

The Firehouse Lawyer

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Eric T. Quinn, Editor

Joseph F. Quinn, Staff Writer

The law firm of Quinn and Quinn, P.S. is legal counsel to more than 40 Fire Departments in the State of Washington.

Our office is located at:

**7403 Lakewood Drive West, Suite #11
Lakewood, WA 98499-7951**

Mailing Address:
**20 Forest Glen Lane SW
Lakewood, WA 98498**

Office Telephone: 253-590-6628

Email Joe at joequinn@firehouselawyer.com
Email Eric at ericquinn@firehouselawyer2.com

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**Inside this Issue: Proclamation 20-28
Rescinded**

May 2022 Extra

Proclamation 20-28 Rescinded, Effective June 1

On May 11, 2022, Governor Inslee announced that, effective June 1, 2022, his Proclamation 20-28 shall be considered rescinded, as per order 20-28.16:

https://www.governor.wa.gov/sites/default/files/proclamations/20-28.16%20-%20COVID-19%20OPMA%20PRA%20Rescind%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery

As you may recall, Proclamation 20-28 altered certain provisions of the Open Public Meetings Act and the Public Records Act.¹ A primary feature of 20-28 was the *prohibition* of in-person meetings by governing bodies of local governments.

Meetings were required to be held remotely, so agencies quickly learned how to hold meetings remotely or virtually. The proclamation was later modified slightly to allow what we call hybrid meetings, which means you could hold in-person meetings but could also retain the remote meeting

¹ See the original Proclamation 20-28 here: <https://www.governor.wa.gov/sites/default/files/proclamations/20-28%20-%20COVID-19%20Open%20Govt%20Laws%20Waivers%20%28tmp%291.pdf>

capability for those who wanted to participate that way, and the in-person component was subject to miscellaneous protective provisions such as social distancing and sanitizing. In the meantime, however, the legislature amended the OPMA in certain particulars, in an effort to encourage or mandate public participation in such meetings. Therefore, we are writing this article to try to synthesize the modified requirements effectuated by the rescission taken together with the modified OPMA.

With this rescission order, effective June 1, 2022 the situation is as follows (much like the pre-Covid situation) due to the order, taken together with the recent legislative changes:

Because of the rescission of Proclamation 20-28 and ESHB 1329² (which is now a session law), local governing bodies:

- SHALL hold their board meetings in-person at a designated place and time as set forth in ordinance or by resolution of the governing body, unless an emergency has been declared (local, state or federal emergency) and the Board determines that it cannot hold an in-person meeting with reasonable safety.
- MAY offer a remote option to allow virtual participation in the meetings by members of the public, but are not required to

2

<https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1329-S.SL.pdf>

do so, unless for some reason public attendance is restricted at the public meeting place (but see below on disability etc.)

- SHALL, WHEN FEASIBLE, allow remote public comment from individuals that “will have difficulty attending... by reason of disability, limited mobility, or for any other reason that makes physical attendance at a meeting difficult.” It remains to be seen whether this will be interpreted as broadly as the statutory language seems to imply (effective June 9, 2022). It would seem that this could be done only upon request.
- MAY, as before, adopt a formal policy (by resolution or ordinance) allowing board members to participate remotely, so long as the public can hear or observe that board member’s participation. Appropriate technology operated by the local government assures this transparency. We have model resolutions drafted many years ago.
- SHALL allow public comment by in-person participants at all regular meetings at which “final action” is taken, within reason, and in accordance with adopted policies regulating such speech, in accordance with the OPMA. Even approval of minutes is “final action” so this essentially requires such public comment at all regular meetings. We recommend that comments also be allowed at special meetings, so long as they are relevant to the limited agenda.
- MAY also allow public comment in writing, prior to or at any such regular meeting

at which final action is to be taken and must share such written comments with the board at or prior to the start of the meeting. We recommend that both in-person and written comments be allowed, despite the language of the statute that seems to allow one OR the other. We think it unwise to allow one type of comment to the exclusion of the other, and recommend that remote participants be allowed to comment somehow.

- SHALL revert to all pre-Covid procedures with respect to public records.

Please note that the new legislation, ESHB 1329 (at footnote 2 above), also amended other parts of the OPMA, such as the agenda and notice requirements of RCW 42.30.077. There are agenda/notice exceptions in that legislation for the very small special purpose districts. We do not delve into those here as our law practice includes only a few small districts, but if you are one of those clients, feel free to ask us about those exceptions.

We are developing a model policy to comply fully with the OPMA as amended, so feel free to ask us for a copy of the policy.

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