

Legislature extends suspension of some state transparency laws during pandemic

Christian Vosler and Chris Henry, Kitsap Sun Published 3:05 p.m. PT May 8, 2020



The Washington State Capitol. (Photo: Elaine Thompson, AP)

Public government meetings in Kitsap will continue to be held online for the foreseeable future after legislative leaders extended an order from Gov. Jay Inslee restricting parts of the state Open Public Meetings Act (OPMA) through the end of May.

As the coronavirus outbreak in Washington intensified during the second half of March, Inslee's office [issued an order prohibiting public agencies from holding in-person meetings](https://www.governor.wa.gov/news-media/inslee-suspends-sections-open-public-meetings-and-records-laws/5083356002/) ([/story/news/2020/03/26/inslee-suspends-sections-open-public-meetings-and-records-laws/5083356002/](https://www.governor.wa.gov/news-media/inslee-suspends-sections-open-public-meetings-and-records-laws/5083356002/)). The order also suspended a section of the Public Records Act (PRA) that compels agencies to respond to public records requests within five days.

Under state law, the governor can [waive or suspend certain statutes](https://apps.leg.wa.gov/RCW/default.aspx?cite=43.06.220) (<https://apps.leg.wa.gov/RCW/default.aspx?cite=43.06.220>) during an emergency for up to 30 days, beyond which a vote of the Legislature is required. If the Legislature isn't in session, the suspensions can be extended by the leadership of the state Senate and House of Representatives.

In a letter to the governor's office this week, legislative leaders [approved the extension of 12 proclamations issued since March](https://www.governor.wa.gov/news-media/inslee-extends-12-proclamations-relating-covid-19/) (<https://www.governor.wa.gov/news-media/inslee-extends-12-proclamations-relating-covid-19/>), including the OPMA suspension. The proclamation suspending a portion of the PRA was only extended through May 11.

Transparency on records debated

House minority leader J.T. Wilcox, R-Yelm, said he was uncomfortable with extending the suspension of the PRA. Wilcox said he understood concerns about exposing public records staff to illness while working in person and agreed to extend the order for a week to further discuss it with the governor's office.

"I'd like to see if we could find a way to not suspend (the PRA), but I wanted to give the governor's office a chance to think it through," Wilcox said.

Inslee's office does not want to see the PRA suspension expire, according to press secretary Mike Faulk, and has asked the Legislature to extend it through the end of the month.

The proclamation suspends the section of the PRA that allows members of the public to review and copy records in person at state and local facilities, as well as a statute that mandates public agencies [initially respond to a public records request within five days](https://app.leg.wa.gov/RCW/default.aspx?cite=42.56.520) (<https://app.leg.wa.gov/RCW/default.aspx?cite=42.56.520>).

Agencies are “still expected to continue to respond promptly and to the greatest and fullest extent possible,” according to the governor’s office.

Toby Nixon, president of the Washington Coalition for Open Government (WCOG), said he hasn’t heard many concerns about government agencies intentionally delaying records requests. But there have been some complaints.

“I think the biggest problem that I’ve heard most about is that there are a number of jurisdictions out there that are just taking this as license to not respond to public records request at all, like they can be infinitely deferred,” Nixon said.

Nixon said the complaints WCOG has received have come mostly from members of the public and not reporters. He added that the governor’s office invited WCOG and other state transparency groups to provide input on the suspension before it was announced.

“We really appreciate the fact that they reached out and the end result of that process is we really think this proclamation was the minimum necessary to deal with the pandemic,” Nixon said. “In general we think it’s worked pretty well.”

Taking meetings online

The migration to Zoom or other remote meeting platforms has proven logistically challenging to some local agencies. Elected officials’ comfort with Zoom has been all over the board, with those who are more adept gamely coaching the technologically challenged among them. A recent meeting via Zoom of the Central Kitsap school board was delayed for about five minutes as one board member fumbled with the view and audio settings.

The city of Port Orchard early in the year finally phased out paper agenda packets and made sure all city council members were using electronic devices, a happy coincidence given that within a couple of months COVID-19 would push public meetings entirely online, Mayor Rob Putaansuu said.

“It’s been a learning curve for us,” Putaansuu said of the ZOOM meetings. “This is all just so new to us and we’re still just figuring it out.”

Roger Gay, a South Kitsap resident who routinely attends many local public meetings, lambasted the South Kitsap School District board for his experience with a Zoom meeting held April 14. The district had been live-streaming meetings via Facebook since late February.

“It was very interesting. I went to the meeting per the information given on the SKSD website. When I logged into the meeting and it started, there was (sic) me and five other people, including one of the directors and I think staff,” Gay wrote on his blog Inform Kitsap. “I understand that this use of Zoom is new for the district, at least I think so. But when the public is given the wrong meeting ID and is left on a site with zero interaction as the SKSD board is continuing with their meeting, that is wrong. It is unacceptable.”

The district on Facebook quickly noted the technical glitch and redirected people who might be trying to access the meeting there.

Public attendance at in-person meetings is typically scant unless there’s a controversial topic, and public officials often lament a lack of community engagement. Moving meetings online may have added yet another hurdle to participation. On the flip side, it may be making it easier for the public to take part, judging by the dozens and (in at least one case) scores shown watching or signed into recent South Kitsap School District’s online meetings, for example.

'You may address the board'

Officials have wrestled, too, with how to accept public comments as meetings went online. The OPMA doesn’t require a public comment period and yet giving constituents an in-person platform to address the board at most regular meetings has been the usual and customary practice among local agencies.

Kitsap County’s board of commissioners, the Port of Bremerton and the city councils for Bremerton and Bainbridge Island have been taking public comment live by Zoom during their regular meetings. The virtual meeting platform is accessible by computer, mobile phone and telephone. Comments typically aren’t taken during work-study sessions, which was the case before COVID-19 meeting restrictions were implemented.

Bremerton Mayor Greg Wheeler said he and the council were united in the intent early on to provide the most public access possible under the circumstances.

"We went immediately to that," Wheeler said. "It was my directive to get the technology in place to offer as much transparency as possible in a virtual world."

Port Orchard and Poulsbo's city councils have for the duration limited their interactions with the public to written comments, plus in Poulsbo's case voicemail comments. Emailed, handwritten and voicemail comments received by the Poulsbo city clerk by 4 p.m. the day of the meeting will be read into the record.

City Clerk Rhiannon Fernandez said Poulsbo was intentional in choosing the written comment route over live comments.

"We weren't very familiar with the technology, and we weren't very sure how it worked and how to manage it," she said. "So moving into something new, we felt that was a good way to manage it."

Putansuu said if Port Orchard's council directed him to allow for live comments, the city would figure it out. But he hasn't seen a big push for it either from city officials or the public.

"It's not that we're not taking public comments, it's just that we're taking them in writing," Putansuu said.

At last week's meeting, the council received one written comment from a resident concerned about the number of beehives in a neighbor's yard. The concern was referred to staff.

School boards adapt gradually

Local school boards, with two recent exceptions, also have held back on taking live comments during online meetings.

"To uphold social distancing guidelines and the public safety/health, there will be no communication portion of the agenda for this meeting," North Kitsap School District advised for the board's April 23 meeting. Public comments are accepted by mail or email, as usual. People who wanted to join the Zoom meeting were asked to register in advance.

The Bainbridge Island School District advises, "All public comment must be submitted in writing prior to the start of the board meeting." The Central Kitsap school board accepts written comments by email or Google Docs form before and after its meetings.

"The school board president will note topics that were submitted prior to the board meeting. All public comment submissions will be provided to each board member," Central Kitsap's website states.

South Kitsap, Bremerton evolve

Curtailing live comments as meetings remain online could be seen as yet another reason for lack of public engagement. Gay in his post on South Kitsap's April 14 meeting chastised the district for not using the technology available for live comments.

"If I were to grade the school district in its interaction and involvement with the public, I would give them a failing grade," Gay said. "I know enough about Zoom that dealing with the public should not be a problem."

South Kitsap, along with Bremerton School District, this past week began taking live comments on Zoom at school board meetings.

Approximately 40 people, about half of them board members or staff, attended South Kitsap's meeting on Wednesday. Board member John Berg instructed people how to virtually (not literally) raise one's hand to be called on. Three people spoke during public comment. The meeting video and agenda written materials were posted on the district's Facebook page the next day. The meeting video was also posted on Vimeo.

Bremerton School District for its meeting on Thursday advised that anyone wishing to speak at the meeting could email the district and they would be added to the agenda under "public input." People also were given the option to use the "raise hand" function at the meeting.

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