

# I. OPEN PUBLIC MEETINGS ACT

## Chapter 42.30 RCW

- ◆ Purpose of the Act
- ◆ Open Meetings Required
- ◆ Executive Sessions
- ◆ Expulsion of Meeting Participants
- ◆ Basic Requirements for Meetings
- ◆ Penalties
- ◆ Exemptions

# **PURPOSE**

## **RCW 42.30.010**

“The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instrument they have created.”

# WHAT IS A MEETING?

- ◆ Commissioners, City Councils, Planning Commissions:
  - Quorum + Action
  
- ◆ Subcommittees:
  - Holds Hearings,
  - Takes Public Comment, or
  - Makes Decisions

# EXECUTIVE SESSION



Personnel



Litigation



Real Estate

# BASIC REQUIREMENTS FOR MEETINGS

- ◆ Regular meetings
- ◆ Special meetings

# II. APPEARANCE OF FAIRNESS DOCTRINE

- ◆ Who, What, Where and Why?
- ◆ Exceptions
- ◆ Applications
- ◆ Violation Consequences
- ◆ Conduct of Hearings

# QUASI-JUDICIAL ACTIONS

- ◆ Acting like a judge:
  - Specific parties
  - Hearing or other contested action
  - Determine rights, duties or privileges
  - Permits, site-specific rezones

# *EX PARTE* CONTACTS

- ◆ **The rule**: No *ex parte* contacts with opponents or proponents during pendency of quasi-judicial action
- ◆ **The fix**: Disclose substance and offer rebuttal

# EXCEPTIONS

- ◆ Regular business exception
- ◆ Doctrine of necessity
- ◆ Waiver
- ◆ Campaign statements/contributions

# REGULAR BUSINESS EXCEPTION

“No members of a local decision making body may be disqualified by the appearance-of-fairness doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body.”

# DOCTRINE OF NECESSITY

- ◆ AOF doesn't apply if it results in loss of quorum or majority needed to approve pending matter.
- ◆ Must disclose basis for disqualification prior to rendering decision.

# WAIVER

A decorative graphic consisting of a horizontal blue line starting from a small circle on the left, and a vertical blue line extending downwards from the same circle. A blue diamond icon is positioned to the left of the text.

◆ Use it or lose it.

# APPLICATIONS

- ◆ Business relationships
- ◆ Social/marital relationships
- ◆ Membership and organizations
- ◆ Personal benefit/detriment
- ◆ *Ex parte* contacts/evidence outside record

# VIOLATION CONSEQUENCES

◆ Action void

◆ Damages?

# III. CONDUCT OF HEARINGS

- ◆ Must be fair in fact
- ◆ Must appear fair
- ◆ Procedures
- ◆ Suggested order of presentation
- ◆ Deliberation

# PROCEDURES

- ◆ Must have ability to produce a verbatim transcript.
- ◆ Number the exhibits.
- ◆ Have each speaker identify him/herself.
- ◆ Have the Chairman recognize each speaker.
- ◆ You may impose reasonable time limits.
- ◆ You may encourage speakers not to be repetitive.
- ◆ In imposing time limits, be aware of potential unfairness if multiple speakers request time on one side of the issue.

# SUGGESTED ORDER OF PRESENTATION

- ◆ Inquiry regarding appearance of fairness
- ◆ Challenges from the audience on appearance of fairness
- ◆ May ask legal counsel to review criteria
- ◆ Open hearing
- ◆ Staff presentation and Commission questions
- ◆ Audience participation
- ◆ Applicant/opponent
- ◆ Close hearing

# DELIBERATION

- ◆ Discussion - why supporting approval or disapproval.
- ◆ Base reasons on criteria and ordinances or state law.
- ◆ Point out how proposal does or does not meet criteria. Base reasons on written and oral record.
- ◆ Motion to approve or disapprove should instruct the staff to prepare draft findings and conclusions in line with the discussion to be presented at the next regular meeting for final approval and passage by Commission.

# DECISION

- ◆ Must be in writing.
- ◆ Must be based on evidence deduced from the record.
- ◆ A court will review the body's decision on the basis of whether or not there is substantial evidence in the record to support the decision.
- ◆ Facts must support the conclusions.

# WHY FINDINGS

- ◆ Judicial deference to findings and conclusions.
- ◆ Aid court in determining if evidence supports decision.
- ◆ Avoid usurpation of fact-finding role.
- ◆ Help protect against careless or arbitrary action.
- ◆ Help parties plan cases for rehearing and judicial review.
- ◆ Keep agencies within their jurisdiction.