

Updated: Open Public Meetings and Infectious Disease Outbreak

Using emergency powers to provide for the functioning of government during the coronavirus (“COVID-19”) crisis, on March 24, 2020, Governor Inslee issued Proclamation 20-28¹ (“Proclamation”) temporarily waiving certain requirements of the Washington State Open Public Meetings Act (“OPMA”) for all governing bodies in the State subject to the OPMA. Among other provisions, the Proclamation temporarily prohibits in-person public meetings, facilitates a process for holding fully remote meetings and limits the range of actions that can be taken in a remote meeting while the Proclamation is in effect. Following the Proclamation, the Washington State Attorney General’s Office (“AGO”) revised its March 6, 2020 OPMA guidance for the COVID-19 outbreak (as revised, the “AGO Guidance”).² The following is a summary of the Proclamation and the AGO Guidance currently in effect.

Governing bodies are prohibited from meeting in person

The Proclamation temporarily prohibits in-person public meetings for all public agencies statewide. Meetings must be held remotely in compliance with the Proclamation or cancelled or postponed until the prohibition is lifted and meetings can otherwise be held in compliance with the OPMA. Specifically, the Proclamation bans all meetings subject to the OPMA unless (a) the meeting is held fully remotely and (b) the public is provided the opportunity to participate in the proceedings through, at minimum, telephone access that affords the ability for all persons attending the meeting to hear each other at the same time.

How to hold a meeting remotely

At a minimum, public agencies holding meetings subject to the OPMA while the Proclamation is in effect must provide telephonic access to the meeting via a conference call-in number or other remote telephonic access. The intent is to maximize the opportunity for the public to “attend” the meeting and hear all individuals speaking during the meeting.

AGO Guidance states that members of the governing body should also remotely participate in meetings, and suggests that care should be taken to avoid conducting meetings in a manner that would necessitate in-person contact. Further, telephonic access must be provided and may not be replaced by other means of electronic communication, such as live internet streaming, televising the meeting, video conferencing or recording the meeting and making it available for playback at a later date. These remote methods may be used, but only to supplement telephonic access to the meeting.

The OPMA is silent on how to notice, hold or otherwise facilitate telephonic participation of members and the public in meetings. AGO Guidance recommends that public agencies post the call-in number or other remote access code with the agenda online and through other public means feasible to the agency, such as on the agency’s website, in its public calendar, through social media, news releases, and so on. Posting paper notice is not necessary. In order to comply with social distancing guidelines, public agencies should not provide a speakerphone for the general public at a physical location for the meeting. Meetings should otherwise be conducted in the ordinary course, taking into consideration logistical considerations with holding a telephonic meeting and keeping minutes. For instance, members of the legislative authority and staff should identify themselves when speaking and roll call voting should be considered. The OPMA does

¹ A copy of the Proclamation is available [here](#).

² A copy of the updated AGO Guidance is available [here](#).

not require public comment, and if it is offered, it should be held according to regular local procedures (e.g., identification for the record of who is providing the testimony, time limits, etc.) and in a manner so each member of the public participating in the call can hear the testimony. Members of the public solely observing the meeting should not otherwise be required to identify themselves. Care should be taken if and when holding an executive session to maintain confidentiality.

Allowable action at meetings

While meetings are held entirely remotely under the Proclamation, legislative authorities are prohibited from taking any action³ except on those matters that are “necessary and routine” or “necessary to respond to the COVID-19 outbreak and the current public health emergency.” All other action should be postponed until the public can participate in the meeting under the OPMA.

The AGO interprets the first limitation as permitting items that are both necessary *and* routine. These words are to be given their ordinary meaning, and deference is given to the public agency to determine what is required or essential to its operations and what type of action is customarily taken by the legislative authority. As a practical matter, an agency may wish to consider whether the matter is required by law, judicial or administrative proceedings or legal obligation, is necessary for continued operations, is customary and of the type regularly taken by the governing body pursuant to a policy or procedure, could be controversial or generate a large amount of public interest, and/or could have consequences to the agency if delayed, among other considerations.

If an item is not necessary and routine, action may still be taken with respect to the item if it is “necessary to respond to the COVID-19 outbreak and the current public health emergency.” Similar to the first limitation, these words are to be given their ordinary meaning and will largely depend on the facts and circumstances of the agency, its authority, and its role in the response to the COVID-19 outbreak.

In either case, a public agency would be well served to add findings to any ordinance or resolution or to state for the record how any action to be taken is consistent with the requirements of the Proclamation. If you have any questions regarding this information, please contact:

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³ “Action” is defined in the OPMA as “the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. ‘Final action’ means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.” RCW 42.30.020(3).