family
0 to ≤ 30% AMI	> 30 to ≤ 50% AMI	> 50 to ≤ 80% AMI	> 80 to ≤ 100% AMI	> 100 to ≤ 120% AMI	> 120% AMI
2,919	2,817	1,988	1,092	1,237	4,102

- The 0 to ≤30% AMI group comprises 1,130 units of Permanent Supportive Housing (PSH) plus 1,789 units of non-PSH
- PSH is an intervention for people who need housing assistance

Source: State of Washington / Benton County
 AMI = Area Median Income.


52
 Emergency
 Housing
 Beds

LET'S BEGIN WITH ACCESSORY DWELLING UNITS (ADUs)

- The GMA requires Richland to update codes to allow at least two ADUs on all lots zoned for single-family homes and limits development standards that can be imposed
- ADUs can help satisfy the City's requirement to produce 14,155 dwelling units by 2046



→ EHB 1337 (2023) RCW 36.70A.680 & 681

LET'S TALK ABOUT "STEP HOUSING"

- HB 1220 (2021) requires cities to allow **STEP** Housing in certain zones:
 - Transitional Housing and Permanent supportive housing in zones where residential units or hotels are permitted.
 - Allow Indoor emergency Shelter and Emergency Housing must be allowed in zones where hotels are permitted.
- **STEP** Housing can help Richland satisfy its requirement to produce 7,724 dwelling units (including 1,130 Permanent Supportive Housing units and 52 emergency beds) by 2046.
- ✓ Richland passed **Ordinance 2022-19** allowing **STEP** Housing



The HUB on Third in Walla Walla (co-located emergency shelter, health care and childcare services),
Source: Blue Mountain Action Council



Gonzaga Family Haven in Spokane (permanent supportive housing),
Source: Catholic Charities of Eastern Washington

ALLOWING NEW HOUSING UNITS IN EXISTING BUILDINGS

- HB 1757 (2024) expanded upon a previous bill (HB 1042 (2023)) requiring cities to allow existing buildings in commercial, mixed-use, or residential zones to be converted into new housing.
- Key provisions of the law include:
 - Allows a **density bonus** up to 50% above the permitted density in an underlying zone for housing housing constructed entirely within an existing non-residential building.
 - Additional parking (beyond what is otherwise available) is not required for new housing units established by this bill (RCW 35A.21.440)
 - Only those **permitting requirements** and **design standards** applicable to all residential development in the applicable zone may be applied.
 - The city may still require studies to ensure the conversion will not result in adverse environmental impacts.



UNDERSTANDING MIDDLE HOUSING

→ ESSHB 1110 (2023) and ESHB 2321 RCW 36.70A.536 (& RCW 36.70A.030 Definitions)

DEVELOPMENT REGULATION UPDATE – STATE REQUIREMENTS

- The City must amend its development regulations and adopt new codes to address **middle housing**
- **Deadline: December 31, 2026**
- The City has some leeway to determine what code says
 - Certain standards must be implemented to meet the HB-1110 requirements
 - The City has flexibility to choose other standards that are tailored to their local context, needs, and preferences

It is important to note that the legislative requirements can vary from city to city based on their size and geographic location; we are looking specifically at Richland's requirements and options

WHAT IS MIDDLE HOUSING?

- HB 1110 (as adjusted by HB 2321) amended the **Growth Management Act (GMA)**.
 - Middle Housing are “buildings that are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes.”
- Middle Housing Types:
 - ▶ Duplexes
 - ▶ Triplexes
 - ▶ Fourplexes
 - ▶ Fiveplexes
 - ▶ Sixplexes
 - ▶ Townhouses
 - ▶ Stacked flats
 - ▶ Courtyard apartments
 - ▶ Cottage housing

DUPLEXES



TRIPLEXES & FOURPLEXES



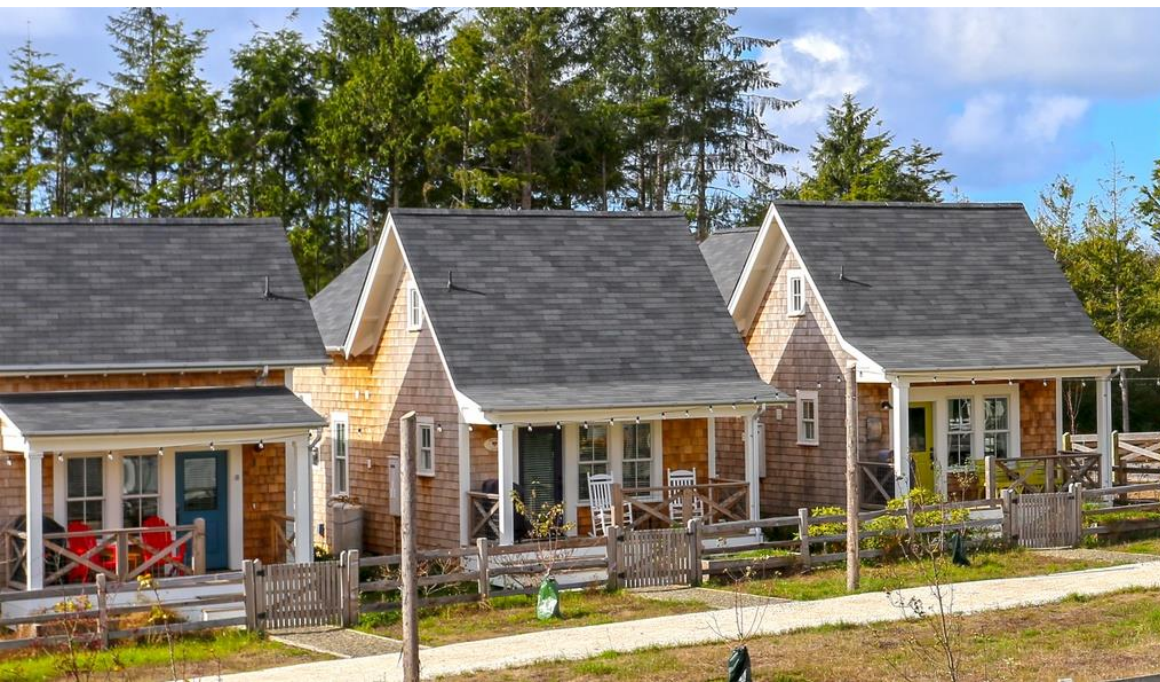
FIVEPLEXES AND SIXPLEXES



TOWNHOUSES (SHARED WALL)



COTTAGE HOUSING



COURTYARD APARTMENTS AND STACKED FLATS



WHAT IS NOT CONSIDERED MIDDLE HOUSING?

Per the legislation, the following is not included in the definition of Middle Housing:

- Tiny homes
- Accessory dwelling units (ADUs)
- Manufactured housing



What could be built today, per the current Richland Municipal Code?

Zone	Middle Housing Type								
	Duplex	Triplex	Fourplex	Fiveplex	Sixplex	Townhome	Stacked Flat	Cottage Housing	Courtyard Apartment
SAG	X	X	X	X	X	X	X	X	X
R-1-12	X	X	X	X	X	X	X	X	X
R-1-10	X	X	X	X	X	X	X	X	X
R-2	Permitted	X	X	X	X	Permitted – A	X	X	X
R-2S	Permitted	X	X	X	X	Permitted	X	X	X
R-3	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted – B	Permitted – C	Permitted – D

- A. Though not currently defined in the code, “Townhouses: would be classified as a similar use to One-family attached dwellings (RMC 23.06.305).
- B. “Stacked flats” are not defined in RMC. However, based on definition of Stacked Flats in RCW 36.70A.030, it appears they would be classified as having a similar use to that of a triplex (RCW 36.70A.030) or multiple family dwelling in the Richland Code (RMC 23.06.315) and therefore could be permitted in R-3.
- C. If cottage housing units are sold as 3 or more condominiums, they would be permitted in the R-3 District under current RMC codes.
- D. Although the term “Courtyard Apartment” is not used, in RMC 23.18.030 – Residential Use Table lists “Apartments with 3 or more units” as permitted in R-3.

DEFINITIONS

DEFINE MIDDLE
HOUSING AND
ALLOWED
HOUSING TYPES

- 6 out of 9 types of middle housing must be allowed by right
- HB 1110 defines cottage housing, courtyard apartments, stacked flats, and townhouses
- Model code defines other housing types
- Existing housing definitions should be reviewed, tailored to local context, and amended in the Richland Municipal Code (RMC) to meet requirements.

DEFINITIONS

ALLOWED
USES

ALLOW MIDDLE HOUSING ON LOTS ZONED PRIMARILY FOR RESIDENTIAL USES

- The city must determine which types of middle housing to allow in “predominately residential” zones based on allowed densities
- The City must review existing dimensional and design requirements in the RMC (and Design Standards) to comply with HB 1110

DEFINITIONS

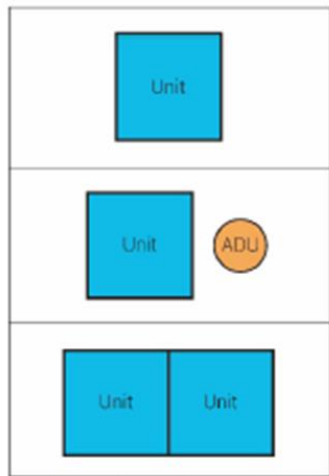
ALLOWED USES

UNIT DENSITY

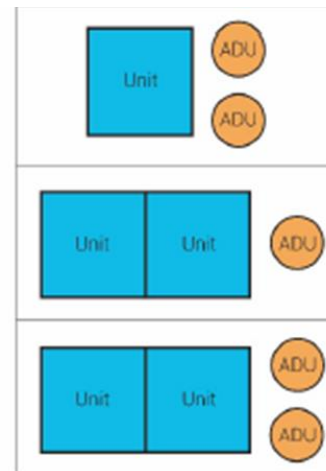
ALLOW AT LEAST TWO HOUSING UNITS PER LOT

- ADUs can count toward the minimum unit lot density requirements for the middle housing legislation Ex: A SFR home with an ADU has a unit lot density of two

OPTIONS:



MORE OPTIONS IF NOT COUNTING ADU TOWARDS HB 1110 UNIT DENSITY:



DEFINITIONS

ALLOWED
USES

UNIT
DENSITY

DENSITY BONUS:
**FOUR HOUSING
UNITS PER LOT
PERMITTED**

- City must allow up to four units per lot **if** at least one unit on the lot is “affordable” and meets certain requirements outlined in [RCW 36.70A.635 \(2\)](#)
- Must meet definition of “Affordable Housing” as defined in [RCW 36.70A.030 \(5\)](#)

DEFINITIONS

ALLOWED
USES

UNIT
DENSITY

LAND
DIVISION

ADOPT A UNIT LOT SUBDIVISION PROCESS

- SB 5258 (2023) requires that cities incorporate procedures for Unit Lot Subdivisions (under Short Plat codes)
- Unit lot subdivisions divide a parent lot into two or more lots
- Allows for the sale of each unit individually
- City can apply dimensional standards of zoning district to development on *parent lot as a whole*, instead of applying standards to each individual lot

DEFINITIONS

ALLOWED
USES

UNIT
DENSITY

LAND
DIVISION

DIMENSIONAL
STANDARDS

MAY APPLY
CERTAIN REGS
ONLY IF THEY ARE
ALSO APPLIED TO
SINGLE FAMILY
HOMES

- The City can't impose middle housing regulations that are more restrictive than those for Single Family Res. homes
Such as: building height, setbacks, impervious coverage, landscape
- We will examine instances whether existing requirements conflict with certain types of middle housing
- State suggests cities explore adding a **FAR requirement** to ensure compatibility between middle housing and SFR homes

DEFINITIONS

ALLOWED USES

UNIT DENSITY

LAND DIVISION

DIMENSIONAL STANDARDS

PARKING

UPDATE ON-SITE PARKING REQUIREMENTS IN THE CODE

- The new law restricts amount of required *on site parking* for middle housing based on lot size:
 - City may only require up to 1 parking space/unit for lots up to 6,000 SF
 - City may only require up to 2 parking spaces/unit for lots greater than 6,000 SF



WHAT OTHER DETAILS APPLY TO MIDDLE HOUSING?

- Richland may only use an **administrative design review** process and only apply **objective design standards** (generally to ensure compatibility with single family homes)
- A model code identifies allowable standards for **pedestrian and vehicle access, carports, garages, and driveways**
- Certain standards for **cottage housing and/or courtyard apartments** may also be applied

Thank you!



PLANNING COMMISSION AGENDA ITEM COVERSHEET

Meeting Date: 3/11/2026

Agenda Category: Agenda Items

Prepared By: Jennifer Ballard, Senior Planner

Subject

Discussion of Washington State Co-Living Housing Regulations

Strategic Priority

Strategic Priority 3 - Focused Development

Recommended Motion

None.

Summary

During the 2024 regular legislative session, the Washington State Legislature passed Engrossed 2nd Substitute House Bill 1998, an Act relating to legalizing inexpensive housing choices through co-living housing. Richland, planning under Chapter 36.70A RCW, was required to implement the requirements of ESHB 1998 by December 31, 2025. Staff will present an overview of the State's co-living regulations.

Attachments

1. 2024 Engrossed 2nd Substitute House Bill 1998
2. RCW 36.70A.535 Co-living housing
3. Dept of Commerce Co-Living Guidance
4. Dept of Commerce Co-living Checklist

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1998

Chapter 180, Laws of 2024

68th Legislature
2024 Regular Session

CO-LIVING HOUSING

EFFECTIVE DATE: June 6, 2024

Passed by the House March 4, 2024
Yeas 97 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate February 22,
2024
Yeas 44 Nays 4

DENNY HECK

President of the Senate

Approved March 19, 2024 9:46 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1998** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

March 19, 2024

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1998

AS AMENDED BY THE SENATE

Passed Legislature - 2024 Regular Session

State of Washington 68th Legislature 2024 Regular Session

By House Housing (originally sponsored by Representatives Gregerson, Barkis, Leavitt, Rule, Ryu, Reed, Morgan, Fitzgibbon, Berry, Duerr, Bronoske, Ramos, Ramel, Bateman, Peterson, Chambers, Taylor, Simmons, Ormsby, Graham, Callan, Macri, Donaghy, Doglio, Mena, Nance, Riccelli, Cortes, Santos, Pollet, and Davis)

READ FIRST TIME 01/15/24.

1 AN ACT Relating to legalizing inexpensive housing choices through
2 co-living housing; adding a new section to chapter 36.70A RCW; and
3 creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature makes the following
6 findings:

7 (a) Washington state is experiencing a housing affordability
8 crisis;

9 (b) Co-living housing is a type of housing that can provide
10 rental homes affordable to people with moderate to low incomes
11 without requiring any public funding, and rents in newly constructed,
12 market-rate co-living housing in the Puget Sound region can be
13 affordable to people with incomes as low as 50 percent of area median
14 income;

15 (c) Co-living housing is a residential development with sleeping
16 units that are independently rented and provide living and sleeping
17 space, in which residents share kitchen facilities with residents of
18 other units in the building;

19 (d) Co-living housing historically provided a healthy inventory
20 of rental homes on the lowest rung of the private housing market,
21 comprising up to 10 percent of housing in some cities;

1 (e) Starting in the mid-20th century, local governments began
2 adopting restrictive zoning and other rules that increasingly
3 prohibited co-living housing, or made it impractical to build or
4 operate, and its numbers plummeted;

5 (f) Today, many cities and counties outright prohibit co-living
6 housing on most of their residential land, or they enforce any number
7 of restrictions that make it effectively impossible to build new co-
8 living housing or to convert existing buildings into co-living
9 housing;

10 (g) Co-living housing provides options for people who:

11 (i) Wish to lower their housing expenses by paying less for a
12 smaller home;

13 (ii) Prefer a living arrangement with shared community spaces
14 that facilitate social connections;

15 (iii) Wish to trade off location for space and, by living in a
16 small home, also get to live in a high opportunity neighborhood they
17 could not otherwise afford; or

18 (iv) Want a low-cost, more private alternative to having a
19 roommate in a traditional rental;

20 (h) Many communities throughout Washington face a severe shortage
21 of workforce housing, and co-living housing provides housing
22 affordable to that income range and below, without public funding;

23 (i) Co-living housing reduces pressure on the limited amount of
24 publicly funded affordable housing by providing housing that is
25 affordable to lower income residents who might otherwise wait years
26 for subsidized housing;

27 (j) Co-living housing works best for single-person households,
28 but the housing for singles that it provides reduces demand for
29 family-sized rentals from singles who would otherwise group together
30 to rent large homes;

31 (k) Co-living housing provides a good option for seniors,
32 especially those who want to downsize, or those who desire a living
33 arrangement that is more social than a standard apartment. When
34 located in walkable neighborhoods, co-living housing gives mobility
35 options to seniors who can no longer drive;

36 (l) Co-living housing is well-suited for the conversion of office
37 buildings to housing, because it typically requires less plumbing and
38 fixtures for kitchens and bathrooms;

1 (m) Co-living housing is well-suited for very low-income people,
2 supportive and recovery housing, and "housing first" homes for the
3 formerly homeless;

4 (n) State building codes have established minimum sizes and other
5 standards to ensure that co-living housing meets modern health and
6 safety standards;

7 (o) Creating co-living housing near transit hubs, employment
8 centers, and public amenities can help the state achieve its
9 greenhouse gas reduction goals by increasing walkability, shortening
10 household commutes, curtailing sprawl, and reducing the pressure to
11 develop natural and working lands; and

12 (p) Co-living housing, because the units are small, is inherently
13 more energy efficient than standard apartments, both saving residents
14 money and reducing the state's energy demand.

15 (2) Therefore, the legislature intends to allow the creation of
16 co-living housing as a means to address the need for additional
17 affordable housing options for a diversity of Washington residents.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A
19 RCW to read as follows:

20 (1) Cities and counties planning under this chapter must allow
21 co-living housing as a permitted use on any lot located within an
22 urban growth area that allows at least six multifamily residential
23 units, including on a lot zoned for mixed use development.

24 (2) A city or county subject to the provisions of this section
25 may not require co-living housing to:

26 (a) Contain room dimensional standards larger than that required
27 by the state building code, including dwelling unit size, sleeping
28 unit size, room area, and habitable space;

29 (b) Provide a mix of unit sizes or number of bedrooms; or

30 (c) Include other uses.

31 (3) (a) A city or county subject to the provisions of this section
32 also may not require co-living housing to:

33 (i) Provide off-street parking within one-half mile walking
34 distance of a major transit stop; or

35 (ii) Provide more than 0.25 off-street parking spaces per
36 sleeping unit.

37 (b) The provisions of (a) of this subsection do not apply:

38 (i) If a city or county submits to the department an empirical
39 study prepared by a credentialed transportation or land use planning

1 expert that clearly demonstrates, and the department finds and
2 certifies, that the application of the parking limitations of (a) of
3 this subsection will be significantly less safe for vehicle drivers
4 or passengers, pedestrians, or bicyclists than if the jurisdiction's
5 parking requirements were applied to the same location. The
6 department must develop guidance to assist cities and counties on
7 items to include in the study; or

8 (ii) To portions of cities within a one-mile radius of a
9 commercial airport in Washington with at least 9,000,000 annual
10 enplanements.

11 (4) A city or county may not require through development
12 regulations any standards for co-living housing that are more
13 restrictive than those that are required for other types of
14 multifamily residential uses in the same zone.

15 (5) A city or county may only require a review, notice, or public
16 meeting for co-living housing that is required for other types of
17 residential uses in the same location, unless otherwise required by
18 state law including, but not limited to, shoreline regulations under
19 chapter 90.58 RCW.

20 (6) A city or county may not exclude co-living housing from
21 participating in affordable housing incentive programs under RCW
22 36.70A.540.

23 (7) A city or county may not treat a sleeping unit in co-living
24 housing as more than one-quarter of a dwelling unit for purposes of
25 calculating dwelling unit density.

26 (8) A city or county may not treat a sleeping unit in co-living
27 housing as more than one-half of a dwelling unit for purposes of
28 calculating fees for sewer connections, unless the city or county
29 makes a finding, based on facts, that the connection fees should
30 exceed the one-half threshold.

31 (9)(a) A city or county subject to the requirements of this
32 section must adopt or amend by ordinance and incorporate into their
33 development regulations, zoning regulations, and other official
34 controls the requirements of this section to take effect no later
35 than December 31, 2025.

36 (b) In any city or county that has not adopted or amended
37 ordinances, regulations, or other official controls as required under
38 this section, the requirements of this section supersede, preempt,
39 and invalidate any conflicting local development regulations.

1 (10) Any action taken by a city or county to comply with the
2 requirements of this section is not subject to legal challenge under
3 this chapter or chapter 43.21C RCW.

4 (11) For the purposes of this section, the following definitions
5 apply:

6 (a) "Co-living housing" means a residential development with
7 sleeping units that are independently rented and lockable and provide
8 living and sleeping space, and residents share kitchen facilities
9 with other sleeping units in the building. Local governments may use
10 other names to refer to co-living housing including, but not limited
11 to, congregate living facilities, single room occupancy, rooming
12 house, boarding house, lodging house, and residential suites.

13 (b) "Major transit stop" means:

14 (i) A stop on a high capacity transportation system funded or
15 expanded under the provisions of chapter 81.104 RCW;

16 (ii) Commuter rail stops;

17 (iii) Stops on rail or fixed guideway systems, including
18 transitways;

19 (iv) Stops on bus rapid transit routes or routes that run on high
20 occupancy vehicle lanes; or

21 (v) Stops for a bus or other transit mode providing actual fixed
22 route service at intervals of at least 15 minutes for at least five
23 hours during the peak hours of operation on weekdays.

Passed by the House March 4, 2024.

Passed by the Senate February 22, 2024.

Approved by the Governor March 19, 2024.

Filed in Office of Secretary of State March 19, 2024.

--- END ---

RCW 36.70A.535 Co-living housing. (1) Cities and counties planning under this chapter must allow co-living housing as a permitted use on any lot located within an urban growth area that allows at least six multifamily residential units, including on a lot zoned for mixed-use development.

(2) A city or county subject to the provisions of this section may not require co-living housing to:

(a) Contain room dimensional standards larger than that required by the state building code, including dwelling unit size, sleeping unit size, room area, and habitable space;

(b) Provide a mix of unit sizes or number of bedrooms; or

(c) Include other uses.

(3) (a) A city or county subject to the provisions of this section also may not require co-living housing to:

(i) Provide off-street parking within one-half mile walking distance of a major transit stop; or

(ii) Provide more than 0.25 off-street parking spaces per sleeping unit.

(b) The provisions of (a) of this subsection do not apply:

(i) If a city or county submits to the department an empirical study prepared by a credentialed transportation or land use planning expert that clearly demonstrates, and the department finds and certifies, that the application of the parking limitations of (a) of this subsection will be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied to the same location. The department must develop guidance to assist cities and counties on items to include in the study; or

(ii) To portions of cities within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements.

(4) A city or county may not require through development regulations any standards for co-living housing that are more restrictive than those that are required for other types of multifamily residential uses in the same zone.

(5) A city or county may only require a review, notice, or public meeting for co-living housing that is required for other types of residential uses in the same location, unless otherwise required by state law including, but not limited to, shoreline regulations under chapter 90.58 RCW.

(6) A city or county may not exclude co-living housing from participating in affordable housing incentive programs under RCW 36.70A.540.

(7) A city or county may not treat a sleeping unit in co-living housing as more than one-quarter of a dwelling unit for purposes of calculating dwelling unit density.

(8) A city or county may not treat a sleeping unit in co-living housing as more than one-half of a dwelling unit for purposes of calculating fees for sewer connections, unless the city or county makes a finding, based on facts, that the connection fees should exceed the one-half threshold.

(9) (a) A city or county subject to the requirements of this section must adopt or amend by ordinance and incorporate into their development regulations, zoning regulations, and other official controls the requirements of this section to take effect no later than December 31, 2025.

(b) In any city or county that has not adopted or amended ordinances, regulations, or other official controls as required under this section, the requirements of this section supersede, preempt, and invalidate any conflicting local development regulations.

(10) Any action taken by a city or county to comply with the requirements of this section is not subject to legal challenge under this chapter or chapter 43.21C RCW.

(11) For the purposes of this section, the following definitions apply:

(a) "Co-living housing" means a residential development with sleeping units that are independently rented and lockable and provide living and sleeping space, and residents share kitchen facilities with other sleeping units in the building. Local governments may use other names to refer to co-living housing including, but not limited to, congregate living facilities, single room occupancy, rooming house, boarding house, lodging house, and residential suites.

(b) "Major transit stop" means:

(i) A stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW;

(ii) Commuter rail stops;

(iii) Stops on rail or fixed guideway systems, including transitways;

(iv) Stops on bus rapid transit routes or routes that run on high occupancy vehicle lanes; or

(v) Stops for a bus or other transit mode providing actual fixed route service at intervals of at least 15 minutes for at least five hours during the peak hours of operation on weekdays. [2024 c 180 s 2.]

Intent—Findings—2024 c 180: "(1) The legislature makes the following findings:

(a) Washington state is experiencing a housing affordability crisis;

(b) Co-living housing is a type of housing that can provide rental homes affordable to people with moderate to low incomes without requiring any public funding, and rents in newly constructed, market-rate co-living housing in the Puget Sound region can be affordable to people with incomes as low as 50 percent of area median income;

(c) Co-living housing is a residential development with sleeping units that are independently rented and provide living and sleeping space, in which residents share kitchen facilities with residents of other units in the building;

(d) Co-living housing historically provided a healthy inventory of rental homes on the lowest rung of the private housing market, comprising up to 10 percent of housing in some cities;

(e) Starting in the mid-20th century, local governments began adopting restrictive zoning and other rules that increasingly prohibited co-living housing, or made it impractical to build or operate, and its numbers plummeted;

(f) Today, many cities and counties outright prohibit co-living housing on most of their residential land, or they enforce any number of restrictions that make it effectively impossible to build new co-living housing or to convert existing buildings into co-living housing;

(g) Co-living housing provides options for people who:

(i) Wish to lower their housing expenses by paying less for a smaller home;

(ii) Prefer a living arrangement with shared community spaces that facilitate social connections;

(iii) Wish to trade off location for space and, by living in a small home, also get to live in a high opportunity neighborhood they could not otherwise afford; or

(iv) Want a low-cost, more private alternative to having a roommate in a traditional rental;

(h) Many communities throughout Washington face a severe shortage of workforce housing, and co-living housing provides housing affordable to that income range and below, without public funding;

(i) Co-living housing reduces pressure on the limited amount of publicly funded affordable housing by providing housing that is affordable to lower income residents who might otherwise wait years for subsidized housing;

(j) Co-living housing works best for single-person households, but the housing for singles that it provides reduces demand for family-sized rentals from singles who would otherwise group together to rent large homes;

(k) Co-living housing provides a good option for seniors, especially those who want to downsize, or those who desire a living arrangement that is more social than a standard apartment. When located in walkable neighborhoods, co-living housing gives mobility options to seniors who can no longer drive;

(l) Co-living housing is well-suited for the conversion of office buildings to housing, because it typically requires less plumbing and fixtures for kitchens and bathrooms;

(m) Co-living housing is well-suited for very low-income people, supportive and recovery housing, and "housing first" homes for the formerly homeless;

(n) State building codes have established minimum sizes and other standards to ensure that co-living housing meets modern health and safety standards;

(o) Creating co-living housing near transit hubs, employment centers, and public amenities can help the state achieve its greenhouse gas reduction goals by increasing walkability, shortening household commutes, curtailing sprawl, and reducing the pressure to develop natural and working lands; and

(p) Co-living housing, because the units are small, is inherently more energy efficient than standard apartments, both saving residents money and reducing the state's energy demand.

(2) Therefore, the legislature intends to allow the creation of co-living housing as a means to address the need for additional affordable housing options for a diversity of Washington residents."
[2024 c 180 s 1.]



Washington State
Department of
Commerce

We strengthen communities

Co-Living Guidance

GROWTH MANAGEMENT SERVICES

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Table of Contents

1.0 Introduction	4
1.1 Purpose and Legal Background	4
1.2 Applicability to Jurisdictions	4
1.3 Co-Living Background	5
2.0 Development Regulations	6
2.1 Applicability and Permitting	6
2.2 Mix of Uses	7
2.3 Definitions, density and room dimensions	8
2.4 Off-Street Parking Standards	13
2.5 Other Standards	15
3.0 Additional Considerations	16
3.1 Affordable Housing	16
3.2 Conversion Projects	17
3.3 Infrastructure Issues	18
3.4 Design Considerations	20
3.5 Short Term Rentals	21
3.6 Homeownership	21
3.8 Comprehensive Plans	21
4.0 Resources	22
APPENDIX A: Co-Living History and Benefits	24
What is Co-Living?	24
Co-Living Evolution	24
Benefits of Co-Living Housing	27
Messaging	27
APPENDIX B: Parking Near Major Transit Stops	30

1.0 Introduction

1.1 Purpose and Legal Background

Guidance Purpose

This guidance is intended to support planners, advisory bodies, elected officials and interested parties in implementing code amendments related to RCW 36.70A.535, and to help readers understand best zoning practices for co-living housing. This guidance uses diagrams, references to public informational documents, and real-world examples to offer recommendations and best practices for the development of co-living housing.

State Law

The Washington Legislature passed Engrossed 2nd Substitute House Bill 1998 (“E2SHB 1998”, commonly referred to as “HB 1998”) in 2024. The provisions of [HB 1998](#) are codified in [RCW 36.70A.535](#). HB 1998 requires cities and counties planning under the Growth Management Act to adopt development regulations allowing co-living as a permitted use on any lot located within an urban growth area that allows at least six multifamily residential units, including on a lot zoned for mixed-use development. The bill provides standards for unit size, parking, density, fees, and other development regulations.

1.2 Applicability to Jurisdictions

The requirements of co-living are applicable to all “fully planning” counties and the cities and towns within those counties. To know if your community is in a fully planning county, visit the Commerce [interactive map](#).¹

Statutory Deadlines

Requirements for co-living take effect December 31, 2025.² By this date, subject cities and counties must adopt or amend co-living housing standards, consistent with RCW 36.70A.535, by ordinance and incorporate co-living housing into their development regulations, zoning regulations, and other official controls. If updates to bring co-living standards into alignment with statutory requirements are not completed by this date, the requirements of RCW 36.70A.535 will “supersede, preempt, and invalidate any conflicting local development regulations.”

Under this statute, any action taken by a city or county to comply with the requirements of the co-living housing law is not subject to legal challenge under the Growth Management Act or the State Environmental Policy Act.³

¹ Department of Commerce. “The Growth Management Act status of Washington counties and cities.” April 2017. <https://deptofcommerce.app.box.com/s/z8ygn0ifeimybnlh4j6v8cl1wxkp1jfa>

² RCW 36.70A.535(9)(a)

³ RCW 36.70A.535(10)

1.3 Co-Living Background

What is Co-Living?

State law provides a definition of co-living housing:

"Co-living housing" means a residential development with sleeping units that are independently rented and lockable and provide living and sleeping space, and residents share kitchen facilities with other sleeping units in the building. Local governments may use other names to refer to co-living housing including, but not limited to, congregate living facilities, single room occupancy, rooming house, boarding house, lodging house, and residential suites.⁴

Many terms are used to refer to co-living housing. In addition to those noted in the statute, co-living housing may be referred to as micro-units, dormitories, or another term. More information on the different types of co-living housing is included in "Overlapping Names and Use Types" on page 7.

Benefits

Co-living housing has many benefits, including:

- Providing market-rate, non-subsidized rental homes affordable to people in the workforce earning as low as 50% of area median income (older co-living units in Spokane area cost \$350 per month, and in the Puget Sound suburbs some new co-living units are renting for \$1,000 per month)
- Offering housing options for people who want a low-cost, private alternative to living with roommates
- Creating a living arrangement with shared community spaces that facilitate social connections
- Increasing affordable housing options in high opportunity neighborhoods with transportation access
- Reducing sprawl and vehicle miles traveled through infill development. This may in turn reduce auto emissions, energy use, and pollution

Stakeholders note that co-living is a great option for seniors looking to downsize their living arrangements and that co-living helps build communities and reduce loneliness for people of all ages. Co-living may be an attractive housing option for many community members and is an effective way to help accommodate housing needs for the state's growing population. More information on benefits of co-living is included in the Legislature's findings in the notes section of [RCW 36.70A.535](#) under "Intent—Findings—2024 c 180."

History

Co-living housing types have a long history in America. Co-living housing was common in the pre-Revolutionary era and represented a larger share of urban housing stock by the turn of the 20th century. As norms and cultural values shifted in the post-WWII period, co-living buildings became stigmatized and new co-living developments were prohibited in many cities.

In Washington, co-living development had a resurgence in the Puget Sound region beginning in the 2000's, as the need for new low-cost apartments in desirable neighborhoods sparked interest in co-living housing among

⁴ RCW 36.70A.535(11)(a)

local developers. These modern co-living buildings improved on the design quality and amenities of twentieth century models. For examples and more history on co-living housing, see Appendix A.

2.0 Development Regulations

This section provides recommendations and considerations for meeting the co-living development regulation requirements of RCW 36.70A.535.

Implementing regulations should respond to each jurisdiction's code framework. In addition to zoning code, cities and counties should review potential barriers in other regulatory areas which may result in conflicts that prohibit co-living housing development and may be preempted by state law. This may include Public Works standards, design standards, fire and tree code, and more.

2.1 Applicability and Permitting

Applicability to Lots and Zones

Per RCW 36.70A.535(1), "Cities and counties planning under this chapter must allow co-living housing as a permitted use on **any lot located within an urban growth area that allows at least six multifamily residential units**, including on a lot zoned for mixed-use development."

The term "multifamily" is not defined by the Growth Management Act. For the purposes of co-living, Commerce interprets "multifamily residential units" to mean any type of housing which allows at least six units on a lot, excluding manufactured home parks, group homes (such as assisted living for seniors or people with disabilities), emergency housing, or emergency shelters.

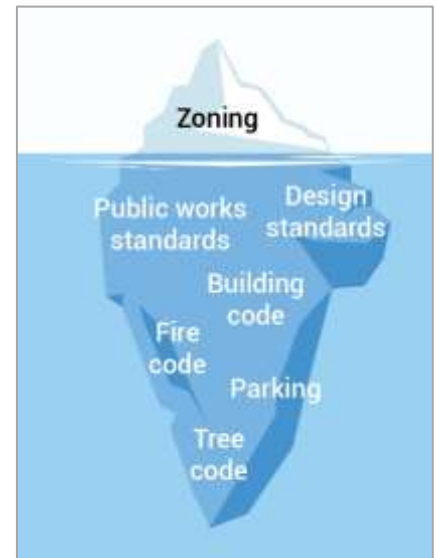
Co-living housing must be a permitted use on any lot if:

- Six or more multifamily residential units are permitted under both the land use permissions and density or lot size standards. This includes lots where multifamily use is permitted to be mixed with non-residential uses (i.e. mixed-use development).
- A lot is subject to the minimum residential density and transit proximity requirements of RCW 36.70A.635(1)(b)(ii).

Cities are not required to allow co-living housing on lots where six units are permitted only through an affordable housing density bonus, such as under RCW 36.70A.635(1)(b)(iii).

Permit Type and Public Notice

Standards for permitting co-living housing must be no more restrictive than permitting standards for other types of multifamily housing in the same zone, per RCW 36.70A.535(4). For example, if multifamily housing is permitted outright, co-living housing must be permitted outright. Commerce recommends local governments consider updating land use matrices and allowable use tables to eliminate conditional use permits and administrative conditional use permits for all housing types— including multifamily housing, low-income



Zoning is just the tip of the regulatory iceberg. Source: MAKERS

housing, and senior housing— to reduce barriers to housing that has traditionally been more difficult to permit.

Per RCW 36.70A.535(5), co-living housing may only be subject to the review, notice, and public meeting requirements that are applied to other types of residential uses in the same location, unless otherwise required by state law, such as shoreline permit regulations under Chapter 90.58 RCW.

Overlapping Names and Use Types

Some jurisdictions already define and regulate co-living uses by different names. Jurisdictions should review their codes for terms identified in RCW 36.70A.535— *congregate living facilities, single room occupancy, rooming house, boarding house, lodging house, and residential suites*— as well as micro-units and dormitories. Regardless of the name, uses meeting the statutory definition of co-living housing are subject to the requirements of RCW 36.70A.535. Where appropriate, consolidating related co-living uses in zones where they must be allowed under RCW 36.70A.535, may provide clarity of land uses, ease of administration, and demonstrating consistency with the law.

Uses that should not be regulated as co-living housing include group living uses that fall under another state law framework with regard to licensing, occupancy and/or zoning standards, such as assisted living facilities (Chapter 18.20 RCW), adult family homes (Chapter 70.128 RCW), or group homes ([which are overseen by the Department of Social and Health Services \(DSHS\)](#)). Emergency shelters, transitional housing, emergency housing, and permanent supportive housing (STEP) should not be combined with co-living or similar housing types ([RCW 35.21.683](#) and [RCW 36A.21.430](#)). As a residential use, co-living differs from short-term rentals and should not be grouped with these uses.

Co-living is also different than co-housing, which is a type of ownership model that features fully equipped dwelling units that share common spaces. Co-housing is a community where people live in their own homes while sharing some facilities and spaces.

For more on non-overlapping housing types, see Commerce’s [“STEP and Other Housing Definition Fact Sheet.”](#)

Where Co-Living Allowance is Not Required

In some cases, jurisdictions may define uses which fall under the broader co-living definition, and which are allowed in areas where consistency with RCW 36.70A.535 is not required (i.e. zones where less than six multifamily residential units are allowed per lot). In these cases, retaining the more specific definitions is recommended when they provide a different type of housing option, provide for few sleeping units, or housing in other zoning districts. A common example may be boarding house.

2.2 Mix of Uses

RCW 36.70A.535(2)(c) prohibits jurisdictions from requiring co-living housing to “include other uses.”

This means that the co-living use cannot be singled out in a general zone-wide or citywide requirement to contain other uses, such as ground-floor commercial uses. However, under RCW 36.70A.535(4), location-specific requirements for ground-floor non-residential uses that apply to multifamily housing can apply to co-living housing. Many larger co-living buildings have historically included a mix of retail and service uses to serve the upstairs residents and surrounding neighborhood.

2.3 Definitions, density and room dimensions

Co-Living Definition

The co-living definition in RCW 36.70.535(11)(a) states: *“Co-living housing” means a residential development with sleeping units that are independently rented and lockable and provide living and sleeping space, and residents share kitchen facilities with other sleeping units in the building.*”

Because dwelling units can also be *“independently rented and lockable and provide living and sleeping space,”* jurisdictions should adopt clear standards to distinguish co-living sleeping units from dwelling units. Guidance is provided in the following sections.

Co-Living Density

RCW 36.70A.535(7) states: *“A city or county may not treat a sleeping unit in co-living housing as more than one-quarter of a dwelling unit for purposes of calculating dwelling unit density.”*

This means that in a zone with a maximum density of 30 dwelling units per acre, a co-living housing development on a one-acre site must be permitted to build co-living housing with up to 120 sleeping units, as long as all other development regulations are met. In zones where there is no density limit for multifamily housing, there should also be no density limit for co-living housing.

Limits On Number of Units

A cap on the number of co-living sleeping units allowed per building is invalid when there are no equivalent limits on the number of units permitted in a multifamily building in the same zone, per RCW 36.70A.535(5). This requirement does not apply to zones where co-living is permitted beyond the locational requirements of RCW 36.70S.535(1). In those areas, the number of sleeping units per co-living building may be limited to less than the maximum for multifamily housing.

Jurisdictions should carefully review limitations on the number of sleeping units in co-living buildings, whether under the name *“co-living”* or another term. For example, one Washington jurisdiction defines *“rooming house”* as *“a dwelling, with a central kitchen and with more than one but fewer than nine boarders, with no more than nine sleeping rooms.”* Since multifamily uses do not have an equivalent limit on the number of units in zones that allow rooming houses (using the 4:1 ratio), this definition should be amended, replaced or clearly defined as a use in zoning areas which would not be subject to RCW 36.70A.535.

Sleeping Units

Sleeping Unit Definition

The International Building Code (IBC) defines a *“sleeping unit”* as *“A single unit that provides rooms or spaces for one or more persons, includes permanent provisions for sleeping and can include provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.”*⁵

A sleeping unit is a standalone bedroom and does not have the full features of a dwelling unit. Unlike dwelling units, sleeping units are not required to have closets, bathrooms or kitchens. However, most new co-living

⁵ 2021 International Building Code, Section 202 Definitions.

developments include private bathrooms and kitchenettes because they are popular with tenants and some building managers find shared bathrooms challenging to manage.

Sleeping units are different from “efficiency dwelling units” under the IBC. These units, which are also known as “studio apartments”, are required to have a closet, full bathroom, kitchen sink, cooking appliance, and refrigerator. Efficiency dwelling units have a defined minimum size of 190 square feet.

The IBC does not limit the number of sleeping units that may share a kitchen and sanitation facilities (bathrooms). Any local limits on the number of unrelated people who share a co-living sleeping unit should be based on occupant load per square foot or generally applicable health and safety provisions as established by applicable building code or city ordinance, per RCWs [35.21.682](#), [35A.21.314](#), and [36.01.227](#).



Sleeping unit interiors. Left. Courtesy of Natural and Built Environments, LLC. Right. Courtesy of Neiman Taber Architects.

Room Dimensional Standards

RCW 36.70A.535(2)(a) prohibits jurisdictions from requiring co-living housing to “Contain room dimensional standards larger than that required by the state building code, including dwelling unit size, sleeping unit size, room area, and habitable space.”⁶

The 2024 IBC definitions and minimum dimensions are as follows:^{7,8}

- Habitable space means “A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.” Habitable spaces other than kitchens must not be less than seven feet in any plan dimension.
- Dwelling unit means “A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.” Dwelling units have a total minimum size of 190 square feet of habitable space and must have at least one room that is a minimum of 120 square feet. Kitchens are not required to be of a minimum floor area.
- Sleeping units must have a minimum size of 70 square feet. For reference, this comfortably fits a twin-size bed.

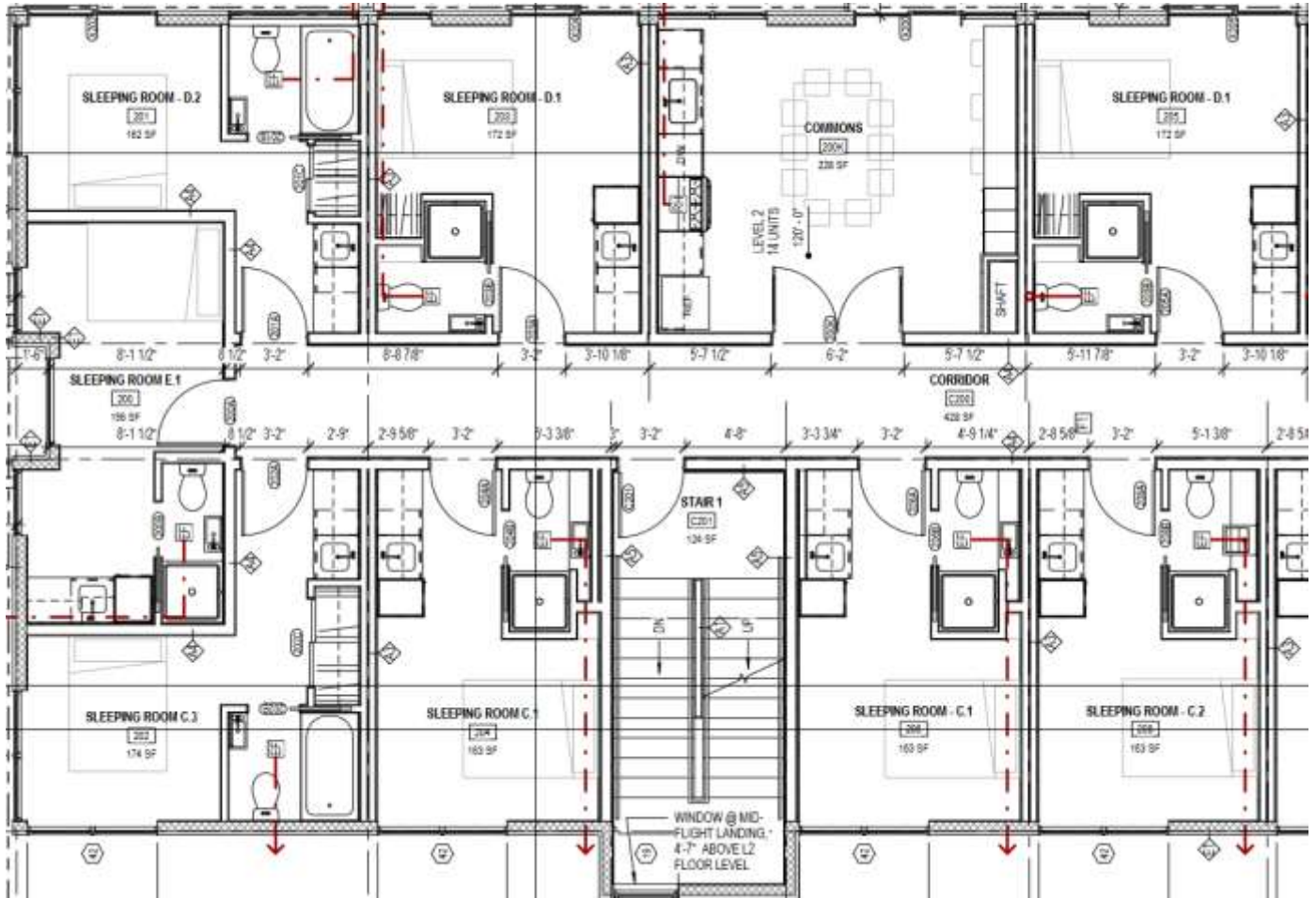
⁶ As of this writing the state building code has the same minimum dimensions as the 2024 International Building Code. See Washington Administrative Code 51-50-1208, Section 1208-Interior space dimensions. <https://app.leg.wa.gov/WAC/default.aspx?cite=51-50-1208>.

⁷ 2024 International Building Code, Section 202 Definitions.

⁸ 2024 International Building Code, Section 1208 Interior Space Dimensions.

- Bedroom means “Any room or space used or intended to be used for sleeping purposes in either a dwelling unit or a sleeping unit.”⁹ A bedroom has a minimum size of 70 square feet when intended for use by one occupant and 100 square feet when intended for use by two occupants, plus another 50 square feet per additional occupant.¹⁰

The building code has no maximum size for sleeping units. A unit larger than 190 square feet may be considered a sleeping unit if it conforms to the definitions noted above. Cities and counties may adopt a maximum size for sleeping units. A maximum sleeping unit size of 300 square feet would reflect typical sleeping unit sizes in co-living buildings, with a bathroom, closet and/or kitchenette (see co-living examples in Appendix A).



Excerpt of a floor plan from *The Kärssti* co-living housing development in Seattle, showing sleeping units with private sanitation facilities and kitchenettes and a common kitchen and dining room. Image courtesy of Neiman Taber Architects.

Sleeping Units vs. Dwelling Units

The density and parking calculations provided by RCW 36.70A.535 apply to sleeping units, not small dwelling units such as studio apartments. The table below is an example of how a local jurisdiction can distinguish between sleeping units and dwelling units based on the unit size and the inclusion of certain features.

⁹ 2021 International Property Maintenance Code, Section 202 General Definitions.

¹⁰ 2021 International Property Maintenance Code, Section 404.4.1 Room area.

Sanitation (bathroom) and kitchen facilities are not defined by the IBC and the definitions noted in the table are provided as examples. There must be at least one shared kitchen facility for sleeping units to be considered co-living housing, per RCW 36.70A.535(11)(a).

Example definitions:

- Sanitation facilities consist of at least a sink (not shared with kitchen), toilet, and shower and/or tub.
- Kitchen facilities are a room or space used for cooking or the preparation of food with all of the following: sink (not shared with sanitation facilities), 220-volt or natural gas stovetop with ventilation, refrigerator, and food preparation area. Portable or countertop appliances are not part of kitchen facilities.

In the Puget Sound area, many new co-living developments include private bathrooms and kitchenettes. A kitchenette does not meet the definition of a kitchen. It has limited cooking facilities such as a sink, small one- or two-burner electric stove, microwave, and mini-fridge. It might also include adequate counter space for plug-in electric cooking appliances.

Jurisdictions should review their zoning and building codes and may develop local interpretations, provided local interpretations and regulations are consistent with the requirements of RCW 36.70A.535 and the Washington State Building Code.

	Minimum size under state building code	Sanitation facilities (i.e. bathroom)	Kitchen facilities
Sleeping unit	70 square feet	In-unit bathroom optional.* Must have access to shared bathroom if in-unit bathroom is not provided.	In-unit kitchen optional* Must have access to shared kitchen.
Dwelling unit	190 square feet **	In-unit bathroom required.	In-unit kitchen required.

* Sleeping unit may not have both private sanitation and kitchen facilities, however kitchenettes may be allowed.
 ** Cities and counties may adopt a larger minimum size for dwelling units.

Mix of Unit Sizes an Option, Not a Requirement

RCW 36.70A.535(2)(b) prohibits jurisdictions from requiring co-living housing to “Provide a mix of unit sizes or number of bedrooms.” Developers may choose to combine co-living sleeping units and full-feature dwelling units in the same building. In such configurations, all residents are typically given access to co-living common areas.

Common Areas

Shared spaces are essential to the concept of co-living. These may include common kitchens, bathrooms, lounge/social rooms, fitness rooms, libraries, workshops, and similar amenities. Only shared kitchens are

required in order to meet the statute’s definition of co-living. When designing common areas, developers consider market demand and how to make their buildings competitive for tenants.

Cities can place standards on the provision of common areas as long as these are not more restrictive than standards for other multifamily development. For instance, a city may require one common area for each eight sleeping units, or ten square feet of common space for each 100 square feet of sleeping unit. Such common areas could be counted towards minimum required open spaces (as some codes allow indoor spaces to qualify for some or all open space requirements). Also see Section 2.5 for more information on open space standards.



Examples of common areas. Clockwise from upper left: lounge and common kitchen in the Kärsti, Seattle WA, courtesy of Neiman Taber Architects. Lounge and laundry room in the Yobi in Seattle, WA, courtesy of Neiman Taber Architects. Common kitchen and lounge in Plaza Apartments in Kirkland, WA, courtesy of Natural and Built Environments, LLC.

Shared Kitchens

Shared kitchens are required in order to meet the statutory definition of co-living. The law has no specific requirements for shared kitchens. In addition to the other co-living requirements described in this section, at least one shared kitchen must be provided in a development for it to be classified as a co-living use under RCW 36.70A.535.

The specific size or quantity of shared kitchens in a co-living development should not be regulated if the same kind of regulation is not applied to multifamily development. Developers have found that tenants can meet their daily needs with in-unit plug-in appliances and kitchenettes. As a result, modern co-living buildings tend to

have only a few shared kitchens that are large enough to host gatherings – for example, one kitchen per 15-20 sleeping units and typically no more than one kitchen per floor. Building owners have found that shared kitchens and other common areas often facilitate social activity like game nights and group dinners.

Utility Functions

Developers report that laundry appliances are typically provided at a ratio of 10-15 sleeping units per set. The building design determines whether laundry appliances are spread throughout a building or centralized in a laundry room. One developer reported that private storage units are lightly used.

2.4 Off-Street Parking Standards

State Law

Basic Requirements

Off-street parking requirements for co-living housing are subject to the following standards:¹¹

- A maximum of 0.25 off-street parking spaces per sleeping unit may be required.
- No off-street parking may be required within one-half mile walking distance of a major transit stop (see Major Transit Stop specifications below).

Co-living residents tend to produce fewer vehicle trips than the general population due to proximity to transit and services, and reduced car ownership.^{12, 13}

Exceptions

The above off-street parking requirements do not apply:

- If a city or county submits to the Department of Commerce an empirical study prepared by a credentialed transportation or land use planning expert that clearly demonstrates, and the department finds and certifies, that the application of the parking limitations will be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied to the same location.¹⁴
- To portions of cities within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements.¹⁵

¹¹ RCW 36.70A.535(3)

¹² A transportation analysis of a mixed apartment and co-living housing project in downtown Kirkland with 290 total units estimated 64 peak hour vehicle trips based on industry standards. A post-occupancy analysis found the project had 33 peak hour vehicle trips. The report concluded this resulted from site management of resident parking and the area's transportation options available to residents.

¹³ Another mixed-use co-living development in Kirkland was approved for reduced minimum parking at 0.5 parking spaces per sleeping unit, for a total of 255 provided parking spaces. This was 155 spaces less than would have been required by previous code, and a one-year post-occupancy analysis found the project was 45 spaces over-supplied.

¹⁴ See the Department of Commerce Empirical Parking Study Guidance: <https://www.commerce.wa.gov/growth-management/housing-planning/middle-housing/>

¹⁵ This only applies to Seattle-Tacoma International Airport. Enplanement data is provided by the Federal Aviation Administration: https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger. Jurisdictions applying this exemption should base the one-mile radius on airport passenger facilities.

Major Transit Stop

Off-street parking cannot be required for co-living housing within one-half mile walking distance of a major transit stop. “Major transit stop” is defined by RCW 36.70A.535(11)(b):

“Major transit stop” means:

- (a) A stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW;
- (b) Commuter rail stops;
- (c) Stops on rail or fixed guideway systems, including transitways;
- (d) Stops on bus rapid transit routes or routes that run on high occupancy vehicle lanes; or
- (e) Stops for a bus or other transit mode providing actual fixed route service at intervals of at least 15 minutes for at least five hours during the peak hours of operation on weekdays.¹⁶

This definition is identical to that for accessory dwelling units, under [RCW 36.70A.696\(8\)](#). This term is slightly different than the general definition of major transit stops under [RCW 36.70A.030\(26\)](#). For more information on how to identify major transit stops and measure distance, see Appendix B.

Local Policy Choice

Eliminating Off-Street Parking Requirements

The cost of providing surface parking can significantly increase the per-space construction cost of co-living housing, depending on the type of parking, number of stalls required, drive aisle area, and turnaround space.

Eliminating minimum off-street parking requirements may encourage co-living development by reducing the cost and physical complexity of projects. This may be particularly beneficial for infill development. Off-street parking requirements often affect the number of units that can be constructed in a co-living housing project, and can significantly impact a project’s feasibility. Builders can continue to include off-street parking to meet market demand, even without regulatory requirements.

Eliminating off-street parking requirements for co-living housing is particularly appropriate for areas well-served by local transit service, connected to bike and pedestrian infrastructure, and proximate to job centers.

Bicycle Parking Requirements

Bicycle parking is not addressed in RCW 36.70A.535. If a jurisdiction requires bicycle parking based on the number of vehicle parking spaces, the co-living calculation for 0.25 vehicle parking spaces per sleeping unit will reduce the amount of bicycle parking required. However, if bicycle parking is based on number of sleeping units no reduction is required.

References

- City of Olympia, WA [Ordinance 7366](#) (2023) reduces parking minimums for all residential units
- [A Business Case for Dropping Parking Minimums](#), 2022, Planning Magazine
- [Parking Reform Network](#)

¹⁶ RCW 36.70A.535(11)(b)

2.5 Other Standards

Bulk Standards

Co-living buildings can range from the size of a single-family home house to a full-sized apartment building.

RCW 36.70A.535(4) and (5) state:

“(4) A city or county may not require through development regulations any standards for co-living housing that are more restrictive than those that are required for other types of multifamily residential uses in the same zone.”

(5) A city or county may only require a review, notice, or public meeting for co-living housing that is required for other types of residential uses in the same location, unless otherwise required by state law including, but not limited to, shoreline regulations under chapter 90.58 RCW.

This means that co-living housing must be subject to zoning dimensional standards that are equal or less restrictive than those for multifamily uses in the same zone. This includes, but is not limited to, the following types of standards: building height, setbacks, lot coverage, floor area ratio, lot area and lot dimension, impervious surface, open space, and landscaped area standards.

Jurisdictions should review their codes for any supplemental use standards related to spacing, distribution, buffering, and other location restrictions for co-living housing. Under RCW 36.70A.535(4), such standards should not create a greater restriction on the permitted location of co-living housing compared to multifamily housing in the same zone. For example, a requirement for co-living housing to not be on adjacent lots, or to be separated by 500 feet, is not consistent with the law.

See Section 3.2 Conversion Projects for bulk standards requirements related to conversions.



Bulk, height, coverage, and other standards for co-living housing must be no more restrictive than standards for multifamily housing. Pictured: co-living and multifamily housing in downtown Redmond. Source: MAKERS



Example of multifamily building with facade articulation. Source: MAKERS

Design Standards

Co-living housing should be subject to equal or less restrictive design standards than other multifamily uses, per RCW 36.70A.535(4).

Jurisdictions should give special consideration to design standards based on the size of dwelling units, such as articulation standards or minimum balcony sizes. These standards may need to be adjusted or interpreted differently as they are applied to co-living housing, as sleeping units are smaller and not the same as dwelling units. For example, a façade articulation standard that says, “the maximum façade width without articulation shall be no greater than the width of a

unit”, could be amended to a specific dimension instead. See Section 3.2 Conversion Projects for design standards requirements for conversion projects.

Open Space Standards

Some jurisdictions require a minimum useable open space or amenity area per dwelling unit, often scaled to the size of dwelling unit or number of bedrooms (studio, one-bedroom, two-bedroom, etc.). Stakeholders report that sleeping units typically accommodate a single resident, so applying per-unit open space standards to these units can result in disproportionate requirements which reduce the feasibility of co-living housing development.

RCW 36.70A.535 does not have specific provisions related to open space standards. Jurisdictions have several options for updating multifamily open space standards to support co-living feasibility:

- Create a reduced open space requirement for sleeping units. For example, apply one-quarter or one-half the open space requirement for co-living that apply to studio apartments.
- Apply an alternate open space standard that does not rely on the size or quantity of units. For instance, require a certain amount of open space for each 1,000 square feet of residential net floor area, for multifamily and co-living.

If open space is required, consider allowing indoor common areas to count as open space in addition to traditional outdoor space (courtyards, balconies, roof decks, etc.). Co-living buildings necessarily include a variety of shared indoor spaces and amenity areas, usually including at least shared kitchens and dining rooms. Other shared indoor spaces may include multi-purpose entertainment space, fitness center, movie theater, library, workshop, conference room, and similar amenities that promote shared use and a sense of community. To encourage a balance with outdoor spaces, some jurisdictions allow projects to count only a portion of indoor common area toward minimum open space square footage requirements.

3.0 Additional Considerations

3.1 Affordable Housing

Market-rate co-living housing can provide an affordable housing option without needing to participate in formal affordability programs. Co-living is often the least expensive private market option available in urban markets and can meet the needs of those who might otherwise experience economic displacement or homelessness. Adequate supply of co-living housing may reduce pressure on publicly funded affordable housing and provide housing affordable to lower income residents who might otherwise wait years for subsidized housing.

However, co-living housing must be eligible to participate in formal government programs and receive public funding. RCW 36.70A.535(6) states:

“(6) A city or county may not exclude co-living housing from participating in affordable housing incentive programs under RCW 36.70A.540.”

Where incentive programs are adopted, co-living housing developments can provide affordable housing in exchange for density and height bonuses, fee waivers, expedited permitting, and other benefits that are available to multifamily housing (when consistent with the incentive program requirements). Co-living housing

may also be eligible for multifamily tax exemptions (MFTE) when meeting the local requirements adopted under Chapter 84.14 RCW. It may also be eligible for the use of HUD Housing Choice vouchers.¹⁷

Stakeholders report that even where co-living housing is permitted, some non-profit affordable housing providers do not include it in their portfolio because of operational complexities. There are more shared spaces to maintain and monitor in a co-living building than a traditional apartment building.

3.2 Conversion Projects

Co-living conversions of existing buildings were relatively common in the past when zoning was more flexible. Commerce recommends considering providing flexibility for both commercial-to-residential and residential-to-residential co-living conversion projects. Older office buildings may be particularly good candidates for conversion due to their floor configurations, with pre-existing shared restroom and kitchen facilities. In some communities, developers have found success converting older motels and churches into micro-units and congregate housing.

Another common type of co-living conversion was older large houses converted into small apartments with some shared kitchen or bathroom facilities. Zoning has made conversions of this type largely prohibited in recent decades. Commerce recommends considering these types of conversions.



Left: Co-living may be well suited to office-to-residential conversions. Center: An older converted mansion with a mix of co-living units and dwelling units. Right: Developers have converted older motels into co-living in several eastern Washington cities. Source: MAKERS

New requirement for cities

[RCW 35.21.990](#) and [RCW 35A.21.440](#) require cities (these RCW sections do not apply to counties) to provide regulatory flexibility for conversion projects that are in commercial and mixed-use zones. In summary, these laws state that cities may not:

- Impose a restriction on housing unit density that prevents the addition of housing units at a density up to 50 percent more than what is allowed in the underlying zone.
- Impose parking requirements on the addition of dwelling units or living units added within an existing building.

¹⁷ https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Payment_Standards.pdf see section 2.4.

- Impose permitting requirements on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone.
- Impose design standard requirements, including setbacks, lot coverage, and floor area ratio requirements, on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone.
- Impose exterior design or architectural requirements on the residential use of an existing building beyond those necessary for health and safety of the use of the interior of the building.
- Prohibit the addition of housing units in any specific part of a building except ground floor commercial or retail that is along a major pedestrian corridor as defined by the city.

Cities may not require off-street parking for the addition of dwelling units or living units within an existing building.

3.3 Infrastructure Issues

Public works and infrastructure standards that create conditions on development are a “development regulation” subject to RCW 36.70A.535(4) which limits regulations to those no more restrictive than required for other types of multifamily uses. This is supported by the definition of “development regulations” under RCW 36.70A.030.

To comply with RCW 36.70A.535(4), public works and infrastructure development standards cannot be more restrictive for co-living housing than for multifamily residential uses. Co-living sleeping units have been shown to have substantially lower utility use than dwelling units, in part because more than 90 percent of co-living residents are single-person households.¹⁸

Water and Sewer

Water and sewer utility purveyors (cities, special districts, and private purveyors) should adopt specific standards for co-living buildings, or sufficient flexibility in the application of multifamily standards to adequately serve co-living buildings without requiring construction of excess infrastructure.

Regarding sewer connections specifically, RCW 36.70A.535(8) states: “A city or county may not treat a sleeping unit in co-living housing as more than one-half of a dwelling unit for purposes of calculating fees for sewer connections, unless the city or county makes a finding, based on facts, that the connection fees should exceed the one-half threshold.” If utility purveyors have several rates for different types of dwelling units, the rate applied for co-living should be no more than one-half the rate for multifamily dwelling units, or the closest applicable category, such as a hotel. Commerce recommends adopting this co-living sewer connection fee in the adopted fee schedule.

State law does not define “connection fee”, but the definition for “connection charge” in RCW [35.92.385\(4\)\(b\)](#) may be informative: “...the one-time capital and administrative charges, as authorized in RCW 35.92.025, that are imposed by a utility on a building or facility owner for a new utility service and costs borne or assessed by a utility for the labor, materials, and services necessary to physically connect a designated facility to the respective utility service.”

¹⁸ Reported by a co-living developer and building owner during interviews conducted for this guidance.

Fact-based findings that justify sewer connection fees above the one-half threshold may include information such as:

- Existing co-living sleeping units in the jurisdiction or planning area generate a nearly similar or equal amount of sewer demand as dwelling units in the same area.
- A proposed co-living development for which project-specific fees are being calculated has sleeping units that exceed 300 square feet (meaning the sleeping units are nearly the size of the smallest dwelling units available on the market).
- A sewer utility conducts a financial analysis that demonstrates it does not have sufficient alternative funding to bear the costs of labor, materials, and services necessary to physically connect a co-living development to sewer service under the connection fee rate limitation of RCW 36.70A.535(8).

Reduced monthly rates for co-living units are another way to reduce co-living housing costs. For example, King County treats “microhousing” units as 0.35 of a residential customer equivalent (based on a detached single-family residence) for monthly sewer capacity charges.¹⁹

Cities, counties, and water utilities should consider a similar one-half to one-quarter metric for requirements related to water infrastructure connections and fees.

Impact Fees

RCW 36.70A.535 does not address impact fees. However, jurisdictions must adopt a fee schedule that complies with [RCW 82.02.060](#)(1), which states in part: “...The schedule shall reflect the proportionate impact of new housing units, including multifamily and condominium units, based on the square footage, number of bedrooms, or trips generated, in the housing unit in order to produce a proportionally lower impact fee for smaller housing units...”. This requirement must be adopted no later than six months after the jurisdiction’s next periodic comprehensive plan update required under [RCW 36.70A.130](#).

New guidance by Commerce on impact fees will be published separately.

Some co-living-specific considerations for setting fee rates:

- Co-living sleeping units are smaller than traditional multifamily units, and therefore should have an adjusted fee, depending on the metric for calculating such fees.
- Co-living residents have been found to produce fewer vehicle trips than the general population due to proximity to transit and services and lower rates of car ownership.²⁰
- Given limited access to private open space, co-living residents may desire greater access to public parks, open space, and recreation facilities.
- Co-living residents tend to be single adults without school-aged children.

¹⁹ “About the capacity charge.” King County. <https://kingcounty.gov/en/dept/dnrp/waste-services/wastewater-treatment/sewer-system-services/capacity-charge/about>

²⁰

See a Parking Analysis Memo for 162TEN, a co-living building in Redmond: https://www.sightline.org/wp-content/uploads/2024/01/20140831_162TEN_Parking-Analysis_Deviation.pdf. See similar reports for two Kirkland projects in the footnotes of Section 2.4.

More information on impact fees is available from the Municipal Research and Services Center (MRSC).²¹ Jurisdictions updating impact fees which may affect non-city facility providers (e.g., school districts) should coordinate with those facility providers on impact fee calculations and capital facilities plans.

Electricity

The electricity used per sleeping unit in co-living developments is typically much lower than for dwelling units. Electricity providers and permitting authorities should consider the lower usage needs when requiring installation of infrastructure.

References

- [King County Capacity Charge](#). Example of a utility fee which is graduated based on the size and type of residential dwelling.
- [Department of Ecology municipal stormwater permits](#). Information on what types of stormwater requirements are in place for jurisdictions across the state.

3.4 Design Considerations

There are a few differences and key considerations for co-living design that differentiate it from design for typical multifamily development.

Architectural Finishes

Because co-living sleeping units are compact, each unit can rent at a higher price per square foot than a typical apartment. As a result, developers report being able to include more durable and higher quality finishes, such as stone countertops and better lighting, in units and in shared spaces. Co-living housing's limited space needs create the opportunity to exchange space for quality, while still maintaining affordability.

Common Space Design

Given the limited private space in each unit, the design of shared spaces, especially kitchens and eating areas, takes on increased importance for resident quality of life. Shared space designs that include features such as sound absorbing acoustic panels and well-designed, adjustable lighting will help create spaces that are more comfortable and inviting for residents. Outdoor open spaces should be designed to provide a range of activities and spaces for individuals and small groups to enjoy.



Ceiling installed acoustic panels in a common area. Photo courtesy of Schemata Workshop.

Sound Proofing

With limited private space and many neighbors, stakeholders noted the importance of sound proofing shared walls and ceilings. Developers are encouraged to go beyond minimum sound proofing requirements in the building code. If jurisdictions modify requirements, such standards must apply equally to co-living and multifamily development.

²¹ "Impact Fees." Municipal Research Service Center. <https://mrsc.org/explore-topics/planning/land-use-administration/impact-fees>

3.5 Short Term Rentals

Short term rental is a business model in which individual residences are rented out by the owner to customers using an online platform. Some cities restrict short-term rentals in order to support a greater share of the housing stock available for residences; this is especially common in smaller cities and towns with high levels of tourism. Jurisdictions seeking to increase the supply of housing for low- and very low-income households may consider prohibiting short-term rentals in co-living buildings.

3.6 Homeownership

RCW 36.70A.535(11)(a) describes co-living housing as rental housing, stating “ ‘Co-living housing’ means a residential development with sleeping units that are independently rented...”

Co-living housing with sleeping units that are independently owned are not addressed by RCW 36.70A.535. This means ownership co-living housing can be treated differently than the state law requires and may be subject to more restrictive standards for parking, density, and other development regulations.

Jurisdictions may choose to allow owner-occupied co-living housing to be regulated the same as rented co-living housing. This may reduce regulatory barriers for owner-occupied co-living housing and create opportunities for conversion to cooperative ownership. Ownership of co-living housing may be less common than rental co-living housing, but it can be encouraged as an opportunity to promote homeownership for people with low-to-moderate incomes.

3.8 Comprehensive Plans

Integrating Co-Living into Housing Elements

Co-living housing allowed under RCW 36.70A.535 may meet housing needs for low-income households in the 50-80% Area Median Income (AMI) band, and possibly the 30-50% AMI band²². Each local jurisdiction will need to verify this finding at the local level. This can be done through a housing needs assessment created for a comprehensive plan or through a market analysis.²³ If no examples of co-living housing are available in your region, it may be appropriate to use data on co-living housing costs from the closest comparable jurisdiction and compare that to local affordability levels (AMIs in the county in which the analysis is being performed).

Allowing for co-living housing in areas that have historically been excluded or in areas where there is evidence of racially disparate impacts will increase affordable housing production, helping meet housing element goals to address past practices and policies that have contributed to racially disparate impacts and exclusion.²⁴

Land Use Elements and Land Capacity

For land capacity analysis, consider that assumed densities and potential development outcomes for co-living housing will be different than those that have been observed for multifamily development and mixed-use development. In identifying assumed development rates for land capacity analysis, consider incorporating

²² Per RCW 36.70A.070(2), jurisdictions are required to identify sufficient capacity of land for housing affordable at these income levels, and to make adequate provisions for these populations' housing needs.

²³ See the Department of Commerce's [Guidance for Updating Your Housing Element](#), specifically Steps 3.1 and 3.2 on pages 35-37.

²⁴ See the Department of Commerce's [Guidance to Address Racially Disparate Impacts](#).

information about local market conditions and real estate market dynamics. Additionally, RCW 36.70A.535(8) requires that sleeping units be calculated as not more than one-quarter ($\frac{1}{4}$) for purposes of calculating dwelling unit density. Although co-living housing may yield higher densities of housing units than other housing typologies, tracking any assumptions and rationale used for assumed densities will be helpful.

Not all sites that are zoned for co-living housing will develop or redevelop as co-living housing. In addition to sites needing appropriate zoning for development, co-living housing also needs:

- Physical and financial feasibility
- Developers who are familiar with building co-living housing
- Sites with a willing seller
- Access to financing
- Sufficient demand for co-living housing at a particular location

To determine local viability of co-living, consider researching trends by interviewing developers about the likelihood for developing a co-living product, and evaluating demographics to determine how much demand there is for this housing type. For many communities, it will take a while to identify likely trends in this re-emerging housing typology, so assumptions for co-living development should be modest.

4.0 Resources

Code Examples

- [Seattle Council Bill 120822](#) – Seattle code updates to comply with RCW 36.70A.535, adopted October 2024.

Further Reading

Groth, Paul. *Living Downtown: The History of Residential Hotels in the United States*. Germany: University of California Press, 1994.

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“Roots of a Crisis,” Real Change, 2016. <https://www.realchangenews.org/news/2016/06/29/roots-crisis>

“Historic South Downtown Oral Histories: Marie Wong Discusses Her Research on Seattle's SRO Hotels and the Men and Women Who Lived in Them”. HistoryLink.org, 2015. <https://www.historylink.org/File/11135>

“Considering SRO Housing in New York City and Beyond.” HUD Office of Policy and Research Development, 2018. <https://www.huduser.gov/portal/pdredge/pdr-edge-trending-062518.html>

Oregon House Bill 3395, Section 17 [\(2023\)](#). Requires local governments within an urban growth boundary to allow the development of single room occupancy (SRO) housing.

APPENDIX A: Co-Living History and Benefits

What is Co-Living?

State law defines co-living housing as:

"Co-living housing" means a residential development with sleeping units that are independently rented and lockable and provide living and sleeping space, and residents share kitchen facilities with other sleeping units in the building. Local governments may use other names to refer to co-living housing including, but not limited to, congregate living facilities, single room occupancy, rooming house, boarding house, lodging house, and residential suites.²⁵

Co-living housing goes by many names. In addition to the congregate living facilities, single room occupancy (SROs), rooming house, boarding house, lodging house, and residential suites, noted in the statute, it may also be referred to as micro-units, dormitories, or some other term.

Co-Living Evolution

Twentieth Century Legacy

Co-living, under various names, has a long history in American cities and towns going back to pre-revolutionary times.^{26,27} By the early 1900's, in some major cities it represented as much as ten percent of the rental housing stock, providing a popular housing and lodging option for industrial workers, travelling salesmen, the elderly, young adults, and writers and artists.²⁸



Left. The historic Wilson Hotel building, built 1890, is now managed by the Anacortes Housing Authority and functions as co-living housing with ground floor commercial businesses (source: MAKERS). Middle: The Upton Hotel in Spokane, built in 1910 and now known as the Grand Coulee Apartments, is listed on the National Register of Historic Places (Source: Will Maupin, [CC BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/)). Right. Milwaukee Hotel is one of several SROs still in operation in Seattle's Chinatown International District neighborhood. (Source: MAKERS)

²⁵ RCW 36.70A.535(11)(a)

²⁶ "The Hotel Spirit", Slate. <https://slate.com/business/2022/07/hotels-rental-market-housing-prices-shortage-solution.html>

²⁷ "Microunits: A Tool to Promote Affordable Housing" in *Retooling Metropolis*. Armlovich, Alex. Manhattan Institute, 2016.

²⁸ "The Rich American Legacy of Shared Housing." Bloomberg, 2023. <https://www.bloomberg.com/news/features/2023-05-02/a-visual-history-of-single-room-occupancy-sro-affordable-housing>

Co-living establishments served people with a wide range of incomes and stages of life. Grander “hotels” offered centralized service perks like cleaning, meals, and laundry at the fraction of a cost of maintaining a larger home. More economical lodging houses, including those run by non-profit operators like the YMCA and Salvation Army, provided basic accommodations affordable to those who had fallen on hard times. With minimal private space available to them, co-living residents relied upon and patronized a rich variety of restaurants, small groceries, music halls, reading rooms, and night clubs, which was foundational to early and mid-20th century American urban culture.²⁹

As Americans’ economic opportunities, travel habits, and values shifted in the post-war period, co-living lost prominence and importance. Identifying safety problems and poverty associated with older co-living properties, urban reformers across the country enacted more stringent regulations that made it more expensive to operate and used zoning to prevent the creation of new co-living buildings.³⁰ Government led-efforts to demolish existing co-living buildings for “slum clearance”, along with gradual decay of older buildings, reduced the number of remaining pre-WWII co-living buildings, now most commonly referred to as single-room occupancy hotels or “SROs”. By the 1980’s, most co-living housing stock in major cities was demolished or converted to other uses, while public housing and subsidized apartments were not built at a large enough scale to replace the gap in affordability left by co-living, contributing to rising urban homelessness. In response, new policies were passed to preserve existing SROs, even as creation of new co-living buildings remained illegal.

New Beginnings

Starting in the 2000’s some developers in the Seattle area noted rising housing costs that created the need for new low-cost apartments in desirable neighborhoods. These developers explored flexibility in Seattle’s zoning regulations for congregate housing, i.e. small sleeping units with shared kitchens. From 2009 to 2015 they built thousands of congregate housing “micro-units”, targeted at young renters, recent arrivals, and students. This new housing option provided an affordable alternative as overall housing prices continued to spike, but also incited a strong backlash concerned about livability and neighborhood impacts. After code changes around 2015 tempered Seattle’s micro housing boom developers continued to seek out opportunities in for new co-living in Redmond, Kirkland, commercial zones in Seattle (where congregate housing was still allowed), and other cities.³¹ Developers have also explored conversions of older motels into micro-units in cities around the state in recent years.



Example of early 2010’s congregate housing in Seattle. Source: MAKERS

The design of this new co-living housing has evolved considerably from twentieth century models, with contemporary architectural styles and amenities, as illustrated in the examples below.

²⁹ *New Homeless and Old*. Hoch, Charles, and Slayton, Robert A. Temple University Press, 1989.

³⁰ “Rooming Houses: History’s Affordable Quarters.” Sightline Institute, 2012. <https://www.sightline.org/2012/11/14/rooming-houses-historys-affordable-quarters/>

³¹ “When is Seattle Going to Fix Micro-Housing?” Sightline Institute, 2021. <https://www.sightline.org/2021/02/04/when-is-seattle-going-to-fix-micro-housing/>

Co-living Examples

While some older pre-zoning co-living buildings survive, modern co-living buildings have been built in Washington cities in the past two decades, marketed as micro-studios, micro-units, congregate apartments, eco flats, residential suites, or with the brand name “aPODments”. Examples showing the range of scale and form these buildings take are included below.



The Kärsti

Seattle, 2020

52 co-living units + 334 sf commercial space

Co-living unit size range: 187-276 sf

Lot size: 5,000 SF

Parking: zero off-street parking

Mixed-use income-restricted (MFTE) congregate apartments built in one of Seattle’s mixed-use zones.

Photo courtesy of Neiman Taber Architects



Arete Apartments

Kirkland, 2015

228 co-living units, 52 dwelling units, and 7,200 sf commercial space

Co-living unit size range: 185-286 sf

Lot size: 62,220 SF (two parcels)

Parking: 255 off-street spaces

Large mixed-use complex incorporating both co-living units and traditional one-, two-, and three-bedroom apartments.

Image courtesy of Natural and Build Environments, LLC



Ramiro’s Place

Seattle, 2014

22 co-living units

Lot size: 3,200 SF

Parking: zero off-street parking

Co-living unit size range: 131-175 sf

One of many micro-unit buildings built in Seattle between 2012-2015 prior to code changes that increased the minimum unit size.

Image source: MAKERS



Tudor Apartments

Remond, 2011

61 co-living units

Lot size: 14,387 SF (nine parcels)

Parking: 30 off-street parking spaces

Co-living unit size range: 222-301 sf

Micro-suite building designed to mimic appearance of townhouses.

Photo courtesy of Natural and Build Environments, LLC

Benefits of Co-Living Housing

As housing in Washington has become increasingly unaffordable, interest in co-living has grown. Co-living housing has many benefits, including:

- Providing market-rate, non-subsidized rental homes affordable to people in the workforce earning as low as 50 percent of area median income (older co-living units in Spokane area cost \$350 per month, and in the Puget Sound suburbs some new co-living units are renting for \$1,000 per month)
- Offering housing options for people who want a low-cost, private alternative to living with roommates
- Creating a living arrangement with shared community spaces that facilitate social connections
- Increasing affordable housing options in high opportunity neighborhoods with transportation options
- Reducing energy demand since units are small and new housing can reduce commutes and sprawl

Modern co-living buildings are high-quality and can feature desirable amenities. Stakeholders note that co-living is a great option for seniors looking to downsize their living arrangements and that co-living helps build communities and reduce loneliness for people of all ages. They are especially well-suited for urban infill on narrow lots because the rent per square foot tends to be higher than other multifamily building types.³² Like any other development, co-living buildings must comply with all building, fire, and life safety codes.

For these and other reasons, co-living is an effective way to help accommodate housing needs for the state's growing population. For more information, see the Legislature's findings in the notes section of [RCW 36.70A.535](#) under "Intent—Findings—2024 c 180."

Messaging

While once common, it has been decades since co-living uses like SROs and boarding houses were widely permitted in most cities. Planners in jurisdictions implementing RCW 36.70A.535 may encounter members of the public and elected officials with questions about the legislative requirement to re-introduce and allow co-living as a permitted use in on lots that allow at least six multifamily residential units.

RCW 36.70A.535 provides the framework for regulating co-living, including where co-living must be a permitted use and limitations on jurisdictions regarding how certain development standards may be applied. Planners and public officials do have an important role to play in public communication and education about co-living and the residents who may live in co-living units, including why the State legislation was passed. In addition to the benefits of co-living identified above, planners and public officials should review the points below and consider incorporating them in public facing materials on co-living.

Framing Discussion of Co-Living

- Allowing co-living housing implements a state requirement and offers one more housing option to achieve the statewide housing needs projection developed by Commerce for 1.1 million homes over the next 20 years.
- Co-living is a way for the private market to take pressure off publicly-subsidized affordable housing. More than a third of Washington households are housing cost-burdened, meaning they pay more than 30% of

³² "The Macro View on Micro Units," Urban Land Institute, 2014.

their income in housing costs, and there isn't nearly enough income-restricted affordable housing to house everyone who would qualify for it.

- Recently built co-living housing in Kirkland and Redmond is popular with service sector workers, seniors, and young professionals.
- Different types of housing are better suited to people at different stages of life, and in different types of employment. A broad range of housing options can also help people adjust to abrupt changes in income or family status.
- Shared living spaces like common kitchens and dining areas encourage social interaction between residents.
- The building code places well-vetted minimum standards on habitable space.
- Co-living housing is environmentally friendly. Co-living housing is generally located near destinations, allowing residents to drive less. Small units with shared walls require less energy to heat and cool.

The following resources may be shared with members of the public and elected officials who want to learn more about co-living housing.

- [FAQ: Co-living for Washington State, Sightline Institute, 2023](#)
- [America Redux Excerpt: The Rich American Legacy of Shared Housing, Bloomberg Citylab, 2023](#)
- [Cruel Musical Chairs \(or Why Is Rent So High?\), Sightline Institute, 2017](#)
- [Micro-apartments are back in Seattle after disappearing decades ago, Seattle Times, 2024](#)
- [Why some Seattle area seniors are choosing dorm-sized apartments, KUOW, 2024](#)
- Additional videos and informational materials in English, Chinese, and Spanish are available at the [Department of Commerce Housing Planning webpage](#).

Resources for public engagement strategies:

- [STEP Messaging Guide, Department of Commerce, 2024](#). Note: while STEP is different from co-living, the strategies described may also be useful for communicating about co-living.
- ["You Don't Have to Live Here" Why Housing Messages are Backfiring and 10 Things We Can Do About It, Frameworks Institute, 2016](#)
- [Building Support for Affordable Homeownership and Rental Choices, Center for Housing Policy, 2013](#)
- [How Does Affordable Housing Affect Surrounding Property Values? Housing Synthesis Research Project, 2008](#).
- [Myths and Facts about Affordable & High Density Housing, California Planning Roundtable, 2002](#)

Internal Staff Engagement

Co-living regulations touch on multiple departments within a jurisdiction. Staff in other departments whose work involves permitting and development review may be unaware or not well informed about the requirements of RCW 36.70A.535 and benefits of allowing co-living housing in multifamily zones.

It is important to pro-actively communicate with other department staff about the jurisdiction's obligation to incorporate co-living into the multifamily permitting procedures. To help address potential issues, focused staff workshops and mock pre-application meetings can be highly valuable. For example, in anticipation of allowing middle housing (small multiunit buildings like duplexes and townhouses) in low-density residential zones the City of Shoreline held several mock pre-application meetings to daylight questions, confusion, and inconsistencies in permitting procedures. According to staff, the process helped identify the need for more

specific standards related to fire access and utility fee rates, as well as several provisions outside of the zoning code that needed to be updated. A similar process for co-living could be beneficial.

Some potential questions to review with staff and non-city service providers such as water districts and fire districts:

- Are all of those involved in the permit review process aware of the legal requirement to permit co-living buildings?
- What information is needed to review a co-living permit application?
- Are there existing regulations which conflict with co-living, RCW 36.70A.535?
- How does the code address converting dwelling unit-based standards (such as open space square feet per unit) when dealing with much smaller sleeping units?
- Do permit reviewers know if, or how much, parking or usable open space is required?
- Do permit reviewers know the impact fee rate per sleeping unit, and does this accurately reflect likely impacts?
- Are permit reviewers aware that sewer connection fees for co-living are calculated at no more than one-half a dwelling unit, unless findings are made to allow connection fees to exceed the one-half threshold?
- Can the Building Official provide a summary of minimum unit sizes for a sleeping unit?

Do utility providers have the information they need to adequately forecast potential demand from co-living buildings?

APPENDIX B: Parking Near Major Transit Stops

Measuring One-Half Mile Walking Distance

Jurisdictions can measure distances from major transit stops in at least two different ways. Each method comes with advantages and disadvantages. The chosen methodology should be identified in the code, perhaps within a definition of “walking distance”, to ensure the methodology is consistently applied and measured over time. Inclusion of the walking distance area on the zoning map, would offer greater certainty to property owners and others as to which parcels are and are not included in the walking distance requirements of a major transit stop. A potential downside to this approach is the need to go through a procedural process to amend the zoning map should the walking distance need to be amended over time due to physical improvements that change the walking distance or routes.

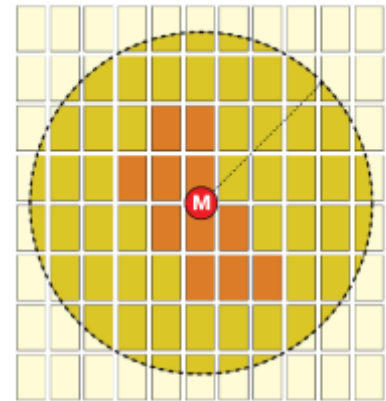
For both methods it is important to consider whether to place a center point of the major transit stop or use the perimeter of the major transit stop. In general, separate radii should be drawn for each boarding and alighting point if they are separated by more than 100 feet, such as a north-bound and a south-bound bus stops that are located at opposite ends of a block. For large major transit stops, such as a rail station, the most straightforward approach is to locate center points in the middle of the station platforms. However, the optimal approach should always be determined using the best judgement of the jurisdiction.

Radius, with Adjustments

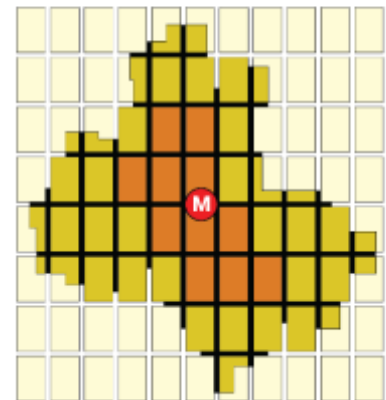
In this approach, a circle is centered on the major transit stop and the radius of the circle is the required distance. All applicable lots which are fully within the circle should be applicable. Lots which are partially within the circle should also be applicable in order to increase housing capacity near major transit stops, though a jurisdiction can also set other criteria such as at least 50 percent of a lot or a minimum amount of lot area is in the circle for the lot to be included.

This method has the advantage of being easy to execute. A consideration is where precisely the circle is centered for large major transit stops, such as a rail station; the approximate center of the stop or platforms is most straightforward and avoids potential complexities with using pedestrian entrances and property boundaries - however, this should be determined on a case-by-case basis using the best judgement of the jurisdiction.

This method has the disadvantage of not accounting for conditions that can constrain walkability and reduce the actual area that is in reasonable walking distance of the major transit stop, such as terrain, water bodies, missing pedestrian routes, or infrastructure barriers. This disadvantage could be overcome by first drawing the



Radius



Path-Finding

Conceptual illustration of different methods for measuring walking distance. Orange on the map represents a multifamily zone and yellow represents a middle housing zone. Source: MAKERS

circle and then customizing and adjusting it to remove areas which are not reasonably in walking distance due to local conditions. Areas which are removed should have documentation explaining why they are exempt.

Path-Finding

In this approach, actual walking paths extending from a major transit stop for the required walking distance are mapped using a geospatial analysis of the local street network and other pedestrian routes such as off-street trails. All lots zoned predominantly for residential use which touch the walking paths are applicable.

This method has the advantage of more accurately capturing lots within actual walking distance of major transit stops.

This method has the disadvantage of requiring access to geospatial analysis software and the skills, funding, and time to employ it. This method also requires that the analysis be repeated from time-to-time to account for changes to pedestrian infrastructure. In some cases, these disadvantages could be overcome by hiring an outside consultant who specializes in geospatial analysis. Network analysis results created for this purpose should be displayed on zoning maps and made available for download on public geographic information system (GIS) databases, if possible.

CO-LIVING CHECKLIST

This checklist provides the framework Commerce regional planners and local jurisdictions will use to review periodic update submissions. **This checklist is NOT required to be completed by each jurisdiction;** it is an additional tool to help meet the intent of the statute.

The Washington Legislature passed Engrossed 2nd Substitute House Bill 1998 (“E2SHB 1998”, commonly referred to as “HB 1998”) in 2024. The provisions of HB 1998 are codified in RCW 36.70A.535. Cities and counties planning under the Growth Management Act are required to adopt development regulations allowing co-living as a permitted use on any lot located within an urban growth area that allows at least six multifamily residential units, including on a lot zoned for mixed-use development. The bill provides standards for unit size, parking, density, fees, and other development regulations.

The requirements of co-living are applicable to all “fully planning” counties and the cities and towns within those counties. To know if your community is in a fully planning county, visit the Commerce [interactive map](#).

A city or county subject to the requirements of this section must adopt or amend by ordinance and incorporate into their development regulations, zoning regulations, and other official controls the requirements of this section to take effect no later than December 31, 2025, or the requirements of RCW 36.70A.535 [will supersede, preempt, and invalidate](#) any conflicting local development regulations. [RCW 36.70A.535\(9-10\)](#)

Any action taken by a city or county to comply with the requirements of this section is not subject to legal challenge under this chapter or chapter [43.21C](#) RCW.

For more information on co-living and how to incorporate it into local regulations, see Commerce’s [guidance for co-living](#).

Questions? Contact Lilith Vespier at Lilith.Vespier@commerce.wa.gov 360-890-5100.

CO-LIVING CHECKLIST

Code requirements for fully-planning cities and counties	Consistent? Yes/No	Comment
<p>a. Co-living housing means <i>a residential development with sleeping units that are independently rented and lockable and provide living and sleeping space, and residents share kitchen facilities with other sleeping units in the building.</i></p> <p>Local governments may use other names to refer to co-living housing, such as congregate living facilities, single room occupancy, rooming house, boarding house, lodging house, or residential suites. RCW 36.70A.535(11)(a)</p>		
<p>b. Allows co-living housing as a permitted use on any lot within an urban growth area that allows at least six multifamily residential units. This includes lots zoned for mixed-use development. RCW 36.70A.535(1)</p>		
<p>c. Treats a sleeping unit in co-living housing as less than or equal to one-quarter of a dwelling unit for purposes of calculating dwelling unit density. RCW 36.70A.535(7)</p>		
<p>d. Does not require co-living housing to contain room dimensional standards larger than those required by the state building code. This includes dwelling unit size, sleeping unit size, room area, and habitable space. RCW 36.70A.535(2)(a)</p>		
<p>e. Does not require co-living housing to provide a mix of unit sizes or number of bedrooms. RCW 36.70A.525(2)(b).</p>		
<p>f. Does not require co-living housing to include other uses. RCW 36.70A.535(2)(c)</p>		
<p>g. Does not require any development regulations for co-living housing that are more restrictive than those required for other types of multifamily housing in the same zone. RCW 36.70A.535(4)</p>		
<p>h. May only require a review, notice, or public meeting for co-living housing that is required for other types of residential uses in the same location, unless otherwise</p>		

<p>required by state law. This includes shoreline regulations under RCW 90.58 . RCW 36.70A.535(5).</p>		
<p>i. Does not exclude co-living housing from participating in affordable housing incentive programs under RCW 36.70A.540. RCW 36.70A.535(6)</p>		
<p>j. Treats a sleeping unit in co-living housing as no more than one-half of a dwelling unit for purposes of calculating fees for sewer connections. Exception: if the city or county makes a finding, based on facts, that the connection fees should exceed the one-half threshold. RCW 36.70A.535(8)</p>		
<p>k. Parking limits: Does not require off-street parking for co-living housing within one-half mile walking distance of a major transit stop. RCW 36.70A.535(3)(a)(i) Exceptions:</p> <ul style="list-style-type: none"> • If an empirical parking study demonstrating that meeting these requirements would be significantly less safe to pedestrians, drivers etc. is certified by Commerce. RCW 36.70A.535(3)(b) • Portions of cities within a one-mile radius of Seattle-Tacoma International Airport. RCW 36.70A.535(3)(b) 		
<p>l. Parking limits: Does not require more than 0.25 off-street parking spaces per sleeping unit for co-living housing. RCW 36.70A.535(3)(a)(ii) Exceptions:</p> <ul style="list-style-type: none"> • If an empirical parking study demonstrating that meeting these requirements would be significantly less safe to pedestrians, drivers etc. is certified by Commerce. RCW 36.70A.535(3)(b) • Portions of cities within a one-mile radius of Seattle-Tacoma International Airport. RCW 36.70A.535(3)(b) 		



PLANNING COMMISSION AGENDA ITEM COVERSHEET

Meeting Date: 3/11/2026

Agenda Category: Agenda Items

Prepared By: Jennifer Ballard, Senior Planner

Subject

Washington State Department of Commerce Short Course on Local Planning

Strategic Priority

Strategic Priority I - High Performance Government

Recommended Motion

None. This is an informational item only.

Summary

The Short Course on Local Planning (Short Course) provides basic information on planning in Washington at no cost to course participants and includes:

- An overview of the complex mix of land use planning laws that work together to support land-use decision-making in Washington state.
- An introduction to comprehensive planning and plan implementation under the Growth Management Act.
- A review of the roles in planning and best practices for public participation.
- Mandatory training on the Open Public Meetings Act and Public Records Act for local government officials.

The course is offered both in person and online.

The next online courses:

Tuesday, March 24, 2026, 1-4 p.m.

Wednesday, May 27, 2026, 6-9 p.m.

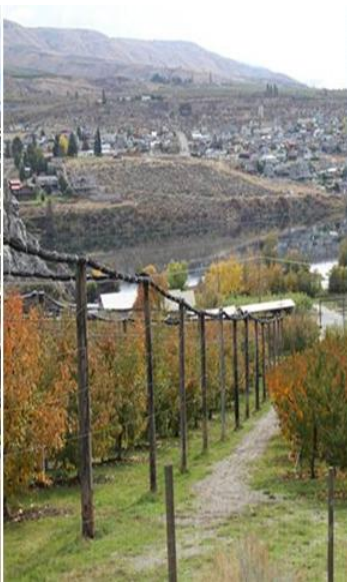
Register at <https://www.commerce.wa.gov/growth-management/education-outreach/short-course/>

The next in-person course:

Campbell's Resort in Chelan, WA, April 22, 2026, 4-7 p.m.

Attachments

1. Short Course Booklet
2. Public Records Act, MRSC v.2025.12
3. Open Public Meetings Act, MRSC v.2024.07



A Short Course on Local Planning

The Short Course on Local Planning, always free and open to all, has been presented in Washington communities since 1977.

Table of Contents

Washington's framework for land use planning.....	3
Constitutional issues in land use planning	5
Comprehensive planning under the Growth Management Act	7
Roles in planning process	11
Typical steps in the legislative process	13
Short form of procedures for quasi-judicial public hearings.....	14
Appearance of Fairness doctrine.....	15
The Open Public Meetings Act (OPMA)	16
Acknowledgements	17

If you are a planning commissioner, this course was created especially for you. It is also a source of basic information for staff, elected officials and the general public about land use planning processes in Washington State.

Agency contact

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shortcourse@commerce.wa.gov
Growth Management Services
360-259-5216

GROWTH MANAGEMENT SERVICES

Why plan?

Land areas have been planned by people across the world for thousands of years. This work included concepts for the placement of buildings, transportation access, infrastructure, public spaces and much more. In the early 1900s, many communities in the U.S. began more formally planning for their local needs. The importance of comprehensive planning became more evident as communities grew and concerns rose about environmental protection, economic vitality, infrastructure, public health and safety, housing, and natural resource conservation.

For example, between 1990 and 2024, our state's population grew from **4.1 million** people to **8.0 million** people. It is projected to grow to **9.8 million** people by 2050.¹

Adding more people, along with other factors, can change our communities. By anticipating that change through comprehensive planning, communities can plan for development and manage the way they grow.

Your community's comprehensive plan starts with a vision of a preferred future, which looks ahead at least 20 years. This vision and the plan's goals and policies guide local actions to help your community achieve its desired future. Your plan helps you to:

- Protect and enhance the good things about your community, such as neighborhoods, parks, or open spaces.
- Identify community needs and how to meet them.
- Save money by identifying priorities for public spending and be prepared to find and use external sources of funding.
- Identify and develop achievable strategies for your community's needs, such as affordable housing or more jobs. While local governments by themselves don't create housing or jobs, they can set the stage through planning.
- Build a stronger sense of community, grow your local economy, and coordinate with other agencies in the region.
- Be better prepared to meet the needs of the future.

¹ www.ofm.wa.gov

Each one of us has a stake in our community's future. We all want to live in great places, but they don't happen by accident. They happen because people care about their communities and take the time to ask what's good here, what's missing, what could be better, and how we will plan for growth that will likely come. Comprehensive planning is a process for people to work together to make great communities.

Washington's framework for land use planning

Long before the Growth Management Act was adopted, a variety of constitutional provisions and state laws enabled local planning.

The constitutional basis for planning

The constitutionality of local governments regulating land use was tested and upheld in a 1926 U.S. Supreme Court decision. In **Village of Euclid v. Amber Realty**, the court found that government has a legitimate interest in regulating where certain land uses should occur, in what form, and under what process. The court allowed the Village of Euclid to designate specific areas of land for specific uses. This authority is now known as "zoning."

The Washington State Constitution (*Art. 11, Sec. 11*) recognizes that state and local governments have authority to make police, sanitary and other regulations so long as they support public health, safety, morals or general welfare and don't conflict with general laws.

Planning at the subdivision level

While some early communities were master planned, many grew organically, or were "planned" at the subdivision level through application of Washington's subdivision statute. This law requires that before subdivisions are approved, appropriate provisions are made for:

"The public health, safety, and general welfare, and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school". RCW 58.17.110

Every city and county must have local codes that implement this law and must approve subdivisions consistent with this law.

Early planning statutes created tools to allow land use planning.

Washington State adopted laws before 1970 to allow land use planning at the local level. Local governments use one of these laws to authorize local planning.

Planning Commission Act (RCW 35.63) allows comprehensive planning by a city or county through a planning commission or planning agency. This was extended to all code cities by RCW 35A.63.

Planning Enabling Act (RCW 36.70) is directed at counties and requires a more detailed comprehensive plan.

Major land use laws

Washington State has three major statutes that overlay the basic planning laws. They provide processes for the planning and management of land and development. These are encoded as the Revised Code of Washington (RCW). Agencies can also develop guidelines to implement state law, adopted as Washington Administrative Codes (WAC).

The State Environmental Policy Act

(SEPA) is modeled on the National Environmental Policy Act (NEPA) and requires a review of the impacts that a plan, regulation, or development project may have upon the natural and built environment to give decision makers full information about the potential consequences of their decision. SEPA applies to every comprehensive plan amendment, most amendments of municipal land use regulations, and many types of development projects. Every proposal or project subject to SEPA must document anticipated environmental impacts. This is done by using environmental checklists, threshold determinations and specific, scientific analyses. For large or complex projects, an "environmental impact statement" is often required (RCW 43.21, WAC 197-11, and on-line SEPA Handbook, Department of Ecology).

The Shoreline Management Act (SMA)

arose out of a citizen initiative and is intended to protect the ecological functions of **shorelines of the state**, plan for water-dependent uses, and for public access. Shorelines of the state include marine shorelines, rivers, large lakes, and associated wetlands and flood zones. The SMA requires local governments with these shorelines to adopt a Shoreline Master Program (SMP), which identifies regulated shorelines and shore lands within their jurisdiction, permitted uses, and policies guiding those uses. The Department of Ecology must

approve all SMPs and ensure that they are consistent with state policies and guidelines. (Chapter 90.58 RCW, 1971, and WAC 173-26, Part III)

www.ecy.wa.gov/programs/sea/shorelines/smp

The Growth Management Act (GMA)

requires certain populous and fast-growing counties and the cities within them to adopt comprehensive plans containing specific information and analysis, with twin goals of focusing urban growth and protecting rural and resource lands from sprawl. The GMA requires coordinated regional and local planning and spells out the elements that must be included in comprehensive plans. All development in counties and cities that fully plan under the GMA must be regulated by rules that are consistent with and implement the comprehensive plan. (Chapter 36.70A RCW, 1990, and WAC 365-196

www.commerce.wa.gov/serving-communities/growth-management/)

Some Federal laws that influence local land use planning

Federal lands, including Federal Indian Reservations, military reservations, national parks, forests, monuments and wildlife refuges make up 51 percent of Washington's land area.

Tribal interests may intersect with local land use planning. There are 29 federally recognized tribal governments within Washington, and 25 Indian reservations, comprising more than eight percent of Washington's land base. Tribes are recognized as distinct, independent, political communities, wholly responsible for planning and permitting on reservation lands. Tribes also participate in "government to government" consultation on a variety of issues like transportation, land use, gaming, hunting and fishing. As of 2022, SHB 1717 requires counties to engage in land use planning with federally recognized tribes that have a reservation or ceded lands within the county. (Governor's Office of Indian Affairs, goia.wa.gov)

As authorized by the **Clean Water Act**, the **National Pollutant Discharge Elimination System (NPDES)** Permit Program controls water pollution by regulating pollutant discharge from point sources such as pipes or manmade ditches into waters of the United States. The Washington State Department of Ecology's Water Quality Program is delegated responsibility by the U.S. Environmental Protection Agency (EPA) for implementing all federal and state water pollution

control laws and regulations. A wastewater discharge permit is required for disposal of waste material into "waters of the state," which include rivers, lakes, streams, and all underground waters and aquifers. Permits stipulate specific limits and conditions of allowable discharge and may require certain activities. www.ecy.wa.gov/programs/wq/wqhome.html

The **Endangered Species Act (ESA)** was passed by congress in 1973 to protect and recover imperiled species and the ecosystems upon which they depend. Under the ESA, species may be listed as either endangered (in danger of extinction throughout all or a significant portion of its range) or threatened (likely to become endangered within the foreseeable future). The Act is administered by the U.S. Fish and Wildlife Service (terrestrial and freshwater organisms) and the U.S. Department of Commerce National Marine Fisheries Service (marine wildlife such as whales and anadromous fish such as salmon). The law's ultimate goal is to "recover" species, so they no longer need protection under the ESA. Cities and counties play a role in designating fish and wildlife habitat conservation areas and reviewing development proposals to consider threatened or endangered species. www.fws.gov/endangered/laws-policies/ and www.nmfs.noaa.gov/pr/laws/esa/.

There are many other state and federal laws that impact aspects of local planning, and thousands of state and federal court decisions interpreting and applying statutory planning rules.

Constitutional issues in land use planning

Community planning must balance many issues while creating a plan for managing growth. Constitutional rights and responsibilities must be respected. If you find yourselves with questions in these areas, ask your city or county legal counsel.

Due process

Procedural due process means that before government makes changes that significantly affect individual or property rights, citizens receive notice that a change is being considered, and they have the opportunity to comment. Procedural due process is most important as a part of permitting actions, it also applies to meetings. If an action would change the property rights of a property owner, legal notice and an opportunity to be heard are required. Failure to give proper notice of a meeting could invalidate any action taken at the meeting.

Substantive due process means the right to be subject to rules that are reasonable in aim and scope and that are appropriate for local government regulation. This means that any regulation should answer the following questions:

- **Is the regulation for a legitimate public purpose** such as protecting public health, public safety or water quality? Does it address issues that are the domain of local government?
- **Is the regulation appropriate to accomplish the purpose?** For example, if the goal is to protect water quality, is a requirement to build a house 75 or 100 feet away from a wetland an appropriate way to meet the goal?
- **Is the regulation reasonable?** Continuing the example, is the size of the setback appropriate to protect water quality, and based on the characteristics of the lot, can the property owner reasonably use their land? In cases where regulations may appear to conflict with the constitution, regulations should include an "out" (variance) for situations where otherwise constitutional regulations apply to a specific applicant in an unconstitutional way.
- **Is the regulation clear and easy to apply?** A proposed regulation must be clearly understood and fairly applied. Design guidelines can be particularly troublesome if they use subjective standards and

words such as "harmonious," or "in good relationship with the surroundings," which are difficult to enforce. Using pictures of acceptable building forms or window treatments can help to provide more clarity. A vague regulation can be invalidated if appealed to court.

Takings

Both the U.S. Constitution (5th Amendment), and the Washington Constitution (Art. I, § 16) state that no private property shall be taken (or damaged) for public or private use without just compensation having been made first. Where local governments have authority over the use of private property, they must be sensitive to the constitutional limits on their authority. Takings claims arise in three circumstances:

- **Physical occupation or damage:** Property has been physically invaded or appropriated through condemnation or an occupation that has a significant impact on the value of the property. Examples may include occupation for a storm water facility or a trail connection. This normally requires compensation, unless it can be shown as a need directly related to the particular project.
- **Regulatory takings:** Land use regulations may deprive an owner of reasonable use of his or her property, such as the right to buy and sell property, or the right to exclude others. Courts generally uphold regulations that protect public health and safety, or environmental concerns, even when these regulations substantially reduce property value. Zoning or other changes to a general regulation, which decrease or change the development potential of a property to meet the needs of the larger community is not considered a taking. However, if a regulation deprives the owner of "all economically viable use of a property" or "investor-backed expectations" (even if temporarily) the owner may be entitled to just compensation. For this reason, regulations should generally have some exceptions to allow reasonable use of property.
- **Exactions as a condition of development:** In order to impose conditions on land development, a local government must do the following:
 - Show a nexus or identify a problem the condition is designed to address. Nexus

means that the condition imposed must relate to and help solve the problem created by the development. For example, if ocean views are protected by the comprehensive plan or regulations, and a proposed office building would cut off that view, the mitigation condition must address the loss of view. Thus, a condition requiring a bigger side yard setback would have nexus because it allows more view, whereas a condition to build frontage improvements would not.

- Show that the proposed development will create or contribute to the problem.
- Show that the condition will solve or alleviate the problem.
- Show that the proposed condition is “roughly proportional” to the problem created or contributed by the proposed development. For example, if a subdivision would add thirty new daily car trips to the adjoining street, a mitigation condition cannot require the developer to build a five-lane freeway.

To avoid takings claims, pay attention to these warning signals

- Does the regulation or action result in a permanent or temporary physical occupation of property?
- Does the regulation or action deprive the owner of all economically viable uses of the property?
- Does the regulation or action deny or substantially diminish a fundamental attribute of property ownership?
- Does the regulatory action have a severe impact on the landowner’s economic interest?

Other constitutional protections

The constitution allows some rights and freedoms that may be in friction with a community desire to regulate activities.

The Equal Protection Clause (EP) is part of the 14th amendment to the US constitution. The 1868 clause provides that no state shall deny to any person equal protection of the laws. In the planning context, this typically arises in enforcement actions. In this case, cities and counties cannot be selective in choosing against whom or when to enforce regulations.

Religious freedoms allow individuals to practice their religion. Local government laws may be applied to

religious institutions. For example, synagogues, temples, or churches may be required to comply with parking and building codes, or hours of operation; however, the regulation must not interfere with the right to practice religion.

Freedom of expression allows individuals to express themselves in their own way. Regulations may address aspects of expressive media such as signs or adult entertainment establishments but must not interfere with the right to freedom of expression.

“64.40 Damages” for permit processing allows property owners who filed an application for a permit to file an “action for damages” to obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, or knowingly cause unlawful delay. (RCW 64.40)

Vesting

Washington state’s vesting rules generally entitle a property owner to use property according to the rules and regulations in place at the time a complete application for a building permit or a subdivision is submitted. Vesting rules enable developers with the right to proceed with their project even if, before the application is finally decided, the regulations affecting the project change.

Moratoria

A moratorium is a swift government pause on accepting applications for certain development types until a particular issue has been studied and addressed. Cities and counties can authorize a moratorium on accepting development applications for six months at a time; or up to one year if a work plan is developed for related studies. Examples include a proposed change in zoning or when a community faces a utility-related shortage. A moratorium cannot be used as a long-term land use tool. (RCW 35.63.200, RCW 35A.63.220, RCW 36.70A.390)

For Further Study

A Short Course on Local Planning Resource Guide, Chapter 4 Constitutional Rights and Responsibilities in Planning

Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property Bob Ferguson, Attorney General (2018) www.atg.wa.gov/avoiding-unconstitutional-takings-private-property
<https://mrsc.org/Home/Explore-Topics/Legal/Planning/Regulatory-Takings.aspx>

Comprehensive planning under the Growth Management Act

The Growth Management Act (GMA) was adopted in 1990 as a response to concerns about unprecedented and largely uncontrolled growth in the 1970s and 80s, and the risks that uncontrolled growth posed to our environment and quality of life.

The GMA has 15 goals

These goals guide preparation of comprehensive plans.

- Encourage compact urban growth
- Reduce sprawl
- Encourage efficient multimodal transportation
- Plan for and accommodate housing for all economic segments
- Encourage economic development
- Protect property rights
- Timely and fair permit processes to ensure predictability
- Maintain and enhance natural resource industries
- Retain open space, enhance recreation
- Protect and enhance the environment
- Encourage citizen participation
- Ensure availability of public facilities and services
- Identify and encourage historic preservation
- Ensure comprehensive plans adapt to and mitigate effects of a changing climate
- Manage shoreline development (Per SMA set forth in RCW 90.58.020)

The GMA has some basic requirements:

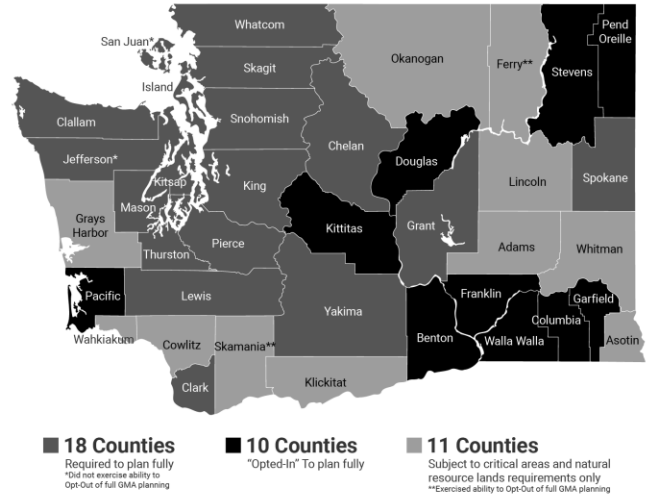
All counties must designate and conserve resource lands of long-term commercial significance.

“Designate” means identifying resource lands not characterized by urban growth and conserving them to protect forestry, agricultural and mineral extraction industries over the long term. Agricultural soils are carefully assessed for long-term commercial significance. (RCW 36.70A.170)

All counties and cities must designate and protect environmentally critical areas. These include wetlands, fish and wildlife habitat conservation areas, critical aquifer recharge areas, frequently flooded areas and geologically hazardous areas. Local governments must use the best available science and adopt regulations to protect functions and values of critical areas. (RCW 36.70A.172, WAC 365-195-900 to 925)

Faster growing counties must do more. In addition to the basic requirements above, faster growing counties, and the cities within them, must “fully plan” under the GMA, meaning they must agree on countywide planning policies, identify urban growth areas, and develop detailed comprehensive plans.

Fully and partially planning map



Countywide planning policies (CPPs) shape regional policy

Developed by a county and all the cities within the county, countywide planning policies help to ensure that plans within a county are consistent with one another and that they work together to manage growth. CPPs may include:

- A mechanism for the county to designate urban growth areas. Some counties have chosen to assign future annexation areas to adjacent cities.
- A means to allocate population and housing targets to each city for incorporation into each city's comprehensive plan. Some counties have chosen to also allocate employment targets.
- Policies that address siting of public facilities of a countywide or statewide nature such as wastewater treatment facilities, highways, prisons or airports.
- Policies to address the need for housing affordable to all income segments.
- Other regional issues such as economic development.

In the Puget Sound Region, Snohomish, King, Kitsap, and Pierce counties are required to develop multi-county planning policies to guide development in a coordinated way. These multi-county planning policies are published in Vision 2050, providing region-wide policies for guiding private development, public policies, regulations, and investments.

Comprehensive plan elements

The GMA (RCW 36.70A.070) and WAC 365-196 provide specific direction on the elements that must be included in a comprehensive plan and the contents of those elements. In general, each element must include an inventory of existing conditions, future needs, and policies to guide implementation.

- **The Land Use Element** includes a land use map showing where and at what density future growth will be accommodated. It must include policies for protection of the quality and quantity of groundwater, storm water run-off, and guidance for corrective actions to mitigate pollution of waters of the state, including Puget Sound, and consider strategies for physical activity.
- **The Housing Element** must inventory existing housing supply and describe how the community is planning for current and future needs of all income bands, including assumptions about the types of housing that could accommodate people in each income band. The element is also to look at the impacts of past racial discrimination and exclusion in housing and include policies to address future displacement.
- **The Transportation Element** must inventory existing transportation networks and identify needed improvements, including those that will arise with future growth. This element must address transit, if applicable, and include a bicycle and pedestrian component.
- **The Capital Facilities Element** must include an inventory of capital infrastructure such as parks or water and wastewater systems to understand current needs and future demands with growth. This element requires detailed financing information for the plan's immediate six-year time period along with cost estimates for providing capital facilities over the remaining life of the plan (typically 20 years). If a local government cannot pay for identified facilities, then it must re-evaluate and adjust the plan until the needs and the ability to pay are in balance.
- **The Utilities Element** must consider the infrastructure needed to provide electricity, natural

gas, and telecommunications, whether provided by the local jurisdiction or by other providers.

- A fully planning county must adopt a **Rural Element**, which defines rural land use patterns and policies to protect rural character. Counties may have designated pre-1990 development in limited areas of more intense rural development (LAMIRDs), in which higher levels of development may occur.

Optional elements

A jurisdiction may include other optional elements in the plan to meet unique local needs or preferences, such as a historic preservation, social services, or climate change element. RCW 36.70A.070 also includes an economic development element, and a parks and recreation element, but these are considered optional because funding was not provided to develop the elements when these elements were added to statute. Some counties with larger ports must also develop a port element (RCW 36.70A.085).

The comprehensive plan must be internally consistent.

Each plan element is based on the same future land use plan map and population projection. The plan must be consistent with the countywide planning policies and must also be coordinated with plans of adjacent cities and counties. Each jurisdiction's development regulations, planning activities and capital budget decisions must be consistent with and implement the plan.

State laws change

The Growth Management Act is often amended. Be sure to review the statute and latest guidance from Commerce on the planning requirements.

www.commerce.wa.gov/about-us/rulemaking/gma-laws-rules/

Implementing your plan

The GMA requires local government actions to not simply be “consistent” with the plan but to implement it. There are three main ways to implement a comprehensive plan: regulations, spending priorities and other tools.

Your jurisdiction has broad flexibility and choices in developing and implementing your comprehensive plan. It is up to you to determine the regulations, spending priorities and other tools that are the right fit and apply them carefully to help your community grow towards the vision.

Zoning and other development regulations shape the community

Development regulations are adopted into municipal codes. They are the rules for what kinds of development are allowed, what it will look like, and how development applications will be processed. These regulations provide predictability regarding future development. Local codes typically include the following components:

- Zoning codes implement the land use map, and provide standards on building height and setbacks, and lot coverage.
- A subdivision code sets out the requirements and procedures for processing subdivision applications. Street and utility standards specify the construction details of streets and other public facilities.
- Critical areas regulations guide development away from places that are inappropriate for development. They protect people and property from hazards such as flooding and geological hazards, and protect environmentally sensitive areas such as coastal areas, wetlands or wildlife habitat from the impacts of development.
- Concurrency programs ensure that public facilities such as roads, water and sewer are provided to serve development.
- Other regulations may implement specific comprehensive plan goals such as design guidelines, landscaping requirements or tree protection.

Capital facility elements set priorities for infrastructure investments

Within the needs set out in a capital facilities element, a jurisdiction may choose to invest in a certain area to address a social issue or encourage certain types of development. It also can choose to make specific types of infrastructure investments such as transportation or park facilities to implement the community vision. In making decisions about infrastructure investments, attention should be paid to equity and displacement impacts.

Other methods to implement goals

Cities and counties can choose to use a variety of other tools to achieve local goals.

- Inter-local agreements between counties and cities may authorize sharing of local authority to permit development or to share revenue in potential annexation areas.
- A detailed land use plan called a “planned action” for a specific sub-area such as a downtown or redevelopment area can offer greater predictability for both the developer and local jurisdiction and encourage the types of development envisioned in the plan by doing upfront environmental analysis to reduce risks.
- A transfer of development rights (TDR) program can be used to obtain the potential to develop in sensitive environmental lands or important resource lands and transfer that development potential into an urban area.
- Multi-family tax exemptions can encourage development of multifamily residential units and/or affordable units in targeted areas.
- Impact fees can help to pay for the added impacts of growth to the transportation, parks, or schools’ systems, or the fire department.

For Further Study

For specific topics, visit www.mrsc.org

Updating your comprehensive plan & regulations

The comprehensive plan is intended to be a long-range document that guides decisions over the long term. The plan can be updated only once a year so that changes are considered concurrently.

Plans need updating, to stay current. Every ten years, the Growth Management Act requires every local government to take a fresh look 20 years into the future and make appropriate updates to the comprehensive plan and development regulations.

Why update your plan and regulations?
The periodic update will help you to do the following:

- Respond to shifts in demographics, changes in state law, or new countywide planning policies
- Evaluate progress toward accomplishment of short-term goals in the existing plan
- Review long-term financial projections and agree on priorities to renew or expand infrastructure
- Plan for potential or newly annexed areas

Big picture, longer term issues

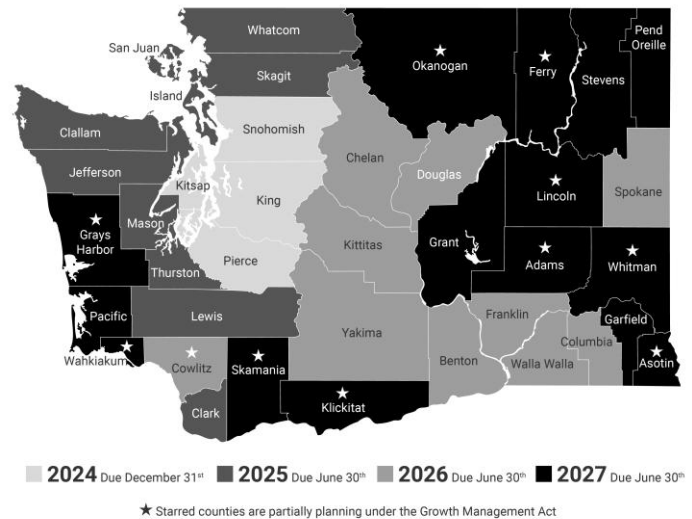
In addition to updating the required components of your comprehensive plan, your community may want to consider new or emerging issues.

- Changing demographics, like immigration and aging
- New forms of development and changing lifestyle preferences
- Impacts of climate change, such as sea-level rise, drought, or severe storms
- Rapidly changing technologies, such as on-line shopping and electric vehicles
- Local food production, physical activity, and sustainability concerns, such as local power production.

Update Schedule

The GMA includes a schedule which requires all counties and cities to update their comprehensive plan and regulations by rolling due dates of 2024 through 2028, and every ten years thereafter.

Periodic update map



Example steps to update your plan

- Let your community know the plan is being updated, and when and how they should participate.
- Review what exists now within your community and look ahead to what will be needed in 20 years.
- Develop a list of items to be updated in the plan. Work through the comprehensive plan amendments and ensure there are lots of opportunities for the community to participate in the process.
- Provide notice to the state 60 days before you intend to adopt so the plan can be reviewed for consistency with the GMA, and with state and regional plans. Unlike other states, Washington State does not approve local plans; they are presumed valid upon adoption.
- Update regulations to address changes in state law or to implement comprehensive plan policies.
- Adopt your comprehensive plan and regulation update before the statutory deadline; clearly state in the adopting ordinance that the periodic update is complete.

For Further Study:

www.commerce.wa.gov/serving-communities/growth-management/periodic-update/-update/

Roles in planning process

Many groups and agencies contribute to the process of land use planning and the development of the community. This collective experience and knowledge will help your community make wise and time-tested decisions that represent the broad public interest.

Elected officials are the legislative body of a city or county. They review policy recommendations from planning commissions regarding plans and development regulations, but only they have the authority to adopt plans and regulations. Elected officials also make decisions about how to fund capital facilities, and where to focus staff effort.

Planning commissioners are appointed by the elected body to represent broad interests of the community. They serve as a sounding board for new ideas, promote community interest in planning, and provide leadership in public participation programs. Planning commissioners make recommendations to elected officials.

Staff or consultants manage the planning process.

- Research and present information in staff reports, prepare draft plans, policies, and ordinances.
- Handle required public notice of meetings, actions, and keep the record of the process.
- Process administrative permitting applications and enforce adopted codes.

Most local governments hire **Hearings Examiners** to hear quasi-judicial development proposals and appeals of administrative land use decisions.

Other advisory groups such as a Parks Board, Diversity, Equity and Inclusion Commission, or Utility Commission, may be appointed to provide broad perspective on plans and regulations. Regional agencies and special districts such as school, sewer or water districts should participate in local planning to coordinate on land use and capital facility planning issues.

The Public includes a diverse collection of individuals, or groups such as the Chamber of Commerce, environmental groups, private utilities, or neighborhood groups.

Growth Management Hearings Board

Although the GMA permits direct review by the courts, the Legislature established the Growth Management Hearings Board and authorized that this Board will “hear and determine” allegations that a city, county, or state agency has not complied with the goals and requirements of the GMA, and related provisions of the Shoreline Management Act (SMA) RCW 90.58, and the State Environmental Policy Act (SEPA) (RCW 43.21C). In order to recognize regional differences, the Legislature created three Growth Management regions with Board members appointed from Central Puget Sound, Eastern and Western Washington. (RCW 36.70A.250-302) www.gmhb.wa.gov/default.aspx

The Board provides a less costly and expedited review of county and city comprehensive plans and development regulations. Appeals to the Hearings Board must be made within 60 days of the adoption of a plan or regulation. The Board’s decisions must be made 180 days after a petition is filed with the Board. If a city or county is found out of compliance with the Growth Management Act, they may not be eligible for certain state grants and loans.

Tribal engagement

Codified in 2022, SHB 1717 added the following requirements to comprehensive planning.

- Tribes may voluntarily participate in local government comprehensive planning (RCW 36.70A.040).
- Cities with a port element must collaborate development with the city, port and tribe(s) (RCW 36.70A.085).
- Commerce must share submittals with tribes on jurisdictions they have requested (RCW36.70A.106).
- Local jurisdictions must work with tribes to coordinate urban growth through an opt-in process (RCW 36.70A.110).
- Commerce must provide mediation services for comprehensive planning process or development regulations disputes (RCW 36.70A.190).
- Counties must invite tribes to participate in the development of countywide planning policies, including protections for tribal cultural resources (RCW 36.70A.210).

Public participation

Public involvement is an essential foundation of planning. When the public is engaged in the planning process, community decisions better reflect the shared values of the community as a whole. A good process helps contentious issues be understood, discussed, and hopefully, resolved through the planning process.

Public involvement ideas

When there is no specific proposal, it may be difficult to get public input on general matters such as a legislative recommendation for change. Examples of outreach that may attract public participation include:

- Insert a flyer in utility bills or city newsletters
- Use traditional media such as placing legal or display ads, and developing relationships with the local radio or print media
- Hold public open houses, workshops, or meetings
- Visit Chamber of Commerce meetings, Kiwanis, Rotary, neighborhood groups of all income levels, or other community meetings or staff information booths at community events
- Use social media such as websites, Facebook, building e-mail lists obtained from your own lists, or from the Chamber of Commerce, home-owner associations, faith-based and civic organizations, or other groups, including members of the community that you might not otherwise hear from, that can help you understand how better to equitably allocate resources.

If a member of the public, remember:

- If you are new to or unfamiliar with planning processes, ask questions of staff or have staff attend your organization's meetings.
- Planning processes take time, and you are an important part of the process.
- Stay informed and find out the opportunities and timing for public input. If possible, attend meetings that relate to the subject you are interested in.
- Be concise and respectful when testifying. Signing a petition does not replace participating in other ways.
- Fundamental choices about how the community wishes to develop and codes that development must meet are made at the time of planning, not permitting.

Effective planning commissions

Well-run meetings can improve public participation and can help your community make wise decisions. Here are some tips and tools for effective meetings:

- Ensure a quorum will be present at meetings (a majority, more than half, of the voting members holding office).
- Adopt bylaws, establish procedures, and use ground rules to provide basic structure for your meetings. Make an annual work plan.
- Elect a chair, and help the chair run a productive, effective meeting. Robert's Rules of Order are helpful, but not essential.
- The chair should make everyone feel welcome, and should work from a timed agenda, beginning and ending the meeting on time.
- The chair should ensure everyone is heard, and no one dominates. Everyone should have an open mind and treat all parties with due respect. At a hearing, members should address applicants, citizens, and staff by last name. First names suggest familiarity.
- Members should read the meeting packet ahead of time and come prepared to participate fully in the meeting.
- The group should use staff resources well, by asking staff to research issues, invite guests, manage the process, and ensure regular communication between council and planning commission.
- Each member of a deliberative body brings his or her own perspective, experience, and opinions to the table — but remember that you are a part of a team.

Types of land use decisions

Clarity in the rules of planning processes helps to support strong local decisions. Understand the types of local government actions and the various roles in the planning processes.

Depending on whether your planning commission is recommending land use policies or deciding on specific development proposals, different rules can apply.

Legislative decisions make the rules. These include amendments to the comprehensive plan, development regulations, or area-wide zoning. Recommendations on these changes are made by the planning commission but are adopted by elected officials. Public process and citizen participation are required. Decisions may be appealed to the Growth Management Hearings Board within 60 days of publication of notice of the decision.

Administrative and quasi-judicial decisions apply the rules.

1. **Administration decisions:** Staff are authorized to permit or deny proposals based on how a proposal meets established zoning and development standards. Examples include building permits or short plats.
2. **Quasi-Judicial decisions:** A planning commission, hearing examiner or elected body acts in a judge-like capacity, weighing evidence and adopting findings and conclusions. In these cases, the **Appearance of Fairness Doctrine** applies, and all communications on the proposal must be disclosed. Examples of quasi-judicial actions are conditional use permits or major variances.

The **Local Project Review Act** (RCW 36.70B, adopted in 1995) revised the way permits are to be processed in Washington State. Strict time limits are imposed for processing permit applications. For any quasi-judicial action requiring a public hearing, only one public hearing is allowed. Appeal processes for administrative and quasi-judicial actions are established locally and generally have a strict time limit. Appeals may be taken to a different local decision body, such as a city council, a hearings examiner, or to Superior Court under the Land Use Petition Act (RCW 36.70C). Appeals to Superior Court must be filed within 21 days of the decision.

Typical steps in the legislative process

Amendments Proposed: Changes to policies, regulations, or land use may be proposed by officials or interested parties. The planning commission is generally required to review the proposed change and make a recommendation to elected officials.

Professional Review: Staff or consultants provide a staff report reviewing proposed changes against established criteria and may make recommendations based on their analysis. The staff report should include:

- A concise explanation of the proposal.
- A review of applicable criteria and comprehensive plan goals and policies, regulations, state law, and constitutional limitations.
- An analysis of the facts relevant to the decision.

Public Review: The public is invited to provide comments on the proposed amendments. As a planning commissioner, you should prepare to hear public comment.

- Educate yourself in the details of the items at issue so you can understand public concerns.
- When necessary, set time limits for speakers, or organize testimony, so everyone has a chance to participate.

When listening to testimony, it is important for you to listen and be mindful of the relevant criteria or considerations that affect the issue in front of you.

At a public hearing:

- Listen and be patient. Understand which groups are providing comment and who is not represented.
- Watch your body language, and don't take things personally.

Recommendations

Your recommendations must be based on the criteria affecting the decision, and not just on how many people argue for a certain choice. Elected officials ultimately make the final decision and rely on your rationale for the recommendation.

Your recommendations should reflect adopted plans and regulations, community values, consider professional advice, and should be the result of thoughtful deliberation.

The record should include:

- A staff report, including references to decision criteria and local policies you used to make the decision.
- Minutes or a verbatim record of any hearing and any exhibits offered during the hearing.
- Findings supporting the reasons for approval or disapproval of the proposal.

Steps for quasi-judicial processes

Your planning commission may be involved in quasi-judicial processes. A quasi-judicial process is different than a legislative process because:

- The proposal is site specific.
- Commission members must not discuss the project outside of the hearing and must disclose any prior information or ex-parte contact about the proposal under the Appearance of Fairness doctrine.
- State law requires review and decision within timelines identified within the local code.

Short form of procedures for quasi-judicial public hearings

1. Chair declares the public hearing is open.
2. Chair states that everyone present will be given an opportunity to be heard; however, state if testimony is to be subject to time limits and also if the commission or council does have a policy of closing meetings at a certain time (e.g. 10:00 p.m.). State that the hearing is being recorded and that prior to speaking, individuals should state their names and addresses.
3. Appearance of Fairness.
 - a. Chair requests anyone who objects to the Chairman's participation, or any other commission or council member's participation, to please state so.
 - b. Chair asks the commission or council members if any have interest in the property or issue. Chair asks commission or council members if they can hear and consider this matter in a fair and objective manner.
 - c. Chair requests member of the commission or council to place on record the substance of any

communication each has had outside of the hearing with opponents or proponents on the issue to be heard. After the communication is placed on the record, the Chair should request whether any interested parties wish to rebut the substance of the communication.

4. Chair requests staff to make their presentation.
5. Applicants invited to comment.
6. Chair invites comments from citizens in favor of the proposal.
7. Chair invites comments from citizen against the proposal.
8. Chair invites applicants to rebut the opposition.
9. Additional comments from those against and those for the proposal should be recognized, if needed.
10. Chair requests whether the commission or council members have questions of the applicant, citizen, or staff.
11. Chair declares the public hearing closed.
12. Commission or council deliberates on the record, discussing Findings of Fact and Conclusions.

Appearance of Fairness doctrine

When boards, commissions, or councils are required to hold hearings, they must not only be fair, but they must also be free from even the appearance of unfairness.

This doctrine applies only to quasi-judicial actions of local decision-making bodies. These are actions that determine the legal rights, duties, or privileges of specific parties in a hearing such as development permit applications, site-specific rezones, subdivisions, variances, special use permits, or conditional use permits. **This doctrine does not apply to legislative actions** such as comprehensive plan amendments, development regulation amendments or area-wide rezones.

The basic standard is that if a person has an interest of any kind in an issue or takes evidence improperly outside of a hearing, the proceeding can be invalidated. These issues can arise in the following instances:

- You have a business, social or familial connection to a matter in front of the board.
- Someone approaches you outside of a hearing with information supporting or opposing a pending matter. This is called ex-parte communication and is not allowed outside of hearings. Tell the person you could be disqualified from participating in the hearing and that they should present their comments through the public hearing process.

Appearance of fairness concerns can be avoided by the following procedures:

- Poll the commission or board members at the start of each hearing to see if anyone has information related to appearance of fairness.
- Ask the audience if anyone wishes to voice an objection to the participation of any board or commission member due to appearance of fairness considerations.
- If there are objections, the board or commission member is provided the opportunity to disqualify or refuse to disqualify themselves from participating. A board or commission member disqualifying themselves from participation shall leave the

hearing room while the application is being considered.

For Further Study

A Short Course on Local Planning Resource Guide, Ch. 2

The Appearance of Fairness Doctrine in Washington State www.mrsc.org/subjects/legal/aofpage.aspx

Knowing the Territory: Basic Legal Guidelines for Washington City, County and Special Purpose District Officials. MRSC, October 2013.

The Open Public Meetings Act (OPMA)

The process of land use decision-making should be transparent and open to the public. OPMA training is required for members of any governing body of a public agency, sub-agencies, such as planning commissions, library boards, or certain committees that act on behalf of the governing body.

A meeting is defined as any regular scheduled meeting or special meeting of a body such as a council or a planning commission in which a majority of the body is present and discusses the business of the body. OPMA applies to councils, commissions or boards when they hold hearings, take public comment, deliberate or discuss, review or evaluate, or make decisions. Boards and commissions subject to OPMA requirements cannot meet as a quorum to discuss board/commission business, when that gathering has not been noticed as a meeting open to the public.

The OPMA requires that:

- All meetings must be advertised as to the place, the time and the agenda. Extra, special or moved meetings require special notice.
- All meetings must be open to the public.
- All discussion about governmental business must take place within the context of the meeting. Group emails, or a series of small meetings adding up to a quorum may be considered meetings and are subject to the OPMA.

Exceptions exist for discussion of sensitive topics such as litigation, real estate or contracts, but decisions must be made in a public meeting. Failure to comply with the OPMA may result in **personal** fines, invalidated actions, delayed process, and loss of the public trust.

OPMA Tips

- One-way emails are okay for distribution of information; it is best if these are from staff.
- Do not “reply all” to emails. Discussion of the commission’s business may be considered a meeting, even if it is by email. For transparency, group discussion should generally be limited to a public meeting for which advance notice has been given.

For Further Study

www.mrsc.org/subjects/legal/opma.aspx

The Public Records Act (PRA)

Public records training is required for elected officials and local public records officials.

A public record is any state or local record relating to the conduct of government or the performance of a governmental function, and which is prepared, owned used or retained (POUR) by any city, county, or district. Public records may include letters, documents, maps, sound recordings, or emails. The public is entitled to access applicable public records. This also applies to any government business conducted on personal electronic devices.

PRA Tips

- It is best practice for planning commissioners or elected officials to use a separate e-mail address (not their personal email address) for agency-related email.
- A separate email address is ideally provided by the jurisdiction to assure that records can be properly retained.
- The rule of thumb is “If you don’t want to see it on the front page of the paper, don’t write it in an email”.

For Further Study

Public Records Act for Washington Cities, Counties and Special Purpose Districts

<https://mrsc.org/Home/Explore-Topics/Legal/Open-Government/Public-Records-Act.aspx>

Local government Records Retention Schedules

<https://www.sos.wa.gov/archives/>

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The Washington Chapter of the American Planning Association (APA-Washington) is a local chapter of the National APA, which certifies professional planners. APA-Washington greatly supported the development of this publication. www.washington-apa.org/

Commerce also partners with city and county risk pools, who have a strong interest in ensuring their members have the training they require to avoid risk.

The Washington Cities Insurance Authority
www.wciapool.org/

The Association of Washington Cities Risk Management Service Agency.
<https://wacities.org/services/risk-management-service-agency>.

The Municipal Research and Services Center (MRSC) is a private, non-profit organization based in Seattle, WA. MRSC is a valuable source of information for local governments. www.mrsc.org

Disclaimer: This document is intended to provide a brief overview of the topics included in the Short Course on Local Planning and is not intended as legal advice. If questions related to this material arise in your community, consult your city or county's legal counsel.

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Congratulations

You have completed the **Basic Short Course on Local Planning**. To learn more on these topics, read the **Short Course on Local Planning Resource Manual** and the other resources listed in each section of this booklet. When available, attend a short course in person where you can get more depth on these topics, ask questions of presenters, and experience an exchange of ideas.

Learn more about planning

With this foundation in the Short Course content and the basic structure for land use planning, you might want to learn more detail about specific planning topics. Attend Special Short Courses on special topics or planning conferences from our partner planning associations. Dive into the wealth of planning resources available on the Web. Thank you again for your engagement in local planning and investing your time in your community's future.

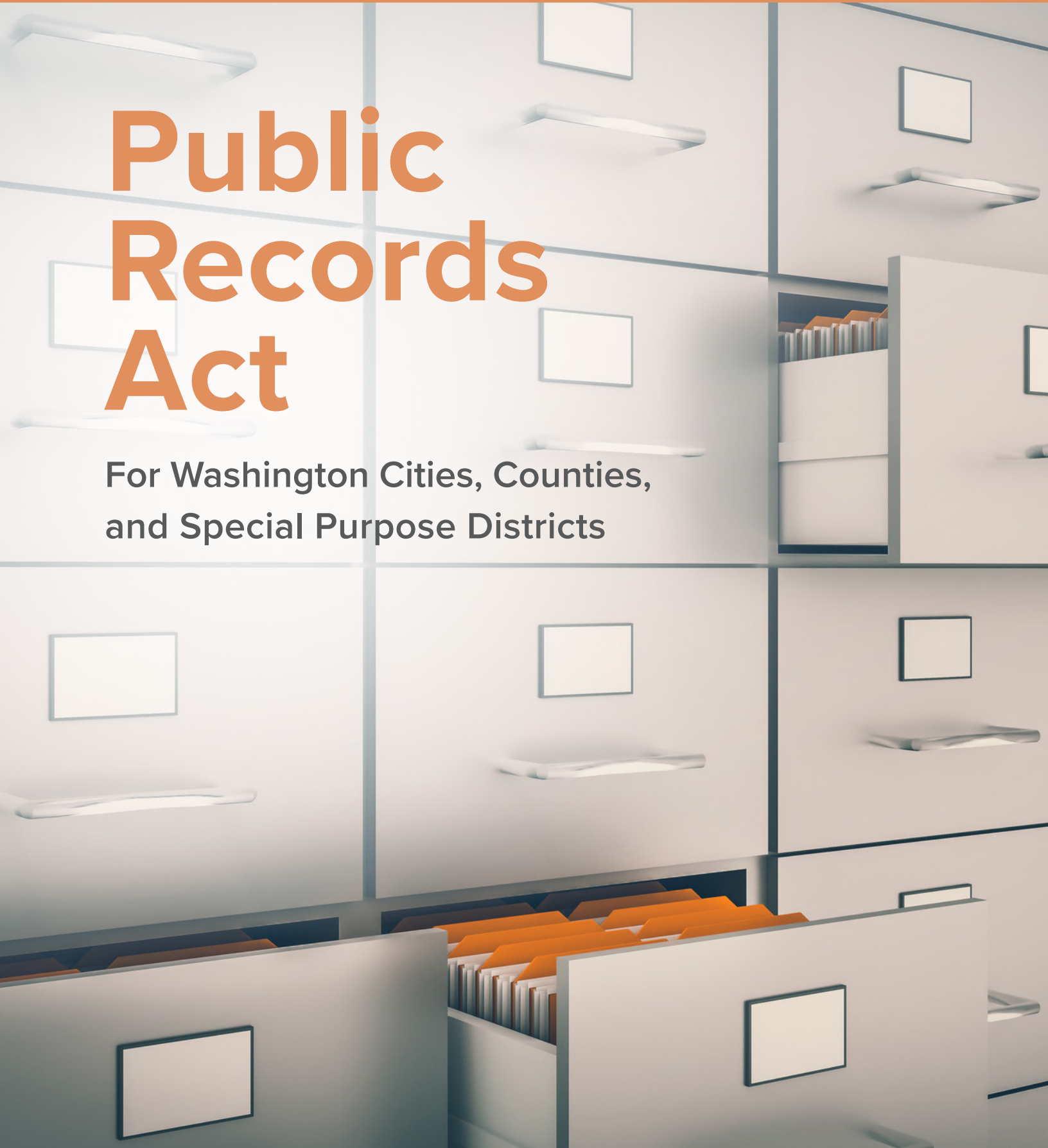


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Public Records Act

For Washington Cities, Counties,
and Special Purpose Districts



Public Records Act

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Revision History

MRSC does our best to update this publication every year to reflect any new legislation or other relevant information impacting city and town revenues. Below is a summary of significant recent changes. If you are aware of any other sections that you think need to be updated or clarified, please contact mrsc@mrsc.org. To make sure you have the most recent version, please go to mrsc.org/publications.

DATE	SUMMARY
December 2025	Entire document reviewed, re-written, and re-published in its entirety

Contents

Introduction	1
Background and Purpose	1
Who Must Comply with the PRA?	1
What Records Are Subject to the PRA?	2
Interpreting the PRA	2
The Importance of Compliance	2
How to Use This Publication	2
What Is a Public Record?	3
Definition of a Public Record	3
Records on Agency Devices and Accounts	4
Records on Personal Devices and Accounts	4
Records Held by Private Entities	4
Agency Obligations Under the PRA	6
Adopt Policies and Procedures	6
Identify the Public Records Officer	7
List of Non-PRA Exemptions	7
Index of Records	8
Agency Office Hours for In-Person Inspection	8
Provide Process for Local Review of Denials	9
Mandatory Training	9
Agency Obligations Under Other Statutes	10
Preservation/Retention of Records	10
Tracking Records Requests	11
Reporting Requirements	11
Tips for Starting the Process	13
Provide the “Fullest Assistance”	13
Assume Disclosure	13

Receiving and Tracking a Records Request	14
How Are Records Requests Received?	14
Does Identity and Motivation Matter?	14
Special Circumstances Related to Certain Requestors	15
Government Agency Requests	15
Internal Agency Requests	15
News Media	15
Prisoner Injunction Provision	15
Tracking a Request	16
Reviewing a Request and the Initial Response	17
Investigating a Request – Threshold Questions	17
What Is the Requestor Asking For?	17
Is It a Request for Identifiable Records?	17
Is the Requestor Asking the Agency to Create a Record that Does Not Exist?	17
Is It a “Standing” Request for Records?	18
Is It a “Bot” Request?	18
Is the Request Directed to the Correct Agency?	18
List of Individuals for Commercial Purposes	18
Frequently Asked Questions	20
Interpreting the Request	20
Does the Request Need Clarification?	20
Could the Request Be Narrowed?	21
Initial Processing of the Request	21
Issuing a Preservation Hold	21
Notice to Employees	22
The Five-Day Response Letter (i.e., Initial Agency Response)	22
Searching for and Gathering Records	25
Conducting an Adequate Search for Public Records	25
Tips on Searching for Records	25
Use a Checklist and Develop Search Terms	25
Manage Time and Resources	26
Search in Installments	26
Document the Search	26

Places to Search for Records	26
Agency Email Records	26
“Old” Equipment	27
Agency Databases	27
Server Back-Up Files	27
Metadata	28
Personal Devices and Accounts	28
Reviewing and Redacting Gathered Records	29
Determining Whether a Record is Responsive	29
Reviewing Records for Potential Exemptions from Disclosure	29
Maintaining a Working List of Commonly Applied Exemptions	30
Special Considerations for Reviewing Electronic Records	30
Redacting Records	31
Redacting Paper Records	31
Redacting Electronic Records	31
Providing an Explanation of Exemptions Applied (e.g., Exemption Log or Letter)	32
Optional (aka Third-Party) Notice to Interested Persons Regarding Disclosure	33
Procedure for Providing Third-Party Notice and Time to Respond	33
Mandatory Notice to Employees	34
Producing and Delivering Records	36
Installments and Deposits	36
Methods of Delivery	36
In-Person Inspection	37
Paper Copies	37
Electronic or Digital Copies	38
Copying Charges – Agency Options and Limitations	39
Option 1: Actual Cost	40
Option 2: Statutory Default Charges	40
Option 3: Flat Fee Up to \$2 per Request	40
Charges Associated with Law Enforcement Records	41

Closing a Request and Afterwards	42
Abandoned Requests	42
Closing Letter	42
After a Request Is Closed – Housekeeping	44
Agency and Judicial Review	45
Internal Agency Review	45
Judicial Review	45
Procedure and Penalties of Judicial Review	46
Exemptions Commonly Used by Local Governments	48
A General Note on Privacy and “Personal” Information	48
Public Employee Records	50
Employee Hiring (Application Materials, etc.)	50
Employee/Official Personal Information – Right to Privacy	51
Employee/Official Personal Information – Specific Exemptions	53
Workplace Complaints – Investigatory Records	55
Employee Health-Related Information	56
Employment Security Department Records	58
Personal and Financial Information (Non-Employee/Official)	59
Student Information	59
Child Information	59
Taxpayer Information	59
Financial Information	60
Utility Customer Information	60
Library Records	61
Religious Affiliation	61
Health Care Information When Public Agency is Health Care Provider	61
Health Related Information of Private Individuals	62
General Government Operations	63
Drafts or “Deliberative Process” Exemption	63
Attorney Work Product and Attorney-Client Privilege	64
Mediation Communications	67
Security of Information, Technology, and Physical Infrastructure	67
Real Estate Appraisals and Other Real Estate Records	68
Financial, Commercial, and Proprietary Information (Government Owned)	69
Civil Code Enforcement Investigative Records and Complainant Identities	70

Archaeological Site Information	71
Law Enforcement Records	71
Business-Related Exemptions	72
Financial, Commercial, and Proprietary Information (Private Parties)	72
Trade Secrets: Chapter 19.108 RCW	72
Copyrighted Materials: 17 U.S.C. § 106	73
Appendix A: Recommended Resources	74
Appendix B: Cross-Reference Guide for 2006 Recodification	75
Appendix C: Exemption and Prohibition Statutes Not Listed in Chapter 42.56 RCW	80

Introduction

BACKGROUND AND PURPOSE

In 1972, voters in Washington State approved Initiative 276, which required that all records maintained by public agencies be made available to the public upon request, with very narrow statutory exemptions. Now known as the Public Records Act (PRA), the state’s public disclosure statutes have evolved over time. The current version of the law is codified at [chapter 42.56 RCW](#). The intent of the PRA is to facilitate open and transparent government. It accomplishes this by mandating that the people have broad and timely access to public records. The public policy behind the PRA is explicitly stated in [RCW 42.56.030](#):

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 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. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

The PRA’s basic mandate is for public agencies to make records available on request for inspection or copying. This publication describes in detail what the statutory obligations are for public agencies and how agencies should respond to public records requests.

WHO MUST COMPLY WITH THE PRA?

The PRA applies to “every state office, department, division, bureau, board, commission, or other state agency” in Washington as well as “every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency” ([RCW 42.56.010\(1\)](#)). We use the term “agency” throughout this publication to mean local governments unless we specify that we are talking about state agencies.

Notably, the PRA does not apply to judicial records because the judiciary is not a “state or local agency” within the meaning of the PRA. See [City of Federal Way v. Koenig](#) (2009). Instead, public access to judicial records is governed by three court rules promulgated by the Washington Supreme Court – [GR 22](#), [GR 31](#), and [GR 31.1](#).

The corollary law for public access to federal public records is the Freedom of Information Act (FOIA). Sometimes requesters use “FOIA” and “PRA” interchangeably when referring to requests for public records. Technically, the PRA applies to Washington State public agencies and FOIA applies to federal agencies; however, a public agency should treat a request for records the same regardless of which term a requestor uses.

Questions may arise whether the records of non-governmental entities (such as nonprofit corporations or government contractors) are subject to disclosure under the PRA. The section on [Records Held by Private Entities](#) covers the relevant analysis in more detail.

WHAT RECORDS ARE SUBJECT TO THE PRA?

A public record is defined in [RCW 42.56.010\(3\)](#) as any writing that is prepared, owned, used, or retained by any state or local government agency that contains information related to government conduct or the performance of any governmental or proprietary function.

The courts interpret this language very broadly, finding that it encompasses “virtually any record related to the conduct of government.” See [O’Neill v. City of Shoreline](#) (2010).

More detail on how to determine whether something is a public record can be found under the chapter [What Is a Public Record?](#) in this publication.

INTERPRETING THE PRA

The Public Records Act ([chapter 42.56 RCW](#)) should not be read in isolation. There has been significant litigation surrounding the PRA, and decades of court decisions inform how agencies should be interpreting their obligations under the PRA. This publication includes citations to relevant case law and analysis where applicable. See also MRSC’s [Public Records Act Court Decisions](#) webpage. Likewise, agencies can refer to the Washington State Attorney General’s [Model Rules on Public Disclosure](#) ([chapter 44-14 WAC](#)) for guidance on how to evaluate and respond to specific types of requests.

In 2005, the state legislature directed the Attorney General to adopt advisory “Model Rules” for state and local agencies. While [chapter 42.56 RCW](#) provides the statutory framework for the disclosure of public records, the Model Rules provide practical, non-binding, advisory guidance on many issues that may not be clear in the language of the PRA itself.

Cities and counties should review the Model Rules and determine whether they wish to incorporate some or all of the Model Rules into their own local disclosure procedures or policies.

THE IMPORTANCE OF COMPLIANCE

Agency compliance with the PRA is important not only because it furthers the basic principle that the people’s government be open and transparent, but also because public agencies face the potential for significant financial liability if they improperly withhold records or otherwise fail to comply with the PRA.

Financial penalties can include fines, attorneys’ fees, staff time, and other costs associated with litigation ([RCW 42.56.550\(4\)](#)). See more in the [Judicial Review](#) section of this document.

HOW TO USE THIS PUBLICATION

The goal of this publication is to assist local agencies in meeting their obligations to the public under the PRA. Readers should use this publication in conjunction with MRSC’s [Public Records Act](#) online resources.

This publication provides general guidance and should not be construed as legal advice. Ultimately, agencies will need to consult with their attorneys regarding how to respond to specific records requests.

This publication will first provide an overview of the PRA, agencies’ procedural obligations, and helpful tips and insights on processing records requests. The second half of this publication reviews common exemptions. The appendices include other helpful resources.

What Is a Public Record?

Washington has one of the broadest and most inclusive definitions of “public record” in the country, which incorporates nearly every record that pertains to government. Not only is the statutory definition itself broad, but courts interpret that definition quite broadly as well. In *Nissen v. Pierce County* (2015), the court noted, “[t]his broad construction is deliberate and meant to give the public access to information about every aspect of state and local government.”

The State Attorney General’s Office has produced a helpful [flowchart](#) to assist when determining whether a record is a “Public Record” under the PRA.

DEFINITION OF A PUBLIC RECORD

A “public record” is defined in [RCW 42.56.010\(2\)](#) to include:

[...] 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.

While this definition is broad, it is still necessary to meet all of the elements within the definition for a record to be considered a “public record.” One of those elements is whether something is considered a “writing.”

“Writing” is defined by the PRA in [RCW 42.56.010\(3\)](#) to include:

[...] 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.

From this definition we see that pretty much any technology used to capture and express communication that pertains to the conduct of government will cause a record to meet the definition of a public record – regardless of where that record may be stored or retained.

Another element to consider is the subject matter of the record. If the record is in any way related to governmental activity, i.e., “relating to the conduct of government or the performance of any governmental or proprietary function,” it would fall within this element. This could include records regarding personnel, property management, agency correspondence, public outreach, regulatory activity, legislative activity, and more. However, if a record only discusses personal or other private business it will generally not meet this element of the definition.



Caution: It is possible for an entirely private or personal record to become a public record if the agency ends up using that record in the conduct of government, for example as part of a personnel action.

The final element of the definition is whether the record was “prepared, owned, used or retained” by that agency, as discussed below.

RECORDS ON AGENCY DEVICES AND ACCOUNTS

It is prudent to assume that all records created or stored on agency devices or accounts or created, stored or published on social media accounts by a public agency are public records as they are likely “prepared, owned, used, or retained” in the conduct of government. That said, the courts have made it clear that the controlling factor of determining whether a record is a public record is the *nature* of that record, not where the record was created or stored.

In [Tiberino v. Spokane County](#) (2000), the court held that personal emails created by an agency employee using their work email account would not have been public records *but for* the fact that the personal emails were subsequently used by the county in a disciplinary action against the employee. In a more recent case, the Washington Supreme Court emphasized that the mere creation and retention of union-related emails on agency devices and accounts did not cause them to automatically be public records. It was necessary, instead, to review the content of the emails to see if they discussed the conduct of government ([SEIU Local 925 v. UW](#) (2019)).

RECORDS ON PERSONAL DEVICES AND ACCOUNTS

An additional test applies when a record is located on a personal device or account. In addition to the other elements of the definition of a public record, it is necessary to look to consider whether the record was prepared or used within an agency employee or official’s “scope of employment” or official duties. To determine whether a record was created within the scope of employment and is thus a “public record,” a court will look at whether at least one of the following three things are true:

- The job required the creation of the record, e.g. text message, email, or social media post;
- The employer directed the creation of the record; and/or
- The creation of the record furthered the employer’s interests.

A series of cases have clarified that text messages on personal cell phones ([Nissen v. Pierce County](#) (2015)), emails in personal email accounts ([West v. Vermillion](#) (2016)), and social media posts on personal accounts ([West v. Puyallup](#) (2018)) may be subject to the PRA if the creation or receipt of the text message, email, social media post met any one of these three elements.



Practice Tip: Agencies should adopt employee and official policies around the use of personal devices and accounts for public business. See MRSC’s [Electronic Records Policy Tool Kit](#) for examples.

RECORDS HELD BY PRIVATE ENTITIES

Records created and/or held by a private business or other non-governmental entity may be subject to the PRA when the entity is determined to be the “functional equivalent” of a public agency ([Fortgang v. Woodland Park Zoo](#) (2017) or is otherwise acting at the direction of a public agency ([Cedar Grove Composting v. City of Marysville](#) (2015)). To determine whether an otherwise private entity is considered the functional equivalent of a government agency, courts will apply a four-factor balancing test from [Telford v. Thurston County Board of Commissioners](#) (1999).

The factors are:

- Whether the entity performs a governmental function;
- The level of government funding the entity receives;
- The extent of government involvement or regulation in the entity's activities; and
- Whether the entity was created by the government.

This is a very fact-specific analysis, and some courts will give greater weight to different facts, so it is important to work with an attorney if there is ever a concern of whether the PRA applies to a particular private entity.



Practice Tip: MRSC recommends that a contract between an agency and a private entity (e.g., a consultant, nonprofit, or business) explicitly define the public records obligations of the entity, if any, so there is clarity about what records may be subject to disclosure under the PRA. While private entities can be sued and forced to turn over public records in their possession, it helps ease the working relationships if expectations are laid out in advance.

Agency Obligations Under the PRA

In the interest of transparency and the people’s ability to “maintain control over the instruments that they have created” ([chapter 42.56 RCW](#)), the Public Records Act (PRA) requires agencies to make their records available for public inspection with limited exemptions. To ensure compliance with this objective, the PRA places several procedural obligations upon agencies. These obligations are reviewed in more detail below.

ADOPT POLICIES AND PROCEDURES

Technically, the first statutory obligation placed on agencies listed in the PRA is the “Duty to Publish Procedures” ([RCW 42.56.040](#)). Local agencies must display and make available the policies and procedures on how and from whom the public may obtain information and copies of records. Of course, the agency must adopt those policies and procedures before they are published. Policies are generally adopted via ordinance or resolution by the legislative body of the agency. Example policies and procedures are available on [MRSC’s Public Records Act Basics](#) webpage.

These published policies must also contain the specific rules of procedure agencies will follow as they meet PRA disclosure obligations. These rules should be designed to provide for “the fullest assistance” and “most timely possible action on requests” without causing “excessive interference with other essential functions of the agency” ([RCW 42.56.100](#)). It is in accordance with these published rules and procedures that agencies per [RCW 42.56.070\(1\)](#) then:

[...] make available for public inspection and copying all public records, unless the record falls within the specific exemptions of [the Public Records Act], or other statute which exempts or prohibits disclosure of specific information or records.

Many agencies adopt policies and procedures based on the Attorney General’s Model Rules ([chapter 44-14 WAC](#)). Though the current version of the Model Rules deals mostly with disclosure procedures, there are also instructive comments regarding some specific disclosure exemptions, such as the right to privacy, the attorney-client privilege, and the deliberative process exemption. The Attorney General has the discretion to revise the Model Rules and periodically does so in response to court decisions and legislative changes.

The Washington Administrative Code (WAC) sections quoted below are taken from the “Introductory Comments” to the Model Rules and provide some explanation of their purpose and role.

[WAC 44-14-00001](#) – Statutory Authority and Purpose.

The overall goal of the model rules is to establish a culture of compliance among agencies and a culture of cooperation among requestors by standardizing best practices throughout the state. The attorney general encourages state and local agencies to adopt the model rules (but not necessarily the comments) by regulation or ordinance.

[WAC 44-14-00003](#) – Model Rules and Comments are Nonbinding.

The model rules, and the comments accompanying them, are advisory only and do not bind any agency. Accordingly, many of the comments to the model rules use the word “should” or “may” to describe what an agency or requestor is encouraged to do. The use of the words ‘should’ or ‘may’ are permissive, not mandatory, and are not intended to create any legal duty.

While the model rules and comments are nonbinding, they should be carefully considered by requestors and agencies. The model rules and comments were adopted after extensive statewide hearings and voluminous comments from a wide variety of interested parties.

Though these rules are nonbinding, the PRA directs agencies to “consult” the Model Rules when establishing their local ordinances ([RCW 42.56.570\(4\)](#)), and courts will cite to the Model Rules with the expectation that the processes explained within them were followed. See, e.g., [Forbes v. City of Gold Bar](#) (2012).

An agency’s adopted policies and procedures should also reflect actual circumstances that are unique to that agency. For examples of agency PRA policies and procedures, see MRSC’s [Public Records Act Basics](#) webpage.

IDENTIFY THE PUBLIC RECORDS OFFICER

Next, the PRA requires that agencies “appoint and publicly identify” a public records officer (PRO) ([RCW 42.56.580](#)). The officer serves as a public point of contact and oversees the agency’s compliance with the PRA. Often, this responsibility is assigned to the clerk, attorney, or other administrative professional and the designation appears within the adopted policies. Some larger jurisdictions are able to have a designated PRO whose sole responsibility is to oversee the agency’s records, but in most situations the PRO duties are only one of an employee’s many job duties.

Some jurisdictions may have more than one PRO. This is particularly true in counties because the separately constitutionally elected officials manage and oversee their own records. Therefore, they may designate their own PRO to process and respond to requests. However, some county elected officials opt to rely on the same PRO designated by the executive branch. The statute also allows agencies to appoint an employee or official of another agency as the designated PRO. This is particularly useful for smaller agencies that have limited staff and resources and could be accomplished through an interlocal agreement or a contract for services between the agencies.

The name and contact information of the agency’s current designated PRO is required to be made available in a reasonably calculated way to provide notice to the public about whom they may direct their records requests to. Examples of how agencies can make this information available are: posting at the local agency’s place of business, posting on the agency’s website, and/or including the information in agency publications and communications.

Note that while the statute requires agencies to identify their designated PRO for the purposes of records requests, the public are *not required* to direct inquiries to this person. This is discussed in more detail in [Receiving and Tracking a Records Request](#) section of this document.

LIST OF NON-PRA EXEMPTIONS

The PRA directs agencies to publish and maintain a list of “other” statutory exemptions or prohibitions on disclosure in addition to those contained within [Chapter 42.56 RCW](#) that the agency intends to rely upon ([RCW 42.56.070\(2\)](#)). These “other statutes” can include Washington laws, federal laws and regulations, and the state and federal constitutions. Many jurisdictions opt to incorporate the [list of RCWs annually updated](#) by the Office of the Code Revisor (available on the Attorney General’s website) into their adopted PRA policies.



Caution: MRSC previously maintained a list of other RCWs as an appendix to a prior version of this publication. Many jurisdictions adopted that appendix by reference in their own policies. However, to avoid duplication with the Code Revisor, MRSC no longer maintains that list of Washington statutes. Agencies should review their adopted policies to be sure they incorporate by reference the most up to date list from the Office of the Code Revisor. MRSC does still maintain a limited list of federal statutes and regulations that have been found to apply to Washington public records, which is attached as [Appendix C](#) to this publication.

Note that any listing of potential exemptions is for informational purposes only and the absence of such a list or the absence of a particular exemption on an adopted list does not prevent an agency from relying upon that exemption.

INDEX OF RECORDS

The PRA requires that local agencies maintain a current index of their records (including correspondence) created after January 1, 1973 ([RCW 42.56.070\(3\)](#)). This index must be made available to the public, even if it is only partially complete. There is no statutory guidance on what information an index should include, but arguably it should contain sufficient information to assist requestors in pointing to the exact records they seek such as keywords and subject matter of the record and where it is located.

But this is where the 50-year-old PRA begins to show its age. The last type of record listed in the statute, “correspondence,” is almost impossible to index in the current age of digital communication, plus other electronic records are constantly being updated and changed, like search histories and database records. Accordingly, the statute was amended to allow local agencies to make a formal finding that maintenance of such an index would be “unduly burdensome or interfere with agency operations” ([RCW 42.56.070\(4\)](#)).

Often, this finding appears in the agency’s adopted PRA policies and must include an explanation of why and to what extent compliance would be difficult. That said, if the agency does maintain an index, even if it only contains a subset of all of the agency’s records, it must still be made available to the public.

In summary, if maintaining even partial indices, an agency must comply with [RCW 42.56.070\(3\)](#). Note that while failure to publish or maintain indices without a finding that doing so would be unduly burdensome is technically a violation of the PRA, the PRA does not explicitly provide a means for someone to bring a court case against the agency on this basis alone.

AGENCY OFFICE HOURS FOR IN-PERSON INSPECTION

The PRA requires that records be made available for inspection during the “customary office hours” of the agency “for a minimum of thirty hours per week,” excluding holidays, unless the requestor and the agency agree otherwise ([RCW 42.56.090](#)). Compliance with this requirement may be difficult for smaller agencies that do not keep that many on-site in-person office hours. One option is to offer at least a 30-hour window during which the requestor can schedule an appointment to inspect records so staff can be available on-site, although the agency needs to be careful not to unduly limit the length of the appointment ([WAC 44-14-03002](#)). The customary business hours must be posted on the agency’s website and made available by other means to provide the public with notice, such as posted at a customer service desk or included on record request forms.

PROVIDE PROCESS FOR LOCAL REVIEW OF DENIALS

Local agencies are required to “establish mechanisms,” i.e. adopt a procedure, for the internal review of any decision that denies inspection of a record ([RCW 42.56.520\(4\)](#)). Note that an agency claiming that a record is subject to an exemption or prohibited from disclosure is considered a denial under the PRA. Per the statute, this is meant to be a very quick process, and any review is deemed completed at the end of the second business day following the denial. This review, if requested, is typically completed by the agency attorney. A requestor is not required to make use of the agency’s denial review process before going to court under [RCW 42.56.550](#). See *Kilduff v. San Juan County* (2019). However, having this process available to requestors may stave off court challenges and give agencies an opportunity to correct any inadvertent errors. This is discussed further in the section in this document titled [Internal Agency Review](#).

MANDATORY TRAINING

Two groups of local government representatives are required to receive PRA training: local elected officials and the agency’s designated PRO ([RCW 42.56.150](#) and [RCW 42.56.152](#) respectively).

Local elected officials and those appointed to fill vacancies in elected office must receive PRA training that also includes discussion of the official’s record retention obligations under [chapter 40.14 RCW](#). Officials are required to complete PRA training either before they assume office or within 90 days of assuming their duties. Officials must take refresher training at intervals of no more than four years.

PROs must receive PRA training that covers the topics of retention, production, and disclosure of electronic documents, including updating and improving technology information services. PROs are required to complete their PRA training within 90 days of assuming their duties and take refresher training at intervals of no more than four years.

While the PRA requires this training, it does not indicate how compliance with this obligation should be documented. MRSC recommends obtaining a certificate of completion from the person or agency conducting the training, as well as ensuring that the local elected official or PRO has a duplicate copy on file should there be a need to prove the requisite training has been completed. Compliance expectations and documentation should be addressed in the agency’s adopted PRA policies.



Note: In addition to in-depth all-day trainings that meet this training requirement for PROs, MRSC partners with the Association of Washington Cities to provide a 40-minute PRA training that meets the obligations for elected officials. The Attorney General’s Office also provides online [Open Government Training](#) for elected officials and PROs that includes the PRA Basics. More information is available on [MRSC’s Public Records Act](#) page.

The PRA does not mandate training for any other local government officials, employees (including IT professionals), or appointees; however, MRSC highly recommends agencies ensure all public employees, officials, and appointees receive records training. Such training will ensure that others can identify requests that come in through untraditional means, explain records retention obligations, assist the designated PRO in their duties, and also helps demonstrate to the courts an agency’s commitment to complying with the PRA. The agency’s training expectation for other officials, employees, or appointees should be addressed in both the agency’s adopted PRA policies and any applicable personnel policies.

Agency Obligations Under Other Statutes

The PRA is not the only statute that creates records-based obligations for local agencies. [Chapter 40.14 RCW](#), originally adopted in 1957, controls the preservation, storage, transfer, destruction, disposal, and management of public records and includes agency obligations to document and report their compliance with the PRA. Note that since these obligations are in a different statute, any failure to comply with these statutes is *not* a violation of the PRA itself but may become relevant during the penalty phase if a court concludes that an agency did violate a provision of the PRA.

PRESERVATION/RETENTION OF RECORDS

Public records are technically the property of the state of Washington, held in trust for its people ([RCW 40.14.020](#)). Officials and employees have no private property rights to public records, and outgoing officials and employees are required by law to turn over all records in their possession to their successors. While state agencies are required to designate records officers to oversee the maintenance, preservation, and disposition of their records, there is not a similar explicit requirement for local governments ([RCW 40.14.040](#)). However, many local government agencies charge their public records officer designated under the PRA with this responsibility. IT professionals will likely also be an important part of the records management team.

Agencies, officials, and employees are prohibited from destroying records any sooner than provided by established retention schedules. The [Local Government Records Retention Schedules](#) (CORE) and other retention schedules are developed and approved by a records committee and published by the State Archivist at the [Division of Archives and Records Management](#) (The Archives) within the Secretary of State's office ([RCW 40.14.050-.070](#)). The retention schedules contain categories of records with examples of the records that fit within those categories. A disposition authority number (DAN) is assigned to each category. Each category has a defined retention period that sets the minimum length a record must be maintained, along with a directive of how the record is to be disposed of at the end of that period (e.g. whether destroyed or transferred to another state agency). The schedules also indicate whether or not the record is archival and/or essential, and thus may have additional handling requirements.

The CORE provides the [retention schedules](#) of the common records most agencies maintain. The State Archivist also maintains at least 27 other schedules that apply to the unique categories of records held by specific types of agencies and departments. For example, one schedule applies to the records of Housing Authorities while another applies to Law Enforcement records. The Archives' website lists and periodically updates the unique, agency-specific retention schedules. Any question of whether a record is subject to a particular schedule, or category within that schedule, should be directed to the Division of Archives or applicable regional archivist.



Practice Tip: The state archivist also maintains many resources for the maintenance, preservation, and disposition of records based on the specific type of [government entity](#). These include tip sheets, webinars, one-on-one consultation, and certain grant programs.

Note that as an alternative to destruction, an agency is allowed to donate records of historical value (records created 70 or more years ago) to a state library, local library, historical society, genealogical society, or similar society or organization ([RCW 40.14.070\(3\)](#)). There is no authority to gift such records to any other person or entity.



Caution: Once an agency has disposed of a record in accordance with the schedules and has ensured there are no duplicate copies of the records in the agency's possession or control, the agency is no longer obligated to disclose the record in response to a records request. However, if the agency does still have the record, or a copy of the record, it must disclose the record – even if the record is long past its retention period ([RCW 42.56.100](#)). The agency cannot then dispose of the record until the pending request is closed.



Caution: Willfully and unlawfully mutilating, destroying, concealing, erasing, obliterating, or falsifying a public record is a felony ([RCW 40.16.010](#) and [40.16.020](#)). Purposely destroying a public record before its scheduled date with knowledge that destruction is premature is potentially subject to criminal prosecution.

TRACKING RECORDS REQUESTS

Agencies are required to maintain a log of all public records requests submitted to and processed by the agency ([RCW 40.14.026](#)). The statute lists out the specific information that must be tracked, including the identity of the requestor (if provided), the date received, the text of the request itself, how the request was fulfilled, and the date the request was closed.

The log itself is a public record subject to a retention schedule and disclosure requirements. Tracking logs are discussed in more detail in the section of this document titled [Tracking a Request](#).

REPORTING REQUIREMENTS

Agencies that expend more than \$100,000 annually on staff and legal costs associated with fulfilling public records requests are required to report certain metrics to the [Joint Legislative Audit and Review Committee](#) (JLARC) ([RCW 40.14.026\(5\)](#)). These metrics include, for example, the number of requests received, the time taken to fulfill the requests, the number of requests denied in full or in part, the total agency staff time spent on requests, estimated costs (including litigation costs and records management costs), and any money the agency receives from requestors, such as copy fees.

By July 1st, agencies are expected to report their data for the previous calendar year to JLARC's reporting system. JLARC then assembles the data into a report presented to the legislature the following January. The legislature then uses this information to inform its decisions related to records legislation. The reporting system, complete datasets, and yearly reports are available on JLARC's [public records reporting website](#).

While only agencies that spend over \$100,000 a year are required to track and report these metrics, all agencies are encouraged to voluntarily track and report their data to JLARC and their local decision makers. This data can inform the allocation of staff and financial resources.



Practice Tip: Some jurisdictions combine the metrics from the tracking log with the reporting metrics into a single electronic document or platform. This may be easier with some of the records request processing software and platforms, but may become unwieldy with a single spreadsheet.

Tips for Starting the Process

PROVIDE THE “FULLEST ASSISTANCE”

[RCW 42.56.100](#) requires agencies to “provide for the fullest assistance to inquirers.” That said, the statute also allows agencies to adopt reasonable rules and regulations to prevent records requests from creating excessive interference with the agency’s other essential functions ([Hearst Corp. v. Hoppe](#) (1978)).

Agencies can establish a preferred process for the public to request records (e.g. web portal instead of postal service). However, the agency cannot require the public to use that process. As such, the agency must accept records requests that do not utilize the preferred process ([O’Dea v. City of Tacoma](#) (2021)).

Agencies can also establish a preferred process for delivering records to requestors. However, the agency must at least consider if it is reasonable and technically feasible to deliver the records via the requestor’s preferred delivery method when that method is not the agency’s preferred one ([Mechling v. City of Monroe](#) (2009)).

Agencies are not required to provide multiple copies of the same record to a requestor, even if the requestor wants the copies delivered to several additional individuals ([Silva v. King County](#) (2005)).

Agencies are also not required to create new records, but have the discretion to do so under the Model Rules. Sometimes it is more convenient to create a summary document instead of redact and produce original records ([WAC 44-14-04003\(6\)](#)). In situations like that, the agency may choose to create a record (the summary document). When an agency creates a new document of its own volition, the agency should first verify with, and obtain a written agreement from, the requestor that they will accept the new record and do not want the original/source documents.

ASSUME DISCLOSURE

Almost every record in an agency’s possession will be subject to disclosure, with limited exemptions that may apply. It is tempting, particularly when sensitive information is involved, to start from a position of – “are we required to disclose this record?” Instead, agencies should start from the position that the record will likely be disclosed and *then* determine whether any law exempts or prohibits disclosure of all or part of the record(s). The PRA contains strong language in [RCW 42.56.030](#) that is in favor of disclosure:

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 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 they have created.** The public records subdivision of this chapter shall be liberally construed and its **exemptions narrowly construed to promote this public policy.**

In line with this, the courts have consistently held that the only information which can be withheld from public disclosure is information which is specifically exempted by statute or other law. See e.g. [Brouillet v. Cowles Publishing Co.](#) (1990). Further, the courts interpret PRA exemptions narrowly. And if exempted information can be redacted from a record, the agency is required to produce the non-exempt portion of the record with the exempt information redacted.

Receiving and Tracking a Records Request

HOW ARE RECORDS REQUESTS RECEIVED?

Agencies receive requests for records in numerous ways (e.g., via records management “portal” systems, verbally, in writing, electronically, and more). As mentioned in the previous section on [Provide the “Fullest Assistance,”](#) the default requirement under [RCW 42.56.080](#)(2) is that the agency must accept and process requests regardless of how they are received.

[RCW 42.56.100](#) directs agencies to adopt rules that provide for full access to public records while preventing damage to those records and avoiding excessive interference with the agency’s other essential functions. This section specifically says that requests received by “mail” for copies of identifiable public records must be honored. This requirement was [added in 1975](#), but has not been updated since then to account for changes in technology. So, requests received by other means, such as phone, email, or social media are not specifically discussed in the statute.

Because an agency is given latitude to devise public records request procedures, it is reasonable to ask that a requesting party fill out a standard request form. But agencies should train their staff to recognize and accept a request for documents regardless of how that request is received.

DOES IDENTITY AND MOTIVATION MATTER?

Except in the specific situation where a statute entitles certain persons or entities to access particular records, the identity and motivation of the requestor are not to be considered by the agency in the PRA disclosure process (see [Special Circumstances Related to Certain Requestors](#) in the next section). This is true whether the individual seeking the record is doing so for private or public purposes. The one notable exception when motivation does matter is when the request is asking for a list of individuals to be used for commercial purposes, discussed in the section [List of Individuals for Commercial Purposes](#).

A 2002 Washington Court of Appeals decision ([King County v. Sheehan](#) (2002)) confirmed that, when one of the statutory exceptions does not apply, an agency is prohibited from inquiring into the proposed use of the information requested for disclosure.

This means that regardless of who the requestor is – a lawyer, another agency, the media, or even one of the agency’s own elected officials – they have the same access to records under the PRA as any member of the public. Further, agencies cannot require requestors to identify themselves (i.e., requestors are allowed to remain anonymous) unless they are seeking records that are only available to certain persons, news media, or agencies, or are seeking a list of individuals to be used for commercial purposes. ([RCW 42.56.080](#)).

Examples of other statutes outside of the PRA that entitle certain persons to records not otherwise available to members of the public include, but are not limited to:

- Records pertaining to a juvenile from a juvenile justice or care agency, the juvenile and their parents would be entitled to such records under [RCW 13.50.100](#)(7);
- Employees’ annual access to review their own personnel file ([RCW 49.12.240](#)); and
- Information and records to be shared with unions during labor agreement negotiations ([RCW 41.56.035](#)).

SPECIAL CIRCUMSTANCES RELATED TO CERTAIN REQUESTORS

Government Agency Requests

Importantly, other government agencies may have specific or general statutory authority to request or demand records outside the PRA. For example, [RCW 49.12.050](#) authorizes the Department of Labor and Industries to obtain a list of all employees from every employer, including public employers, in the state.

If the requesting government agency has statutory authority to obtain the records, then its request would not be processed as a PRA records request. In those instances, timelines and copying charge requirements under the PRA would not apply, although many jurisdictions still track whenever they provide records to any other agency. Sometimes an agency may have a data sharing agreement with another agency that controls the exchange of sensitive records, such as a multi-agency law enforcement task force ([RCW 39.34.240](#)).

Other times, government agencies do make their requests under the PRA. In those circumstances, all of the same PRA processing provisions would apply. Note that agencies should consider still charging for copies provided under the PRA. A statute known as the “Local Government Accountancy Act” ([RCW 43.09.210](#)) requires that local governments receive the “true and full value” for all property transferred from one department or public entity/agency to another. Because of this, agencies should include a section in their records policies that addresses interagency record production.

Internal Agency Requests

When a request for records comes from an agency employee or official, the agency needs to determine whether the request relates to agency work. If the records requested are not relevant to their scope of duties, then the request should likely be processed as a PRA request. If the employee or official needs the record for their official business, then the records should be shared without the formality of the PRA process. Some jurisdictions have adopted policies that address employee and official access to records. Note that records that are circulated for official business can still be redacted to limit the risk of inadvertent disclosure of otherwise exempt information.

News Media

Members of the news media, as defined in [RCW 5.68.010\(5\)](#), have greater access to certain personally identifying information about public employees and volunteers under [RCW 42.56.250](#) than the public does. Washington court decisions limit this access to news media outlets wherein the news organization has a legal identity separate from the individual making the request ([Green v. Pierce County](#) (2021)).

Prisoner Injunction Provision

A local government agency may file a court action in superior court to obtain a court order (injunction) prohibiting a prisoner from filing public records disclosure requests if the intent of the disclosure requests is to harass or intimidate an agency or its employees. There are clear standards for the types of evidence the agency must present to obtain the injunction. So long as the injunction is in place, the agency can deny additional requests made by the prisoner. See [RCW 42.56.565](#).

TRACKING A REQUEST

As mentioned previously, [RCW 40.14.026\(4\)](#) requires each agency to maintain a log of its public records requests.

At a minimum, this log must include:

- The identity of the requestor if provided;
- The date the request was received;
- The text of the original request;
- A description of the records produced in response to the request;
- A description of the records redacted or withheld and the reasons therefore;
- And the date of the final disposition, i.e. closure, of the request.

It is common to include additional information in the tracking log such as an assigned unique identifier, estimated installments dates, processing milestones, etc.



Practice Tip: MRSC recommends assigning each request a unique identifier such as a number/year or other code and listing it in the tracking log. Including this identifier in the tracking log, on all correspondence, and on any copies eventually produced will help the agency track and document its compliance with the PRA. It may also help track and differentiate multiple requests from a single requestor.

The log itself is a public record subject to a two-year record retention schedule. The log must be produced in response to a records request but note that there may be exemptions that should be applied, especially if the log contains any names of students, employees, victims, or witnesses. Further, names listed in the “identity of the requestor” might be considered a “list of individuals” under the commercial purposes prohibition. These exemptions are discussed more in the section on [Lists of Individuals for Commercial Purposes](#).

Reviewing a Request and the Initial Response

Once a public agency receives a records request, the PRO or designated staff must review it and develop a plan for responding. The following key threshold questions will help an agency determine a path forward.

INVESTIGATING A REQUEST – THRESHOLD QUESTIONS

What Is the Requestor Asking For?

When an agency receives a records request, staff must determine what the requestor is asking for. It is important to not be too legalistic or to interpret the request too narrowly. Consider whether there is mutual understanding about the terms used by the requestor (e.g., if the term “personnel file” is used, do the PRO, requestor, and other agency staff have a common understanding of the scope of what is included in a personnel file?). This initial review will help determine how and where to conduct the search for responsive records or whether clarification is needed.

Is It a Request for Identifiable Records?

A requestor must make a request for identifiable records ([RCW 42.56.080](#)). An “identifiable record” is a record that exists at the time of the request and one which an agency can locate. Requests for information and questions posed to an agency without reference to specific records are not considered requests for identifiable records under the PRA. See *Bonamy v. Seattle* (1998). Likewise, a request for all, or substantially all, records prepared, owned, used, or retained by an agency is not considered a request for identifiable records ([RCW 42.56.080\(1\)](#)). Additionally, if a request requires a PRO or agency employee to read every agency record in order to determine whether any of the records are responsive to the request, then it is not a request for an identifiable record. That said, a requestor can ask for all records related to a particular topic, keyword, project, or official, for example. Also, agencies should beware of digital records. If an electronic search of all of the agency records can be conducted with the keyword, then courts do consider it to be a request for an identifiable record. Additional examples related to “identifiable records” can be found in the Model Rules at [WAC 44-14-04002](#).

Note that agencies cannot deny a request that may be very big or “overbroad” ([RCW 42.56.080](#)). So long as the request contains some limitation in the scope of the request such that it is not a request for substantially all of an agency’s records, it is a valid request.

Is the Requestor Asking the Agency to Create a Record that Does Not Exist?

There is no obligation in the PRA for an agency to create a record in response to a public records request.

For example, a requestor may ask an agency to compile a report with information they are interested in reviewing. If this report does not exist at the time the request is made, the agency is not legally obligated to create it under the PRA. With that said, if a requestor could otherwise obtain the desired information by requesting individual records, and it is easier to run a report or create a spreadsheet than producing the individual records, the agency could offer to create the report if the requestor agrees.

What if an existing record contains some, but not all, of the information requested? The agency should produce the record that it does have, even if it does not contain everything the requestor is seeking. For example, a requestor may seek a vendor list with X, Y, and Z, information included. If the agency has a vendor list but it only contains “X”, it should produce that list.

Is It a “Standing” Request for Records?

Because an identifiable record is one that exists at the time of the request, a requestor may not make a standing or ongoing request for records. For example, a requestor could not ask for “all correspondence to date between Jane Doe and Councilmember Smith and any future correspondence between Jane Doe and Councilmember Smith through the end of this fiscal year.” In this example, the agency should provide any existing correspondence but should explain to the requestor that the agency is under no obligation to provide future correspondence and as such, the requestor would have to make subsequent requests for additional correspondence that may occur.

Is It a “Bot” Request?

If the same requestor has made multiple automated requests to an agency within a 24-hour period, and if an agency establishes that responding to multiple requests would cause excessive interference with agency functions, it can deny the request ([RCW 42.56.080\(3\)](#)). These are sometimes referred to as “bot” requests and were used by some requestors as an attempt to get around limitations on standing requests. The legislature added this provision to avoid excessive interference in agency functions. As a practical matter, these are not frequently an issue for an agency.

Is the Request Directed to the Correct Agency?

Sometimes a request for records will be directed to the wrong agency. If it is, the agency should inform the requestor and close the request. The agency has no duty to try to obtain the records from another agency or to forward the request. In [Limstrom v. Ladenburg \(Limstrom II\)](#) (1998) the court noted: “On its face the Act does not require, and we do not interpret it to require, an agency to go outside its own records and resources to try to identify or locate the record requested.” In a more recent, unpublished decision, the Washington Court of Appeals held that a county had no duty to produce records held by the superior court ([Cortland v. Lewis County](#) (2020)).

There is a difference between a request being directed to the wrong agency and a request involving records not currently held by the agency. The US District Court for the Western District of Washington held in [Contreraz v. City of Tacoma](#) (2024) that a city had an obligation to produce records held in the database of another agency when the city created the records and used the database on a daily basis. The city could not simply refer the requestor to the other agency because the database was housed under that agency.

LIST OF INDIVIDUALS FOR COMMERCIAL PURPOSES

Of special consideration at this point in evaluating a request is whether the requestor is seeking a list of individuals that may be used for commercial purposes.

[RCW 42.56.070\(8\)](#) prohibits agencies from giving, selling, or providing “access to lists of individuals requested for commercial purposes” unless authorized by law. This provision prohibits disclosure “[...] if the requestor has a commercial purpose and intends to directly contact or personally affect the individuals named in the list” ([AGO 1998 No. 2](#) and [WAC 44-14-06002\(6\)](#)).

The commercial purpose prohibition only applies to requests for “lists of individuals.” It does not apply to a set of records or other lists that a requestor might use to gather information that they could potentially use for commercial purposes. See [AGO 1975 No. 15](#). As an example, an agency could not inquire as to why a requestor is seeking a copy of the front page of all active permit applications filed with the city, even though the agency knows that the requestor could compile a list of names from those records.

In addition, this provision does not prohibit disclosure of lists of businesses, corporations, or partnerships; the statute only prohibits disclosure of lists of natural persons. See [AGO 1975 No. 15](#). Therefore, lists of private companies that have commercial value for targeted advertising must be disclosed upon request. Likewise, a list of individuals requested for political purposes does not fall within this prohibition as the list is not sought for “commercial purposes.” See [Wash. Pub. Emps. Ass’n v. Wash. State Ctr. for Childhood Deafness & Hearing Loss](#) (2019).

A list of other information, like property, that happens to have names associated with the information is not a “list of individuals.” However, if the information is in an electronic record, such as an Excel spreadsheet, that can be sorted to display lists of individuals, the prohibition applies. See [AGO 2019 No. 3](#). Another example of a potentially “sortable” list may include copies of an agency’s public records request log.

An investigation into whether to disclose a list of individuals is one of the only times agencies are authorized to inquire into the identity and motivation of the requestor. In [SEIU Healthcare 775NW v. State](#) (2016), the court held that an agency must investigate when it has some indication that a requested list might be used for a commercial purpose. The court also held that:

[M]erely requiring an affirmation from the requesting party is not sufficient to satisfy an agency’s obligation to investigate under [RCW 42.56.070\(8\)](#). When under the specific case facts an agency has an obligation to investigate, it must at least require a party requesting a list of individuals to state the purpose of the request.

The court provided three factors to consider when determining whether to investigate:

- The identity of the requestor;
- The nature of the record requested; and
- Any other information that is available to the agency.

When an agency has reviewed the factors above and made a preliminary determination that the request may be for a commercial purpose, the agency is to notify the requestor that, under [RCW 42.56.070\(8\)](#), a preliminary determination has been made that the records are being sought for a commercial purpose and, as such, the requestor needs to explain why this preliminary determination is incorrect. In other words, the burden shifts from the agency to the requestor to show they are entitled to the list.

Here is a [sample affidavit template](#) developed by the Attorney General’s Office that an agency could ask a requestor to complete. If the agency ultimately decides to withhold some or all of a list based on the affidavit, it should do so in consultation with the agency’s attorney in order to discuss potential liability.



Practice Tip: Consider producing the list with individual names redacted and explaining the prohibition, but also invite the requestor to provide the information necessary for the agency to investigate whether the unredacted list can also be disclosed.

Frequently Asked Questions



Must the city disclose the address list that it uses to mail newsletters to city residents when the list does not include the names of the occupants residing at the addresses and instead only refers to them as “resident”? Does it make a difference if the request is from the local chamber of commerce, a retail business, or a person campaigning for public office?

The list must be disclosed to anyone requesting it. Motivation is not relevant, and [RCW 42.56.070\(8\)](#) does not apply, because the list only identifies individuals as “resident” and thus is not a list of natural persons. If the list contained the residents’ names along with their addresses, it could probably not be provided to a retail business, but it could be provided to a political candidate for campaign mailing, since an election campaign would not be considered a commercial purpose.



Must the city disclose a list containing the names and addresses of all city residents who are delinquent in their Local Improvement District (LID) payments when the requestor is an employee of a company that provides home equity loans?

As it appears the request is likely for commercial purposes, the city should disclose the list, redacting the names pursuant to [RCW 42.56.070\(8\)](#), and provide only the addresses. The city should provide an opportunity for the requestor to submit an affidavit rebutting the city’s conclusion that the request is for commercial purposes.



Does the agency have to fulfill an anonymous request for a list of individuals for commercial purposes?

No. The agency is *required* to investigate whether a list of individuals will be used for a commercial purpose. MRSC believes the agency cannot conduct an adequate investigation if it does not know the requestor’s identity.

INTERPRETING THE REQUEST

Does the Request Need Clarification?

Sometimes all or portions of a records request are unclear. If so, an agency can ask the requestor to clarify. In fact, requesting clarification is one of the agency’s options in providing an initial response to a records request (i.e., [The Five-Day Response Letter](#) section) ([RCW 42.56.520](#)). An agency should put a deadline on a request for clarification, such as “If you have not responded to our request for clarification by [date], we will assume you do not want to provide clarification and as such, we will process your request as submitted.”

If portions of the request are clear, an agency should respond to those portions while waiting for clarification on the unclear sections.

If no clarification is received and the entire request is unclear, then the agency must send a closing letter indicating that it asked for clarification by a certain date, the requestor did not provide it, and the request is now closed. See more in the [Closing Letter](#) section of this document.



Caution: Note that rarely is an entire request so unclear that an agency cannot respond. A court will expect an agency to try to respond.

Could the Request Be Narrowed?

In some situations, such as when a very broad request for records is received, an agency may choose to reach out to the requestor to see whether they are willing to narrow their request. A conversation with the requestor could reveal that they do not actually want certain types of records that would have otherwise been considered a responsive record based on the original request. Likewise, if an agency runs an initial keyword search and discovers that the request would produce a large volume of responsive records, it could inform the requestor of the large response and ask whether the requestor wants to proceed with the original request or if they want to narrow/modify the request using a date range, alternative keywords, etc. This approach is sometimes called a “sample pull.” Importantly, the requestor is under no obligation to narrow or modify a request for identifiable records. If the requestor agrees to narrow the request, be sure to confirm in writing.



Caution: An agency does not satisfy its obligation to provide an initial response to a request for records within five days by asking if a request may be narrowed. See more in [The Five-Day Response Letter](#) section of this document.

INITIAL PROCESSING OF THE REQUEST

Issuing a Preservation Hold

Once an agency receives a request, any responsive records may not be destroyed, even if they could otherwise be destroyed under the applicable retention schedules. After receipt of a request, the PRO should notify relevant staff and put a hold on the retention/destruction schedule. The hold informs staff that they need to suspend their ordinary destruction and archiving of any records that may be responsive to the request. The PRO should also work with IT staff to stop any automatic electronic record disposal on accounts where there are likely responsive records.

Notice to Employees



Does the request likely include records found exclusively in a current or former employee's personnel, payroll, supervisor, or training file records?

If the request is for information or records located exclusively in an employee's personnel, payroll, supervisor, or training file, then an agency is required to give notice to the employee and to any applicable union representative, regardless of whether the agency ends up releasing a record ([RCW 42.56.250\(2\)](#)). We discuss this more in the section [Mandatory Notice to Employees](#) of this document but mention it here as the statute requires the agency to provide notice "upon receipt" of the request, likely to avoid an unreasonable delay in the release of records.

The Five-Day Response Letter (i.e., Initial Agency Response)

Agencies are required by [RCW 42.56.520](#) to provide an initial response to a public records request within five business days of receiving the request. The five days are five *business* days—weekends and holidays are excluded. "Day one" of the five-day count begins the next business day after receipt of the records request. So, if an agency receives a request on a Tuesday, Wednesday will be day one as long as that Wednesday is not a holiday. Assuming there were no intervening holidays, the following Tuesday would be the deadline for a five-day response.

MRSC recommends that an agency's PRA policies include a statement about what happens if a records request is submitted after business hours. MRSC has advised that a records request submitted after business hours is not "received" until the next business day, and therefore "day one" starts on the business day following the day it is considered "received."

Pursuant to [RCW 42.56.520](#), an agency may satisfy the requirement to provide a response within five days by doing any one of the following:

- **Providing the record(s)** (i.e., fulfilling the request).
- **Providing an internet address and link to the specific records requested on the agency's website.** The link must be to the requested records on the agency's own website. The link may not direct the requestor to an outside party's website and an agency may not make a requestor search for the records online. If the individual does not have internet access, then the agency must provide copies of the records or allow the requestor to view the records using an agency computer.
- **Acknowledging receipt of the request and providing a reasonable estimate of the time necessary to provide the records** (or at least the first installment of records). It is insufficient to only state that the agency needs more time to respond. There must also be an estimate for when the records (or an initial installment of records) will be available. See below for more information.
- **Acknowledging receipt of the request; seeking clarification if the request is unclear; and providing, to the greatest extent possible, a reasonable estimate of time necessary to respond if the request is or is not clarified.** If the requestor does not respond to the agency's clarification request, and the entire request is unclear, an agency need not further respond to the request other than to formally close the request. If portions of the request are clear, however, the agency must respond to those portions.
- **Denying the request.** See more in the section [Deny and Close a Request](#).

Estimating a Reasonable Response Time

If the request cannot be fulfilled within five days, the five-day letter must provide an estimate of the time it will take the agency to fulfill the request. If the agency is fulfilling the request in installments, it must provide at least an estimate of time it will take to complete the first installment, but it is not required to provide an estimate for the entire production. See [Health Pros Northwest, Inc. v. State](#) (2019).

The time estimates must be “reasonable.” In determining reasonableness, agencies should consider the following factors:

- volume of records requested;
- number of staff who may possess responsive records;
- whether records are kept in multiple locations;
- whether exemptions apply and the difficulty of redactions;
- extent of legal review required to determine potential exemptions or responsiveness;
- whether third-party or employee notice is required; and
- where the request falls in the request queue.

Some agencies have adopted rules for prioritizing requests; others have adopted rules that say how many hours a week or day they will spend processing requests. These policies should also be considered when providing a reasonable estimate of the time to respond. See MRSC’s [Public Records Act Basics](#) page for examples of these policies from agencies across the state.

The Model Rules say the following at [WAC 44-14-04003\(7\)](#) about providing a reasonable estimate of time to respond:

An agency should either fulfill the request within the estimated time or, if warranted, communicate with the requestor about clarifications or the need for a revised estimate. An agency should not ignore a request and then continuously send extended estimates. Routine extensions with little or no action to fulfill the request would show that the previous estimates were not “reasonable.” Extended estimates are appropriate when the circumstances have changed (such as an increase in other requests or discovering that the request will require extensive redaction). An estimate can be revised when appropriate, but unwarranted serial extensions deny a requestor access to public records.

If the agency knows it will miss a self-imposed deadline, MRSC recommends explaining to the requestor why there is a delay and then setting a new date for records to be produced. If an agency is sued for denying access to records due to delay, courts like to see regular communication with requestors on these issues.

Deny and Close a Request

Sometimes, although infrequently, an agency will need to deny a request at the outset without producing any records. To summarize, an agency may deny a request if:

- The request has been sent to the wrong agency;
- The request is totally unclear (this is rare) and the requestor has not responded to the agency’s inquiries for clarification;
- The request is for information, not an identifiable record; or
- The request is for all, or substantially all, of an agency’s records.

If an agency has a basis for denying a request at this point in the process, it must provide a written statement of explanation in a closing letter. See more in the section [Closing Letter](#).

Note that, while typically later in the process, withholding or redacting a record because an exemption applies is also considered a denial for purposes of judicial review. However, indicating that there are no responsive records after performing a search is not the same as denying access to records.

Searching for and Gathering Records

CONDUCTING AN ADEQUATE SEARCH FOR PUBLIC RECORDS

The PRA requires that agencies perform an adequate search to locate records responsive to a public records request.

The PRA itself does not provide detailed instructions on how to conduct an adequate search. Instead, those requirements can be found in court decisions interpreting the PRA, including [Neighborhood Alliance v. Spokane County](#) (2011) and [Block v. City of Gold Bar](#) (2015). Those cases direct agencies to:

- Conduct the search in a manner that is reasonably calculated to uncover all relevant documents;
- Consider all locations where responsive records are likely located; and
- Follow obvious leads as they are uncovered.

As technology and file management systems continue to evolve, responsive public records might be located in many different locations and formats. This is why it is essential to develop a search plan, especially for larger and more complex requests.

TIPS ON SEARCHING FOR RECORDS

Use a Checklist and Develop Search Terms

MRSC recommends that agencies [develop and use a search checklist](#). Using a checklist will help plan a specific search. It should be used as a basis to have conversations with staff and elected officials, especially the agency's IT department. That conversation should identify the physical and digital locations of records that might be responsive. It is also a good time to discuss and generate electronic search terms.

The search checklist is only a guide, and the agency should not limit itself to the original checklist. Make it an iterative process in which agency staff are comfortable chasing leads developed as they find records. Agencies can also share their checklist with the requestor and ask if the requestor suggests other search terms or possible record locations.

In developing search terms, consider the possibility that a subject may be referred to in multiple ways. For example, in a planning development or a public works project, files could be listed by address, owner name, construction company name, or some other nicknames that may have changed over time. Another example is in student records where a child may be referred to by their full name or by the initials.

For electronic records, balance casting a wide search net with the need to review the search results. Too narrow of an interpretation of the request can lead to an inadequate search. See, e.g., [Cantu v. Yakima School District No. 7](#) (2022). At a minimum, consider the use of Boolean search operators that will find variations on a search term. For example, using the "*" operator, as in "develop*", will return results containing words such as "development," "developer," and "developing."

Consider developing standard search locations and/or search terms for commonly requested records. For an example of this type of standard search outline, see MRSC's [PRA Adequate Search tip sheet](#).

Manage Time and Resources

[RCW 42.56.100](#) requires agencies to adopt reasonable rules to provide full public access to public records while protecting those records from damage or disorganization and preventing excess interference with other essential functions of the agency. Some agencies classify requests by volume and complexity, and also specify how much time per week or day they will spend processing requests. See examples of public records request policies from [Bainbridge Island](#) (2024) and [Snohomish County](#) (2017).

Search in Installments

Remember that the PRA allows an agency to provide records in installments ([RCW 42.56.120\(4\)](#)). Using installments may allow the agency to “pause” its search while waiting to see if the requestor reviews or accepts delivery of the first installment. If an agency chooses to do this, notify the requestor that the agency will provide records in installments and give them a reasonable estimate of the time when the first installment will be available.

As discussed in the section of this publication called [Installments and Deposits](#), the agency can close the request as abandoned if a requestor does not pay for copies or review or collect the copies by the established deadline.

Document the Search

Using the agency’s search checklist, document where the agency searched and what terms were used. If there was a location on the checklist that was not searched, document the rationale behind this decision. For example, if the checklist said staff might look in the public works file, an appropriate reason not to do so would be if the application was never reviewed by public works. Documentation of the search process will help the agency in meeting its burden to prove that the search was adequate.

PLACES TO SEARCH FOR RECORDS

Agency Email Records

Searching email mailboxes for records responsive to a records request is a particularly challenging task given the volume of emails sent and received by staff and officials. Consider investing in software that allows certain staff members to search all agency emails and find responsive records.

Examples of such software include [Barracuda](#) and [Commvault](#); see our [PRA & Records Management Technology Guide](#) for additional software options.

If an agency does not have the budget to invest in such software or have the capability to search all agency emails, consider using an email voting tool. This kind of tool allows the PRO to efficiently survey staff and officials on whether they have responsive emails as well as other issues related to records requests.



Practice Tip: Microsoft Outlook has a “voting function” that can be included in an email, which allows the email recipient to vote “Yes,” “No,” or “Maybe” regarding whether they have responsive records. To learn how to use the Outlook voting function, refer to MRSC’s [Microsoft Outlook Voting Function](#) tip sheet.

“Old” Equipment

Consider looking for records that may be stored on computer equipment used by former officers and employees, as well as equipment that is no longer being used because it has been replaced. If agency policy is that equipment is backed up and wiped when an officer or employee leaves or when the equipment is no longer used because of upgrades, it may be reasonable not to search on that equipment. But be careful to document the policy and that the policy is being followed. Otherwise, make sure that old equipment is searched if records may be stored there.

Agency Databases

Information in databases is stored as discrete inputs organized by the database software. Those individual inputs, or pieces of data, are themselves public records, and if the agency can generate a report from those fields using “off the shelf” software, it must do so. If providing the information requires custom programming, the agency may still be required to produce the custom report, but it can charge the requestor for the cost of the custom programming ([RCW42.56.120\(3\)](#)). While agencies are not required to create records that do not exist on the day of a request, extracting data from a database into a new spreadsheet or other report is not considered the creation of a new record – rather it is the effort the agency must take to make the existing data available for inspection.

Server Back-Up Files

While we have no clear guidance from the courts or the Attorney General’s Office, MRSC believes there are legitimate arguments that local governments are not obligated to open and restore back-up server files to perform a search for responsive records unless there is reason to believe that a copy of an otherwise missing record can be found within the back-up server file. This position is based on what a court would likely consider to be “reasonable” in the specific context. If an agency gets a specific request to access the server back up and recover a particular file, it should be ready and willing to do so, but should also consider whether a customized service charge for providing access is appropriate. See [RCW 42.56.120\(3\)](#).

If someone asks for the backup file itself, that is likely the equivalent of asking for “all records” which means it is not a request for identifiable records.

MRSC understands from talking with IT professionals and the State Archivist, the purpose of server back-up files is disaster recovery for the agency’s computer and network systems. It is essentially a “moment in time” snapshot of the agency’s entire computer and network system. That file contains not only documents, but sensitive information about the agency’s computer and network systems. Revealing server organization and file locations would be a significant cybersecurity risk and arguably the basis for asserting an exemption under [RCW 42.56.420\(4\)](#). An agency could also argue that production of a “back up” may excessively interfere with agency functions in violation of [RCW 42.56.100](#) because it would require having sufficient infrastructure to restore the entire system before removing and redacting otherwise exemption information from the entirety of the file.



Caution: This analysis of back-up server files has not been tested in court and, if an agency chose this route, it would need to be very well supported with a declaration explaining in laypeople terms the nature of the back-up file, the security risk if disclosed, and the feasibility of search and/or redaction.

Metadata

Electronic records have a vast trove of digital information that is stored “behind the scenes.” This is data that is not immediately apparent when viewing an electronic record in its default status. This information is often referred to as “metadata” – because it is data about the data that is visible. Metadata could include, for instance:

- When the record was originally created;
- The original and subsequent authors;
- The number of times the document has been edited and by whom;
- File storage locations;
- Server IP addresses, and more.

The agency is required to produce non-exempt metadata if requested, and if producing it is reasonably and technologically feasible ([Mechling v. City of Monroe](#) (2009) and [O’Neill v. City of Shoreline](#) (2010)). The requestor must ask for metadata. They may do so by asking for it specifically, or by asking for electronic records in their “native” or original format.

Personal Devices and Accounts

Records related to agency business are public records regardless of where they were created or stored – that includes on personal devices and in personal email or social media accounts. However, there are practical and legal challenges to having agency staff perform a centralized search for responsive records that reside on an employee’s or official’s personal device or personal account.

Washington Courts recognize this and have said that the agency can reasonably rely on the employee or official to perform their own search of their device or account. See [Valderrama v. City of Sammamish](#) (2024). The employee or official then certifies that they have done the search by signing an affidavit or declaration that details the extent and nature of their search. The affidavit or declaration must be “reasonably detailed” and “nonconclusory,” and should describe the accounts, devices and locations searched and the names and search terms used to locate responsive records. An agency’s affidavits are entitled to a presumption of good faith.

See [Nissen v. Pierce County](#) (2015) for more guidance on what constitutes an adequate search of personal devices and personal email accounts.

Reviewing and Redacting Gathered Records

Before records can be provided to a requestor, they must be reviewed for responsiveness and potential withholding or redaction. This section defines responsiveness in the context of the PRA, provides a high-level overview of exemptions and withholdings, and covers best practices for redacting and creating exemption/withholding logs or communications.

DETERMINING WHETHER A RECORD IS RESPONSIVE

The first part of the records review process is determining if each record found is actually responsive to the request. What does it mean for a record to be “responsive”? A responsive record fits squarely within the requestor’s request. When a request is narrow or limited to specific documents, this should be fairly easy to determine.

But with larger or broadly worded requests, a more expansive scope of records may need to be gathered and then reviewed. For example, when gathering potentially responsive electronic records using keyword or Boolean search terms, it’s likely that not all records retrieved will be relevant. For instance, searching using the term “public records” will bring up many irrelevant records since most public officials have it in their disclaimer footer so it appears in every email they send.



Practice Tip: In keeping with the directive to provide the fullest assistance, inundating a requestor with non-responsive documents or charging a requestor for records they did not ask for is discouraged. At the same time, be careful about being too exacting in interpreting a request. When in doubt whether a record is responsive, the risk adverse approach is to provide it to the requestor.

It is important to review the entire record to determine responsiveness. A careful review will not only ensure an agency is not providing non-responsive records, but also that staff are not overlooking other potentially responsive material. For example, it can be tempting to just look at the subject line of a memo or email and believe it to be responsive, but this practice can lead to errors. It is common, especially in email chains, for the content of a record to depart from the original subject matter. The body of the email, as well as other types of documents, may also contain “breadcrumbs,” like references to other relevant materials or attachments, that should be followed to find additional records. Failure to follow obvious leads could result in a court finding that the search for responsive records was not adequate.

REVIEWING RECORDS FOR POTENTIAL EXEMPTIONS FROM DISCLOSURE

MRSC is often asked whether a certain public record is subject to disclosure, i.e., must the record be released to the requestor. As the PRA explains, every agency “shall make available for public inspection and copying all public records, unless the record” is a list of individuals requested for commercial purposes, falls within the specific exemptions of the PRA itself, or is exempt based on an “other statute which exempts or prohibits disclosure of specific information or records” ([RCW 42.56.070\(1\)](#)). The presumption is that a record is public and subject to disclosure. Agencies bear the burden of proving whether an exemption applies. We go into more detail in the section on [Exemptions Commonly Used by Local Governments](#), but there are certain underlying concepts related to the process of asserting exemptions that we explore here.

Maintaining a Working List of Commonly Applied Exemptions

While the PRA includes many exemptions listed in [Chapter 42.56 RCW](#), there are many other statutes that an agency can cite to justify withholding all or part of a public record. It can be difficult to track down these other exemptions. This is likely why agencies are required to create and make available to the public a list of commonly applied exemptions, other than those listed in the PRA, “that the agency believes exempts or prohibits disclosure of specific information or records of the agency”([RCW 42.56.070\(2\)](#)). To meet this obligation, many agencies simply incorporate into their PRA policies the list of exemptions found in state statutes that the Code Reviser is required to prepare every year for the [Sunshine Committee](#) (a.k.a. “public records exemptions accountability committee”) ([RCW2.56.140\(7\)](#)). However, as of 2024, that list is over 30 pages long and includes many agency-specific exemptions that have no relevance for local governments.

Ideally, an agency should develop its own working list of exemptions that it uses often. This list could be customized based on the types of records the agency maintains, and the nature of requests it commonly receives. Such a list is helpful for two major reasons. The first is that a shorter list can be very helpful to records staff as they review records. To the extent that an agency has document review software, there should be a “key” for staff to consult as they review records and apply exemptions. Of course, staff will need to be generally aware of other potentially sensitive information and should be trained on how to identify other less common exemptions that might apply.

The second reason is to better inform the public and shape requestor expectations. If the list is made easily available, perhaps along with the agency’s adopted procedures and fee schedule (ideally on a website), an agency can potentially reduce the amount of friction that results when someone seeks a record that will not be disclosed. It may also provide some assurance to the subject of the record that their information would likely not be disclosed. For example, if an agency regularly receives requests for employee “payroll information,” a list of all the information and records that will and will not be disclosed may assist the requestor in determining whether the information they are seeking will actually be released. In the meantime, employees will know that their employer cannot be compelled to disclose certain listed information.

Special Considerations for Reviewing Electronic Records

When it comes to reviewing electronic records, especially records in their native format (as opposed to those that have been converted to another format, like “pdf”), records staff need to take additional review precautions. As discussed in the [Metadata](#) section of this publication above, electronic records in their native format include “metadata,” or data about the data that one could theoretically locate within the record. Some of that metadata information may be subject to an exemption.

Records staff should work with their IT professionals to identify the types of information that may exist as metadata within electronic records.



Caution: If a file allows a person to view different versions of a record, such as prior drafts and tracked changes, all of these versions should be reviewed before the original record is released in case there . Agencies should be especially mindful if an attorney was involved in the document drafting process (in which case the information may be protected as attorney work product) or if the agency works with individuals whose identity is protected (like witnesses, victims, welfare recipients, and juveniles.)

Another difficult aspect of working with original electronic records involves how information can be redacted from an electronic record without altering the original, which is discussed below.

REDACTING RECORDS

Records staff may be tempted to hold back the full record if an exemption applies. However, an agency cannot rely on an exemption to withhold an entire record if the protected information “can be deleted from the specific records sought” ([RCW 42.56.210\(1\)](#)). We refer to this deletion of information as “redaction.”

But what does it mean to “redact” a record? To redact means to hide or remove the content that is subject to a PRA or other statutory exemption. From a practical standpoint, how one hides or removes information depends on the nature of the record itself, but keep in mind that whatever process is followed, the original record must remain intact and unaltered.



Caution: It is a felony to intentionally and unlawfully “remove, alter, mutilate, destroy, conceal, or obliterate” a public record! ([RCW 40.16.010](#) and [RCW 40.16.020](#)).

Redacting Paper Records

Because it is illegal to alter an original paper document, the first step in redacting a paper record is to make a photocopy or digital scan. This copy of the record can now be altered for redaction purposes. Note that an agency cannot charge the requestor for any photocopies made solely for the purpose of applying redactions if the copy will not be provided to the requestor.

For paper photocopies, the method of redaction needs to completely obscure the text. This may require a second photocopy after the redaction is applied. Remember, if you can hold the paper record to the light and still see the redacted text, you have not completed the redaction. Likewise, any physically applied marks need to cover all parts of the text. If the tops or bottoms of letters can be seen, and then guessed, then the information has not been effectively redacted.

Additionally, we recommend a method that demonstrates the text was hidden intentionally. For paper copies, use a colored marker instead of white liquid paper. Liquid paper can make redactions invisible after photocopying, making it unclear if sections were blank in the original record or were later redacted. This is especially important for forms to clearly communicate what was redacted versus never filled out. Alternatively, a black box can be drawn around the whited-out area and/or redaction codes labeled overtop.

Redacting Electronic Records

As mentioned above, it is impossible to remove or obscure information in an electronic record without altering the record. One secure way to redact electronic records is to convert the file to pdf, which creates a static image of the record, and use redaction tools in software like Adobe Acrobat Pro or E-Discovery to remove the necessary information. (Note that free versions of most software do not come with these advanced tools). Converting to pdf will also likely remove any metadata or prior digital versions. If the requestor is seeking the records with metadata, then staff will need to work with IT professionals to extract the metadata for disclosure along with the pdf of the record, to the extent it is reasonable and technically feasible to do so.

Make sure that the digital tool actually removes the text from the electronic document. A known mistake is to use a mark out tool that seems to completely obscure the text, but it is actually a 100% opaque or “black”

highlighter software setting. The digital information is still below and can be viewed by a different user by removing the highlighter.

Again, reviewing staff should also be careful if the agency uses versioning software, where multiple versions are overlaid in the same electronic file, or if the file can be viewed with tracked changes or comments visible. By converting the document to pdf, only what is visible in the original record at the time of conversion will be visible in the final pdf.

If an agency lacks the software to convert the electronic record, staff may need to consider printing out the document and then physically redacting it as one would a paper record. This could happen, for instance, if redactions would modify a spreadsheet formula. Alternatively, after consultation with the requestor, staff may need to create an entirely new record that does not contain the exempt information but is still responsive to the request – such as running a new report from a database with non-exempt parameters.

PROVIDING AN EXPLANATION OF EXEMPTIONS APPLIED (E.G., EXEMPTION LOG OR LETTER)

If a record is redacted or withheld in its entirety, the agency needs to identify the specific statute(s) authorizing redaction or withholding and provide a brief explanation of how the exemption applies to the withheld record ([RCW 42.56.210\(3\)](#)). This identification is commonly done using an exemption log, but other methods are allowable as long as they meet the statutory requirement. This identification must provide sufficient explanatory information for requestors to determine whether the exemptions are properly invoked. The log or other explanation should include the type of information that would enable a records requester to make a threshold determination of whether the agency properly claimed the exemption. See [Block v. City of Gold Bar](#) (2015).

An exemption log typically consists of a table that includes a description of the record, a statement whether the record is withheld in its entirety or if only portions have been redacted, page numbers of the redactions, and a brief description of and statutory citation for the exemption. For an example of an exemption log that can be modified for an agency's use, see MRSC's [sample exemption log](#).

For smaller requests, a detailed letter explaining any redactions or withholdings can be used instead. Another option is to apply the redaction code directly to the document and include a key for reference. However, an agency's attorney should review this approach, as some exemptions might require more detailed explanations than can be provided in a simple key.

An agency must identify each page of a record where information has been redacted and specify the basis for each redaction. For example, the redaction of an employee's residential address on page five would be one entry. The redaction of the same employee's social security number on page seven would be a separate entry. If multiple redactions are on the same page, we recommend creating separate entries for each redaction in order to provide a sufficient explanation for each redaction.



Practice Tip: We recommend using a process known as Bates stamping, a method of sequentially numbering pages with a reference number that automatically advances on each page. Many software programs (e.g., Adobe Acrobat) also have a feature to add sequential numbering. This is especially helpful when managing a high volume of documents. For paper copies, there are physical stamps that automatically advance the number for each page.

If more than one statutory provision could apply to prohibit or limit disclosure, each should be included in the exemption log. The requestor challenging an exemption needs to be put on notice of why a record (or portion thereof) is being withheld before they file a complaint in court. Courts do not look kindly on late arguments that another exemption not listed in the exemption log might apply.



Caution: If an agency uses an exemption key or a cheat sheet for frequently used exemptions, make sure that the statutory citations are up to date. For example, in 2023 the legislature re-numbered [RCW 42.56.250](#), which contains many employment-related exemptions, and changed most paragraph numbers to letters. Moreover, if an agency uses a software program to auto-generate an exemption log, take steps to ensure the output is sufficiently detailed.

OPTIONAL (AKA THIRD-PARTY) NOTICE TO INTERESTED PERSONS REGARDING DISCLOSURE

An agency has the option of notifying interested parties before the agency releases records that may name or pertain to an individual(s) or private interest. ([RCW 42.56.540](#)). This notice allows any person named in a record or to whom the record pertains, an opportunity to ask a court to issue an order (i.e., “injunction”) to prevent an agency from releasing a record. Practitioners and courts sometimes refer to this optional notice as “third-party” notice. For more, see the section of this publication called [Injunction Challenges](#).

This option to provide notice is particularly useful in circumstances where an agency may be unsure how or if an exemption would apply or when there is sensitive information about an individual(s).

The Washington Supreme Court affirmed this practice when it explained that “[t]he person who is the subject of the public record is in the best position to identify what interest, if any, they hold that could be invaded as a result of disclosure of the public records” ([Does v. Seattle Police Dep’t](#) (2025)). The option to provide notice under [RCW 42.56.540](#) is the best mechanism for the agency to inform the subject of the pending request so that individual may seek a court injunction on that basis.



Caution: An agency will generally be immune from liability if an otherwise exempt record is released in good faith under the Public Records Act (PRA) ([RCW 42.56.060](#)). However, penalties may apply if the exemption or prohibition on release is based on a different statute (e.g., violations of the Criminal Privacy Act could result in civil and criminal penalties, see [Chapter 10.97 RCW](#).)

Procedure for Providing Third-Party Notice and Time to Respond

When deciding whether to notify an interested person under the optional notice provisions at [RCW 42.56.540](#), consider whether releasing the record could cause embarrassment, involve constitutional privacy concerns, or affect the financial interests of the individual or organization.

Once an agency decides to give notice, they should promptly do so to avoid claims of an unreasonable delay by the records requestor. As a best practice, the notice should include the text or a copy of the request, a description of the records likely to be released, the identity or contact information of the requestor, and a deadline by which the agency will release the requested record if the interested person does not act.

The typical practice is to allow ten calendar days from the date of the notice for the third party to go to court and obtain what is called a “preliminary injunction.” An agency should be aware of its local court’s requirements, some courts may only hear motions for injunctions on specific days (e.g., every other Friday), in which case a longer period should be the agency’s standard practice. The notice should include a clear deadline by when the interested person must act. For instance, the notice might state, “If this office does not receive a court-issued injunction by 8 a.m. on February 6th, the record will be released immediately.” An agency should also avoid delaying the release of responsive records based solely on the third party’s intent or promise to file for an injunction; this is not sufficient grounds and could also be considered an unreasonable delay.

Some jurisdictions also provide a copy of the likely-to-be-produced records (with redactions) so the third party can make an informed decision about whether to challenge the production. This is discretionary.

Finally, always inform the requestor that third-party notice has been given.

We recommend that agencies develop an official policy for when and for how long to provide third-party notice. This will hopefully provide clarity and consistency in making the decision to give optional notice.



Practice Tip: When providing notice to federal agencies, an agency may need to allow more time, such as 20 days, for them to file injunctions. Ask them to notify the agency as soon as possible if they do not object to disclosure.

MANDATORY NOTICE TO EMPLOYEES

As mentioned above, providing notice to interested persons may be mandatory in certain circumstances. One such circumstance is when an agency receives “a request for information located exclusively in an employee’s personnel, payroll, supervisor, or training file” ([RCW 42.56.250\(2\)](#)). Upon receipt of such a request, the agency must provide notice to the employee, any union representing the employee, and the requestor.

The mandatory notice requirement is limited to requests for information that is “exclusively” in the relevant files. Arguably, if the information is also available elsewhere, then the agency is not required to provide notice although it may be a good practice to exercise the option to provide notice under [RCW 42.56.540](#) regardless. It is unclear whether this mandatory notice also applies to former employees, so again, it may be a good practice to use the option to provide notice anyway.

Mandatory notices must state:

- The date of the request;
- The nature of the requested record relating to the employee;
- That the agency will release any information in the record which is not exempt at least ten days from the date the notice is made; and
- That the employee may seek to enjoin release of the records under [RCW 42.56.540](#).

This mandatory notice requirement applies regardless of whether any exemption might apply. Note that the notice should be provided as soon as feasible to avoid an unreasonably delay in the release of records.



Practice Tip: While the statute only requires that the notice inform the employee of the number of days after the date of the notice that the records will be disclosed, we recommend agencies include a specific date the records will be released if the employee does not present the agency with an injunction order from the court. For more, see the section of this publication called [Injunction Challenges](#).

Producing and Delivering Records

The Public Records Act (PRA) protects the public's right to inspect and copy records without interfering with local government agencies' operations or records preservation. Specifically:

- [RCW 42.56.100](#) requires agencies to adopt reasonable rules to provide full public access to records while protecting records from damage or disorganization and preventing excessive interference with other essential local government functions.
- [RCW 42.56.080\(2\)](#) provides that public records shall be accessible for inspection and copying and made promptly available, in installments if necessary.
- [RCW 42.56.090](#) requires public records to be available for inspection and copying during customary business hours for at least 30 hours per week, with hours posted on the agency's website and publicly communicated, unless an alternative time is agreed upon.

Once an agency has gathered and reviewed responsive records, it must make these records available to the requestor, who can opt to inspect the records on site or obtain digital or paper copies. The agency should adopt policies on how records will be made available for inspection and copying and make that policy easily available to requestors. A clear policy can frame requestors' expectations and help ensure equal treatment of requestors.

Further, it is important to provide an explanation for any records that are being withheld or redacted at the time of delivery.

INSTALLMENTS AND DEPOSITS

There are two important tools available to agencies when managing larger requests – installments and deposits.

[RCW 42.56.080\(2\)](#) authorizes agencies to produce records “on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure,” and [RCW 42.56.120\(4\)](#) provides that, if a requestor fails to claim or review an installments of records, the agency is not obligated to fulfill the balance of the request.

Additionally, [RCW 42.56.120\(4\)](#) permits an agency to estimate, in advance, the total copy cost for a production. Based on this estimate, agencies may require a 10% deposit to be paid in advance. The estimate can include a customized service charge. The section on [Copying Charges – Agency Options and Limitations](#) below goes into more detail.

If the advance deposit is not paid within a reasonable time or an installment is not claimed or inspected, the agency can deem the request abandoned and close the request, as discussed more in the section [Abandoned Requests](#).

METHODS OF DELIVERY

As noted in [WAC 44-14-04004\(2\)](#), an agency should provide the copies in the format and manner requested by the requestor if reasonable and feasible. If the agency cannot comply, it should be prepared to explain why and to offer an alternative.

In-Person Inspection

An agency can make records available for in-person inspection using several methods. Paper records and files can simply be set aside for viewing, although the agency may need to set a time limit for how long the records are pulled out of place to avoid interference with records filing and storage. This option is only available if no redactions are necessary.

If redactions are necessary, the agency will need to make copies to apply the redactions. Note that the agency cannot charge for these “inspection” copies unless the requestor opts to take these copies with them.

For in-person inspection of electronic records, the agency will need to find a method that allows inspection but still protects the security of the agency’s IT systems. A laptop or other terminal with access to the records, but not additional agency systems, is one possibility.



Caution: The requestor should not be allowed to attach or connect any of their own electronic storage devices—e.g., USB drives, external hard drives, wireless/Bluetooth phone connections—to agency devices. This poses a significant IT security risk.

An agency should not allow the requestor to take original paper or electronic records out of the building, as there is potential for loss or damage. While the public can examine the records at the agency or make copies, the records must remain in the agency’s custody. The requestor can also use their own equipment to make copies, scans, or photographs, however it may be necessary to have staff monitor the requestor’s review to ensure proper treatment of records. As discussed in the section [Agency Office Hours for In-Person Inspection](#), records should be available during an agency’s customary office hours but it may be necessary to schedule an appointment so staff can be available. Again, in the interest of providing “fullest assistance” to the requestor, it is important not to be unduly restrictive in the timing and length of the appointment.

Paper Copies

Records staff can prepare paper copies or set originals aside for the requestor to make copies using agency facilities. In both cases, the agency can charge for the physical paper and the use of the machine. Copy charges are discussed in more detail below. Note that the agency cannot charge for intermediate copies of records that are generated only for redaction purposes.

It may be necessary to send certain records out for professional copying. This may occur with very high-volume records productions or large dimension records, i.e., building plans. In cases like these, the agency should be sure that the adopted copy charge fee schedule includes an “actual cost” fee for specialized copy services. However, the agency should not incur these costs until after informing the requestor of the estimated charge.

Some requestors may ask for paper copies of electronic records. If possible, the agency should provide the copies in the format and manner requested. However, providing paper copies may not be feasible if a requestor is seeking an electronic record in native format or with its metadata.

Delivery of Paper Copies

To deliver paper copies, the agency can either mail the records at a cost to the requestor, or the requestor can pick up the copies from the agency’s office. When mailing records, the agency can charge for the cost – like postage or envelopes. The agency should decide whether or in which circumstances to utilize certified mail

with tracking. The requestor should be informed that if they fail to pay for or pick up the copies, their request will be deemed abandoned, as discussed in the section on [Abandoned Requests](#).

Electronic or Digital Copies

The vast majority of an agency's records are likely in digital or electronic format. These records may have always existed in digital form, or they may have started out as paper records that were digitized for retention. In many instances, the agency will be able to simply copy the electronic record "as is" to comply with the requestor's preferred method of delivery, discussed further below.

However, it may occasionally be necessary to convert the digital record to another format to make it accessible to the requestor. For example, if the requestor does not have Microsoft Outlook, they may not be able to view email records provided in a "pst" format. Instead, the agency may need to convert to a universal reader format, like "pdf." If the electronic record happens to be data stored within a database, it may be necessary to run a new report or data compilation or otherwise provide customized electronic access services. This is not considered the creation of a new public record; rather, it is part of the process necessary to make the record available to the requestor.

When it comes to electronic records that are under the control of third parties, like social media, the agency will need to take steps to retain its own copy via a capture tool. This obligation to retain a copy exists regardless of whether the agency receives a request for the record and it is this retained copy that should be made available to requestors. See State Archives' [Strategies for Managing Social Media Records Retention](#). Agencies do not meet their obligation to "make records available" by directing a requestor to a third-party website or digital platform that the agency does not control.

Delivery of Electronic Records

There are several different methods of delivering electronic records. Many jurisdictions use record request portals to upload records to a unique digital location that allows the requestor to download copies. Be sure the platform is completely separate from the agency's electronic record management system. Sharing links via One Drive, Microsoft Teams, Google Docs, etc., exposes the original digital records as well as the file storage system to potential cyberattack or alteration.

Another method, particularly for large requests, is to save the records to an external storage device, like a portable hard drive or USB memory stick, that can be mailed to or picked up by the requestor. As discussed below, agencies can charge for storage devices, as well as for mailing costs, in addition to the digital copies themselves. Again, for IT security reasons, never attach a digital storage device to an agency computer that has not been under the control of the agency since purchase.

If the records already exist on an agency-controlled website, the agency can simply provide direct links to the records – likely via an email. See [RCW 2.56.520\(1\)\(b\)](#). An agency cannot charge for providing links to records that are already available online unless the requestor specifically asks for the record in a different format ([RCW 42.56.120\(2\)\(e\)](#)). Note that the link must be directly to the record itself. It is not sufficient to link to an agency's online database directing the requestor to search for the records themselves. And again, an agency does not meet its statutory obligation to make records available by only providing a link to a third-party website it does not control.



Caution: Emails with multiple links in the body often get flagged as potentially dangerous and may be filtered to junk email folders. Be sure to send a separate follow up email without links to confirm receipt of the original email.

Finally, while a common practice, care must be taken when delivering digital records as email attachments. Often, these attachments exceed the allowable file size, sometimes resulting in delivery failures that may not bounce back for several hours. Still, breaking up multiple attachments into several emails invites more potential for human and computer error. MRSC recommends limiting email attachment sizes to less than 20 MB and/or if the entire production or installment can be accomplished with a single email, confirm receipt with a follow-up email. Otherwise, we recommend choosing one of the alternatives detailed above.



Practice Tip: When it comes to digital records, particularly in instances where there is no charge for the record, we recommend using a delivery method that indicates if the records have been claimed within a reasonable timeframe. These may include an online records portal or document exchange platform that logs access and download history.

COPYING CHARGES – AGENCY OPTIONS AND LIMITATIONS

Unless another statute provides otherwise, the Public Records Act sets forth how and when public agencies may charge a requestor for costs associated with fulfilling a public records request. See [RCW 42.56.120](#) and [RCW 42.56.070\(7\)](#). Importantly, an agency may only charge for the actual cost of the physical or digital copies produced to the requestor, which may include the cost of staff time in creating the copies, as discussed more below.

Agencies may not charge for many aspects of the records production process, such as time spent searching, documenting, reviewing, or redacting records (with the exception of Body Worn Camera recordings, referenced below). Further, agencies cannot charge for on-site inspection of records, links to records publicly available on the agency's website, or copies made for applying redactions or preparing records for inspection (that the requestor does not take with them).

An agency is not required to charge for copies of public records, although we recommend that an agency do so. If an agency does charge for copies, it must do so pursuant to an adopted fee schedule ([RCW 42.56.070\(7\)](#)). [RCW 42.56.070\(7\)](#) and [RCW 42.56.120](#) set forth an agency's options for charging copying fees, which also authorizes agencies to collect costs on a rolling basis if records are produced to the requestor in installments. See also [WAC 44-14-070](#) and [44-14-07001](#). An agency must formally adopt copying charge policies, even if it opts for the default costs laid out in the statute, and those copy policies must be available to the public.



Note: An agency has discretion to waive any copying charges pursuant to adopted rules. Agencies should be careful that any policy to waive charges is either equally available to all or is structured in a manner to avoid the constitutional prohibition against the [gift of public funds](#). Note that some agencies have a policy to only charge for records that would exceed some minimum dollar threshold (e.g., \$2, \$3, or \$5). This is to avoid an administrative burden, as the cost of collection may exceed the fee recovered.

Below are the three primary methods for establishing copying costs allowed by the PRA. For a good overview of charges, see this one-page [summary](#) prepared by the Washington State Attorney General's Office.

Option 1: Actual Cost

Agencies can charge the actual cost incurred for providing copies by adopting a statement of costs, after notice and a public hearing ([RCW 42.56.070\(7\)](#)). Choosing this method requires agencies to identify the actual cost of providing copies by conducting a fee study.

For hard copies, actual cost includes:

- The cost of paper,
- The per-page cost for use of agency copying equipment,
- The cost of postage or delivery charges and the container used for delivery, and
- Staff time to *copy* and *send* the requested public records.

For electronic copies, actual cost includes:

- The cost of electronic production or file transfer of a record,
- The use of cloud-based storage and processing services,
- The transmission of records in electronic format, including the transmission charge and the media device used for delivery, and
- Staff time to *copy* and *send* the requested public records.

Again, if the records are provided via a link to the agency's website where the records are already publicly available, the agency cannot charge for the provision of that link.

Option 2: Statutory Default Charges

Alternatively, if agency policy establishes that calculating actual costs would be unduly burdensome, it can adopt the statutory default charges listed in [RCW 42.56.120](#):

- 15 cents/page for photocopies or printed copies of electronic records,
- 10 cents/page for records scanned into electronic format,
- Five cents for every four electronic files or attachments uploaded to an email, cloud storage service, or other electronic delivery system,
- 10 cents/gigabyte for transmitting records electronically,
- The actual cost of the digital storage media/device, container used to mail the copies, and postage or delivery charges, and
- A customized service charge for requests that would require information technology expertise to prepare data or provide customized electronic access.

Option 3: Flat Fee Up to \$2 per Request

An agency also has the option to charge a flat fee of up to \$2 per request as an alternative to actual or default costs if it estimates the copying cost for the request are equal or more than \$2. This flat fee can only be charged once per request, not per installment ([RCW 42.56.120\(2\)\(d\)](#)).



Note: Sales tax may not be charged for copies made in response to a public records request, as these charges are exempt under [RCW 82.12.02525](#).

Charges Associated with Law Enforcement Records

In addition to the authority to charge for copying within the PRA, there are also several statutes specific to law enforcement agencies that allow for different types of cost recovery beyond the typical charges in the PRA:

- **Body Worn Camera Redaction:** [RCW 42.56.240](#)(14) allows agencies to charge for staff time spent redacting body worn camera video recordings for requestors other than those set forth in subsection (14)(e) of the statute. These charges are in addition to the regular costs allowed under [RCW 42.56.070](#)(7).
- **Criminal History Records Information:** [RCW 10.97.100](#) allows criminal justice agencies to establish and collect reasonable fees for the dissemination of criminal history record information to agencies and persons.
- **Traffic Accident Reports:** [RCW 46.52.085](#) allows law enforcement agencies to adopt a standard fee to cover the costs of furnishing copies of traffic accident reports, regardless of the number of pages in the report.
- **Sheriff Department Audio, Visual, or Photographic Material:** [RCW 36.18.040](#)(1)(t) allows sheriffs to collect fees for the reproduction of audio, visual, or photographic material, including the actual cost of personnel time.

Closing a Request and Afterwards

An agency can close a request when:

- It has provided all the responsive records, with or without applying exemptions;
- It has a basis for denial of the request (e.g., the agency is not the correct agency that holds the requested records; the request is a request for information or is not a request for identifiable records; the request is for personal records that are not public records, the request was for all or substantially all of the agency's records, etc.);
- The requestor failed to clarify an entirely unclear request; or
- The records request has been abandoned or withdrawn.

ABANDONED REQUESTS

There are times when an agency can deem a PRA request abandoned ([RCW 42.56.120\(4\)](#)). This may occur when a requestor fails to pay the advance deposit, pick up the responsive records or an installment, pay for the requested records or an installment, or provide contact information for delivery purposes.

The PRA Model Rules at [WAC 44-14-04005](#) addresses inspection of records and abandonment. The rules suggest adopting a policy that allows a 30-day timeframe for reviewing or claiming the records before the request is deemed abandoned. After a request is deemed abandoned, the agency can formally close it and is no longer bound by the records retention requirements of the PRA prohibiting the scheduled destruction of a requested record ([RCW 42.56.100](#)).

Agencies can avoid wasting staff time by adopting policies and procedures that require the requestor to be an active participant in the records fulfillment process by making a deposit payment or taking delivery of an installment. This is one reason MRSC recommends adopting a policy to charge for copies. If an agency does not charge for copies, it may not be able to utilize the 10% deposit option.

If the request is deemed abandoned, it is important to formally close the request and send a closing letter.



Practice Tip: To document abandonment when producing records in installments, an agency should be diligent about numbering the installments and tracking them in a log. Agencies should also keep track of whether an installment has been picked up, downloaded, and/or paid for.

CLOSING LETTER

To formally close a request and start the time period during which a person can file a suit against the agency claiming records were wrongfully withheld, e.g., the “statute of limitations,” the agency must issue a final, definitive response that is “sufficient to put [the requestor] on notice that the [agency] did not intend to disclose records or further address this request.” See [Belenski v. Jefferson County](#) (2015). This “final, definitive response” must contain certain elements articulated by the Supreme Court in [Cousins v. Dept. of Corrections](#) (2024).

First, the letter must be in plain language that can be understood by a lay audience. This means there should be little to no legal jargon in the letter.

Next, the letter must explain how the request was fulfilled and why the agency is now closing the request. Some examples of proposed language may include:

- “All responsive records have been produced and the request is now closed.”
- “Due to nonpayment of copy charges for the previous installment, your request is now closed.”
- “We notified you on [date] that you needed to inspect or pick up your records by [due date]. You have not done so, and your request is now closed.”
- “On [date] we told you that your request was unclear and requested clarification by [due date]. We did not hear from you. Because you did not clarify your request and it is entirely unclear, by law we are not required to further respond to your request. Your request is now closed.”



Practice Tip: Agencies are encouraged to communicate to the requestor what they can expect and what actions the requestor needs to take to obtain records. However, a “final, definitive response” is one that states that the request is now closed. Explaining that a request *will be* closed in the future if the requestor fails to act in some manner (pick up copies, make a payment, clarify the request) does not meet this standard. See [Soule v. State of Washington](#) (2024).

Next, the agency must inform the requestor that the PRA’s one-year statute of limitations for a requestor to seek judicial review has started to run and that the agency does not intend to further address the request. The statute of limitations is discussed in more detail below.

Consistent with [WAC 44-14-04006](#), the agency must also invite the requestor to ask follow-up questions about how the agency has responded to the request. The agency can specify a reasonable time frame during which the requestor should ask such follow-up questions. Importantly, the agency must *actually* respond to those questions. Additionally, if the agency does not intend to do anything else with the request, then it must explicitly inform the requestor and indicate that the request is still closed. Alternatively, the agency can respond that it will conduct a further search for responsive records but the agency should be aware that this may pause the clock on the statute of limitations.

MRSC also recommends that agencies inform requestors of their right to seek internal review of any denials of requests per [RCW 42.56.520](#)(4) (local governments) or [RCW 42.56.530](#) (state agencies), as well as invite requestors to submit a new request now that the current request is closed.

If additional records are discovered after a request is closed, e.g. in response to questions raised by the requestor or by coming across the records during other work, they should be produced to the requestor in an expedited manner with an explanation of whether the request remains closed (i.e., the statute of limitations continues to run) or if the agency is reopening the request and further records are likely to be produced. See [WAC 44-14-040](#)(13).



Practice Tip: Developing templates for closing letters is a great way to ensure that all the important information is included, however all templates should be approved by the agency attorney to ensure compliance with the PRA.

AFTER A REQUEST IS CLOSED – HOUSEKEEPING

Once a records request is closed, there are several “housekeeping” duties an agency needs to complete.

First, an agency should update its PRA tracking log as required by [RCW 40.14.026\(4\)](#) and discussed in [Receiving and Tracking a Records Request](#). This includes “a description of the records produced in response to the request, a description of the records redacted or withheld and the reasons therefor, and the date of the final disposition of the request,” i.e., the issuance of the closing letter.

While there is no statutory guidance on the form this log should take, very large requests will likely result in very large entries to the log. Consider linking the log to separate documents, such as the exemption log or the file where all duplicate copies may be retained, to meet the statutory requirements. Regardless, the tracking log should describe the collected records in enough detail that someone could recreate the response if necessary. Be sure any other work-flow tracking checklists or forms are fully complete so that the process of responding to the request is well documented.

Next, an agency needs to organize and prepare for the retention of any records related to the request and that document the agency’s compliance with the PRA. These records must be retained for at least two years after the request is fulfilled—longer if any litigation follows. See [Local Government Common Records Retention Schedule](#), GS2010-014, *Public Disclosure/Records Requests*. This includes, but is not limited to:

- Internal and external correspondence relating to the request;
- Records documenting the public records provided to the requestor (copies or lists of the records provided, etc.);
- Records documenting the public records (or portions) withheld (exemption logs, copies of portions redacted, etc.);
- Records documenting administrative reviews relating to the request;
- Tracking logs.

Note that the list of records required to be retained explicitly excludes copies of the records produced; however, as noted in [WAC 44-14-04006\(3\)](#), there may be other business reasons to keep a duplicate of all copies of records produced to the requestor:

In some cases, particularly for commonly requested records, it may be wise for the agency to keep a separate copy of the records it copied and provided in response to a request. A growing number of requests are for a copy of the records provided to another requestor, which can easily be fulfilled if the agency retains a copy of the records provided to the first requestor.



Caution: It is common to receive requests for records that were previously produced for another requestor. Before doing so, it is very important to review and update any exemptions previously applied. It may be necessary to either remove or add exemptions. This may happen when either the original requestor or the new requestor was the subject of the record and so certain exemptions designed to protect their privacy need to be reconsidered. A new exemption log or letter should also be prepared for the new requestor.

Finally, the agency should assign a “destruction or disposition date” for the retained records related to the request. This is the date on which the records are eligible for destruction. We suggest organizing the tracking logs by calendar year for more effective planning. For example, all the records associated with a request closed

sometime in 2025 could be safely destroyed January 1, 2028. However, if litigation is pending, the agency must put a hold on any destruction of related records.

AGENCY AND JUDICIAL REVIEW

There are two important ways agency decisions related to a public records request can be reviewed. The first is an internal review and the second is a court or “judicial” review.

Internal Agency Review

Pursuant to [RCW 42.56.520\(4\)](#), agencies are required to “establish mechanisms for the most prompt possible review of decisions denying inspection.” This is intended to be an informal and fairly quick internal process to enable an agency to reconsider its denial. Often the agency attorney is identified as the person that will review any denials upon request. The statute states that the internal “review shall be deemed completed at the end of the second business day following the denial of inspection,” so the opportunity to cure any errors in the denial is very brief.

Note that while agencies are required to have the “mechanisms” for internal review, requestors are not and cannot be required to take advantage of this opportunity for internal review before filing a court case for judicial review of a denial ([Kilduff v. San Juan County](#) (2019)).

Judicial Review

There are several types of judicial review procedures available—some may occur while a request is still being processed by the agency while other challenges may only occur after a request is closed. Additionally, some challenges may only be brought by the requestor, while other challenges may be brought by interested parties.

Injunction Challenges

The PRA authorizes any agency or a person named in a record or to whom the record pertains to seek an injunction order from the superior court to prevent an agency from disclosing a record in response to a pending records request ([RCW 42.56.540](#)). As mentioned before, agencies may opt to provide notice to a third party who may be interested in whether a record(s) is disclosed or not. This injunction procedure is the only option available to those interested parties to seek a court order preventing disclosure of certain records.

To be successful, the party seeking the injunction order must first show that an exemption or prohibition on the disclosure of the record or information applies. Then the party must also prove both that disclosure would:

- Clearly not be in the public interest, *and*
- Substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

Such challenges typically arise after an agency provides notice to interested persons, as allowed by this statute, although receiving notice is not a prerequisite for filing for an injunction. Requestors may also intervene and become a party in these challenges.

Agency Declaratory Judgment Action

While not specifically referenced in [chapter 42.56 RCW](#), the courts have acknowledged that agencies have the right to seek a declaratory judgement order under the Uniform Declaratory Judgment Act (UDJA), [chapter 7.24 RCW](#). See [Benton County v. Zink](#) (2015). While there are significant limits on the availability of the UDJA, courts

have found that when an agency is faced with an existing request for records under the PRA and the real potential for a lawsuit, it has the necessary standing to seek a declaratory judgment that it has complied with the PRA. The procedures for obtaining a declaratory judgment are controlled by the UDJA, not the PRA.

Requestor Challenges

There are two types of judicial review initiated by the requestor.

The first type authorizes a requestor to file a motion in superior court challenging the reasonableness of an agency's estimate of the time required to respond to a request or the estimate of the charges to provide copies ([RCW 42.56.550\(2\)](#)). These challenges may be brought as soon as the agency provides its estimate. The burden of proof is on the agency to show that its estimate was reasonable. This is why it is important to contemporaneously develop documentation that justifies the estimates.

The second, and perhaps most litigated, option is to file a motion in superior court challenging any denial to inspect or copy a public record ([RCW 42.56.550\(1\)](#)). These challenges can be brought once an agency denies access to a record. In most circumstances, the denial cannot be challenged until the agency has stated it will refuse to produce the record or information. Typically, this occurs in the closing letter. Even if interim exemption logs or letters are provided for installments (a recommend practice), "the agency does not deny access to the records until it finishes producing all responsive records." See [Hobbs v. State](#) (2014) and [Cortland v. Lewis County](#) (2020). That said, a "lack of diligence" in processing a request can be deemed a "constructive denial," allowing the requestor to bring a case even while records are being produced. See [Cantu v. Yakima School District No. 7](#) (2022).

Again, the burden of proof is on the agency to demonstrate that the refusal to permit inspection or copying (i.e., to withhold or deny access) was consistent with a statutory exemption or prohibition on the release of the record.

Procedure and Penalties of Judicial Review

As discussed above, there is a one-year statute of limitations for bringing a lawsuit pursuant to the PRA after the request has been closed ([RCW 42.56.550\(6\)](#)). This period is strictly enforced and will be measured from the day after the agency sends its "final, definitive response." See [Bogen v. City of Bremerton](#) (2021).

When a court reviews a local government disclosure action, it will review the facts anew (de novo) and is not bound to accept any factual determination made by the agency, nor give any deference to the agency's decision. To prevent otherwise exempt information from being reviewed in public, the courts may examine any record "in camera," which means behind closed doors with no parties present ([RCW 42.56.550\(3\)](#)). The court may also conduct a hearing based solely on affidavits and declarations, meaning it does not need to take live testimony.

When reviewing agency action, the court is required to consider the broad public policy favoring disclosure, even though disclosure might cause inconvenience or embarrassment to public officials or others. Even extreme inconvenience, such as very large or broad requests, does not excuse an agency from compliance with the PRA. See [Zink v. City of Mesa](#) (2007).

If a public agency prevails, there is no monetary recovery unless the claim brought by the requestor is determined to be frivolous, which is a very high bar to meet.

If the court finds the requestor prevailed against the agency to compel production of a record or finds the original estimate of time to produce was unreasonable, the agency must pay the requestor's court costs, including attorney fees ([RCW 42.56.550\(4\)](#)). If the requestor prevails on the question of the estimate of costs,

they are not entitled to attorney fees. If the case was originally brought by an interested third party seeking an injunction to prevent the agency from disclosing the records, but the requestor eventually prevails, there is no monetary recovery against the agency.

Additionally, per [RCW 42.56.550\(4\)](#), the court may also decide to award the prevailing requestor a penalty “amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.” This is a per-day/ per-record penalty calculation.

A non-exclusive list of factors for a court to consider as either likely to reduce or increase a penalty was laid out in [Yousoufian v. Sims](#) (2010) and includes:

Non-exclusive factors likely to REDUCE statutory penalty include:	Non-exclusive factors likely to INCREASE statutory penalty include:
<ol style="list-style-type: none"> 1. The lack of clarity of the PRA request; 2. An agency’s prompt response or legitimate follow-up inquiry for clarification; 3. Good faith, honest, timely, and strict compliance with all the PRA procedural requirements and exceptions; 4. Proper training and supervision of personnel; 5. Reasonableness of any explanation for noncompliance; 6. Helpfulness of the agency to the requestor; and 7. The existence of systems to track and retrieve public records. 	<ol style="list-style-type: none"> 1. A delayed response, especially in circumstances making time of the essence; 2. Lack of strict compliance with all the PRA procedural requirements and exceptions; 3. Lack of proper training and supervision of personnel and response; 4. Unreasonableness of any explanation for noncompliance; 5. Negligent, reckless, wanton, bad faith, or intentional noncompliance with the PRA; 6. Dishonesty; 7. Potential for public harm, including economic loss or loss of governmental accountability; 8. Personal economic loss; and 9. A penalty amount necessary to deter future misconduct considering the size of the agency and the facts of the case.

When determining the penalty amount necessary to deter future misconduct, it may also be appropriate for a court to take into account the size and financial resources of the agency. See [Zink v. City of Mesa](#) (2018).

The purpose of these penalties is to focus on overall agency culpability due to an overarching concern for deterrence. See, e.g., [Cantu v. Yakima School District No. 7](#) (2022). If the agency otherwise complied with the requirements of the PRA but mistakenly overlooked a responsive document, it “should be sanctioned less severely than an agency that intentionally withheld known records and then lied in its response to avoid embarrassment” ([Neighborhood Alliance of Spokane Cty. v. Cty. of Spokane](#) (2011)).

Remember, the PRA requires reasonable thoroughness and diligence, not absolute perfection. See, e.g., [Freedom Foundation v. DSHS](#) (2019).

Exemptions Commonly Used by Local Governments

While the Public Records Act (PRA) contains numerous exemptions, only some are commonly used by local governments. This chapter will provide an overview of these more commonly used PRA exemptions, as well as the exemptions/prohibitions found in “other statutes” (a phrase used in [RCW 42.56.070\(1\)](#) to indicate that reasons to withhold records are also contained in other state and federal laws).

For an additional review of PRA and other statutory exemptions and prohibitions, see [Chapter 2](#) of the Open Government Resource Manual published by the Washington State Office of the Attorney General. Readers may also be interested in reviewing MRSC’s page [Exemptions and Prohibitions for Local Government Records](#) and the “Exemptions and Prohibitions” section of the [Public Records Act FAQs](#) page.

A GENERAL NOTE ON PRIVACY AND “PERSONAL” INFORMATION

Inherent in many of the specific exemptions in the PRA is the legislature’s attempt to balance personal privacy interests against the need for public transparency in government. For example, exemptions for certain personal information of public employees such as residential addresses and personal cell phone numbers are expressly included within the PRA and are intended to protect an individual’s privacy interests as well as the public’s interest in the efficient administration of government by attracting and retaining well-qualified public employees. See [RCW 42.56.250\(1\)\(d\)](#).

However, the legislature has been clear that the PRA itself does not contain a general “right to privacy” in public records or information unless the right to privacy is explicitly referenced in the statute. See [RCW 42.56.050](#). There are only three exemptions in the PRA that explicitly reference a person’s right to privacy. These are:

- **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* ([RCW 42.56.230\(3\)](#)); and
- **Specific intelligence information** and **specific investigative records** compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential [...] *for the protection of any person’s right to privacy* ([RCW 42.56.240\(1\)](#)); and
- **Information required of any taxpayer in connection with the assessment or collection of any tax** if the disclosure of the information to other persons would [...] *violate the taxpayer’s right to privacy* or result in unfair competitive disadvantage to the taxpayer ([RCW 42.56.230\(4\)](#)).

That said, this “right to privacy” does not encompass everything someone might consider “private” or embarrassing in these three categories of records. Rather, [RCW 42.56.050](#) narrowly defines the violation of a person’s right to privacy to be only if the disclosed information is *both*:

1. Highly offensive to a reasonable person; *and*
2. Not of legitimate concern to the public.

What does it mean for disclosure to be “highly offensive to a reasonable person”? If disclosure would only be “offensive” and not “highly offensive,” an exemption invoking a person’s right to privacy would not apply ([Brouillet, et al., v. Cowles Publishing Company](#) (1990)). This is because the “right to privacy” under the PRA “will

not protect everything that an individual would prefer to keep private” ([Predisik v. Spokane School Dist. No. 81](#) (2015)). Instead, the court in Predisik noted that “a person has a right to privacy under the PRA only in matters concerning the private life.” The court referred to the Restatement 2nd of Torts summary of the right to privacy:

Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man’s life in his home, and some of his past history that he would rather forget.

This is the type of information the disclosure of which might reasonably be considered “highly offensive.” But even then, if there is a legitimate concern to the public, the exemption would not apply ([Brouillet, et al., v. Cowles Publishing Company](#) (1990)).

Information of “legitimate” concern to the public means information that is of “reasonable” concern. For example, courts have held that disclosure of employee performance evaluations which do not discuss any specific instances of misconduct would be “highly offensive” under the two-part privacy test because “employee evaluations qualify as personal information that bears on the competence of the subject employees.” And for most employment positions, those performance evaluations are of “small public concern” and therefore meet the second prong of the privacy test. See [Dawson v. Daly](#) (1993). However, a court has held that a city manager’s performance evaluation must be disclosed because that information is of legitimate concern to the public. The court concluded a city manager is “not like other employees” because it is the “city’s chief executive officer, its leader and a public figure. The performance of the city manager’s job is a legitimate subject of public interest and public debate” ([Spokane Research & Defense Fund v. City of Spokane](#) (2000)).

Unfortunately for records professionals, the application of the privacy right under the PRA depends upon the unique facts of a situation and is not amenable to a bright-line rule ([Predisik v. Spokane School District No. 81](#) (2015)). At best, we can look to past court cases with similar facts. Because applying this exemption and the privacy test will be a fact-specific exercise, it should be done in consultation with the agency attorney. If there is a question, the risk-adverse approach would be to provide the interested party notice of the potential disclosure under [RCW 42.56.540](#).

Notably, general rights to privacy do exist outside the PRA in “other statutes,” specifically the state and federal constitutions ([RCW 42.56.070](#)(1)). However, there is no duty on a public agency to defend and protect an individual’s alleged right to privacy in public records under the state or federal constitutions. Instead, as explained by the Washington Supreme Court, it is sufficient for an agency to provide notice to an individual under [RCW 42.56.540](#), allowing the individual the opportunity to seek a court injunction preventing the release of the records. See [Does v. Seattle Police Department](#) (2025).



Note: Importantly, the PRA often exempts “personal” information. This is not necessarily the same as “private” information and has a different definition. “Personal information” is information that is “peculiar or proper to private concerns” ([Lindeman v. Kelso School Dist. No. 458](#) (2007)). Some exemptions explicitly list or provide examples of what is considered “personal information” and others narrow the scope to “personally identifying information.”

PUBLIC EMPLOYEE RECORDS

There are several exemptions applicable to personnel and public employment-related records. Generally, the exemptions apply to records related to both current and former employees. See [Seattle Fire Fighters Union, Local No. 27 v. Hollister](#) (1987) and [Belenski v. Jefferson County](#) (2015). Often these exemptions apply to both records held by the employing agency as well as other agencies that handle employment-related records, like the retirement system or workers compensation.

Again, there is an obligation on agencies to provide notice to employees and their union representatives (where applicable) of any request for information contained exclusively within their employment files ([RCW 42.56.250\(2\)](#)). See the section [Mandatory Notice to Employees](#) for more.

The following sections will provide an overview of the types of employment and employee-related information and records that are exempt and/or protected, and those that are typically subject to disclosure.

Employee Hiring (Application Materials, etc.)

The PRA includes employment-related exemptions that broadly protect materials submitted as part of the hiring process. See [RCW 42.56.250](#). The exemptions enable individuals to apply for local government employment without worrying about disclosure of their applications or the fact that they are seeking other employment. This exemption applies to all non-elective local government positions, including administrative positions, such as city manager, or professional positions, such as city attorney or city engineer. The exemption explicitly excludes applications to fill vacancies for elected offices. Further, it only refers to employment positions and does not appear to apply to other volunteer positions like citizen advisory committees or planning commissions.

The following information is exempt in the employee hiring context:

- **Test questions, scoring keys, and other examination data** used to administer a license, employment, or academic examination ([RCW 42.56.250\(1\)\(a\)](#)).
- **Applications for public employment**, including applicant names, resumes, and other related materials submitted with respect to an applicant (e.g., information submitted by prior employers in response to requests for information about an applicant). ([RCW 42.56.250\(1\)\(b\)](#)). See also [Beltran v. Dep't Social & Health Services](#) (1999). To the extent applicant names appear in other documents, like calendar invites, interview schedules, interviewer notes, etc., they should be redacted.
- **Background checks and pre-employment polygraphs** are included within the meaning of “other materials submitted with respect to an applicant” at [RCW 42.56.250\(1\)\(b\)](#). See [Sheats v. East Wenatchee](#) (2018).
- **Employment entrance medical examination records and pre-employment psychological evaluations**, if the evaluation is in the nature of a medical evaluation. Note that these records should be maintained with heightened confidentiality in separate medical files. See [RCW 70.02.020](#) (*Disclosure by Health Care Provider*), [WAC 162-22-090\(4\)](#) (which covers disability-related medical records), and the federal Americans with Disabilities Act (ADA), specifically [29 C.F.R. § 1630.14\(b\)\(1\)](#) and (d)(4)(i). The Equal Employment Opportunity Commission (EEOC), the federal agency that enforces the ADA, discusses when a psychological examination is considered to be a “medical” examination in its enforcement guidance on [Preemployment Disability-Related Questions and Medical Examinations](#).



Note: Some agencies interpret [RCW 42.56.250\(1\)\(a\)](#) to protect interview notes and reference check notes, but others do not. The most risk-averse approach is to not apply the exemption to interview notes and reference check notes, given the PRA liability for wrongfully withholding a record; however, the answer is not clear, so the agency attorney should be consulted on applicability of the exemption. To the extent the notes identify an applicant by name, the name should be redacted. For a more detailed discussion, see the question on MRSC's FAQ, [Are interview notes or reference check notes exempt?](#)

Employee/Official Personal Information – Right to Privacy

The PRA includes a general exemption protecting personal information about employees, appointees, or elected officials stored in public agency files *to the extent that disclosure would violate their right to privacy* ([RCW 42.56.230\(3\)](#)).

As noted in the section [A General Note on Privacy and “Personal” Information](#), a person’s right to privacy is invaded or violated if a disclosure would:

- Be highly offensive to a reasonable person; *and*
- Is not of legitimate concern to the public ([RCW 42.56.050](#)).

Application of this employee/official personal information exemption involves three separate considerations:

- whether the records contain personal information;
- whether the public employees have a privacy interest in that personal information; and
- whether disclosure of that personal information would violate their right to privacy ([Predisik v. Spokane School District No. 81](#) (2015)).

Courts have defined “personal information” as “information relating to or affecting a particular individual, information associated with private concerns, or information that is not public or general” ([Bellevue John Does 1-11 v. Bellevue School Dist.](#) (2008)). The right of privacy applies “only to the intimate details of one’s personal and private life,” in contrast to actions that take place in the public ([Dawson v. Daly](#) (1993)).

While not an exhaustive list, below are some examples of cases where the courts have applied the privacy test in the context of employee information. Note that the application of this exemption will be highly fact-dependent and should be reviewed with the agency’s attorney.

Courts have held the following records and information **are exempt** from disclosure:

- **Routine performance evaluations of employees which do not discuss specific instances of misconduct.** Disclosure of information between a public employee and supervisor generally serves no legitimate public interest and would interfere with maintaining a candid and open employee evaluation process if made public to anyone upon request. Courts have determined release of these evaluations is presumed to be highly offensive. See [Dawson v. Daly](#) (1993) (performance evaluations of deputy prosecutor), [Church of the Divine Earth v. Tacoma](#) (2020) (performance evaluations of public works and planning department heads), and [Brown v. Seattle Public Schools](#) (1993) (performance evaluations of former school principal). However, a court has held evaluations of a City Manager, essentially the chief executive officer or leader of the city, are of legitimate public interest ([Spokane Research & Defense Fund v. City of Spokane](#) (2000)). See more in MRSC’s FAQ, [Are performance reviews exempt?](#)

- **Identities of employees who are subject to unsubstantiated allegations of sexual misconduct.** One factor in determining whether information is of legitimate concern to the public, in context of right-to-privacy exemption, is whether the information is true or false. Generally, the public has no legitimate interest in finding out the names of people who have been falsely accused. Note, however, that the remaining non-identifying portions of the investigatory report should be disclosed ([Bellevue John Does 1-11 v. Bellevue School Dist.](#) (2008)). See also [Bainbridge Island Police Guild v. City of Puyallup](#) (2011). For a more detailed analysis, see MRSC’s FAQ, [Are disciplinary records exempt?](#)
- **Portions of employee’s emails and text messages that are unrelated to the conduct of government and solely related to the intimate personal details of an employee’s life.** There is a legitimate public interest in the amount of time a public employee spends on personal matters, but not in the content of those personal emails or phone calls or conversations ([Tiberino v. Spokane County](#) (2000)).

The following information is **not exempt** from disclosure:

- **Salary and benefit information of public employees.** The disclosure of employee names paired with benefits would allow public scrutiny of the government and ensure that the government is not paying one employee twice or funneling money to non-existent employees ([Tacoma Pub. Library v. Woessner](#) (1998)).
- **List of names and ranks of law enforcement officers.** It is not highly offensive to disclose the fact of public employment, even if that information could be linked with other publicly available information that could reveal private information about the officers ([King County v. Sheehan](#) (2002)).
- **Employees’ public conduct.** The disclosure of a police officer’s involvement in a bachelor party or strip show at a private club was not considered highly offensive, as it occurred in front of more than 40 people ([Spokane Police Guild v. State Liquor Control Board](#) (1989)). Likewise, disclosure of the identities of officers that participated in the highly public and televised events of January 6, 2021, at the United States Capitol, was not “highly offensive” where the officers took no steps to hide or obscure their identities ([Does v. Seattle Police Department](#) (2025)).
- **Records relating to substantiated employee misconduct.** These records are considered to be of legitimate public interest, even if they may cause embarrassment to the employee involved. Misconduct, whether on duty or off, that “bears on ability to perform” public duties is “not private, intimate, personal details” of a state patrol officer’s life, but rather is an issue of public concern ([Cowles Publ’g Co. v. State Patrol](#) (1988)). See also [Brouillet v. Cowles Publishing Co.](#) (1990) (records regarding the revocation of teacher certifications are a matter of public concern). Similarly, in [Morgan v. City of Federal Way](#) (2009), the court held that investigations into and confirmation of inappropriate behavior by a municipal court judge were of significant public interest and subject to disclosure. The fact that the judge disputed the allegations did not mean they were unsubstantiated. For a more detailed analysis, see MRSC’s FAQ, [Are disciplinary records exempt?](#)
- **Records showing pending investigations of public employees related to alleged misconduct.** The mere fact that an investigation is open and an employee is on administrative leave is not protected under the privacy test ([Predisik v. Spokane School District No. 81](#) (2015)). Note, however, that the subsequently adopted exemption at [RCW 42.56.250\(1\)\(f\)](#) may apply to protect open investigative records depending on if the investigation is related to unfair work practices or discrimination or harassment.
- **Performance evaluation of a city manager/agency leader.** In a council-manager code city where the city manager is the most senior executive leader and a public figure, the public has a legitimate interest in the disclosure of the city manager’s performance review ([Spokane Research & Defense Fund v. City of Spokane](#) (2000)). Contrast this to performance evaluations of other public employees, including senior department heads, which do meet the privacy test (see above).

- **Settlement agreements, except for personal details that may meet the privacy test.** Settlement agreements between employees and their employer are of legitimate public concern and must be disclosed, even if they were intended to be confidential. But some personal information in a settlement agreement may be exempt from production under a public records request based on the right to privacy or other specific exemptions. ([Yakima Newspapers, Inc. v. City of Yakima](#) (1995)).



The local newspaper heard that one of the city shop employees was disciplined for repairing his personal vehicle in the city shop. The newspaper has requested a copy of the investigation report prepared by the employee’s supervisor, and a copy of the letter of discipline which was placed in the employee’s personnel file. Should the records be disclosed?

Yes. The state supreme court has determined that the public has a legitimate interest in records concerning acts of misconduct by city employees which have been investigated and sustained ([Dawson v. Daly](#) (1993)).



What if an employee or former employee requests their own records that would otherwise be confidential or exempt from disclosure?

If the information is part of an employee’s personnel file (as defined in [RCW 42.56.240\(2\)](#)), the employee has a legal right to inspect the file annually. See [RCW 49.12.240-.250](#). The right extends to former employees, as well. Any copies of those records are to be processed in accordance with the procedures and requirements set forth in the PRA. [RCW 42.56.250\(2\)](#).

More generally, when it comes to requests submitted by the subject of a record, there is non-binding language in a PRA case that indicates that “all requesters would be entitled to their own identifying information” ([City of Fife v. Hicks](#) (2015)). This weighs in favor of an agency exercising its discretion to not redact personal information (after taking steps to confirm the requestor is indeed who they claim to be).

Employee/Official Personal Information – Specific Exemptions

This part identifies the sections of the PRA and “other statutes” where personal information of employees is specifically exempt from disclosure. Note that some of the exemptions only apply to records when they are maintained in certain places, such as personnel files. It will be important to read each exemption/prohibition carefully.

Personal Identifying Information

[RCW 42.56.250\(1\)\(d\)](#) expressly protects the following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency:

- Residential addresses,
- Residential telephone numbers,
- Personal wireless telephone numbers,
- Personal email addresses,

- Social security numbers,
- Driver's license numbers,
- Identocard numbers,
- Payroll deductions including the amount and identification of the deduction,
- Emergency contact information of employees or volunteers of a public agency,
- The names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency.



Note: Records professionals might be tempted to apply the exemptions at [RCW 42.56.250\(1\)\(d\)](#) to other records – like emails from members of the public or residential addresses included on a meeting sign-in sheet. However, these specific exemptions for personal information only apply to employees, officials, and volunteers. There may be other exemptions that protect some personal information of private individuals (e.g., related to taxpayer information or utility billing), but agencies cannot rely on this exemption to withhold information related to those other than public employees/officials/volunteers. Likewise, it matters where this information is located. In [Mechling v. City of Monroe](#) (2009), personal email addresses of city councilmembers used to conduct city business were found not to be exempt, because they were not considered personnel or employment-related records—which is a component of the statutory exemption. When it comes to applying exemptions, context matters.

Photographs and Month and Year of Birth in a Personnel File

[RCW 42.56.250\(1\)\(h\)](#) protects photographs and month and year of birth in personnel files of employees or volunteers of a public agency, except that the news media as defined in [RCW 5.68.010\(5\)](#) can gain access to this information. See [Green v. Pierce County](#) (2021). This likely applies to copies of badge photographs.



Practice Tip: If records responsive to a request include full dates of birth, consider asking the requestor to narrow their request to exclude employees' full date of birth so that redactions can be applied in a much faster manner (rather than having to redact the month and year individually).

Personal Identifying Information of Survivors of Sexual Assault/Domestic Abuse/Harassment

In order to protect employees and their dependents that may be survivors of domestic violence, sexual assault, sexual abuse, stalking, or harassment, or if they participate in the address confidential program under [chapter 40.24 RCW](#), [RCW 42.56.250\(1\)\(i\)](#) exempts the employee's name and other personally identifying information including but not limited to birthdate, job title, addresses of work stations and locations, work email address, work phone number, bargaining unit, or other similar information. The documentation needed to support asserting this exemption is also exempt from disclosure. This exemption also applies if the identifying information appears in lists and directories of employees.

Tax/Payroll Information

[RCW 42.56.230\(4\)\(b\)](#) protects an employee’s federal tax withholding data to the extent disclosure would violate their right to privacy. And [RCW 42.56.250\(1\)\(d\)](#) exempts payroll deductions including the amount and identification of the deduction.

For more information, see MRSC’s FAQ, [Is an employee's personnel file and payroll record exempt?](#)

Religious Affiliation

[RCW 42.56.235](#) exempts all records that relate to or contain personally identifying information about an individual’s religious beliefs, practices, or affiliation.



Practice Tip: While the wording of the exemption implies an entire record is exempt, the practice is to only redact the religious affiliation information.

Financial Information

If an agency has any of the following financial information related to an employee, it is exempt from disclosure under [RCW 42.56.230\(5\)](#):

- Credit card numbers,
- Debit card numbers,
- Electronic check numbers,
- Card expiration dates,
- Bank, and other financial information as defined in [RCW 9.35.005](#) including social security numbers, except when disclosure is expressly required by or governed by other law ([RCW 42.56.230\(5\)](#)). The definition of “financial information” in [RCW 9.35.005](#) includes account numbers and balances, transaction information, codes, passwords, driver’s license numbers, and other information held for account access or transaction initiation.

Workplace Complaints – Investigatory Records

Workplace investigations into allegations of harassment or discrimination are exempt in their entirety while the investigation is active and ongoing ([RCW 42.56.250\(1\)\(f\)](#)). Once the investigation is complete, certain identifying information of complainants, other accusers, and witnesses must be redacted, unless they consent to the disclosure. Agencies must redact the names, images, employee agency job titles, email addresses, and phone numbers of complainants, other accusers, and witnesses. Any voice recordings may only be disclosed if the recording can be “altered while retaining inflection and tone.”



Note: The exemption appears to potentially apply to the identifying information of non-employee “other accusers or witnesses,” so long as there is a “complaining employee.”

Employee Health-Related Information

Health-related information might be maintained in employee records for various reasons. An agency could have health-related records to support a reasonable accommodation request sought by an employee under the Americans with Disabilities Act (ADA). An agency could have a proof of vaccination, results of a required medical or psychological examination, results of mandatory drug-testing, or records to support entitled leave, for example.

Several state and federal laws come into play when evaluating the confidentiality and/or disclosure requirements for employee health-related information and medical records.

For a discussion of health care records in other contexts (e.g., public agency as provider or agency in possession of private health-related information), see the sections [Health Care Information When Public Agency is Health Care Provider](#) and [Health Related Information of Private Individuals](#) below.

Employee Health-Related Information – Right to Privacy

With regard to an employee’s medical records or other health-related information, agencies may be able to apply [RCW 42.56.230\(3\)](#), which exempts personal information in files maintained for employees, to the extent that disclosure would violate their right to privacy. See the section [Employee/Official Personal Information – Right to Privacy](#), above. The agency would need to determine that the two prong privacy test (i.e., the information is both highly offensive and of no legitimate interest to the public) is met. Employee health-related records would typically be considered of no legitimate interest to the public, but disclosure must be highly offensive, as well. Note that for most employee health information that may be in possession of a public agency, other more specific statutory exemptions and confidentiality provisions may be easier to apply – but this provision could be a backup to fill in when there is ambiguity in applying these other exemptions, discussed next.

Medical Records

[RCW 42.56.360](#) is the PRA exemption covering health care records, although most of the subsections relate to specific records held by state agencies and are not applicable to local governments. However, [RCW 42.56.360\(2\)](#) generally references [chapter 70.02 RCW](#) (known as the Health Care Information Act, or HCIA), which relates to the public inspection and copying of health care information of patients.

[RCW 70.02.020](#) of the HCIA prohibits a *health care provider* from disclosing health care information about a patient to any other person without the patient’s written authorization. Health care information is defined as information that identifies or can readily be associated with the identity of a patient and directly relates to the patient’s health care ([RCW 70.02.010\(17\)](#)).

While most local government agencies would not be considered health care providers (with some limited exceptions, e.g., public hospital districts, certain public health districts, and emergency medical services), the HCIA does provide that:

[P]ersons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient’s interests in the proper use and disclosure of the patient’s health care information survives even when the information is held by persons other than health care providers ([RCW 70.02.005\(4\)](#)).

We are aware that this section is cited as an “other statute” that agencies rely on to withhold medical records they may have in their possession—even when they are not the original health care provider.



Caution: Before citing [RCW 70.02.005\(4\)](#) and [RCW 42.56.360\(2\)](#) as an exemption, agencies should confirm whether the records contain “health care information” as defined in the HCIA, i.e., whether the information directly relates to the patient’s health care. In [Hines v. Todd Pacific Shipyards Corp.](#) (2005) the court held that the confidentiality protections of [chapter 70.02 RCW](#) did not apply to employer-mandated drug testing results. Likewise, psychological evaluations performed with the intent to get leniency in sentencing from the court were not protected from disclosure under [chapter 70.02 RCW](#) ([John Does v. Department of Corrections](#) (2018)). In both situations, the records were generated primarily for purposes other than a patient seeking medical care. If records do not meet the definition of health care information, then the agency would need to determine whether a different exemption applies (e.g., [RCW 42.56.230\(3\)](#) related to an employee’s right to privacy or ADA protections).

Reasonable Accommodations and Required Medical Examinations – Americans with Disabilities Act (ADA)

There are confidentiality provisions within the [Americans with Disabilities Act](#) (ADA) (considered an “other statute” under [RCW 42.56.070\(1\)](#)). If there is medical or health care information provided to an employer that is part of a workplace disability accommodation or required medical examination/disclosure (either pre-employment or ongoing employment), federal law protects that information under the ADA at [42 U.S.C. § 12112\(d\)\(3\)\(b\)](#). See also [29 C.F.R. § 1630.14\(c\)\(1\)](#). Examples of required medical examinations could include law enforcement medical and psychological examinations, as well as vision exams for employees operating equipment requiring a commercial driver’s license. Records covered by these provisions are entirely exempt from disclosure and only a limited set of people are entitled to access the information. For more information about the confidentiality requirements, see these resources:

- [U.S. Equal Employment Opportunity Commission: The ADA: A Primer for Small Business](#)
- [Great Lakes ADA Center: Confidentiality Requirements Under the ADA](#) (2018)



Practice Tip: Both state and federal law require that medical files be kept separate from personnel files and in a secure manner with limited access. See [WAC 162-22-090\(4\)](#) (which covers disability-related medical records) and the federal ADA at [29 C.F.R. § 1630.14](#) (more broadly covering medical examinations, not just disability-related records) ([42 U.S.C. § 12112\(d\)\(3\)\(b\)](#)).

Drug Testing Results (Typically Not Exempt)

As noted above, in [Hines v. Todd Pacific Shipyards Corp.](#) (2005) the court held that the confidentiality protections of [chapter 70.02 RCW](#) did not apply to employer-mandated drug testing results. Mandatory tests for illegal drugs or post-incident intoxication testing are also not considered the type of medical examination which would be treated as confidential under the ADA. See the U.S. Equal Employment Opportunity Commission’s [The ADA: A Primer for Small Business](#). In the absence of a specific exemption, an agency could consider applying the employee privacy analysis to determine whether all or a portion of drug testing results would be subject to disclosure. A test revealing illegal drug use would likely not meet this standard since illegal drug use by a public employee would be a legitimate concern to the public. However, there may be an argument

that the results of any drug testing not associated with a specific incident that reveals the presence of legal or prescription drugs should be protected under the right to privacy analysis.

Workers Compensation/Industrial Insurance Files

All information contained in Department of Labor and Industry (LNI) claim files and records of injured workers is confidential under [RCW 51.28.070\(1\)](#):

Information contained in the claim files and records of injured workers, under the provisions of this title, shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but representatives of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant.

See also [RCW 51.16.070\(2\)](#) which protects information in an employer's records for assessment and collection of premiums.

Even if that information is extracted into other records, that information does not necessarily lose its confidential status. See [Baxter v. WWU](#) (2021).

Federal Family Medical Leave Act (FMLA) Certifications

Records and documents relating to certifications, recertifications, or medical histories of employees or employees' family members, created for purposes of the Federal Family Medical Leave Act (FMLA), are confidential and shall be maintained in separate files/records from the usual personnel files. See [29 C.F.R. § 825.500\(g\)](#).

Washington State Paid Family and Medical Leave Act (PFMLA) Records

Information contained in files and records pertaining to an employee under the Washington Paid Family and Medical Leave Act (PFMLA) are confidential and not subject to disclosure, other than to public employees in the performance of their official duties, except as provided in [chapter 50A.25 RCW](#)—which sets out the limited circumstances when the otherwise private and confidential information can be made available to other parties. See [RCW 50A.05.020\(4\)](#).

Employment Security Department Records

[RCW 42.56.410](#) exempts from disclosure records originally created by the Employment Security Department (ESD) and subject to [chapter 50.13 RCW](#) (Unemployment Compensation) that have been provided to another organization (including public employers) for operational purposes. [RCW 50.13.110\(2\)](#) specifically prohibits the disclosure of records obtained from ESD. That said, [RCW 50.13.040\(1\)](#) entitles an individual to all records and information concerning that individual originally held by ESD. If staff have taken steps to confirm the identity of the requestor is in fact the individual who is the subject of the ESD records, an agency likely does not have an obligation to assert the confidentiality in [RCW 50.13.110\(2\)](#) and could release the record to the requestor.

ESD also oversees Washington's Paid Family Medical Leave Act (PFML). Information contained in files and records pertaining to an employee under Washington's PFML is confidential and not open to public inspection, except as provided in [chapter 50A.25 RCW](#) ([RCW 50A.05.020\(4\)](#)).

PERSONAL AND FINANCIAL INFORMATION (NON-EMPLOYEE/OFFICIAL)

Personal information exemptions applicable to public agency employees, officials, and volunteers are covered in detail in the section [Public Employee Records](#) in this document. In addition, there are protections for other members of the public found within an agency's public records. Many of these are listed in [RCW 42.56.230](#) covering "personal information."

Some personal information exemptions are specific to categories of individuals (e.g., students, public health/institution patients, children and family members in childcare or program settings, utility customers) while others are more broadly applicable (e.g., financial information of any individual). Below are some of the specific exemptions that may be relevant to local government agencies. Review [RCW 42.56.230](#) for a full list of personal information exemptions.

Student Information

Personal information in files maintained for students in public schools is exempt ([RCW 42.56.230\(1\)](#)). Outside of those files, personal information of current and former students in any records pertaining to the student, *including correspondence*, is exempt ([RCW 42.56.230\(2\)\(a\)\(iii\)](#)). The federal [Family Educational Rights and Privacy Act](#) (FERPA) will also control the release of student information.

Child Information

Personal information of children enrolled in licensed childcare facilities in files maintained by the Department of Children Youth and Families and by any other public or nonprofit program serving or applying to children or students, including parks and recreation and after-school programs, is exempt. For family members or guardians of these children, their personal information is exempt if they have the same last name as the child or if they live at the same address and the disclosure would reveal otherwise exempt personal information of the child. Emergency contact information may be produced in emergency situations ([RCW 42.56.230\(2\)](#)).

Taxpayer Information

The PRA exempts taxpayer information required of any taxpayer in connection with the assessment or collection of taxes when prohibited by certain listed statutes, or where disclosure would violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer ([RCW 42.56.230\(4\)](#)).

Regarding the specific statutes listed in the exemption at [RCW 42.56.230\(4\)](#), [RCW 82.32.330](#) is probably the most common statute relied upon to withhold tax records. That statute provides that tax returns and other tax information about a specific or identifiable taxpayer are confidential and may not be disclosed, subject to specific exceptions. [RCW 35.102.145](#) is also listed which provides that "a city that imposes a business and occupation tax may by ordinance provide that return or tax information is confidential, privileged, and subject to disclosure in the manner provided by [RCW 82.32.330](#)." At [RCW 42.56.210\(1\)](#), the PRA provides that taxpayer information exempt under the listed statutes is not subject to redaction, but instead the record can be withheld in its entirety.

Taxpayer information is also exempt if disclosure would violate the taxpayer's right to privacy or cause unfair competitive disadvantage. Applying the two-step privacy test, Washington courts have interpreted this provision in a handful of decisions. In [Van Buren v. Miller](#) (1979), the court determined that certain information relied upon by the assessor to make valuation is not private (e.g., the names of agricultural lessors and lessees) and that percentage crop sharing information is not the equivalent to income information. See also [Hearst Corp. v. Hoppe](#) (1978), where information in valuation folios did not include highly private information like "any

income data on any property, depreciation figures on commercial property, site plans which show floor plans of any structure, data unrelated to value or assessment, information pertaining to access to any premises or to security measures or devices on any premises.”

In [Hoppe v. King County](#) (2011), the court held that disclosure of proprietary business information of a corporate taxpayer *would* result in unfair competitive disadvantage to a taxpayer. The court also held that redaction was not possible to prevent unfair competitive disadvantage, and that the records could be withheld in their entirety.



Note: [RCW 84.40.020](#) provides that, except for confidential income data, property tax assessments and all supporting documents are specifically open to public inspection during the regular office hours of the county assessor’s office.

Financial Information

Under [RCW 42.56.230](#)(5), the following financial information is considered “personal information” and exempt from disclosure:

- Credit card numbers,
- Debit card numbers,
- Electronic check numbers,
- Credit or debit card expiration dates,
- Bank, and other financial information as defined in [RCW 9.35.005](#) including social security numbers, except when disclosure is expressly required by or governed by other law. The definition of “financial information” in [RCW 9.35.005](#) includes account numbers and balances, transaction information, codes, passwords, driver’s license numbers, and other information held for account access or transaction initiation.



Note: MRSC has been asked whether [RCW 42.56.230](#)(5) can be used to withhold public agency bank account and other sensitive financial information. It’s not clear that an agency’s information can be considered “personal information” such that this exemption would apply. However, if the disclosure of the information would allow improper access to public accounts, the security exemption in [RCW 42.56.420](#) may apply.

Utility Customer Information

Under the PRA, much of the customer information contained in utility account records is exempt from disclosure. Specifically, [RCW 42.56.330](#)(2) exempts:

The addresses, telephone numbers, electronic contact information, and customer-specific utility usage and billing information in increments less than a billing cycle of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

Notably, this exemption does not apply to the names and account numbers of utility customers, the amount owed by a utility customer, their associated billing/usage information for *entire* billing cycles, and whether their account is delinquent.

What if the request is from law enforcement?

Under [RCW 42.56.335](#), if police are seeking to obtain evidence of criminal conduct from records of electrical use, they must provide the utility with a written statement indicating that they suspect a specific person of a crime, and that the records could help to determine whether this suspicion is justified. No fishing expeditions are allowed ([State v. Cole](#) (1995)).

For example, in a state supreme court case, the court held that a private individual may request and obtain a copy of the electric bill for a specific residence, but a police officer seeking evidence of a marijuana-growing operation can only obtain that same record if they first provide a written statement concerning their reasonable belief that the information is relevant to the investigation of a possible crime ([Matter of Maxfield](#) (1997)).



Practice Tip: When responding to a request related to utility customer information, keep in mind the commercial purposes prohibition related to lists of individuals at [RCW 42.56.070\(8\)](#). See more on how to investigate whether a requestor may be seeking records for commercial purposes at [List of Individuals for Commercial Purposes](#).

Library Records

[RCW 42.56.310](#) protects from disclosure library records that are kept to track use of libraries and their resources that identify or could be used to identify a library user.

Religious Affiliation

[RCW 42.56.235](#) exempts all records that relate to or contain personally identifying information about an individual's religious beliefs, practices, or affiliation.



Practice Tip: While the wording of the exemption implies an entire record is exempt, the practice is to only redact the religious affiliation information.

Health Care Information When Public Agency is Health Care Provider

Most local government agencies are not health care providers as defined in the Health Care Information Act (HCIA), [chapter 70.02 RCW](#). The exception is public hospital districts organized under [chapter 70.44 RCW](#), and potentially some public health districts/departments when offering patient services or emergency medical services (EMS). These specialized agencies or departments will generally be familiar with their responsibilities related to health care information and patient records.

The PRA exemption related to health care at [RCW 42.56.360\(2\)](#) provides that “[chapter 70.02 RCW](#) applies to public inspection and copying of health care information of patients.”

[RCW 70.02.020](#) controls when a health care provider can disclose health care information about a patient to any other person without the patient’s written authorization. Health care information is defined as information that identifies or can readily be associated with the identity of a patient and directly relates to the patient’s health care ([RCW 70.02.010](#)(17)). Courts have interpreted [RCW 42.56.360](#)(2) to mean that “health care information” is exempt under the PRA. See [Doe G v. Dept. Of Corrections](#) (2018). Importantly, the exemption does not apply if the record was created for purposes other than providing health care.

There is also the federal [Health Information Portability and Accountability Act](#) (HIPAA) which establishes similar protections for patient records and standards for health care providers regarding health information.

One important consideration for public agencies who are health care providers is that if health care information can be de-identified (i.e., the patient’s name and any identifying information removed), then the record can be released. [RCW 70.02.010](#)(6) defines “deidentified” as health information that “does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.”

The HIPAA de-identification standard in [45 C.F.R. § 164.514](#) is:

Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information [...]

The regulation sets forth 18 types of identifiers. As a practical matter, de-identification of health care information/records is only appropriate when a request is not seeking a specific person’s or patient’s records. This means that requests for records of specific persons or patients, de-identification would not be sufficient to protect patient privacy. Instead, the entire record should be withheld.

Here are some additional resources for those agencies who are health care providers under the HCIA:

- [Washington State Attorney General's Office: Open Government Resource Manual at Chapter 2.2F](#)
- [Washington State Healthcare Authority: Washington Confidentiality Toolkit for Providers](#) (2025) – The sections on allowed disclosures are particularly helpful.
- Washington State Hospital Association:
 - [Hospital and Law Enforcement Guide to Health Care Related Disclosure](#) (2023)
 - [Washington Health Law Manual: Chapter 1 – Healthcare Information and Confidentiality](#) (2016)

Health Related Information of Private Individuals

Public agencies who are not health care providers under [chapter 70.02 RCW](#) may still end up in possession of health-related information of private individuals in various circumstances. Three common circumstances would be related to law enforcement (e.g., emergency response and criminal investigations), 911 dispatch services, and ADA accessibility/accommodation requests from the public. Note that this is not an exhaustive list and there are many ways health-related information might come into an agency’s possession.

Law Enforcement

Medical and health-related records and information in possession of law enforcement are covered in MRSC’s [Disclosure of Medical and Postmortem Law Enforcement Records](#) (part of MRSC’s [Law Enforcement Records Tool Kit](#)), as well as Washington State Hospital Association’s [Hospital and Law Enforcement Guide to Health](#)

[Care Related Disclosure](#) (2023). In particular, [RCW 42.56.240\(1\)](#) related to investigatory records may apply to protect a person’s privacy.

911 Dispatch

Health-related information collected by a 911 dispatch or call center would likely not be protected “health care information” under [chapter 70.02 RCW](#) and [RCW 42.56.360\(2\)](#), although there is not yet a court decision interpreting the provision in that context. Information given to a 911 dispatch during a call for emergency services does not fall within the definition of “health care information” at [RCW 70.02.010\(17\)](#), unless one were to argue that because dispatch is passing the information along to medical providers, it “directly relates to the patient’s health care.”

There may nonetheless be privacy protections for what might be considered “unpleasant or disgraceful or humiliating” medical information – under either constitutional privacy protections or [RCW 42.56.240\(1\)](#) privacy related to law enforcement. Health-related conditions likely to be protected under a privacy analysis include social “stigma” medical conditions such as AIDS, Hepatitis, MRSA, STIs, Leprosy, and certain mental health conditions.

However, [RCW 42.56.240\(1\)](#) applies only to certain types of investigative agencies—in particular law enforcement. There are no court decisions on whether an independent 911 dispatch agency/call center is considered “law enforcement” for purposes of applying this exemption. We recommend consulting with the agency’s attorney to discuss options in the context of 911 dispatch.

ADA Public Accommodation Requests

Unlike Title III which applies to employee records, [Title II of the Americans with Disabilities Act](#) (ADA), which applies to state and local government provision of public services, does not have specific confidentiality requirements for disability accommodations. Further, there does not appear to be PRA privacy exemption that might apply to this information. For this reason, agencies should not require a person who is requesting an accommodation to disclose the exact nature of their disability or diagnosis, but rather ask what work or task would be served by the accommodation. Title II would apply in situations where a member of the public requests accommodations for a sight or hearing impairment at a public meeting, for example.

GENERAL GOVERNMENT OPERATIONS

In creating the exemptions listed in the PRA, the legislature has attempted to balance the need for public transparency versus protecting the confidentiality and privacy of certain information and governmental interests. In keeping with this, some exemptions and prohibitions protect certain categories of information/ records the disclosure of which could negatively impact the functions and purpose of the public agency. Below are some of the more commonly used exemptions that serve this purpose.

Drafts or “Deliberative Process” Exemption

Preliminary drafts, notes, recommendations, and intra-agency memorandums expressing opinions or formulating policies are exempt under [RCW 42.56.280](#). The purpose of the exemption, named the “deliberative process” exemption by the courts, is “to safeguard the free exchange of ideas, recommendations, and opinions *prior to decision*” ([Hearst Corp. v. Hoppe](#) (1978)), “to protect the ‘give and take’ of deliberations that are necessary to agency decision-making and to formulate agency policy” ([ACLU v. City of Seattle](#) (2004)).

This is how the Washington Supreme Court in [PAWS v. Univ. of Washington](#) (1994) has described the test to determine whether a record is covered by this exemption:

In order to rely on this exemption, an agency must show that the records contain predecisional opinions or recommendations of subordinates expressed as part of a deliberative process; that disclosure would be injurious to the deliberative or consultative function of the process; that disclosure would inhibit the flow of recommendations, observations, and opinions; and finally, that the materials covered by the exemption reflect policy recommendations and opinions and not raw factual data on which a decision is based.

Importantly, the exemption no longer applies once an agency makes a final decision on the proposed issue/policy. In the context of labor negotiations, the Washington Supreme Court in [Citizen Action Defense Fund v. Washington State Office of Financial Management](#) (2025) held that for a collective bargaining agreement (CBA) between the state and bargaining units representing state employees, the deliberative process exemption in [RCW 42.56.280](#) does not expire until funding for the CBA has been approved by the state legislature—consistent with the statutory scheme for approving a CBA by the state. It distinguished the holding in [West v. Port of Olympia](#) (2008) where the court held that the exemption applied only until the results of the policy-making process were presented to the port commission for adoption. In *West*, all the decisions were to be made by the port commission, whereas in the *Citizen Action* case, the approval process was divided between the governor’s office and the legislature. The statutory scheme for CBA approval determined when implementation occurred such that the deliberative process exemption would no longer apply. The court considered the purpose of the exemption, which was to protect the policy-making process all the way through to implementation of the policy.

Here are five issues to keep in mind when applying the exemption:

1. Matters that are factual are not covered by the exemption, so redaction rather than complete exemption of the record might be required ([Brouillet v. Cowles Publishing Co.](#) (1990)).
2. The exemption is not limited to intra-agency documents prepared by a government agency; it can apply to documents prepared by persons from outside the governmental agency ([ACLU v. City of Seattle](#) (2004)).
3. Documents concerning the implementation of policy are not covered by the exemption ([Cowles Publ’g Co. v. City of Spokane](#) (1993)).
4. The exemption does not apply once the policies or recommendations contained in the records are implemented ([Brouillet v. Cowles Publishing Co.](#) (1990) and [Cowles Publishing Co. v. Spokane](#) (1993)).
5. If the document is publicly cited in connection with an agency action, the exemption no longer applies ([Overlake Fund v. City of Bellevue](#) (1991)).

For more, see MRSC’s FAQ, [Are draft documents exempt from disclosure?](#)

Attorney Work Product and Attorney-Client Privilege

An attorney’s work product is exempt under [RCW 42.56.290](#) and attorney-client privileged communications are exempt under [RCW 5.60.060\(2\)\(a\)](#) (considered an “other statute” that exempts or prohibits disclosure ([RCW 42.56.070\(1\)](#))).

Agencies will need to consult with their attorneys to determine whether the work product or attorney-client communications privilege applies to specific records. A local government may not assert the work product or attorney-client privilege simply because an attorney created a record or was included in a communication. The communication or record must meet the legal definition of work product or attorney-client privileged communication – and that privilege must not have been waived. For more detailed information, see the

The attorney work product and attorney-client privilege are covered in more detail below.



Practice Tip: Keep an eye out for attorney work product and attorney-client communication in comments and drafts of agency documents that reflect attorney review.

Attorney Work Product

An attorney's "work product" is exempt under [RCW 42.56.290](#). If an agency is a party to a controversy, the agency may withhold records that normally would be privileged under litigation discovery rules (i.e., materials protected from discovery pursuant to [CR 26](#)). A "controversy" covered by this exemption includes threatened, actual, or completed litigation ([Dawson v. Daly](#) (1993)).

A record is considered work product if an attorney prepares it in confidence and in anticipation of litigation, or if it is prepared by another individual at the attorney's request. In [Soter v. Cowles Publishing](#) (2007), a newspaper sought records generated by a private investigator hired by a school district's attorney. The court held that the records were properly withheld as work product, even though prepared by someone other than the attorney.

The fact that a document has a litigation and a nonlitigation purpose (i.e., a dual-purpose document) does not mean it fails to qualify for work product protection. In [Denney v. City of Richland](#) (2022), the court held that workplace investigation reports prepared for the purpose of investigating an employee's discrimination, harassment, and retaliation complaints were protected as "work product," even though they were also prepared pursuant to city policy. The court applied a two-part test to determine if the document qualified as work product, i.e., whether the document in question was really created in anticipation of litigation. One first asks whether the individual who prepared or ordered preparation of the document subjectively did so with the intent of preparing for litigation. If yes, then the question is whether the subjective anticipation of litigation was objectively reasonable.

Generally, attorney billing statements as a whole are not protected by the "work product" exemption. However, some attorneys provide detailed billing statements that may include entries that show an attorney's "work product" or litigation strategy. Only those portions of the billing statement that meet the work product or controversy standard can be redacted.

The legislature adopted an "intent" statute providing guidance on billing statements sent to public agencies by their legal counsel, whether in-house or not. [RCW 42.56.904](#) provides:

It is the intent of the legislature to clarify that no reasonable construction of [chapter 42.56 RCW](#) has ever allowed attorney invoices to be withheld in their entirety by any public entity in a request for documents under that chapter. It is further the intent of the legislature that specific descriptions of work performed be redacted only if they would reveal an attorney's mental impressions, actual legal advice, theories, or opinions, or are otherwise exempt under chapter 391, Laws of 2007 or other laws, with the burden upon the public entity to justify each redaction and narrowly construe any exception to full disclosure. The legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditure of public resources, including through liability insurance, upon private legal counsel or private consultants.

In [San Juan County v. Washington Coalition for Open Government](#) (2023), the court held that the county properly redacted the detailed descriptions within the attorney invoices under the controversy exemption at [RCW 42.56.290](#), consistent with the legislature’s statement of intent at [RCW 42.56.904](#).



Must a local government disclose a “separation agreement” entered into with an employee to settle a claim and avoid litigation? (The terms of the agreement were worked out by the council in an executive session, with the assistance of the local government attorney.)

The agreement must be disclosed. The relevant controversy exemption does not apply in this situation, because this document would be available to a party under the rules of pretrial discovery ([Yakima Newspapers v. Yakima](#) (1995)). However, the attorney’s comments on drafts of the agreement and legal advice on accepting the settlement agreement will be protected.

Attorney-Client Privileged Communications

Attorney-client privileged communications are exempt under [RCW 5.60.060](#)(2)(a), considered an “other statute” that exempts or prohibits disclosure under [RCW 42.56.070](#)(1). The privilege can be asserted only where the records reflect:

1. A communication;
2. Made between privileged persons (i.e., the attorney and client);
3. In confidence; and
4. For the purpose of obtaining or providing legal assistance for the client.

See [Hangartner v. City of Seattle](#) (2004).

Once a third party, such as another agency, is included in that communication, the privilege is generally considered waived. In the context of local government, this usually means that to preserve the attorney–client privilege, communications should be restricted to only the attorney(s) and relevant staff and officials within the local government.

However, one exception to the general rule is the common interest doctrine, which provides that when multiple parties share confidential communications pertaining to their common claim or defense, the communications remain privileged as to those within the group. See, e.g., [Sanders v. State](#) (2010).

The Washington State Court of Appeals held that the common interest doctrine can apply as between two or more public agencies. In [Kittitas County v. Allphin](#) (2016), the court wrote:

The common interest or joint defense privilege applies where (1) the communication was made by separate parties in the course of a matter of common interest or joint defense; (2) the communication was designed to further that effort; and (3) the privilege has not been waived. [...] A written agreement regarding the privilege is not required, but the parties must invoke the privilege: they must intend and agree to undertake a joint defense effort.

Mediation Communications

Pursuant to [RCW 42.56.600](#), communications in the context of mediation that are privileged under [chapter 7.07 RCW](#) are exempt from production. [RCW 7.07.070](#) states:

Unless subject to [chapter 42.30 RCW](#), mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

[Chapter 42.30 RCW](#) is the Open Public Meetings Act (OPMA). So, records associated with portions of a mediation that might occur at an open public meeting would not be eligible for this exemption.

Once executed, a settlement agreement arising from a mediation is a disclosable public record. See [Yakima Newspapers, Inc. v. City of Yakima](#) (1995).

Security of Information, Technology, and Physical Infrastructure

[RCW 42.56.420](#) exempts records based on the impact disclosure may have on an agency's physical, technological, or information security, including as related to terrorist acts. Each of the six subsections includes specific types of information, so an agency should work closely with its legal counsel in determining whether an exemption applies in any given circumstance. The most utilized exemptions by local governments are probably subsections (1) and (4).

The general categories of records exempted under [RCW 42.56.420](#) (as summarized from the statute) include:

1. **Records assembled, prepared, or maintained to respond to criminal terrorist acts**, when release could significantly disrupt the conduct of government and are substantially likely to threaten public safety, including specific and unique vulnerability assessments or response or deployment plans, as well as the underlying data compiled in preparation of or essential the vulnerability assessments or response or deployment plans.
2. **Vulnerability assessments and emergency or escape response plans** at correctional facilities or certain secure treatment facilities, the disclosure of which would have a substantial likelihood of threatening the security of such facilities.
3. Information compiled to develop comprehensive **safe school plans**, to the extent the information identifies specific vulnerabilities of school districts or individual schools.
4. Information about the **infrastructure and security of computer and telecommunications networks** that, if released, would increase risk to their confidentiality, integrity or availability, including security passwords, security access codes and programs, access codes for secure software applications.
5. **System security and emergency preparedness plans** for transportation systems.
6. **Personally identifiable and security information of employees of private cloud service providers** which have entered into a Criminal Justice Information Systems (CJIS) agreement.

Security of Physical Infrastructure

Washington courts have applied the exemption at [RCW 42.56.420\(1\)](#) in a couple of cases. In [Northwest Gas Association v. Washington Utilities and Transportation Commission](#) (2007), the court of appeals interpreted [RCW 42.56.420\(1\)](#) to exempt detailed maps/shape files of underground pipelines from disclosure even though the data was not initially compiled to combat terrorism – it was still maintained for that purpose. More than twenty industry representatives asserted that the gas pipeline system was part of critical energy infrastructure, and that incapacity or destruction of the system would have potentially catastrophic consequences. The court

found there was potential of significant dangers to public safety if detailed data was disclosed to pranksters, saboteurs, or terrorists.

However, in *Does v. King County* (2015), the court of appeals rejected application of the exemption to campus surveillance footage that depicted a campus shooting and events leading up to the incident, despite the university's contention that disclosure could enable future individuals to successfully evade its surveillance security system or would encourage similar crimes. The court held that the university did not meet its burden in showing that disclosure of the video footage resulted in a "substantial likelihood of threatening public safety."



Is security footage exempt?

In most circumstances, no. Once the security camera recordings are created, they are public records, and no specific exemption applies to the recordings – including [RCW 42.56.420](#). Note that jail and corrections facilities' footage may be exempt (or should be redacted) if (1) any inmates are captured on the footage (see inmate confidentiality provisions at [RCW 70.48.100](#)); or if (2) nondisclosure is essential for effective law enforcement under [RCW 42.56.240\(1\)](#). See *Gronquist v. Department of Corrections* (2013) and *Fischer v. Department of Corrections* (2011).

Although there have been no relevant court decisions yet, it may be possible to argue that the security exemption could be applied to withhold building plans for correctional facilities, secure treatment facilities, and schools, to the extent such plans are part of vulnerability assessment and emergency plans under [RCW 42.56.420\(2\)](#) and (3). Likewise, any maps or plans that are part of transportation security or emergency preparedness plans may be exempt ([RCW 42.56.420\(5\)](#)).

Security of Computer, IT, and Telecommunications Networks

As mentioned above, [RCW 42.56.420\(4\)](#) exempts:

Information regarding the public and private infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities, and other such information the release of which may increase risk to the confidentiality, integrity, or availability of security, information technology infrastructure, or assets

There are no court decisions interpreting [RCW 42.56.420\(4\)](#); however, the plain language supports applying the exemption to a broad range of IT-related infrastructure and security information, including passwords and other information that may expose an agency to a cyberattack or security breach. Some jurisdictions rely on this exemption to redact metadata – especially of emails. Use of this exemption should be utilized only after consultation with IT professionals and the agency attorney.

Real Estate Appraisals and Other Real Estate Records

The PRA provides a time-limited exemption for real estate appraisals and certain other real estate records. Pursuant to [RCW 42.56.260](#), the following documents relating to an agency's real estate transactions are exempt from disclosure:

- Except as provided by [chapter 8.26 RCW](#) (relocation assistance), the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property

- Documents prepared for the purpose of considering 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, including records prepared for executive session pursuant to [RCW 42.30.110\(1\)\(b\)](#) of the Open Public Meetings Act (OPMA);
- Documents prepared for the purpose of considering the minimum price of real estate that will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price, including records prepared for executive session pursuant to [RCW 42.30.110\(1\)\(c\)](#) of the OPMA.

Again, this exemption is time limited. [RCW 42.56.260\(2\)](#) provides:

The exemptions in this section do not apply when disclosure is mandated by another statute or after the project or prospective project is abandoned or all properties that are part of the project have been purchased, sold, or leased. No appraisal may be withheld for more than three years.

This exemption allows local governments to keep appraisal information away from public scrutiny while negotiating a potential purchase or sale. Relatedly, local government legislative bodies may review and discuss confidential appraisal information in an executive session pursuant to [RCW 42.30.110\(1\)\(b\)](#). Members of a governing body are prohibited from disclosing that information ([RCW 42.23.070\(4\)](#)).

In [Ekelmann v. City of Poulsbo](#) (2022), the court held that the City of Poulsbo properly exempted real estate appraisal documents and redacted sales price information with respect to property acquired for a road improvement project pursuant to [RCW 42.56.260](#), even where another statute gives property owners access to appraisal information for their property when involved in a public works project. Even though property owners were authorized access to their *own* property appraisal pursuant to state law, this did not mean that any other individual had a right to access the information under the PRA.

Financial, Commercial, and Proprietary Information (Government Owned)

[RCW 42.56.270](#) protects certain financial, commercial, and proprietary information in possession of public agencies. The purpose of the exemption is to prevent unfair private gain derived from the exploitation of potentially valuable intellectual property placed in the public domain for a public benefit ([Robbins, Geller, Rudman & Dowd v. State](#) (2014)). Most, though not all, records that would potentially fall within this exemption will be third-party (i.e., private) records in possession of the agency. For a more detailed discussion of how the financial, commercial, and proprietary information exemptions apply to third-party/private records, see the section of this document titled [Business-Related Exemptions](#) below.

[RCW 42.56.270\(1\)](#) is most often cited in the context of government records (the other subsections have limited applicability to local government records). Per the plain meaning of the statute, the exemption may be claimed by either the government or a private party. [RCW 42.56.270\(1\)](#) exempts:

Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

Several cases have interpreted this exemption in the context of government records. In one, the Washington Supreme Court found that a cash flow analysis of port properties prepared for the port's sole use in negotiations with prospective joint venture partners was within the research data exemption ([Servais v. Port of Bellingham](#) (1995)). In another case, the court found that a university's research data relating to intellectual property was exempt from disclosure ([PAWS v. University of Washington](#) (1994)). In both decisions, the

requesting parties were denied their public disclosure request, because they would have profited and the government would have incurred a loss.

By contrast, the court of appeals found that documents used by professors and accountants hired by the city, to perform credit and financial analysis for the city's loan guarantee for private shopping center development, were not exempt. The city was unable to show a public loss resulting from the disclosure of the requested research ([Spokane Research & Defense Fund v. City of Spokane](#) (1999)).

Civil Code Enforcement Investigative Records and Complainant Identities

The PRA exempts certain investigatory records from disclosure, along with certain information contained within such records. See [RCW 42.56.240](#). This is a frequently utilized exemption in the criminal law enforcement context and is covered in detail in MRSC's [Disclosure of Law Enforcement Investigative Records](#) page. This section will focus on the application of the exemption at [RCW 42.56.240](#)(1) and (2) in the context of civil code enforcement.

MRSC takes the position that civil code enforcement can be considered "law enforcement" for the purposes of [RCW 42.56.240](#)(1) and (2). This position is supported in part by footnote 2 in [Wade's Eastside Gun Shop v. L&I](#) (2016) where the court pointed out that "civil law enforcement agencies, which enforce the law and impose sanctions for illegal conduct, may benefit from the investigative records exemption."

Investigative Records – Effective Law Enforcement and Right to Privacy

The exemption at [RCW 42.56.240](#)(1) protects specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, the nondisclosure of which is either:

- Essential to effective law enforcement; or
- For the protection of any person's right to privacy.

While this exemption can be applied in both the criminal and civil context, how this looks in practice will be different—with the application in the criminal context likely being much broader. In particular, the Washington Supreme Court has held that an active police investigation file, in its entirety, is presumed to be exempt from disclosure under the PRA's "effective law enforcement" exemption so as not to tip-off the subject of an investigation, unless the law enforcement agency decides that specific information is not essential to solving the case ([Newman v. King County](#) (1997)). This is often referred to as a "categorical" exemption for the investigation file. For more, see the section on "Open Investigations" in the [Law Enforcement Records Tool Kit](#).

However, there is not an equivalent categorical exemption in the civil enforcement context. In a case involving a state agency investigating violations of safety laws, the Washington Supreme Court found that the same risk of disclosing sensitive information in a criminal context does not exist in the civil context where the subject is almost always aware of the investigation ([Wade's Eastside Gun Shop v. Department of Labor and Industries](#) (2016)). The court found the agency could not rely on a categorical exemption under [RCW 42.56.240](#)(1) for records related to civil law enforcement activities such as safety violations. In that case, the employers knew that they were being investigated so the nondisclosure could not be claimed to be essential to effective law enforcement. See also [Brouillet v. Cowles Publishing Co](#) (1990) (revocation of teacher certificates was not exempt).

Even though there is no categorical exemption for an open civil enforcement file, specific information within the file or certain records might be subject to the exemption if an agency could make the case that nondisclosure of that information is essential for effective law enforcement.

As for the application of a person’s right to privacy in civil investigation records, the same privacy analysis as for criminal investigation likely applies. In the context of code enforcement, disclosure of photographs of residential interiors or living conditions may rise to the level of being “highly offensive.” For a detailed discussion of how to apply the right to privacy exemption at [RCW 42.56.240\(1\)](#), see [Disclosure of Law Enforcement Investigative Records](#), as well as the [General Note on Privacy and “Personal” Information](#) section above.

Given the lack of court cases, any application of the exemption at [RCW 42.56.240\(1\)](#) in the civil code enforcement context should be done in consultation with the agency attorney.

Records Revealing Complainant, Witness, or Victim Identity (RCW 42.56.240(2))

As stated above, [RCW 42.56.240\(2\)](#) allows agencies to redact identifying information provided to an investigative, law enforcement, or penology agency that may reveal the identity of witnesses, victims, or complainants under two circumstances:

- Where disclosure would endanger any person’s life, physical safety or property; or
- If, at the time a complaint is filed, the complainant, victim, or witness indicates a desire for disclosure or nondisclosure.

The request for nondisclosure comes up frequently in the context of local government code enforcement. Often, a local government’s code violation complaint form will include a place for a complainant to request anonymity/non-disclosure of their identity (e.g., by checking a box). If, at the time the complaint is submitted, a request for non-disclosure is made, an agency can redact the identity of the person making the complaint.

If such a preference is not made at the time of the complaint, the agency must “make an affirmative showing that disclosure entails a potential threat to safety or property” ([Sargent v. Seattle Police Department](#) (2013)).

Regarding redaction of identifying information where a person’s life, physical safety or property would be endangered, an agency may be better off providing third-party notice under [RCW 42.56.540](#) to give that person the opportunity to seek an injunction rather than the agency asserting that exemption on someone’s behalf (unless there is clear evidence of endangerment in the complaint or other records).

Archaeological Site Information

[RCW 42.56.300](#) exempts archaeological records, maps or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites. This may come up in the public works, building permit, or planning contexts.

Law Enforcement Records

There are various exemptions, prohibitions, and requirements that relate to law enforcement records. MRSC’s [Law Enforcement Records Tool Kit](#) provides information and analysis about records disclosure requirements for the following types of records:

- [Investigative Records](#) – Open investigations and investigative records essential to effective law enforcement or a person’s right to privacy.
- [Criminal History and Arrest Records](#) – Conviction data, non-conviction data, and rap sheets.
- [Juvenile Records](#) – Criminal and non-criminal juvenile records.
- [Medical and Postmortem Records](#)

- [Personal Identifying Information](#) – Driver’s license numbers, Social Security numbers, dates of birth, and victim or witness identity.
- [Traffic Accident and Vehicle Records](#)
- [Video Footage](#) – Includes dashcams and body cameras.
- [Exemptions and Prohibitions](#) – Addresses other common exemptions and prohibitions in law enforcement-related records: booking photos, concealed pistol license applications, confidential informants, abuse of vulnerable adults, and intelligence information.

BUSINESS-RELATED EXEMPTIONS

The following exemptions are often difficult to apply as they tend to involve facts outside of the agency’s knowledge. When dealing with these kind of records, consider providing third-party notice as discussed in the section [Optional \(aka Third-Party\) Notice to Interested Persons Regarding Disclosure](#).

Financial, Commercial, and Proprietary Information (Private Parties)

Courts have interpreted the exemptions at [RCW 42.56.270](#) (including [RCW 42.56.270\(1\)](#)) discussed above in the section Financial, Commercial, and Proprietary Information (Government Owned), as potentially applying to both agency records and non-agency records in the possession of the agency. A private party may assert the exemption, even if a public agency elects not to, by seeking a court order as discussed in the section [Injunction Challenges](#) (*Robbins, Geller, Rudman & Dowd v. State* (2014)).

Additionally, private parties are most likely to assert (or urge a public agency to assert) the exemption at [RCW 42.56.270\(11\)](#), which exempts:

Proprietary data, trade secrets, or other information that relates to: (a) A vendor’s unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in [RCW 41.05.011](#);

Importantly, this exemption only applies to “vendors.” It does not apply in situations where the interested party is not a “vendor” to the government. An example of when this exemption may be raised is in connection with the public bidding process. Local governments often obtain information which bidders would not voluntarily divulge to their competitors. MRSC recommends providing notice to a bidder pursuant to [RCW 42.56.540](#) if an agency thinks a private party may want to claim this exemption.

Trade Secrets: Chapter 19.108 RCW

While a vendor’s trade secrets are explicitly exempt under [RCW 42.56.270\(11\)](#), intellectual and proprietary information may also be more broadly exempt under the Washington Trade Secrets Act, [chapter 19.108 RCW](#) (*Servais v. Port of Bellingham* (1995)). This Act qualifies as an “other statute” under [RCW 42.56.070\(1\)](#) (*Progressive Animal Welfare Soc’y v. UW* (1994) (PAWS II)).

There is a sizable body of caselaw around whether certain information is considered a trade secret under the Trade Secret Act, but only a few examples of its application in the PRA context.

In one case, information submitted by a law firm in response to the request for qualifications and quotations from the Washington State Investment Board was held not to be exempt as a trade secret under [RCW](#)

[19.108.010\(4\)](#) because it was not shown to be unique, innovative or novel or that sufficient steps had been taken to protect the secrecy of the information ([Robbins, Geller, Rudman & Dowd, LLP v. Office of Attorney General](#) (2014)).

In another case, [Lyft, Inc. v. City of Seattle](#) (2018), there was a public records request for data reports filed by “transportation networking companies” Uber and Lyft with the City of Seattle. Uber and Lyft considered at least some of the data to be trade secrets. Specifically, the companies tried to protect “zip code reports,” which includes, among other things, the percentage and number of rides picked up in each zip code and the pick-up and drop-off zip codes for each ride.

The court said it was a “close call,” but it upheld a trial court finding that the reports did constitute trade secrets. However, the court ruled that the reports were still subject to disclosure under the Public Records Act due to the nature of the case. If a private party seeks an injunction to prevent disclosure of a record, it must show that not only does an exemption apply, but that disclosure is not in the public interest ([RCW 42.56.540](#)). In a 5-4 decision, the court found that this standard was not met and reversed the trial court’s grant of a permanent injunction.



Practice Tip: As discussed in the section on [Judicial Review](#), the threshold to obtain an injunction from a court is much higher than asserting the exemption in the first place. There may be certain situations where an agency may be willing to assert an exemption that protects a third party’s trade secrets in exchange for that party being willing to defend against any challenges against that assertion. This is a policy decision that should be made in consultation with the agency attorney.

Copyrighted Materials: 17 U.S.C. § 106

Agencies may need to consider federal copyright laws when providing copies of records that are subject to copyright protection under [17 U.S.C. § 106](#). This issue may arise where private entities have copyrighted their work, such as blueprints or architectural plans.

However, even if a person has a copyright interest in materials submitted to a public agency, disclosure is not automatically prohibited. A court has held that those requesting copies of copyrighted materials may be entitled to the records if the facts meet the “fair use doctrine” exemption to the federal Copyright Act ([Lindberg v. County of Kitsap](#) (1997)). Such a determination requires asking what purpose the requestor intends to use the copyrighted material, which seems to run counter to [RCW 42.56.080\(2\)](#) which prohibits agencies from inquiring why a requestor wants a certain record, except in certain circumstances. Unfortunately, the court did not resolve that issue.

Consequently, MRSC has recommended that when there is a disclosure request for these types of materials, the agency should provide third-party notice under [RCW 42.56.540](#) to the person who submitted the documents.

Appendix A: Recommended Resources

MRSC has [numerous resources](#) that can help state and local government agencies comply with the Public Records Act (PRA). For a complete list of all resources available in our website, see our [Public Records & PRA](#) page. Below is a selection of some of these resources:

- [Electronic Records Policy Tool Kit](#) – Series of webpages providing sample policy language options and guidance for the various facets of electronic records retention, management, and disclosure, including email, text, and social media.
- [Law Enforcement Records Tool Kit](#) – Series of webpages to help police and sheriff departments manage their records and comply with PRA and other statutes.
- [Public Records Act Basics](#) – PRA overview with selected examples of local PRA policies and procedures.
- [PRA Practice Tips and Checklists](#) – Helpful tips and short checklists providing practical guidance.
- [Public Records Act Court Decisions](#) – Significant state appellate court decisions concerning PRA.
- [Recent blog posts about PRA](#) – Articles written by MRSC staff and contributors about specific aspects of the PRA, including new legislation and court decisions. Articles are listed in reverse chronological order, with the most recent first.

Appendix B: Cross-Reference Guide for 2006 Recodification

The following table is provided for historical cross-reference. Since 2006, several statutes have since been renumbered, reorganized, or repealed.

Table 1: Chapter 42.17 RCW to Chapter 42.56 RCW

PDA (until 7/1/06)	PRA (after 7/1/06)	WAC Model Rules
42.17.020	42.56.010	44-14-01001
42.17.250	42.56.040	44-14-02001
42.17.251	42.56.030	44-14-01003 44-14-06002
42.17.253	42.56.580	44-14-020 44-14-02002
42.17.255	42.56.050	44-14-06002(2)
42.17.258	42.56.060	44-14-01003 44-14-04003
42.17.260	42.56.070	44-14-03003
42.17.260(1)	42.56.070	44-14-010 44-14-06002
42.17.260(2)	42.56.070(2)	44-14-010 44-14-060 44-14-06001
42.17.260(7)	42.56.070(7)	44-14-07001
42.17.260(9)	42.56.070(9)	44-14-03006 44-14-06002(6)
42.17.270	42.56.080	44-14-01002 44-14-03006 44-14-04002 44-14-04003 44-14-04006
42.17.280	42.56.090	44-14-03002 44-14-04005
42.17.290	42.56.100	44-14-01002 44-14-04001 44-14-03004 44-14-04003 44-14-04006

PDA (until 7/1/06)	PRA (after 7/1/06)	WAC Model Rules
42.17.295	42.56.110	
42.17.300	42.56.120	44-14-04005
		44-14-070
		44-14-07001
42.17.305	42.56.130	
42.17.310	42.56.210	44-14-04004
		44-14-06002
42.17.310(1)(a)	42.56.230	
42.17.310(1)(b)	42.56.230	
42.17.310(1)(c)	42.56.230	
42.17.310(1)(d)	42.56.240	
42.17.310(1)(e)	42.56.240	
42.17.310(1)(f)	42.56.250	
42.17.310(1)(g)	42.56.250	
42.17.310(1)(h)	42.56.270	
42.17.310(1)(i)	42.56.280	44-14-06002(4)
42.17.310(1)(j)	42.56.290	44-14-06002(3)
42.17.310(1)(k)	42.56.300	
42.17.310(1)(l)	42.56.310	
42.17.310(1)(m)	42.56.270	
42.17.310(1)(n)	repealed	
42.17.310(1)(o)	42.56.270	
42.17.310(1)(p)	42.56.320	
42.17.310(1)(q)	42.56.330	
42.17.310(1)(r)	42.56.270	
42.17.310(1)(s)	repealed	
42.17.310(1)(t)	42.56.250	
42.17.310(1)(u)	42.56.250	
42.17.310(1)(v)	42.56.330	
42.17.310(1)(w)	42.56.350	
42.17.310(1)(x)	42.56.360	
42.17.310(1)(y)	42.56.360	
42.17.310(1)(z)	42.56.270	
42.17.310(1)(aa)	42.56.270	
42.17.310(1)(bb)	42.56.270	
42.17.310(1)(cc)	42.56.370	
42.17.310(1)(dd)	42.56.250	

PDA (until 7/1/06)	PRA (after 7/1/06)	WAC Model Rules
42.17.310(1)(ee)	42.56.250	
42.17.310(1)(ff)	42.56.380	
42.17.310(1)(gg)	42.56.270	
42.17.310(1)(hh)	42.56.360	
42.17.310(1)(ii)	repealed	
42.17.310(1)(jj)	42.56.270	
42.17.310(1)(kk)	42.56.390	
42.17.310(1)(ll)	42.56.330	
42.17.310(1)(mm)	42.56.330	
42.17.310(1)(nn)	42.56.330	
42.17.310(1)(oo)	42.56.360	
42.17.310(1)(pp)	42.56.400	
42.17.310(1)(qq)	42.56.320	
42.17.310(1)(rr)	42.56.240	
42.17.310(1)(ss)	42.56.230	
42.17.310(1)(tt)	42.56.270	
42.17.310(1)(uu)	42.56.410	
42.17.310(1)(vv)	42.56.320	
42.17.310(1)(ww)	42.56.420	
42.17.310(1)(xx)	42.56.430	
42.17.310(1)(yy)	42.56.430	
42.17.310(1)(zz)	42.56.430	
42.17.310(1)(aaa)	42.56.440	
42.17.310(1)(bbb)	42.56.420	
42.17.310(1)(ccc)	42.56.420	
42.17.310(1)(ddd)	42.56.420	
42.17.310(1)(eee)	42.56.400	
42.17.310(1)(fff)	42.56.270	
42.17.310(1)(ggg)	42.56.330	
42.17.310(1)(hhh)	42.56.270	
42.17.310(1)(iii)	42.56.210	
42.17.310(1)(jjj)	42.56.270	
42.17.310(1)(jjj)	42.56.380	
42.17.310(1)(kkk)	42.56.380	
42.17.311	42.56.510	
42.17.312	42.56.360	
42.17.313	42.56.450	
41.17.314	42.56.330	

PDA (until 7/1/06)	PRA (after 7/1/06)	WAC Model Rules
42.17.315	42.56.320	
42.16.316	42.56.360	
42.17.317	42.56.380	
42.17.318	42.56.240	
42.17.319	42.56.270	
42.17.31901	42.56.240	
42.17.31902	42.56.360	
42.17.31903	42.56.400	
42.17.31904	42.56.400	
42.17.31905	42.56.400	
42.17.31906	42.56.460	
42.17.31907	42.56.380	
42.17.31908	42.56.400	
42.17.31909	42.56.380	
42.17.31910	42.56.360	
42.17.31911	42.56.400	
42.17.31912	42.56.330	
42.17.31913	42.56.250	
42.17.31914	42.56.420	
42.17.31915	42.56.400	
42.17.31916	42.56.400	
42.17.31917	42.56.400	
42.17.31918	42.56.380	
42.17.31919	42.56.380	
42.17.31920	repealed	
42.17.31921	42.56.470	
42.17.31922	42.56.590	
42.17.31923	42.56.610	
42.17.320	42.56.520	44-14-04003
		44-14-08001
		44-14-08004
42.17.325	42.56.530	44-14-08002
42.17.330	42.56.540	44-14-04003
		44-14-08004(5)

PDA (until 7/1/06)	PRA (after 7/1/06)	WAC Model Rules
42.17.340	42.56.550	44-14-01003
		44-14-04001
		44-14-04003
		44-14-08004
42.17.341	42.56.560	
42.17.348	42.56.570	
New	42.56.020	
New	42.56.900	

Appendix C: Exemption and Prohibition Statutes Not Listed in Chapter 42.56 RCW

[RCW 42.56.070\(2\)](#) requires an agency to:

[...] publish and maintain a current list containing every law, other than those listed in the PRA, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency’s failure to list an exemption shall not affect the efficacy of any exemption.

The following list provides exemptions and prohibition statutes not listed in the PRA.

Washington State Statutes

See the [Attorney General’s Sunshine Committee](#) webpage for the most up-to-date list of public disclosure exemptions. It is created annually by the Code Reviser’s Office.


Selected Federal Confidentiality Statutes and Rules

MRSC will periodically update this list. The date of the last update is reflected in the cover.

18 U.S.C. § 2721 - 2725	Driver and License Plate Information
18 U.S.C. § 923(g) ; Public Law 112-55, div. B, title II, 125 STAT. 609	“Tiahrt Amendment” – Firearms trace data provided to local law enforcement by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
20 U.S.C. § 1232g	Family Education Rights and Privacy Act
23 U.S.C. § 407	Evidence of certain accident reports
42 U.S.C. § 290dd-2	Confidentiality of Substance Abuse Records
42 U.S.C. § 405(c)(2)(C)(viii) (I)	Limits on Use and Disclosure of Social Security Numbers
42 U.S.C. § 654(26)	State Plans for Child Support
42 U.S.C. § 671(a)(8)	State Plans for Foster Care and Adoption Assistance
42 U.S.C. § 1396a(7)	State Plans for Medical Assistance
42 U.S.C. § 5106a	Grants to States for Child Abuse and Neglect Prevention and Treatment Programs
7 C.F.R. § 272.1(c)	Food Stamp Applicants and Recipients
34 C.F.R. § 361.38	State Vocational Rehabilitation Services Programs
42 C.F.R. Part 2 (2.1 - 2.67)	Confidentiality of Alcohol and Drug Abuse Patient Records
42 C.F.R. § 431.300 - 307	Safeguarding Information on Applicants and Recipients of Medical Assistance
42 C.F.R. § 483.420	Client Protections for Intermediate Care Facilities for Individuals with Intellectual Disabilities
45 C.F.R. § 160-164	HIPAA Privacy Rule

Other Potential Federal Confidentiality Statutes and Rules. Note that these provisions have not been fully analyzed in the context of Washington’s Public Records Act.

Citation	Summary
5 U.S.C. § 552a	<i>Privacy Act of 1974</i> – Applies if a local government operates a federally funded program or receives federal records; limits use and disclosure of personal data.
26 U.S.C. § 6103	Prohibits local governments from disclosing federal tax return information unless expressly authorized.
38 U.S.C. § 7332	Applies if local governments work with VA health programs; requires consent before releasing records related to substance use, HIV, or sickle cell.
42 U.S.C. § 241(d)	<i>Certificates of Confidentiality</i> – Researchers at the local level receiving federal funds may protect identifiable research participant data from forced disclosure.
21 C.F.R. Part 21	FDA’s rules on privacy under the Privacy Act; applies if local governments work with or receive regulated medical product data.
CIPSEA (Title V, EGov Act of 2002)	Protects the confidentiality of statistical data collected under federal authority; relevant to local governments involved in federal data collection.
Cybersecurity Information Sharing Act of 2015	Requires privacy protections when local governments participate in federal cybersecurity threat-sharing activities.

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The Open Public Meetings Act

How it Applies to Washington Cities,
Counties, and Special Purpose Districts



2023 update created in partnership with

The Center for Government Innovation, a service of the Washington State Auditor's Office



THE OPEN PUBLIC MEETINGS ACT

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Revision History

MRSC updates this publication as needed to reflect new legislation and other changes. Below is a summary of significant recent changes. If you are aware of any other sections that you think need to be updated or clarified, please contact mrsc@mrsc.org. To make sure you have the most recent version, please go to mrsc.org/publications.

DATE	SUMMARY
July 2024	Procedural Requirements: <ul style="list-style-type: none"><li data-bbox="467 548 1365 617">• Public Comment: Added new public comment notice requirement (RCW 42.30.250).
June 2023	Updated publication to reflect legislative changes to the OPMA current through the 2023 legislative session and up-to-date case law.

Contents

Introduction	1
Applicability	2
In General	2
Governing Bodies and Subagencies	3
Selected Questions on Applicability	4
What Is a “Meeting”?	6
In General	6
Serial Meetings	6
Hybrid and Remote Meetings	7
Selected Questions On Meetings Under the OPMA	7
Exemptions	9
Selected Questions on Exemptions	10
Procedural Requirements	11
Types of Meetings	11
Procedural Requirements for All Meetings	11
Procedural Requirements Specific to Regular Meetings	12
Procedural Requirements Specific to Special Meetings	13
Procedural Requirements Specific to Emergency Meetings	14
Location of Meetings	14
Public Comment	15
Meeting Adjournments or Cancellations	16
Selected Questions on Procedural Requirements	17
Executive Sessions	19
Attendance at Executive Sessions	19
Procedural Requirements for Holding Executive Sessions	19
Allowed Purposes for Holding Executive Sessions	20
Selected Questions on Executive Sessions	26

Penalties and Enforcement	27
Training Requirements	28
Appendix: Recommended Resources	29
Municipal Research and Services Center (MRSC)	29
Washington State Office of the Attorney General (AGO)	29

Introduction

In 1971, the state legislature enacted the Open Public Meetings Act (OPMA) to make the conduct of government more accessible and open to the public. The OPMA begins with a strongly worded statement of purpose ([RCW 42.30.010](#)):

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed and informing the people's public servants of their views so that they may retain control over the instruments they have created. For these reasons, even when not required by law, public agencies are encouraged to incorporate and accept public comment during their decision-making process.

This publication comprehensively reviews the OPMA as it applies to Washington cities, towns, counties, and special purpose districts. It also provides answers to selected questions that have been asked of MRSC staff concerning the application of the OPMA. However, we find that new questions constantly arise concerning the OPMA. So, if you have questions that are not addressed by this publication, do not hesitate to contact your legal counsel or MRSC legal staff.

Applicability

Codified in [chapter 42.30 RCW](#), the OPMA applies to all city and town councils,¹ to all county councils and boards of county commissioners, and to the governing bodies of special purpose districts, as well as to many subordinate city, county, and special purpose district commissions, boards, and committees. It requires that all “meetings” of such bodies be open to the public and that all “action” taken by such bodies be done at meetings that are open to the public. The terms “meetings” and “action” are defined broadly in the OPMA and, consequently, the OPMA can have daily significance for cities, counties, and special purpose districts even when no formal meetings are being conducted.

IN GENERAL

The basic mandate of the Open Public Meetings Act in [RCW 42.30.030](#) is as follows:

All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

The OPMA applies to “meetings” of a “governing body” of a “public agency.” In [RCW 42.30.020](#) a “public agency” is defined as including a city, county, and special purpose district and a “governing body” is defined as follows:

“Governing body” means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

The legislative bodies of cities and counties² clearly are governing bodies under this definition, as are the boards or commissions that govern special purpose districts. However, they are not the only bodies to which the OPMA applies. The OPMA also applies to any “subagency” of a city, county, or special purpose district,³ because the definition of “public agency,” per [RCW 42.30.020\(1\)\(c\)](#), includes:

Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.

Under this definition, the subagency must be created by some legislative act of the legislative body, such as an ordinance or resolution. A group established by a mayor to advise the mayor on a particular issue could not, for example, be a subagency, because a mayor does not act legislatively. However, a legislative act alone does not create a subagency. According to the Washington State Attorney General's Office (AGO), a board or a commission or other body is not a subagency governed by the OPMA unless it actually possesses some aspect of policy or rulemaking authority. As explained by the AGO, “its “advice,” while not binding upon the agency with which it relates [...], must nevertheless be legally a necessary antecedent to that agency's action.” See [AGO 1971 No. 33](#)⁴.

1 For convenience, the term “city council” will in this publication also refer to town councils and to city commissions under the commission form of government.

2 The legislative bodies of cities are the city councils or city commissions, and the legislative bodies of counties are the boards of county commissioners or county councils.

3 Most special purpose district governing bodies do not have the authority to create such subagencies.

4 The Attorney General's Office bases its conclusion on this issue on the language “or other policy or rulemaking body of a public agency” in the definition of “governing body” in [RCW 42.30.020\(2\)](#). See also [AGLO 1972 No. 48](#).



Certain advisory boards are not subject to the OPMA: If a board or commission (or whatever it may be termed) established by legislative action is merely advisory and its advice is not necessary for the city, county, or district to act, the OPMA generally does not apply to it. However, the governing body can always choose to make the advisory boards that it creates subject to the OPMA, even if that board would not otherwise be subject to the OPMA.

GOVERNING BODIES AND SUBAGENCIES

Given the definition of “governing body” and “subagency”, the following are governing bodies within city and county government that are subject to the OPMA:

- City council or commission
- County council or board of commissioners
- Planning commission
- Civil service commission
- Board of adjustment
- Lodging Tax Advisory Committee

Other boards or commissions will need to be evaluated individually to determine whether the OPMA applies to them. For example, the definition of a subagency identifies library boards, but, in some cities (particularly those without their own libraries), library boards function as purely advisory bodies, without any policymaking or rulemaking authority. That type of library board would not be subject to the OPMA. In cities where library boards function under statutory authority and possess policymaking and rulemaking authority, those boards must follow the requirements of the OPMA ([RCW 27.12.210](#)).

Most special purpose districts have only one “governing body” under the meaning of that term in the OPMA.

Committees subject to the OPMA

The OPMA also applies to a committee created by a governing body in the following circumstances:

- When it acts on behalf of the governing body⁵
- When it conducts hearings, or
- When it takes testimony or public comment.

⁵ In a 2015 decision, the State Supreme Court adopted the reasoning of [AGO 1986 No. 16](#) in concluding that a committee acts on behalf of the governing body “when it exercises actual or de facto decision-making authority.” See [Citizens Alliance v. San Juan County](#) (2015). A committee when it is exercising actual or de facto decision-making authority should be distinguished from the situation where a committee simply provides advice or information to the governing body and is not subject to the OPMA. See [Citizens Alliance v. San Juan County](#) (2015).

When a committee is not doing any of those things, it is not subject to the OPMA.⁶

Keep in mind that it is usually good public policy to open the meetings of local government boards, commissions, and committees to the public, even if it is uncertain or doubtful that the OPMA applies to them. This approach would be consistent with the OPMA's focus on transparency and its basic intent that the actions of governmental bodies "be taken openly and that their deliberations be conducted openly" ([RCW 42.30.010](#)).

SELECTED QUESTIONS ON APPLICABILITY

Below are additional questions and answers addressing the topic of OPMA applicability. For more questions and answers about the OPMA, see MRSC's page on [Open Public Meetings Act FAQs](#).

May four councilmembers-elect of a seven-member council meet before taking their oaths of office without procedurally complying with the OPMA?

Yes. Councilmembers-elect are not yet members of the governing body and cannot take "action" within the meaning of the OPMA, and so they are not subject to the OPMA. See [Wood v. Battle Ground School Dist.](#) (2001).

Must a committee of the governing body be composed solely of members of the governing body for it to be subject to the OPMA under the circumstances identified in RCW 42.30.020(2)?

No. [RCW 42.30.020](#)(2) defines a "governing body" to include a "committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment." The State Supreme Court has held that a "committee thereof," an entity created or specifically authorized by the governing body, may include or consist of individuals who are not members of the governing body. See [Citizens Alliance v. San Juan County](#) (2015).

If a committee of a governing body is subject to the OPMA and it forms a subcommittee, is that subcommittee also subject to the OPMA?

If the subcommittee consists of a quorum of committee members, then it is subject to the OPMA. If the subcommittee consists of less than a quorum of committee members, then it is subject to the OPMA if it performs any of the following functions:

- It acts on behalf of the committee (i.e., it is exercising actual or de facto decision-making authority);
- It conducts hearings; or
- It takes testimony or public comment.

⁶ While the definition of "governing body" speaks of "when" a committee acts so as to come within that definition, the courts have not been clear about whether a committee is subject to the OPMA for all of its meetings when it is only at some that it is acting in that manner. See [Clark v. City of Lakewood](#) (9th Cir. 2001).

Does the OPMA apply to meetings of department directors or other staff? Does the answer change if the public is invited to attend these meetings?

The OPMA does not apply to meetings of department directors or staff meetings because those are not meetings of the “governing body” to which the OPMA applies. The meeting is still not subject to the OPMA even if the public is invited to attend. If a quorum of the council or commission attends the department director or staff meeting, whether the meeting is subject to the OPMA depends on the participation of the council or commission members. Passive receipt of information by a quorum of the governing body does not violate the OPMA, so mere attendance is allowed by the OPMA. However, for transparency reasons and to avoid any liability under the OPMA, MRSC recommends noticing all meetings at which a quorum of the council or commission attends.

What Is a “Meeting”?

IN GENERAL

There must be a “meeting” of a governing body for the OPMA to apply. Sometimes it is very clear that a “meeting” must be open to the public, but other times it isn't. To determine whether a governing body is having a “meeting” that must be open, it is necessary to look at the OPMA's definitions. [RCW 42.30.020\(4\)](#) defines “meeting” as follows: “Meeting’ means meetings at which action is taken.” “Action,” as referred to in that definition of “meeting,” is defined in [RCW 42.30.020\(3\)](#) as follows:

“Action” means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. “Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

Since a governing body can only transact business when a quorum (majority) of its members are present (e.g., [RCW 35A.12.120](#), [35.23.270](#), [35.27.280](#), [36.32.010](#)), it is conducting a meeting subject to the requirements of the Open Public Meetings Act whenever a majority of its members gathers with the collective intent of transacting the governing body's business ([Citizens Alliance v. San Juan County](#) (2015)). This includes simply discussing any matter having to do with agency business. Because members of a governing body may discuss the business of that body by telephone and other electronic means (including email, text message, social media or chat), it is not necessary that the members be in the physical presence of each other for there to be a meeting subject to the OPMA ([Wood v. Battle Ground School Dist.](#) (2001)). Also, it is not necessary that a governing body take “final action” for a meeting subject to the OPMA to occur. See [RCW 42.30.020\(3\)](#).

Note that it does not matter if the meeting is called a “workshop,” a “study session,” or a “retreat”; it is still a meeting subject to the Open Public Meetings Act if a quorum is addressing the business of the city, county, or special purpose district. If a quorum of the governing body just meets socially or travels together, it is not having a meeting subject to the OPMA as long as the members do not discuss agency business or otherwise take “action.” See [RCW 42.30.070](#), [In re Recall of Roberts](#) (1990).

SERIAL MEETINGS

Members of a governing body must avoid communicating with each other in a way that eventually turns into a majority of the body collectively taking action, even if the majority is never part of any one communication or are not in the physical presence of one another ([Citizens Alliance v. San Juan County](#) (2015), [Wood v. Battle Ground School Dist.](#) (2001), [Egan v. City of Seattle](#) (2020)). This can happen if the members discuss city, county, or district business together in a series of in-person meetings, phone calls, emails, and other electronic means (including text messages, chat, social media posts and comments, and shared documents). These types of meetings are referred to as “serial” or “rolling” meetings and violate the OPMA when they involve a majority of members having the collective intent to take action. They are a violation because the public could not, as a practical matter, attend these “serial” or “rolling” meetings.

Washington’s Supreme Court has said that, for a serial meeting to occur in violation of the OPMA, there must be a “collective intent to take action.” In discussing collective intent, the Court said that in-person meetings, emails, phone calls, and text messages between and among the city councilmembers could constitute a “meeting” under the OPMA if there was evidence that at least five members (a majority of the nine-member city council) participated in and were aware that four others were participating in conversations about repealing the head tax. See [Egan v. City of Seattle](#) (2020).

It is not an illegal serial meeting if one member communicates with the other members merely for the purpose of providing relevant information to them. For example, one member can email the other members about an agency issue, so long as the other members only “passively receive” the information and no email or other type of discussion regarding that information takes place ([Egan v. City of Seattle](#) (2020)). MRSC recommends using the “blind carbon” function in these types of emails which prevents a recipient from replying to all the other recipients. MRSC also recommends having agency staff distribute materials to members of the governing body; this can also help avoid situations where OPMA violations may occur.

HYBRID AND REMOTE MEETINGS

Local governments are encouraged under [RCW 42.30.030](#) to hold meetings of the governing body as hybrid meetings, where the physical location of the meeting is coupled with a remote access option, but this is not a requirement. A local government can choose to offer its meetings at a physical location or as a hybrid meeting, but it cannot choose to offer a remote-only meeting unless certain circumstances apply. Fully remote meetings with no physical location are permitted under the OPMA only if a local, state, or federal emergency has been declared and the public agency determines it cannot hold an in-person meeting.⁷ See [RCW 42.30.230](#).

While the public must be provided the option to attend meetings of the governing body at a physical location (absent an emergency declaration), the OPMA specifically permits members of the governing body to attend their meetings by phone or other electronic means that allow for real-time verbal communication. See [RCW 42.30.230](#)(5). However, some local governments have adopted local policies placing rules on remote attendance by members of the governing body, such as allowing members to remotely attend only three meetings per year or only in special circumstances (e.g., traveling out-of-town, illness).

SELECTED QUESTIONS ON MEETINGS UNDER THE OPMA

Below are additional questions and answers addressing the topic of meetings under the OPMA. For more questions and answers about the OPMA, see MRSC’s page on [Open Public Meetings Act FAQs](#).

May a quorum of a city or county legislative body attend, as members of the audience: (1) a citizens’ group meeting; or (2) an advisory board or other committee meeting?

Yes, a quorum of the legislative body may attend a citizen’s group meeting or an advisory board/committee meeting without that meeting being subject to the OPMA so long as the members attending the meeting do not

⁷ The OPMA provides an additional exception to the physical meeting location requirement, but this exception does not apply to local governments. The OPMA allows those governing bodies that held some of their regular meetings remotely prior to March 1, 2020, to continue to hold fully remote meetings with no declared emergency so long as the public may also attend remotely.

discuss, as a group, agency business or otherwise take “action” within the meaning of the OPMA ([AGO 2006 No. 6](#)). That possibility could in most circumstances be avoided by not sitting as a group and not engaging with each other in any way during the meeting.

If the legislative body will be expected to participate in the citizens’ group meeting, then either a quorum should not attend, or the meeting should be noticed as a special meeting of the legislative body. Given the nature of the advisory board and committee meetings, the agency may want to notice the meeting as a special meeting of the legislative body to avoid any risk of the members taking action that would violate the OPMA. Further, some agencies may have local rules addressing legislative body attendance at such meetings and may choose to limit attendance or participation for various reasons, including avoiding any undue influence that may occur from the presence or participation by members of the legislative or potential complications with the appearance of fairness doctrine.

May an entire county council attend a private dinner in honor of the out-going county official without complying with the Open Public Meetings Act?

This issue comes down to whether the council will be dealing with county business. It can be argued that honoring the county official is itself county business. On the other hand, it could be argued that honoring an individual who is leaving county employment does not involve the functioning of the county. Additionally, the OPMA provides that there is no violation if “a majority of the members of a governing body [...] gather for purposes other than a regular meeting or a special meeting” (and do not take action at the gathering) ([RCW 42.30.070](#)). Even so, this is a gray area where caution should be exercised.

Must the public be allowed to attend the annual city council retreat?

Yes. A retreat attended by a quorum of the council where issues of city business are addressed constitutes a meeting subject to the OPMA.

May all members of the governing body remotely attend their own meeting?

Yes. The OPMA allows all members of the governing body to remotely attend their own meeting. Remote attendance can be by phone or other electronic means and must allow for real-time verbal communication. Local policies may place restrictions or additional rules on remote meeting attendance by members of the governing body.

Exemptions

[RCW 42.30.140](#) sets out four situations where a governing body may meet and not be subject to any requirements of the Open Public Meetings Act. That statute provides that the OPMA does not apply to:

1. “The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary.”

This provision, for the most part, has little, if any, application to any city, county, or special district governing body. One type of proceeding where it has been used is where a city provides for a hearing before revoking a business license. See [Cohen v. Everett City Council](#) (1975).

2. “That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group;”

This exception applies when a governing body is acting in a quasi-judicial capacity. 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.

3. “Matters governed by [chapter 34.05 RCW](#), the Administrative Procedures Act;”

This exception has no application to cities, counties, or special purpose districts, but it has been held to apply to removal hearings for elected state conservation district supervisors (who may be removed from office by the state conservation commission upon notice and hearing pursuant to [RCW 89.08.200](#)). See [Johnson v. Washington State Conservation Commission](#) (2021).

4. “(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.”

The language of this exception is basically self-explanatory.⁸ However, the term “professional negotiations” must be interpreted in the context of collective bargaining; it should not be interpreted to apply generally to negotiations for professional services.

SELECTED QUESTIONS ON EXEMPTIONS

Below are additional questions and answers addressing the topic of exemptions to the OPMA. For more questions and answers about the OPMA, see MRSC’s page on [Open Public Meeting Act FAQs](#).

Does the OPMA require that a civil service commission hearing regarding a police officer's appeal of disciplinary action be open to the public?

Such a hearing would fall under the exception from the OPMA in [RCW 42.30.140](#)(2) for quasi-judicial matters. However, since [RCW 41.12.090](#) requires that such a hearing be public, the OPMA’s exemption does not apply. The commission may nevertheless deliberate in private.

Must a local government give any notice under the OPMA when the governing body is meeting to discuss the strategy to be taken during collective bargaining with an employee union?

No. Under [RCW 42.30.140](#)(4), this meeting is exempt from the OPMA. The council or commission may therefore meet without notifying anyone. Of course, each member of the governing body must be notified.

Can a local government unilaterally require that collective bargaining negotiations occur at an open public meeting?

No. The Washington Supreme Court held that a city ordinance requiring that all collective bargaining between city and union representatives occur at an open public meeting was preempted by state law and unconstitutional under article XI, section 11 of the Washington State Constitution. See [Washington State Council of County and City Employees v. City of Spokane](#) (2022).

⁸ City, county, and special district governing bodies should be aware that this exemption from the OPMA does not protect the public from accessing documents that are introduced at such a meeting through a Public Records Act request. See [ACLU of WA v. City of Seattle](#) (2004).

Procedural Requirements

The OPMA establishes some basic procedural requirements that apply to all meetings of a governing body, whether they are regular or special meetings. All meetings of a governing body are, under the Open Public Meetings Act, either regular or special meetings. It does not matter if it is called a “study session” or a “workshop” or a “retreat,” it is either a regular or special meeting.

TYPES OF MEETINGS

What is a regular meeting?

A regular meeting is one that is held according to a schedule adopted by ordinance, resolution, order, or rule, as may be appropriate for the governing body. See [RCW 42.30.060](#), [.070](#), [.080](#).⁹

What is a special meeting?

A special meeting is any meeting that is not a regular meeting. In other words, special meetings are not held according to a fixed schedule. Under the OPMA, special meetings have specific notice requirements, as discussed below. Also, governing bodies may be subject to specific limitations about what may be done at a special meeting.¹⁰

What is an emergency meeting?

An emergency meeting is one that is held because the governing body needs to take expedited action to meet an unexpected emergency (such as a fire, flood or earthquake). As discussed in more detail below, emergency meetings have no notice requirements. To qualify for an emergency, the situation must be one that involves, or has the likelihood to involve, injury or damage to persons or property, when time requirements of meeting notice make notice impractical and increases the likelihood of such injury or damage or when notice cannot be posted with reasonable safety. See [RCW 42.30.070](#), [.080](#), [Mead School District v. Mead Ed. Ass'n](#) (1975).

PROCEDURAL REQUIREMENTS FOR ALL MEETINGS

The following requirements and prohibitions apply to both regular and special meetings of a governing body:

- All meetings must be open to the public ([RCW 42.30.030](#)).

⁹ Also, state law, though not the OPMA, may require the governing body of a city, county, or special district to meet with a certain regularity, such as monthly. For example, second class and code city councils, town councils, and the board of directors of any school district must meet at least once a month. See [RCW 35.23.181](#), [35.27.270](#), [35A.12.110](#), [28A.343.380](#).

¹⁰ For example, second class city councils may not pass an ordinance or approve a contract or a bill for the payment of money at a special meeting ([RCW 35.23.181](#)). Town councils may not pass a resolution or order for the payment of money at a special meeting ([RCW 35.27.270](#)). Many special purpose districts are subject to requirements that certain actions can be taken only at a regular meeting, i.e., not at a special meeting. See, e.g., [RCW 54.16.100](#) (appointment and removal of public utility district manager); [RCW 85.05.410](#) (setting compensation of board of diking district commissioners). The councils of first class and code cities and county legislative bodies have no specific limitations on actions that may be taken at a special meeting, other than those imposed by the Open Public Meetings Act.

- Meetings must be held in a physical location, with remote access optional, unless a local, state or federal emergency has been declared and the agency determines it cannot hold an in-person meeting with reasonable safety because of the emergency ([RCW 42.30.230](#)).
- Minutes are required for all regular and special meetings except executive sessions (although the announced purpose of the executive session must be included in the minutes). See [RCW 42.30.035](#) and [42.30.110\(2\)](#). Minutes must be made available for public inspection but are not required to be posted online.
- A member of the public may not be required as a condition of attendance to register their name or other information, or complete a questionnaire, or be required to fulfill any other condition to be allowed to attend ([RCW 42.30.040](#)).
- The governing body may require the removal of members of the public who disrupt the orderly conduct of a meeting. This ability to remove disruptive attendees applies to both in-person and remote meetings, although agencies have more tools available in remote meetings to prevent disruption (e.g., muting microphones, disabling chat and video). If order cannot be restored by removal of individuals, the governing body may order the meeting room cleared and may continue in session or it may adjourn and reconvene the meeting at another location, subject to the limitations in [RCW 42.30.050](#). These limitations include that final disposition may be taken only on matters appearing in the agenda and that the press and news media shall be allowed to attend the reconvened session (unless they were disruptive).
- Votes may not be taken by secret ballot. Votes taken by secret ballot are null and void. See [RCW 42.30.060\(2\)](#).
- Meetings may be adjourned (rescheduled) or continued subject to the procedures in [RCW 42.30.090](#), as discussed below.
- The governing body may exclude members of the public and meet either (1) in executive session for one of the reasons specified in and in accordance with the procedures identified in [RCW 42.30.110](#) or (2) in a closed session if the purpose of the meeting is not subject to the requirements of the OPMA under [RCW 42.30.140](#). See discussion on [executive sessions](#) and closed sessions.

PROCEDURAL REQUIREMENTS SPECIFIC TO REGULAR MEETINGS

- The date and time of regular meetings must be established by ordinance, resolution, order, or rule, as may be required for the particular governing body. The location of the regular meeting should also be designated.
- If the regular meeting date falls on a holiday, the meeting must be held on the next business day ([RCW 42.30.070](#)).
- Most agencies must post the regular meeting agenda online at least 24 hours in advance of the published start time of the regular meeting ([RCW 42.30.077](#)). This requirement does not prohibit the agency from subsequently modifying the agenda and failure to post the agenda will not invalidate otherwise legal action taken at the meeting. Cities, towns, and special purpose districts that meet the following criteria are not required to post their regular meeting agendas online:
 - Have a population within its jurisdiction of under 3,000; and
 - Have an aggregate valuation of the property subject to taxation by the district, city or town of less than \$400,000,000, as placed on the last completed and balanced tax rolls of the county preceding the date of the most recent tax levy; and

- Provide confirmation to the state auditor at the time it files its annual reports under [RCW 43.09.230](#) that the cost of posting notices on a website of its own, a shared website, or on the website of the county in which the largest portion of the district’s, city’s, or town’s population resides, would exceed one-tenth of 1% of the district’s, city’s, or town’s budget.

May a regular meeting agenda be modified prior to the meeting?

While the regular meeting agendas must be posted online at least 24 hours prior to the published start time of the meeting, this requirement does not preclude governing bodies from making subsequent changes to a regular meeting agenda. Governing bodies may modify the agenda by adding new items or modifying or removing items, either before or during the meeting. The OPMA does not prohibit taking final action on matters that are added to the preliminary regular meeting agenda. Agencies must be mindful of any restrictions in their local rules of procedures as those rules may affect the timing of agenda modifications and whether the agency can take final action on matters added to the agenda.

PROCEDURAL REQUIREMENTS SPECIFIC TO SPECIAL MEETINGS

The procedural requirements that apply to special meetings deal primarily with the notice that must be provided. These requirements, contained in [RCW 42.30.080](#), are as follows:

- A special meeting may be called by the presiding officer or by a majority of the members of the governing body.¹¹
- Written notice must be delivered personally, by mail, by fax, or by email at least 24 hours before the time of the special meeting to:
 - Each member of the governing body, and to
 - Each local newspaper of general circulation and each local radio or television station that has on file with the governing body a written request to be notified of that special meeting or of all special meetings.¹²
- Notice of the special meeting must be provided to the public as follows:
 - “Prominently displayed” at the main entrance of the agency’s principal location, and at the meeting site if the meeting will not be held at the agency’s principal location and is not held as a remote meeting; and
 - Posted on the agency’s website. Website posting is not required if the agency:
 - Does not have a website or does not share a website with another agency;
 - Does not employ any full-time equivalent employees; or
 - Does not employ personnel whose job it is to maintain or update the website.

¹¹ There is a conflict between the provision in [RCW 42.30.080](#) authorizing a majority of the members of a governing body to call a special meeting and the provision for code cities in [RCW 35A.12.110](#) authorizing three members of the city council to call a special meeting. This conflict occurs only with respect to a code city with a seven-member council, because three members is less than a majority. Since [RCW 42.30.140](#) provides that the provisions of the OPMA will control in case of a conflict between it and another statute, four members of a seven-member code city council, not three, are needed to call a special meeting.

¹² Note also that statutes relating to each class of city require that cities: “[...] establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city’s official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement.” See [RCW 35A.12.160](#), [35.22.288](#), [35.23.221](#), [35.27.300](#). There are no similar statutes that apply to counties or special purpose districts. Nevertheless, we recommend that counties and special districts establish like procedures for notifying the public.

- The notice must specify:
 - The time and place of the special meeting, and
 - The business to be transacted at the special meeting.
- The governing body may take final action only concerning matters identified in the notice of the special meeting. This does not prevent a governing body from discussing or otherwise taking less than final action with respect to a matter not identified in the notice.
- Written notice to a member or members of the governing body is not required when:
 - A member files at or prior to the meeting a written waiver of notice or provides a waiver by telegram, fax, or email; or
 - The member is present at the meeting at the time it convenes.

PROCEDURAL REQUIREMENTS SPECIFIC TO EMERGENCY MEETINGS

Special meeting notice requirements may be dispensed with when a special meeting is called to deal with an emergency¹³ involving injury or damage to persons or property or the likelihood of such injury or damage, when the time requirements of the notice would make notice impractical and increase the likelihood of such injury or damage or when notice cannot be posted or displayed with reasonable safety.

If the local, state or federal government declares an emergency and the local government determines it cannot hold a meeting of the governing body with in-person attendance with reasonable safety, the agency may hold a fully remote meeting or hold a meeting at which physical attendance by some or all members of the public is limited ([RCW 42.30.230](#)). In the event of such a meeting, notice must be posted on the agency website even if the agency does not employ full-time-equivalent employees or does not employ personnel whose duty is to maintain or update the website ([RCW 42.30.080\(2\)\(b\)](#)).

LOCATION OF MEETINGS

The OPMA does not require that a city, county or, special district governing body hold its meetings within the city or in a particular place in the county or district. However, other statutes require governing bodies to meet in specific locations in order to conduct business.

The councils of code cities, second class cities, and towns may take final actions on ordinances and resolutions only at a meeting within the city or town ([RCW 35.23.181](#), [35.27.270](#), [35A.12.110](#)). Also, as a general matter, county legislative bodies must hold their regular meetings at the county seat ([RCW 36.32.080](#)). However, county legislative bodies can hold regular meetings outside the county seat but within the county if the legislative body determines that “holding a meeting at an alternate location would be in the interest of supporting greater citizen engagement in local government,” as follows: (1) once per calendar month in a city with a greater population than the city in which the county seat is located; and (2) once per calendar quarter in any other location. No more than one meeting per calendar month may be held at an alternate

¹³ The type of emergency contemplated here is a severe one that “involves or threatens physical damage” and requires urgent or immediate action. See [Mead Sch. Dist. No. 354 v. Mead Educ. Ass’n](#) (1975).

location. County legislative bodies may hold special meetings in the county outside of the county seat if there are agenda items that “are of unique interest or concern” to the residents of the area of the county in which the meetings are held ([RCW 36.32.090](#)). And joint meetings – regular or special – of two or more county legislative authorities may be held in the county seat of a participating county if the meeting agenda includes an item or items that “relate to actions or considerations of mutual interest or concern to the participating legislative authorities.”

Some special purpose district governing bodies, such as school district boards of directors, are specifically required to hold their regular meetings within the district, while others, such as irrigation districts, are specifically required to hold meetings in the county where the district is located. See [RCW 28A.330.070](#) (school districts) and [RCW 87.03.115](#) (irrigation districts). Where the statutes are silent as to where meetings must be held for a particular type of district, they should be held within the district or, at the very least, within the county in which the district is located.

PUBLIC COMMENT

Except in an emergency situation, the OPMA requires the governing body to provide an opportunity for public comment “at or before every regular meeting at which final action is to be taken” ([RCW 42.30.240](#)). The comment can be given verbally or in writing. This does not mean that the governing body must allow public comment at every meeting. First, it must be a “regular” meeting. While there is no specific definition of “regular meeting,” a conservative interpretation of the statute is that any meeting that is on the adopted meeting schedule is a “regular meeting.” It does not matter if your agency refers to the meeting as a “business meeting” or a “study session,” if the meeting is on a schedule that is adopted by ordinance, resolution, order, or rule then it is a regular meeting. Second, it must be a meeting at which “final action” is to be taken. “Final action” is defined in [RCW 42.30.020\(4\)](#):

“Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

The governing body has flexibility in deciding when and how it will accept public comment. For example, it can decide that it will only take written comment submitted in advance of the meeting or that it will only take oral comment at the beginning of the meeting. However, if a person notifies the governing body that the person will have “difficulty attending a meeting” because of “disability, limited mobility, or for any other reason that will make physical attendance at a meeting difficult” the governing body must (if feasible) provide an opportunity for that person to provide oral testimony remotely if it is taking oral testimony in-person during the meeting.

Notice of Public Comment Period

If the agency is required by state law to solicit public comment for a statutorily specified period of time and is required by state law to provide notice that it is soliciting public comment, then the notice must specify the first and last date and time by which written public comment may be submitted. See [RCW 42.30.250](#).

MEETING ADJOURNMENTS OR CANCELLATIONS

Meeting Adjournment

The OPMA provides that a meeting can be adjourned – or rescheduled – to a specified time and place ([RCW 42.30.090](#)).¹⁴

There are a few circumstances under which a meeting might be adjourned:

- When the governing body does not achieve a quorum. In that circumstance, less than a quorum may adjourn a meeting to a specified time and place; or
- When all members are absent from a regular meeting or an adjourned regular meeting. In that instance, the clerk or secretary of the governing body may adjourn the meeting to a stated time and place, with notice provided as required for a special meeting, unless notice is waived as provided for special meetings. However, the resulting meeting is still considered a regular meeting.

Meeting Cancellation

The OPMA does not specifically address cancellation of a regular meeting.¹⁵ Technically, a regular meeting can only be adjourned under [RCW 42.30.090](#). But MRSC is aware that local governments often use the term “cancel” when a meeting must be rescheduled (or not held) because of weather, holidays, or knowledge that a quorum is not going to be present. If an agency is not aware of the need to cancel in advance of the meeting but a quorum is not present for a meeting, then those members present (or the clerk or secretary of the governing body if no members are present) can adjourn the meeting to the next regularly scheduled meeting or to an alternative date and time.

Notice Requirements

While not specifically authorized by the OPMA, if an agency knows in advance of the meeting that it must be rescheduled or not held, then MRSC recommends that the notice of “cancellation” should state that the regular meeting is cancelled and rescheduled to the next regular meeting date. Or if the meeting is being rescheduled to a date/time other than that for the next regular meeting, then it should be noticed as a special meeting. In either case notice should be given in the same manner that notice is given for a special meeting under [RCW 42.30.080](#).

Except in the case of remote meetings without a physical location, notice of an adjourned or cancelled meeting is to be provided as follows:

- An order or notice of adjournment or cancellation, specifying the time and place of the meeting to be adjourned or cancelled, must be “conspicuously posted” immediately following adjournment on or near the door of the place where the meeting was held.
- Members of the governing body must receive written notice by mail, fax, or email.

¹⁴ While the term “adjournment” in the OPMA refers to rescheduling a meeting, it is a common and acceptable practice for local governments to end their regular or special meetings by indicating that the meeting is “adjourned.”

¹⁵ When cancelling a regular meeting, be mindful of any state law requirements that the governing body meet a specified number of times per month (for example second class and code city councils and town councils must meet at least once a month. See [RCW 35.23.181](#), [35.27.270](#), [35A.12.110](#)).

- The order or notice must be posted on the agency’s website unless the agency meets the exception criteria in [RCW 42.30.080\(2\)\(b\)](#).
- If the notice or order of an adjourned or cancelled meeting fails to state the hour at which the adjourned or cancelled meeting is to be held, it must be held at the hour specified for regular meetings by ordinance, resolution, or other rule ([RCW 42.30.090](#)).

Hearings

If the governing body is holding a hearing, the hearing may be continued at a later date by following the same procedures for adjournment of meetings ([RCW 42.30.100](#)).

SELECTED QUESTIONS ON PROCEDURAL REQUIREMENTS

Below are additional questions and answers addressing the OPMA’s procedural requirements. For more questions and answers about the OPMA, see MRSC’s page on [Open Public Meetings Act FAQs](#).

Must a city, county, or special purpose district provide published notice of a special meeting?

While notice of a special meeting does not need to be published in the newspaper, the agency must post the special meeting notice on its website unless it does not have a website or does not share a website with another agency. See [RCW 42.30.080\(2\)\(b\)](#). If an agency does not employ any full-time equivalent employees or does not employ personnel whose duty it is to maintain or update the website, it also does not need to post special meeting notice on its website except for the following circumstances:

- The meeting is a fully remote meeting; or
- The meeting is one in which physical attendance by some or all members of the public is limited due to a declared emergency.

May notice to the media of a special meeting be provided by mail, fax, or email?

Yes. [RCW 42.30.080](#) allows notice by mail, fax, or email.

Is an agency required to audio or video record a regular or special meeting?

The OPMA encourages but does not require that agencies record their regular meetings.¹⁶ The OPMA does not encourage recording of special meetings. This is true even if the meeting is held either fully or partially remote. See [RCW 42.30.220](#).

There is also no requirement that the recordings be posted to the agency’s website. The recordings must be retained for the period required by the Washington State Archives’ [Local Government Records Retention schedule](#) and must be made available to the public under the Public Records Act ([Ch. 42.56 RCW](#)).

¹⁶ The one exception to this is that school district boards of directors must audio record all regular and special meetings at which final action is taken or formal public testimony is accepted. [RCW 42.30.035](#).

May a governing body prohibit a member of the public from recording a meeting of the governing body?

No, there is no legal basis for prohibiting the audio or video recording of a meeting of the governing body, unless the recording disrupts the meeting. If the governing body enacted such a rule, it essentially would be conditioning attendance at a meeting on not recording the meeting. This would be contrary to [RCW 42.30.040](#), which prohibits a governing body from imposing any condition on attending a public meeting. See [AGO 1998 No. 15](#).

How can a majority of the governing body agree outside of a formal meeting to call a special meeting without violating the OPMA?

Since a majority of the governing body, under [RCW 42.30.080](#), may call a special meeting “at any time,” it would indeed be an anomaly if, in calling for that meeting, the majority would be considered to have violated the OPMA. In MRSC’s opinion, the only way to give effect to this statutory provision is to allow a majority to communicate as a group in some way (e.g., by phone, email, in person, or through the clerk’s office) to decide whether to have a special meeting, when to have it, and what matters it will deal with. The members could not discuss anything else, such as the substance of the matters to be discussed at the special meeting.

May the agency change the date and time or location of a regular meeting?

The OPMA does not address a one-time change to the date and time or location of a regular meeting. If an agency wants to make a one-time change to the date and time or the location of its regular meeting schedule, it should notice the new meeting as a special meeting pursuant to [RCW 42.30.080](#).

How should the agency notice a joint meeting of the legislative body (such as the city council) and a subagency (such as the planning commission)?

If the subagency is joining the legislative body at its regular meeting, the meeting should be noticed as a special meeting of the subagency. The agenda should include “joint meeting” as an agenda item. If the legislative body and subagency are not meeting during a regular meeting, then the meeting should be noticed as a special meeting of the two bodies.

Executive Sessions

“Executive session” is not expressly defined in the Open Public Meetings Act, but the term is commonly understood to mean that part of a regular or special meeting of a governing body that is closed to the public. A governing body may hold an executive session only for specified purposes, which are identified in [RCW 42.30.110\(1\)\(a\)-\(p\)](#),¹⁷ and only during a regular or special meeting. Nothing, however, prevents a governing body from holding a meeting, which complies with the OPMA’s procedural requirements, for the sole purpose of having an executive session. A governing body should always follow the basic rule that it may not take final action in an executive session.

Information shared in a properly convened executive session is confidential and participants have a duty to keep it so. Disclosure of confidential information from an executive session by a municipal officer violates [RCW 42.23.070\(4\)](#), which prohibits municipal officers from disclosing confidential information gained by reason of the officer’s position. See [AGO 2017 No. 5](#). Confidentiality does not apply to executive session information that was previously publicly discussed or that fell outside the meeting scope.

ATTENDANCE AT EXECUTIVE SESSIONS

Attendance at an executive session need not be limited to the members of the governing body. Persons other than the members of the governing body may attend the executive session at the invitation of that body. Those invited should have some relationship to the matter being addressed in the executive session, or they should be attending to otherwise provide assistance to the governing body. For example, when the governing body is meeting in executive session to discuss litigation or potential litigation, legal counsel must be present and participate in the discussion. Another example of attendance by individuals other than the governing body is when staff of the governing body or of the governmental entity may be needed to present information or to take notes or minutes. Minutes are not required to be taken at an executive session, and because they would be subject to disclosure under the Public Records Act, we recommend that agencies do not take executive session minutes. See [RCW 42.32.030](#).

PROCEDURAL REQUIREMENTS FOR HOLDING EXECUTIVE SESSIONS

Before a governing body may convene in executive session, the presiding officer must publicly announce the executive session to those attending the meeting by stating two things:

- The purpose of the executive session, and
- The time when the executive session will end.

The announced purpose of the executive session must be one of the statutorily-identified purposes for which an executive session may be held and the purpose must be included in the regular or special meeting minutes.

¹⁷ There is at least one statute outside of the Open Public Meetings Act that authorizes an executive session for a purpose not identified in [RCW 42.30.110\(1\)\(a\)-\(p\)](#). [RCW 70.44.062](#) authorizes the board of commissioners of a public hospital district to meet in executive session “concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider” or “to review the report or the activities of a quality improvement committee.”

The announcement must contain enough detail to identify the purpose as falling within one of those identified in [RCW 42.30.110\(1\)](#).

If the executive session is not over at the stated time, it may be extended only if the presiding officer announces to the public at the meeting place that it will be extended to a stated time. If the governing body concludes the executive session *before* the time that was stated it would conclude, it may not reconvene in open session until the time stated. Otherwise, the 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 that was announced for the conclusion of the executive session.

After conclusion of the executive session, the presiding officer returns to the open session even if it is just to adjourn the meeting.

ALLOWED PURPOSES FOR HOLDING EXECUTIVE SESSIONS

An executive session may be held only for one or more of the purposes identified in [RCW 42.30.110\(1\)](#). Identified below are selected purposes which have practical application to cities, counties, and special purpose districts. The complete list of purposes is set forth in the statute.

- **National Security** ([RCW 42.30.110\(1\)\(a\)\(i\)](#))

“To consider matters affecting national security.”

Until the events of September 11, 2001, the provision allowing for consideration of matters affecting national security in executive session had little, if any, practical application to cities, counties, or special districts. However, since the events of September 11, 2001, it has become clear that local security issues may in some instances have national security implications. So, discussions by city, county, or district governing bodies of security matters relating to possible terrorist activity should come within the ambit of this executive session provision. This would include discussions of vulnerability or response assessments relating to criminal terrorist activity.

- **Data Security Breach** ([RCW 42.30.110\(1\)\(a\)\(ii\)](#))

“To consider, if in compliance with any required data security breach disclosure under [RCW 19.255.010](#) and [RCW 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 asset.”

This provision permits executive session discussion of cybersecurity concerns, so long as legal counsel is present, and the discussion meets the provision’s criteria.

- **Purchase or Lease of Real Estate** ([RCW 42.30.110\(1\)\(b\)](#))

“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.”

This provision has two elements:

- The governing body must be considering either purchasing or leasing real property; and
- Public knowledge of the governing body’s consideration would likely cause an increase in the price of the real property.

The consideration of the purchase of real property under this provision can involve condemnation of the property, including the amount of compensation to be offered for the property. See [Port of Seattle v. Rio](#) (1977).

Since this provision recognizes that the process of purchasing or leasing real property or selecting real property to purchase or lease may justify an executive session, it implies that the governing body may need to reach some consensus in executive session as to the price to be offered or the particular property to be selected. See [Port of Seattle v. Rio](#) (1977) at 723-25. However, the State Supreme Court has emphasized that “only the action explicitly specified by [an] exception may take place in executive session.” See [Miller v. Tacoma](#) (1999). See also, [Feature Realty, Inc. v. Spokane](#) (9th Cir. 2003). Taken literally, this limitation would preclude a governing body in executive session from actually selecting a piece of property to acquire or setting a price at which it would be willing to purchase or lease property, because such action would be beyond mere “consideration.” Yet, the purpose of allowing this type of consideration in an executive session would be seemingly defeated by requiring a vote in open session to select the property or to decide how much to pay for it, where public knowledge of these matters would likely increase its price. While this issue awaits judicial or legislative resolution, city and county legislative bodies and special district governing bodies should exercise caution.

- **Sale or Lease of Agency Real Estate** ([RCW 42.30.110\(1\)\(c\)](#))

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

This subsection, the reverse of the previous one, also has two elements:

- The governing body must be considering the minimum price at which real property belonging to the city or county will be offered for sale or lease; and
- Public knowledge of the governing body's consideration will likely cause a decrease in the price of the property.

The requirement here of taking final action selling or leasing the property in open session may seem unnecessary, since all final actions must be taken in a meeting open to the public. However, its probable purpose is to indicate that, although the decision to sell or lease the property must be made in open session, the governing body may decide in executive session the minimum price at which it will do so. However, see the discussion under the previous provision for meeting in executive session and taking any action in executive session that is not expressly authorized.

If there would be no likelihood of a change in price if these real property matters are considered in open session, then a governing body should not meet in executive session to consider them.

Washington's Supreme Court has said that this section is to be used sparingly. Only actual price can be discussed in executive session. In a case involving a port's lease of its property to a private party, the Court said that factors such as potential impacts on local jobs, local spending, environmental risks, public safety, and risks to neighboring tenants should have been discussed in an open session. These types of factors comprising value must be discussed in open session, though "their specific dollars-and-cents impact on price" may be discussed in executive session. See [Columbia Riverkeeper v. Port of Vancouver USA](#) (2017).

- **Review Negotiations on Performance of Bid Contracts** ([RCW 42.30.110\(1\)\(d\)](#))

"To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs."

This subsection indicates that when a city, county, or special district and a contractor performing a publicly bid contract are negotiating over contract performance, the governing body may "review" those negotiations in executive session if public knowledge of the review would likely cause an increase in contract costs. There is no case law on this provision and it is not clear what circumstances would result in a governing body meeting in executive session under this provision.

- **Complaints and Charges Against Officer or Employee** ([RCW 42.30.110\(1\)\(f\)](#))

"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 a meeting open to the public shall be conducted upon such complaint or charge."

For purposes of meeting in executive session under this provision, a "charge" or "complaint" must have been brought against a city, county, or special district officer or employee. A "public officer" includes members of the governing body and volunteers who serve in public officer positions, such as a member of a subagency like the planning commission. The complaint or charge could come from within the city, county, or district or from the public, and it need not be a formal charge or complaint. The bringing of the complaint or charge triggers the opportunity of the officer or employee to request that the discussion be held in open session.

As a general rule, city governing bodies that are subject to the OPMA do not deal with individual personnel matters.¹⁸ For example, the city council should not be involved in individual personnel decisions, as these are within the purview of the administrative branch under the authority of the mayor or city manager.¹⁹ This provision for holding an executive session should not be used as a justification for becoming involved in personnel matters which a governing body may have no authority to address.

¹⁸ A civil service commission is an obvious exception. It, however, addresses personnel actions taken against a covered officer or employee, and it does so in the context of a formal hearing. Another exception is where the governing body may be considering a complaint against one of its members. Also, when a city council has confirmation authority over a mayoral appointment, it may discuss the appointment that is subject to confirmation in executive session.

¹⁹ An exception is where the council, in a council-manager city, may be considering a complaint or charge against the city manager.

- **Evaluate Applicants for Employment or Review Performance of Employees** ([RCW 42.30.110\(1\)\(g\)](#))

“To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to [RCW 42.30.140\(4\)](#), 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, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public.”

There are two different purposes under this provision for which a governing body may meet in executive session: (1) to evaluate qualifications of applicants for public employment; and (2) to review the performance of a public employee. This means that a governing body may evaluate in executive sessions persons who apply for appointive office positions, such as a city manager, as well as those who apply for appointive office or employee positions.²⁰ But, they would not evaluate in executive session:

- The performance of a member of the legislative body (who is not considered a public employee in most circumstances). As mentioned above, complaints or charges against a member of the governing body can be discussed in an executive session under [RCW 42.30.110\(1\)\(f\)](#).
- Applicants for or the performance of uncompensated, appointed offices (like the planning commission) or general volunteer positions (such as a parks department volunteer).

The first purpose under this provision involves evaluating the qualifications of applicants for public employment. This could include personal interviews with an applicant, discussions concerning an applicant's qualifications for a position, and discussions concerning salaries, wages, and other conditions of employment personal to the applicant.

This authority to “evaluate” applicants in executive session allows a governing body to discuss the qualifications of applicants, not to choose which one to hire (to the extent the governing body has any hiring authority). Although this subsection expressly mandates that “final action hiring” of an applicant for employment be taken in open session, this does not mean that a governing body may take preliminary votes in executive session that eliminate candidates from consideration. See [Miller v. Tacoma](#) (1999).

The second part of this provision concerns reviewing the performance of a public employee. Typically, this is done where the governing body is considering a promotion or a salary or wage increase for an individual employee or where it may be considering disciplinary action.²¹

The result of a governing body's executive session review of the performance of an employee may be that the body will take some action either beneficial or adverse to the officer or employee. That action, whether raising a salary of or disciplining an officer or employee, must be made in open session.

²⁰ The courts have, for various purposes, distinguished between a public "office" and a public "employment." See, e.g., [Oceanographic Comm'n v. O'Brien](#) (1968); [State ex rel. Hamblen v. Yelle](#) (1947); [State ex rel. Brown v. Blew](#) (1944). A test used to distinguish between the two is set out in [Blew](#) at 51.

²¹ In general, a city council has little or no authority regarding discipline of public officers or employees. An exception would be a city manager over which the council has removal authority. See [RCW 35A.13.130](#) and [35.18.120](#).

Any discussion involving salaries, wages, or conditions of employment to be “generally applied” in the city, county, or district must take place in open session. However, discussions that involve collective bargaining negotiations or strategies are not subject to the Open Public Meetings Act and may be held in closed session without being subject to the procedural requirements for an executive session ([RCW 42.30.140\(4\)](#)).

- **Evaluate Candidates for Appointment to Elective Office** ([RCW 42.30.110\(1\)\(h\)](#))

“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.”

This provision applies to a city, county, or district governing body only when it is filling a vacant elective position. Under this provision, the governing body may meet in executive session to evaluate the qualifications of applicants for the vacant position. However, any interviews with the candidates must be held in open session. As with all other appointments, the vote to fill the position must also be in open session.

This provision does not allow evaluation in executive session of a candidate for a nonelected, appointive positions because this provision is limited to evaluations of candidates for elective office.

- **Discuss Enforcement Actions and Litigation with Legal Counsel** ([RCW 42.30.110\(1\)\(i\)](#))

“To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency 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.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), “potential litigation” means matters protected by RPC 1.6²² or [RCW 5.60.060\(2\)\(a\)](#)²³ concerning:

- (i) 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;
- (ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or
- (iii) 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.”

²² RPC 1.6 is part of the Rules of Professional Conduct for attorneys, and it deals specifically with client confidentiality, generally prohibiting disclosure of client confidences except in certain specific situations.

²³ [RCW 5.60.060\(2\)\(a\)](#) provides that an attorney may not be compelled to be a witness at trial and reveal client confidences.

Three basic requirements must be met before this provision can be used by a governing body to meet in closed session:²⁴

- The attorney or special legal counsel representing the city, county, or special district must attend the executive session to discuss the enforcement action or the litigation or potential litigation;
- The discussion with legal counsel must concern either an enforcement action or litigation or potential litigation to which the city, county, district, a governing body, or one of its members is or is likely to become a party; and
- Public knowledge of the discussion would likely result in adverse legal or financial consequence to the city, county, or district.

The potential litigation issue. This provision allows governing bodies to discuss in executive session the legal risks of a proposed or existing practice or action, when discussing those risks in open session would likely have an adverse effect on the agency’s financial or legal position. This allows a governing body to freely consider the legal implications of a proposed decision or an existing practice without the attendant concern that some future litigation position might be jeopardized.

The probability of adverse consequence to the city or county. It is probable that public knowledge of most governing body discussions of existing litigation would result in adverse legal or financial consequence to the city, county, or district. Knowledge by one party of the communications between the opposing party and its attorney concerning a lawsuit will almost certainly give the former an advantage over the latter. The same probably can be said of most discussions that qualify as involving potential litigation.

The State Supreme Court has held that a governing body is not required to determine beforehand whether public knowledge of the discussion with legal counsel would likely have adverse consequences; it is sufficient if the agency, from an objective standard, should know that the discussion is not benign and that public knowledge of it will likely result in adverse consequences. See [Recall of Lakewood City Council](#) (2001).

Again, no final action in executive session. The purpose of this executive session provision is to allow the governing body to discuss litigation or enforcement matters with legal counsel; the governing body is not authorized to take final action regarding such matters in an executive session. See [Miller v. Tacoma](#) (1999) and [Feature Realty, Inc. v. Spokane](#) (9th Cir. 2003) (emphasizing that, in order for any action to take place legally in executive session, authority must be “explicitly specified” in an exemption under [RCW 42.30.110\(1\)](#)). The only action that is specifically authorized in this exemption is discussion.

However, since a basic purpose of shielding these discussions from public view is to protect the secrecy of strategic moves concerning litigation, the scope of a governing body's authority in executive session should be interpreted to afford that protection. So, for example, while this provision does not authorize a governing body to approve a settlement agreement in executive session, it should provide authority for that body to authorize its legal counsel to settle a case for no higher than a certain amount. An interpretation supporting the council's authority to take such action appears warranted, but such an interpretation may not be supported by the strict language in case law.

²⁴ This provision for holding an executive session is based on the legislative recognition that the attorney-client privilege between a public agency governing body and its legal counsel can co-exist with the Open Public Meetings Act. See [Final Legislative Report, Forty-Ninth Legislature, 1985 Regular and 1st Special Sessions](#) (SSB 3386); see also [Recall of Lakewood City Council](#) (2001); [Port of Seattle v. Rio](#) (1977); [AGO 1971 No. 33](#). However, that privilege is not necessarily as broad as it may be between a private party and legal counsel.

SELECTED QUESTIONS ON EXECUTIVE SESSIONS

Below are additional questions and answers addressing executive sessions. For more questions and answers about the OPMA, see MRSC's page on [Open Public Meetings Act FAQs](#).

May an executive session be called to discuss “personnel matters”?

No, this would not be a legally sufficient reason to hold an executive session. The purpose for holding an executive session must be within those specifically identified in [RCW 42.30.110\(1\)](#). Although there are personnel issues that may be addressed in an executive session under this statute, such as complaints or charges against an employee or an employee's performance, “personnel matters” is too broad a purpose and could include purposes not authorized by the statute.

May a city council meet in executive session to ask the mayor to resign?

No. Although the council could meet in executive session to discuss complaints or charges against the mayor, the council should take the action of asking for the mayor's resignation in open session. (Of course, a mayor is not legally bound by the council's wishes.)

May a governing body meet in executive session at a special meeting if the notice of the special meeting did not identify that an executive session would be held?

Yes. But [RCW 42.30.080](#) would prevent the governing body from taking final action on a matter that was discussed in executive session when the body reconvenes the open session, unless that action was already on the published agenda. As well, from a policy standpoint, the meeting notice should identify the executive session if the governing body knows at the time of giving the notice that it will be meeting in executive session at the special meeting.

If three members of a seven-member city council interview candidates for a council vacancy, must those interviews be open to the public?

Yes. Although they do not represent a quorum of the council, the three councilmembers would be acting on behalf of the entire council in conducting these interviews. As such, they would be considered a “governing body” subject to the OPMA. Since interviews by a governing body of candidates for appointment to elective office must occur in an open meeting under [RCW 42.30.110\(1\)\(h\)](#), this three-member committee may not meet in executive session for the purpose of interviewing the candidates.

Penalties and Enforcement

The only avenue provided by the Open Public Meetings Act to enforce its provisions or to impose a penalty for a violation of its provisions is by an action in superior court. “Any person” may bring that action in superior court. If a superior court determines that a violation has occurred, liability may be imposed as follows:

- **Individual Liability**

Members of a governing body who attend a meeting where action is taken in violation of the OPMA are subject to a \$500 penalty for the first violation, if they attend with knowledge that the meeting is in violation of the OPMA ([RCW 42.30.120\(1\)](#)). Subsequent knowing violations of the OPMA carry a \$1,000 penalty. Violation of the OPMA is not a criminal offense. The penalty is assessed by the superior court, and any person may bring an action to enforce the penalty ([RCW 42.30.120\(2\)](#)).

Also, a knowing or intentional violation of the OPMA may provide a legal basis for recall of an elected member of a governing body, although recall is not a penalty under the OPMA. See [Recall of Lakewood City Council](#) (2001), [In re Recall of Kast](#) (2001).

- **City, County, or District Liability**

The city, county, or district is liable for all costs, including reasonable attorney fees. However, if a court determines by written findings that an action for violation of the OPMA was “frivolous and advanced without reasonable cause,” a city, county, or district may be awarded reasonable expenses and attorney fees ([RCW 42.30.120\(4\)](#)).

In addition to the above, any person may bring an action by mandamus or injunction to stop violations of the OPMA or to prevent threatened violations ([RCW 42.30.130](#)).

Actions in violation of the OPMA are null and void. Any ordinance, resolution, rule, regulation, order, or directive that is adopted at a meeting that does not comply with the OPMA, and any secret vote taken, is null and void ([RCW 42.30.060](#)). This does not, however, mean that a subsequent action that complies with the OPMA is also invalidated. See [OPAL v. Adams County](#) (1996), [Clark v. City of Lakewood](#) (9th Cir. 2001), and [AGO 1971 No. 33](#). But, where action taken in open session merely ratifies an action taken in violation of the OPMA, the ratification is also null and void. See [Clark v. City of Lakewood](#) (2001) and [Miller v. Tacoma](#) (1999).

Training Requirements

The OPMA requires that all members of governing bodies, state and local, receive training on the requirements of the Open Public Meetings Act ([RCW 42.30.205](#)).

The training must be completed within 90 days after a governing body member takes the oath of office or otherwise assumes the duties of the position. The training must be repeated at intervals of no longer than four years, as long as an individual is a member of the governing body. This legislation does not specify the training that must be received, other than it is to be on the requirements of the OPMA and that it may be completed remotely. No penalty is provided for the failure of a member of a governing body to receive the required training.

For more information on this training requirement, see the Attorney General's [Open Government training](#) page.

Appendix: Recommended Resources

MUNICIPAL RESEARCH AND SERVICES CENTER (MRSC)

- [Open Public Meetings Act Basics](#) – Basic OPMA overview.
- [Executive Session Basics](#) – Basic overview of executive sessions as allowed by the OPMA.
- [Open Public Meetings Act FAQs](#) – Browse answers to frequently asked questions (FAQs) from local governments regarding the Open Public Meetings Act.
- [Executive Session FAQs](#) – Browse answers to frequently asked questions (FAQs) from local governments regarding executive sessions as allowed by the Open Public Meetings Act.
- [OPMA Practice Tips and Checklists](#) – Developed in partnership with the State Auditor’s Center for Government Innovation, these practice tips and short checklists provide practical guidance for local agencies.
- [OPMA Court Decisions and AG Opinions](#) – Key court decisions and attorney general opinions regarding the OPMA organized by topic.
- [Public Hearings](#) – Provides an overview of the legal requirements for conducting public hearings in Washington State and describes the basic procedures that should be followed for a proper public hearing.
- [Recent blog posts about OPMA](#) – Articles written by MRSC staff and contributors about specific aspects of the OPMA, including executive sessions, new legislation, and court decisions. Articles are listed in reverse chronological order, with the most recent first.
- [PRA and OPMA E-Learning Course for City/Town Elected Officials](#) – MRSC partners with the Association of Washington Cities (AWC) to produce two free e-learning courses for city and town councilmembers and mayors, one dealing with the with the Open Public Meetings Act (OPMA) and the other with the Public Records Act (PRA).
- [Upcoming Trainings](#) – MRSC produces webinars every month and several virtual and in person workshops throughout the year, many related to open government.

WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (AGO)

- [Open Government](#) – Provides links to OPMA trainings and other AGO resources on the OPMA and PRA.
- [OPMA Guidance on Frequently Asked Questions About Processes to Fill Vacant Positions by Public Agency Governing Boards](#) (2016) – This guidance is intended to assist public agency governing bodies in complying with the OPMA when filling vacant positions in their agencies.


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