

*Updated May 18, 2021*

## **Updated: Open Public Meetings and the COVID-19 Emergency**

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Using emergency powers to provide for the functioning of government during the COVID-19 crisis, Governor Inslee and legislative leaders temporarily waived certain requirements of the Washington State Open Public Meetings Act (“OPMA”) for all governing bodies in the state subject to the OPMA. Under the current Proclamation, public agencies are required to offer a remote option for public meetings. In addition, public agencies located in counties in Phase 2 or Phase 3 of the Healthy Washington – Roadmap to Recovery Plan, are permitted to offer an in-person option for meetings, in addition to providing the required remote meeting options.

The OPMA restrictions remain in effect until the Governor ends the state or emergency, unless rescinded. On May 13, 2021, Governor Inslee announced that the state is moving toward full reopening on June 30, and that all counties in Washington will move to Phase 3 from May 18 until June 30. On May 13, Governor Inslee also announced that Washington has adopted the Center for Disease Control’s (“CDC’s”) new guidance lifting face mask and social distancing requirements for vaccinated people in most settings. We currently are awaiting guidance from state and local officials about how the CDC’s new face mask rules will be implemented in Washington.

The following is a summary of the Proclamation, the Washington State Attorney General’s Office (“AGO”) guidance (as revised, the “AGO Guidance”), and face mask and social distancing requirements currently in effect.<sup>1</sup>

### ***Governing bodies must offer remote options for all meetings***

Under the current Proclamation, 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. There are no restrictions what type of action may be taken at a fully remote meeting.

### ***Governing bodies in Phase 2 or Phase 3 counties may offer an in-person option for meetings***

Public agencies in Phase 2 and Phase 3 counties are allowed to offer an in-person component for meetings, but must continue to offer the remote meeting options as described below.<sup>2</sup> Importantly, if an agency opts to have in-person meetings, it must allow in-person public access as well. A governing body cannot meet in person and limit public access to the remote access options.

An in-person meeting component must meet all the requirements for in-person business meetings under the “Miscellaneous Venue” guidance.<sup>3</sup> There are a number of details in this guidance, including capacity limitations – 25% for Phase 2, and 50% for Phase 3. The Miscellaneous Venue guidance also requires face

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<sup>1</sup> A copy of Proclamations and the AGO Guidance are available [here](#).

<sup>2</sup> The November 11, 2020 Proclamation sets out the requirements for the optional in-person component. A copy is available [here](#).

<sup>3</sup> The Miscellaneous Venue guidance is available [here](#).

masks and social distancing. Since that guidance issued, Governor Inslee announced that Washington has adopted the CDC's new guidance lifting face mask and social distancing requirements for vaccinated people in most settings. Governor Inslee stated, however, that businesses may still choose to require face masks and distancing for all visitors. We are awaiting guidance from the Washington State Department of Health and other state and local agencies to learn more about how the CDC's new face mask rules will be implemented in Washington. We will continue to monitor these evolving requirements and its impact on public agencies.

Public entities can thus conduct business in person if they 1) maintain a remote access option, 2) allow in-person access and 3) comply with the generally applicable capacity, social distancing, and face mask requirements.

### *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. 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.

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 governing body 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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