



Tracey M. Stagle
YAKIMA COUNTY CLERK

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

ANGIE GIRARD, Citizen of Washington.

Plaintiff,

vs.

COUNTY OF YAKIMA, A Washington
County, YAKIMA COUNTY BOARD OF
COUNTY COMMISSIONERS, YAKIMA
COUNTY BOARD OF HEALTH, AND
LADON LINDE and AMANDA
MCKINNEY, in their individual and
personal capacities.

Defendants.

No. 2120076839

PLAINTIFF'S COMPLAINT
FOR DECLARATORY,
MANDAMUS AND INJUNCTIVE
RELIEF UNDER THE
WASHINGTON STATE
OPEN PUBLIC MEETINGS
ACT (RCW 42.30), WASHINGTON
CONSTITUTION (ARTICLE XI, §
11), and UNIFORM
DECLARATORY JUDGEMENTS
ACT (RCW 19.86)

I. INTRODUCTION

1.1 Plaintiff, Angie Girard, a citizen of Washington State, by and through counsel, Elizabeth Hallock, brings this citizen's action against Yakima County Board of Commissioners (hereinafter "BOCC"), Yakima County Board of Health (hereinafter "BOH"), and Commissioners Amanda McKinney and LaDon Linde, in their individual and personal capacities ("Defendants") for violations of the Open Public Meetings Act, RCW 42.30, *et. seq.* (hereinafter "OPMA," or "The Act."). Plaintiff seeks to enjoin the enforcement of and invalidate Yakima County Ordinance No. 1-2021 ("The Ordinance"), as it was illegally adopted in violation of the OPMA. In the alternative, the Ordinance unconstitutionality conflicts with and is pre-empted by

1 state law under Article XI, §11 of the Washington State Constitution.

2 1.2 Plaintiff alleges the Defendants committed violations of the OPMA from the period
3 of March 27, 2020 to the present. Many of the violations were as a result of the actions of the
4 current Yakima BOCC, Amanda McKinney, LaDon Linde, and Ron Anderson, who serve both
5 as county commissioners and, at times throughout January 2021, as a quorum or negative
6 quorum of the Yakima BOH.

7 1.3 The Defendants failed to make open and public regular meetings publicized only as
8 Yakima health district (“YHD”) or COVID-19 “briefings” on the Yakima BOCC’s calendar, in
9 violation of the spirit of and various black-letter provisions of the OPMA.

10 1.4 Throughout January 2021, when the three county commissioners made up three of the
11 four seats on the Yakima County Board of Health, the commissioners’ level of hubris
12 skyrocketed. The commissioners began meeting together multiple times a week behind closed
13 doors in a power grab for control of public health policy in Yakima County.

14 1.5 Throughout January 2021, each time two commissioners met, they met as a quorum
15 of the BOCC, or a negative quorum of the BOH. When three commissioners met, they met as the
16 full panel of the BOCC and a quorum of the BOH. (At times, the commissioners tried to meet as
17 the BOH, without inviting the fourth member of the BOH.)

18 1.6 Plaintiff alleges the January violations of the OPMA occurred January 4, 6, 11, 13,
19 20 18, 20, 25, 2021, with more illegal meetings interspersed throughout these dates.

21 1.7 Plaintiff alleges the Defendants also engaged in secret balloting in these meetings and
22 on or around January 20, 2021, issued directives to county YHD staff as a result in violation of
23 the OPMA at RCW 42.30.060(1). County YHD staff expressed dismay at the county
24 commissioners’ alarming lack of transparency. Yet, these long-time civil servants were largely
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1 dismissed, ignored, and even chastised, as if their calls for open government were somehow
2 impediments and distractions to the county commissioners' larger goals.

3 1.8 Plaintiff further alleges that on or around December 15, 2020, the Defendants
4 formulated Yakima County Ordinance No. 1-2021 behind closed doors at these so-called
5 "briefings" or via other communications, and that its speedy unanimous passage was a fait
6 accompli made possible through secret balloting in violation of RCW 42.30.060(1).

7 1.9 Despite warnings from county staff and legal counsel, Defendants knowingly and
8 intentionally met in private, closed door sessions, in which a quorum of a governing body, either
9 the BOCC or the BOH (or both), was present, business was discussed, and decisions were made.

10 1.10 These regular meetings were not merely passive briefings, but gatherings in which
11 action, as defined by the OPMA statute at RCW 42.30.020(3), was taken, triggering the waterfall
12 of the requirements found in the OPMA.

13 1.11 These gatherings should have been publicized as official meetings open to the public
14 under RCW 42.30.030; instead, these secret meetings were held outside of the public's view and
15 denied the public any chance of meaningful participation.

16 1.12 The OPMA requires that "[a]ll meetings of a governing body of a public agency are
17 open and public." RCW 42.30.020. Washington's own Supreme Court has stated, "We believe
18 that the purpose of the Act is to allow the public to view decision-making at all stages of the
19 process." *Cathcart v. Andersen*, 85 Wn.2d 102, 107 (1975).

20 1.13 Subsequent attempts to cure violations of the act do not offer public agencies
21 immunity from citizen suits. "A subsequent open meeting does not cure a violation of the act."
22 *Miller v. Tacoma*, 138 Wn.2d 318, 319 (1999).

1 1.14 The purpose of the OPMA is to ensure public bodies make decisions openly. The
2 legislature reiterated this point by including the purpose of the statute within the text of the
3 statute itself, so that there could be no denying the legislature's commands:

4 The legislature finds and declares that all public commissions, boards, councils,
5 committees, subcommittees, departments, divisions, offices, and all other public agencies
6 of this state and subdivisions thereof exist to aid in the conduct of the people's business. It
7 is the intent of this chapter that their actions be taken openly and that their deliberations
8 be conducted openly.

9 The people of this state do not yield their sovereignty to the agencies which serve them.
10 The people, in delegating authority, do not give their public servants the right to decide
11 what is good for the people to know and what is not good for them to know. The people
12 insist on remaining informed so that they may retain control over the instruments they
13 have created.

14 RCW 42.30.010.

15 1.15 The OPMA mandates a liberal construction. "The purposes of this chapter are
16 hereby declared remedial and shall be liberally construed." RCW 42.30.910. Liberal construction
17 of a statute "implies a concomitant intent that its exceptions be narrowly confined." *Mead Sch.*
18 *Dist. No. 354 v. Mead Educ. Ass'n*, 85 Wn.2d 140, 145, 530 P.2d 302 (1975).

19 1.16 Intent is not required to demonstrate an agency's violation of the Act, but if
20 demonstrated, can result in personal liability and fines for elected officials. [RCW 42.30.120(1-
21 2)]. The first adjudication of a violation results in a \$500 fine for the elected official. Each
22 additional fine is \$1,000. Plaintiff alleges the named Defendants committed dozens of violations,
23 the date of each being recorded on the commissioners' calendar as mere "briefings." YHD staff
24 was present as witnesses at many, but not all, of these illegal meetings.

25 1.17 Ironically, the Yakima county commissioners issued an official proclamation,
complaining of arbitrary executive overreach and a lack of transparency at the state level during
the COVID public health emergency. [*Annexed as Exhibit A, "Proclamation on Emergency*

1 **Orders.”]** Yet it was the Yakima county commissioners themselves who were so brazen as to
2 meet multiple times a week in a blatantly illegal fashion, behind closed-doors and outside of the
3 public’s view, in order to conduct business and make decisions for the citizens of Yakima
4 County, without ever notifying the public that these regular meetings of a governing body were
5 occurring as required by the OPMA.

6 1.18 The Defendants’ left behind an extensive email trail of communications, uncovered
7 by Plaintiff’s Public Records Act request under RCW 42.56, *et. seq.* [**Decl. of Angie Girard,**
8 **Girard’s PRA request, annexed as Exhibit B**]. Included in the public records is an email from
9 Commissioner Amanda McKinney scolding a civil servant, YHD executive director Andre
10 Fresco, who appears to have recognized the impropriety of the meetings, for his non-attendance,
11 stating that she is “more than displeased” he has boycotted these illegal meetings. [**Exhibit C,**
12 **March 12, 2021 email from Amanda McKinney to director Andre Fresco**].

13 1.19 Likewise, a civil servant, Ryan Ibach, Chief Operating Officer (“COO”) of the
14 YHD, excoriates Defendant McKinney point by point for her failure to be transparent in her
15 directive to YHD staff to craft a companion resolution to Yakima County Ordinance No. 1-2021.
16 [**Exhibit D, January 23, 2021 email from Ryan Ibach to Amanda McKinney**].

17 1.20 From January 1 to January 27, 2021, as YHD director Fresco will warn the
18 Defendants multiple times, there are only four members of the Yakima BOH, three of whom are
19 the county commissioners. The county commissioners constitute a quorum of the BOH, and two
20 county commissioners constitute a negative quorum. On January 23, 2021 YHD COO Ibach puts
21 Commissioner McKinney and the Defendants on notice that they must issue directives in open
22 public meetings.
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25 1.21 Yet the Defendants fail to heed Ibach’s warnings, and even try to bully him into

1 submission. On January 25, 2020, in an admission in the form of an email to Ibach,
2 Commissioner Linde reveals that the Defendants have been discussing and deliberating upon
3 county business, the BOH companion resolution to their Ordinance, in private.

4 1.22 According to Linde's own words, the Defendants took "action" as defined by the
5 OPMA statute at RCW 42.30.030(4), and participated in a closed-door meeting, in violation of
6 the OPMA at RCW 42.30.020. **[Exhibit E, January 25, 2021 email from LaDon Linde to Ryan**
7 **Ibach]**. Defendant Linde writes "we are in agreement" on issuing the directive to draft the BOH
8 companion resolution, yet the last public BOH meeting had been December 17, 2020, over a
9 month prior to his email.

10 1.23 The county commissioners issued their directive for staff to draft a BOH companion
11 resolution without doing so in an open and public forum, and instead, by secret ballot in violation
12 of RCW 42.30.060(1). The commissioners acted in secrecy, ignoring Mr. Ibach's stern warning
13 that the directive be issued in an open and public forum. The Defendants ignored Mr. Ibach's
14 suggestions that they loop in all the members of the BOH, as well as YHD staff Attorney James
15 Elliot, instead preferring to conduct business in secret, without the input of their colleagues and
16 without the knowledge of the rest of the Yakima County citizenry.

17 1.24 The violations complained of herein are not only knowing and intentional, they
18 demonstrate a willful disregard for the inclusive task of open governance and a pattern of
19 diminishing anyone in disagreement with the lack of transparency. The Plaintiff is "more than
20 displeased" at the illegal and undemocratic conduct of the named county commissioners and the
21 named government agencies.

22 1.25 In addition to the egregious OPMA violations throughout the Defendant
23 commissioners' power grab for control over the Yakima Board of Health, Ordinance No. 1-2021
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1 should be declared entirely null and void under Wa. Const. Article XI, § 11 for its impermissible
2 and unconstitutional conflict with and pre-emption by the state's regulatory scheme for local
3 health districts and health boards found at RCW 70.46, *et. seq.* and RCW 70.05, *et. seq.* As a
4 stand-alone ordinance, the Ordinance does not appear to have any savings clause. [Ordinance
5 No. 1-2021, *strike-through version which has never been available in BOCC document center,*
6 *annexed as Exhibit F*].

7 1.26 The Defendants' acts and practices alleged in this complaint violate and continue to
8 violate the Act, and declaratory and preliminary and permanent injunctive relief is appropriate,
9 as prayed for below.

10 II. THE PARTIES

11 2.1 Defendant is Yakima County, Yakima Board of County Commissioners, Yakima
12 County Board of Health, and County Commissioner Amanda McKinney, County Commissioner
13 LaDon Linde, in their private and individual capacities.

14 2.2. Plaintiff, Angie Girard, is a citizen of Washington and resident of Yakima County.

15 III. JURISDICTION AND VENUE

16 3.1 Yakima County Superior Court has subject matter jurisdiction over the Defendants
17 under the OPMA at RCW 42.30, *et. seq.*, Wa. Const. Article XI, § 11, and the Uniform
18 Declaratory Judgments Act (UDJA), at RCW 19.86, *et. seq.*

19 3.2 This Court has jurisdiction over the parties in this claim.

20 IV. RELEVANT STATUTES

21 RCW 19.86: Uniform Declaratory Judgements Act

22 4.1 Under the Washington State Uniform Declaratory Judgments Act, courts of record
23 within their respective jurisdictions enjoy broad general powers to declare rights, status and other
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1 legal relations in any proceeding where declaratory relief is sought, in which a judgment or
2 decree will terminate the controversy or remove an uncertainty, whether or not further relief is or
3 could be claimed. (See RCW 19.86.010-030).

4 **RCW 42.30: Open Public Meetings Act**

5 4.2 The OPMA proclaims, "All meetings of the governing body of a public agency shall
6 be open and public and all persons shall be permitted to attend any meeting of the governing
7 body of a public agency, except as otherwise provided in this chapter." RCW 42.30.030.

8 4.3 An agency cannot place conditions on attendance. RCW 42.30.040.

9 A "governing body" is defined as "the multimember board, commission, committee,
10 council, or other policy or rule-making body of a public agency, or any committee thereof when
11 the committee acts on behalf of the governing body, conducts hearings, or takes testimony or
12 public comment." RCW 42.30.020(2).

13 4.4 Under the OPMA, a "Meeting" is defined as "meetings at which action is taken"
14 RCW 42.30.020(4).

15 "Action" is defined as the transaction of the official business of a public agency by a governing
16 body including but not limited to receipt of public testimony, deliberations, discussions,
17 considerations, reviews, evaluations, and final actions. RCW 42.30.020(3).

18 4.5 The OPMA prohibits secret balloting. RCW 42.30.060(1), any "ordinance, resolution,
19 rule, regulation, order, or directive" must be adopted at a public meeting which has been
20 scheduled in accordance with the provisions of the act.

21 4.6 Any person may commence an action either by mandamus or injunction for the
22 purpose of stopping violations or preventing threatened violations of this chapter by members of
23 a governing body. RCW 42.30.130.
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1 4.7 Each member of the governing body who attends a meeting of such governing body
2 where action is taken in violation of any provision of the chapter...with knowledge of the fact
3 that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil
4 penalty in the amount of five hundred dollars for the first violation and one-thousand dollars for
5 each additional violation. RCW 42.30.120(1)-(2).

6 *Wa. Const. Article XI, § 11: Unconstitutionality of Ord. No. 1-2021*

7 4.8 A local law or ordinance is void as it is in conflict with or pre-empted by state law, in
8 violation of Article XI, § 11 of the Washington Constitution. An ordinance is pre-empted by
9 state law where it attempts to frustrate the purpose of state law and the state's regulatory scheme.

10 **V. FACTS**

11 5.1 Plaintiff is a citizen of Washington state and resident of Yakima County.

12 5.2 The Yakima County Board of Commissioners ("BOCC") is a governing body in
13 Yakima County, WA. It is composed of three members.

14 5.3 The Yakima County Board of Health ("BOH") is a governing body in Yakima
15 County, WA. Typically, it is composed of seven members.

16 5.4 Defendant McKinney was sworn in as a BOCC member on or around November 25,
17 2020. Defendant LaDon Linde was sworn in as a BOCC member on or around November 14,
18 2020.

19 5.5 At the close of 2020, the terms of several BOH members expired. From January 1 to
20 January 27, 2021, the BOH was composed of four members: County Commissioner LaDon
21 Linde, County Commissioner Ron Anderson, County Commissioner Amanda McKinney, and
22 one other member, community member Dr. Sean Cleary. During this time frame, all three county
23 commissioners constituted a quorum of the BOH. Two constituted a negative quorum of the
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1 BOH.

2 5.6 RCW 70.46, *et. seq.* and RCW 70.05, *et. seq.* set forth the state's regulatory scheme
3 regarding local health districts and boards of health, respectively.

4 5.7 Since 1945, RCW 70.46.030 expressly delegates authority to local boards of county
5 commissioners to create health districts:

6 A health district to consist of one county may be created whenever the county legislative
7 authority of the county shall pass a resolution or ordinance to organize such a health
8 district under chapter 70.05 RCW and this chapter.

9 The resolution or ordinance may specify the membership, representation on the district
10 health board, or other matters relative to the formation or operation of the health district.
11 The county legislative authority may appoint elected officials from cities and towns and
12 persons other than elected officials as members of the health district board so long as
13 persons other than elected officials do not constitute a majority.

14 Any single county health district existing on *the effective date of this act shall continue
15 in existence unless and until changed by affirmative action of the county legislative
16 authority. RCW 70.46.030

17 5.8 Yakima County has a long-standing tradition of having a health district.

18 5.9 In 1995, the Washington State Legislature enacted ESSB 5253, to "provide the public
19 health system with the necessary capacity to improve the health outcomes of the population of
20 Washington State." (ESSB 5253, SL 1995, §1.) The legislature amended RCW 70.05.030 to
21 allow boards of county commissioners to "adopt an ordinance *expanding* the size and
22 composition of the board of health." (RCW 70.05.030) [*emphasis added*].

23 5.10 The intent of the state's public health regulatory scheme, including RCW 70.05.030,
24 is not to increase the decision-making authority of county commissioners, who often have no
25 scientific, medical, or health background, over public health matters.

5.11 Once a health district has been created within a jurisdiction, the state legislature
delegates specific power, duties, and jurisdiction directly to local boards of health. "Each local

1 board of health shall have supervision over *all matters pertaining to the preservation of the life*
2 *and health of the people within its jurisdiction.*” (RCW 70.05.060)[emphasis added.]

3 5.12 The intent of the state’s regulatory scheme is that once a health district is created,
4 and a board of health expanded in its membership by RCW 70.05.030, county commissioners are
5 no longer the sole decision-makers on matters of local public health. Officials from local cities
6 and civilians with specific expertise in public health are utilized to achieve the state’s goal of
7 increasing the public health’s system’s “capacity to the improve health outcomes of the
8 population of Washington state.” (ESSB 5253, SL 1995, §1.)

9 5.13 If a board of county commissioners wishes to have complete control and jurisdiction
10 over matters of public health, instead of utilizing circuitous and legally dubious routes to
11 undermine the power structure and efficacy of an extant local board of health, they can instead
12 make the politically unpalatable move of simply eradicating a century old health district, by
13 utilizing express powers delegated by the legislature, found in RCW 70.46.030.¹ [Even in the
14 absence of a health district, the county commissioners would still have to follow state law in
15 matters of public health. “A locality cannot do the opposite of state law or contravene a state-
16 administered regulatory scheme.” *See Dept. of Ecology v. Wahkiakum County*, WA Ct.App. Div.
17 2, No. 44700-II (Nov. 4, 2014)].

18 5.14 Yakima County has a Board of health with expanded membership consisting of:
19 three county commissioners, two local city officials, and two highly-qualified citizens.

20 5.15 The tradition of prior Yakima Boards of County Commissioners upheld was to work
21 in tandem with the Yakima County Board of Health, as evidenced in their cooperation with the
22 Board of Health in the passage of an ordinance changing the process for selecting members of
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1 the Board. [**Exhibit G, BOH resolution 2018-3**]. In that case, resolution 2018-3 was first passed
2 by the Board of Health, then offered to the County Commissioners afterwards in order to update
3 the County Code.

4 5.16 The process surrounding the adoption and the fate of Yakima County Ordinance No.
5 1-2021 was shrouded in secrecy and mired in confusion from the start.

6 **A. OPMA Violations 1-?, YHD and COVID-19 “briefings,” twice weekly from March**
7 **27, 2020 to the present as listed on the Defendants’ Board of County Commissioners**
8 **calendar.**

9 5.17 Plaintiffs allege Defendants attended a series of briefings with health district staff in
10 which a quorum of Commissioners were present. Beginning on March 27, 2020, the
11 Commissioners’ calendar listed “YHD briefings,” which became “YHD COVID briefings” by
12 May 25, 2020. From June 2020 to March 15 2021, these briefings were labeled “COVID-19”
13 briefings on the Commissioners’ calendar. Additionally, on several dates from March 23 to April
14 12, 2021, “COVID-19 Emergency Study Sessions” are posted, but mention of COVID-19 “study
15 sessions” disappears thereafter. No YHD study sessions are ever listed on the county
16 commissioners’ calendar; these gatherings with YHD staff are only ever indicated as “briefings.”
17 No YHD or COVID-19 “study sessions” are publicized on the commissioners’ calendar during
18 the entire tenure of the named Defendants, Commissioners Linde and McKinney, time in office;
19 interactions with YHD staff are listed merely as briefings from late April 2020 into 2021.
20 [**Exhibit H, county commissioners’ March 23 through April 12, 2020 calendars; full**
21 **calendars available at www.yakimacounty.us/DocumentCenter, last checked 4/27/21.**]

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24 5.18 On December 2, 2020, Yakima county board of health staff confirms in an email that

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¹ Disclaimer: This should in no way be construed as legal advice.

1 these briefings are still occurring, months after their first appearance on the commissioners'
2 calendar on March 27, 2020. By this time, the current sitting three commissioners have all been
3 sworn in and are regularly participating in these "briefings." Andre Fresco, YHD executive
4 director, requested of the BOCC clerk, Julie Lawrence, that these commissioner gatherings not
5 conflict in date with Board of health public meetings. [Exhibit I, email from YHD director
6 *Fresco's assistant to BOCC clerk Julie Lawrence*].

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8 5.19 There was no indication that these were public meetings, or that the public could
9 attend. Plaintiff alleges these "briefings" morphed into full-blown meetings, yet the Defendants
10 failed to make the meetings open and public in accordance with RCW 42.30.030.

11 5.20 Plaintiff alleges that these briefings were abused as a forum to take "action," as
12 defined by the OPMA at RCW 42.30.020(3), such as deliberations, discussions, and decision-
13 making regarding County business, including, but not limited to, the operations and composition
14 of the Yakima County Board of Health. Once action is taken, for purposes of the OPMA, a
15 "meeting" occurs [(RCW 42.30.060(4))] and the waterfall of requirements found in the OPMA is
16 triggered.

17 5.21 Plaintiff alleges the Defendants failed to meet the standards of the law.

18 5.22 Plaintiff alleges the named Defendants knowingly chose to evade what they saw as
19 inconvenient impediments to their goal of upending the structure of the Board of Health, despite
20 repeated warnings from county staff, in order to circuitously take complete control over public
21 health policy in Yakima County. Yet it is these rules of government transparency, found, in part,
22 at the people's Open Public Meeting Act of 1971, that preserve our fragile democratic republic.

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24 **B. OPMA Violation, the December 29, 2020 passage of Ordinance No. 1-2021 and**
25 **"briefings" leading up to the passage of the Ordinance in 18 minutes, with no discussion,**

1 **and without notifying the 2020 members of the Board of Health.**

2 5.23 On or around December 10, 2020, the Defendants Board of County Commissioners
3 sent a letter to YHD staff and Yakima Board of health members expressing their concern with
4 the selection process for Board of health members. Nowhere in the letter is there any statement
5 of an intent to revise the Yakima County Code and engage in a major overhaul of the
6 composition and operations of the Yakima health district and the Board of Health. **[Exhibit J,**
7 **Commissioners letter to BOH].**

8 5.24 On or around December 29, 2020, the Defendant BOCC unanimously passed the
9 ground-shifting Ordinance No. 1-2021 (now Codified at Yakima County Code 6.04, *et. seq.*),
10 regarding the Yakima County Board of health, in 18 minutes, with no discussion, with one
11 member in the audience, and without notifying the 2020 members of the Board of Health other
12 than through a special meeting announcement in the print version of the local paper of record.

13 5.25 Plaintiff alleges that on or around December 10 to 15, and then again on or around
14 December 15 to 29, after sending the aforementioned letter to the BOH, but prior to the
15 Commissioners' special meeting of December 29, 2020, the Commissioners participated in the
16 "briefings" listed on their commissioner calendar, in which a quorum of Commissioners were
17 present, action was taken, and official meetings occurred outside of the public's view, in direct
18 violation of the Open Public Meetings Act at RCW 42.30, *et. seq.*

19 5.26 Amongst other items of County business, Plaintiff alleges that during these secret
20 meetings, the creation of and the fate of Ordinance 1-2021 was discussed by a quorum of county
21 commissioners.
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23 5.27 Plaintiff alleges the Ordinance was, therefore, illegally adopted.
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25 5.28 On or about December 15, 2020, the Commissioners approved Resolution 376-2020,

1 setting a December 29, 2020 special meeting in accordance with RCW 42.30.080, and stating:
2 "...the Board of Yakima County Commissioners desires to increase its engagement with the
3 Board of Health in order to evaluate and develop public health policies and strategies to support
4 a healthy community, and therefore wishes to amend Ordinance 2-2018...A full copy of the text
5 of the proposed ordinance is posted to the BOCC website or will be mailed upon request." The
6 proposed Ordinance was never posted on the website. It was not even attached to the December
7 29th special meeting packet.

8 5.29 The commissioners' intent was, as stated, to "evaluate and develop public health
9 policies." But in crafting their resolution, the Defendants fail to acknowledge that the legislature
10 has not expressly or impliedly delegated local county commissioners' jurisdiction over public
11 health policy. That jurisdiction rests exclusively with the Board of Health.

12 5.30 The commissioners' intent was, as stated, to "increase its engagement with the Board
13 of health," yet the commissioners did not personally notify Board of Health members about its
14 special meeting. The Board of Health members never had a chance to review the proposed
15 Ordinance. This severely broke from the tradition of BOCC predecessors. In failing to include
16 the BOH members in the process, the county commissioners treated the BOH members, several
17 of whom had public health and medical training, like obstacles, rather than as professional
18 colleagues.

19 5.31 Ordinance 1-2021 has already been codified, at Yakima County Code (YCC) Section
20 6.04, *et. seq.* The amended code references an amended BOH Resolution 2018-3 "amended to be
21 consistent with this section." YCC 6.04.010(1)(d).

22 5.32 However, to date, no companion resolution to Ordinance 1-2021 or amendment to
23 BOH resolution 2018-3 has been adopted by the BOH. The resolution referenced in the proposed
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1 Ordinance, and now Yakima County Code, does not exist. The codification of Ordinance 1-2021
2 put the cart before the proverbial horse and the process of such a major overhaul of the County
3 Code and the Board of Health's organization and operations was clearly rushed.

4 5.33 At the December 29 special meeting, Defendant Commissioner Amanda McKinney
5 presented, publicly for the first time, the proposed ordinance within a PowerPoint presentation. It
6 was a strike-through version of Yakima County Code Chapter 6.04, regarding health districts.
7 The proposed ordinance has no savings clause.

8 5.34 There is no record of this document containing the proposed ordinance in any
9 December meeting minutes or on the Board of County Commissioner's document center. Not
10 only is there no record of the strike-through version available online, the public was not provided
11 with *any* proposed ordinance or ability to download it prior to the December 29, 2020 special
12 meeting. (Plaintiff's strike-through version was obtained from BOH January 27, 2021 meeting
13 minutes.)

14 5.35 The members of the Board of Health did not see the proposed Ordinance prior to the
15 December 29, 2020 special meeting. They were left in the dark just as much as the public.

16 5.36 Ordinance 1-2021 only finally appears in the January 5, 2021 BOCC meeting packet
17 as agenda item 7A, but it is not the original strike-through version. This is the first time the
18 Ordinance is available to the public, other than by watching a video of a PowerPoint
19 presentation. The strike-through version is *still* nowhere to be found on the BOCC website or in
20 their document center.
21

22 5.37 At the December 29, 2020 special public meeting, there is no discussion of
23 Commissioner McKinney's proposed changes to YCC Section 6.04, *et. seq.* Its passage appears
24 in the video a fait accompli; the entire special meeting lasted only 18 minutes. Commissioner
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1 McKinney had seemingly rewritten the entire Code Section by herself, with seemingly no input
2 from the other Commissioners.

3 5.38 Plaintiff alleges the county commissioners repeatedly violated the black letter law of
4 the OPMA over a period of weeks, with knowledge and intent, by crafting Ordinance 1-2021
5 behind closed doors on or around December 10 to December 29 and taking an illegal secret
6 ballot to ensure its passage. Plaintiff alleges the BOCC and its members had no intent to loop the
7 public or their equivalents at the BOH into such a major overhaul of the Yakima County Code
8 and the membership and operations of the BOH, in violation of the OPMA at RCW 42.30, *et*
9 *seq.*

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11 **C. County Commissioners grant themselves the chair of and negative quorum over**
12 **the Board of Health.**

13 5.39 The ordinance proposed, amongst other changes, that as members of the Board of
14 Health, the County Commissioners should always hold the position of chairperson, who would
15 have two votes in passing or rejecting any Board of health resolutions. Although some decisions
16 could result in a 4-4 tie, the Yakima County Commissioners would perpetually hold a negative
17 quorum and the permanent ability to block the city and civilian members' resolutions.

18 5.40 This fundamental change would ensure that elected officials, beholden to the law and
19 charged with carrying out the public's business in public, would direct public health in Yakima
20 County, rather than unelected health professionals with years of public health experience. Yet
21 that is already the law.

22 5.41 Pursuant to state law, elected officials must comprise the majority of the Board of
23 health. RCW 70.46.030 and RCW 70.05.010.

24 5.42 Additionally, pursuant to state law, the chairperson of the board of health must be
25

1 elected by board of health members. RCW 70.05.040. Nowhere does the state's regulatory
2 scheme delegate express or implied power to county commissioners to dictate that a county
3 commissioner always holds the chairperson seat of the local Board of health. Nowhere does the
4 regulatory scheme contemplate granting county commissioners to constitute a negative quorum
5 by ensuring that county commissioners always get four votes in every Board of health matter.

6 5.43 What the Ordinance ensured is that the Commissioners would always have ultimate
7 decision-making power when it came to matters of public health. This, despite the fact the
8 county had adopted RCW 70.05.010 to change that dynamic and rest decision-making power
9 with the larger community and health professionals. This, despite the fact that the entire point of
10 the state's regulatory scheme enacted to expand local health board membership was to increase
11 expertise on health boards and "provide the public health system with the necessary capacity to
12 improve the health outcomes of the population of Washington State." 70.05.030

14 5.44 By fiat, and in the manner of grafting together Frankenstein's monster, Ordinance 1-
15 2021 gives the county commissioners, who are already members of a separate governmental
16 agency, sole jurisdiction over "all matters pertaining to the preservation of the life and health of
17 the people...." (RCW 70.05.060).

18 5.45 Additionally, the Ordinance prohibits the Board of health from creating committees or
19 subcommittees in the event of an order issued under RCW 43.06, regarding a "state of
20 emergency – powers of Governor pursuant to a statewide proclamation." It requires a circuitous
21 path for the BOH to carry-out regular business during a statewide state of emergency, and,
22 contrary to the express jurisdiction and duties delegated only to boards of health by the state
23 legislature at RCW 70.030.060, requires the Board submit its jurisdiction to the board of county
24 commissioners before proceeding with standard BOH operating procedures. Only after a vote of
25

1 authorization by the BOCC may the BOH then proceed to create committees or subcommittees
2 in order to carry out state law during an emergency and carry out the duties required of boards of
3 health by the state legislature.

4 5.46 The Ordinance prohibits the Board of Health, in a direct and dangerous conflict from
5 state law, from carrying out standard business practices, such as forming a committee, during a
6 public health crisis, right when the capacity of the Board to deliver emergency public health
7 services to the people of Yakima County is needed most.

8 5.47 This addition to Yakima's County Code is contrary to the intent of the state's
9 regulatory scheme for local health districts and boards. It also restricts the Yakima Board of
10 Health from carrying out duties prescribed to it by state law. Within the state's regulatory
11 scheme for health districts, there is no express or implied delegation of authority from the state
12 legislature to boards of county commissioners, once they have created expanded boards of
13 health, to have *any jurisdiction whatsoever* over public health policy. The state legislature
14 explicitly and expressly delegates *exclusive* jurisdiction over "all matters pertaining to the
15 preservation of the life and health" to local Boards of health at RCW 72.05.060.

16 5.48 Plaintiff alleges the Ordinance conflicts with and is pre-empted by state law, and
17 attempts to frustrate the purpose of the state's regulatory scheme for local health districts and
18 boards of health. This local Ordinance is therefore, unconstitutional under Article XI, § 11 of the
19 Washington State Constitution.

20 5.49 The Ordinance, which was never available for public inspection until after the
21 ordinance was already passed, merely consisted of strike-throughs and amendments to the
22 County Code, with no other text. It does not appear to have a savings clause. The Ordinance was
23 also codified with language making reference to a BOH resolution that does not exist. The entire
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25

1 ordinance should be declared null and void and de-codified from the Yakima County Code.

2 **D. OPMA violations, by Defendants acting as a quorum of the BOCC and/or a**
3 **quorum of the BOH on or about January 4, 6, 11, 13, 18, 20, 25, prior to the seating of the**
4 **new Board of Health on January 27, 2021. County staff raises the alarms.**

5 5.50 Plaintiff's public records request produced several startling admissions throughout
6 January 2021 on behalf of the Defendants and their agents that these "YHD briefings" and
7 "YHD COVID briefings" were actually recurrent study sessions in which deliberations,
8 discussions, considerations, reviews, evaluations, or final actions occurred, "actions" which
9 violate the OPMA if not conducted in public view. RCW 42.30.020(3).

10 5.51 The terms of several members of the BOH expired on December 31, 2020. New
11 members were not sworn in until January 27, 2021. [Exhibit K, *minutes from BOH January 27*
12 *meeting.*]

13 5.52 Plaintiff alleges from January 1 to January 27, particularly on Mondays of that month,
14 the Yakima County commissioners engaged in multiple study sessions, morphing back and forth
15 between their roles as county commissioners, and county commissioners who occupied seats on
16 the county Board of Health. Except now, with only four seated members of the Board of Health,
17 the three county commissioners were a quorum of the Board of Health, and two county
18 commissioners constituted a negative quorum.

19 5.53 The first concern that a quorum of the Board of Health has been gathering, taking
20 action, and meeting to discuss and act upon official business is raised on January 10, 2021, by
21 long-time civil servant and YHD executive director Andre Fresco.

22 5.54 Fresco wrote to County Commissioner Ron Anderson:

23 5.55 "Given that the Yakima Health District currently has only four board members, I will
24
25

1 not be able to continue to join you for Commissioner Meetings. This is due to the fact that the
2 three county commissioners comprise a quorum of the Yakima Health District's Board of Health
3 when meeting with me." [Exhibit L, January 10, 2021 email from Andre Fresco to
4 Commissioner Anderson]

5 5.56 On or about January 12, 2021, Julie Lawrence, Clerk of the Board of County
6 Commissioners, sent an email to Andre Fresco and Ryan Ibach, Yakima health district
7 employees entitled "BOH study sessions with Commissioners." [Exhibit M, email from Julie
8 Lawrence to Fresco and Ibach.]

9 5.57 Ms. Lawrence's email clearly states:

10
11 The Commissioners would like to continue COVID Briefings on Monday and
12 Wednesday mornings. In addition publishing notice of your regular monthly
13 meetings, will you please publish notice of once-a-week study sessions, at which
14 Andre and Tony Miller can provide COVID updates? All three would like to attend
15 on Mondays, which would require that both BOH and BOCC publish notice...

16 5.58 Ms. Lawrence's email memorializes that these "study sessions" were recurring at least
17 once a week, and no public notice was given.

18 5.59 Study sessions are meetings of a quorum of a governing body which fall under the
19 purview of the OPMA and must be open and public. Unlike special meetings, describe at RCW
20 42.30.080, study sessions are recurring meetings and must be publicized in the same fashion as
21 regular meetings.

22 5.60 Ms. Lawrence does not explicitly state that the purpose of her request was in order for
23 the meetings to comport with the law under the OPMA, but that is the implication of her e-mail
24 communication.

25 5.61 Ms. Lawrence's communication demonstrates that county staff not only knew that
meetings, rather than briefings, were being held by the commissioners, but also that these

1 meetings needed to be publicly noticed in order to comply with the OPMA.

2 5.62 On or about January 15, 2021, Ms. Lawrence asks if a “COVID briefing” for January
3 18 has been cancelled. The Monday, January 18, 2021 commissioner calendar and public notice
4 board show no mention of study sessions. The calendar lists simply “briefings.”

5 5.63 The BOH public notices list no study sessions with the county commissioners, or
6 official BOH meetings or than regular meetings, during this time frame, either.

7 5.64 On or about January 15, 2021, Mr. Fresco’s direct response confirms that all three
8 commissioners have been attending these briefings in a “meeting” format. Fresco states he is
9 unwilling to publish notice of a public hearing of the Board of health that does not included the
10 entire panel of board of Health members. His email indicates that the three commissioners had
11 been meeting without inviting the fourth board of Health member. “The issue is not simply the
12 need for a public notice but also the fact that all Board of Health members would have to be
13 invited. This would then be a Board of Health meeting, not a Board of County Commissioners
14 meeting.” [Exhibit N, *January 15, 2021 email from YHD Director Fresco to BOCC clerk*
15 *Lawrence*].

16
17 5.65 These communications memorialize the fact that multiple county staff knew that
18 official county commissioner meetings were masquerading as “YHD briefings,” yet the
19 Defendants did nothing to alert the public as required by the OPMA.

20 5.66 The county commissioners may have, at times, attempted to label their meetings board
21 of Health meetings, but this semantic distinction still carried major consequences with respect to
22 open meetings laws. As Mr. Fresco pointed out, twice, *infra*, that not only were a quorum of
23 county commissioners meeting, the three commissioners constituted a quorum of BOH members.

24 5.67 Mr. Fresco is unwilling to publish notice of a public meeting in which, the fourth
25

1 member of the Board of health is not even invited.

2 5.68 One day prior to Ms. Lawrence's email communication, on or about January 11, 2021,
3 Yakima County civil staff counsel Don Anderson wrote an email to all of the Yakima County
4 Commissioners. [*January 11, 2021 email from county counsel Don Anderson, obtained in*
5 *Plaintiff's PRA request, Exhibit O*]. The email, obtained via Plaintiff's official public records
6 request, reads:

7 To make BOH meetings notices orderly, the BOH: 1) would continue to publish notice of
8 its monthly regular meetings; and 2) publish notice of the dates for one (or more) study
9 sessions each week. Obviously, it would probably make sense to only have one BOH
10 "study session" per week, rather than three or more. The BOCC, acting as the BOH, would
also need to publish notice of all such meetings and study sessions.

11 5.69 The email of counsel is one of several admissions by County staff that the
12 Commissioners were no longer participating in mere briefings. It acknowledges that the meetings
13 needed to be publicized as official, recurring meetings by the BOH *and* the BOCC, so that the
14 public could attend and meaningfully participate, and official actions could be taken in the plain-
15 sight, rather than behind closed doors.

16 5.70 The BOCC never publicized the secret meetings, in violation of the OPMA at RCW
17 42.30, *et. seq.*

18 5.71 The BOH did not either, but did begin to schedule special meetings under RCW
19 42.30.080.

20 5.72 The minutes of a BOH meeting lay bare the situation, that there had been extensive
21 discussions by the county commissioners going on behind closed doors: "Due to the *long*
22 *discussions* COVID-19 bring and due to the issues with the Board of Health, special meetings
23 will have a set time." (February 24, 2021 meeting minutes.)[Emphasis added.]

24 5.27 At least one county commissioner seems to acknowledge the impropriety of the excessive
25

1 number of county commissioner meetings and number of commissioners attending these study
2 sessions.

3 5.73 Within the same January 11, 2021 email chain from counsel, received by Plaintiff in
4 the same public records request, County Counsel counsels the county commissioners that the
5 Board of health could publicize COVID briefings on their website as public meetings, and the
6 meeting would adhere to the law. Commissioner Ron Anderson states: “Don, Given this, can we
7 assign one commissioner to the morning call meetings.” [See Exhibit O] Commissioner
8 Anderson admits here that a quorum has been meeting in unpublicized meetings.

9
10 5.74 Staff Counsel responds: “That is up to you. Another approach would be to have the
11 Board of health publish notice of the morning COVID update meetings with Andre and Tony. If
12 the BOH did so, then all three Commissioners could attend.”

13 5.75 County counsel warned the commissioners that they were a quorum of the Board of
14 Health and their January briefings, which were full-blown meetings, needed to be publicized as
15 either BOCC or BOH meetings.

16 5.76 Yet, Plaintiff alleges the COVID briefings that have morphed into meetings continue,
17 in person and via email, yet neither the BOH or the BOCC publish the notice required to satisfy
18 the OPMA.

19 5.77 Despite warnings from county staff, and county agents’ own characterization of these
20 briefings in which a quorum of both county commissioners and county board of health members
21 were present as regular study sessions, there are no “study sessions” publicized on the
22 Defendants’ online public notice board for the entire period of December 2020, when Ordinance
23 No. 1-2021 was adopted, to the present. [Exhibit P, *December through April 2021 BOCC*
24 *public notice board screenshots and December through February BOCC agenda center*
25

1 *notices.]*

2 5.78 Despite their absence from the public notice boards, these meetings had to have been
3 occurring, because on January 11, 2021, county counsel warned the Commissioners that they
4 were holding these meetings improperly, too frequently (“three or more” a week), and without
5 following proper public notice procedure. As study sessions, which county staff admits they
6 were, minutes containing a roster of who attended and what was discussed at the meetings should
7 be available, yet none have been made public.

8 **E. The OPMA violations continue in February and March 2021 and are ongoing;**
9 **February 1 and March 10-12, 2021 OPMA violations.**

10
11 5.79 Despite warning from legal counsel and county staff, the Defendants continued to
12 meet in a quorum, without properly publicizing the meetings as open and public under RCW
13 42.30.030. The commissioners’ violations of the OPMA were knowing and intentional
14 violations, with virtually no respect for the principles of government transparency and our long-
15 standing tradition in Washington state that meetings of governing bodies must be open and
16 public.

17 5.80 Plaintiff alleges the county commissioners are still meeting in study sessions without
18 properly publicizing these meetings and that the violations are ongoing.

19 5.81 Plaintiff alleges that on February 1, 2021, after a brief pause and some uncomfortable
20 exchanges with Board of health staff, illegal meetings masquerading as briefings on the county
21 commissioner’s calendar resumed.

22
23 5.82 On January 31, 2021 Defendants Linde confirms he will be in attendance at what is
24 listed on the county commissioner’s calendar as only a “COVID briefing.” **[Exhibit Q, Linde’s**
25 ***January 31 email between all commissioners; Exhibit R, January 25-31 and Feb. 1-7, 2021***

1 *commissioner calendar.]*

2 5.83 Within the same email chain, the day before Linde's confirmation of the meeting of a
3 quorum of commissioners set for February 1, 2021, McKinney writes to YHD executive director
4 Andre Fresco on January 30, 2021:

5 5.84 "I would like to confirm the regular morning COVID updates will resume with your
6 office beginning this Monday as we now have a full health board seated..." [See Exhibit Q,
7 *January 30, 2021, email from Defendant McKinney to YHD director Fresco.*]

8 5.85 Defendant McKinney, by her own admission, states that these YHD COVID briefings
9 are "regular" gatherings.

10 5.86 The email is sent to all the other county commissioners. Conspicuously absent are the
11 other non-county commissioner members of the Board of Health. These gatherings with YHD
12 staff were clearly intended for the county commissioners only, and as stated above, were noted
13 as "briefings" for the commissioners on the county commissioners' calendar.

14 5.87 If "action" as defined by the OPMA at RCW 42.30.020(3) occurred at these
15 gatherings, the requirements of the OPMA would have been triggered. County staff recognized
16 these briefings were actually meetings of a governing body under the OPMA which were not
17 being properly publicized and open to the public, as documented by the staff emails *infra*.

18 5.88 On Thursday March 11, Yakima County YHD staff member Andre Fresco boycotts a
19 meeting of commissioners slated for March 12. The subject of his email is still "COVID-19
20 commissioner update." He writes to Julie Lawrence: "I've canceled my attendance at tomorrow's
21 meeting, as we are now successfully moving to Phase 3." [Exhibit S, *March 11, 2021 email*
22 *from YHD director Fresco to BOCC clerk Lawrence.*]

23 5.89 On March 12, 2021 Commissioner McKinney sent an email admonishing Fresco for
24
25

1 his non-attendance at one of the illegal meetings. Within its text, she makes the most startling
2 admission yet that business is being conducted and decision-making is occurring in these
3 meetings masquerading as “briefings” and “updates”:

4 5.90 "I find your cancellation more than inconvenient, it is harmful to our ability to
5 *conduct business and make decisions* on behalf of all residents of Yakima County." [**See Exhibit**
6 **C, email from McKinney to Fresco**][emphasis added].

7 5.91 By Defendant McKinney’s own admission, County “business” was being
8 “conducted” and “decisions” were being made at these YHD briefings with the commissioners,
9 in which a quorum of county commissioners were present.

10 5.92 “Action” as defined by the OPMA at 42.30.020(3) was occurring in these closed-
11 door meetings.

12 5.93 By definition, the “COVID briefings” were in fact, meetings of a governing body, as
13 defined by the OPMA at RCW 42.30.020(4).

14 5.94 Because they were meetings, that should have triggered the public notice and
15 participation requirements of the OPMA.

16 5.95 Yet none of the requirements of the OPMA were set into motion by the Defendants.

17 5.96 Ironically, Ms. McKinney declared that the failure of Mr. Fresco to participate in a
18 meeting that violates the OPMA somehow harms the public interest, when it is Ms. McKinney
19 herself who harms the public interest by conducting business and making decisions in secret
20 outside of the public’s view and violating a core principal of the OPMA.

21 5.97 The Commissioner’s calendar lists *no* business meetings, regular meetings, or study
22 sessions on either March 10 or March 12, 2021, the dates Defendant McKinney would have been
23 referring to in her email to Mr. Fresco regarding his non-attendance. [**Exhibit T, March 10-12**

1 *commissioner's calendar.*] The Commissioner's calendar lists only "COVID briefings."

2 5.98 On either March 10 or March 12, the Commissioners were clearly conducting County
3 business and taking action, as defined by the OPMA, without announcing the meetings to the
4 public or allowing the public to engage in meaningful participation.

5 5.99 The pattern of morphing passive briefings into official meetings was one which
6 County legal counsel recognized, and warned the commissioners not to engage in. County staff
7 recognized the meetings needed to properly noted as study sessions in order to comport with the
8 OPMA, yet this task was never completed.

9 5.100 The named Defendants, in spite of clear warnings from legal counsel, and even a
10 boycott by county staff of the illegal meetings, knowingly and intentionally held these illegal
11 meetings in order to make decisions on behalf of Yakima County citizens, without allowing the
12 citizens to be a part of a governing body's decision-making process as required by the OPMA.

13 5.101 Announcement of these "BOH study sessions with Commissioners" were not
14 prominently displayed on the County commissioner's website on its notice board.

15 **F. OPMA violation, January 25, 2021, Defendants take action in an illegal secret**
16 **meeting, take a secret ballot, and issuing a directive to YHD staff to draft a companion**
17 **resolution to Ordinance 1-2021.**
18

19 5.102 On or around January 25, 2021, Plaintiff alleges a quorum of the BOCC and a
20 quorum of the BOH, (which was, at this point in time, 3 out of 4 members), met in unpublicized
21 gatherings and took action, as defined by the OPMA, in the form of discussing and deliberating
22 upon a companion resolution to Ordinance 1-2021. The Defendants then took additional action
23 and directed YHD staff to draft this resolution. The Defendants failed to make their meeting
24 open and public in violation of the OPMA at 42.30.030.
25

1 5.103 Simultaneously, on or around January 25, 2021, the Defendants engaged in secret
2 balloting in violation of RCW 42.30.060(1). Again, Plaintiff alleges the Commissioners
3 deliberated upon a companion resolution, then made a decision by secret ballot, and issued a
4 directive to YHD staff to draft a resolution without doing so in an open and public meeting.

5 5.104 On or around January 25, 2021, Commissioner Linde composed an email to YHD
6 COO Ryan Ibach revealing that the Commissioners had taken action in secret: they had
7 discussed and deliberated upon the companion BOH resolution and had come to a decision,
8 behind closed doors, regarding county and BOH business:

9
10 The Yakima County BOCC would like a draft resolution mirroring our recently
11 passed ordinance regarding the appointment process for members of the Yakima
12 Health District Board and the hiring process for the Executive Director and Health
13 Officer be presented at our Wednesday Board of Health meeting. As Commissioner
14 McKinney has requested. We have spoken about this as a board and are in
15 agreement. *[See Exhibit E, Email from LaDon Linde to Ryan Ibach requesting
16 BOH draft resolution to mirror the BOCC Ordinance 1-2021]*

17 5.105 Linde states in his email that Commissioner McKinney has already requested a draft
18 companion resolution from the BOH. Suddenly, the members of the BOH, of which the county
19 commissioners make up the majority, are “in agreement” about issuing a directive to YHD staff
20 to draft a companion resolution to the county commissioners’ Ordinance.

21 5.106 The last BOH open and public meeting had not been since December 17, 2021.

22 5.107 The fourth, non-commissioner, member of the BOH was not included in Linde’s
23 email communication.

24 5.108 The only way the BOH could be “in agreement” to issue a directive to staff would be
25 if Commissioners McKinney, Anderson, and Linde, or three out of four BOH members, had met
in private and held discussions and deliberations, illegally, and then taken a secret ballot to issue
a directive. The Defendants obviously did this, as clearly evidenced by Linde’s email, and

1 violated RCW 42.30.060(1), the OPMA's provision on secret balloting.

2 5.109 Two days prior to Linde's email admission of a secret ballot, on January 23, 2021,
3 Ryan Ibach puts Commissioner McKinney on notice that she and the other commissioners are
4 not being transparent in the process of drafting a companion BOH resolution to Ordinance No. 1-
5 2021. Ibach excoriates McKinney for failing to issue her directive for staff to draft a resolution in
6 an open and public meeting. Ibach points out her failure to consult other crucial players in the
7 legislative process, including BOH assigned counsel. He writes to Commissioner McKinney:

8 ...I have several questions, that I am hoping we can talk about, in regards to the due
9 process that has existed in the past. Here are my questions and concerns: Should a request
10 to draft a Board of health resolution come from the Board of Health? Does a Board of
11 Health resolution need to be reviewed by the Yakima Health District/Board assigned
12 counsel? Should the decision to draft a resolution be discussed and approved during a
13 Board of Health meeting that is open and public?...Should the Board of Health members
14 have input as to what should be included in a Board of Health draft resolution? ...You
15 mentioned to send a copy of the Board of Health draft resolution to the BOCC but should
16 we send a Board of Health draft resolution to the Board of Health?" [See, Exhibit D].

17 5.110 Ibach finishes with the following:

18 In 2018, Commissioner Mike Leita and I were assigned to work together to simultaneously
19 draft both the County Ordinance and the Board of Health Resolution so that the Board of
20 County Commissioners, the Board of Health, and Yakima Health District staff could all
21 address any concerns, have adequate input and work in partnership to create 2 documents
22 that mirrored each other. In order to improve communication and transparency, I just want
23 to make sure we are all on the same page... [See, Exhibit D].

24 5.111 This scathing rebuke of Defendant McKinney's lack of transparency in her attempt
25 to direct YHD staff to draft a companion resolution to Ordinance No. 1-2021 demonstrates that,
by January 23, 2021, the named Defendants knew that they were not being transparent in their
process. The named Defendants knew that they were violating open and public meeting laws on
the issue of drafting a companion resolution, because their own staff put them on notice. Ryan
Ibach had warned them to issue directives regarding a BOH resolution only in an open and

1 public meeting, so that the public and the non-commissioner Board of Health member could
2 attend.

3 5.112 But just like the warnings of their own counsel on January 11 regarding publicizing
4 study sessions, these warnings from YHD staff went unheeded.

5 5.113 By January 25, 2021, the Defendants go on to violate the OPMA, because they
6 knowingly and intentionally ignored their own staff's advice.

7 5.114 Plaintiff alleges that in these secret and unpublicized meetings the Defendants
8 McKinney and Linde knowingly took action in violation of the OPMA at RCW 42.30, *et. seq.*
9 and knowingly engaged in secret balloting in violation of RCW 42.30.060(1).

10 5.115 The Defendants' roles as Board of Health members in no way disposes of, pauses,
11 relinquishes, or otherwise evades their status as elected members of the Yakima County Board of
12 Commissioners. When two out of three county commissioners meet and take action as defined
13 by the OPMA, either in person, email, or serial communication, they are, by definition, a quorum
14 of County Commissioners.

15 5.116 When the Defendants' illegal directive was issued on January 25, 2021, the county
16 commissioners were acting as both a quorum of the BOCC and a quorum or negative quorum of
17 the BOH. The difference does have some distinctions, but at the end of the day, when the
18 commissioners got together in January 2021, in secret, and took action outside of the public's
19 view, as well as engaged in secret balloting, they left both the BOCC and the BOH on the hook
20 for government agency violations of the OPMA.

21
22
23 **G. Named Commissioners Engaged in Knowing Violations of the OPMA, RCW**
24 **42.30.120.**

25 5.117 Plaintiff alleges the actions detailed herein of the named Defendants were knowing

1 and intentional acts, as evidenced by the repeated warnings of County staff that the meetings of
2 either the BOCC and BOH were not being properly publicized.

3 5.118 Plaintiff alleges that the emails that have surfaced indicate only a fraction of the
4 illegal meetings and decision-making made behind closed doors in regards to the changes the
5 County Commissioners instituted regarding the Yakima County Board of Health. The
6 Commissioners violated a core principal of the OPMA, as well as open governance in
7 Washington State, by deciding for themselves “what is good for the people to know and what is
8 not good for them to know.” RCW 42.30.010.

9
10 **H. Washington State Attorney General warns localities to tread lightly when**
11 **interpreting emergency waivers to the OPMA. Regular study sessions, two to three times a**
12 **week, with no public notification, and secret balloting do not qualify as necessary “to meet”**
13 **an emergency.**

14 5.119 The OPMA waives some of the requirements only if there is a need for expedited
15 action by a governing body to meet the emergency. RCW 42.30.070. But the Washington State
16 Supreme Court has ruled “the context and history of RCW 42.30.080 indicate that the term
17 “emergency” contemplates a severe one.” *Mead School District No. 354 v. Mead Educ. Ass’n*, 85
18 Wn.2d 140, 530 P.2d 302 (1975).

19 5.120 Governing bodies still have to adhere to regular notice requirements of the OPMA in
20 most cases, even under Governor Jay Inslee’s emergency COVID Proclamation 20-28.1,
21 pertaining to the Public Records Act at RCW 42.56 and the OPMA.

22 5.121 The Washington State Office of the Attorney General, in its March 6, 2020
23 publicized guidance on COVID and OPMA, warns agencies subject to the OPMA to tread
24 carefully:
25

1 The fact that there is an emergency in the city or state (including one that has been declared
2 by another agency), and which may impact the governing body in some way, may or may
3 not mean there is a “need” for “expedited action” by that governing body itself to “meet the
4 emergency.” As noted, the analysis would depend upon the facts and the authority of the
5 governing body. Recall that an agency often has other choices, such as cancelling or
6 rescheduling a meeting, or providing remote participation supplemental alternatives, if it
7 determines that it wants to reduce opportunities for virus transmission at public meetings.
8 (“Open Public Meetings Act General Guidance from the Office of the Attorney General
9 Regarding the Coronavirus Disease, COVID-19, Event,” March 6, 2020, at p. 5.) [*Annexed
10 as Exhibit U*]

11 5.122 Regular undisclosed meetings, multiple times a week, are not meetings contemplated
12 “to meet” an emergency. They are regular meetings which need to permit members of the public
13 to attend (RCW 42.30.040) and an agency cannot place conditions on attendance. (RCW
14 42.30.040).

15 5.123 There is no current legal exception to the OPMA to morph “COVID briefings” into
16 study sessions (recurrent meetings which require public notice), discuss the composition of the
17 Yakima County Board of Health in a quorum outside of a public meeting, or engage in secret
18 balloting in order to unduly pressure unwilling public servants into drafting resolutions that suit
19 the needs of the Yakima County Board of Commissioners.

20 5.124 On or around February 24, 2021, staff Attorney for the YHD, James Elliot,
21 addressed the Board of Health to discuss the changes to the Yakima County Code proposed by
22 Ordinance No. 1-2021. He noted several conflicts with state law at RCW 70.030 and 70.040; his
23 comments are appended to this complaint. [*Annexed as Exhibit V*]. He advised that in crafting a
24 companion resolution to the commissioner’s Ordinance, the Board of Health could adopt all or
25 part of the Ordinance. To date, the Board of Health still has not ratified any resolution adopting
the changes proposed by Ordinance No. 1-2021.

VI. FIRST CAUSE OF ACTION
Open Public Meetings Act

1 6.1 Plaintiff realleges and incorporates by reference the allegations set forth in each of the
2 preceding paragraphs of this Complaint.

3 6.2 Defendants' conduct affected and continues to affect the public interest.

4 "Any person may commence an action either by mandamus or injunction for the purpose
5 of stopping violations or preventing threatened violations of this chapter by members of a
6 governing body." RCW 42.30.130.

7 6.3 Plaintiff seeks to amend the complaint after discovery to include the dates of
8 violations of the OPMA alleged herein, spanning from March 2020 to the present.

9 6.4 It is the intent of the OPMA that the actions of public agencies, commissions, boards,
10 committees, or subcommittees of the state of Washington "be taken openly and that their
11 deliberations be conducted openly." RCW 42.30.010.

12 6.5 The OPMA requires that "[a]ll meetings of [a] governing body of a public agency
13 shall be open and public and all persons shall be permitted to attend any meeting of the
14 governing body of a public agency, except as otherwise provided in this chapter." RCW
15 42.30.030.

16 6.6 An agency may not place conditions on attendance. RCW 42.30.040.

17 6.7 "Governing body" is defined in the OPMA as "the multimember board, commission,
18 committee, council, or other policy or rule-making body of a public agency, or any committee
19 thereof when the committee acts on behalf of the governing body, conducts hearings, or takes
20 testimony or public comment." RCW 42.30.020(2). The governing bodies that met in this case
21 was the BOCC and the county commissioners acting as a quorum of the BOH from January 1 to
22 January 27, 2021.
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1 6.8 Under the OPMA, a "Meeting" is defined as "meetings at which action is taken"
2 (RCW 42.30.020(4)).

3 6.9 "Action" is defined as the transaction of the official business of a public agency by a
4 governing body including but not limited to receipt of public testimony, deliberations,
5 discussions, considerations, reviews, evaluations, and final actions.

6 RCW 42.30.020(3).

7 6.10 Plaintiff alleges that a quorum of the Yakima County Board of Commissioners took
8 action in closed door meetings designated on the commissioners' calendar only as YHD or
9 COVID "briefings." These gatherings were recognized by various County staff and County legal
10 counsel for what they actually were: recurrent meetings, in the form of recurrent study sessions,
11 occurring up to three times a week, in which a quorum of Commissioners attended and action, as
12 defined by the OPMA, was taken. These study sessions should have been publicized as study
13 sessions, so that the public could attend in accordance with RCW 42.30.030.

14 6.11 The "action" taken at these closed door meetings included the transaction of County
15 business vis à vis deliberations, discussion, consideration, review, and evaluation.

16 6.12 The "action" included creating and shoring up the fate of Yakima County Ordinance
17 No. 1-2021, a drastic overhaul of the YCC at Section 6.04, *et. seq.*, and its companion BOH
18 resolutions.
19

20 6.13 Plaintiff alleges the Defendant BOCC met illegally and in secret beginning March
21 27, 2020 in these "briefings," or unpublicized study sessions.
22

23 6.14 Plaintiff alleges that once the current BOCC members met illegally and in secret in
24 these unpublicized study sessions from the time of their swearing-in in November 2020 to the
25 present.

1 6.15 Plaintiff alleges that on or about December 10, and before the passage of Ordinance
2 No. 1-2021 on December 29, 2021, Defendants utilized these unpublicized study sessions to craft
3 and secretly ballot in violation of RCW 42.30.030, RCW 42.30.040, RCW 42.30.060, RCW
4 42.30.120.

5 6.16 That Ordinance passed unanimously, in 18 minutes, with no discussion, with no
6 Board of Health members notified, with one member of the public in the audience, with no pre-
7 approval of any amendments to BOH resolution 3-2018, and with no copy of the proposed
8 ordinance available to the public.

9 6.17 Plaintiff alleges the Ordinance was illegally adopted and should be enjoined from
10 enforcement and de-codified from the Yakima County Code.

11 6.18 Plaintiff alleges Defendants acted as a quorum of the BOCC and/or a quorum of the
12 BOH on or about January 4, 6, 11, 13, 18, 20, 25, prior to the seating of the new Board of Health
13 on January 27, 2021, in violation of the OPMA.

14 6.19 By Commissioner McKinney's own admission, within these closed door briefings
15 the Commissioners were transacting the people's "business" and making "decisions," resulting in
16 technical violations of the OPMA.

17 6.20 Not a single member of the public knew these meetings were occurring. Not a single
18 member of the public was invited. Even county staff recognized the meetings were illegal. Yet
19 no effort was made by Yakima County and the Yakima Board of County Commissioners to alert
20 the public and follow the legal notice requirements of the OPMA.

21 6.21 Plaintiff alleges on January 20, 2021, Defendants engaged in secret balloting and
22 issued a directive to YHD staff in violation of OPMA at RCW 42.30.060(1)

23 6.22 On January 30, 2021, Defendants admitted in an email chain, which included all the
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1 commissioners that they were attending a February 1, 2021 briefing.

2 6.23 Plaintiff alleges on February 1, 2021 the Defendants held an illegal secret meeting,
3 again masquerading on the county commissioners' calendar as a briefing, without notifying the
4 public, in violation of the OPMA.

5 6.24 Plaintiff alleges that on or around March 10, 2021, the Defendants again held an
6 illegal secret meeting in violation of the OPMA.

7 6.25 Plaintiff alleges that these illegal meetings occurred throughout March and April
8 2021 and are still ongoing.

9 6.26 The OPMA states that public agencies of this state "exist to aid in the conduct of
10 the people's business...The people of this state do not yield their sovereignty to the agencies
11 which serve them. The people, in delegating authority, do not give their public servants the right
12 to decide what is good for the people to know and what is not good for them to know." RCW
13 42.30.010.

14 6.27 Defendants violated the spirit of and the black letter law of the OPMA by
15 conducting county business out of public view and by holding secret meetings without following
16 the requirements of notice to the public under the Act. RCW 42.30.030.

17 6.28 Plaintiff alleges the violations were knowing and intentional on the part of the
18 named Defendants, Commissioners Linde and McKinney.

19 6.29 Defendants Linde and McKinney had knowledge of the fact that the meetings they
20 attended were actually study sessions and/or meetings of a quorum of a governing body which
21 needed to be publicized. Yet, they chose to ignore their own counsel's January 11, 2021 advice
22 that these study sessions were not being properly publicized, were too frequent, and needed to be
23 open and public. They chose to chastise rather than to listen to YHD staff who alerted them that
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1 their conduct was not transparent.

2 6.30 “Each member of the governing body who attends a meeting of such governing
3 body where action is taken in violation of any provision of this chapter applicable to him or her,
4 with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal
5 liability in the form of a civil penalty in the amount of five hundred dollars for the first
6 violation.” RCW 42.30.120(1). Fines increase to \$1,000 per violation for each additional
7 violation.² RCW 42.30.120(2).
8

9 6.31 Defendants McKinney and Linde attended OPMA trainings as part of their official
10 duties. (*See* RCW 42.30.205, each member of the governing body of a public agency must
11 complete training no later than ninety days after taking an oath of office or assuming duties as a
12 public official.) Despite this training, and with knowledge of the law set forth in the OPMA, the
13 named Defendants defied the basic principle of the OPMA and governance in Washington State
14 set forth in RCW 42.30, *et. seq.*
15

16 6.32 Between January 23 and January 25, 2021, Plaintiff alleges the Defendants
17 knowingly ignored the warnings of BOH COO Ryan Ibach. The Defendants knowingly took
18 action in an unpublicized gathering (or email chain or other medium of communication) of a
19 quorum of BOH and BOCC members by discussing and deliberating upon a BOH companion
20 resolution to their already codified Ordinance No. 1-2021. Thereby the Defendants took “action”
21 as defined by the OPMA, a “meeting” was held, and the meeting was not open and public, in
22 violation of the OPMA. RCW 42.30.030(4), RCW 42.30.030(3), RCW 42.30.020.

23 6.33 The Defendants then engaged in secret balloting, either over email communications
24

25 ² The public comment from the legislative session increasing the fines under the OPMA demonstrates the
fines are per adjudicated violation and are designed to increase in severity for each violation.

1 or in person, with regards to the BOH companion resolution and issued a directive to YHD staff
2 to commence its drafting, in violation of RCW 42.060(1).

3 6.34 RCW 42.30.060(1) requires an "ordinance, resolution, rule, regulation, order, or
4 directive" must be adopted at a public meeting which has been scheduled in accordance with the
5 provisions of the OPMA. A directive includes directing county staff to draft a resolution.

6 6.35 On January 25, 2021, Defendant Linde, in conjunction with Defendant McKinney,
7 who is mentioned by name in Linde's email (and had just been rebuked on January 23, 2021 for
8 attempting to direct Ryan Ibach to draft the companion resolution without holding an open and
9 public meeting), attempt to use their collective might to force Mr. Ibach to do their bidding. The
10 Defendants issue an email directive to YHD staff to draft a companion BOH resolution to the
11 BOCC's Ordinance 1-2021. The commissioners attempt to bully the staff into submission, after
12 meeting illegally, and after clearly having taken an illegal secret ballot.

13 6.36 Commissioner Linde admits in his email that this directive to County staff has been
14 decided upon by a quorum of Commissioners, stating "we are in agreement." There had been no
15 public BOH meeting since December 17, 2020. The only possible way an "agreement" to issue
16 the directive would have been reached would have been through a secret ballot behind closed
17 doors in violation of of RCW 42.30.060(1).

18 6.37 During the period of January 1 to January 27, 2021, as YHD staff pointed out multiple
19 times, the commissioners were also meeting as a quorum or negative quorum of the only four-
20 member Board of Health. In issuing a directive on behalf of the BOH, while they constituted a
21 quorum or negative quorum of the BOH, the commissioners violated the OPMA.

22 6.38 The county commissioners also issued this directive to benefit their own troubled
23 Ordinance, so, arguably, the directive was also one made in a quorum, behind closed doors,
24
25

1 utilizing a secret ballot, on behalf of the BOCC. Either way, a quorum of commissioners were
2 meeting in secret and making decisions about county business outside of the public view, in
3 violation of the OPMA.

4 6.39 Annexed to this complaint is a portion of "OPMA BASICS" provided by the
5 Municipal Research Service Council ("MSRC") [Exhibit W] Some meetings of city or county
6 councils, such as training sessions, are not subject to OPMA. However, if while at a passive
7 meeting, a quorum of a council discusses government business, that would be a violation of the
8 OPMA. (AGO 2006 No. 6). The same would hold true of a public health COVID-19 briefing.

9 6.40 As the MSRC document describes, once the meeting is no longer passive, and
10 county business is discussed, such as set forth by the facts complained of herein, the agency
11 meeting is subject to the procedures defined in OPMA. The County was violating, and continues
12 to violate the OPMA by not following those procedures.

13 6.41 The OPMA violations set forth herein were at times so obvious and egregious it
14 prompted County staff and legal counsel to plead with the Commissioners to properly notice
15 their meetings, rather than continue to violate the law.

16 6.42 The Yakima County Commissioners ignored their own staff and legal counsel's
17 advice, instead choosing to leave the taxpayers holding the bag for their blatant and brazen
18 violations of open-government laws. The County and the BOH and BOCC dropped the ball, too;
19 they never publicized the meetings they recognized to be recurrent "study sessions" so that the
20 public could attend and meaningfully participate in government decision-making.

21 6.43 To promote government transparency and public input in government decision-
22 making, the OPMA is to be construed broadly and in favor of the public and citizen Plaintiffs.
23 RCW 42.30.910.
24
25

1 6.44 Defendants' and named Defendants' acts and practices alleged in this Complaint
2 violate RCW 42.30, *et. seq.*, for which relief is appropriate as prayed for below.

3 **VII. SECOND CAUSE OF ACTION**
4 **Wa. Const. Article XI, Section 11: Unconstitutionality of Ord. No. 1-2021**

5 7.1 Plaintiff realleges and incorporates by reference the allegations set forth in each of the
6 preceding paragraphs of this Complaint.

7 7.2 A local law or ordinance is void if it is in conflict with or pre-empted by state law, in
8 violation of Article XI, § 11 of the Washington Constitution. An ordinance is pre-empted by
9 state law where it attempts to frustrate the purpose of state law and the state's regulatory scheme.

10 7.3 RCW 70.46, *et. seq.* and RCW 70.05, *et. seq.* set forth the state's regulatory scheme
11 regarding local health districts and boards of health, respectively.

12 7.4 The powers, duties, and jurisdiction of local health boards to achieve the state's goals
13 of preserving life and health stem *directly* from the legislature, in accordance with RCW
14 70.05.060.

15 7.5 The state legislature delegates power directly to local boards of health. "Each local
16 board of health shall have supervision over *all matters pertaining to the preservation of the life*
17 *and health of the people within its jurisdiction.*" (RCW 70.05.060.)[emphasis added.]

18 7.6 The powers, duties, and jurisdiction of expanded local health boards are *not* derived
19 from the authority, votes, or will of local boards of county commissioners. By statute, health
20 boards become essentially independent from the county commissioners with regards to specific
21 powers and duties delegated directly to them by the state legislature.

22 7.7 The legislature was very specific in its demands of health districts in order to achieve
23 its statewide goals of increased public health.
24
25

1 7.8 The legislature demands that local boards of health enforce “the public health statutes
2 of the state and rules promulgated by the state board of health and the secretary of health.” RCW
3 70.05.060(1).

4 7.9 The legislature demands that local boards of health “provide for the control and
5 prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local
6 health department.” RCW 70.05.060(4).

7 **A. Requiring an intermediary vote and permission from county commissioners to**
8 **form public health committees interferes with the jurisdiction and duties of the Yakima**
9 **County Board of Health. Ordinance 1-2021 conflicts with and is pre-empted by state law,**
10 **and is unconstitutional under Art. XI, Sec. § 11 of the Washington State Constitution.**

11 7.10 Yakima County Ordinance No. 1-2021, now codified at Yakima County Code
12 section 6.04, *et. seq.*, prohibits the local health board from forming committees or subcommittees
13 to address statewide emergency public health issues. The relevant subsection reads:
14

15 Neither the Yakima County Health District nor the Yakima Board of Health shall create
16 any committee or sub-committee which creates or enforces any policy except as
17 expressly provided by chapter 70.05 RCW, chapter 70.46 [*sic*], chapter 70.026.04.010(6)
18 [*sic*], chapter 43.20 RCW or chapter 43.70 RCW, without the approval of the Board of
19 Yakima County Commissioners. YCC 6.04.010(6).

20 7.11 Deliberately citing each chapter of the Revised Code of Washington, and notably
21 excluding chapter 43.06 RCW, the Governor’s powers, is no mere oversight, especially in
22 combination with the January 11, 2021 critique the Commissioners leveled at the Governor,
23 annexed as **Exhibit A**. Under the doctrine of *exclusio unius* in statutory construction, the listing
24 of specific statutes is used in order to exclude those that are not listed. If this Ordinance were
25 allowed to remain law, in the event of a statewide public health orders under RCW 43.06.220,

1 such as those stemming from the COVID event, only the Board of County Commissioners would
2 be able to create committees and hold study sessions to deal with the crisis under the Ordinance.
3 The Board of Health members would not be able to address these crisis issues in committee or
4 subcommittee without a full vote of the Board of County Commissioners.

5 7.12 Ordinance No. 1-2021, therefore, frustrates the state’s statutory scheme delegating
6 power *directly* to local health districts to carry out the legislature’s goals of fully preserving life
7 and health and controlling and preventing infectious disease, especially in an emergency when its
8 mechanisms and capacity to deliver services are most needed. RCW 70.05.060.

9 7.13 The state legislature, in delegating power and jurisdiction to health boards in *all*
10 *matters pertaining to the preservation of the life and health of the people*, did not intend that
11 during a statewide public health emergency, the standard operating procedures of boards of
12 health and regular ways of doing business would be thwarted by a separate agency with no
13 jurisdiction over public health matters.

14 7.14 The state legislature also made clear that it was the duty of the local health district
15 officer to “Enforce the public health statutes of the state, rules of the state board of health and the
16 secretary of health...” RCW 70.05.070(1). Both the BOH and the local health district officer
17 have been specifically charged by the legislature to follow state law in matters of public health,
18 and there is no reason to list the state laws that they may address through the formation of
19 committees and sub-committees. The Yakima County Boards of Health and health district officer
20 are *required* by the state legislature to follow and enforce *all* state laws, including the Governor’s
21 emergency proclamations.
22

23 7.15 Nowhere in RCW 70.05.060, RCW 70.46, *et. seq.*, or the state’s regulatory scheme
24 for health districts is there *any* express or implied delegation of power to county legislative
25

1 bodies by the legislature to impose a requirement of intermediary votes by county legislative
2 authorities before a board of health can act as required under the statute. Local boards of health
3 do not need to get “permission” from boards of county commissioners before acting upon urgent
4 matters of public health within their jurisdiction.

5 7.16 Simply put, Ordinance No. 1-2021 *prohibits* the health Board from utilizing the
6 power delegated to them directly by the legislature when a statewide public health emergency is
7 declared under RCW 43.06.220.

8 7.17 The Ordinance’s purpose, as evidenced by its very own text, (which would have
9 been unnecessary and redundant language had it not specifically excluded the state statute
10 authorizing emergency public health orders), is to frustrate state law and undermine the state’s
11 public health regulatory scheme.

12 7.18 The ordinance directly conflicts with the authority and jurisdiction vested in public
13 health boards at RCW 70.05.060 and conflicts with the state’s regulatory scheme for health
14 districts and health boards found at RCW 70.05, *et. seq.* RCW 70.46, *et. seq.*

15 7.19 The Ordinance is pre-empted by the statewide regulatory scheme giving public
16 health boards jurisdiction over all public health matters and delegating to them specific powers
17 and duties that cannot be undermined in an emergency public health situation by a separate
18 agency lacking jurisdiction.

19 7.20 Because the Ordinance conflicts and is pre-empted by state law at RCW 70.05.060,
20 it is unconstitutional under Article XI, § 11 of the Washington State Constitution. The Ordinance
21 should be declared null in void in its entirety.

22 **B. The Ordinance requires a county commissioner always be the chair of the Board**
23 **of Health and be granted two votes, giving the county commissioners a permanent negative**
24
25

1 quorum on the Yakima County Board of Health. Ordinance 1-2021 conflicts with and is
2 pre-empted by state law, and is unconstitutional under Art. XI, Sec. § 11 of the Washington
3 State Constitution.

4 7.21 Ordinance 1-2021 gives the chair of the Yakima BOH two votes. [codified as YCC
5 6.04.010(1)]. It then goes on to crown a county commissioner permanent chair of the BOH. The
6 Board of Health must include "Three members of the board of county commissioners, one of
7 whom shall be elected as chair of the Board of Health . . ." [codified as YCC 6.04.010(1)(a)].
8

9 7.22 However, this arrangement conflicts with RCW 70.05.040, which does not
10 guarantee a County commissioner, or even an elected official, serve as chair, but instead states:
11 "At the first meeting of a district board of health the members shall elect a chair to serve for a
12 period of one year." RCW 70.05.040.

13 7.23 Within the state's regulatory scheme, there is no express or implied delegation of
14 power to county legislative authorities to stack the Boards of local health districts to ensure a
15 County Commissioner is *always* the chair, and that a Commissioner *always* has two votes. With
16 a seven member health Board, three commissioners can always block the passage of any
17 resolution put forth by a city official or civilian BOH member with their negative quorum.
18

19 7.24 As noted *infra*, the legislature's purpose in expanding the membership of health
20 boards via ESSB 5253 was to expand the membership of boards of health and increase the
21 capacity of health districts to deliver services; not to always give county commissioners the
22 deciding vote over matters of public health. In amending RCW 70.05.030, the legislature
23 intended for Board of Health decision-making power be shared between county commissioners,
24 city officials and more experienced members of the public health community.

25 7.25 The Ordinance encroaches even further on the independence of the Board of Health

1 by requiring all sub-committees have as their majority, county commissioners. YCC 6.04.010(7).
2 This would result in the odd situation that every single BOH committee meeting becomes a
3 public meeting of county commissioners under the OPMA at RCW 42.30, *et. seq.* This could
4 expose the BOH to legal liability (especially given the allegations in this case), and impede the
5 BOH's ability to carry out the duties delegated to it under state law.

6
7 7.26 Pre-emption doctrine holds that in the event of an inconsistency on any matter upon
8 which the legislature has acted, "the statute prevails." *Chemical Bank Chemical Bank v. WPPSS*,
9 99 Wn.2d 777, 793 (1983). When a state statute and a municipal ordinance on the same subject
10 matter cannot be harmonized, the municipal ordinance must yield. *State v. Seattle*, 94 Wn.2d
11 162, 166, 615 P.2d 461; *Spokane v. J-R Distrib. Inc.*, 90 Wn.2d 722, 730, 585 P.2d 784 (1978).

12 7.27 The Ordinance conflicts and is pre-empted by state law at RCW 70.05.020. The
13 Ordinance also frustrates the state's regulatory scheme for expanded member Boards of Health.
14 The Ordinance is unconstitutional under Article XI, § 11 of the Washington State Constitution.

15 **C. State law does not delegate to the county commissioners exclusive authority to**
16 **select the Health Officer of the health district. The Ordinance conflicts with and is pre-**
17 **empted by state law, and is unconstitutional under Article XI, § 11 of the Washington State**
18 **Constitution.**

19
20 7.28 "The local health officer and administrative officer shall be appointed by the local
21 board of health." RCW 70.05.050. State law provides that boards of health select the health
22 district's health officers.

23 7.29 However, Ordinance 1-2021, as codified, states: "In the event of a vacancy in the
24 Health Officer position, a new Health Officer shall be appointed by the Board after all the
25 following steps have been completed:... The Board of Health, by a majority vote, has selected a

1 candidate to serve as the Health Officer of the health district.” [Codified as YCC 6.04.030(5).]

2 7.30 YCC 6.04.010(7), discussed *infra*, requires that county commissioners are the head
3 of all BOH committees, including nominating committees for staff positions. Additionally, the
4 health officer must be approved by a majority vote of the BOH. Because the county
5 commissioners always have a negative quorum under Ordinance 1-2021, they can block any
6 nomination for health officer.

7 7.31 This power grab frustrates the state’s regulatory scheme and its spirit and purpose in
8 the creation of *expanded* member health boards at RCW 70.05.030. The Ordinance conflicts with
9 state law, is pre-empted by state law, and is an unconstitutional violation of Article XI, §11.

10 **D. The ordinance contains no savings clause.**

11 7.32 The Ordinance as written, (which is still as of this date not available for public
12 inspection on the BOCC’s website), contained no provision such that if any portion of the act is
13 found unconstitutional or invalid, the remainder of the Ordinance is valid.

14 7.33 Because the sections of the Ordinance discussed *infra* are unconstitutional, the entire
15 Ordinance should be rendered null and void and should be decodified.

16 7.34 In the alternative, the unconstitutional sections must be deleted or amended.

17 **VIII. THIRD CAUSE OF ACTION**
18 **Uniform Declaratory Judgements Act**

19 8.1 Plaintiff realleges and incorporates by reference the allegations set forth in each of the
20 preceding paragraphs of this Complaint.

21 8.2 Under the Washington State Uniform Declaratory Judgments Act, courts of record
22 within their respective jurisdictions enjoy broad general powers to declare rights, status and other
23 legal relations in any proceeding where declaratory relief is sought, in which a judgment or
24
25

1 decree will terminate the controversy or remove an uncertainty, whether or not further relief is or
2 could be claimed. (See RCW 19.86.010-030).

3 8.3 Defendants, and each of them, by their acts described herein created a controversy by
4 holding public meetings outside of the public view, without initiating proper public notice as
5 required by law.

6 8.4 These uncertainties give rise to a cause of action under the Uniform Declaratory
7 Judgments Act for declaratory relief as prayed for below that will resolve this actual and existing
8 controversy between genuinely adverse parties. Such a declaration will conclusively terminate
9 the controversy giving rise to this proceeding and is in the public interest.

11 **IX. FOURTH CAUSE OF ACTION**

12 *Attorney's Fees*

13 9.1 Plaintiff realleges and incorporates by reference the allegations set forth in each of the
14 preceding paragraphs of this Complaint.

15 9.2 Costs of this action and reasonable attorneys' fees are provided by the OPMA at
16 RCW 42.30.120(4).

17 **X. REQUEST FOR RELIEF**

18 WHEREFORE, Plaintiff, prays for relief pursuant to each cause of action set forth in this
19 Complaint as follows:

20 A. For an order directing a speedy hearing in this action and advancing such hearing on
21 the court's calendar;

22 B. That the Court adjudge and decree that the Defendants have engaged in the acts and
23 practices complained of herein;

24 C. That the Court issue a preliminary and permanent injunction prohibiting and
25

1 restraining Defendants and their representatives, successors, assigns, officers, agents, servants,
2 employees, and all other persons acting or claiming to act for, on behalf of, or in active concert
3 or participation with Defendants for continuing or engaging in the unlawful conduct complained
4 of herein;

5 D. That the Court issue a preliminary and permanent injunction enjoining the
6 Defendants from implementing and enforcing Yakima County Ordinance No. 1-2021;

7 E. That the Court adjudge and decree that the acts and practices complained of herein
8 constitute a violation of the Open Public Meetings Act, RCW 42.30; *et. seq.*;

9 F. That Court issue a Writ of Mandamus, under RCW 42.30.130, compelling the
10 Defendants to overturn and decodify Yakima County Ordinance No. 1-2021;

11 G. For preliminary and permanent injunctive relief, under RCW 42.30.130, restraining
12 the Defendants from participating in any public health “briefings,” in which more than one
13 Commissioner is present and notice has not been made in accordance with the OPMA;

14 H. That a Writ of Mandamus issue from this Court compelling the Defendants to
15 properly note and publicize county commissioner study sessions or public meetings in which a
16 quorum of Commissioners are present, clearly and conspicuously on the County website as a
17 meeting of county commissioners, *including* when the quorum of Commissioners discuss
18 business under the jurisdiction of the Yakima County Board of Health.

19 I. That a Writ of Mandamus issue from this Court compelling the Defendants to
20 provide the Plaintiff and the public with minutes from the so-called “COVID briefings” of 2020
21 and 2021;

22 J. That a Writ of Mandamus issue from this Court compelling the Defendants to
23 henceforth directly contact and give the members of the Yakima County Board of Health at least
24
25

1 24 hours notice that the county commissioners are holding any study sessions, special meetings,
2 or other such gatherings in which a quorum of county commissioners are present, and the
3 membership, representation on the district health board, or other matters relative to the formation
4 or operation of the health district are on the agenda;

5 K. That the Court adjudge and decree that the acts and practices complained of herein
6 regarding the individually named Defendants constitute personal, knowing violations of the
7 Open Public Meetings Act, in violation of RCW 42.30.120, and that the Defendants be fined
8 \$500 each for the first violation, and \$1000 for each additional violation, as indicated by the
9 statute.

10 L. That a Declaratory Ruling issue under the Seal of this Court declaring that the
11 Defendants violated the Open Public Meetings Act by holding closed-door meetings in which the
12 public's business was conducted, without proper public notice and a chance for citizen
13 participation;

14 M. That a Declaratory Ruling issue under the Seal of this Court declaring that the
15 Defendants violated the Open Public Meetings Act by engaging in secret balloting;

16 N. That a Declaratory Ruling issue under the Seal of this Court declaring that Yakima
17 County Ordinance No. 1-2021 was illegally adopted;

18 O. That a Declaratory Ruling issue under the Seal of this Court declaring Yakima
19 County Ordinance No. 1-2021 unconstitutional under Article XI, § 11 of the Washington
20 Constitution and that the Ordinance is null and void in its entirety, or in part.

21 P. That an order issue from this Court restraining Defendants from holding further so-
22 called "COVID briefings," until they are clearly and conspicuously on its public website as study
23 sessions, in the same location as notice for regular meetings.
24
25

1 Q. That the Court impose penalties and fines on Defendants under the OPMA and award
2 these to the Plaintiff;

3 R. That the Court make such orders pursuant to RCW 19.86 and RCW 42.30 as it deems
4 appropriate to provide that Plaintiff recovers the cost of this action, including reasonable
5 attorneys' fees as provided by RCW 42.30.120(4) and any other relevant statutes;

6 S. That the Court give Plaintiff leave to amend the Complaint to conform to the
7 evidence presented at trial; and

8 T. That the Court order such other or further relief and nominal damages as the Court
9 may deem just or proper.
10

11
12 **DATED this 27th day of April, 2021,**

13
14 **By Counsel,**



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EXHIBITS A - W

EXHIBIT A

**YAKIMA COUNTY BOARD OF COMMISSIONERS
PROCLAMATION**

**A PROCLAMATION IN SUPPORT OF LOCAL PUBLIC HEALTH AGENCY
MANAGEMENT OF COVID-19 PREVENTION AND RESPONSE, AND CALLING
FOR IMMEDIATE CHANGE TO STATE COVID-19 MANAGEMENT,
ENFORCEMENT POLICIES, AND STATUTORY LANGUAGE LIMITING STATE
OF EMERGENCY DURATION WITHOUT LEGISLATIVE APPROVAL**

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary Alex Azar declared a public emergency for the novel coronavirus (COVID-19) beginning on January 27, 2020; and

WHEREAS, on February 29, 2020, Governor Jay Inslee signed a Proclamation declaring a State of Emergency exists in all counties in the State of Washington due to the number of confirmed cases of COVID-19 in the state; and

WHEREAS, on March 23, 2020, Governor Inslee issued Proclamation 20-25: "Stay Home, Stay Healthy", requiring Washingtonians to stay home unless they are engaged in an essential activity and restricting gatherings for social, spiritual, and recreational purposes and ordering all businesses closed unless they are designated as an essential business; and

WHEREAS, on May 31, 2020, Governor Inslee issued Proclamation 20-25.4: "Transition From "Stay Home – Stay Healthy" County-By-County Phased Reopening" allowing phased reopening of qualifying counties based on "target metrics (intended to be applied as 'targets' and not hard-line measures)"; and

WHEREAS, on October 13, 2020, Washington State Secretary of Health John Wiesman approved Yakima County's application to move to Phase 2 of Governor Inslee's Phased Approach to Reopening Washington Plan with a warning that approval could be revoked "if circumstances change within your county jurisdiction on a county to county application, such as a significant community transmission, no or minimal access to COVID-19 testing, inadequate surge capacity in the hospital, inadequate PPE supplies, inadequate case and contact investigations, inadequate performance on daily contact for cases in isolation or contacts in quarantine, inadequate isolation or quarantine facilities, or other conditions warranting significant concern."; and

WHEREAS, since the move to Phase 2, the safe operation of Yakima County businesses and establishments, including restaurants, bars, brewpubs, movie theaters, gyms, museums, and churches, have at no time ever been linked to "significant community transmission," proving that it is the behavior of individuals in private settings, not the conduct of the businesses and establishments themselves, that contribute to community transmission; and

WHEREAS, Yakima County businesses and establishments under their representative local governments have been open, practicing all necessary transmission prevention behaviors, gainfully employing county residents, and safely serving the local community with no evidence that they are the direct cause of “significant community transmission”; and

WHEREAS, Virginia Mason Memorial Hospital, Astria Sunnyside Hospital and Yakima County medical providers have risen to the challenge and have not experienced, “no or minimal access to COVID-19 testing, inadequate surge capacity in the hospital, or inadequate PPE supplies”; and

WHEREAS, Yakima County Public Health Department staff, Public Health Officer Dr. Theresa Everson, and contracted community service providers have diligently carried out their duties and, for months, exceeded all case and contact investigation metrics established by the Washington State Department of Health and surpassed the performance of Washington State Centralized Investigators; and

WHEREAS, Yakima County Public Health Department continues to maintain daily contact for cases in isolation, the resources necessary for contacts to quarantine, and the ability to respond to outbreaks and high-risk settings; and

WHEREAS, Yakima County and its elected officials and representative local governments have been a leader in the state in providing seven-day-a-week free drive-thru testing sites for all residents wishing to be tested, whether symptomatic or not; and

WHEREAS, Yakima County has never been at risk of having “inadequate isolation or quarantine facilities”; and

WHEREAS, during this Phase 2 period, neither the Secretary of Health nor the Governor have moved to revoke Yakima County’s Phase 2 approval set forth in the Phase 2 approval letter; and

WHEREAS, Public Health Officer Dr. Theresa Everson has issued health orders, including a mask directive on June 3, 2020 which preceded the statewide mask mandate on June 26, 2020, directed to assist local citizens with preventing transmission while working to preserve the livelihoods of Yakima county residents; and

WHEREAS, Governor Inslee has issued no less than 327 COVID-related proclamations with multiple amendments directed at all 39 counties, all on county by county basis with varying transmission rates, demographics, community values, cultural norms and populations ranging from just over 2,000 to 2.6 million people; and

WHEREAS, Governor Inslee’s Proclamation 20-25.8 of November 15, 2020 entitled “Stay

Safe – Stay Healthy” abruptly closed businesses which had not previously been identified as a systemic community transmission source in Yakima County; and

WHEREAS, Governor Inslee’s “Healthy Washington Roadmap to Recovery” announced publicly January 5, 2021 creates subjective and arbitrary regions in which local elected officials and governments have no legal control or influence over the jurisdictions in which they are subject to inclusion with, and in which the democratic process of dually elected legislative bodies to create laws impacting the residents of Washington State was circumvented; and

WHEREAS, these same businesses, having previously been closed by gubernatorial health order, subsequently reopened in Phase 2 and invested significant time and financial resources to ensure customers and staff followed common-sense COVID-19 prevention protocols to limit transmission and keep business doors open; and

WHEREAS, disruptions to workers and small businesses are serious, as small businesses are the backbone of our economy, and provide the foundation of employment, essential services for the community, a vital role in the overall health and welfare for citizens, and revenue for cities and other public agencies to continue to provide essential services for the public welfare and benefit; and

WHEREAS, citizens who have lost their primary source of income due to economic impacts from the COVID-19 restrictions may be unable to afford to stay home or practice social distancing which could have a negative impact on the public's health; and

WHEREAS, the Yakima County Board of Commissioners recognizes that one of its essential functions is to secure the health and welfare of Yakima County's citizens under the dually elected representative local authorities within Yakima County;

NOW THEREFORE BE IT PROCLAIMED that the Board of County Commissioners of Yakima County, Washington, in the interests of securing the health and welfare of the citizens of Yakima County, concludes that those businesses either closed or gravely impacted by Proclamation 20-25.8 and “Healthy Washington-Roadmap to Recovery” and which had previously operated using all necessary COVID-19 prevention protocols, have been unjustly, arbitrarily, and capriciously impacted along with the livelihoods of both owners and employees; and

BE IT FURTHER PROCLAIMED that the Board of County Commissioners calls on the residents and citizens of Yakima County to support all local businesses by following all necessary COVID-19 prevention protocols, and continuing to support friends and neighbors employed locally by purchasing goods and services and patronizing establishments practicing COVID-19 prevention protocols; and

BE IT FURTHER PROCLAIMED that the Board of County Commissioners supports the work of the Yakima County Public Health Department and Public Health Officer to advance the results they have achieved partnering with businesses, governments and public agencies, schools, healthcare facilities, community organizations, churches and citizens to minimize community transmission, mitigating the secondary community mental health impacts, and encouraging continued use of all necessary COVID-19 prevention protocols; and

BE IT FURTHER PROCLAIMED that the Board of County Commissioners recognizes and appreciates the work of local law enforcement and regulatory bodies to model all necessary COVID-19 prevention protocols and focus on educating citizens as the first and best option towards minimizing community transmission; and

BE IT FURTHER PROCLAIMED that the Board of County Commissioners concludes that local official governmental management of preventing community transmission spread, not sweeping state proclamations creating arbitrary regional boundaries over which we have no authority, is and remains the primary means of ensuring healthcare facility readiness by positively interacting with citizens to reduce the risk of what is proven to be the leading source of infection spread – casual social gatherings where prevention measures are not adhered to; and

BE IT FURTHER PROCLAIMED that the Board of County Commissioners calls on Governor Jay Inslee to recognize the democratically fundamental authority of local elected officials to effectively manage community transmission spread within their respective jurisdictions, and swiftly shift current state response policy to respecting, informing, supporting, and supplying local authorities' management directives and community messaging; and

BE IT FURTHER PROCLAIMED that the Board of County Commissioners calls on Governor Jay Inslee, state regulatory agency directors, and state agents charged with workplace compliance enforcement within Yakima County to immediately cease issuance of fines and licensure sanctions, and instead adopt the model of local law enforcement agencies across the state by educating and encouraging businesses to follow all necessary COVID-19 prevention protocols where improvement opportunities may exist; and

BE IT FURTHER PROCLAIMED that the Board of County Commissioners firmly believes that only through swift and thorough action on the part of Legislative elected officials can publicly vetted improvements be made to the health and mental well-being of employers, employees, students, families and citizens alike be achieved.

BE IT FURTHER PROCLAIMED that Yakima County will take appropriate action to address proclamations which unlawfully violate due process rights, property rights or interferes unlawfully with representative democratic local government's lawful authority; and

BE IT FURTHER PROCLAIMED that the Board of County Commissioners is committed


to protecting the Constitutional rights of its residents and will actively engage in lawful approaches to challenge regulations that the Board of County Commissioners believe are improper and will furthermore not endorse the expenditure of resources on enforcement or assisting in the enforcement of aforementioned arbitrary and capricious proclamations and acts by Governor Jay Inslee; and

BE IT FURTHER PROCLAIMED that the Board of County Commissioners, in consideration of the indefinite nature of this State of Emergency, calls on Governor Jay Inslee and the Washington State Legislature to immediately begin examination and drafting of those measures necessary to amend statutory language under Title 43, Chapter 6 of the Revised Code of Washington for the purposes of requiring legislative approval for any State of Emergency lasting longer than 14 days and immediately nullifies the “Stay Home-Stay Healthy” and “Healthy Washington-Roadmap to Recovery” orders.

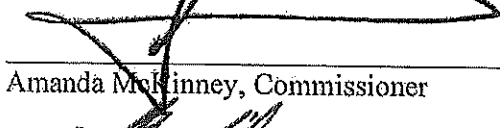
This Proclamation shall become effective upon adoption and shall continue until further formal action of the Yakima County Board of Commissioners.

DATED this 11th day of January 2021.

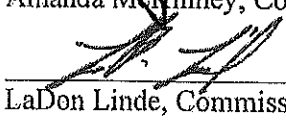
YAKIMA COUNTY BOARD OF COMMISSIONERS



Ron Anderson, Chairman



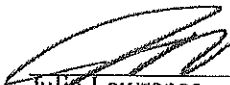
Amanda McKinney, Commissioner



LaDon Linde, Commissioner

*Constituting the Board of County Commissioners
for Yakima County, Washington*

Attest:



Julie Lawrence
Clerk of the Board



EXHIBIT B



Yakima Health District
1210 Ahtanum Ridge Drive
Union Gap, Washington 98903
Phone (509) 575-4040 Fax
(509) 575-7894
<http://www.yakimapublichealth.org>

**REQUEST FOR PUBLIC RECORDS
(OTHER THAN PERSONAL MEDICAL RECORDS)**

(Please Print)

NAME: Angie Girard DATE: March 14, 2021

ADDRESS: 5201 W. Lincoln Ave

CITY: Yakima STATE: WA ZIP: 98908

TELEPHONE: 509-969-7388 EMAIL ADDRESS: angiegirard@hotmail.com

REQUEST MADE BY: In person Telephone electronic mail mail fax

HOW WOULD YOU PREFER TO BE CONTACTED AND/OR RECEIVE RECORDS?

Mail/In Writing Telephone Electronic Mail Fax

RECORDS REQUESTED:

Please describe below the records you are requesting and any additional information that will help us locate the records for you as quickly as possible. Please include dates if known and parcel numbers, if applicable.

This is a formal public records request under RCW 42.56. Please provide me with all correspondence between employees, agents, and Board of Health members of the Yakima County Health District and the Yakima County commissioners and their employees and agents (including corporate counsel) from November 1, 2020 to March 12, 2021, including but not limited to:

- Agendas, meeting minutes, resolutions, and public notices that are NOT available on the Yakima Health District Website
- Digital, telephonic, or written meeting requests and any correspondence regarding such meetings regardless of whether or not they occurred (e.g. BOH Study Sessions with Commissioners)
- Memos
- Telephone logs
- Emails
- Text messages

If any records need to be redacted, please provide an exemption log and the reason for the exemption under RCW 42.56

Records immediately provided upon request by: _____

2

If I am requesting a list of individuals, I certify that the records listed above will not be used for commercial purposes.

I understand that if I request paper copies of records that I will be required to pay \$0.25 per page to obtain copies of the records, although I may review records at the Yakima Health District at no charge to me.

Angie Guard
Signature of Applicant

For YHD use only

Department Receiving Request: _____
Number of Copies: _____ Date Request Completed: _____
Cost: _____ Person Receiving Request: _____ Total
Date Request Received: _____

EXHIBIT C

Girard, Angie

From: Amanda McKinney <amanda.mckinney@co.yakima.wa.us>
Sent: Friday, March 12, 2021 8:30 AM
To: Julie Lawrence; Ron Anderson; LaDon Linde; Craig Warner; Don Anderson; Andre Fresco
Subject: Re: COVID-19 Commissioner Update

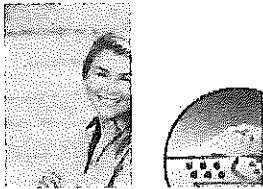
Good morning Andre,

I find your cancellation more than inconvenient, it is harmful to our ability to conduct business and make decisions on behalf of all residents of Yakima County. We have many things to discuss regarding the announced Phase 3, most significantly how the two metrics put our community at a disadvantage. We must work diligently to coordinate efforts to ensure we are able to actually meet those metrics by March 22nd.

I request you fulfill your commitment and take this meeting as scheduled and apprise us as is generally prescribed in your duties as Director of the Yakima Health District.

Please let me know how I can be in further service to you, I am here to help.

Best wishes,



Amanda McKinney
Commissioner District 1
Board of Yakima County Commissioners
509-424-0043
www.Facebook.com/CommissionerAmandaMcKinney
www.yakimacounty.us

This email is subject to disclosure as a public record under the Public Records Act, RCW Chapter 42.56

"The preservation of the sacred fire of liberty, and the destiny of the republican model of government, are justly considered deeply, perhaps as finally, staked on the experiment entrusted to the hands of the American people." — George Washington

From: Julie Lawrence <julie.lawrence@co.yakima.wa.us>
Sent: Thursday, March 11, 2021 11:09 PM
To: Ron Anderson <Ron.Anderson@co.yakima.wa.us>; LaDon Linde <ladon.linde@co.yakima.wa.us>; Amanda McKinney <amanda.mckinney@co.yakima.wa.us>; Craig Warner <craig.warner@co.yakima.wa.us>; Don Anderson <don.anderson@co.yakima.wa.us>
Subject: Fwd: COVID-19 Commissioner Update

Please see Andre's message below.

Get [Outlook for iOS](#)

From: Andre Fresco <andref@co.yakima.wa.us>
Sent: Thursday, March 11, 2021 10:49:02 PM
To: Julie Lawrence <julie.lawrence@co.yakima.wa.us>
Subject: COVID-19 Commissioner Update

Hi Julie,

I've canceled my attendance at tomorrow's meeting, as we are now successfully moving to Phase 3. Tomorrow is busy, as our goal at the Health District is to begin actively planning for Phase 3 activities as well as new tiers for vaccine distribution. Would you please convey this to the Commissioners.

My thanks,
Andre



EXHIBIT D

13

~~12~~

Girard, Angie

From: Amanda McKinney <amanda.mckinney@co.yakima.wa.us>
Sent: Monday, January 25, 2021 8:03 AM
To: Ryan Ibach
Subject: Re: YHD Board Resolution
Attachments: image001.png

Great, I just sent a Team invite.

Best wishes,

Amanda McKinney
Commissioner, District 1
Board of Yakima County Commissioners
c 509.424.0043
o 509.574.1500
www.yakimacounty.us
www.facebook.com/CommissionerAmandaMcKinney

This email is subject to disclosure as a public record under the Public Records Act, RCW Chapter 42.56

"The **preservation of the sacred fire of liberty**, and the **destiny of the republican model of government**, are justly considered deeply, perhaps as finally, staked on the experiment entrusted to the hands of the American people." – George Washington

On Jan 24, 2021, at 9:48 PM, Ryan Ibach <ryan.ibach@co.yakima.wa.us> wrote:

Good evening Amanda. I have time at 10:30 tomorrow.

<image001.png> **Ryan Ibach, R.S.**
Chief Operating Officer
Yakima Health District
Phone: 509-249-6521 | Fax: 509-249-6621
www.yakimapublichealth.org

From: Amanda McKinney <amanda.mckinney@co.yakima.wa.us>
Sent: Sunday, January 24, 2021 8:52 PM
To: Ryan Ibach <ryan.ibach@co.yakima.wa.us>
Subject: Re: YHD Board Resolution

Hello Ryan, thank you for following up. Do you have time between 10-11am tomorrow to talk via teams?

Best wishes,

Amanda McKinney

Commissioner, District 1

Board of Yakima County Commissioners

c 509.424.0043

o 509.574.1500

www.yakimacounty.us

www.Facebook.com/CommissionerAmandaMcKinney

This email is subject to disclosure as a public record under the Public Records Act, RCW Chapter 42.56

"The preservation of the sacred fire of liberty, and the destiny of the republican model of government, are justly considered deeply, perhaps as finally, staked on the experiment entrusted to the hands of the American people." – George Washington

On Jan 23, 2021, at 7:10 PM, Ryan Ibach <ryan.ibach@co.yakima.wa.us> wrote:

Good evening Amanda. In regards to your email below, knowing that you haven't had the opportunity to go through the new Board of Health member orientation that we have discussed, I have several questions, that I am hoping we can talk about, in regards to the due process that has existed in the past. Here are my questions and concerns:

- Should a request to draft a Board of Health resolution come from the Board of Health?
- Should the decision to draft a resolution be discussed and approved during a Board of Health meeting that is open to the public?
- Does a Board of Health resolution need to be reviewed by the Yakima Health District/Board of Health assigned counsel instead of the County assigned counsel?
- Should the Board of Health members have input as to what should be included in a Board of Health draft resolution?
- Have the other three current Board of Health members been made aware of this request? I am asking because this was not mentioned in the email below and they were not Cc'd in that email.
- You mentioned to send a copy of the Board of Health draft resolution to the BOCC but should we send a Board of Health draft resolution to the Board of Health?
- The County assigned counsel was Cc'd on the below email but I noticed that the assigned counsel for the Yakima Health District/Board of Health was not included in that email.

In 2018, Commissioner Mike Leita and I were assigned to work together to simultaneously draft both the County Ordinance and the Board of Health Resolution so

that the Board of County Commissioners, the Board of Health, and Yakima Health District staff could all address any concerns, have adequate input and work in partnership to create 2 documents that mirrored each other. In order to improve communication and transparency, I just want to make sure we are all on the same page. I am looking forward to talking to you more about this matter.

<image005.png> Ryan Ibach, R.S.
Chief Operating Officer
Yakima Health District
Phone: 509-249-6521 | Fax: 509-249-6621
www.yakimapublichealth.org

From: Amanda McKinney <amanda.mckinney@co.yakima.wa.us>
Sent: Tuesday, January 19, 2021 11:28 AM
To: Ryan Ibach <ryan.ibach@co.yakima.wa.us>
Cc: Don Anderson <don.anderson@co.yakima.wa.us>; Joseph Brusic <josephb@co.yakima.wa.us>
Subject: YHD Board Resolution

Good morning Ryan,

I am following up on Ordinance 1-2021 which will require a sister Resolution to be drafted for review and approval by the Yakima Health Board during the next regular board meeting on January 27, 2021. I am requesting that you please send a copy of the draft resolution to the BOCC and include assigned counsel Mr. Brusic and Mr. Anderson for review to ensure the resolution appropriately addresses the amendments resolved. A copy of the Ordinance was provided to you on January 6, 2021. I have attached a copy again for convenience. Thank you in advance for assisting with this Resolution.

Please let me know how I can be in further service to you, I am here to help.

Best wishes,

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Amanda McKinney

Commissioner District 1

Board of Yakima County Commissioners

EXHIBIT E

(17)
(17)

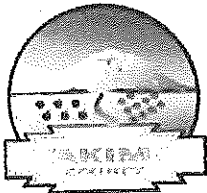
Girard, Angie

From: LaDon Linde <ladon.linde@co.yakima.wa.us>
Sent: Monday, January 25, 2021 10:09 AM
To: Ryan Ibach
Subject: BOH Resolution

Good morning Ryan,

The Yakima County BOCC would like a draft resolution mirroring our recently-passed ordinance regarding the appointment process for members of the Yakima Health District Board and the hiring process for the Executive Director and Health Officer to be presented at our Wednesday Board of Health meeting. As Commissioner McKinney has requested. We have spoken about this as a board and are in agreement.

Thanks,



LaDon Linde
Commissioner District 3
Board of Yakima County Commissioners
509-574-1500

www.yakimacounty.us

This email is subject to disclosure as a public record under the Public Records Act, RCW Chapter 42.56

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EXHIBIT F

EXHIBIT A

**Chapter 6.04
COUNTY HEALTH DISTRICT**

Sections:

- 6.04.010 Membership – Appointment – Term – Compensation – Reimbursement of Expenses.**
- 6.04.020 Fund Established.**
- 6.04.030 Officer Appointment.**
- 6.04.040 Payroll.**
- 6.04.050 Claims Payment.**
- 6.04.060 Meetings.**
- 6.04.070 Food Permit Transfer.**
- 6.04.080 Budget Adoption.**

~~Section 1. Yakima County Code section 6.04 are hereby amended as follows:~~ **6.04.010 Membership – Appointment – Term – Compensation – Reimbursement of Expenses.**

(1) The district ~~h~~Board of ~~h~~Health of the health district of Yakima County shall consist of the following seven members, each of whom shall have one vote, except the chair of the Board of Health, who shall have two votes:

- (a) Three members of the board of county commissioners, one of whom shall be elected as chair of the Board of Health for a one-year term, not to exceed four consecutive terms;
- (b) Two elected officials of the cities and towns within Yakima County to be nominated by the nominating committee and appointed by the ~~h~~Board of ~~h~~Health to represent the collective interests of all cities within Yakima County; and
- (c) Two citizens from within Yakima County with an interest in public health to be nominated by the nominating committee and appointed by the ~~h~~Board of ~~h~~Health for four-year terms, which terms shall be staggered so that every two years one of such terms shall expire. A citizen may serve no more than two consecutive four-year terms.

(d) Appointment process for elected city officials and citizen representatives will follow procedures as outlined in Yakima Health District Board of Resolution 2018-3, as amended consistent with this Section.

(2) Elected officials shall be appointed by the Board of Health after all of the following steps have been completed:

(a) The Yakima Health District has made the cities and towns in Yakima County aware of a vacant position by promoting and seeking qualified candidates;

(b) Interested candidates have submitted letters of qualification and interest within 30 days of the announcement that the position is vacant;

(c) The nominating committee has reviewed the submitted letters, conducted interviews and has nominated candidates to the Board of Health for consideration;

(d) The Board of Health has reviewed the submitted letters and interviewed the nominated persons; and

(e) The Board of Health, by a majority vote, has selected a candidate to serve a term on the Board of Health.

~~For purposes of this section, "elected official" shall include an official appointed to an elected position.~~

(3) Each elected ~~official~~ members shall serve a term of two years at the pleasure of the entity or entities appointing ~~them~~ him/her. Consecutive terms are allowed, but in no event may a member serve beyond the term of the elective office which qualifies him or her to serve on the board of health: provided, that no elected official is eligible for appointment to the Board of Health if his/her elected term expiration date would leave a mid-term vacancy on the Board of Health. An elected official may serve no more than four consecutive two-year terms.

(4) The Yakima County Coroner shall serve as an ex-officio member of the Board of Health. The Coroner shall not have voting privileges, shall not be included in the count when determining the number needed for a quorum and shall not be counted when determining if a quorum is present.

(5) For purposes of this Section, the following terms shall be defined as follows:

(a) "Elected official" shall include an official appointed to an elected position; and

(b) "Nominating committee" shall mean the Board of Yakima County Commissioners.

(6) Neither the Yakima County Health District nor the Yakima Board of Health shall create any committee or sub-committee which creates or enforces any policy except as expressly provided by chapter 70.05 RCW, chapter 70.46, chapter 70.02

RCW, chapter 43.20 RCW or chapter 43.70 RCW, without the approval of the Board of Yakima County Commissioners.

(7) All Board of Health committees shall include the members of The Board of Yakima County Commissioners, who shall also comprise the majority all such committees.

(48) No member shall receive compensation from the Yakima County health district for serving as a member of the board of health.

(Ord. 3-2000 § 1, 2000; Ord. 1-1996 § 1, 1996; Vol. W p. 342 (part), 1950).

6.04.020 Fund Established.

A fund to be designated as district health fund shall be established by the treasurer of Yakima County, Washington, who shall be the treasurer and custodian thereof, and in which said fund shall be placed all moneys received by the health district from any source and out of which shall be expended all moneys disbursed by the health district, in accordance with law.

(Vol. W p. 342 (part), 1950).

6.04.030 Health Officer Appointment.

A qualified physician, trained and experienced in public health, is appointed district Health Officer of the health district. In the event of a vacancy in the Health Officer position, a new Health Officer shall be appointed by the Board of Health after all of the following steps have been completed:

(1) The Yakima Health District has made the public aware of the vacancy by promoting and seeking qualified candidates;

(2) Interested candidates have submitted letters of qualification and interest within 30 days of the announcement that the position is vacant;

(3) The nominating committee has reviewed the submitted letters, conducted interviews and has nominated candidates to the Board of Health for consideration;

(4) The Board of Health has reviewed the submitted letters and interviewed the nominated persons; and

(5) The Board of Health, by a majority vote, has selected a candidate to serve as the Health Officer of the health district.

(Vol. W p. 342 §1, 1950).

6.04.035 Executive Director Appointment.

An Executive Director of the health district is appointed. The Executive Director shall act as executive secretary and administrative officer for Board of Health, and shall be responsible for administering the operations of the Board including such other administrative duties required by the Board of Health, except for duties assigned to the Health Officer as enumerated in RCW 70.05.070 and other applicable state law.

22

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In the event of a vacancy in the Executive Director position, a new Executive Director shall be appointed by the Board of Health after all of the following steps have been completed:

(1) The Yakima Health District has made the public aware of the vacancy by promoting and seeking qualified candidates;

(2) Interested candidates have submitted letters of qualification and interest within 30 days of the announcement that the position is vacant;

(3) The nominating committee has reviewed the submitted letters, conducted interviews and has nominated candidates to the Board of Health for consideration;

(4) The Board of Health has reviewed the submitted letters and interviewed the nominated persons; and

(5) The Board of Health, by a majority vote, has selected a candidate to serve as the Executive Director of the health district.

6.04.040 Payroll.

Monthly payrolls of the health district may hereafter be certified for payment upon approval of the chairperson of the board of health, or such other member of the board of health as designated in the chairperson's absence.

(Vol. W p. 342 §2, 1950).

6.04.050 Claims Payment.

All claims against the health district shall be paid only upon approval of the executive director of the health district and a majority of the members of the board of health.

(Vol. W. p. 342 §4, 1950).

6.04.060 Meetings.

Regular meetings of the district board of health shall hereafter be held at the hour of 8:30am, upon the last Wednesday of each month, excepting when said day may fall upon a holiday, the regular meeting shall be held upon the day preceding; special meetings of the district board of health may be called at any time on order of the chairperson of the board of health, or at the request of any members thereof.

(Vol. W p. 342 §5, 1950).

6.04.070 Food Permit Transfer.

The maintenance and administration of the issuance and collection of food permits are transferred to the Yakima Health District.

To effectuate said transfer, books of receipts, applications, and permits are transferred from the possession of the board of county commissioners to the possession of Yakima Health District.

23

23

(Vol. VI p. 428 (part), 1961).

6.04.080 Budget Adoption.

Adoption of the annual budget of the health district shall require the presence of a quorum of members of the board of health and shall require the concurrence of a majority of those members present, and two-thirds of the county commissioners.

~~Section 2. This ordinance shall be effective immediately.~~

2+

2.4



**YAKIMA HEALTH DISTRICT
BOARD OF HEALTH**

**RESOLUTION APPROVING THE SELECTION
PROCESS FOR ELECTED CITY OFFICIALS AND
CITIZEN MEMBERS TO THE BOARD OF HEALTH**

Resolution 2018-03

WHEREAS, pursuant to RCW 70.05.030 allowing the board of county commissioners, at its discretion, to adopt an ordinance to provide for provisions of appointing a local health board; and

WHEREAS, pursuant to Board of Yakima County Commissioners Ordinance 2-2018 amending section 6.04.010 of Yakima County Code allowing the Yakima Health District board of health to appoint two elected city officials and two citizen representatives to the board of health; therefore

BE IT HEREBY RESOLVED, that elected city officials, to serve on the board of health, will be appointed by the members of the board of health after; the Yakima Health District has made the cities and towns in Yakima County aware of an open position by promoting and seeking potential candidates; after interested persons have submitted letters of qualification and interest; after board of health members have reviewed submitted letters and interviewed selected persons; and after board of health, by majority vote, have chosen a person to serve a term on the board of health; and

BE IT HEREBY FURTHER RESOLVED, that citizen representatives to serve on the board of health, will be appointed by members of the board of health after; the Yakima Health District has made the community aware of an open position by promoting and seeking potential candidates; after candidates have submitted letters of qualifications and interest; after the board of health members have reviewed submitted letters and interviewed selected candidates; and after the board of health, by majority vote, have chosen a person to serve a term on the board of health; and

BE IT HEREBY FURTHER RESOLVED, that any current board member may not vote on an open position in which they are a candidate.

PASSED AND ADOPTED this 25th day of April, 2018.

Gail Weaver
Chair of the Board, Gail Weaver

EXHIBIT G

26



**YAKIMA HEALTH DISTRICT
BOARD OF HEALTH**

**RESOLUTION APPROVING THE SELECTION
PROCESS FOR ELECTED CITY OFFICIALS AND
CITIZEN MEMBERS TO THE BOARD OF HEALTH**

Resolution 2018-03

WHEREAS, pursuant to RCW 70.05.030 allowing the board of county commissioners, at its discretion, to adopt an ordinance to provide for provisions of appointing a local health board; and

WHEREAS, pursuant to Board of Yakima County Commissioners Ordinance 2-2018 amending section 6.04.010 of Yakima County Code allowing the Yakima Health District board of health to appoint two elected city officials and two citizen representatives to the board of health; therefore

BE IT HEREBY RESOLVED, that elected city officials, to serve on the board of health, will be appointed by the members of the board of health after; the Yakima Health District has made the cities and towns in Yakima County aware of an open position by promoting and seeking potential candidates; after interested persons have submitted letters of qualification and interest; after board of health members have reviewed submitted letters and interviewed selected persons; and after board of health, by majority vote, have chosen a person to serve a term on the board of health; and

BE IT HEREBY FURTHER RESOLVED, that citizen representatives to serve on the board of health, will be appointed by members of the board of health after; the Yakima Health District has made the community aware of an open position by promoting and seeking potential candidates; after candidates have submitted letters of qualifications and interest; after the board of health members have reviewed submitted letters and interviewed selected candidates; and after the board of health, by majority vote, have chosen a person to serve a term on the board of health; and

BE IT HEREBY FURTHER RESOLVED, that any current board member may not vote on an open position in which they are a candidate.

PASSED AND ADOPTED this 25th day of April, 2018.

Gail Weaver

Chair of the Board, Gail Weaver

EXHIBIT H

28

28

March 23, 2020 - March 29, 2020

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
										1	2	3	4
1	2	3	4	5	6	7	5	6	7	8	9	10	11
8	9	10	11	12	13	14	12	13	14	15	16	17	18
15	16	17	18	19	20	21	19	20	21	22	23	24	25
22	23	24	25	26	27	28	26	27	28	29	30		
29	30	31											

Monday, March 23

- 8:00am - 5:00pm CMRS: COVID-19 State of Emergency Study Session ☑
- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 9:00am - 10:00am CMRS: Study Session Situation Updates (BOCC Conference Room/ Microsoft Teams) - Commissioners Calendar ☑
- 1:00pm - 2:00pm Call-In COVID-19 Communication (Call in 1-509-574-2920 PIN 2920#) - Commissioners Calendar

Tuesday, March 24

- 8:00am - 5:00pm CMRS: COVID-19 State of Emergency Study Session ☑
- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 9:00am - 10:00am CMRS: Study Session Situation Updates (BOCC Conference Room/ Microsoft Teams) - Commissioners Calendar ☑
- 10:00am - 10:30am CMRS: Study Session COVID-19 Grants (BOCC Conference Room / Teams Meeting) - Commissioners Calendar
- 11:00am - 12:00pm WA State DOH and the State EOC will be hosting a local government briefing - Commissioners Calendar

Wednesday, March 25

- 8:00am - 5:00pm CMRS: COVID-19 State of Emergency Study Session ☑
- 8:00am - 8:30am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 8:30am - 11:00am CMRS: HEALTH DISTRICT BOARD VIA CONFERENCE CALL (Health District) - Commissioners Calendar ☑
- 1:00pm - 2:00pm CMRS: Study Session Public Services (BOCC Conference Room) - Commissioners Calendar
- 2:00pm - 3:00pm CMRS: Study Session Situation Updates (BOCC Conference Room/ Microsoft Teams) - Commissioners Calendar ☑
- 5:30pm - 7:00pm CMRS: Central Washington Chamber of Commerce Meeting-CWHCC (10 North 9th Street Yakima Holiday Inn) ☑

Thursday, March 26

- 8:00am - 5:00pm CMRS: COVID-19 State of Emergency Study Session ☑
- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 9:00am - 10:00am CMRS: Study Session Situation Updates (BOCC Conference Room/ Microsoft Teams) - Commissioners Calendar ☑
- 10:00am - 11:00am CMRS: Daily Briefing with Clerk & Agenda Overview (BOCC Conference Room) - Commissioners Calendar ☑
- 11:00am - 12:00pm CMRS: STUDY SESSION Director Updates (BOCC Conference Room) - Commissioners Calendar ☑

Friday, March 27

- 8:00am - 5:00pm CMRS: COVID-19 State of Emergency Study Session ☑
- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 9:00am - 10:00am CMRS: Study Session Situation Updates (BOCC Conference Room/ Microsoft Teams) - Commissioners Calendar ☑

Saturday, March 28

Sunday, March 29

- 8:00am - Calendar is published on Fridays. The Calendar is subject to change. Call (509) 574-1500 to confirm meeting dates/times. ☑

March 30, 2020 - April 5, 2020

March 2020

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

April 2020

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Monday, March 30

- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 9:30am - 10:00am CMRS: 9:30 AM Agenda Review and HR Matters ☑
- 10:00am - 5:00pm CMRS: COVID-19 State of Emergency Study Session ☑

Tuesday, March 31

- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 9:00am - 9:30am CMRS: Pre-Agenda Briefing / Current Issues (BOCC Conference Room) - Commissioners Calendar ☑
- 10:00am - 10:30am AGENDA (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 11:30am - 5:00pm CMRS: COVID-19 State of Emergency Study Session ☑

Wednesday, April 1

- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 9:00am - 10:30am CMRS: Study Session Department Updates (Microsoft Teams Meeting) - Commissioners Calendar
- 10:30am - 5:00pm CMRS: COVID-19 State of Emergency Study Session ☑

Thursday, April 2

- 8:00am - 9:30am Law and Justice Committee (Large GAB Conference Room) - Jessica Humphreys
- 9:30am - 10:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 11:30am - 12:00pm CMRS: Agenda Overview - Commissioners Calendar ☑
- 1:00pm - 5:00pm CMRS: COVID-19 State of Emergency Study Session ☑
- 2:00pm - 3:00pm CMRS: Yakima Emergency Operations and Yakima Health District conference call (Conference Call) - Commissioners Calendar ☑

Friday, April 3

- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 9:00am - 10:30am CMRS: Study Session Department Updates (Microsoft Teams Meeting) - Commissioners Calendar
- 10:30am - 3:30pm CMRS: COVID-19 State of Emergency Study Session ☑
- 3:30pm - 4:30pm Coronavirus (COVID-19) – Webinar Information - Jaime Bodden

Saturday, April 4

Sunday, April 5

- 8:00am - Calendar is published on Fridays. The Calendar is subject to change. Call (509) 574-1500 to confirm meeting dates/times. ☑

(20)

April 6, 2020 - April 12, 2020

April 2020						May 2020							
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
												1	2
5	6	7	8	9	10	11	3	4	5	6	7	8	9
12	13	14	15	16	17	18	10	11	12	13	14	15	16
19	20	21	22	23	24	25	17	18	19	20	21	22	23
26	27	28	29	30			24	25	26	27	28	29	30
							31						

Monday, April 6

- 8:30am - 9:30am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 9:30am - 10:00am CMRS: 9:30 AM Agenda Review and HR Matters ☑
- 10:30am - 11:30am CMRS: Public Services Updates (Teams Meeting) - Commissioners Calendar ☑
- ☑ 1:00pm - 4:00pm CMRS: COVID-19 State of Emergency Study Session (Microsoft Teams Meeting) - Commissioners Calendar ☑

Tuesday, April 7

- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 9:00am - 9:30am CMRS: Pre-Agenda Briefing / Current Issues (BOCC Conference Room) - Commissioners Calendar ☑
- 10:00am - 11:30am AGENDA (TELECONFERENCE) - Commissioners Calendar ☑
- 1:00pm - 2:00pm CMRS: Study Session GMA (TELECONFERENCE) - Commissioners Calendar ☑
- ☑ 2:00pm - 4:00pm CMRS: COVID-19 State of Emergency Study Session (Microsoft Teams Meeting) - Commissioners Calendar ☑

Wednesday, April 8

- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- ☑ 9:00am - 4:00pm CMRS: COVID-19 State of Emergency Study Session (Microsoft Teams Meeting) - Commissioners Calendar ☑

Thursday, April 9

- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 9:30am - 10:30am CMRS: Daily Briefing with Clerk & Agenda Overview (BOCC Conference Room) - Commissioners Calendar ☑
- ☑ 11:00am - 1:00pm CMRS: COVID-19 State of Emergency Study Session (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 1:00pm - 2:00pm CMRS: Study Session re: farm worker housing (Microsoft Teams Meeting) - Commissioners Calendar
- 2:00pm - 3:00pm CMRS: Yakima Emergency Operations and Yakima Health District conference call (Conference Call) - Commissioners Calendar ☑

Friday, April 10

- 8:30am - 9:00am CMRS: YHD Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☑
- ☑ 9:00am - 3:30pm CMRS: COVID-19 State of Emergency Study Session (Microsoft Teams Meeting) - Commissioners Calendar ☑
- 3:30pm - 4:30pm Coronavirus (COVID-19) – Webinar Information - Jaime Bodden ☑

Saturday, April 11

Sunday, April 12

- 8:00am - Calendar is published on Fridays. The Calendar is subject to change. Call (509) 574-1500 to confirm meeting dates/times. ☑

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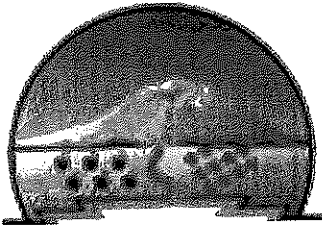
EXHIBIT I



Victoria Reyes
 Administrative Assistant
 Yakima Health District
 1210 Ahtanum Ridge Drive
 Union Gap, WA 98903
 Ph: (509) 249-6549 | F: (509) 249-6649
 "Prevention is our Business"

From: Julie Lawrence <julie.lawrence@co.yakima.wa.us>
Sent: Wednesday, December 2, 2020 10:15 AM
To: Victoria Reyes <victoria.reyes@co.yakima.wa.us>
Subject: RE: CMRS briefings

Thanks Victoria! Is there a reoccurring Zoom Meeting that I can add to the calendar?



Julie Lawrence
 Clerk of the Board
 Board of Yakima County Commissioners
 Yakima County Board of Equalization

From: Victoria Reyes <victoria.reyes@co.yakima.wa.us>
Sent: Wednesday, December 2, 2020 10:10 AM
To: Julie Lawrence <julie.lawrence@co.yakima.wa.us>
Subject: CMRS briefings

Good morning Julie,

Andre Fresco is requesting to not schedule a COVID-19 briefing on the days that there is a Board of Health meeting. That is the only date he cannot attend the 8 am meeting with the commissioners. The dates below are when we have our Board of Health meetings:

- January 27, 2021
- February 24, 2021
- March 31, 2021
- April 28, 2021
- May 26, 2021
- June 30, 2021
- July 28, 2021
- August 25, 2021
- September 29, 2021
- October 27, 2021
- December 1, 2021

Please let me know if you have questions or concerns, thank you,

33



Victoria Reyes

Administrative Assistant

Yakima Health District

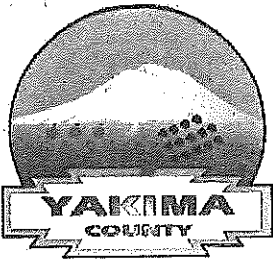
1210 Ahtanum Ridge Drive

Union Gap, WA 98903

Ph: (509) 249-6549 | F: (509) 249-6649

"Prevention is our Business"

EXHIBIT J



BOARD OF YAKIMA COUNTY COMMISSIONERS

Amanda McKinney
District 1

Ron Anderson
District 2

LaDon Linde
District 3

December 10, 2020.

Yakima Health District
Andre Fresco, Director
Gail Weaver, Board Chair
Members, Board of Health

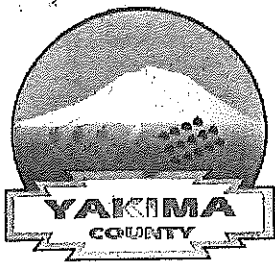
Dear Sirs/Madams,

The Board of Yakima County Commissioners (BOCC) writes to express its concerns associated with RCW Chapter 70.05, Board of Yakima County Commissioners Ordinance 2-2018 and Yakima Health District (YHD) Board Resolution 2018-03. In particular, the BOCC wishes to address the sequence of events occurring at, and following, the recent Yakima Health Board public meeting on December 2, 2020. Specifically, the BOCC finds the call for a vote on re-appointment of members to the Board of Health (BOH) was done in a manner inconsistent with YHD Resolution 2018-03. This resolution expressly states appointments will be made after "...Yakima Health District has made cities and towns/community in Yakima County aware of an open position by promoting, seeking potential candidates..." Additionally, the BOH moved to appoint a slate of candidates rather than each member independently, and allowed members with expiring seats to vote in favor of their own re-appointment, both of which are in violation of YHD Board Resolution 2018-03.

Subsequently on Friday, December 4, Director Fresco contacted by phone each member of the Board of County Commissioners to notify the Board that YHD would be remedying these violations and publicly posting the vacancies to the public for no less than 30 days. During this call, Director Fresco voluntarily divulged there has traditionally been an informal selection committee which seeks and reviews applications for both BOH member positions and District Health Officer.

While we believe the former issue will be remedied in a manner satisfactory to the Board of County Commissioners, the latter raises a significant question as to the validity of the search process, vetting and overall appropriateness for the Board of Health to hold a vote to affirm a contractual agreement with proposed interim Health Officer, Dr. Jecha. While Dr. Jecha's willingness to serve our community, and likewise many others, and his knowledge in the field is acknowledged and appreciated, there is a high level of scrutiny on the function of our Health District, and therefore it is incumbent upon the entire Board of Health to be involved as required by law in the selection process to ensure the community has a voice through their appointed representatives. There is no enumeration of powers delegated to an informal selection committee in any State, County or YHD document. To the contrary, RCW 70.05.060 states that "Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction..."

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BOARD OF YAKIMA COUNTY COMMISSIONERS

Amanda McKinney
District 1

Ron Anderson
District 2

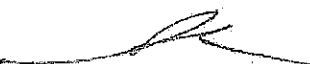
LaDon Linde
District 3

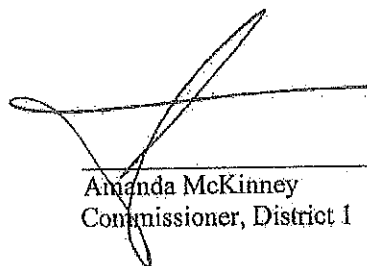
Because Director Fresco has acknowledged that the entire Board of Health was not involved in the recruitment, interviewing, reviewing of documents and vetting of Dr. Jecha, nor any other candidates, and given the extremely sensitive nature of the position, the Board of County Commissioners advises that all laws, ordinances and resolutions must be followed prior to the approval of a contract with an Interim Health Officer.


The Board of County Commissioners further advises that Director Fresco publicly post the position of Health Officer for the Yakima Health District at his earliest convenience for a time period of no less than two weeks. Upon the close of that time period, the Board of Health will be given the opportunity to review applications and conduct interviews, and within 30 days of the close of the job posting, shall convene a special meeting to vote on approval to enter into a contract with new Health Officer.

The Board of County Commissioners wishes to convey its gratitude to Dr. Jecha for his desire to serve as Health Officer to the community of Yakima County, and the BOCC welcomes his application in a new selection process that is consistent with the RCWs which govern the Yakima Health District, the local Yakima Board of Health and the appointment of a Health Officer.

Sincerely,


Ron Anderson
Chairman of the Board
Commissioner, District 2


Amanda McKinney
Commissioner, District 1


LaDon Linde
Commissioner, District 3

(37)

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EXHIBIT K

38

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YAKIMA HEALTH DISTRICT

Prevention Is Our Business

3. **Review of Submitted Public Written Comments** – 28 written comments that were submitted by members of the public were read by Ryan Ibach, Chief Operating Officer. Submitted comments are available upon request.

<p>4. CONSENT AGENDA: MOTION Vice Chair Ron Anderson entertained a motion to approve the January 27, 2021 Yakima Health District Consent Agenda.</p>	<p>MOVE TO APPROVE: Amanda McKinney SECOND: LaDon Linde <input checked="" type="checkbox"/> <i>Approved</i> <input type="checkbox"/> <i>Declined</i> <input type="checkbox"/> <i>Amend</i></p>
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The following items were adopted upon approval of the consent agenda:

- December 2, 2020 Yakima Health District Board of Health minutes.
- December 17, 2020 Board of Health Special Meeting minutes.
- Approval of accounts payable and payroll issued in November 2020 in the amount of \$616, 618.52 and December 2020 in the amount of \$1,097,029.38.

5. **BOARD BUSINESS:** Andre Fresco, Yakima Health District (YHD) Executive Director

Recognition of Mayor Barbara Harrer

Andre Fresco recognized the work and dedication of Barbara Harrer, who served on the Board for over forty years. A plaque will be given to Mayor Harrer and a portrait will be mounted in the Executive Conference room at the health district, as a thank you for her service to our Board and community.

Appointment of Board of Health Members

Andre Fresco shared his appreciation for those who applied for the Citizen Representative position and the City Representative positions, all of whom were extremely qualified. Ryan Ibach stated a total of 17 candidates applied for the position. All 17 candidates were given the opportunity to participate in an interview, except for two candidates who declined to proceed. Interviews were conducted by the Board of Health Interview Committee members, Ryan Ibach, Amanda McKinney, and Dr. Sean Cleary. The seven candidates for the city representative positions are: Patricia Byers, Naila Duval, Beth Husted, Jose Trevino, Julie Shilling, Dr. Kay Funk, and Barbara Harrer. Those who applied for the citizen position are: Chris Schmelzer, Dr. Dave Atteberry, Gail Weaver, Guadalupe V. Huitron-Lilly, Jodi Daly, Joel Thome, Lyndsey Bazan, Peggy Steere, Dr. Raul Garcia, and Ronda Edwards. Ryan Ibach asked the Board to vote via email to himself and Victoria Reyes.

EXHIBIT L

(40)

(10)

Girard, Angie

From: Andre Fresco <andref@co.yakima.wa.us>
Sent: Sunday, January 10, 2021 9:22 PM
To: Amanda McKinney
Subject: Commissioner Meetings

Commissioner McKinney,

Given that the Yakima Health District currently has only four board members, I will not be able to continue to join you for Commissioner Meetings. This is due to the fact that the three county commissioners comprise a quorum of the Yakima Health District's Board of Health when meeting with me.

I will continue to make myself available to answer any questions you may have and am happy to contact you individually to discuss issues related to public health and specifically the COVID-19 response. Thank you in advance for your understanding.

Respectfully,
Andre

EXHIBIT M

42

(14)

Girard, Angie

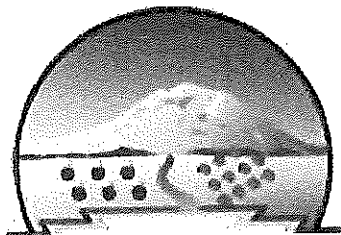
From: Julie Lawrence <julie.lawrence@co.yakima.wa.us>
Sent: Tuesday, January 12, 2021 11:38 AM
To: Andre Fresco; Ryan Ibach
Subject: BOH Study Sessions with Commissioners

Importance: High

Good morning all,

The Commissioners would like to continue COVID Briefings on Monday and Wednesday mornings. In addition to publishing notice of your regular monthly meetings, will you please publish notice of once-a-week study sessions, at which Andre and Tony Miller can provide COVID updates? All three would like to attend on Mondays, which would require that both BOH and BOCC publish notice. Commissioner Linde has also asked that the Wednesday briefing continue - He would be the only Commissioner in attendance, so there would be no need to publish notice for that meeting. Please let me know if you have any questions!

Thanks,



Julie Lawrence

Clerk of the Board

Board of Yakima County Commissioners

Yakima County Board of Equalization

(43)

EXHIBIT N

44

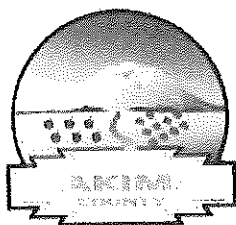
Girard, Angie

From: Julie Lawrence <julie.lawrence@co.yakima.wa.us>
Sent: Friday, January 15, 2021 4:03 PM
To: Andre Fresco
Subject: RE: Monday's COVID Briefing

Hi Andre,

Thank you for your reply. Does this include the Wednesday morning meeting that only Commissioner Linde attends?

Thanks,



Julie Lawrence

Clerk of the Board
Board of Yakima County Commissioners
Yakima County Board of Equalization
509-574-1502 www.yakimacounty.us

This email is subject to disclosure as a public record under the Public Records Act, RCW Chapter 42.56

From: Andre Fresco <andref@co.yakima.wa.us>
Sent: Friday, January 15, 2021 3:55 PM
To: Julie Lawrence <julie.lawrence@co.yakima.wa.us>
Subject: RE: Monday's COVID Briefing

Julie,

Thank you for your email. Unfortunately, the Yakima Health District is unable to honor the request for a Board of County Commissioner update meeting. The issue is not simply the need for a public notice but also the fact that all Board of Health members would have to be invited to the meeting. This would then be a Board of Health meeting, not a Board of County Commissioners meeting.

I recognize the complexity of the situation and apologize for any inconvenience it creates. The Board of Health can certainly meet for special meetings in the future. But we would then be including our directors and the Health District's legal counsel to the meeting as well.

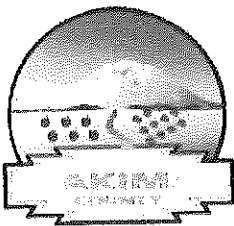
Respectfully,
Andre

From: Julie Lawrence <julie.lawrence@co.yakima.wa.us>
Sent: Friday, January 15, 2021 11:02 AM
To: Andre Fresco <andref@co.yakima.wa.us>; Antone Miller <antonem@co.yakima.wa.us>
Subject: Monday's COVID Briefing

Good morning,

Is the COVID Briefing on Monday morning cancelled, due to the Holiday?

Thanks,



Julie Lawrence

Clerk of the Board

Board of Yakima County Commissioners

Yakima County Board of Equalization

509-574-1502 www.yakimacounty.us

This email is subject to disclosure as a public record under the Public Records Act, RCW Chapter 42.56

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EXHIBIT O

(47)



Girard, Angie

From: Don Anderson <don.anderson@co.yakima.wa.us>
Sent: Monday, January 11, 2021 9:01 AM
To: Ron Anderson
Cc: LaDon Linde; Andre Fresco; Joseph Brusic
Subject: RE: Commissioner Meetings

Ron,

To make BOH meeting notices orderly, the BOH: 1) would continue to publish notice of its monthly regular meetings; and 2) publish notice of the dates for one (or more) study sessions each week. Obviously, it would probably make sense to only have one BOH "study session" per week, rather than three or more. The BOCC, acting as the BOH, would also need to publish notice of all such meetings and study sessions.

Don

Don L. Anderson
Chief Civil Deputy Prosecuting Attorney
Corporate Counsel Division
Yakima County Prosecutor's Office
128 North 2nd Street, Room 211
Yakima, WA 98901
☎: 509-574-1206
✉: don.anderson@co.yakima.wa.us

From: Don Anderson
Sent: Monday, January 11, 2021 8:14 AM
To: Ron Anderson <Ron.Anderson@co.yakima.wa.us>
Cc: LaDon Linde <ladon.linde@co.yakima.wa.us>; Andre Fresco <andref@co.yakima.wa.us>
Subject: RE: Commissioner Meetings

Ron,

That is up to you. Another approach would be to have the Board of Health publish notice of the morning COVID update meetings with Andre and Tony. If the BOH did so, then all three Commissioners could attend.

Don

From: Ron Anderson <Ron.Anderson@co.yakima.wa.us>
Sent: Monday, January 11, 2021 7:21 AM
To: Don Anderson <don.anderson@co.yakima.wa.us>
Cc: LaDon Linde <ladon.linde@co.yakima.wa.us>; Andre Fresco <andref@co.yakima.wa.us>
Subject: FW: Commissioner Meetings

Don,
Given this, can we assign one commissioner to the morning call meetings?

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EXHIBIT P

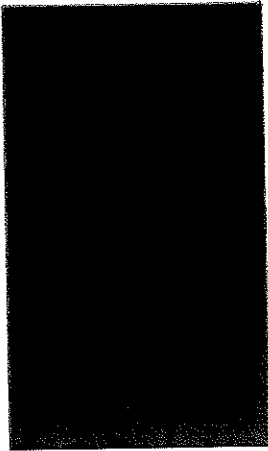
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YAKIMA COUNTY

Government Services Law & Justice Community How Do I?



• 11 Coronet	• <u>Notice</u>	105
• 12 Corrections	• <u>12.15.20 Proclamation</u>	1052
• 13 County Clerk's Office	• <u>12.15.20 Proclamation</u>	1052
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• 30 Weekly Calendar		
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English Language - 3

COVID-19 INFORMATION

Yakima County Information & Data

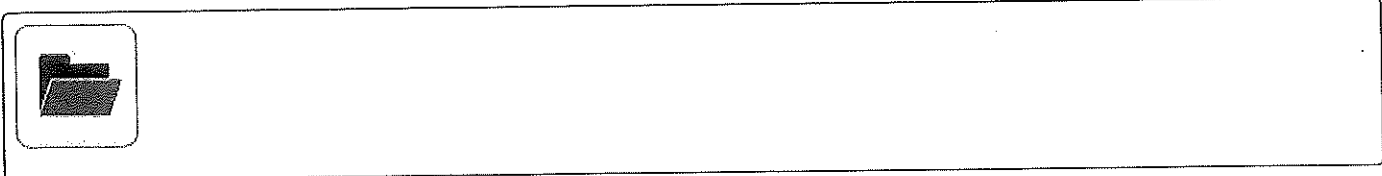


YAKIMA COUNTY

Government Services Law & Justice Community How Do It?

- Assigned Counsel
- Auditor
- Building & Fire Safety
- Coroner
- Corrections
- County Clerk's Office
- County Commissioners
 - Board of Equalization
 - Claims
 - Commissioners Audit
 - County Budgets
 - County Code
 - Financial Reports
 - Misc
 - Notices
 - Ordinance
 - Petites
 - Press Releases
- Published Public Notices
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Display Name	520 (RB)
1.12.21 Notice to Holders	65
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25.2021 RC12 - Reopen 2021 Vacate and Set Public Hearing Legal Notice (Michela)	68
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- Assessor
- Assigned Counsel
- Auditor
- Building & Fire Safety
- Coroner
- Corrections
- County Clerk's Office
- County Commissioners
 - Board of Equalization
 - Claims
 - Commissioners Audio
 - County Budgets
 - County Code
 - Financial Reports
 - Misc.
 - Notices
 - Ordinance
 - Policies
 - Press Releases
 - Published Public Notices
 - 2020 Published Legal No
 - 2021 Published Legal No
 - South Central Workforce Dr
 - Weekly Calendar
- Court Services
- COVID-19
- DRYVE - Driving Rural Yakima
- Emergency Management
- Facilities
- Franchise Services
- General Public Services
- GIS
- Groundwater Management A
- Health District
- Horticulture
- HSD COVID-19
- Human Resources

1

Displaying items 1 - 10 of 10

Display Name	Size (KB)
<u>Solid Waste Litter- Pickup Notice To Proposers</u>	76
<u>RESOLUTION for Public Hearing of Franchise for the Town of Harrah Legal Notice (franchise 03-2020)(Star)</u>	105
<u>Public Notice 30-2021 Dog Control</u>	63
<u>Notice of Public Hearing 73-2021</u>	96
<u>Notice of Intent - Release Funds Treener Water System (Joe)</u>	113
<u>46-2021 RESO - Lowrie 2021 Vacate and to set Public Hearing Legal Notice (Michele)</u>	67
<u>45-2021 RESO - Borton 2021 Vacate and Set Public Hearing Legal Notice (Michele)</u>	68
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<u>2.2.21 Notice to Bidders - Purchase of 2021 Gravel Road Stabilization Material</u>	66
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▼ Board of Commissioners

2021 2020

Agenda	Minutes	Media	Download
<u>Feb (February) 9, 2021</u> — Amended <u>Feb (February) 8, 2021</u> 9:26 AM <i>Board of Yakima County Commissioners Regular Agenda Meeting</i>			
<u>Feb (February) 2, 2021</u> — Posted <u>Jan (January) 28, 2021</u> 2:46 PM <i>Board of Yakima County Commissioners Regular Agenda Meeting</i>			
<u>Jan (January) 26, 2021</u> — Posted <u>Jan (January) 21, 2021</u> 2:52 PM <i>Board of Yakima County Commissioners Regular Agenda Meeting</i>			
<u>Jan (January) 19, 2021</u> — Posted <u>Jan (January) 14, 2021</u> 3:45 PM <i>Board of Yakima County Commissioners Regular Agenda Meeting</i>			
<u>Jan (January) 12, 2021</u> — Posted <u>Jan (January) 7, 2021</u> 1:27 PM <i>Board of Yakima County Commissioners Regular Agenda Meeting</i>			

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Agenda

Minutes

Media

Download

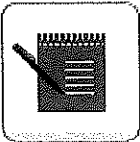
Jan (January) 5, 2021 — Posted Dec (December) 30,
2020 12:18 PM



*Board of Yakima County Commissioners Regular Agenda
Meeting*

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▼ Board of Commissioners

2020

Agenda	Minutes	Media	Download
<u>Dec (December) 29, 2020</u> — Posted <u>Dec (December) 22, 2020 3:58 PM</u> <i>Board of Yakima County Commissioners Regular Agenda Meeting</i>			
<u>Dec (December) 29, 2020</u> — Posted <u>Dec (December) 23, 2020 1:03 PM</u> <i>Special Agenda - Public Hearing to Consider Amending Yakima County Code Section 6.04 Regarding Provisions for the Appointment and Term of Members of the Yakima Board of Health</i>			
<u>Dec (December) 22, 2020</u> — Posted <u>Dec (December) 17, 2020 3:54 PM</u> <i>Board of Yakima County Commissioners Regular Agenda Meeting</i>			
<u>Dec (December) 15, 2020</u> — Posted <u>Dec (December) 10, 2020 4:03 PM</u> <i>Board of Yakima County Commissioners Regular Agenda Meeting</i>			
<u>Dec (December) 9, 2020</u> — Posted <u>Dec (December) 8, 2020 4:03 PM</u> <i>Special Agenda - Public Hearing for Consideration of the Final 2021 Budget</i>			

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Agenda	Minutes	Media	Download
<p><u>Dec (December) 8, 2020</u> — Posted <u>Dec (December) 3, 2020 4:02 PM</u> <i>Board of Yakima County Commissioners Regular Agenda Meeting</i></p>			
<p><u>Dec (December) 1, 2020</u> — Posted <u>Nov (November) 24, 2020 4:37 PM</u> <i>Board of Yakima County Commissioners Regular Agenda Meeting</i></p>			

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EXHIBIT Q

(57)

(57)

Girard, Angie

From: Andre Fresco <andref@co.yakima.wa.us>
Sent: Sunday, January 31, 2021 8:15 PM
To: LaDon Linde; Amanda McKinney; Ron Anderson; Julie Lawrence; Don Anderson; Craig Warner; Antone Miller
Subject: RE: CMR COVID updates

Yes, I plan to be on the call tomorrow morning.

Thank you,
Andre

From: LaDon Linde <ladon.linde@co.yakima.wa.us>
Sent: Sunday, January 31, 2021 5:57 PM
To: Amanda McKinney <amanda.mckinney@co.yakima.wa.us>; Andre Fresco <andref@co.yakima.wa.us>; Ron Anderson <Ron.Anderson@co.yakima.wa.us>; Julie Lawrence <julie.lawrence@co.yakima.wa.us>; Don Anderson <don.anderson@co.yakima.wa.us>; Craig Warner <craig.warner@co.yakima.wa.us>; Antone Miller <antonem@co.yakima.wa.us>
Subject: RE: CMR COVID updates

That sounds right to me. Hope to see/hear you all tomorrow morning!



LaDon Linde
Commissioner District 3
Board of Yakima County Commissioners
509-574-1500
www.yakimacounty.us
This email is subject to disclosure as a public record under the Public Records Act, RCW Chapter 42.56

From: Amanda McKinney <amanda.mckinney@co.yakima.wa.us>
Sent: Saturday, January 30, 2021 8:30 AM
To: Andre Fresco <andref@co.yakima.wa.us>; Ron Anderson <Ron.Anderson@co.yakima.wa.us>; LaDon Linde <ladon.linde@co.yakima.wa.us>; Julie Lawrence <julie.lawrence@co.yakima.wa.us>; Don Anderson <don.anderson@co.yakima.wa.us>; Craig Warner <craig.warner@co.yakima.wa.us>; Antone Miller <antonem@co.yakima.wa.us>
Subject: CMR COVID updates

Good morning Andre,

I would like to confirm the regular morning COVID updates will resume with your office beginning this Monday as we now have a full health board seated. I look forward to receiving your confirmation.

Best wishes,

Amanda McKinney
Commissioner, District 1
Board of Yakima County Commissioners

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EXHIBIT R

January 25, 2021 - January 31, 2021

January 2021							February 2021							
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	
					1	2			1	2	3	4	5	6
3	4	5	6	7	8	9	7	8	9	10	11	12	13	
10	11	12	13	14	15	16	14	15	16	17	18	19	20	
17	18	19	20	21	22	23	21	22	23	24	25	26	27	
24	25	26	27	28	29	30	28							
31														

Monday, January 25

- 8:30am - 9:00am CMRS: COVID-19 Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☺
- 9:00am - 11:00am CMRS: 9:00 AM Agenda Review and HR Matters ☺
- 3:30pm - 4:30pm CMRS: Study Session - Regarding Technology Services (Microsoft Teams Meeting) - Commissioners Calendar

Tuesday, January 26

- 9:00am - 9:30am CMRS: Pre-Agenda Briefing / Current Issues (Microsoft Teams Meeting) - Commissioners Calendar ☺
- 10:00am - 11:00am COMMISSIONERS WEEKLY AGENDA MEETING (Zoom; <https://zoom.us/j/94084501212?pwd=Q1VNdGVFcmJhTW9ORzREUUt1WWt2Zz09>) - Julie Lawrence ☺
- 1:00pm - 2:00pm CMRS: Quarterly Study Session - Facilities (Microsoft Teams Meeting) - Commissioners Calendar
- 2:00pm - 3:30pm CMRS: HR Study Session (Workforce Data) (BOCC Conference Room) - Commissioners Calendar

Wednesday, January 27

- 8:00am - 9:00am CMRS: COVID-19 Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☺
- 8:30am - 11:00am CMRS: January Board of Health Meeting (<https://zoom.us/j/98801022502?pwd=emVPZm51VjhRNDh4bU1LVnZSR3A3QT09>) - Victoria Reyes
- 1:00pm - 2:00pm CMRS: Jail Review (Microsoft Teams Meeting) - Commissioners Calendar
- 4:00pm - 5:00pm CMRS: Follow up on discussions with other PA's (Microsoft Teams Meeting) - Commissioners Calendar
- 5:30pm - 7:00pm CMRS: Central Washington Chamber of Commerce Meeting-CWHCC (10 North 9th Street Yakima Holiday Inn) ☺

Thursday, January 28

- 8:30am - 9:30am CMRS: Quarterly Study Session - Public Services (Microsoft Teams Meeting) - Commissioners Calendar

Friday, January 29

- 9:00am - 10:00am CMRS: Agenda Overview (Zoom Meeting) - Commissioners Calendar ☺

Saturday, January 30

Sunday, January 31

- 8:00am - Calendar is published on Fridays. The Calendar is subject to change. Call (509) 574-1500 to confirm meeting dates/times. ☺

February 1, 2021 - February 7, 2021

February 2021							March 2021								
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa		
		1	2	3	4	5	6			1	2	3	4	5	6
7	8	9	10	11	12	13	7	8	9	10	11	12	13		
14	15	16	17	18	19	20	14	15	16	17	18	19	20		
21	22	23	24	25	26	27	21	22	23	24	25	26	27		
28							28	29	30	31					

Monday, February 1

- 8:30am - 9:00am CMRS: COVID-19 Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☺
- 9:00am - 11:00am CMRS: 9:00 AM Agenda Review and HR Matters ☺
- 11:00am - 12:00pm CMRS: Study Session - Financial Services (Microsoft Teams Meeting) - Commissioners Calendar

Tuesday, February 2

- 8:00am - 9:00am Downtown Association of Yakima Community Breakfast (BOCC Members Attending) (2nd Street Grill) - Commissioners Calendar ☺
- 9:00am - 9:30am CMRS: Pre-Agenda Briefing / Current Issues (Microsoft Teams Meeting) - Commissioners Calendar ☺
- 10:00am - 11:00am COMMISSIONERS WEEKLY AGENDA MEETING (Zoom; <https://zoom.us/j/94084501212?pwd=Q1VNdGVFcmJaTW9ORzREUUtUWw1ZzZz09>) - Julie Lawrence ☺
- 1:00pm - 2:00pm CMRS: Study Session w/ Matt Pietrusiewicz (Microsoft Teams Meeting) - Commissioners Calendar
- 2:00pm - 2:30pm CMRS: Study Session - Human Services (Microsoft Teams Meeting) - Commissioners Calendar
- 3:00pm - 4:00pm CMRS: Bi-Weekly Water Issues Study Sessions (Microsoft Teams Meeting) - Commissioners Calendar

Wednesday, February 3

- 8:00am - 9:00am CMRS: COVID-19 Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☺
- 1:00pm - 2:00pm CMRS: Jail Review (Microsoft Teams Meeting) - Commissioners Calendar
- 6:00pm - 8:00pm Footprinters (BOCC Members Attending) (Elks Club Selah) - Commissioners Calendar ☺

Thursday, February 4

- 9:00am - 10:00am CMRS: Quarterly Study Session - Facilities (Microsoft Teams Meeting) - Commissioners Calendar

Friday, February 5

- 8:30am - 10:00am HOLD - Commissioners Calendar
- 10:00am - 11:00am CMRS: Agenda Overview (Zoom Meeting) - Commissioners Calendar ☺

Saturday, February 6

Sunday, February 7

- 8:00am - Calendar is published on Fridays. The Calendar is subject to change. Call (509) 574-1500 to confirm meeting dates/times. ☺

(6)

EXHIBIT S

(62)

Please see Andre's message below.

Get [Outlook for iOS](#)

From: Andre Fresco <andref@co.yakima.wa.us>
Sent: Thursday, March 11, 2021 10:49:02 PM
To: Julie Lawrence <julie.lawrence@co.yakima.wa.us>
Subject: COVID-19 Commissioner Update

Hi Julie,

I've canceled my attendance at tomorrow's meeting, as we are now successfully moving to Phase 3. Tomorrow is busy, as our goal at the Health District is to begin actively planning for Phase 3 activities as well as new tiers for vaccine distribution. Would you please convey this to the Commissioners.

My thanks,
Andre

(63)

EXHIBIT T

(b4)

March 8, 2021 - March 14, 2021

March 2021							April 2021						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6					1	2	3
7	8	9	10	11	12	13	4	5	6	7	8	9	10
14	15	16	17	18	19	20	11	12	13	14	15	16	17
21	22	23	24	25	26	27	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28	29	30	

Monday, March 8

- 8:30am - 9:00am CMRS: COVID-19 Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☺
- 9:00am - 11:00am CMRS: 9:00 AM Agenda Review and HR Matters ☺
- 11:15am - 11:45am CMRS: Discussion-Dairy Track Out (Public Services) (PS ConfRm419) - Commissioners Calendar

Tuesday, March 9

- 9:00am - 9:30am CMRS: Pre-Agenda Briefing / Current Issues (Microsoft Teams Meeting) - Commissioners Calendar ☺
- 10:00am - 11:00am COMMISSIONERS WEEKLY AGENDA MEETING & PUBLIC HEARINGS (Zoom; <https://zoom.us/j/94084501212?pwd=Q1VNdGVFcmJaTW9ORzREUUtWWT2Zz09>) - Julie Lawrence ☺
- 11:00am - 11:30am CMRS: Public Services/BOCC briefing-County Surplus Property Recommendation (BOCC Conference Room) - Commissioners Calendar ☺
- 1:00pm - 5:00pm HOLD (Human Resources Conference Room) - Commissioners Calendar

Wednesday, March 10

- 8:00am - 9:00am CMRS: COVID-19 Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☺
- 5:30pm - 7:30pm March Board of Health Special Meeting (<https://zoom.us/j/97880534726?pwd=MytOWXVZb1VQRjU2cjJSaFg0YzZXdz09>) - Victoria Reyes

Thursday, March 11

Friday, March 12

- 8:30am - 9:00am CMRS: COVID Briefing (Microsoft Teams Meeting) - Commissioners Calendar ☺
- 9:00am - 10:00am CMRS: Agenda Overview (Zoom Meeting) - Commissioners Calendar ☺
- 10:00am - 10:30am Meeting w/ Chris Wickenhagen (HOME Program) (Microsoft Teams Meeting) - Commissioners Calendar
- 1:00pm - 5:00pm HOLD (Human Resources Conference Room) - Commissioners Calendar

Saturday, March 13

Sunday, March 14

- 8:00am - Calendar is published on Fridays. The Calendar is subject to change. Call (509) 574-1500 to confirm meeting dates/times. ☺

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EXHIBIT U

(b)

(1.5)

March 6, 2020



**OPEN PUBLIC MEETINGS ACT GENERAL GUIDANCE
FROM THE OFFICE OF THE ATTORNEY GENERAL
REGARDING THE CORONAVIRUS DISEASE (COVID-19) EVENT**

Some state and local agencies may be considering their options for how to conduct public meetings under the state's Open Public Meetings Act (OPMA) at RCW 42.30, during the outbreak of coronavirus disease 2019 (COVID-19) in Washington State. See also Governor's Proclamation 20-05 declaring a state of emergency in all counties and directing state resources to affected political subdivisions.

The current COVID-19 event may impact many state and local agencies, including governing bodies subject to the OPMA. This document provides general information about the OPMA from the Office of the Attorney General under RCW 42.30.210. This document is not legal advice or a legal opinion. An agency should consult with its assigned legal counsel if it has questions or needs legal advice or a legal opinion. State agencies should consult with their assigned Assistant Attorney General.

This document suggests general guidance, options and resources for agencies that are concerned about virus transmission and are seeking to reduce opportunities for such transmissions at public meetings governed by the OPMA. This guidance document for agencies and their attorneys addresses only the OPMA, and as of the events on the date above. Other laws may apply to some meetings of some agencies. In addition, depending upon the agency and its governing statutes, or agency resources, other options might be available at a particular agency.

This guidance provides information on the laws as of the date above. Later-enacted statutes, case law, or other legal developments may affect the analysis.

For more information about COVID-19, see this webpage of the Washington State Department of Health: <https://www.doh.wa.gov/Emergencies/Coronavirus>. Information about strategies to mitigate exposure is also available from many federal and local agencies.

1. In light of this COVID-19 event, what questions should the agency be asking itself if it has concerns about virus transmission at a public meeting and before it proceeds with holding a current meeting or schedules a future meeting, when the meeting is required to be open to the public under the OPMA?

We suggest that the agency should be considering at least the following:

- Does the governing body really need to hold the meeting at this time or are there matters that can wait or be set over to a future meeting?
- If so, can the meeting be cancelled or rescheduled? If an agency needs to cancel a regular meeting, it can wait until the next or a future regular meeting to conduct business (RCW 42.30.070, RCW 42.30.077), or it can schedule the items on the agenda of a future special meeting (RCW 42.30.080). (More details below.)
- If the governing body does need to meet, does it need to meet on all the agenda items? Could the number of agenda items be reduced so the governing body can make decisions only on the most urgent or time-sensitive or essential items, thus decreasing the time needed for the public meeting?
- If the governing body does need to meet to decide some matters, can it set up a conference call or other remote participation options for the members? (More details below.)
- If the governing body does need to meet to decide some matters, can it set up options (in addition to a meeting room location) where the public could choose to listen to the discussion such as via conference call or other remote alternatives, rather than attending a meeting in person? (More details below.)
- If there is information that could be distributed or made available in writing to the governing body and the public by agency staff and which does not need governing body action, can the staff provide that information without a discussion at a governing body's meeting? An example might be a staff briefing memo or an updated agency calendar of events.
- If the governing body accepts public comments at a meeting, can it strongly encourage written comments instead? (More details below.)

2. How does an agency reschedule or cancel a meeting under the OPMA?

The OPMA does not use the word "cancel." Some OPMA procedures appear to apply or may apply to rescheduled meetings. The OPMA does not provide specific direction on how to cancel or reschedule a meeting due to a situation such as the COVID-19 event. However, there are times at which an agency governing body must cancel or reschedule a meeting. Here is some suggested guidance.

Rescheduling ("Adjourning") a Meeting. The OPMA uses the word "adjourn" in RCW 42.30.090, which, as this Municipal Research and Services Center article describes, "can be really understood as rescheduling a meeting." Robert Sepler, "Windstorms, Blizzards and More: What Can Be Done When Weather-Related Issues Cancel a Public Meeting,"

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Dec. 5, 2016, available at <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/December-2016/When-Weather-Cancels-a-Public-Meeting.aspx>.

RCW 42.30.090 provides,

The governing body of a public agency may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the governing body may declare the meeting adjourned to a stated time and place. He or she shall cause a written notice of the adjournment to be given in the same manner as provided in RCW 42.30.080 for special meetings, unless such notice is waived as provided for special meetings. Whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

The MRSC article provides other suggestions on how to adjourn a meeting.

In addition, for state agencies that have filed a regular meeting schedule in the *Washington State Register* with the Code Reviser under RCW 42.30.075, that statute also provides, "Notice of any change from such meeting schedule shall be published in the state register for distribution at least twenty days prior to the rescheduled meeting date." See also WAC 1-21-076.

Cancelling a Meeting. The MRSC article also describes that while the OPMA does not require any specific procedure for canceling an upcoming meeting, the author recommends "providing notice of the cancellation to the public in the same manner that notice is given for a special meeting under RCW 42.30.080." It may be easier for an agency to simply cancel (rather than "adjourn" or reschedule) a meeting, and hold it later as a special meeting if the next appropriate date/time is not a regular meeting date/time.

- 3. Many governing bodies typically hold in-person meetings with most or all governing body members in physical (in-person) attendance at the agency designated meeting office or other meeting room. On occasion, some members participate by conference call. Can all governing body members participate by conference call?**

Yes. All governing members can participate by phone. While not required by the OPMA, it may be a good idea to note on the agenda that the members are participating by phone.

If a governing body has a policy about when it will permit telephone participation by its members, it may need to review that policy.

4. If some or all of the governing body members are participating remotely by phone, how does the public attend the meeting to observe?

The OPMA permits members of the public to attend governing body meetings. RCW 42.30.030. An agency cannot place conditions on attendance. RCW 42.30.040. When one or more governing body members participate remotely by phone, the agency needs to have a speakerphone available at an agency meeting location (agency office or other designated physical location) where the public can attend to listen to the discussion. AGO 2017 No. 4.

While a speakerphone and a meeting physical location are needed, the agency can look at options for additional means for the public to attend to observe, such as through phone call-in numbers the public can use, or real time streaming of the meeting online, or GoToMeeting, or similar remote means for the public to listen to the discussion.

If an agency has these additional means for the public to observe remotely (via phone, online, or otherwise), we suggest the agency provide public notice of that on the agenda, listing the details. It should also provide public notice of those options through other means, particularly if this is a new meeting process at the agency. Those public notices could be made, for example, on the agency's website, via email to stakeholders, social media postings, news releases, or other relevant or available means.

On those notices, the agency can also strongly encourage members of the public to use those alternate means of attending the meeting, rather than attending in person, given the current situation. The agency can also post that information (about how to attend remotely) at the physical location of the meeting where the speakerphone is set up.

However, under the OPMA, an agency cannot prohibit a member of the public from attending in person at the agency location where the speakerphone is set up, even if all governing body members are participating remotely.

5. What about public comment? How does an agency accomplish that remotely?

The OPMA does not require public comment. If an agency typically permits or wishes to permit public comment, it could consider accepting only written comments for the time being. An agency should consult with its assigned attorney if it is required through other laws outside the OPMA to accept public comment, and to determine if written comments are sufficient.

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If an agency does wish to solicit and accept written comments from the public, it should also provide information on how to do that in its public meeting notices.

6. Could the governing body remotely “meet” via an exchange of texts or emails, and then later make those records available to the public?

No. While those records would be public records, when a quorum collectively meets to conduct official agency business (“action”) it must do so in a public meeting where the public can attend, not by email or text. *See* RCW 42.30.010; RCW 42.30.030; *Wood v. Battle Ground School District*, 107 Wn. App. 550, 27 P.3d 1208 (2001); *see also* RCW 42.30.060(2) (no secret ballots).

7. Doesn’t the OPMA have other meeting procedures when there is an emergency that, in effect, suspend some of these requirements?

Yes, but those procedures are limited and they do not apply to all emergencies and may not apply to all governing bodies. What may be an emergency for one governing body that needs take expedited action in its jurisdiction (for example, perhaps a particular a health board) may not qualify as an emergency for a different governing body that is not required to take expedited action to meet or deal with the emergency (for example, perhaps a particular planning commission). The analysis will depend upon the law, the facts, and the authority of the particular governing body.

Regular Meetings. Specifically, the OPMA regular meeting statute at RCW 42.30.070 allows for an emergency meeting as follows:

- If, by reason of fire, flood, earthquake, or other emergency,
- there is a *need*
- *for expedited action*
- *by a governing body*
- *to meet the emergency,*
- the presiding officer of the governing body may provide for a meeting *site* other than the regular meeting site
- and the *notice* requirements of this chapter shall be suspended during such emergency.

(Emphasis added).

The fact that there is an emergency in the city or state (including one that has been declared by another agency), and which may impact the governing body in some way, may or may not mean there is a “need” for “expedited action” by that governing body itself to “meet the emergency.” As noted, the analysis would depend upon the facts and the authority of the governing body. Recall that an agency often has other choices, such as cancelling or rescheduling a meeting, or providing remote participation supplemental alternatives, if it determines that it wants to reduce opportunities for virus transmission at public meetings. Note that while the “meeting site” of a regular meeting may be changed, the same

procedures apply for having a speakerphone available if some governing body members are attending remotely. Currently, that speakerphone arrangement should not be an issue as many if not most agency staff and officials have cell phones and most cell phones have a speaker capability.

Special Meetings. Somewhat similarly, the special meeting statute at 42.30.080 provides that:

- 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.

(Emphasis added).

As with the regular meeting analysis, the fact that there is an emergency including one declared by some other agency may or may not mean the governing body has to “deal with” an emergency that involves injury or damage to persons or property or the likelihood of that, and that the usual notice procedures impede its ability to do that. Again, an agency may have options such as rescheduling or canceling a meeting, or providing remote supplemental participation alternatives. Moreover, again, any conclusions would be dependent upon the law, the facts and the authority of the governing body. Note that this statute concerns only the notices, and not a change in locations.

Court Decisions. While there is little case law on emergency meetings, the appellate courts have on two occasions looked at whether a situation is an emergency for a particular governing body.

In *Mead Sch. Dist. No. 354 v. Mead Educ. Ass’n*, 85 Wn.2d. 140, 530 P.2d 302 (1975), for example, the court held that the type of emergency contemplated by RCW 42.30.070 and RCW 42.30.080 to justify a meeting of a particular governing body without having to comply with the OPMA is a “severe one” that “involves or threatens physical damage” and requires urgent or immediate action by the governing body. In that case, a teachers’ strike did not justify an “emergency” meeting by the school board, under RCW 42.30.080. The court described:

The context and history of RCW 42.30.080 indicate that the “emergency” it contemplates is a severe one. The term is used in the parallel provision of RCW 42.30.070, which permits notice of scheduled meetings to be dispensed with in case of “fire, flood, earthquake, or other emergency . . .” The reference in RCW 42.30.080 is similar. Its emergency exception was

not included in the original version of the Open Public Meetings Act of 1971 submitted in the Senate. S. Jour. 704 (1971). It was added in response to the concern of several legislators that the notice requirement would be unworkable and unjustified in unusual circumstances. This difficulty was first expressed in debate on the Senate floor by Senator Scott, who noted that the restriction of business to matters mentioned in prior notices might hamstring agencies in their ability to respond expeditiously to unexpected developments:

If you have an emergent situation, and *I use the instance of a public utility district operation where you had a flash flood*, you would not be able to bring that up . (Italics ours.) S. Jour. 705 (1971).

...

In order to dispense with the notice required by RCW 42.30.080, therefore, an emergency must exist which involves or threatens physical damage. The circumstances must be unexpected and must call so urgently for action that even the 1-day delay the notice entails would substantially increase a likelihood of such injuries. The situation facing the Mead School District Board when it was called to meet on April 29, 1974 [to approve a lawsuit to stop the strike], was not this kind of emergency.

This constricted reading of the exception to the notice requirement of RCW 42.30.080 is justified, we believe, in light of the remedial purpose of the Open Public Meetings Act of 1971. RCW 42.30.910. The legislative command that the coverage of the act's provisions be "liberally construed" implies a concomitant intent that its exceptions be narrowly confined. The act is intended to guarantee public access to and participation in the activities of their representative agencies. RCW 42.30.010. The decisions of governmental bodies are usually important and the circumstances in which they are made are often pressing. Were we to allow them to escape public scrutiny by the simple expedient of declaring the situations they face emergent, we would subject the act's requirements to the whim of the public officials whose activities it is designed to regulate.

The *Mead* decision was discussed in the more recent unpublished Court of Appeals decision of *Hilliard v. Lewis County Water & Sewer District # 5*, 2019 WL 279846 (July 2, 2019). The court rejected the argument that the sewer and water board must formally "declare" an emergency. However, the court remanded the case to determine the facts concerning whether there was an actual emergency that permitted an emergency special meeting of that board under RCW 42.30.080. While this *Hilliard* decision is unpublished and cannot be cited as binding precedent, it does reflect that a court will look at whether the urgent matter qualifies as an emergency for a particular governing body.

EXHIBIT V



YAKIMA HEALTH DISTRICT

Prevention Is Our Business

The Board voted as follows:

Amanda McKinney:	City Representatives - <i>Patricia Byers and Julie Shilling</i> Citizen Representative - <i>Dr. Dave Atteberry</i>
LaDon Linde:	City Representatives - <i>Patricia Byers and Naila Duval</i> Citizen Representative - <i>Dr. Dave Atteberry</i>
Ron Anderson:	City Representatives – <i>Patricia Byers and Naila Duval</i> Citizen Representative – <i>Dr. Dave Atteberry</i>
Sean Cleary:	City Representatives – <i>Naila Duval and Julie Shilling</i> Citizen Representative – <i>Gail Weaver</i>

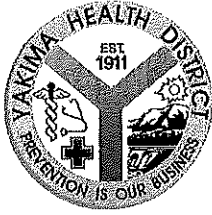
As a result, the Board appointed the following three members:

Mayor Patricia Byers for the City Representative
Councilwoman Naila Duval for the City Representatives
Dr. Dave Atteberry for the Citizen Representative

Board of Health Draft Resolution

Andre Fresco introduced YHD Attorney James Elliott to discuss the ordinance that was passed by the Commissioners on January 5, 2021. James discussed his draft resolution, that in his opinion falls legally under the authority of RCW 70.05.030 and RCW 70.05.040. Two issues that have caused public concern are the Chair of the Board, and the voting rights of the Board. James discussed the remaining five points: appointment process and terms of Board of Health members, adding the county coroner as an ex officio member, changes to the power to the Board of Health Committees, appointment process for the Health Officer, and appointment process of the Executive Director.

Discussion: Discussion from both James Elliott and the Board members regarding the voting rights of the Board and the rights the Commissioners have over the size and composition of the Board. James clarified that the composition of the Board is to legally have a majority of elected officials and changing that would be in violation of RCW 70.05.030. Per the county code, that was passed on January 5, 2021, the seven board members should each have one vote, except the Board chair, who will have two. James stated in his opinion, giving a second vote to the chair does not fit legally into the authority of RCW 70.05.030. Another point of discussion is per the county code 6.04.010, the Board chair shall be a county commissioner for a one year term and serve no more than four consecutive terms. James clarified that the Board of Health is not required to follow this per the wording in both RCW 70.05.030 and RCW 70.05.040. James Elliot clarified that this Board



YAKIMA HEALTH DISTRICT

Prevention Is Our Business

does not have the authority to change the county code that passed on January 5th, but can adopt a resolution that accepts a portion of that code or in its entirety.

<p>MOTION: Amanda McKinney motions to move on with the agenda and discuss the changes to the resolution at a different time.</p>	<p>MOVED: Amanda McKinney SECOND: Naila Duval <input checked="" type="checkbox"/> <i>Approved</i> <input type="checkbox"/> <i>Declined</i> <input type="checkbox"/> <i>Amend</i></p>
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Appointment of Board Chair and Vice Chair

Andre Fresco request the Board to appoint a Board Chair and Vice Chair. James Elliot reads RCW 70.05.040 which states a Board Chair is to be elected at the first meeting in a year.

<p>MOTION: Commissioner Amanda McKinney motions to nominate Commissioner Ron Anderson as Board Chair.</p>	<p>MOVED: Amanda McKinney SECOND: Patricia Byers <input checked="" type="checkbox"/> <i>Approved</i> <input type="checkbox"/> <i>Declined</i> <input type="checkbox"/> <i>Amend</i></p>
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<p>MOTION: Commissioner Amanda McKinney motions to nominate Dr. Sean Cleary as Vice Chair.</p>	<p>MOVED: Amanda McKinney SECOND: Dr. Dave Atteberry <input checked="" type="checkbox"/> <i>Approved</i> <input type="checkbox"/> <i>Declined</i> <input type="checkbox"/> <i>Amend</i></p>
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6. FINANCIAL REPORT: Chase Porter, Senior Finance Manager

November 2020 Budget Summary

We had a monthly gain in excess revenue of approximately \$80K, bringing our annual excess revenue to approximately \$931K.

November 2020 Revenue and Expenditures

- Annual budgeted revenues and expenditures are \$6.4M and \$6.8M, respectively.
- Year-to-date budgeted revenue and expenditures are \$5.9M and \$6.3M, respectively.
- Year-to-date actual revenue and expenditures are \$6.7M and \$5.8M, respectively

EXHIBIT W



Ask MRSC - Open Public Meetings Act FAQs

Below are some of the common and frequently asked questions we have received regarding the Open Public Meetings Act (OPMA) in Washington State.

It is part of MRSC's series on the [Open Public Meetings Act](#).

To view the answer to a question, simply click on the question. If your question is not addressed here or you wish to contact one of our staff attorneys directly, eligible government agencies can [Ask MRSC](#).

FAQs on Public Meetings During COVID-19 Outbreak

For answers to frequently asked questions related to public meetings during the COVID-19 pandemic and in response to the governor's emergency orders, see MRSC's [COVID-19 FAQs on Public Meetings and Public Hearings](#).

Is a Meeting Subject to the OPMA?

Are all gatherings of members of the governing board considered a "meeting?"

When is a governing body taking "action?"

Are social gatherings or other organizations' meetings subject to the OPMA?

Is a tour of a new business a public meeting subject to the OPMA?

If the governing body attends a training session, is it a public meeting subject to the OPMA?

Generally, no. [RCW 42.30.070](#) states that:

[i]t shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or a special meeting as these terms are used in this chapter: PROVIDED, That they take no action as defined in this chapter.

Additionally, per [Citizens Alliance v. San Juan County](#) (2015), passive receipt of emails or other one-way forms of communication are not participation in a meeting; such passive receipt of information does not demonstrate the necessary intent to meet.

FB

An attorney general opinion ([AGO 2006 No. 6](#)) concluded that a quorum of a city or county council attending a meeting that was not called by the council is not a meeting of the council and therefore not subject to the OPMA. However, if, while at the training the quorum of councilmembers discusses city business, that would be a violation of the OPMA. In [RCW 42.30.020\(3\)](#) "action" is defined broadly to include "deliberations, discussions, considerations, reviews, [and] evaluations"; therefore, this would encompass discussions among the quorum that occur while they attend a training.

If the training session is limited to the agency, and a quorum of the governing body attends, it would be prudent to treat it as a meeting subject to the OPMA because it is likely that the members would be discussing and considering agency business.

[\(Link to this question\)](#)

Meeting Procedures

[What can I do at a special meeting?](#)

[What can we do if someone is causing a disturbance during the meeting?](#)

[If a meeting is conducted by telephone or other remote software, does there have to be a physical location?](#)

Quorum

[Can the presence of an "ex-officio" member of a committee of the governing body transform the committee meeting into a meeting of the entire governing body?](#)

[What if I lose my quorum during a meeting?](#)

[What is a serial meeting?](#)

Committees and Advisory Boards

[When is an advisory board "acting on behalf" of the governing body \(and therefore subject to the OPMA\)?](#)

[Can a member of the governing body attend a meeting of a committee of the governing body if they are not assigned to that committee?](#)

Executive / Closed Sessions

[What is the difference between an executive session and a closed session?](#)

[Who decides who gets to attend an executive session?](#)

[Can an executive session be recorded?](#)

[Can we conduct interviews in executive session?](#)

[Can we discuss the city manager's performance evaluation/contract renewal/compensation in executive session?](#)

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6
7 **STATE OF WASHINGTON**
8 **YAKIMA COUNTY SUPERIOR COURT**

9 **ANGIE GIRARD, Citizen of Washington.**

10 **Plaintiff,**

11 vs.

12 **COUNTY OF YAKIMA, A Washington**
13 **County, YAKIMA COUNTY BOARD OF**
14 **COUNTY COMMISSIONERS, YAKIMA**
15 **COUNTY BOARD OF HEALTH, AND**
16 **LADON LINDE and AMANDA**
17 **MCKINNEY, in their individual and**
18 **personal capacities.**

19 **Defendants.**

No.

DECLARATION OF PLAINTIFF
ANGIE GIRARD

20 I, ANGIE GIRARD, declare under penalty of perjury in the State of Washington that the
21 following statements are true, based on my personal knowledge.

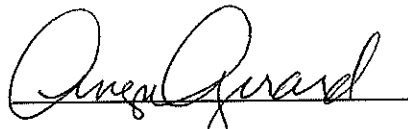
- 22 1. I am over the age of 18, I am competent to provide testimony in this matter, and I do so
23 based on my personal knowledge.
- 24 2. I am a resident of Yakima, WA, located in Yakima County. I have lived here almost my
25 entire life.
3. On March 14, 2021, I submitted a public records request under RCW 42.56 to the
Yakima Health District. (Annexed to the complaint as EXHIBIT B). I requested that if
any records were redacted that I be provided with an exemption log and reason for the

1 exemption under RCW 42.56.

2 4. The results of that records request contained various emails between Yakima county
3 commissioners and county staff, many of which are appended to my complaint.

4 5. I am a concerned citizen of Washington state and believe that there is ongoing harm to
5 the community and public interest due to past and ongoing violations of the Washington
6 Open Public Meetings Act ("OPMA") by the Defendants. I believe that our local Board
7 of Health is being dramatically overhauled outside of the public's view, and without a
8 meaningful opportunity for the public to participate, all in violation of the OPMA.
9

10 Executed at Yakima, WA, this 27th Day of April, 2021,

11 

12 Plaintiff Angie Girard

13 5201 Lincoln Avenue

14 Yakima, WA 98908

15 Phone: 509-969-7388