



*Friends of Toppenish Creek*

May 28, 2022

Board of Directors  
Yakima Regional Clean Air Agency  
186 Iron Horse Court, Suite 101  
Yakima, WA. 98901

To the Yakima Regional Clean Air Agency Board of Directors:

Yesterday the Yakima Regional Clean Air Agency (YRCAA) scheduled a special meeting for June 9, 2022, to evaluate qualifications of applicants for the position of Air Pollution Control Officer (APCO). Friends of Toppenish Creek (FOTC) now sends this letter advising YRCAA board members of potential violations of RCW 42.30, the Washington Open Public Meetings Act (OPMA) if the board interviews applicants in executive session.

This sentence in the special meeting announcement is somewhat confusing: “The Yakima Regional Clean Air Agency (YRCAA) Board of Directors will have a special meeting to evaluate and interview the qualifications of candidates for employment pursuant to RCW 42.30.110 (1) (g).” One can only interview an individual. One cannot interview qualifications.

RCW 42.30.080(3) states, “The call and notices required under subsections (1) and (2) of this section shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body.” The meeting announcement uses the word “interview”, so the public can reasonably expect that interviews will take place.

But, the special meeting agenda does not reference interviews. We cannot determine from the posted agenda when or if interviews are scheduled to take place, or whether interviews are planned for either the public portion of the meeting or the executive session.

RCW 42.30.110(1)(g) allows the board to “evaluate the qualifications of an applicant for public employment” in executive session but does not provide for interviews of applicants. An interview is not the same as an evaluation of qualifications. RCW 42.30.110(1)(h) distinguishes between evaluating qualifications and interviewing. It is our understanding that courts have ruled the OPMA should be interpreted broadly, and exceptions should be interpreted narrowly.

We believe that the board cannot adequately evaluate the qualifications of applicants without first interviewing the applicants. We believe these interviews, especially for a position as important to the public as YRCAA APCO, must be done in an open public meeting according to Washington law. If unannounced interviews are conducted prior to the special meeting FOTC would worry about violation of the OPMA. If interviews are conducted after the evaluation FOTC would worry about a faulty process that screens out qualified candidates before interviews take place. Evaluation and screening are not the same.

The board has the authority to hire an APCO, but the YRCAA Code A does not prescribe a process for hiring an APCO. The YRCAA Board of Directors could create a process for the current hiring, but the board has not done so. To the best of our knowledge, the YRCAA Board of Directors has not agreed upon standardized interview questions.

FOTC has asked the YRCAA board to add a member of the public from the Lower Yakima Valley to the search team and screening committee. The board has sidestepped that request.

According to our understanding of the law, board action is a legal term that includes evaluation of applicant qualifications, interviewing applicants for the position of APCO, screening applicants, and even discussing applicants. RCW 42.30.020(3) states, “‘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.” A screening of applicants during executive session would require a vote and constitute a final action, in our lay opinion.

According to our understanding of YRCAA Administrative Code Part A, section 2.1, a quorum is necessary for the board to take any action, although this section allows “deliberation and discussion” without a quorum. This may conflict with RCW 42.30,020(3). Must three or more YRCAA board members be present to convene a special meeting?

There are three elected officials on the five member YRCAA board of directors. These three are presumed to represent the public. Two board members are appointed and at least one of the two represents an industry that receives special considerations from the YRCAA at public expense. Is it necessary for a majority of the board members present at a special meeting to be elected officials to have adequate public representation?

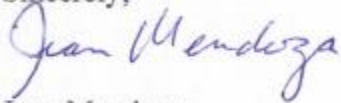
According to our understanding of YRCAA Administrative Code Part A, Section 2.8, no issues will be discussed in executive session except those issues presented within the executive session announcement. Applicant interviews were not presented in the executive session announcement section of the special meeting agenda for the June 9, 2022, YRCAA special meeting, so FOTC hopes that interviews will not be conducted during the executive session, even

though the word “interview” was used in the special meeting announcement. At some time, the board chair must state the reason for excluding the public from executive session discussions.

FOTC asks the YRCAA Board of Directors to be cognizant of requirements for public engagement recently codified in RCW 70A.02 Environmental Justice.

Finally, FOTC reminds the board of your informal commitment to present candidates for the position of APCO to the public at a place and time convenient for residents of the Lower Yakima Valley who live with Yakima County’s worst air pollution.

Sincerely,

A handwritten signature in blue ink that reads "Jean Mendoza". The signature is written in a cursive style with a large initial "J".

Jean Mendoza

Executive Director, Friends of Toppenish Creek  
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## **Special Meeting**

**Date: June 9, 2022**

**Approximate time: 8:45 a.m. to 1:30 p.m.**

The Yakima Regional Clean Air Agency (YRCAA) Board of Directors will have a special meeting to evaluate and interview the qualifications of candidates for employment pursuant to RCW 42.30.110 (1) (g). The board will go into executive session as indicated in the agenda during the above-indicated time.



**SPECIAL MEETING NOTICE  
OF THE YAKIMA REGIONAL CLEAN AIR AGENCY  
BOARD OF DIRECTORS**

**June 9, 2022  
Yakima Regional Clean Air Agency's Conference Room  
186 Iron Horse Court, Suite 101, Yakima WA**

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***AGENDA***

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***SPECIAL BOARD MEETING @ 8:45 a.m. to 1:30 p.m.***

1. 8:45 AM. Call to Order *Board Chair*
2. Roll Call *Clerk of Board*
3. Close Special Board Meeting for Executive Session  
by RCW 42.30.110(1) (g). *Board Chair*
4. Convene Executive Session RCW 42.30.110 (1) (g). *Board Chair*

Board members will evaluate applicants for the APCO/Executive Director vacant position as provided by RCW 42.30.110 (1) (g).

5. Reopen the Special Board Meeting

***OTHER BUSINESS***

6. Other Business and Adjournment *Board Chair*
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## **YAKIMA REGIONAL CLEAN AIR AGENCY**

### **ADMINISTRATIVE CODE**

#### **PART A**

### **Operating Policies, Procedures and Guidelines for the Governing Board of Directors**

#### **2.1 Quorum**

A majority of the Board shall constitute a quorum. A quorum shall be necessary for the Board to take any action. Deliberation and discussion may be had without a quorum, so long as no action is taken.

#### **2.8 Executive Sessions**

From time to time the Board shall choose to discuss certain matters, as defined by RCW 42.30.110 (1) in a closed or executive session. When such an occasion arises, the Chair will announce that the Board is adjourning to a closed session. No issues will be discussed except those issues presented within the executive session announcement. Acceptable subjects for closed sessions include, but may not be limited to: personnel matters; matters of public security; labor or real estate negotiation; or pending litigation or enforcement. An executive session may be called during a regular, emergency or special meeting. Before convening in executive session, the Chair shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. All executive sessions shall be conducted according to the following:

- 2.8.1 Notification of location, purpose, beginning and ending time of the session must be published on the Agency website 24 hours prior to the Executive Session;
- 2.8.2 The purpose of the session must be stated in the notification and must meet the criteria for calling per RCW 42.30.110;
- 2.8.3 At the time of the session only Board Members, the Executive Director, legal counsel, or person who may provide important information on the subject matter may attend an Executive Session;
- 2.8.4 The Board Chair shall publicly announce the purpose for excluding the public and Media, and an approximate time-frame for the Executive Session, or may be extended to a later date and time;
- 2.8.5 No final action may be taken during an Executive Session;
- 2.8.6 The Board Chair may provide information about the Executive Session upon conclusion of the Executive Session during the regular board meeting; and
- 2.8.7 Any action taken as a result of the Executive Session must be voted on during the regular board meeting.

#### 3.4 Executive Director

The Board shall appoint an Executive Director (Director) who shall have the primary duty and responsibility for the day-to-day operations of the Agency, including, but not limited to, fiscal responsibilities, administrative oversight, and employee appointment and termination.

#### 3.5 Control Officer

Pursuant to RCW 70.94.170 the Board shall appoint an Air Pollution Control Officer to implement and enforce the Federal and State Clean Air Acts (statutes) and the rules, regulations and policies pursuant to the statutes. This position and that of the Executive Director are usually occupied by the same person.

### **Section 5 Voting**

This section provides guidance to Board members for voting on an issue which requires Board action. The Board shall not vote to approve any action or to adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public, and then only at a meeting for which notice has been given according to the provisions of this policy. Any Board action failing to comply with the provisions of this policy shall be null and void. The Board shall not vote by secret ballot. Any vote taken in violation of this subsection shall be null and void.

## **RCW 42.30.080**

### **Special meetings.**

\*\*\* CHANGE IN 2022 \*\*\* (SEE 1329-S.SL) \*\*\*

(1) A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body. Written notice shall be deemed waived in the following circumstances:

(a) A member submits a written waiver of notice with the clerk or secretary of the governing body at or prior to the time the meeting convenes. A written waiver may be given by telegram, fax, or electronic mail; or

(b) A member is actually present at the time the meeting convenes.

(2) Notice of a special meeting called under subsection (1) of this section shall be:

(a) Delivered to each local newspaper of general circulation and local radio or television station that has on file with the governing body a written request to be notified of such special meeting or of all special meetings;

(b) Posted on the agency's website. An agency is not required to post a special meeting notice on its website if it (i) does not have a website; (ii) employs fewer than ten full-time equivalent employees; or (iii) does not employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the website; and

(c) Prominently displayed at the main entrance of the agency's principal location and the meeting site if it is not held at the agency's principal location.

Such notice must be delivered or posted, as applicable, at least twenty-four hours before the time of such meeting as specified in the notice.

(3) The call and notices required under subsections (1) and (2) of this section shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body.

(4) The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

[ 2012 c 188 § 1; 2005 c 273 § 1; 1971 ex.s. c 250 § 8.]



## **RCW 42.30.110**

### **Executive sessions.**

\*\*\* CHANGE IN 2022 \*\*\* (SEE 5532-S2.SL) \*\*\*

\*\*\* CHANGE IN 2022 \*\*\* (SEE 1329-S.SL) \*\*\*

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a)(i) To consider matters affecting national security;

(ii) To consider, if in compliance with any required data security breach disclosure under RCW 19.255.010 and 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 assets;

(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;

(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;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(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;

(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;

(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;

(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 1.6 or RCW [5.60.060](#)(2)(a) 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;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW [41.05.026](#);

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(o) To consider information regarding staff privileges or quality improvement committees under RCW [70.41.205](#).

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

[ [2019 c 162 § 2](#); [2017 c 137 § 1](#); [2014 c 174 § 4](#); [2011 1st sp.s. c 14 § 14](#); [2010 1st sp.s. c 33 § 5](#); [2005 c 424 § 13](#); [2003 c 277 § 1](#); [2001 c 216 § 1](#); [1989 c 238 § 2](#); [1987 c 389 § 3](#); [1986 c 276 § 8](#); [1985 c 366 § 2](#); [1983 c 155 § 3](#); [1979 c 42 § 1](#); [1973 c 66 § 2](#); [1971 ex.s. c 250 § 11](#).]

## **NOTES:**

**Intent—2014 c 174:** See note following RCW [28B.50.902](#).

**Severability—Effective date—1987 c 389:** See notes following RCW [41.06.070](#).