



# Department of Local Government Finance

## Public Meeting & Public Hearing Notice Requirements

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# Public Notice Requirements



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# Public Notice Requirements



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[www.in.gov/pac/files/  
PAC%20Handbook%202017.pdf](http://www.in.gov/pac/files/PAC%20Handbook%202017.pdf)



# Disclaimer

This presentation and other Department of Local Government Finance materials are not a substitute for the law! The following is not legal advice, just an informative presentation. The Indiana Code always governs.



# Agenda

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- Indiana Public Access Counselor
- Open Door Law
- Public Notices
- Public Notices for Budget Hearings (“Form 3”)
- Budget Adoption
- Frequently Asked Questions
- Possible COVID-19 Scenarios



# Indiana Public Access Counselor

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# Indiana Public Access Counselor

- The Public Access Counselor provides advice and assistance concerning Indiana's public access laws (the Access to Public Records Act and the Open Door Law) to members of the public and government officials and employees.
  - Conducts research.
  - Prepares interpretive and educational materials and programs in cooperation with the office of the attorney general.

*IC 5-14-4-10*



# Indiana Public Access Counselor

- Distributes to newly elected or appointed public officials the public access laws and educational materials concerning the public access laws.
- Responds to informal inquiries made by the public and public agencies by telephone, in writing, in person, by facsimile, or by electronic mail concerning the public access laws.
- Issues advisory opinions to interpret the public access laws upon the request of a person or a public agency.
- Makes recommendations to the general assembly concerning ways to improve public access.

*IC 5-14-4-10*





# Indiana Public Access Counselor

- During the 2018-2019 Fiscal Year...
  - Received approximately 7300 Inquiries
  - 400 Formal Complaints Filed
  - 20-30 Informal Inquiries Filed
  - Conducted 40 Trainings and Presentations

*Opinions & Annual Report found at: [www.in.gov/pac](http://www.in.gov/pac)*



# Open Door Law



# Open Door Law

- **Indiana Code Chapter 5-14-1.5**
  - “...It is the intent of this chapter that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed...”  
IC 5-14-1.5-1.



# Open Door Law

- ***What meetings are open to the public?***
  - Generally, all meetings of the governing bodies of public agencies must be open at all times so members of the public may observe and record them. However, several types of meetings are not required to be open to the public.



# Open Door Law

- *Basic Rule...*
  - Majority
  - Governing Body
  - Official Action
  - Public Business
  - 48 Hours Notice
  - Must be Open to the Public

IC 5-14-1.5



# Open Door Law

## *What is a governing body?*

- A governing body is two or more individuals who are one of the following:
  - A public agency that is a board, commission, authority, council, committee, body, or other entity which takes official action on public business.
  - The board, commission, council, or other body of a public agency that takes official action upon public business.
  - Any committee directly appointed by the governing body or its presiding officer which authority to take official action upon public business has been delegated, except for agents appointed to conduct collective bargaining.

*IC 5-14-1.5-2(b)*



# Open Door Law

- *What is a “meeting” under the Open Door Law?*
  - “Meeting” means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon business.

IC 5-14-1.5-2(c)



# Open Door Law

- ***What is a not “meeting” under the Open Door Law?***
  - Any social or chance gathering not intended to avoid the requirements of the Open Door Law;
  - Any on-site inspection of a project or program;
  - Traveling to and attending meetings devoted to the betterment of government;
  - A caucus; ...

IC 5-14-1.5-2(c)





# Open Door Law

- *Continued...*
  - A gathering to discuss an industrial or commercial prospect that does not include a conclusion as to recommendation or final action;
  - An orientation of members of the governing body; or
  - A gathering for the sole purpose of administering an oath of office to an individual.

IC 5-14-1.5-2(c)



# Open Door Law

- Official Action vs. Final Action...

## **Official Actions:**

- Discussions
- Deliberations
- Receiving Information
- Giving Information

## **Final Actions:**

- Voting
- Decisions

*IC 5-14-1.5-2(d)*



# Open Door Law & COVID-19



# Open Door Law & COVID-19

- **Executive Order 20-04**
  - **Section 5**
    - “Public meetings conducted pursuant to Ind. Code § 5-14-1.5 et seq. should be limited to only essential matters critical to the operations of the governmental agency or entity for the duration of this public health emergency; ...”

[EO 20-04](#) issued March 16, 2020



# Open Door Law & COVID-19

- **Executive Order 20-09**
  - Section 4(A) amended Executive Order 20-04
    - “Open Door Law: Suspend the requirement of governing bodies of public agencies to explicitly adopt a policy for electronic participation and suspend the requirement to have any members be physically present for meeting deemed to be essential. (See Ind. Code § 5-14-1.5-3.6(c), (f), (g), & (h)). All other provisions of Ind. Code § 5-14-1.5 et seq. remain in effect. Therefore, for the duration of this public health emergency, all governing bodies may meet by videoconference or by telephone conferencing so long as a quorum of member participate and any meeting is made available to members of the public and media.” [EO 20-09](#) issued March 23, 2020



# Open Door Law & COVID-19

- These two executive orders modify IC 5-14-1.5-3.5, which normally only permits members of a governing body of a political subdivision to participate electronically under certain circumstances.
- During the public health emergency, a local unit may conduct a public meeting through electronic means.

[EO 20-04](#) issued March 16, 2020; [EO 20-09](#) issued March 23, 2020



# Open Door Law & COVID-19

- *What about emergency meetings?*
  - If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of governmental activity, the 48-hour notice requirement does not apply. However, the definition of an emergency should be narrowly construed and would not include foreseeable events.

*IC 5-14-1.5-5*



# Public Notices





# Public Notices

- Public Hearings vs. Public Meetings
- Notice Requirements
- Emergency Meetings
- Executive Order 20-04
- Public Notices & COVID-19
- Public Notices for Public Fiscal Hearings



# Public Meetings vs. Public Hearings

- A **public hearing** is distinguishable from a public meeting. While the Open Door Law grants the public the opportunity to observe meetings of a public agency, public agencies may be required by statute to hold a hearing where the public has the right to make comments regarding a particular matter.



# Public Notices

- *What kind of notice is required for public meetings?*
  - 48 business hours in advance
  - Date, time, and place where Governing Body will meet
  - Generally no requirements to publish in newspaper
  - Must post at principal place of business or meeting location
  - Prohibition on serial meetings

IC 5-14-1.5-5



# Public Notices & COVID-19

- Executive Order 20-04
  - Section 5
    - “...All governing bodies of public agencies may post notices and agendas for meetings solely by electronic means for the duration of this public health emergency.”

[EO 20-04](#) issued March 16, 2020



# Public Notices & COVID-19

- However...
  - The provisions under the executive order only applies to notices required by the Open Door Law and it does not apply to notice as required by any other statute.
    - i.e. – It does not apply to notices required to be published in accordance is IC 5-3-1.



# Public Notices & COVID-19

- Therefore, for hearings on the following actions, publication in the newspaper under IC 5-3-1-2 is still required:
  1. Additional Appropriations.
  2. Local Income Tax Ordinance.



# Public Notices for Public Fiscal Hearings

- The public notice for these public hearings must comply with IC 5-3-1 ...
  - Notice shall be published in two (2) newspapers in the unit's jurisdiction. If only one newspaper is published in the jurisdiction, publication in one paper is sufficient.

*IC 5-3-1-4*



# Public Notices for Public Fiscal Hearings

- Timeline for Public Hearing Notices...

## **Additional Appropriations**

- 10 days before hearing

## **Local Income Tax Ordinance**

- 10 days before hearing





# Additional Appropriation & LIT Notice Hearing Example

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	<b>15 Publication</b>	16 Day 1	17 Day 2	18 Day 3	19 Day 4	20 Day 5
21 Day 6	22 Day 7	23 Day 8	24 Day 9	<b>25 Day 10; Public Hearing</b>	26	27
28	1	2	3	4	5	6



# Public Notices for Public Fiscal Hearings

- What happens if a newspaper fails to publish my Notice of Public Hearing?
  - Get a written acknowledgement from the newspaper.
  - Post the notice in three (3) prominent places in the unit.
  - Include the written acknowledgement.
  - Include an affidavit about the posting with a list of where the notice was published in the submission.

*IC 5-3-1-2(k)*



# Public Notices for Budget Hearings (“Form 3”)

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# Public Notices for Budget Hearings (“Form 3”)

- The official public notice for budget hearings is completed via Form 3, which notifies taxpayers of:
  1. Public Hearing date, time, and location.
  2. Adopting Meeting date, time, and location.
  3. Proposed budgets, tax levies, and appeals.
  4. Current levy.
  5. Percentage change in levy.
  6. DLGF estimates for circuit breaker and max levy.

*IC 6-1.1-17-3*



# Public Notices for Budget Hearings (“Form 3”)

## NOTICE TO TAXPAYERS

The Notice to Taxpayers is available online at [www.budgetnotices.in.gov](http://www.budgetnotices.in.gov) or by calling (888) 739-9826.

Complete details of budget estimates by fund and/or department may be seen by visiting the office of this unit of government at

Notice is hereby given to taxpayers of **SCHOOL CORPORATION,** **County, Indiana** that the proper officers of **School Corporation** will conduct a public hearing on the year **2020** budget. Following this meeting, any ten or more taxpayers may object to a budget, tax rate, or tax levy by filing an objection petition with the proper officers of **School Corporation** not more than seven days after the hearing. The objection petition must identify the provisions of the budget, tax rate, or tax levy to which taxpayers object. If a petition is filed, **School Corporation** shall adopt with the budget a finding concerning the objections in the petition and testimony presented. Following the aforementioned hearing, the proper officers of **School Corporation** will meet to adopt the following budget:

### Fill in Hearing Info

Public Hearing Date	Wednesday, September 11, 2019
Public Hearing Time	7:30 PM
Public Hearing Location	123 Main Street

Adoption Meeting Date	Wednesday, October 09, 2019
Adoption Meeting Time	7:30 PM
Adoption Meeting Location	123 Main Street

Est. School Operations Max Levy	\$21,066,477
Property Tax Cap Credit Estimate	\$863,587

- Form 3 will list the date, time, and location of the Public Hearing and Adoption Meeting
- Form 3 will be pre populated with the Department estimates for Maximum Levy and Circuit Breaker.



# Public Notices for Budget Hearings

- “Date, Time, and Place”
  - For virtual meeting, state in the “Place” field the hearing or meeting will be held virtually with a reference to the “Notes” section.
  - Form 3 does not allow a hyperlink to be included in the “Place” field.
  - Include in the “Notes” section the link to access the virtual meeting.
    - Limited to 100 characters.

*IC 6-1.1-17-3*



# Public Notices for Budget Hearings

- As you complete the Form 3, make sure that the values are consistent with your budget goals.

1 Fund Name	2 Budget Estimate	3 Maximum Estimated Funds to be Raised (Including appeals and levies exempt from maximum levy limitations)	4 Excessive Levy Appeals (Included in Column 3)	5 Current Tax Levy	6 Levy Percentage Difference (Column 3 / Column 5)
0101-GENERAL	\$15,500,000	\$8,063,548	\$0	7,537,971	6.97 %
0102- ELECTION/REGISTRATION	\$219,000	\$0	\$0	0	
0104-REPAIR & REPLACEMENT	\$28,500	\$0	\$0	0	
0107-PROPERTY MAINTENANCE	\$10,500	\$0	\$0	0	
0124-2015 REASSESSMENT	\$410,000	\$235,367	\$0	352,459	-33.22 %

**Line 2** is the max allowable budget the Department will approve for a fund.

**Line 3** is the max levy that the Department will allow the unit to pledge toward a specific fund.





# Public Notices for Budget Hearings

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Line 5 and Line 6 are used as a visual indicator to help you compare last year's Line 3 to the current year.

In this example Line 6 shows that the unit is pledging 6.97% more property tax to the general fund and 33.22% less levy to the 2015 reassessment fund.





# Public Notices for Budget Hearings

- *Am I required to publish my Form 3 in the newspaper?*
  - No. Statute requires units to submit their Form 3 through Gateway for notifying taxpayers of budget hearings, budget adoptions. Failure to advertise properly on the Form 3 through Gateway will lead to budgets and levies being continued.



# Public Notices for Budget Hearings

- *Can I publish my Form 3 in the newspaper?*
  - Yes. Units may choose to voluntarily advertise their Form 3 through a local newspaper, but advertising through the newspaper is not required and does not meet any of the statutory requirements for notifying taxpayers of budget hearings, budget adoptions, etc.



# Public Notices for Budget Hearings

- Form 3 must be submitted a minimum of ten (10) days prior to the Public Hearing.
- There must be a minimum of ten (10) days between the Public Hearing and Adoption Meeting.
- Last day to submit the Form 3 for 2021 budget hearings is October 12.

*IC 6-1.1-17-3*



# Public Notices for Budget Hearings

- October 12** Last day to post notice to taxpayers (Budget Form 3) of proposed 2021 budgets and net tax levies and public hearing to Gateway. IC 6-1.1-17-3
- October 22** Last possible day for taxing units to hold a public hearing on their 2021 budgets. IC 6-1.1-17-5
- November 2** Deadline for all taxing units to adopt 2021 budgets, tax rates, and tax levies. IC 6-1.1-17-5(a)
- November 10** Last day for units to submit their 2021 budgets, tax rates, and tax levies to the Department through Gateway as prescribed by the Department.

*IC 6-1.1-17-5(d)*



# Public Notices for Budget Hearings

- *What happens if I have submitted my Form 3, but I need to change a meeting date, time, or place?*
  - Changes to the Form 3 must be done through Gateway. All requests for changes to the Form 3 will be done through email with the Gateway inbox:  
[Gateway@dlgf.in.gov](mailto:Gateway@dlgf.in.gov)
  - Before submitting a change request, units must confirm that the new public hearing date still meets the 10-day public hearing requirement.



# Budget Adoption



# Budget Adoption

## Public Hearings vs. Adoption Meetings

- The public hearing is the opportunity for the presentation of the proposed budget to the public. The public must be given an opportunity for comment.
- The adoption meeting is the meeting to adopt the budget. The public has the right to attend but the fiscal body does not have to give the public the chance to comment.



# Budget Adoption

- **DLGF Reviews:**
  - Compliance with notice/publication laws.
  - Rate does not exceed statutory maximum.
  - Timely submission.
  - No misleading or inaccurate information.
- **PUBLIC ACCESS COUNSELOR:**
  - Conduct of public hearing.
  - Posting of notice at meeting location.
  - Open Door Law compliance.





# IC 6-1.1-17-16(L) – Levy Correction

- Under IC 6-1.1-17-16(I), the DLGF must increase a political subdivision's tax levy to an amount that exceeds the amount originally advertised or adopted by the political subdivision if:
  - 1) the increase is requested in writing by the officers of the political subdivision;
  - 2) the request includes:
    - (A) the corrected budget, tax rate, or levy, as applicable; and
    - (B) the time and place of the meeting described in subdivision (4);



# IC 6-1.1-17-16(L) – Levy Correction

## *Continued...*

- 3) the political subdivision publishes the requested increase on the department's website
- 4) the political subdivision adopts the needed changes to its budget, tax levy, or rate in a public meeting of the governing body; and
- 5) notice is given to the county fiscal body of the department's correction.



# IC 6-1.1-17-16(L) – Levy Correction

- If the department increases a levy beyond what was advertised or adopted under this subsection, it shall, unless the department finds extenuating circumstances, reduce the certified levy affected below the maximum allowable levy by the lesser of:
  - Five percent (5%) of the difference between the advertised or adopted levy and the increased levy; or
  - (\$100,000).

*IC 6-1.1-17-16*



# Frequently Asked Questions



# Budget Adoption - Signatures

- *How do I obtain signatures at an adoption meeting being held virtually?*
  - Electronic signatures will be accepted – along with minutes reflecting each individual’s vote.
  - For elected officials and attestation signatures, wet signatures are preferred.



# Meeting Requirements

- *Do we still need a quorum on a virtual meeting?*
  - Yes. All the same rules apply to the traditional meetings apply to virtual meetings including, but not limited to having a quorum of members in attendance in order to take action. Virtual meetings without a quorum would not be considered a valid public hearing or adoption.



# In Person Meetings

- *Can we still have in person meetings? Can those meetings include safety measures like social distancing, attendee limitations, or mask requirements?*
  - As long as Executive Order 20-09 and 20-38 remain in effect, units can hold their hearing or meeting electronically.
  - Unless there is a restriction that says otherwise, a hearing/meeting can be held at a physical location while also allowing people to participate virtually.



# In Person Meetings

- Continued...
  - Local public health restrictions may be more stringent than what is in the Governor's orders. Confirm with the local health department as to the public gathering requirements in the locality.
  - If the public hearing is being held electronically, the teleconference system (e.g., WebEx, Microsoft Teams) should be set up to allow the public the opportunity to give comment. Allowing submission of written comments should supplement, not replace, the public hearing.





# Budget Adoption - Signatures

- *Can I just sign the Budget Ordinance (“Form 4”) ahead of time?*
  - No, that is not permissible.



# Possible COVID-19 Scenarios



# Possible COVID-19 Scenarios

- At this time, it's possible for the public health emergency to be extended past September 2, or even through the end of 2020.
  - IC 6-1.1-17-3(a) has not been suspended by executive order, however it already requires uploading the Form 3 onto Gateway. This means that the Form 3 must be prepared in accordance with statute while also giving proper notice to the taxpayers about the public hearing and adoption meeting.
- As things change by the day, it is important to prepare for several possible scenarios...



# COVID-19 Scenarios

- **Scenario #1 – If the public health emergency lasts through December 31...**
  - The public hearing and adoption meeting can be held virtually.
  - This is particularly important for 16(L) hearings.



# COVID-19 Scenarios

- **Scenario #2 – If the public health emergency expires during the fall...**
  - Pay close attention to the date of the expiration as it may affect how you are able to conduct the hearing or meeting.
    - **Example 1:** A local council plans to hold a public hearing on the unit's budget on September 1. The public health emergency is expires on September 2. The adoption meeting is scheduled to take place on September 11.
      - The public hearing can be held virtually. The adoption meeting must be held at a physical location.



# COVID-19 Scenarios

- Scenario #2 – If the public health emergency expires during the fall...
  - Example 2: A local council plans to hold a public hearing on the unit's budget on September 1 and its adoption meeting on September 11. The public health emergency is renewed up to and including October 1.
    - Both the public hearing and the adoption meeting can be held virtually.



# COVID-19 Scenarios

- Scenario #3 – If the public health emergency extends beyond September 2, and stricter restrictions on public gatherings are imposed...
  - Be flexible. If the hearing or meeting has to change from physical to virtual, or be rescheduled entirely, repost the Form 3. Plan ahead to ensure the timeframes in IC 6-1.1-17-3(a) and 6-1.1-17-5(a) are followed.



Questions?





# Questions?

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