

Washington Open Public Meetings Act Update

Legal Alert
June 9, 2022
Foster Garvey Newsroom

All changes to the Open Public Meetings Act (“OPMA”) under [ESHB 1329](#) are now in effect. Here’s what you need to know.

- **Physical Location Required for Most Meetings.** Before the pandemic, the Attorney General’s Office advised that a physical location was required for public meetings. During the pandemic, the Washington Governor required a remote option for public meetings and during some phases of the pandemic, required that all meetings be held fully remotely. Now, the legislature has amended the OPMA to require a physical meeting location where the public can attend, except in emergency situations where the public agency determines it cannot safely hold an in-person meeting. While the OPMA amendments allow governing bodies that held regular meetings remotely prior to March 1, 2020 (*i.e.*, before the pandemic) to continue to hold fully remote non-emergency meetings, this provision will apply only to a small number of agencies.

With the rescission of Proclamation 20-28 et seq. (the Governor’s proclamations that, among other things, authorized and required public agencies to hold public meetings remotely), agencies are no longer required to offer a remote option to attend a public meeting in most instances, but the OPMA amendments specifically encourage public agencies to provide options to the public to observe and participate in meetings remotely.

- **Governing Bodies May Attend Meetings Remotely.** Although meetings must have a physical location for the public to attend, the OPMA now expressly allows members of a governing body to attend the meeting remotely. The

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means of remote access should allow real-time verbal communication. Agencies may wish to implement or update their policies regarding remote attendance to ensure they align with their desired expectations.

- **Most Agencies Will be Required to Post Regular Meeting Agendas Online.** The OPMA requires that agencies post their regular meeting agendas online no later than 24 hours before the meeting. Before ESHB 1329, an agency without a website or with fewer than ten full time employees could opt out of online agenda posting. Under the new OPMA language, the exception to post online agendas has been limited, and most agencies should plan to post their agendas online. Under the new language, a special purpose district, city or town may only opt out of online agenda posting if the agency: (1) has an aggregate valuation of the property subject to taxation of less than \$400,000,000; (2) has a population of under 3,000; *and* (3) provides confirmation to the state auditor that the cost of posting notices on its website or a shared website would exceed one-tenth of one percent of the local government's budget. It appears that *each* of these requirements must be satisfied in order to be exempt from the requirement to post regular meeting agendas. However, as under existing law, a failure to post an agenda does not invalidate otherwise legal action taken at a meeting.
- **Changes to Requirements for Online and Physical Posting of Special Meeting Notices.** The new legislation provides some changes to the requirements for special meeting notices. The OPMA still requires these notices be posted at least 24 hours in advance of the meeting time. Under the previous OPMA language, the notice of special meeting was required to be made available in a number of ways, including on the agency's website, though online posting was not required for agencies without a website, with fewer than ten full-time equivalent employees, or who did not employ personnel whose duties included maintaining or updating the website. As with the exception for website postings for regular meeting notices discussed above, this exception is narrowed by the changes to the OPMA. Under ESHB 1329, an agency must post a notice of special meeting to its website unless it (a) does not have a website or a shared website, (b) it employs no full-time equivalent employees, or (c) does not employ personnel whose duties include maintaining or updating the website.

The new language also addresses the physical display of the meeting notice in emergency situations. Under the revised language, a meeting notice need not be displayed at the entrance of the agency's principal location and meeting site if the meeting is being held remotely due to a declared emergency that prevents a meeting from being held with reasonable safety. And, instead, the meeting notice may be posted on the agency's website. Finally, new language also provides an exception to when notice is required: special meeting notices need not be provided if the notice "cannot be posted or displayed with reasonable safety, including but not limited to declared emergencies in which travel to physically post notice is barred or advised against."

As of June 9, 2022, two additional provisions of ESHB 1329 are now in effect.

- **Mandatory Public Comment Requirement at Regular Meetings.** While many public agencies already include time for public comment, as of June 9, 2022, the OPMA will require the acceptance of public comment at any regular meeting at which the governing body takes final action, except in emergency situations. Public comment may take the form of oral or written comments; if written comments are accepted, agencies can set reasonable deadlines for accepting comments in advance, and the written comments must be distributed to the governing body. When feasible, and if requested by an individual who will have difficulty attending a meeting (for reasons including, but limited to, disability or limited mobility), a governing body is required to provide an opportunity to present oral comment remotely, if oral comment from other members of the public will be accepted at the meeting. The new language encourages public agencies to “incorporate and accept” public comment even when not required.
- **Purpose of Executive Session to be Entered into Meeting Minutes.** The OPMA requires that the purpose of an executive session be announced publicly before the executive session is convened. With the amended language taking effect on June 9, 2022, the law will also require that the announced purpose of the executive session be entered into the meeting minutes.

If you have any questions regarding the above OPMA changes or other open government matters, please contact our [Public Records & Open Government team](#).