

CLG Training Spokane, WA September 26, 2017

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Legal Basics, Open Meetings, Executive Sessions, Conflict of Interest & Appearance of Fairness





Amendment X
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Delegation of Authority

- Dillon's Rule
 - Narrow government authority
 - If there is a reasonable doubt if power has been conferred, then the power has not been conferred
- Home Rule
 - Defined specifically by each state
 - Home rule creates local autonomy and limits state interference



Amendment V

... nor shall private property be taken for public use, without just compensation

Legal Decisions



Legal Decisions

Euclid v. Ambler, 1926

Use of the police power as a legitimate form of local government regulation of land in upholding zoning laws.

Berman v. Parker, 1954

“The concept of the public welfare is broad and inclusive. . . .The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determinate that the community should be beautiful as well as healthy ”

Penn Central Transportation Co. v. New York City, 1978

- Upheld historic preservation designation as
- a legitimate use of the police power



Penn Central “three prong test”

- Economic impact of the regulation on the private landowner
- The degree to which the regulation interferes with the private landowner’s distinct investment-backed expectations
- The character of the government action – “does it advance legitimate state interests.”

Federal Preservation Overview

- Public
 - Antiquities Act of 1906
 - National Park Service – 1916
 - Historic American Building Survey – 1933
 - Historic Sites Act of 1935 (basis for formation of National Register of Historic Places)
 - National Trust for Historic Preservation - 1949
- Private
 - Mount Vernon Ladies Association - 1853
 - Daughters of the American Revolution - 1890
 - Colonial Dames - 1890
 - Society for the Preservation of New England Antiquities - 1910
 - Colonial Williamsburg - 1926

National Historic Preservation Act of 1966

- Expanded the National Register of Historic Places
- Created Section 106 and the Advisory Council on Historic Preservation
- Created State Historic Preservation Offices
 - Administers NRHP
 - Review and Compliance – Section 106
 - Survey & Inventory
 - Planning – State Preservation Plan
 - Grants
 - Federal Rehabilitation Tax Credits
 - Public Education and Technical Assistance



Amendments to the NHPA of 1966

▪ 1980 Amendments

- Created Certified Local Governments
 - 10% Pass through of federal appropriation
 - Review and approval of NR nominations
- Provided for owner objection to listing in the National Register of Historic Places

▪ 1992 Amendments

- Provided for a greater role for Native Americans and Native Hawaiians in federal and state preservation programs
- Required federal agencies to establish their own internal procedures to incorporate historic preservation planning within their programs
- Obligated federal agencies to withhold federal assistance in cases of anticipatory demolition

Open Meetings, Executive Session and Conflicts of Interest

DISCLAIMER

This presentation does not constitute “legal advice.” Use this presentation in consultation with your City Attorney and Ethics Officer.

Open Meetings, Executive Sessions, Conflict of Interest & Appearance of Fairness





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RCWs > Title 42 > Chapter 42.30

Chapter 42.30 RCW
OPEN PUBLIC MEETINGS ACT
 Complete Chapter | RCW Dispositions

Sections

- 42.30.010** Legislative declaration.
- 42.30.020** Definitions.
- 42.30.030** Meetings declared open and public.
- 42.30.040** Conditions to attendance not to be required.
- 42.30.050** Interruptions—Procedure.
- 42.30.060** Ordinances, rules, resolutions, regulations, etc., adopted at public meetings—Notice—Secret voting prohibited.
- 42.30.070** Times and places for meetings—Emergencies—Exception.
- 42.30.075** Schedule of regular meetings—Publication in state register—Notice of change—"Regular" meetings defined.
- 42.30.077** Agendas of regular meetings—Online availability.
- 42.30.080** Special meetings.
- 42.30.090** Adjournments.
- 42.30.100** Continuances.
- 42.30.110** Executive sessions.
- 42.30.120** Violations—Personal liability—Civil penalty—Attorneys' fees and costs.
- 42.30.130** Violations—Mandamus or injunction.
- 42.30.140** Chapter controlling—Application.
- 42.30.200** Governing body of recognized student association at college or university—Chapter applicability to.
- 42.30.205** Training.
- 42.30.210** Assistance by attorney general.
- 42.30.900** Short title.
- 42.30.910** Construction—1971 ex.s. c 250.

NOTES:

Drug reimbursement policy recommendations: RCW 74.09.653.

Site Contents

Selected content listed in alphabetical order under each group

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 - Comment on a Bill
 - Contact Your Legislators

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 - Washington Courts

Find

What is subject to the Act?

Any meeting at which an action is taken

What is an action?

An action is 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.

Public Comment

- The Act does not require public comment . . . but you should include it.

During public comment, be fair and consistent

Apply time limits consistently (with the exception of the applicant who has a legitimate claim of having more time – but not “running out the clock.”)

If time is an issue, ask people to submit written comments

Executive Session

- The Act allows an Executive Session in the matter of:

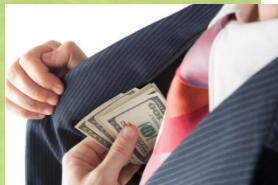
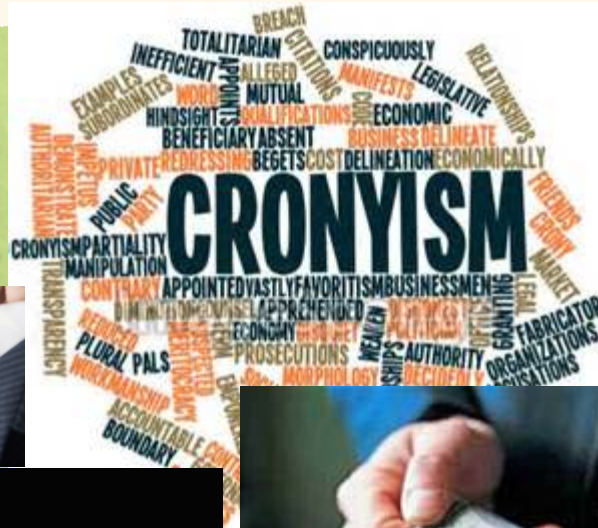
National Security

Real Estate Transactions

Litigation

Confidential Information

Appearance of Fairness, Conflicts of Interest





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RCWs > Title 42 > Chapter 42.23

Print

Chapter 42.23 RCW

CODE OF ETHICS FOR MUNICIPAL OFFICERS—CONTRACT INTERESTS

Complete Chapter

Sections

- 42.23.010** Declaration of purpose.
- 42.23.020** Definitions.
- 42.23.030** Interest in contracts prohibited—Exceptions.
- 42.23.040** Remote interests.
- 42.23.050** Prohibited contracts void—Penalties for violation of chapter.
- 42.23.060** Local charter controls chapter.
- 42.23.070** Prohibited acts.
- 42.23.900** Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

NOTES:

Cities, free passes, services prohibited: RCW 35.17.150.

County officers, general provisions: Chapter 36.16 RCW.

Ethics in public service act: Chapter 42.52 RCW.

Public employment, civil service: Title 41 RCW.

State officers, general provisions: Chapter 43.01 RCW.

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Code of Ethics

No municipal officer may:

- use his or her position to secure special privileges or exemptions for himself, herself or others;
- directly or indirectly, give or receive any compensation, gift, gratuity, or reward from any source, except the employing municipality, for a matter connected with or related to the officer's services unless otherwise prohibited by law;
- accept employment or engage in business that the officer might reasonably expect would require him or her to disclose confidential information acquired by reason of his or her official position;
- disclose confidential information gained by reason of the officer's position, nor may the officer use such information for his or her personal gain.

Code of Ethics

- Most jurisdictions have their own Code of Ethics
- Familiarize yourself with your local Code of Ethics
- Ask the Ethics Officer in your jurisdiction to brief the Commission

**Legislature Home**[House of Representatives](#)[Senate](#)[Find Your District](#)[Laws & Agency Rules](#)[Bill Information](#)[Agendas, Schedules, and Calendars](#)[Legislative Committees](#)[Coming to the Legislature](#)[Legislative Agencies](#)[Legislative Information Center](#)[Email Updates \(GovDelivery\)](#)[View All Links](#)[RCWs > Title 42 > Chapter 42.36](#)**Chapter 42.36 RCW****APPEARANCE OF FAIRNESS DOCTRINE—LIMITATIONS**[Chapter Listing](#) | [RCW Dispositions](#)**Sections**

- 42.36.010** Local land use decisions.
- 42.36.020** Members of local decision-making bodies.
- 42.36.030** Legislative action of local executive or legislative officials.
- 42.36.040** Public discussion by candidate for public office.
- 42.36.050** Campaign contributions.
- 42.36.060** Quasi-judicial proceedings—Ex parte communications prohibited, exceptions.
- 42.36.070** Quasi-judicial proceedings—Prior advisory proceedings.
- 42.36.080** Disqualification based on doctrine—Time limitation for raising challenge.
- 42.36.090** Participation of challenged member of decision-making body.
- 42.36.100** Judicial restriction of doctrine not prohibited—Construction of chapter.
- 42.36.110** Right to fair hearing not impaired.

42.36.010**Local land use decisions.**

Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

[1982 c 229 § 1.]



Ask me anything

1:52 PM
2/28/2017

Appearance of Fairness

Avoid conflicts of interest as outlined in the Code of Ethics

Preserve an atmosphere of fairness and impartiality

Ex Parte Communications

An ex parte communication is a one-sided discussion between a decision-maker and the proponent or opponent of a particular application or matter that takes place outside of the formal hearing process.

Ex Parte Communications

When does it occur?

The ban on ex parte communication applies only during the pendency of a proceeding, for example, the filing of an application.

Ex Parte Communications

What happens if it occurs?

An ex parte communication does not necessarily preclude your participation. It is important for you to disclose the contact in public including the substance of the interaction and allow any rebuttal of the substance of the interaction.