

City of Blaine
Request for Council Action
Meeting Date: July 13, 2020

Subject: An emergency order on public meeting formats in consideration of the Open Public Meetings Act waiver and Washington’s Safe Start reopening phases

Department: City Manager **Prepared By:** _____
(Digital Signature)

Agenda Location: Consent Agenda Council Action Unfinished Business

Attachments:

1. Draft Emergency Order – Option A
 2. Draft Emergency Order – Option B
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Background/Summary:

On March 16, 2020, City Council approved Resolution 1800-20 which created a new rule (Rule 38) in the Council Rules of Procedure. Rule 38 authorized the City Manager to waive rules and modify the City Council meeting process.

Under the Safe Start Washington plan there are 4 phases of reopening the economy. Phases 1 and 2 preclude government offices from being open to the public. Local government offices reopen under Phase 3. Whatcom County is currently in Phase 2 and given the progress related to controlling the virus in the county it does not appear likely we will move to Phase 3 soon.

The Open Public Meetings Act (OPMA) requires that meetings of government decision-makers, such as the City Council and Planning Commission, must be open to the public. Governor Inslee, in conjunction with the State Legislature, has authorized a waiver of the OPMA. The waiver allows for meetings to occur in a digital format without a physical location open to the public for meeting attendance. The public can “attend” meetings electronically, and observe the functions of government through the digital medium.

The OPMA waiver is limited in term, meaning it is subject to expiration. As of the drafting of this report, the waiver will expire on August 1, 2020. The legislature has taken action to extend the waiver in small increments of one or two weeks at a time. This causes city staff to be unsure if the waiver will be in place or not as a meeting approaches and as we are preparing an agenda for the Council and public.

If the OPMA waiver expires when Whatcom County is under Phase 2, the City will be forced to either violate the OPMA by keeping offices closed and holding a digital meeting, or violate the Safe Start Washington plan by opening city offices to host an open public meeting in a live, in-person format.

The City Manager and City Attorney have prepared two emergency orders for your consideration. The City Manager has authority to adopt emergency orders, and waive City Council rules. Either of the two

emergency orders can be issued by the City Manager. We are seeking guidance from Council on how they wish to proceed with meetings if the OPMA waiver were to expire while Whatcom Count is still under Phase 1 or 2 of the Safe Start Washington plan.

Option A makes the Safe Start Washington plan preeminent, directing the City to conduct digital meetings open to the public electronically. Option B makes the OPMA preeminent, directing the City to conduct live, in-person meeting, which would be held in the City Council Chambers.

Budget Implications: Current Budget New Budget Request Non-Budgetary

There are no impacts to the 2020 budget.

Recommendation:

The City Manager recommends that the City Council take into consideration the implications of the two options and:

- Direct the City Manager to issue an emergency order consistent with Option A, or
- Direct the City Manager to issue an emergency order consistent with Option B.

Reviewed By:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

EMERGENCY ORDER NO. EO20-09 – Option A

EMERGENCY ORDER REGARDING PUBLIC MEETING FORMATS

WHEREAS, on March 13, 2020, the Blaine City Manager issued a Proclamation of Local Emergency regarding COVID-19; and,

WHEREAS, on March 16, 2020, the City Council of Blaine, Washington adopted Resolution No. 1800-20 confirming the City Manager's Proclamation of Local Emergency regarding COVID-19; and,

WHEREAS, since the adoption of those documents, the President of the United States has declared a national emergency due to COVID-19 and Washington State Governor Inslee has issued additional emergency decrees related to COVID-19 to protect and preserve public health and safety, including closing schools, restaurants, bars, entertainment and recreational facilities statewide; and,

WHEREAS, the Blaine Municipal Code, Chapter 2.24, including BMC 2.24.030, authorizes the City Manager to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by the emergency; and,

WHEREAS, the public health emergency regarding COVID-19 and the facts underlying the actions taken on the federal, state and local level continues on the date of signature hereto, thereby necessitating the action taken herein to protect and preserve public health, safety, life and property; and,

WHEREAS, the action taken hereinbelow is done under the authority and emergency powers granted me pursuant to the foregoing Resolutions and Proclamations and under federal, state and local law and regulation; and,

WHEREAS, Rule 38, Emergencies, of the Blaine City Council Rules of Procedure allows for the City Manager to take administrative actions under the authority to a Proclamation of Emergency and Chapter 2.24 of the Blaine Municipal Code; and,

WHEREAS, Governor Inslee's Stay Home, Stay Healthy Order¹ in combination with a suspension of the Open Public Meetings Act ("OPMA") requirement² to provide in-person meetings of legislative bodies which together prohibit in-person public participation at public meetings, but require alternative electronic options for public attendance; and,

WHEREAS, the Safe Start plan for the State of Washington includes phases that restrict and allow certain actions, including restricting the opening of government offices that contain the City Council Chambers and other meeting rooms to the public; and,

WHEREAS, the combined impact of the various State Proclamations, orders, guidance and the Revised Code of Washington, and the Blaine Municipal Code, can generate conflicting guidance and requirements on how to conduct public meetings, thereby causing confusion and lack of clarity for the public, staff and elected officials; and,

¹ Proclamation No. 20-25, as modified.

² See Governor Inslee's Proclamation No. 20-28 as extended.

WHEREAS, prematurely conducting public meetings in an in-person format may expose members of the public, city staff, and elected officials to a risk of infection caused by the presence of the COVID-19 virus.

NOW, THEREFORE, BE IT ORDERED BY THE CITY MANAGER OF THE CITY OF BLAINE, WASHINGTON:

Section 1. Recitals. The foregoing recitals are expressly adopted herein.

Section 2. Findings: I hereby find as follows:

2.1 The City of Blaine shall continue to hold open public meetings through a remote, electronically enhanced format as long as Whatcom County is under Phase 1 or Phase 2 of the Safe Start plan regardless of the applicability of an OPMA suspension.

Section 3. Order: Based upon the foregoing Recitals and Findings, I hereby order as follows:

3.1 On Wednesday of the week prior to a regularly scheduled public meeting of the City Council, Planning Commission, or other board, commission, or committee, staff shall determine whether the format of any such meeting shall be in-person or remote digital meeting based on the current phase of the Safe Start, and shall prepare for such meetings accordingly.

3.2 Changes to the then current re-opening phase that occur after the close of business on Wednesday of the week prior to a regularly scheduled public meeting of the City Council, Planning Commission, or other board, commission, or committee shall not change the format of said meeting.

Section 4. Duration: This Emergency Order No. EO20-09 shall be in effect from the date of signature hereto until December 31, 2020 unless sooner extended or terminated by separate written order.

Section 5. Severability. In case any provision in this Emergency Order No. EO20-09 shall be found invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

Section 6. Consistency. All existing and non-terminated orders and proclamations issued by the City Manager in existence on the date of signature below shall remain in full force and effect; however, provided that, insofar as any provision of any such prior order and/or proclamation is inconsistent with any provision of this Emergency Order No. EO20-09, then the provision of this Order shall control.

Section 7. Confirmation. This Emergency Order No. EO20-09 will be confirmed, modified or rejected by the City Council at the earliest practicable time. If rejected by the City Council, this Emergency Order No. EO20-09 shall be void; however, any such rejection or modification shall not affect any actions previously taken, including, by way of example, the City's financial liability for such actions hereunder and such rejection or modification shall be prospective only.

Dated this ___ day of _____, 2020.

Michael Jones
City Manager
City of Blaine, Washington

EMERGENCY ORDER NO. EO20-09 – Option B

EMERGENCY ORDER REGARDING PUBLIC MEETING FORMATS

WHEREAS, on March 13, 2020, the Blaine City Manager issued a Proclamation of Local Emergency regarding COVID-19; and,

WHEREAS, on March 16, 2020, the City Council of Blaine, Washington adopted Resolution No. 1800-20 confirming the City Manager's Proclamation of Local Emergency regarding COVID-19; and,

WHEREAS, since the adoption of those documents, the President of the United States has declared a national emergency due to COVID-19 and Washington State Governor Inslee has issued additional emergency decrees related to COVID-19 to protect and preserve public health and safety, including closing schools, restaurants, bars, entertainment and recreational facilities statewide; and,

WHEREAS, the Blaine Municipal Code, Chapter 2.24, including BMC 2.24.030, authorizes the City Manager to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by the emergency; and,

WHEREAS, the public health emergency regarding COVID-19 and the facts underlying the actions taken on the federal, state and local level continues on the date of signature hereto, thereby necessitating the action taken herein to protect and preserve public health, safety, life and property; and,

WHEREAS, the action taken hereinbelow is done under the authority and emergency powers granted me pursuant to the foregoing Resolutions and Proclamations and under federal, state and local law and regulation; and,

WHEREAS, Rule 38, Emergencies, of the Blaine City Council Rules of Procedure allows for the City Manager to take administrative actions under the authority to a Proclamation of Emergency and Chapter 2.24 of the Blaine Municipal Code; and,

WHEREAS, Governor Inslee's Stay Home, Stay Healthy Order¹ in combination with a suspension of the Open Public Meetings Act ("OPMA") requirement² to provide in-person meetings of legislative bodies which together prohibit in-person public participation, but require alternative electronic options for public attendance; and,

WHEREAS, the Safe Start plan for the State of Washington includes phases that restrict and allow certain actions, including restricting the opening of government offices that contain the City Council Chambers and other meeting rooms to the public; and,

WHEREAS, the combined impact of the various State Proclamations, orders, guidance and the Revised Code of Washington (RCW), and the Blaine Municipal Code, can generate conflicting guidance and requirements on how to conduct public meetings, thereby causing confusion and lack of clarity for the public, staff and elected officials; and,

¹ Proclamation No. 20-25, as modified.

² See Governor Inslee's Proclamation No. 20-28 as extended.

WHEREAS, the conduct of the business of government should occur in an open manner in the full view of the public, and as such shall occur in a format that allows in-person exchange and in-person public viewing at the earliest safe opportunity.

NOW, THEREFORE, BE IT ORDERED BY THE CITY MANAGER OF THE CITY OF BLAINE, WASHINGTON:

Section 1. Recitals. The foregoing recitals are expressly adopted herein.

Section 2. Findings: I hereby find as follows:

2.1 The City of Blaine shall continue to hold open public meetings through a remote, electronically enhanced format as long as Whatcom County is under Phase 1 or Phase 2 of the Safe Start plan.

2.2 In such circumstance that there is not a governing suspension of the Open Public Meetings Act requirement to provide in person attendance at City of Blaine meetings subject to the OPMA, such meeting shall be conducted in an in-person, public format.

2.3 The City has adopted policies based upon Whatcom County and the State of Washington guidance and requirements regarding physical distancing and use of personal protective equipment within governmental buildings and as part of governmental operations including any public meetings that may be allowed or required.

Section 3. Order: Based upon the foregoing Recitals and Findings, I hereby order as follows:

3.1 On Wednesday of the week prior to a regularly scheduled public meeting of the City Council, Planning Commission, or other board, commission, or committee, staff shall determine whether the format of any such meeting shall be in-person or remote digital meeting based on the current status of any waiver(s) of the RCW open public meetings requirements, and shall prepare for such meetings accordingly.

3.2 Changes to the then current re-opening phase or the suspension of the OPMA that occur after the close of business on Wednesday of the week prior to a regularly scheduled public meeting of the City Council, Planning Commission, or other board, commission, or committee shall not change the format of said meeting.

Section 4. Duration: This Emergency Order No. EO20-09 shall be in effect from the date of signature hereto until December 31, 2020 unless sooner extended or terminated by separate written order.

Section 5. Severability. In case any provision in this Emergency Order No. EO20-09 shall be found invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

Section 6. Consistency. All existing and non-terminated orders and proclamations issued by the City Manager in existence on the date of signature below shall remain in full force and effect; however, provided that, insofar as any provision of any such prior order and/or

proclamation is inconsistent with any provision of this Emergency Order No. EO20-09, then the provision of this Order shall control.

Section 7. Confirmation. This Emergency Order No. EO20-09 will be confirmed, modified or rejected by the City Council at the earliest practicable time. If rejected by the City Council, this Emergency Order No. EO20-09 shall be void; however, any such rejection or modification shall not affect any actions previously taken, including, by way of example, the City's financial liability for such actions hereunder and such rejection or modification shall be prospective only.

Dated this ____ day of _____, 2020.

Michael Jones
City Manager
City of Blaine, Washington