

EMERGENCY  
PROCLAMATIONS –  
THE AAG ROLE

# THE BASICS - WASHINGTON'S EMERGENCY MANAGEMENT STRUCTURE

## RCW 38.52 -- Emergency Management

- Governor has overall responsibility
- State Military Department (ML) administers the program through the Emergency Management Division (EMD).
- Comprehensive Emergency Management Plan (CEMP)
- State Emergency Operations Center (SEOC)



**EMERGENCIES COME IN ALL TYPES:  
PART 1**



# EMERGENCIES COME IN ALL TYPES: REALITY (AKA: THE SEQUEL)

TECHNICAL EMERGENCIES

NORMAL EMERGENCIES

COVID

# TECHNICAL EMERGENCIES

- Events that meet technical definition of an “emergency.”
- Governor’s Proclamation may be needed for federal aid.
- Example: State Route 518 bridge strike (truck hit an overpass near SeaTac).
  - Caused backups and a lane closure that day.
  - DOT was able to modify lanes and traffic resumed.
  - Extent of the damage and cost of repair qualified for federal “emergency” aid.
  - Proclamation of “emergency” issued stating just the facts – there was a bridge strike, the amount and type of damage to the bridge and the cost of repair; together they constitute an emergency.
- No Activation of the SEOC.

# “NORMAL” EMERGENCIES

- Spring Storms - flooding/landslides
- Summer Fires
- Fall Windstorms –downed trees, roads blocked
- Winter Storms - high winds, snow, ice, flooding



# EXTRAORDINARY EMERGENCIES

So Far:

- COVID-19 PANDEMIC

Planning:

- Cascadia Subduction Zone Megaquake

# STATE EMERGENCY OPERATIONS CENTER

## When an emergency occurs:

- The state agency or political subdivision seeks an incident number from the State Emergency Management Division (EMD),
- EMD notifies the SEOC administration to monitor the situation.
- If the entity requires outside assistance the SEOC is partially or fully activated to coordinate and assist.
- SEOC divided into 15 Support Functions, staffed by 34 state agencies and the State National Guard.

# SEOC SUPPORT FUNCTIONS

- ESF #1: Transportation
- ESF #2: Communications
- ESF #3: Public Works and Engineering
- ESF #4: Firefighting
- ESF #5: Information and Planning
- ESF #6: Mass Care, Emergency Assistance, Temporary Housing, and Human Services
- ESF #7: Logistics
- ESF #8: Public Health and Medical Services
- ESF #9: Search and Rescue
- ESF #10: Oil and Hazardous Materials Response
- ESF #11: Agriculture and Natural Resources Annex
- ESF #12: Energy
- ESF #13: Public Safety and Security
- ESF #14: Cross-Sector Business and Infrastructure
- ESF #15: External Affairs



# ONCE SEOC ACTIVATED

Resource Requests go to and through the SEOC:

- Mutual Aid (interlocal/agency agreements)
- Joint Communications
- Equipment
- Emergency proclamations
- Administration of federal emergency grants
- Interface with FEMA



# GOVERNOR'S PROCLAMATIONS

When an emergency rises to the level for SEOC activation:

- EMD prepares a draft letter requesting an emergency proclamation with a draft proclamation.
- Sends it to the Lead AAG for EMD for review and advice.
- EMD sends to Governor's Office for review and decision.
- As emergency situations change additional proclamations may be needed.
- AAGs rarely are called into the SEOC – 2015 Fires.

# AAG SUPPORT FOR EMERGENCY OPERATIONS

- Normal: 2 AAGs (1 FTE) represent the State Military Department Divisions and State National Guard.
- Review/edit the one or two Proclamations needed for the emergency – modified boilerplates.
- Provide advice as needed.

# “UNPRECEDENTED”

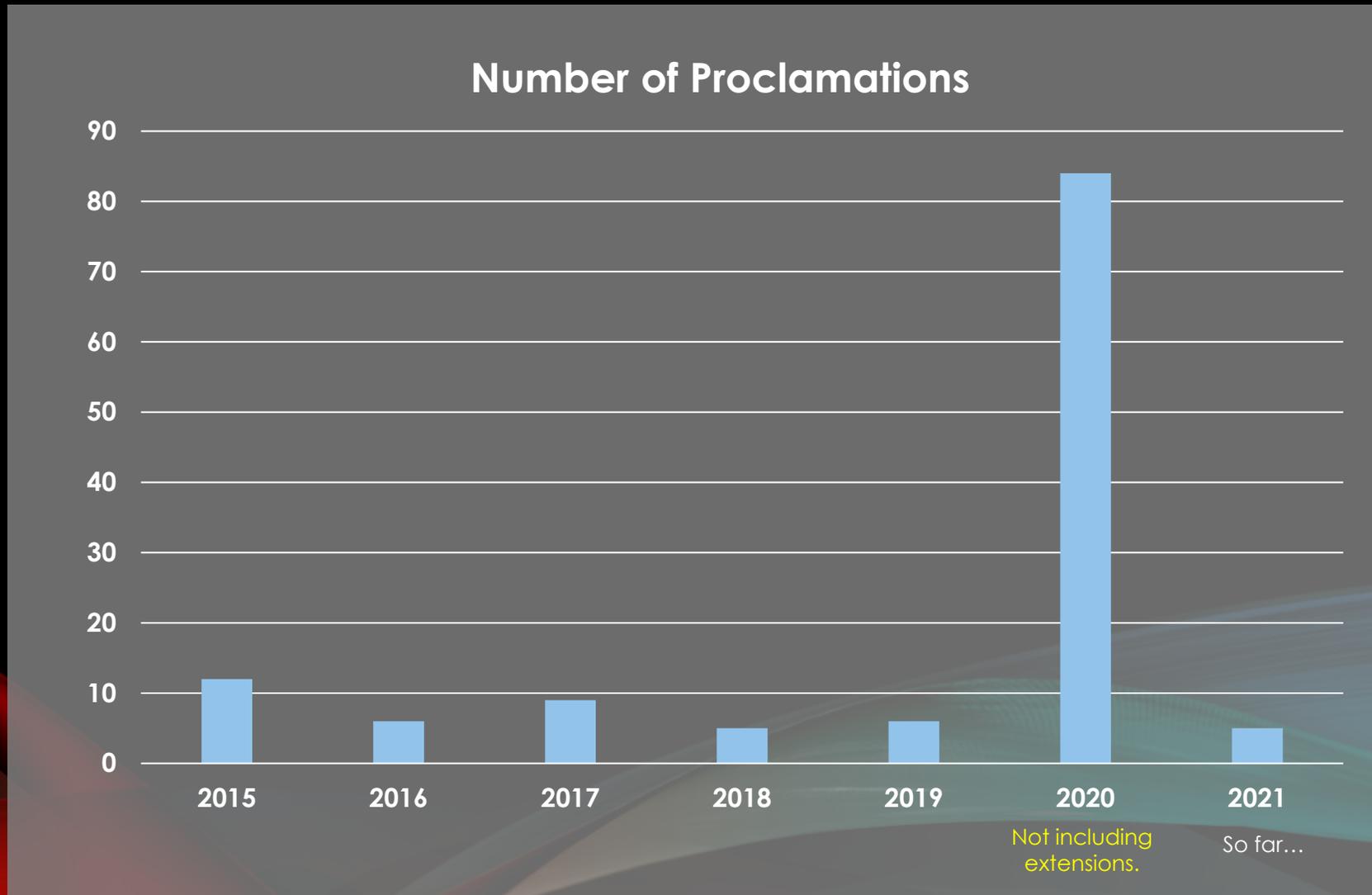
The Oxford Dictionary defines “unprecedented” as:

“Never done or known before.”

*Synonyms:*

unparalleled · unequaled · unmatched · unrivaled · without parallel · without equal · extraordinary · uncommon · out of the ordinary · unusual · outstanding · striking · exceptional · prodigious · abnormal · singular · remarkable · unique · anomalous · atypical · untypical · **freakish** · unheard of · unknown · **novel** · original · new · groundbreaking · revolutionary · pioneering · one of a kind · unexampled

# 2020 WAS AN UNPRECEDENTED YEAR FOR EMERGENCY PROCLAMATIONS



# COVID PANDEMIC

- AAGs notified in February of SEOC activation for pandemic.
- One AAG called into SEOC in February to advise and draft and review proclamations.
- As pandemic intensified, SEOC received an avalanche of requests for proclamations from agencies/governments.
- By March 13 - Two AAGs, 7 days a week to:
  - Review, analyze, draft and edit proclamations.
  - Provide *ad hoc* advice on disaster legal issues.
- By April 1 – Third AAG brought in – 6 days a week.
- Two Governor's attorneys working non-stop on proclamations
- Many AAGs providing *ad hoc* agency-specific advice



# GOVERNOR'S EMERGENCY POWERS

RCW 43.06.010(12). The Governor may

- after finding that a public disorder, disaster, energy emergency, or riot exists
- within this state or any part thereof
- which affects life, health, property, or the public peace,
- proclaim a state of emergency in the area affected, and
- the powers granted the Governor during a state of emergency shall be effective only within the area described in the proclamation;

# AN EMERGENCY EXISTS WHEN DECLARED BY THE GOVERNOR

## RCW 43.06.200

"State of emergency means an emergency proclaimed as such by the Governor pursuant to RCW 43.06.010 as now or hereafter amended."

# GOVERNOR'S EMERGENCY POWERS

## RCW 43.06.220

- Amended in 2019.
- Generally, it provides the Governor with 3 Powers:
  - To Prohibit
  - To Suspend
  - To Waive
- Every state's emergency powers act is different – the cases analyzing whether the governor of Michigan, Wisconsin, or California overstepped his/her authority have little application to Washington.
- Constitutional cases do have broader applicability.

# PROHIBITIONS

RCW 43.06.220(1): After proclaiming a state of emergency the Governor may **prohibit**:

- Being in a public place during a curfew;
- Public and private gatherings;
- The sale, purchase or dispensing of alcoholic beverages;
- The sale, purchase or dispensing of commodities or goods,
- The use of streets, highways or public ways by the public;
- **Such other activities** as he or she reasonably believes should be prohibited **to help preserve and maintain life, health, property or the public peace.**

RCW 43.06.220(3): The Governor may impose restrictions “for such times, **upon such conditions**, and with such **exceptions** and in such areas as he or she from time to time deems necessary.”

# WAIVERS AND SUSPENSIONS

RCW 43.06.220(2)

Governor may issue an order **waiving or suspending statutory obligations or limitations** in the following areas:

- Liability for participation in interlocal agreements;
- Inspection fees owed to L&I;
- Application of the family emergency assistance program;
- Regulations, tariffs, and notice requirements under the jurisdiction of the UTC;
- Application of tax due dates and penalties;
- Permits for industrial, business, or medical uses of alcohol;

and ... (continued)

# WAIVER/SUSPENSION “CATCH ALL”

RCW 43.06.220(2)(g)

“Such other statutory and regulatory obligations or limitations prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency ...” unless (continued)

## ...UNLESS

- (i) ...expressly granted to another statewide elected official,
- (ii) ... conflict with federal requirements that are a ... condition to ... federal funds ..., or
- (iii)... conflict with the rights, under the First Amendment, of freedom of speech or of the people to peaceably assemble.

# STATUTORY WAIVERS/SUSPENSIONS HAVE AN EXPIRATION DATE

## RCW 43.06.220(4)

- “No order or orders concerning waiver or suspension of **statutory** obligations or limitations under subsection (2) of this section may continue for longer than **thirty days** unless extended by”:
  - Concurrent resolution of the legislature if in session.
  - Written authorization from the “four corners” if legislature not in session.

# NUTS & BOLTS OF A PROCLAMATION

## PROCLAMATION BY THE GOVERNOR

### AMENDING PROCLAMATION 20-05

- **20-41 Department of Licensing – License Renewal Extension**

**WHEREAS**, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout Washington State as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

...

**WHEREAS**, the response to and impacts of the COVID-19 State of Emergency on many state agencies has significantly impacted their ability to adequately staff and supply various administrative and operational activities, including the ability of the Washington State Department of Licensing to meet the demand for driver license renewal; and

...

**WHEREAS**, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

**NOW, THEREFORE**, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamations 20-05 and all amendments thereto remain in effect, and that Proclamation 20-05 is amended to waive and suspend specific statutes pertaining to the expiration and renewal of personal and commercial driver licenses by the Department of Licensing, as provided herein.

...

**FURTHERMORE**, based on the above noted situation and under the provisions of RCW 43.06.220(2)(g), I also find that, as a result of the COVID-19 pandemic, strict compliance with the following statutory obligations or limitations will prevent, hinder, or delay action that is necessary to maintain the provision of essential Department of Licensing services to the public and further reduce the risk of disease transmission to its employees and members of the public visiting its offices by temporarily extending the renewal date of personal and commercial driver licenses, and that the language of each statutory provision specified below is hereby waived and suspended in its entirety until midnight on May 3, 2020:

1. RCW 46.20.181(1), and
2. RCW 46.25.088(1).

Violators of this of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

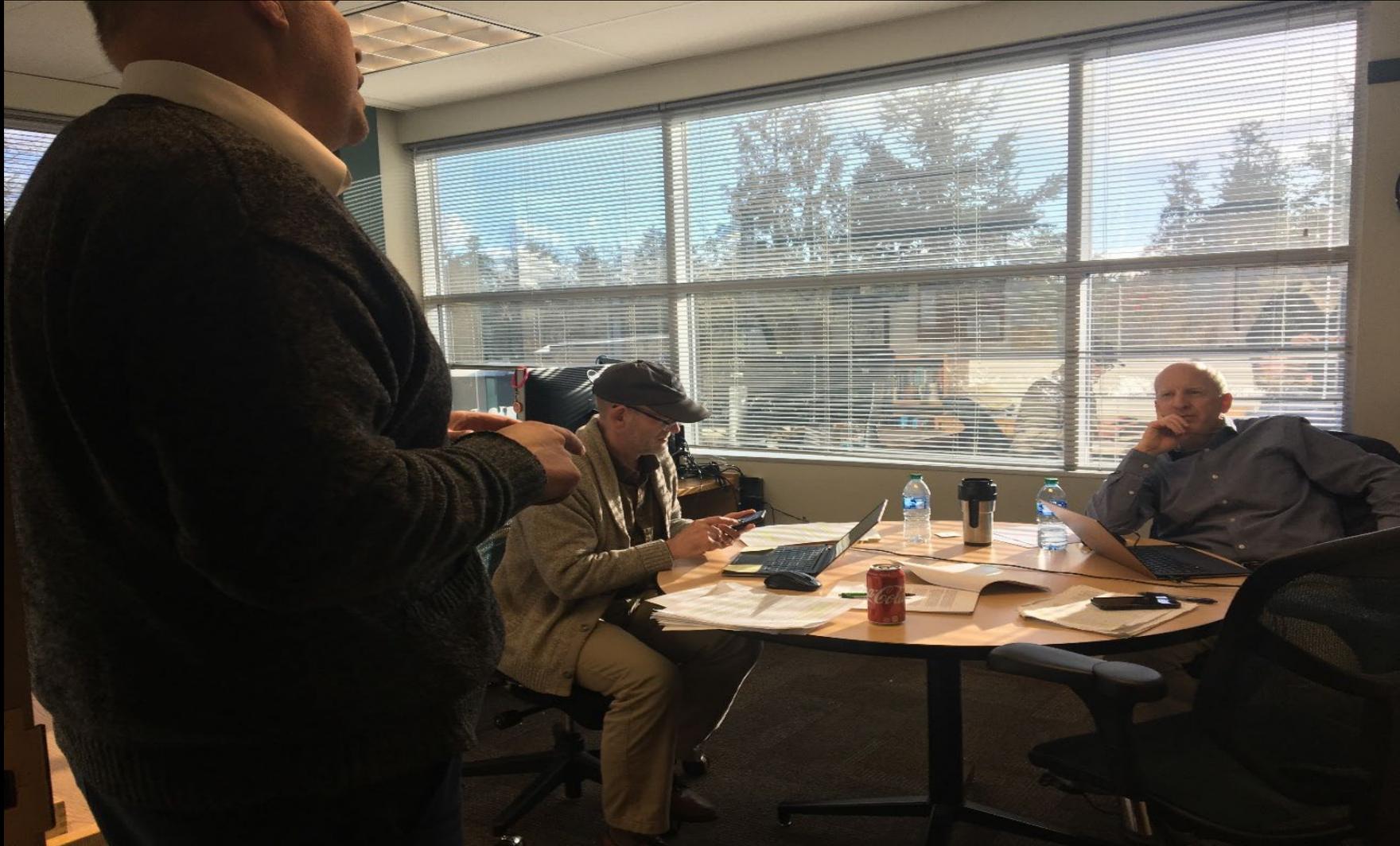
Signed and sealed with the official seal of the state of Washington on this 3rd day of April, A.D., Two Thousand and Twenty.

SIGNATURE

# ENFORCEMENT/CIVIL UNREST

## RCW 43.06.270

The Governor may order the State or National Guard or the state patrol to assist local officials in restoring order in the area described in the proclamation of a state of emergency.



# NOTABLE COVID-19 PROCLAMATIONS

- **20-05** -- COVID-19 State of Emergency
- **20-25** -- Stay Home, Stay Healthy → Healthy Washington – Roadmap to Recovery\*
- **20-09** – Statewide School Closures\*
- **20-19** – Evictions Moratorium
- **20-28** – Open Public Meeting Act\*
- **20-45** – Protection Orders, Personal Service, Court Operations\*
- **20-52** – Long-Term Care Restrictions (consolidates several related proclamations)\*

# PROCLAMATION 20-05

- Proclaimed a statewide state of Emergency due to the Coronavirus COVID-19
- Activated the SEOC
- Ordered the State and National Guard into service to assist with the response
- Ordered DOH, the EMD, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

# PROCLAMATION 20-25 STAY HOME – STAY HEALTHY

## Prohibition – with a condition

1. All people in Washington State shall immediately cease leaving their home or place of residence except: (1) to conduct or participate in essential activities, and/or (2) for employment in essential business services.



2. All people in Washington State shall immediately cease participating in all public and private gatherings and multi-person activities for social, spiritual and recreational purposes, regardless of the number of people involved, except as specifically identified herein.



3. Effective midnight on *March 25, 2020*, all non-essential businesses in Washington State shall cease operations except for performing basic minimum operations. All essential businesses are encouraged to remain open and maintain operations, but must establish and implement social distancing and sanitation measures established by the [USDOL or WADOH].

# 20-25 HAS BEEN AMENDED 13 TIMES

- Stay Home Stay Healthy
- Safe Start Stay Healthy
  - Adjusted for Recreational Activities
  - Extended
  - County by County Phased Re-Opening
- Stay Safe Stay Healthy
  - Extensions
  - Rollback of Phased Re-Opening
- Healthy Washington – Roadmap to Recovery

# PROCLAMATION 20-28

## OPEN GOVERNMENT

### Combination of Waivers and Prohibitions w/conditions

- Written to prohibit meetings and other activities related to the Open Public Meetings and the Public Records Act from occurring in person.
- Waived statutes requiring in-person meetings and prohibited in-person meetings that did not (1) include electronic components that would allow the public to view and participate in meetings and (2) meet modified notice standards.

# AMENDMENTS

**Many proclamations were substantively amended multiple times:**

20-22 – Driver Hours (modified to stay consistent with changing federal standards)

20-19 – Evictions (CRD AAGs)

20-25 – Stay Home-Stay Healthy

20-28 – Open Government

20-32 – Health Care Licensing

20-36 – Health Care Facilities & Hand sanitizer

20-49 – Garnishments

# THINGS TO REMEMBER IN AN EMERGENCY

Stay Calm and Carry On

When everyone is speeding up, slow down – your role is to process, to think.

Do the research and give options based advice.

Don't get sucked into policy issues – but do advise regarding the effects of policy decision.

Stay out of the politics.

**Collaborate with other AAGs for advice and assistance, again and again.**

Keep your sense of humor.