

JUNE 1, 2020



FIFTH UPDATED
OPEN PUBLIC MEETINGS ACT GENERAL GUIDANCE
FROM THE OFFICE OF THE ATTORNEY GENERAL
REGARDING THE CORONAVIRUS DISEASE (COVID-19) EVENT

Some state and local agencies have been considering their options for how to conduct public meetings under the state’s Open Public Meetings Act (OPMA) at [RCW 42.30](#), during the outbreak of coronavirus disease 2019 (COVID-19) in Washington State. See also [Governor’s Proclamation 20-05](#) declaring a state of emergency in all counties and directing state resources to affected political subdivisions. More proclamations are on the Governor’s Office website [here](#) including the [“Stay Home, Stay Healthy” Proclamation 20-25](#) and its recent extensions ([Proclamations 20-25.1](#) and [20-25.2](#) and [20-25.3](#)) and the proclamation describing the transition from “Stay Home, Stay Healthy” to “Safe Start – Stay Healthy” phased re-opening in [Proclamation 20-25.4](#).

COVID-19 events and their impacts have continued to evolve over time, affecting OPMA in-person meeting requirements. As these events have developed, the Office of the Attorney General has issued and updated general OPMA nonbinding guidance under RCW 42.30.210, and is now doing so again. The office provided general guidance with considerations on how to conduct OPMA meetings during this COVID-19 event, describing [Governor’s Proclamation 20-28](#) (which temporarily waived/suspended some OPMA and Public Records Act (PRA) provisions) and legislative leadership and proclamation extensions at [20-28.1](#), [20-28.2](#), and [20-28.3](#). The office provided those OPMA guidance documents on March 6, 2020; March 26, 2020 (First Update); April 24, 2020 (Second Update); May 6, 2020 (Third Update); and, May 14, 2020 (Fourth Update). See those guidance documents for details, posted on the office’s Open Government Training Webpage under [Lesson 3 – Open Public Meetings Act – Other Resources - Open Public Meetings Act Guidance – Coronavirus Disease \(COVID-19\)](#).

This Fifth Update to Guidance – June 1, 2020. On May 29, 2020, the state legislative leadership extended the OPMA and PRA temporary waivers/suspensions described in the prior guidance documents and proclamations, to **June 17, 2020**. On May 29, 2020, in [Proclamation 20-28.4 \(Open Public Meetings Act and Public Records Act\)](#), the Governor extended and amended Proclamations 20-28, 20-28.1, 20-28.2 and 20-28.3 to reflect the May 29, 2020 legislative leadership action and to similarly extend the expiration date of the proclamation to **June 17, 2020**. As a result, the guidance is updated to reflect the new expiration date, which is **June 17, 2020**. Proclamation 20-28.4 also retained the earlier proclamations’ temporary requirement that agency

governing bodies conduct remote meetings only (no in-person meetings at this time). However, Proclamation 20-28.4 did not continue the earlier proclamations' limit on what matters a governing body may take "action" in an OPMA meeting. Therefore, some considerations in the March 26, 2020 guidance document (First Update) as subsequently updated no longer apply; that guidance is hereby updated once more and for the period of time the most recent proclamation is in effect. See further discussion below*.

The guidance documents are not legal advice or a legal opinion. An agency should consult with its assigned legal counsel if it has questions or needs legal advice or a legal opinion. State agencies should consult with their assigned Assistant Attorney General.

As with the office's prior guidance documents, this fifth updated guidance document for agencies and their attorneys addresses only the OPMA (except for the updated references only in the proclamations concerning the PRA), and as of the events on the date above. Other laws may apply to some meetings of some agencies. In addition, depending upon the agency and its governing statutes, or agency resources, other options might be available at a particular agency. This guidance provides information about the OPMA as of the date above. Later-enacted statutes, case law, or other legal developments may affect the analysis.

For more information about COVID-19, see this webpage of the Washington State Department of Health: <https://www.doh.wa.gov/Emergencies/Coronavirus>. Information about strategies to mitigate exposure is also available from many federal and local agencies.

*The March 26, 2020 OPMA guidance updated the suggested considerations and responses to several questions that had been presented in the earlier March 6, 2020 OPMA guidance. The March 26, 2020 updates took into account Governor's Proclamation 20-28, revising the responses to and suggested considerations for Questions ## 1, 2, 3, 4 & 7 in the March 6, 2020 guidance. The OPMA guidance was updated three more times after that to reflect the extended effective dates.

As of June 1, 2020, the COVID-19 disease event still calls for social distancing. However, many other things have changed since the beginning of March. Specifically, all agencies subject to the OPMA have been required to establish procedures for remote meetings and to arrange for remote attendance at their meetings by the public, even if the agencies had not conducted remote meetings in the past so did not previously establish remote meeting mechanisms. This means that today, remote meetings of government bodies have become commonplace. It is now unexceptional for the public to remotely attend various gatherings including meetings.

As a consequence of the most recent proclamation (Governor's Proclamation 20-28.4), the response to Question # 1 is hereby revised again, as follows.

1. In light of this COVID-19 event, what questions should an agency be asking itself if it has concerns about virus transmissions and a public meeting and before it proceeds with holding a current meeting or schedules a future meeting, when the meeting is required to be open to the public under the OPMA?

In response to this question, the March 6, 2020 guidance had described several general considerations for agency meetings subject to the OPMA, prior to the issuance of a proclamation related to the OPMA and as COVID-19 events were just getting underway. Then, as events progressed, the March 26, 2020 OPMA guidance had revised the March 6, 2020 response and described that under the proclamation in effect at that time, agencies needed to specifically ask if the matter on which they were taking “action” in their remote meetings was (1) “necessary and routine,” or (2) “necessary to respond to the COVID-19 outbreak and current public health emergency.”

Revision: The response to Question # 1 in the March 26, 2020 guidance is hereby revised. An agency governing body subject to the OPMA can meet for “action” as defined in the OPMA. Proclamation 20-28.4 no longer limits agency governing body’s “action” under the OPMA to only those matters that are “necessary and routine” or “necessary to respond to the COVID-19 outbreak and current public health emergency” as was the case in the prior proclamations. “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.” RCW 42.30.020(3). “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.” *Id.*

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With respect to the remainder of the guidance, and as described, OPMA meetings must continue to be remote only through the expiration of the proclamation at the end of the day on June 17, 2020, unless further extended. Governor’s Proclamation 20-28.4, as with the prior proclamations, still requires remote OPMA meetings only at this time. The requirement for remote public attendance only – at minimum by telephone access, and in addition, an agency can arrange for other supplemental options – likewise remains in effect at this time. See the current Proclamation 20-28.4 and Questions # 3 & 4 as revised in the March 26, 2020 guidance.

For more resources on conducting remote meetings, see also:

- The Municipal Research and Services Center (MRSC) website article of March 26, 2020, [“Tips for Government Bodies Meeting Remotely.”](#)
- The MRSC website article of April 29, 2020, [“Engaging in a Pixelated Public Square.”](#)

- The Association of Washington Cities website article of April 20, 2020, “[Digital Meeting Options](#).”
- Department of Enterprise Services Master Contract for teleconferencing and web-based meeting platforms, which can be found here:
Software Resellers (06016):
<https://apps.des.wa.gov/DESContracts/Home/ContractSummary/06016> Cloud
Solutions (05116):
<https://apps.des.wa.gov/DESContracts/Home/ContractSummary/05116>

There may be other resources for agencies as well.

As previously described, this updated guidance is provided as a resource for the time the proclamation is in effect.