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# STATE OF INDIANA

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DEPARTMENT OF LOCAL GOVERNMENT FINANCE



INDIANA GOVERNMENT CENTER NORTH  
100 NORTH SENATE AVENUE N1058(B)  
INDIANAPOLIS, IN 46204  
PHONE (317) 232-3777  
FAX (317) 974-1629

**TO: All Political Subdivisions**

**FROM: Wesley R. Bennett, Commissioner**

**RE: Public Meetings and Public Hearings during COVID-19 Emergency**

**DATE: March 30, 2020**

The Department of Local Government Finance (“DLGF”) issues this memorandum to assist local government units with understanding how to conduct public meetings and hearings in light of Executive Orders 20-04 and 20-09, as well as guidance from the Public Access Counselor (“PAC”) interpreting the same.

This memorandum is meant to supplement the PAC’s FAQ regarding COVID-19 and Indiana’s public access laws, available at <https://www.in.gov/pac/files/FAQs-for-Open-Door-Law-in-light-of-Covid-19.pdf>.

## **Executive Orders 20-04 & 20-09**

Section 5 of Executive Order 20-04 (“E.O. 20-04”) states in part:

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

...

All governing bodies of public agencies may suspend the requirement of explicitly adopting a policy for electronic participation and reduce the number of members required to be physically present to one member only (See Ind. Code § 5-14-1.5-3.6(c), (f), (g) & (h)). Entities should also adhere to the CDC guidance on gatherings and make efforts to allow the public to participate electronically, if feasible. All other provisions of Ind. Code § 5-14-1.5 *et seq.* remain in effect;

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;”

Section 4(A) of Executive Order 20-09 (“E.O. 20-09”) amends E.O. 20-04 as follows:

“As strict compliance with various deadlines found in regulatory statutes are preventing, hindering and delaying necessary action in coping with the emergency, the following actions are authorized:

A. *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 by physically present for meetings 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 conference so long as a quorum of members participate and any meeting is made available to members of the public and media.

Any political subdivision or entity subject to the provisions of Ind. Code § 5-14-1.5-3.5 may comply with the provisions of section 3.6 as modified by Executive Order 20-04 and as amended in this Order in conducting public meeting for the duration of this public health emergency.”

In other words, these two executive orders modifies IC 5-14-1.5-3.6, which permits members of a governing body of a state agency, charter schools, airport authorities, and departments of aviation to participate electronically under certain circumstances. A local unit (counties, cities, towns, schools, etc.) may conduct a public meeting through electronic means for the time of the statewide public health emergency without having to go through the statutory requirements of being able to conduct a meeting electronically.

The PAC has emphasized that the final action (i.e., voting on public business) must take place at a meeting open to the public. This means that the meeting can be done electronically.

In accordance with PAC guidelines, local units should look to the following options regarding meetings:

- (1) Postpone or cancel any public meetings that do not concern essential matters critical to government operations. Advance notice of the cancelation is not required by the Open Door Law, however, the unit should notify the news media and include notice of the cancellation on the unit’s website or social media.
  - What constitutes “essential matters critical to government operations” may be particular to each unit. The Department encourages the unit to review “essential” in light of the current public health emergency.
- (2) Utilize technology to conduct public business. This means that members of the governing body may use conference calls to conduct business; however, a quorum must be on the conference call for official business. To ensure public access, if a governing body has the capability to allow the media and members of the public to call in to a public meeting, it must do so. Livestreaming and broadcasting are also permissible, as well as providing access to the meeting through a municipal or county website or social media page.

## **Public Notice**

Per Executive Order 20-04 and PAC guidance, agencies can provide the notice required by the Open Door Law solely through electronic means, including posting a notice on the agency's website or social media. Please note that this only applies to notices required by the Open Door Law (for example, the posting 48-hours before the scheduled meeting) and it does not apply to notice as required by any other statute. This does not apply to notices required to be published in accordance with IC 5-3-1. Therefore, for hearings on the following actions, publication in the newspaper is still required:

- (1) Cumulative fund establishment or re-establishment. (IC 6-1.1-41-4; IC 6-1.1-17-16.7)
- (2) Fire protection territory establishment. (IC 36-8-19-6)
- (3) Local income tax ordinance adoption. (IC 6-3.6)
- (4) Additional appropriations. (IC 6-1.1-18-5)

## **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 public agencies, public agencies may be required by statute to hold a hearing where the public has the right to make comments regarding a particular matter. The PAC has advised that, when statute requires a public hearing prior to a local unit taking action, the governing body should provide for some method for the public to provide comment remotely. This includes verbal comments using WebEx, Zoom, or other means. The public should also be given an opportunity to submit written comments in the days leading up to and after the public hearing.

Please note that the notice of public hearing must be published in accordance with IC 5-3-1. The notice should explain that the hearing will be conducted electronically as permitted under Executive Order 20-09 and include instructions for how to access the electronic meeting, such as via phone or internet.

## **Note on Executive Order 20-12 on Extension of Certain Deadlines**

On March 26, 2020, Governor Eric Holcomb issued Executive Order 20-12, which extended certain deadlines for the establishment of cumulative funds and fire protection territories through and including June 30, 2020. This offers units an extension to be able to set up a public hearing and take action through at a physical location. However, for the period in which the statewide public health emergency is in effect, the adopting bodies may conduct a public hearing electronically, provided that:

- (1) Public notice is made in the manner required by state law (i.e., publication in the newspaper in accordance with IC 5-3-1);
- (2) The notice required by the Open Door Law is posted electronically; and
- (3) The public is allowed to comment through either telecommunication or by submission of a written statement.

## **Options for Telecommunications**

Units should be aware of the following services for conducting electronic meetings. The Department does not endorse any of these options, and the list does not represent the entirety of all available telecommunications services. Please note that not all of these services allow for interactivity, which may limit the ability of the public to offer comments at public hearings. Also, be aware that some of these services may be limited only to those with internet access. Units should, therefore, look into whether the services allow both internet and phone access.

- (1) Cisco WebEx - <https://www.webex.com/>
- (2) Zoom - <https://zoom.us/>
- (3) Vimeo Livestream - <https://vimeo.com/vimeolivestream>
- (4) Facebook Live - <https://www.facebook.com/facebookmedia/solutions/facebook-live>
- (5) YouTube Live - <https://www.youtube.com/live>
- (6) Instagram Live - <https://www.instagram.com/>
- (7) Public access TV