

The OPMA Gets an Update from the Legislature

March 24, 2022 by [Flannary Collins](#)

Category: [Open Public Meetings Act](#), [New Legislation and Regulations](#)



Editor's note: This blog has been updated since the original date of publication in the following ways:

- *To add that Governor Jay Inslee has signed HB 1329 into law (March 24, 2022),*
- *To add the dates on which changes to the OPMA take effect,*
- *To clarify what the OPMA defines as a 'governing body',*
- *To clarify how a special or regular meeting can be adjourned, and*
- *To clarify remote meeting attendance.*

Changes have been made to the [Open Public Meetings Act \(OPMA\)](#) in [HB 1329](#), with some changes effective upon Governor Jay Inslee's [signature on the bill](#) (March 24, 2022), while others are effective soon after (June 9, 2022). Local governments should familiarize themselves with these changes, so they are prepared to implement them immediately upon the governor's signature.

The most notable change (which is really more of a clarification) is that meetings subject to the OPMA must have a physical location (with a few allowed exceptions). Another significant change is the requirement for public comment at regular meetings where final action is taken. This blog will review the physical location and public comment requirements as well as other notable changes made to the OPMA. Unless otherwise noted below, all of the changes highlighted in this blog are effective as of March 24, 2022.

Location of Meetings

Over the years, those in the municipal field have debated the question of whether the OPMA requires a physical location for a meeting of the legislative body. A 2017 Attorney General opinion concluded that it did, interpreting the

OPMA language as requiring meetings be held at a physical location and allowing remote attendance by the legislative body (see [AGO 2017 No.4](#)). That position has now been codified into the OPMA.

Of course, during the COVID-19 pandemic, the governor's proclamations made an exception to the physical location requirement, mandating that meetings of the legislative body be held remotely. And, despite the [recent lifting of the mask mandate](#), [Proclamation 20-28.14](#) (extended by [Proclamation 20-28.15](#)) remains in effect and requires meetings subject to the OPMA be held remotely, with an in-person component optional. Once the proclamation expires, the new language in the OPMA will control. *Editor's note: On April 29, Governor Inslee announced that [Proclamation 20-28 et seq.](#) will be lifted on June 1. For more information, see our blog post [OPMA/PRA Emergency Proclamation Will Expire June 1](#).*

That new OPMA language requires that all meetings of a governing body of a public agency be held in a physical location where the public can attend, with two exceptions:

1. If a local, state, or federal emergency has been declared and the public agency determines it cannot hold an in-person meeting, the meeting can be fully remote.
 - If required by the emergency, the public agency can either fully prohibit or limit in-person public attendance at the meeting.
 - If the meeting is held remotely or the public attendance is limited or prohibited, the agency must provide a cost-free option to attend in real-time, either by telephone or another readily available alternative.
2. If a governing body held some of its regular meetings remotely prior to March 1, 2020, they may continue to hold these meetings remotely with no declared emergency so long as the public may also attend remotely.

This latter option will only apply to a small handful of public agencies, as the March 1, 2020 date precedes by approximately three weeks the governor's [Proclamation 20-28](#) requiring all meetings be remote.

Notably, it is encouraged but not required that a governing body provide a remote meeting attendance option when there are no limitations to in-person meeting attendance by the public.

Remote Meeting Attendance by Members of the Legislative Body

Again confirming the direction in [AGO 2017 No.4](#), the OPMA now specifically permits members of the governing body to attend the meeting by phone or other electronic means that allows for real-time verbal communication. So, while the meeting must be held in a physical location and must allow the public to attend in-person (absent an emergency), any or all members of the governing body can choose to attend the in-person meeting remotely. See section 5, subsection 5 of [HB 1329](#), which provides that “[n]othing in this section alters the ability of public agencies... to have members of the governing body participate in a meeting remotely with no declared emergency.”

Online Posting of Regular Meeting Agendas

The general rule is that all public agencies must post their regular meeting agendas online no later than 24 hours in advance of the governing body's meeting. Previously, the OPMA allowed those agencies without a website or with fewer than 10 full time employees to opt out of online agenda posting. The bar for opting out of posting agendas online is now much higher. The OPMA now only allows special purpose districts, cities, or towns that meet the following criteria to opt out of online agenda posting:

- Has an aggregate valuation of the property subject to taxation by the district, city, or town of less than

\$400,000,000;

- Has a population of under 3,000; and
- Provides confirmation to the state auditor that the cost of posting notices on its website or a shared website would exceed one-tenth of 1% of the local government's budget

Posting of Special Meeting Notice

Special meetings are any meetings of the legislative body that are not a regular meeting, and they require different types of notice. [RCW 42.30.080](#). The rules for special meeting notice have changed slightly. The chart below details the new rules by looking at the type of notice required and whether there is an exception:

Type of Notice (required at least 24 hours in advance of meeting)	Exception
Personal notification to each member of the governing body	If a waiver is on file or they are present at the meeting
Notification to news media if there is a request on file	None
Agency website posting	If the agency: (1) does not have a website; or (2) does not share a website with another agency; or (3) employs no full-time equivalent employees (the previous language was "employs fewer than 10 full-time equivalent employees."); or (4) does not employ personnel whose duty it is to maintain or update the website.
In print at the main entrance of agency's principal location for meetings held in person	If notice cannot be posted with reasonable safety (such as during a snowstorm or other hazard).

Notwithstanding the above requirements, special meeting notice is not required for the following:

- Special meetings called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage; or
- When the notice cannot be posted or displayed with reasonable safety.

However special meeting notice is required to be posted on the agency website for any special meetings that are being held remotely due to a declared emergency or where public attendance must be restricted, regardless of the number of employees or whether the agency employs personnel whose duty it is to update or maintain the website.

Receiving Public Comment and Recording Meetings

While the OPMA previously did not require governing bodies to receive public comment at their meetings, most public agencies did provide a set time on the meeting agenda for the public to comment on agency business. Effective June 9, 2022, public comment at regular meetings of a governing body of a public agency where final action is taken is now a requirement. Note that a governing body includes not just the city or county council or board of commissioners, but also planning commissions, civil service commissions, and other policy or rule-making bodies, and committees that act on behalf of the governing body, conduct hearings, or take testimony or public comment.

Public agencies must allow for the public to orally comment at the meeting or submit written comment prior to or at all regular meetings. [HB 1329](#) doesn't expressly state at what point during the meeting public comment must be taken, so this is a policy decision of the agency. Public comment is not required in emergency situations and is not

required (but is recommended) at special meetings, even when final action is taken. If oral comment is allowed and an individual who has difficulty attending the meeting in-person requests an opportunity to provide oral comment remotely, the agency must provide this opportunity when feasible.

Also, effective June 9, 2022, the OPMA encourages agencies to make an audio or video recording of the regular meetings and make those recordings available online for a minimum of six months.

Purpose of Executive Sessions

Effective June 9, 2022, the OPMA now requires the announced purpose of the executive session be entered into the meeting minutes. See our [Executive Session Basics](#) topic page and [Executive Sessions FAQs](#) for more on executive sessions.

Adjournment of In-Person Meetings

Under the OPMA, a regular or special meeting can be “adjourned,” or rescheduled, to a different time and place, so long as appropriate notice is provided. (While “adjourn” is commonly understood to mean simply ending a meeting, in the OPMA context it means to reschedule a scheduled meeting.) If an in-person meeting is adjourned (i.e., rescheduled), a copy of the order or notice of adjournment must be posted immediately after adjournment on or near the door where the meeting was held. If the meeting was held remotely, no notice of adjournment is required.

Conclusion

As the reader can see based on the length of this blog, the legislature changed many details in the OPMA. While this blog highlights these changes, a careful read of [HB 1329](#) is recommended to ensure your agency's meetings are in compliance with the OPMA.

If you are interested in learning more about the OPMA, MRSC has a wealth of OPMA information available on its website, including:

- [Open Public Meetings Act Basics](#) topic page
- *The OPMA – Latest Issues and Case Law Update* on-demand webinar broadcast in February 2022. To access the webinar, visit [On Demand Webinars](#) and scroll down to Open Government (PRA and OPMA).
- MRSC Insight blogs
 - [Tips for Government Bodies Meeting Remotely](#)
 - [Working on Council Guidelines? What About Remote Meeting Attendance?](#)
 - [Technology and Open Government: Maximizing Participation and Transparency](#)

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About Flannary Collins

Flannary Collins is the Managing Attorney for MRSC. Flannary first joined MRSC as a legal consultant in August



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At MRSC, Flannary enjoys providing legal guidance to municipalities on all municipal issues, including the OPMA, PRA, and personnel. She also serves on the WSAMA Board of Directors as Secretary-Treasurer.

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