Chapter 42.36 RCW
APPEARANCE OF FAIRNESS DOCTRINE—LIMITATIONS

Sections

42.36.010 Local land use decisions.
42.36.020 Members of local decision-making bodies.
42.36.030 Legislative action of local executive or legislative officials.
42.36.040 Public discussion by candidate for public office.
42.36.050 Campaign contributions.
42.36.060 Quasi-judicial proceedings—Ex parte communications prohibited, exceptions.
42.36.070 Quasi-judicial proceedings—Prior advisory proceedings.
42.36.080 Disqualification based on doctrine—Time limitation for raising challenge.
42.36.090 Participation of challenged member of decision-making body.
42.36.100 Judicial restriction of doctrine not prohibited—Construction of chapter.
42.36.110 Right to fair hearing not impaired.

RCW 42.36.010 Local land use decisions. Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance. [1982 c 229 s 1.]

RCW 42.36.020 Members of local decision-making bodies. No member of a local decision-making body may be disqualified by the appearance of fairness doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body. [1982 c 229 s 2.]

RCW 42.36.030 Legislative action of local executive or legislative officials. No legislative action taken by a local legislative body, its members, or local executive officials shall be invalidated by an application of the appearance of fairness doctrine. [1982 c 229 s 3.]

RCW 42.36.040 Public discussion by candidate for public office. Prior to declaring as a candidate for public office or while campaigning for public office as defined by RCW 29B.10.440 no public discussion or expression of an opinion by a person subsequently

elected to a public office, on any pending or proposed quasi-judicial actions, shall be a violation of the appearance of fairness doctrine. [2024 c 164 s 512; 2011 c 60 s 27; 1982 c 229 s 4.]

Intent—Construction—Rules remain valid—Effective date—2024 c 164: See notes following RCW 29B.10.010.

Effective date—2011 c 60: See note following RCW 29B.20.030.

RCW 42.36.050 Campaign contributions. A candidate for public office who complies with all provisions of applicable public disclosure and ethics laws shall not be limited from accepting campaign contributions to finance the campaign, including outstanding debts; nor shall it be a violation of the appearance of fairness doctrine to accept such campaign contributions. [1982 c 229 s 5.]

Public disclosure of campaign finances: Title 29B RCW.

RCW 42.36.060 Quasi-judicial proceedings—Ex parte communications prohibited, exceptions. During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

(1) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and

(2) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding. [1984 c 191 s 1; 1982 c 229 s 6.]

RCW 42.36.070 Quasi-judicial proceedings—Prior advisory proceedings. Participation by a member of a decision-making body in earlier proceedings that result in an advisory recommendation to a decision-making body shall not disqualify that person from participating in any subsequent quasi-judicial proceeding. [1982 c 229 s 7.]

RCW 42.36.080 Disqualification based on doctrine—Time limitation for raising challenge. Anyone seeking to rely on the appearance of fairness doctrine to disqualify a member of a decision-making body from participating in a decision must raise the challenge as soon as the basis for disqualification is made known to the individual. Where the basis is known or should reasonably have been

known prior to the issuance of a decision and is not raised, it may not be relied on to invalidate the decision. [1982 c 229 s 8.]

RCW 42.36.090 Participation of challenged member of decision-making body. In the event of a challenge to a member or members of a decision-making body which would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law, any such challenged member(s) shall be permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the member or members publicly disclose the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine. [1982 c 229 s 9.]

RCW 42.36.100 Judicial restriction of doctrine not prohibited—Construction of chapter. Nothing in this chapter prohibits the restriction or elimination of the appearance of fairness doctrine by the appellate courts. Nothing in this chapter may be construed to expand the appearance of fairness doctrine. [1982 c 229 s 10.]

RCW 42.36.110 Right to fair hearing not impaired. Nothing in this chapter prohibits challenges to local land use decisions where actual violations of an individual's right to a fair hearing can be demonstrated. [1982 c 229 s 11.]