

Updated: Open Public Meetings and the COVID-19 Emergency July 8, 2021

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, beginning June 30, 2021, all public agencies are also permitted to offer an in-person option for public meetings.

The OPMA restrictions remain in effect until the Governor ends the state of emergency, unless rescinded. However, on June 30, 2021, Governor Inslee announced that the state has reopened under the Washington Ready plan¹, allowing all industry sectors in the state to return to their usual capacity and operations. 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. The Washington Department of Health has subsequently issued an order implementing this guidance.

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 requirements currently in effect.²

Governing bodies must offer remote options for all meetings

Under the current Proclamation, governing bodies of public agencies must continue to hold remote meetings in compliance with the Proclamation or cancel or postpone the meeting 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 prohibited 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.

All Governing bodies may offer an in-person option for meetings

Despite the requirements in the Governor’s Proclamation, with the reopening of the state on June 30, 2021, all public agencies in Washington are permitted—but not required—to also conduct in-person meetings. Agencies may thus return to hosting in-person meetings on a full or part-time basis. However, agencies must continue to offer remote meeting options for all public meetings, as described below.³ Importantly, if an agency opts to have an in-person meeting, 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.

¹ The current Washington Ready plan is available [here](#)

² A copy of Proclamations and the AGO Guidance are available [here](#).

³ The November 11, 2020 Proclamation sets out the requirements for the optional in-person component. A copy is available [here](#).

Additionally, the amended “Miscellaneous Venue” guidance lifts most of the previous restrictions required to conduct in-person meetings.⁴ All restrictions on capacity limitations and physical distancing requirements have been lifted. However, public agencies must continue to follow the applicable face mask requirements, as set forth by the Washington State Department of Health and the CDC. Under the Secretary of Health’s Order 20-03⁵, face masks are still generally required in indoor public places, but are no longer mandated for fully vaccinated people in most settings. Notwithstanding these provisions, local jurisdictions are permitted to impose face masking requirements that are more protective than those established by the state. Both businesses and local governments may thus still choose to require face masks for all visitors. We will continue to monitor these evolving requirements and their 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 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.

⁴ The Miscellaneous Venue guidance is available [here](#).

⁵ The Secretary of Health’s masking Order is available [here](#).

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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