

**Bainbridge Island Ethics Board
Advisory Opinion 2010 - 1**

Thank you for your email of October 22, 2010.

The allegations raised in this complaint do not constitute a violation of City Ethics Program.

Fri 10/22/2010 11:51 AM

Ethics Board
City of Bainbridge Island

Please review the following complaint that I submitted to the Washington State Attorneys Generals office and their research regarding the recent actions by the city council. I believe there is a problem with public policy under the Laws of the State of Washington and the City Council actions restricting public input and censorship of the media. Please help us ensure that "City government adheres to the highest standards of public service for elected officials".

Thank you,

Andy Rovelstad
----- Forwarded Message

From: "Ford, Tim (ATG)" <TimF@ATG.WA.GOV>
Date: Fri, 22 Oct 2010 09:15:21 -0700
To: Andy Rovelstad <atr@leavenarch.com>
Subject: RE: Bainbridge Island complaint

Andrew Rovelstad,

I received your email dated October 13, 2010 which states:

After a recent City Council meeting we became aware that the city council had told the local news covering the public meeting that they were to leave the city hall and not film one particular section of the public City Council Meeting. In addition, there is typically a public comment prior to any discussion and voting by the city council members, but that was not part of the agenda for the evening prior to discussion and a vote by the city council members. Censoring the public and the media on selected controversial issues seems to be an unethical approach to public policy. Is this legal under Washington State Law?

The Open Public Meetings Act provides a legal right that: "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 of the governing body of a public agency, except as otherwise provided in this chapter." [RCW 42.30.030](http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.030) <<http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.030>> .

The Attorney General issued a formal opinion interpreting that law to require that news media may not be restricted in attending and recording an open public meeting, but that where the meeting is an authorized closed executive session, such restrictions are valid. See [AGO 1998, No. 15](http://www.atg.wa.gov/AGOOpinions/Opinion.aspx?section=archive&id=9332) <<http://www.atg.wa.gov/AGOOpinions/Opinion.aspx?section=archive&id=9332>> .

Additionally, the OPMA does not provide a legal right to public comment. However, other laws may exist which require public comment for different types of local government. See for example [RCW 35.18.170](http://apps.leg.wa.gov/rcw/default.aspx?cite=35.18.170) <<http://apps.leg.wa.gov/rcw/default.aspx?cite=35.18.170>> which applies to council meetings of cities which use a city manager plan:

The council shall meet at the times and places fixed by ordinance but must hold at least one regular meeting each month. The clerk shall call special meetings of the council upon request of

the mayor or any two members. At all meetings of the city council, a majority of the councilmembers shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. Requests for special meetings shall state the subject to be considered and no other subject shall be considered at a special meeting.

All meetings of the council and of committees thereof shall be open to the public and the rules of the council shall provide that citizens of the city or town shall have a reasonable opportunity to be heard at any meetings in regard to any matter being considered thereat.

The City of Bainbridge Island may not be subject to RCW 35.18.170 as cities may operate under many different forms of government.

I hope this helps.

Sincerely,
Tim Ford
Open Government Ombudsman
Assistant Attorney General for Government Accountability
Attorney General of Washington
1125 Washington St, SE
Olympia, WA 98504
(360) 586-4802
timf@atg.wa.gov
<http://www.atg.wa.gov/OpenGovernment/Ombudsman.aspx>

DISCLAIMER: This email is not intended or offered to provide legal advice or legal representation by the Office of the Attorney General to any recipient.

----- End of Forwarded Message

On 10/26/10 11:12 AM, "jjohnson@ci.bainbridge-isl.wa.us" <jjohnson@ci.bainbridge-isl.wa.us> wrote:

Dear Mr. Rovelstad:

A copy of your complaint to the Ethics Board was forwarded to me. I do not wish to foreclose any action or comment by that board, but perhaps I can provide the City's legal perspective on this matter.

You raise two issues: (1) the restriction of public input at a City Council meeting and (2) direction to "the local news" not to film part of a council meeting.

Our City Council routinely invites the public to offer comments at its meetings. It is a standing item on Council agendas. However, state law allows the Council to restrict such public comments to specific places on the agenda and to limit the comments to a reasonable period of time. The efficient conduct of the Council's business makes this a necessity.

As to the second issue, it is important to know that Bainbridge Island TV (BITV) videotapes and broadcasts City Council meetings as a paid contract service to the City. In this instance, the Mayor informed BITV that it would not be required to broadcast a particular Council workshop that was put together on short notice to discuss a possible transaction. This was much different than telling a news organization that it would not be allowed to videotape the meeting. I believe the City Council is aware that it cannot prohibit non-disruptive filming or recording of its open meetings, but that is not what happened in this case. (In fact, the City made a full audio recording of the meeting and posted it on the City's website.)

Without some additional knowledge of this situation, it is easy to see how it might have been misinterpreted. I hope this explanation is of some value.

-Jack Johnson
City Attorney

On **10/26/10 3:56 PM**, "Andy Rovelstad" <atr@leavenarch.com> wrote:

Dear Jack Johnson,

Thank you for getting back to me, but I still have conflicts with the entire evening, and question that I "misinterpreted" the events presented. The evening was a City Council meeting where they voted on public policy. It was not an authorized closed executive session, a newly created Ad Hoc Committee meeting (which are not open to the public) or a Council Workshop. The City Council discussed and voted on policy as a part of the evenings agenda. The open water marina, as part of the agenda, was by no means a workshop that was put together on short notice.

It is completely ironic that the city council eliminated the public comment section about the open water marina and in the same evening, censored it from public access on BITV.

I know the issues related to public access, TV, cable and contracts to provide public access are difficult to define in this day and age. Even if a public agency has a contract with a local Public TV organization, does it have the right to pick and choose what the public has the right to see from an open city council meeting. That is an issue that is way beyond me. If that right is legal, is it ethical and accountable?

We have to accept the power of the videotaped media in our culture. We can't equate posting a vocal recording and defining it as equal replacement to the power of video. When I have made a comments during the public comment periods of a city council meeting and filmed by BITV, I have been totally surprised at the number of citizens, that I do not even know, who have come up to both agree or disagree with what I had said. This is healthy for a community and what community is based on.

I have no background in Law and have to trust and respect the values and interpretation of others. Even if the actions of the City Council are legal, and even if they are defined as being ethical, is this what we want to be as a community?

I have copied the ethics board on this e-mail as the issue truly extends beyond legal boundaries. Actually, the legal boundaries are probably the easiest to define.

Sincerely,
Andrew Rovelstad

From: Andy Rovelstad [mailto:atr@leavenarch.com]
Sent: **Wed 10/27/2010** 11:17 AM
To: Jack Johnson; Ethics Board
Subject: FW: Bainbridge Island complaint DRAFT

Last night I went through the Governance Manual and wanted to add a few additional comments to the e-mail sent yesterday re: the City Council meeting on September 29th.

The meeting was defined as a Special City Council Meeting/Workshop. The City of Bainbridge Island Governance Manual notes that at a special meeting the city may conduct business that has been stated on the agenda. It is essentially a city council meeting establish on a date or time other than the prescribed meeting time. The council may take action on items posted on the agenda. The Governance Manual does not have any language that omits public comment from a Special City Council Meeting. As public policy is established and voted on by the city council during a Special City Council Meeting the Washington State laws that apply to regular meetings would apply to the special city council meeting. [RCW 35.18.170](http://apps.leg.wa.gov/rcw/default.aspx?cite=35.18.170) <<http://apps.leg.wa.gov/rcw/default.aspx?cite=35.18.170>> applies to council meetings of cities which use a city manager plan:

The council shall meet at the times and places fixed by ordinance but must hold at least one regular meeting each month. The clerk shall call special meetings of the council upon request of the mayor or any two members. At all meetings of the city council, a majority of the councilmembers shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. Requests for special meetings shall state the subject to be considered and no other subject shall be considered at a special meeting.

All meetings of the council and of committees thereof shall be open to the public and **the rules of the council shall provide that citizens of the city or town shall have a reasonable opportunity to be heard at any meetings in regard to any matter being considered thereat.**

If there is a loophole in the city policy that allows the city council to vote and approve public policy without public participation, this needs to be corrected.

The Governance manual does put restrictions on public comments during study Sessions and Workshops (8.9a). It also notes that At a Study Session, "the Council may choose to refer an issue to an Ad Hoc Committee or Steering Group, or schedule a Public Forum, before the issue returns to a future agenda (8.9). Voting on and processing an agenda item into public policy is not allowed from a study session/workshop.

The meeting on September 29th did not allow public comment for either the Workshop (which is allowed) or the Special City Council Meeting. The meeting on September 29th, allowed the workshop to

be video taped but censured BITV from the Special City Council meeting, where they voted to abandon the Open Water Mooring Area.

My initial response was that something is not correct in the structure of our local government based on the First Amendment Rights at a Federal level. These concerns have been reconfirmed on a State Level by the State Attorney Generals Office and within the Governance Manual for the City of Bainbridge Island.

Sincerely
Andrew Rovelstad

I have included the agenda and excerpts from the Governance manual below.

[Special City Council Meeting/Workshop](#)

Sep 29 2010

1. CALL TO ORDER

**4:30 PM 2. LEASE NEGOTIATIONS WITH DNR REGARDING EAGLE HARBOR
OPEN WATER ANCHORING AND MOORING AREAS**

3. BUDGET OVERVIEW AND PRESENTATIONS

5:30 PM A. City Manager

B. Executive

C. Finance

D. Municipal Court

E. Planning

F. Public Safety

G. Public Works

H. Health, Housing and Human Service

4. LEASE NEGOTIATIONS WITH DNR (CONTINUED)

7:00 PM

5. ADJOURNMENT

8:00 PM

2.3.1 Regular Meeting

A Regular Meeting of the Council is a meeting convened on a regular series of dates (and at a time) stated in City ordinance. At a Regular Meeting, the Council may conduct any business stated on the agenda that is publicly posted prior to the meeting, or the Council may approve additions or deletions to the agenda at the meeting.

2.3.2 Special Meeting

A special meeting is a Council meeting called at a date or time other than the time prescribed by ordinance for a Regular Meeting. At a special meeting, the Council may conduct any business stated on the agenda that is publicly posted prior to the meeting, or the Council may approve deletions or additional items for discussion (but not additional action items) to the agenda at the meeting.

2.3.3 Business Meeting

A business meeting is a regular or special meeting of the Council that is primarily for the purpose of voting on the City's business, generally in the form of motions, resolutions or ordinances. A business meeting typically includes a public comment period for a limited period of time stated in advance on the agenda, during which a member of the public may address the Council on any matter of public concern (whether or not on the agenda).

2.3.4 Study Session

A study session is a regular or special meeting of the Council that is generally held in a more informal manner or setting than a business meeting, and where the purposes may be, for example, (i) to study, deliberate or review one or more topics or emerging issues for potential action at a future date, (ii) to vet the status of matters that are intended to be presented on the agenda of an ensuing business meeting unless exceptional circumstances apply, (iii) to engage in public comment or dialog, or (iv) to participate in presentations with City staff or other subject matter experts. In general, final votes are not taken at a study session, but there are commonly procedural votes on the disposition of various matters. Any regular or special Council meeting may be adjourned to a "Study Session".

2.3.5 Workshop

A study session on a single topic or subject is sometimes referred to as a workshop.

8.9 Conduct of Study Sessions and Workshops

Regular or Special Meetings of the Council, or portions thereof, may be designated as Study Sessions. The definition and the basic rules for Study Sessions are stated in Section 2.3.4, and for a Workshop in Section 2.3.5.

A Study Session may consist of any or all of the following elements:

(a) Public Comment Period

In general, because a Study Session is more informal and more interactive than a Business Meeting, the Presiding Officer may have greater latitude to seek public comment on a particular issue being discussed. Therefore, the Presiding Officer may invite public comment and dialog from time to time during the Study Session. In general, public comment shall be sought solely or primarily on matters on the Study Session agenda.

(b) Vetting of Agenda Items:

This element of a Study Session involves a vetting and review of agenda items that are expected to appear for Council action on the agenda of the next ensuing Council Business Meeting. This element of the Study Session may include: review of clarity and completeness of issues presented; discussion of the merits of the proposal; and a procedural vote to determine whether the agenda item shall be advanced to an ensuing Business Meeting of the Council.

(c) Study of Emerging Issues

This element of the Study Session involves emerging issues that are not initially expected to appear for action at the next Council Business Meeting, and it may include: (i) staff or third-party presentations; (ii) Council and Administration study, discussion and analysis; and/or (iii) interactive public comments and Council responses to comments.

(d) First Touch and Second Touch Updates

The agenda may provide time for short updates by the City Manager, staff, Councilmembers, or a member of an Ad Hoc Committee or Steering Group.

(e) Referral to Committee, Steering Group or Further Public Process

At a Study Session, the Council may choose to refer an issue to an Ad Hoc Committee or Steering Group, or schedule a Public Forum, before the issue returns to a future agenda.

8.10 Workshops

The purpose of a Workshop (i.e., a single-topic Study Session) is to allow Councilmembers to do

concentrated preliminary work with Administration or the public on a single subject (i.e., budget, complex legislation or reports, etc.). Workshops shall be in a less formal setting, but shall not discourage public observation. Public comment is not normally allowed at Workshops although the Council may allow, or request, participation in the same manner as other Council Study Sessions.

Fri 10/29/2010 4:41 PM

I had to add one more comment as I came across an announcement from 10/21/2009. The concerns I have presented regarding public input are not merely isolated incidents.

Enclosed is an official announcement from a year ago, notifying the public of a **Special City Council Meeting** to Discuss the Open Water Marina. It specifically states that the Harbor Master and a representative from DNR will be present to answer any questions. What it fails to note was that the public would not be allowed to talk, communicate or ask questions of either the Harbor Master, DNR or the City Council Members. In addition, there was not even a public comment period allowed although it was clearly defined as a Special City Council Meeting. There are consistent conflicts and inconsistencies in our public policy.

Thanks,

Andy Rovelstad

Attachment:



The City Council will discuss options for a design for an Open Water Moorage and Anchoring Area to house both residential and transient vessels within Eagle Harbor. The City's Harbormaster and representatives from Washington Department of Natural Resources will also be present to answer any questions,

Wednesday, October 21

9:00 a.m. – 12:00 p.m.

Council Chambers at City Hall, 280 Madison Ave.

The proposed marina options and description of the project are available for review and download at the City's website: www.ci.bainbridge-isl.wa.us. To

obtain a hard copy, please contact Kelly Dickson, Department of Planning and Community Development, 206-780-3725.

On 10/29/10 6:33 PM, "RLassoff@ci.bainbridge-isl.wa.us" <RLassoff@ci.bainbridge-isl.wa.us> wrote:

Hi Andy,

I just want to let you know that your emails have been received (they are automatically forwarded to me first).

The board may provide advisory opinions as to whether a particular situation or specific, contemplated action would violate the Code of Ethics. Are you requesting an advisory opinion?

Please let me know before I forward your inquiry.

Have a great weekend,

Roz

Mon 11/1/2010 10:49 AM

Hi Roz,

Thank you for getting back to me.

When I read the Code of Ethics, I understand that this is probably outside of committee's jurisdiction, but there isn't another official direction that one can follow, if you feel that the actions of the city council are in conflict with State Law regarding public process. By asking for an advisory opinion, I hope that the process at least initiates a serious conversation within the city and the city council members over the new city management structure, the law and public input. Yes, I would like to request an advisory opinion.

Sincerely,

Andy Rovelstad

Sent: Tue 11/2/2010 5:56 PM

Mr. Rovelstad

I realize that your dissatisfaction with the handling of the particular council meeting is only partially based on legal requirements. However, I wanted to point out that one of the laws you referred to does not actually apply to the City of Bainbridge Island.

Your email cited RCW 35.18.170 for its language requiring that the council provide the public a reasonable opportunity to speak at its meetings.

I did not catch it at the time I first read your message, but just want to note that Bainbridge is organized under an alternative set of state statutes, RCW Title 35A, known as the "Optional Municipal Code." That title has its own, different requirements for meetings (quoted below). It governs our meetings rather than the statute you cited. The legal requirement to allow public comment does not exist under the RCW sections that apply to the Bainbridge City Council.

Again, that distinction may not be important to your argument, but I wanted to be sure you were aware of it.

-Jack

RCW 35A.12.110 Council meetings.

The city council and mayor shall meet regularly, at least once a month, at a place and at such times as may be designated by the city council. All final actions on resolutions and ordinances must take place within the corporate limits of the city. Special meetings may be called by the mayor or any three members of the council by written notice delivered to each member of the council at least twenty-four hours before the time specified for the proposed meeting. All actions that have heretofore been taken at special council meetings held pursuant to this section, but for which the number of hours of notice given has been at variance with requirements of RCW 42.30.080, are hereby validated. All council meetings shall be open to the public except as permitted by chapter 42.30 RCW. No ordinance or resolution shall be passed, or contract let or entered into, or bill for the payment of money allowed at any meeting not open to the public, nor at any public meeting the date of which is not fixed by ordinance, resolution, or rule, unless public notice of such meeting has been given by such notice to each local newspaper of general circulation and to each local radio or television station, as provided in RCW 42.30.080 as now or hereafter amended. Meetings of the council shall be presided over by the mayor, if present, or otherwise by the mayor pro tempore, or deputy mayor if one has been appointed, or by a member of the council selected by a majority of the councilmembers at such meeting. Appointment of a councilmember to preside over the meeting shall not in any way abridge his or her right to vote on matters coming before the council at such meeting. In the absence of the clerk, a deputy clerk or other qualified person appointed by the clerk, the mayor, or the council, may perform the duties of clerk at such meeting. A journal of all proceedings shall be kept, which shall be a public record.

From: Andy Rovelstad <atr@leavenarch.com>

Date: Thu, 04 Nov 2010 10:10:11 -0700

To: <timf@atg.wa.gov>

Conversation: Public Comments, City of Bainbridge Island

Subject: Public Comments, City of Bainbridge Island

Tim Ford,
Open Government Ombudsman
Assistant Attorney General for Government Accountability

Dear Tim,

My e-mail chain has gotten larger (since my first question to you), as I'm trying to understand our local government and the changes that we have gone through with the revision to a city manager form of Government. As You noted and as was confirmed by Jack Johnson, the city attorney, the City of Bainbridge Island is not be subject to RCW 35.18.170. It operates under RCW 35A. 12.110. When I read the quoted section, I do not see any reference to public comments that would substantiate Jack Johnsons comment that "The legal requirement to allow public comment does not exist under the RCW sections that apply to the Bainbridge City Council". Can it be that there is no requirement for public comment or participation within the structure of Bainbridge Island? That would mean that the City Council can (and does) pick and

choose when they want to involve the public or where they do not want any participation.

Concurrently with the selected public input at City Council and Special Council meeting; Committee meetings, that are open to the public, are now being structured as Ad Hoc Committee Meetings, which are closed to the public. Notes from Ad Hoc Committee meetings either do not exist, or are not available for public review. With the change to the the new City Manager Form of Government there has been a controlled loss of participation, transparency and accountability. All of this seems contradictorily with the intent of the Laws of the State of Washington.

If it is true that there is a loophole in the city policy that allows the city council to vote and approve public policy without public participation, this needs to be corrected. How do we change this inconsistency within the law?

I would appreciate any assistance.

Thank you very much,
Andrew Rovelstad

Mon 11/15/2010 2:19 PM

To the Ethics committee,

I thought that I would forward this e-mail to you that I sent to Tim Ford last week (**see 11/4/10 email above**)

I have questioned the response from the city attorney that the City of Bainbridge Island has no legal requirement for public comment during City Council Meetings.

If this is true under Washington law, I have questioned how can it be changed.

Thank you,

Andy Rovelstad

----- Forwarded Message