

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF YAKIMA

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
CITY OF WAPATO, CITY COUNCIL  
FOR THE CITY OF WAPATO, JUAN  
OROZCO, and DORA ALVAREZ-  
ROA.  
  
Defendants.

NO.  
  
COMPLAINT FOR VIOLATIONS OF  
WASHINGTON'S CODE OF ETHICS  
FOR MUNICIPAL OFFICERS, RCW  
42.23, AND OPEN PUBLIC  
MEETINGS ACT, RCW 42.30.

I. INTRODUCTION

1.1 "Government derives its powers from the people. Ethics in government are the foundation on which the structure of government rests." Laws of 1994, ch. 154, § 1.

1.2 Washington requires its government officials to hold themselves to the highest ethical standards. Under Washington's Code of Ethics for Municipal Employees (CEMO), every public official is prohibited from "us[ing] his or her position to secure special privileges or exemptions for himself, herself, or others." RCW 42.23.070. And under Washington's Open Public Meetings Act (OPMA), when government officials do the work of the people, "their deliberations [must] be conducted openly" so that the people of our State "may retain control over the instruments they have created." RCW 42.30.010.

1.3 This case concerns a violation of these two fundamental principles by government officials in Wapato, Washington.

1.4 In August 2018, Defendant Juan Orozco, then the Mayor of Wapato, used his office to create a City Administrator position, with a salary of \$95,000 per year, to which he then got himself appointed. Defendant Orozco's scheme to use his office to secure a lucrative contract for himself violated CEMO.

1.5 Although Defendant Orozco's scheme violated the law and the public trust, it was approved by the City Council—in an early morning “special meeting,” held without any advance notice to the public as to subject matter of the meeting. The Council appointed Defendant Orozco City Administrator without any public notice, any public discussion, and without even requiring him to apply for the position. The City Council's ratification of Defendant Orozco's scheme violated Washington's Open Public Meetings Act (OPMA), which requires the City Council to notify the public in advance about the business to be transacted at “special meetings,” and prohibits them from conducting any business without such notice.

1.6 The Attorney General of Washington, on behalf of the people of Wapato, brings this suit to remedy Defendants' violations of the public trust. It asks this Court to declare null and void Defendants' unethical conduct, to require Defendant Orozco to repay the City the funds he improperly directed to himself and forfeit his position as City Administrator, and for injunctive relief to prevent future violations.

## II. PARTIES

2.1 The Plaintiff is the State of Washington. The Attorney General is authorized to commence this action pursuant to RCW 43.09.260(6) and RCW 42.30.130.

2.2 Defendant City of Wapato is a second-class city under RCW 35.23, a municipality under RCW 42.23.020, and a public agency under RCW 42.30.020(1)(b).

2.3 Defendant City of Wapato City Council is a governing body under RCW 42.30.020(2).



1           4.2     Central to the CEMO is RCW 42.23.070, which provides that “[n]o municipal  
2 officer may use his or her position to secure special privileges or exemptions for himself, herself,  
3 or others.”

4           4.3     The CEMO imposes an absolute bar against municipal officials’ efforts to secure  
5 special privileges. “Any contract made in violation of the [CEMO] is void.” RCW 42.23.050.  
6 Moreover, “[a]ny officer violating the provisions of [the CEMO] is liable to the municipality of  
7 which he or she is an officer for a penalty in the amount of five hundred dollars, in addition to  
8 such other civil or criminal liability or penalty as may otherwise be imposed upon the officer by  
9 law. In addition to all other penalties, civil or criminal, the violation by any officer of the  
10 provisions of this chapter may be grounds for forfeiture of his or her office.” *Id.*

11           **2.     Washington’s Open Public Meetings Act**

12           4.4     Washington’s Open Public Meetings Act functions to preserve transparency in  
13 government and ensure that government works for the people of this State.

14           4.5     As the Legislature declared in passing the Act: “The people of this state do not  
15 yield their sovereignty to the agencies which serve them. The people, in delegating authority, do  
16 not give their public servants the right to decide what is good for the people to know and what  
17 is not good for them to know. The people insist on remaining informed so that they may retain  
18 control over the instruments they have created.” RCW 42.30.010.

19           4.6     RCW 42.30.060 provides that “[n]o governing body of a public agency,”  
20 including cities, “shall adopt any ordinance, resolution, rule, regulation, order, or directive,  
21 except in a meeting open to the public,” on a date “fixed by law or rule,” or for which notice has  
22 otherwise been given as provided in the OPMA.

23           4.7     “Any action taken at meetings failing to comply with the provisions of this  
24 subsection shall be null and void.” RCW 42.30.060.

25           4.8     Because Wapato is a second-class city, its City Council and Mayor are required  
26 to meet once monthly, at a time and place fixed by “ordinance, resolution, bylaws, or by whatever

1 other rule is required for the conduct of business by that body.” RCW 42.30.070; *see also*  
2 RCW 35.23.181.

3 4.9 Additionally, the Mayor or City Council may call “special meetings,” by  
4 providing notice to the public, including via print and media publication, of the time, location,  
5 and “business to be transacted” at the meeting. RCW 42.30.080. “Final disposition shall not be  
6 taken on any other matter at such meetings by the governing body.” *Id.*

7 4.10 “No ordinances shall be passed or contract let or entered into, or bill for the  
8 payment of money allowed at any special meeting.” RCW 35.23.181.

9 **3. Washington’s State Auditor**

10 4.11 Our Constitution establishes the State Auditor to audit public accounts on behalf  
11 of the people of Washington. Const. art. III, § 20.

12 4.12 Among its other roles, the State Auditor’s Office is required to “examin[e] . . .  
13 the financial affairs of all local governments” to ensure that “the Constitution and laws of the  
14 state, the ordinances and orders of the local government, and the requirements of the state auditor  
15 have been properly complied with.” RCW 43.09.260(1), (5).

16 4.13 Where an auditor’s investigation “discloses malfeasance, misfeasance, or  
17 nonfeasance in office on the part of any public officer or employee . . . the attorney general shall  
18 institute, in the proper county, such legal action as is proper . . . to carry into effect the findings  
19 of the examination.” RCW 43.09.260(1), (6).

20 **B. Factual Background**

21 4.14 This action concerns violations of Washington’s CEMO by Defendant Orozco,  
22 who used his position as Mayor to secure a lucrative contract for himself, and of the OPMA by  
23 the current Mayor and members of the Wapato City Council who approved Defendant Orozco’s  
24 unethical conduct in an improper “special meeting.”

25 4.15 In May 2019, the State Auditor’s Office provided the Attorney General’s Office  
26 with a report detailing a scheme by Defendant Orozco to create a new City Administrator

1 position and secure for himself a contract to serve in that position, with an annual salary of  
2 \$95,000. Audit Report, attached hereto as Exhibit A.

3 4.16 According to the report, “in August 2018, the then-current Mayor [Defendant  
4 Orozco] directed the City Attorney to draft an ordinance for a City Administrator position and a  
5 proposed City Administrator contract. According to interviews with [Defendant Orozco], he  
6 initiated the creation of this position and the City Council was not aware of the position.” Ex. A  
7 at 6.

8 4.17 “The contract included setting the City Administrator’s salary at \$95,000 per  
9 year, for the full term of seven years, plus severance pay for six months, even in the event that  
10 the City Administrator contract was terminated. This provision would bind future councils,  
11 which is against the law.” *Id.* at 6–7.

12 4.18 On September 4, 2018, the City Council held a special meeting, thirty minutes  
13 prior to their regular meeting, to approve the ordinance. *Id.* at 6. Until the day of the special  
14 meeting, “the City Council was not aware of” Defendant Orozco’s plan to create the City  
15 Administrator position. *Id.*

16 4.19 “The advertisement for the special meeting did not include the business purpose  
17 for the meeting.” *Id.* at 11. The City Council did not post the meeting agenda on its website until  
18 more than a month after the meeting had occurred. *Id.* at 11.

19 4.20 During the special meeting, the City Council approved the ordinance creating the  
20 City Administrator position, at which point then-Mayor Orozco promptly resigned. *Id.* at 6.

21 4.21 The City Council then “adjourned the special meeting and immediately began its  
22 regular meeting,” at which “the City Council appointed a new Mayor,” Defendant Alvarez-Roa,  
23 “and the new Mayor appointed [Defendant Orozco] as City Administrator,” without any public  
24 discussion. *Id.* at 6.

25 4.22 “The City Administrator contract, provided to the Council within their packet  
26 before the special meeting on Sept. 4, already had the Mayor’s name filled in. The City did not

1 advertise the City Administrator position as required by City policy, nor did the Mayor complete  
2 and sign an application for the position.” *Id.* at 7; *see also id.* at 8–9 (excerpting Wapato City  
3 Policy).

4 4.23 Based on the foregoing, the State Auditor concluded that Defendants violated  
5 both State law and City policy:

6  
7 The former Mayor [Defendant Orozco] personally benefited from the creation of  
8 the City Administrator position and contract, which he designed without Council  
knowledge or input. In addition, the City did not follow its personnel policy . . .

9 The former Mayor violated the Code of Ethics for Municipal Officers. In  
10 addition, the City violated its recruiting and hiring personnel policies and state  
law.

11 *Id.* at 7.

12 4.24 Although the Audit Report does not address whether Defendant Alvarez-Roa  
13 violated CEMO, it appears she likely did so by using her position as mayor to “secure special  
14 privileges for . . . others,” namely, by appointing Defendant Orozco as city administrator in  
15 violation of City policy.

16 4.25 Additionally, the Auditor concluded that Defendants violated the OPMA by  
17 approving an ordinance in the September 4, 2018 special meeting that was not the noticed  
18 “business purpose” of the meeting. *Id.* at 11.

19 4.26 The Audit Report indicates that the City Council’s September 4, 2018 violation  
20 of the OPMA was part of a pattern of ignoring the requirements of that statute. For example, the  
21 report concluded that the City “failed to provide notice on *several* occasions . . . of changes to  
22 meeting dates and times.” *Id.* at 12 (emphasis added); *see also id.* at 11 (detailing meetings). The  
23 Audit Report further details an occasion on June 15, 2018, in which the City Council, in the  
24 absence of a quorum, purported to take several significant actions, including entering into a  
25 contract, accepting a contract bid, and appointing a new City Council member. *Id.* at 11.

1        4.27 Each of these acts constitutes a violation of the OPMA, potentially warranting  
2 nullification of any Council business transacted at the meetings in question. Taken together, they  
3 reveal a pattern of indifference to the OPMA's fundamental goals of ensuring government  
4 remain open, transparent, and under the control of the people of Washington.

5                                    **V. FIRST CAUSE OF ACTION**  
6                                    **VIOLATION OF CODE OF ETHICS FOR MUNICIPAL OFFICERS**  
7                                    **RCW 43.23.070**  
8                                    **AGAINST DEFENDANT OROZCO**

9        5.1 The State incorporates each of the foregoing paragraphs herein as if set forth in  
10 their entirety.

11        5.2 RCW 43.23.070(1) prohibits a municipal officer from "us[ing] his or her position  
12 to secure special privileges or exemptions for himself, herself, or others."

13        5.3 Defendant Orozco used his position as Mayor of Wapato to secure for himself a  
14 contract to serve as the City of Wapato Administrator for \$95,000 per year for seven years.

15        5.4 Defendant Orozco created the City Administrator role for himself without any  
16 opportunity for input from the City Council or the public and got himself appointed without even  
17 applying for the position.

18        5.5 The State Auditor's Office determined Defendant Orozco's conduct violated  
19 RCW 43.23.070(1).

20        5.6 Defendant Orozco's violation of CEMO was improper, wrongful, and unlawful,  
21 and constituted misfeasance and/or malfeasance under RCW 43.09.260(6).

22        5.7 Pursuant to RCW 42.23.050, the State seeks an order declaring the City  
23 Administrator contract void *ab initio*, requiring Defendant Orozco to forfeit his position as City  
24 Administrator and disgorge to the City of Wapato any money paid to him under the City  
25 Administrator contract, and fining Defendant Orozco \$500.  
26



VI. SECOND CAUSE OF ACTION  
VIOLATION OF OPEN PUBLIC MEETINGS ACT  
RCW 42.30  
AGAINST ALL DEFENDANTS

6.1 The State incorporates each of the foregoing paragraphs herein as if set forth in their entirety.

6.2 RCW 42.30.080, provides that special meetings may be held only after providing the public with notice of the "business to be transacted" at the meeting. RCW 42.30.080. The statute further provides that "[f]inal disposition shall not be taken on any other matter at such meetings by the governing body." *Id.*

6.3 Defendants' September 4, 2018 special meeting violated each of these provisions. In advertising the special meeting, Defendants failed to give notice of the business purpose for the meeting. Because they failed to provide notice that they were considering the City Administrator Ordinance, their approval of that Ordinance necessarily constituted a "final disposition" on an "other matter."

6.4 The State Auditor's Office determined Defendants' conduct violated RCW 42.30.080.

6.5 Defendants' conduct also violated RCW 35.23.181, which provides that "[n]o ordinances shall be passed or contract let or entered into . . . at any special meeting."

6.6 Defendants' violations of the OPMA were improper, wrongful, and unlawful, and constituted misfeasance and/or malfeasance under RCW 43.09.260(6).

6.7 Pursuant to RCW 42.30.130 and RCW 42.30.060, the State seeks an order declaring all action taken at the September 4, 2018 special meeting, including the adoption of the Ordinance creating the position of City Administrator, and resultant contract hiring Defendant Orozco as City Administrator, null and void. The State also seeks an order requiring Defendants to undergo training on the OPMA, as recommended by the Audit Report. Ex. A at 12.

VII. PRAYER FOR RELIEF

Wherefore, the State prays for the following relief:

7.1 A declaration that Defendants' acts described above violate the OPMA, RCW 42.30, and the CEMO, RCW 42.23.070;

7.2 A declaration pursuant to RCW 42.23.050 that the City Administrator contract is void *ab initio*;

7.3 A declaration pursuant to RCW 42.30.060 that all actions taken at the September 4, 2018 special meeting, including the adoption of the City Administrator ordinance, as well as the City Administrator contract stemming directly therefrom, are null and void;

7.4 An order necessary to restore to the City of Wapato any moneys or other property, real or personal, which may have been paid to Defendant Orozco under, because of, or in consideration for the void City Administrator contract;

7.5 An order pursuant to RCW 42.23.050 requiring Defendant Orozco to forfeit his office as City of Wapato City Administrator;

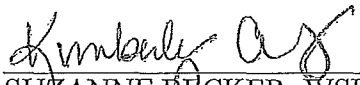
7.6 An injunction pursuant to RCW 42.30.130 requiring all Wapato City Council Members to undergo training on the Act, in a form and manner to be approved by the Court;

7.7 An award of a civil penalty in the amount of \$500 for Defendant Orozco's violation of Washington's Code of Ethics for Municipal Employees, pursuant to RCW 42.23.050; and

7.8 Any other and further relief the Court deems just and equitable.

DATED this 7th day of June, 2019.

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