

*Updated June 3, 2020*

## **Updated: Open Public Meetings and Infectious Disease Outbreak**

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Using emergency powers to provide for the functioning of government during the coronavirus (“COVID-19”) crisis, on March 24, 2020, Governor Inslee issued Proclamation 20-28, as amended (the “Original 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 Original Proclamation (a) temporarily prohibited in-person public meetings, (b) facilitated a process for holding fully remote meetings and (c) limited the range of actions that can be taken in a remote meeting while the Proclamation is in effect. On May 29, 2020, Governor Inslee issued Proclamation 20-28.4<sup>1</sup> (the “Proclamation”) further extending the prohibition on in-person public meetings and notably, eliminating the prior limitation on what type of “action” may be taken at a meeting. Following the Proclamation, the Washington State Attorney General’s Office (“AGO”) revised its prior OPMA guidance for the COVID-19 outbreak (as revised, the “AGO Guidance”).<sup>2</sup>

The public health emergency and related proclamations and orders are expected to continue to evolve while Washington State moves forward through a phased reopening. 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 extends the temporary prohibition on in-person public meetings for all public agencies statewide. Meetings must continue to 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, all public meetings subject to the OPMA are banned 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. Further, the Proclamation eliminates the restriction on what type of action<sup>3</sup> may be taken at a fully remote meeting. While the Proclamation is in effect, public agencies may take action at remote meetings in the ordinary course, and are no longer limited to only those matters that are considered to be “necessary and routine” or “necessary to respond to the COVID-19 outbreak and the current public health emergency” as required by the Original Proclamation.

### ***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

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<sup>1</sup> A copy of the Proclamation dated May 29, 2020 is available [here](#).

<sup>2</sup> A copy of the AGO Guidance dated June 1, 2020 is available [here](#).

<sup>3</sup> “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).

meetings in a manner that would necessitate in-person contact. Telephonic access to the meeting 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. Public agencies are encouraged to develop procedures to encourage meaningful participation and the AGO Guidance references resources available to local governments. AGO Guidance recommends that public agencies post the telephone 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, in news releases, and so on. Notice of any special meeting must still comply with applicable OPMA requirements, such as including a summary of the business to be transacted and providing notice at least twenty-four hours prior to the time of the meeting. Under the AGO Guidance, posting paper notice at the agency's physical location is not necessary. For all meetings, a public agency would be well served to document or to state for the record how the meeting was noticed and held in a manner that is consistent with the requirements of the Proclamation.

Until in-person participation in meetings is permitted, 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, we recommend that members of the legislative authority and staff identify themselves prior to speaking and consider roll call voting for any action. Such considerations may help the general public follow the meeting while participating by phone.

The OPMA does 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. The usual procedural requirements under the OPMA apply when holding an executive session during a remote meeting, such as announcing the purpose of the executive session and the time/length of the session. To maintain confidentiality, the agency may consider using a separate dial in/remote access code for the executive session, while keeping the regular meeting conference call line open to the public.

If you have any questions regarding this information, please contact:

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