

# CHECKLIST

For Local Government Success



The Open Public Meetings Act (OPMA) requires specific steps be taken in order to hold an executive session. Use this checklist to guide your agency’s compliance with the OPMA related to executive sessions.\*

	Requirement	Completed
Meeting	An executive session can only be held as part of a regular or special meeting.	<input type="checkbox"/>
Purpose	The presiding officer announces in open session the purpose of the executive session.	<input type="checkbox"/>
End Time	The presiding officer announces in open session the time the executive session will end.	<input type="checkbox"/>
Legal Counsel	Legal counsel is present during the executive session, if required.	<input type="checkbox"/>
Confidentiality	At the start of the executive session, participants are reminded that discussions are confidential.	<input type="checkbox"/>
Topics	Local governments can discuss the following topics set forth in <a href="#">RCW 42.30.110(1)</a> in executive session:	
	• Matters affecting national security. <a href="#">RCW 42.30.110(1)(a)(i)</a> .	<input type="checkbox"/>
	• Infrastructure and security of agency computer and telecommunications network. <a href="#">RCW 42.30.110(a)(ii)</a> . See back of page. <b>Note:</b> Requires presence of legal counsel.	<input type="checkbox"/>
	• Real estate sale, purchase, or lease if a likelihood that disclosure would increase price. <a href="#">RCW 42.30.110(1)(b)</a> , <a href="#">(c)</a> . If agency is seller/lessor, only minimum price may be discussed & factors influencing price must be discussed in public session. <i>Columbia Riverkeeper v. Port of Vancouver</i> .	<input type="checkbox"/>
	• Consideration of the minimum offering price for sale or lease of real estate if there's a likelihood that disclosure would decrease the price. <a href="#">RCW 42.30.110(1)(c)</a> . See back of page. <b>Note:</b> Final action selling or leasing public property must be taken in open session.	<input type="checkbox"/>
	• Negotiations on the performance of a publicly bid contract. <a href="#">RCW 42.30.110(1)(d)</a> . See back of page.	<input type="checkbox"/>
	• Complaints or charges brought against a public officer or employee. <a href="#">RCW 42.30.110(1)(f)</a> . <b>Note:</b> At accused’s request, discussion must be in open session.	<input type="checkbox"/>
	• Qualifications of an applicant for public employment. <a href="#">RCW 42.30.110(1)(g)</a> . See back of page.	<input type="checkbox"/>
	• Performance of a public employee. <a href="#">RCW 42.30.110(1)(g)</a> . See back of page.	<input type="checkbox"/>
	• Qualifications of an applicant/candidate for appointment to elective office. <a href="#">RCW 42.30.110(1)(h)</a> . See back of page.	<input type="checkbox"/>
	• Agency enforcement actions. <a href="#">RCW 42.30.110(1)(i)</a> . See back of page. <b>Note:</b> Requires presence of legal counsel.	<input type="checkbox"/>
	• Current or potential litigation. <a href="#">RCW 42.30.110(1)(i)</a> . See back of page. <b>Note:</b> Requires presence of legal counsel.	<input type="checkbox"/>
	• Legal risks of current or proposed action. <a href="#">RCW 42.30.110(1)(i)</a> . See back of page. <b>Note:</b> Requires presence of legal counsel.	<input type="checkbox"/>
Extended End Time	If the executive session is not completed by the originally announced end time, the presiding officer announces the extended end time in open session before returning to executive session.	<input type="checkbox"/>
Resumption	Open session is not resumed until after the announced end time.	<input type="checkbox"/>

Meeting Date \_\_\_\_\_ Form Completed By \_\_\_\_\_  
Attendees \_\_\_\_\_

\*DISCLAIMER: This checklist is meant to provide summary information on executive sessions; the checklist is not intended to be regarded as specific legal advice. Consult with your agency’s attorney about this topic as well. December 2018

An executive session must begin after a regular or special meeting is convened and adjourn before the meeting ends. While an executive session will therefore always be a part of a regular or special meeting, it is possible to hold a special meeting for the sole purpose of holding an executive session.

To start, the chair must announce the executive session to those in attendance at the meeting, including: (1) the purpose of the executive session; and (2) the time when the executive session will end.

**Announced Purpose and Topics of Discussion:** The announced purpose of the executive session must be one of the statutorily-identified purposes for which an executive session may be held. The announcement must contain enough detail to identify the purpose as falling within the limits of the law.

*It would not be sufficient, for example, for a meeting chair to declare simply that the governing body will now meet in executive session to discuss "personnel matters."* Discussion of personnel matters, in general, is not an authorized purpose for holding an executive session; only certain specific issues relating to personnel may be addressed in executive session.

**Attendance of legal counsel** – Legal counsel must be present at an executive session, either in person or remotely via a device that allows two-way communication, to discuss enforcement actions, current or potential litigation, or the legal risks of current or proposed action. “Potential litigation” means 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; or the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity. Discussion of the “legal risks” of a current or proposed action can only occur in executive session if public discussion of those legal risks is likely to result in an adverse legal or financial consequence to the agency.

### Notes for Specific Discussion Topics

- **Security of computer and telecommunications network** – Governing body may be briefed in executive session about agency cybersecurity issues or data breaches. If a data breach occurs, the agency must comply with breach notification requirements.
- **Contract Performance** – Review of contract performance of publicly bid contracts may only be discussed in executive session when public knowledge of such consideration would likely cause increased costs.
- **Qualifications of an applicant for public employment or review of performance of a public employee** – If the governing body elects to take final action regarding hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action must be taken in open session.
- **Qualifications of candidate for appointment to elective office** – Candidate interviews and final action appointing a candidate to elective office must be in an open public meeting.
- **Collective bargaining sessions** – Collective bargaining sessions with employee organizations are not subject to OPMA requirements and may occur in closed session without following OPMA procedures. This exemption applies to contract negotiations, grievance meetings, and discussions about the interpretation or application of a labor agreement or to that portion of a meeting when the governing body is planning or adopting its strategy during the course of any collective bargaining, professional negotiations, grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings in progress.

**Length of Session:** If the governing body concludes the executive session before the time stated, it should not reconvene in open session until the time stated. Otherwise, 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 when the chair announced the executive session would conclude. If the executive session is not over at the stated time, it may be extended only if the chair announces to the public at the meeting place that it will be extended to a stated time.

**Attendance:** Attendance at an executive session need not be limited to the members of the governing body. Persons other than elected members may attend the executive session at the invitation of the governing body. Those invited should have some relationship to the matter being addressed in the executive session, or they should be in attendance to otherwise provide assistance to the governing body. Note that if the stated purpose for the executive session is to discuss litigation or potential litigation with the governing body's attorney, the presence of persons at the session who are not governing body members or agency staff may waive the attorney-client privilege.

**Minutes:** Minutes are not required to be taken at an executive session. If minutes or notes are taken during an executive session, they may be subject to the disclosure requirements of the Public Records Act.

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