

WCOG Recommendations to the Seattle City Council

Dear Council President Conlin:

The Washington Coalition for Open Government (WCOG) appreciates your request for advice on how the City Council can best promote open government. As Washington's largest city, Seattle sets an important example, not only within the state, but for the rest of the country.

There have been times when, in our view, Seattle's influence has not fostered open government, as in its collaboration with the Monorail authority in seeking the Supreme Court's Hangartner decision that greatly expanded the withholding of documents from the public on the basis of attorney-client privilege. Also, Seattle did not rate well in the State Auditor's 2008 evaluation of public records practices in various jurisdictions.

Seattle also has been a pathbreaker, with immediate examples being the City Council's recent creation of the Special Committee on Open Government; and the Council's committing in April 2008 via Res. 31049 to adopt a "coordinated plan and policy on open and participatory government." By including participation as a priority along with openness, the City recognizes that, while very important, it is not enough to simply obey the laws on public records and open public meetings. Democracy also needs government to act proactively to make it easy for citizens to know what it is doing, so they can best give it direction and keep it accountable.

WCOG does note that a year after passage of Res. 31049, the City has not produced even a draft of its open government plan, that producing the plan is not listed in the work program for the Special Committee, and that the City Council web site's statement on the scope and purpose of the Special Committee speaks only of improving City Council decision-making. We urge that the Committee recognize a broader scope in promoting open government throughout Seattle's legislative, executive, and judicial branches, and that toward that end it produce for City Council adoption a strong and far-reaching plan for open and participatory government. WCOG also urges the City Council to give close consideration to the recommendations that it received February 24 from the Seattle Community Council Federation, a public-spirited group which occupies a seat on WCOG's board.

We particularly recommend the following:

- Seattle should adopt as its own the model rules that the Attorney General has issued for implementation of the Public Records Act.
- As the Port of Seattle is already doing, the City Council should audio record its executive sessions, the Council having supported last year in the legislature a bill that did not pass, requiring this of all local governing bodies. Also, as the Port does, the Council should have outside counsel review every executive session for compliance with the Open Public Meetings Act.
- Seattle should maintain an index of public records as required by the Public Records Act. It should not seek to exempt itself from this requirement.

- Seattle should archive all electronic documents for at least a year, and not deliberately record over backup tapes or other media. It should not be automatically deleting e-mails only 60 days after their creation.
- Seattle should not allow those who created a document to have the sole decision on deleting it. That decision should be made by someone without a potential conflict of interest.
- The City Council should engage the public in reconsideration of the City's withholding of documents from the public on the basis of attorney-client privilege, even if there is no pending case. That position, which was adopted without any public discussion, allows the City's attorneys to secretly monopolize discussion when the Council and Mayor would benefit from public discussion of the City's legal options. At the least, the City Council should amend its rules to allow a majority to release legal advice it has received in executive session; currently the rules allow even one Councilmember to veto such release.
- Seattle should create an Open Government Ombudsman with an independent role in assisting the public and advising agencies regarding public records and open public meetings. This will reduce the number of controversies involving public records and open meetings.
- The Special Committee on Open Government should provide to the public via its web site, well in advance of its meetings, any documents that are to be discussed. Without a priority from the Council members, staff are likely to finish documents at the last minute, hampering timely public input. It would also be a good start for the Special Committee to have its staff collect from throughout the country examples of the best open government practices so that Seattle can consider adopting them. The Washington Coalition for Open Government would certainly appreciate seeing what you are able to collect.
- The City Council should not hold serial meetings from which it excludes the public. Training materials currently used by the Association of Washington Cities, available at <http://www.awcnet.org/trainmaterials/OpenGovernment/07OPMAApplies.pdf>, state:

A serial meeting would occur when a majority of members of a governing body have a series of smaller gatherings or use a go-between, so that a majority of the body is never together, but through this series of meetings, the majority collectively intends to take "action." Courts in other states have consistently held that if serial meetings were permitted, it would be too easy to evade the requirements of open public meeting act laws. The Wood v. Battle Ground School District case [Wood, 107 Wn. App. at 562] provides four examples of what might qualify as a serial meeting:

- (1) "series of telephone calls between individual members and attorney to develop collective commitment or promise on public business violated [the law]"
- (2) "successive meetings between school superintendent and individual school board members violated Sunshine Law"

(3) “use of serial electronic communication by quorum of public body to deliberate toward or to make a decision violates state open meeting law”

(4) “‘telephone trees,’ where members repeatedly phone each other to form a collective decision, are inappropriate under the OPMA.”

Seattle government will not be at its most open unless the City Council in its own operations demonstrates a very high standard of openness, and one that respects not only the letter but the spirit of our open government laws. Open government should be practiced even – especially – when public officials would prefer to keep their activities under wraps.

The Washington Coalition for Open Government appreciates the Council’s asking for our suggestions. This letter was approved unanimously at the April 10 meeting of the WCOG board.

Best regards,

WASHINGTON COALITION FOR OPEN GOVERNMENT

Toby Nixon
President
president@washingtoncog.org

CC: Members of the Seattle City Council
Thomas Carr, Seattle City Attorney
WCOG Board Members