

PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY
COMMISSIONERS' MEETING

DRAFT AGENDA

August 22, 2017

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

1. Approval of Agenda 08/22/17
2. Approval of Minutes 08/08/17
3. Ratification of Vouchers 08/15/17
4. Approval of Vouchers 08/22/17

TREASURER'S REPORT – July 2017

AUDIENCE COMMENTS

OLD BUSINESS

5. Manager's Report
6. Quarterly Report – Operations Department

NEW BUSINESS

MISCELLANEOUS

7. Attorney General's Opinion 2017 – No. 5

COMMISSIONER COMMENTS

ADJOURNMENT

JUDY RESERVOIR ELEVATION

Agenda Item #2

MINUTES OF THE REGULAR MEETING OF THE COMMISSION PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY, WASHINGTON

August 8, 2017

The regular meeting of the Commission of Public Utility District No. 1 was held in the Aqua Room of the utility located at 1415 Freeway Drive, Mount Vernon, Washington, on August 8, 2017.

The meeting was called to order at 4:30 PM. Those Commissioners in attendance were: Robbie Robertson, President; Eron Berg, Vice President; and Al Littlefield Secretary. Also in attendance were: George Sidhu, General Manager; Mark Handzlik, Engineering Manager; Sally Saxton, Finance Manager/Treasurer; Peter Gilbert, Attorney; and Kim Carpenter, Clerk of the Board; Audience: Judy Littlefield, Diane Robertson, Les Walker, and Dale Ragan, Mount Vernon City Councilman; District Employees: Mike Fox, Gary Chrysler, Kathy White, Kevin Tate, Luis Gonzalez, and Mark Semrau.

Commissioner Littlefield led the Pledge of Allegiance.

Commissioner Littlefield moved to approve the Consent Agenda for August 8, 2017:

1. Approval of Agenda 08/08/17
2. Approval of Minutes 07/25/17
3. Ratification of Vouchers
No. 2743 Voucher Nos. 01945 to 10001 (\$1,060,632.94) 07/25/17
No. 2744 Voucher Nos. 10002 to 10038; Payroll Check Nos. 19241-19324 (\$301,877.34) 08/01/17
4. Approval of Vouchers
No. 2745 Voucher Nos. 10040 to 10111; Payroll Check Nos. 19325-19408 (\$591,542.46) 08/08/17
5. Aronson Security Group (ASG) - Install Access Control, Intrusion Detection and Video Surveillance Systems for Tank and Booster Pump Station

The motion passed.

Treasurer Saxton presented the Status of Budget/Financial Summary

Audience Comments: None

Under Old Business:

6. Manager's Report - Manager Sidhu reported on the following items:
 - Upon the retirement of Larry Saunders, Engineering Supervisor, the District conducted an internal search and Bill Trueman, Environmental Services Coordinator was selected for the position.
 - Met with representatives from the Samish Water District to discuss if they can confirm that the District is amenable to wheeling wholesale water. They have asked the residents to circulate a petition of interest.

Agenda Item #2

- The State audit will begin August 21; however, they have not yet scheduled an entrance conference. They expect to be onsite for approximately two weeks.
 - Bill outsourcing begins this week and information is posted on the District's website.
 - The District advertised a Request for Qualifications for an architectural needs assessment of the building facility. Ten submittals and were narrowed to three for interviews, which have been conducted. The interview team will meet on Friday to determine the selection.
 - Grant funding from Skagit County to connect fiber to the Port has been revised based on the scope of work changes and the District received a schedule extension.
 - A tour of the WTP for elected officials is scheduled for August 24 for the Cities of Mount Vernon, Sedro-Woolley and Burlington. Skagit County officials will tour the facility on August 31. Details regarding time are being worked out, but participants will meet at the park and ride on the south side of the bridge on SR9. Commissioner Robertson plans to attend the and suggested inviting service organizations such as Kiwanis, Rotary and the Chambers to the tour on August 31.
7. Commission Priorities and Goals for 2018 Budget Summary
Manager Sidhu reviewed the summary and stated it helps with the budget process. The Commission and staff are in general agreement regarding the major capital items.
8. Quarterly Report- Information Technology (IT) Department – IT Manager Chrysler presented the quarterly report for his department. Discussion ensued regarding various aspects of the information presented.

New Business

9. Draft Credit Card Administrative Practice & Procedures (AP&P) Revisions – Discussion
Manager Sidhu stated that IT Manager Chrysler and Treasurer Saxton are working on policy revisions. Manager Sidhu stated there is no action required for the AP&P, but wanted to address any questions or comments from the Commission.
10. Safety Policy – Drug Free Workplace Policy and Associated AP&P's – Discussion/Action
Manager Sidhu stated that the first draft was presented to the Commission on 06/27 and comments were reviewed and revisions were made with the associated policies. The related AP&P's were presented to the Commission for any questions or comments. Commissioner Berg moved to approve Policy #1026 as presented. The motion passed. Commissioner Berg moved to approve Policy #1013 as presented. The motion passed.

Agenda Item #2

Under Commissioner Comments, Commissioner Littlefield reported that there are no WA PUD Association (WPUDA) meetings this month.

Commissioner Robertson commented briefly regarding the WPUDA strategic plans for major committees discussed at the meetings last month.

Having no further business to come before the Board, Commissioner Littlefield moved for adjournment. The motion passed and the meeting of August 8, 2017 was adjourned at 5:27 PM.

Respectfully submitted:

Kim Carpenter
Clerk of the Board

DRAFT

Agenda Item #7

STATE REPRESENTATIVE
3rd LEGISLATIVE DISTRICT
MARCUS RICCELLI
DEPUTY MAJORITY WHIP

State of
Washington
House of
Representatives



HEALTH CARE & WELLNESS
VICE CHAIR
CAPITAL BUDGET
TRANSPORTATION

April 4, 2016

The Honorable Bob Ferguson
Washington State Attorney General
P.O. Box 40100
Olympia, WA 98504-0100

RE: Request for Opinion – Disclosure of Executive Session Deliberations under the Open Public Meetings Act

Dear Attorney General Ferguson:

Pursuant to RCW 43.10.030(5), I write to request an opinion as to whether public officials who participate in meetings convened in executive session under the Washington Open Public Meetings Act may lawfully later disclose information shared during such sessions (assuming the disclosure would not violate separate privacy laws, or local laws or policies).

Some government jurisdictions have advised public officials that Washington law categorically prohibits public officials from later disclosing information obtained during executive sessions. Some cities have advised that all information in an executive session is confidential and that disclosure could lead to criminal sanctions.

The Municipal Research and Services Center provides similar guidance, which is broadly circulated among government jurisdictions in Washington. For example, in its 2011 report, "Knowing the Territory: Basic Legal Guidelines for Washington City, County and Special Purpose District Officials," MRSC advises under the heading, "Improper Disclosure of Information Learned in Executive Session:"

- a. "It is the clear intent of the provisions relating to executive sessions that information learned in executive session be treated as confidential. However, there is no specific sanction or penalty in the Open Public Meetings Act for disclosure of information learned in executive session.
- b. "A more general provision is provided in RCW 42.23.070 prohibiting disclosure of confidential information learned by reason of the official position of a city officer. This general provision

Agenda Item #7

would seem to apply to information that is considered confidential and is obtained in executive sessions.”

See p. 25 of <http://www.doh.wa.gov/Portals/1/Documents/4200/SWSW-Blair-3.pdf>. Still, MRSC also has acknowledged the uncertainty in this area of law. See its blog post here: <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/April-2013/What-Can-Be-Done-if-an-Elected-Official-Divulges-I.aspx>.

The theory that disclosure is prohibited apparently reads RCW 42.23.070(4) (a statute related to ethics) as a restriction to the OPMA’s presumption of openness. RCW 42.23.070 (4) states: “No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.” The statute does not define “confidential.” The theory apparently presumes that information that qualifies for the executive session exemption in the OPMA categorically constitutes “confidential” information.

However, Timothy Ford, former Open Government Ombudsman for the Washington Office of Attorney General, apparently rejected that theory in 2009. He wrote in an informal opinion to a member of the Puyallup City Council, in part:

“It is true that confidential information must be protected pursuant to RCW 42.23.070(4). However, not all information shared in executive session may be confidential. The mere fact that records and information are shared in executive session is not sufficient to create confidentiality. The executive session is not a valid exemption from disclosure of non-exempt materials. *ACLU V. City of Seattle*, 121 Wn. App. 544, 554-555 (2004).

“Moreover, while the executive session allows closed meetings on specific topics, it does not limit your first amendment right to speak about non-confidential information that concerns the public. Any rule that seeks to limit all information discussed in executive session may be overly broad, and likely restricts your constitutional rights. Taken to its absurd limit, an overly broad rule might prohibit the city council from taking required actions in public where it is necessary to explain to the public much of its rationale that was formerly discussed in executive session.”

I have enclosed a copy of the letter.

Additionally, some local jurisdictions have adopted policies allowing for limited disclosure of information discussed during executive sessions. For example, the Spokane Municipal Code’s chapter on ethics says: “Confidential information does not include information authorized by the mayor or a majority vote of the council to be disclosed.” SMC 01.04A.020(I)(4).

I request your guidance to resolve this question, which implicates a broad range of potential issues, from whether members of a public agency may choose to disclose details of real estate negotiations after the negotiations conclude, to whether a public agency may collectively disclose matters of public concern.

Specifically:

Agenda Item #7

1. Does RCW 42.23.070(4) restrict public officials from disclosing information shared during meetings conducted as executive sessions under the Open Public Meetings Act? If so, does the statute categorically prohibit disclosure, or is its reach limited to “confidential information”? If limited, how should public officials define “confidential information”?
2. If RCW 42.23.070(4) does prohibit public officials from disclosing information exchanged during executive sessions, would a violation of that prohibition constitute a misdemeanor under RCW 42.20.100 (“Failure of duty by a public wrongful conduct”) and/or “official misconduct” under RCW 9A.80.010?

Sincerely,

A handwritten signature in black ink, appearing to read "M. Riccelli". The signature is fluid and cursive, with a horizontal line extending from the left side.

Representative Marcus Riccelli

cc: Sarah Reyneveld, Mike Webb

Agenda Item #7

STATE REPRESENTATIVE
22ND LEGISLATIVE DISTRICT
SAM HUNT

State of
Washington
House of
Representatives

STATE GOVERNMENT
CHAIR
EDUCATION
APPROPRIATIONS



RECEIVED

OCT. 27 2015

ATTORNEY GENERAL'S OFFICE
Solicitor General's Division

ATTORNEY GENERAL
STATE OF WASHINGTON
GSE/OLYMPIA

2015 OCT 27 PM 1 10

RECEIVED

October 26, 2015

The Honorable Bob Ferguson
Attorney General
State of Washington
P.O. Box 40100
Olympia, WA 98504-0100

Dear Attorney General Ferguson:

As Chair of the House committee with jurisdiction over ethics issues, I am writing pursuant to RCW 43.10.030(5) to request guidance from your office on constitutional and statutory provisions relating to incompatibility of office, conflict of interest, appearance of fairness, and disclosure of confidential information.

To provide context for this request, I submit the following scenario:

Jane Doe is an elected member of a school district board of directors and also serves as a member of the local city planning commission. The powers and duties of school boards are set forth in RCW 28A.320.015. The general powers of planning commissions are set forth in RCW 35.63.060. The city defines the duties of its planning commission also to include making recommendations to the city council on a broad range of issues relating to land use, zoning, property redevelopment, and infrastructure. The school board and the city are in communication regarding the use and potential redevelopment of school district property. Pursuant to RCW 42.30.110, the school district board of directors meets in executive session to discuss the use and disposition of school district property.

My questions are as follows:

- 1) Are the positions of school board director and planning commission member incompatible under Washington law? How is that determination made and, if the positions are incompatible, what remedies are available to address the incompatibility?
- 2) Is there a conflict of interest between such dual positions under Washington law? How is that determination made, and if a conflict or potential conflict exists, what remedies are available to address it?



Agenda Item #7

- 3) Does holding such dual positions violate the appearance of fairness provisions of RCW 42.36? How is that determination made, and what remedies are available to address it?
- 4) In the scenario presented, what obligations does Washington law impose on the person holding dual positions in regard to confidential information?
- 5) Under what circumstances, if any, may a school board exclude an elected member from executive session because of concerns about incompatibility of office, conflict of interest, appearance of fairness or confidential information?

Please let me know if you have questions or need additional information. I appreciate your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Hunt", with a long horizontal flourish extending to the right.

Representative Sam Hunt
Chair, State Government Committee