

# Schedule of Audit Findings

## City of Ocean Shores January 1, 2003 through December 31, 2004

### 1. The City of Ocean Shores did not comply with the Open Public Meetings Act.

#### Background

The City is governed by a Council which consists of a Mayor, a Mayor Pro Tem and three Council members. The City's regularly scheduled meetings are the second and fourth Mondays of the month.

#### Description of Condition

Our review of the record of meetings for the City Council from January 1, 2003, through May 5, 2005, identified a violation of Open Public Meetings Act requirements. We noted the following:

- On October 27, 2003, after convening from executive session, the Council directed the City Manager to offer the City Manager position to a candidate who was not identified by name, which is not in accordance with state law (RCW 42.30.110(1)(g)). This action also indicates the Council is making decisions in executive session, which is also a violation of state law (RCW 42.30.060).

#### Cause of Condition

The Council believed it was following the requirements for holding open public meetings.

#### Effect of Condition

By not holding its meetings in an open and public manner in accordance with the Open Public Meetings Act, the Council denies interested parties their right to be informed of the financial decisions and actions of City management.

#### Recommendation

We strongly recommend City management ensure all Council meetings are held in an open and public manner and ensure it complies with all requirements of the Open Public Meetings Act.

We further recommend the City Council seek legal guidance on compliance with the Open Public Meetings Act.

#### District's Response

*We concur with the finding. RCW 42.30.110 Executive Sessions:*

*(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee.*

*The City Council felt this section allowed them to offer employment to a candidate without revealing the name. After the candidate accepted, they then thought it appropriate to reveal the name. Although final action was taken in open session, they now understand that assigning a number to each of the candidates was incorrect. The City has contacted Municipal Research and Services Center of Washington and has received guidance on how to properly evaluate the qualifications of and offer employment to future City Managers. We will conduct all future hiring's in accordance with state statute.*

## **Auditor's Remarks**

We appreciate City personnel's cooperation during the course of the audit. We will review the City's compliance during the next regularly scheduled audit.

## **Applicable Laws and Regulations**

RCW 42.30.030 provides for open meetings:

All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting . . . .

RCW 42.30.110, Executive sessions states in part:

(1) (g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public; (emphasis added).

RCW 42.30.060 Ordinances, rules, resolutions, regulations, etc., adopted at public meetings -- Notice -- Secret voting prohibited.

- (1) No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.
- (2) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.

RCW42.30.120 regarding violations, personal liability and penalty states in part:

(1) Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars. The civil penalty shall be assessed by a judge of the superior court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.