



INFORMATIONAL MEMORANDUM

TO: **Finance & Governance Committee**
FROM: **Laurel Humphrey, Legislative Analyst**
DATE: **April 1, 2022**
SUBJECT: **Changes to the Open Public Meetings Act**

ISSUE

The Washington Legislature passed Engrossed Substitute House Bill 1329 which amended the Open Public Meetings Act with minimal impact to Tukwila.

BACKGROUND

ESHB 1329 established five specific changes to the OPMA, two of which are now in effect and the remaining three in effect when Governor's Proclamation 20-28.15 relating to the COVID-19 pandemic is lifted. The attached memo from Ogden Murphy Wallace, PLLC details the changes, which are summarized as follows, including Tukwila's current status:

Physical Location Requirements in an Emergency

When Proclamation 20-28.15 is lifted, cities must resume holding meetings in a physical location, unless a state, federal or local state of emergency is declared.

Status: Compliant. The Tukwila City Council has resumed meeting in a physical location with hybrid participation offered to residents and staff.

Online Posting of Regular Meeting Agendas

Cities with certain small population, AV, and budget are now exempt from posting meeting agenda online 24 hours prior to the meeting.

Status: Compliant. Tukwila is not exempt and will continue to post meeting agendas online 24 hours in advance.

Public Comment now Required at Public Meetings

Cities are now required to provide a public comment opportunity before or during a meeting at which the governing body takes final action, except in the case of an emergency.

Status: Compliant. Tukwila provides the opportunity for public comment at Regular Meetings (and Committee of the Whole, which is not required).

Remote Public Attendance

When Proclamation 20-28.15 is lifted, cities will not longer be required, but are encouraged, to offer remote options for public attendance.

Status: Compliant. Tukwila conducts hybrid City Council meetings with options for remote public attendance.

Remote Public Participation by the Governing or Advisory Body

City Council members will now be allowed to participate in meetings remotely, even in times of non-emergency, if their Rules of Procedure allow.

Status: Policy Decision Needed. The City Council's current Rules of Procedure only allow remote meeting participation only in the event of a city, state or federal emergency.

Recording of Executive Sessions in the Meeting Minutes

ESHB 1329 requires that the announced purpose of an executive session must be formally entered in the minutes for that meeting.

Status: Compliant. Tukwila City Council meeting minutes already include the announced purpose of executive sessions.

RECOMMENDATION

Discussion only. The Finance & Governance Committee may request that staff initiate a Rules of Procedure update with regard to remote meeting attendance by Councilmembers.

ATTACHMENTS

- Ogden Murphy Wallace Memo dated March 29, 2022

MEMORANDUM

DATE: March 29, 2022

TO: All Cities

FROM: Drew Pollom, Ogden Murphy Wallace, PLLC

RE: Changes to the Open Public Meetings Act (“OPMA”) as a result of Engrossed Substitute House Bill (“ESHB”) 1329

Background

The Washington Legislature passed ESHB 1329 which amended the OPMA regarding physical meeting locations during a public emergency, posting of meeting agendas online, public comments, and remote participation in meetings by the public and governing bodies.¹ Although Governor Inslee signed the bill on March 24, 2022, Proclamation 20-28.15—which suspends specific OPMA requirements due to the COVID-19 pandemic—remains in effect, superseding the full implementation of ESHB 1329 until the Governor lifts Proclamation 20-28.15.² ESHB 1329 establishes five specific changes to the OPMA that municipalities should be aware of with two changes now in effect.

Physical Location Requirements in an Emergency

Prior to the COVID-19 pandemic, the OPMA required physical locations for public meetings. Proclamation 20-28.15 suspended this requirement to allow for remote meetings. After the Governor lifts Proclamation 20-28.15, ESHB 1329 will allow municipalities to hold a remote meeting without a physical location or in a location with limited in-person participation only when the state, federal government, or municipality declares a state of emergency.³ The municipality

¹ ESHB 1329, 67th Leg. Reg. Session (Wash. 2022) Signed on March 24, 2022, *available at* <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/1329-S.PL.pdf#page=1>.

² Proclamation 20-28.15 *available at* https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-28.15.pdf.

³ ESHB 1329, *Supra* n. 1. at §5(1)(a).

must publicize a remote meeting in compliance with the OPMA, allow for the public to listen and participate in the remote meeting, and provide instructions for public participation.⁴

This means that your city should be prepared to reinstate physical meeting locations for all OPMA covered meetings consistent with the requirements of ESHB 1329 as soon as Proclamation 20-28.15 (or subsequent proclamation) is rescinded unless there is another qualifying declaration of emergency.

Online Posting of Regular Meeting Agendas

The OPMA previously required all municipalities to post meeting agendas online 24 hours prior to the start of a regular meeting unless they did not have a website or employed fewer than 10 full-time equivalent employees. Beginning on March 24, 2022, ESHB 1329 changes the law to exempt municipalities from the 24-hour agenda posting requirement only if:

- a. The aggregate value of the property within the municipality is less than \$400,000,000;
- b. The population of the municipality is under 3,000 people; and,
- c. The municipality confirms to the State Auditor's Office when it files its annual reports that the cost of posting notices on a website would exceed 0.1% of the annual budget.⁵

Proclamation 20-28.15 does not affect requirements for agendas, therefore this provision of ESHB 1329 went into effect on March 24, 2022.

Public Comment Now Required at Public Meetings

Prior to the passage of ESHB 1329, governing bodies were not required to accept public comments at public meetings. ESHB 1329 created a new requirement: governing bodies shall provide an opportunity for public comment either before or during any meeting at which the governing body takes final action, except in the case of an emergency.⁶ The OPMA defines final action as a collective positive or negative decision or a vote by a majority of a governing body.⁷ The bill allows for either oral comments or written comments, however any written comments must be distributed to the governing body.⁸ Governing bodies may set a deadline for submission of written testimony before a meeting.

Proclamation 20-28.15 does not affect public comments, therefore this provision of ESHB 1329 went into effect on March 24th, 2022.

Remote Public Attendance

Prior to the COVID-19 pandemic, municipalities were not required to provide remote public attendance options for council meetings. Proclamation 20-28.15 temporarily requires municipalities to offer remote options for public attendance. Once the Governor lifts Proclamation 20-28.15 this requirement will end, and ESHB 1329 merely encourages — but does not require —

⁴ *Id.* at §5(3-4).

⁵ *Id.* at §9(2)(a-c).

⁶ *Id.* at §13(1).

⁷ RCW 42.30.020(3).

⁸ ESHB 1329, *Supra* n.1 at §13(1).

municipalities to provide the public with remote ways to observe and participate in public meetings, including livestreaming and posting recordings online.⁹

Remote Participation by the Governing or Advisory Body

Proclamation 20-28.15 permits members of governing bodies and advisory boards to participate in meetings remotely; ESHB 1329 will allow these same members to participate remotely at a meeting during a declared public emergency.¹⁰ Regardless, governing and advisory body members may still participate remotely during a non-emergent period if that approach is permitted by the body's rules and the meeting otherwise complies with the requirements outlined above. For example, the Redmond City Council Rules of Procedure allow councilmembers to participate remotely in council business at any time.¹¹

Recording of Executive Sessions in the Meeting Minutes

For any meeting involving an executive session, ESHB 1329 now requires that the announced purpose of the executive session be formally entered into the minutes for that meeting.¹² Proclamation 20-28.15 does not affect meeting minutes, so this provision of ESHB went into effect on March 24, 2022.

Recommendations

In responding to the OPMA changes made by ESHB 1329, we recommend municipalities take the following action in consultation with their City Attorney:

- Decide whether the municipality will continue or declare a local state of emergency once all other state of emergencies have been lifted.
- Determine if the municipality is exempt from the revised 24-hour agenda posting requirements.
- Ensure the municipality allows for public comment at or before meetings where final action is taken.
- Review — and amend as necessary — the municipality's existing rules for public comment to ensure compliance with the new public comment mandate.
- Evaluate the applicable costs and equipment necessary to continue remote participation by the public at public meetings if the municipality chooses to provide remote public participation options after the Governor lifts Proclamation 20-28.15.
- Determine whether the municipality's governing and advisory bodies will permit remote participation by their members outside of a state of emergency, and—if so—amend the

⁹ *Id.* at §4(1).

¹⁰ *Id.* at §5(2).

¹¹ Redmond City Council Rules of Procedure *available at* <https://www.redmond.gov/DocumentCenter/View/166/Rules-of-Procedure?bidId=>.

¹² ESHB 1329, *Supra* n. 1. at §12(1)(2).

municipality's current ordinances and rules of procedure as necessary to specifically authorize this approach.

Please direct any questions about this memo's information or ESHB 1329 to your City Attorney.