

Open Public Meetings and Infectious Disease Outbreak

Responses to the coronavirus pandemic have impacted virtually every aspect of public life, and the functioning of local governing bodies is no exception. Although the actions necessary for a particular governing body will depend on its organic act, charter or rules, there is some practical advice to help local governments comply with requirements of the Washington State Open Public Meetings Act (“OPMA”).

A governing body might decide to hold a remote meeting, postpone or even cancel a meeting, if quarantines or other measures prevent its members from traveling to the meeting place or if the physical gathering of people at the meeting place would present an unwarranted risk. Below is practical advice based on the OPMA and new guidance provided by the Washington State Attorney General’s Office for the coronavirus outbreak (“AGO Guidance”). As circumstances evolve, local governments also may want to consider other potential sources of authority (e.g., Washington Constitution, statutes, etc.) that grant additional powers and discretion during a public health crisis.

How to hold a meeting remotely

The AGO Guidance endorses the use of telephonic meetings in which all governing body members participate by phone.

The OPMA is silent on remote or telephonic participation of members in meetings and the issue has not been settled by the courts. Nonetheless, the AGO previously opined that the OPMA allows an entire governing body to meet telephonically, if a quorum of members participate in the call, the body gives proper notice of the meeting (and posts the agenda online, if required), and the public is permitted to attend. The public attendance requirement is satisfied in a telephonic meeting if a speaker phone or similar technology is provided at a designated physical meeting place so that the public can hear the members’ discussion. If the agency’s organic act or the governing body’s rules require public comment or testimony, the technology must also permit members of the public to testify.

Because AGO opinions and guidance are not binding on the courts, it may be prudent for a governing body to ratify any actions taken in a telephonic meeting, at a future in-person meeting where a quorum of members are physically present. Nonetheless, with proper notice and provision for public attendance, conducting telephonic meetings by phone is both legally sound and the best guidance available for governing bodies that cannot meet in person.

How to cancel a meeting

Although the OPMA does not specify a procedure for canceling a meeting, notice of the cancelation should be given in the same manner as a notice calling a special meeting. Either the governing body’s presiding officer or a majority of its members should distribute, or cause to be distributed, the cancelation notice at least 24 hours in advance of the scheduled meeting.

If a meeting is not canceled but less than a quorum of the governing body attends, then the members who are present may adjourn the meeting to a time and place specified in an order of adjournment. The governing body's secretary or clerk should immediately post a conspicuous notice of adjournment on or near the door of the site where the meeting was to be held. If no members attend, then the secretary or clerk should declare the meeting adjourned to a stated time and place, and post the notice of adjournment. An adjourned meeting should be noticed in the same manner as a special meeting.

How to call an emergency meeting

The OPMA permits emergency meetings to take place in the event that fire, flood, earthquake, or other emergency creates a need for expedited action to address the emergency. Emergency meetings may be called by the presiding officer without regard to OPMA's notice requirements and may take place away from the site of regular meetings.

As a practical matter, emergency meetings may offer little advantage over special meetings, which can be called on as little as one day's (24 hour) notice. Further, the AGO Guidance stresses that the emergency circumstances must create an emergency for the particular governing body to take the particular action being considered.

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