

Generic Set of Rule of Procedure Patterned After IC 5-14-1.5.3.6

By: John Molitor

(caveat: *Not* known to have been adopted by any entity)

These rules are designed to provide a local government lawyer with basic features of rules to be considered for Plan Commissions during the current emergency when local government is not bound by IC 5-14-1.5-3.5. Future use will depend upon whether IC 5-14-1.5-3.5 is repealed by the legislature. John had shared this on the Indiana State Bar Association Zoning Section list serve.

Rule 1. Definitions.

(a) As used in these rules, the term "Emergency" means either:

- (1) a disaster emergency that has been declared by the governor, in accordance with IC 10-14-3-12; or
- (2) a local disaster emergency that has been declared by the principal executive officer of a political subdivision, in accordance with IC 10-14-3-29.

(b) In addition, as used in these rules, the following terms have the meanings set forth in the Indiana Open Door Law (IC 5-14-1.5):

- "Deliberate" – see IC 5-14-1.5-2(i).
- "Final Action" – see IC 5-14-1.5-2(g).
- "Meeting" – see IC 5-14-1.5-2(c).
- "News Media" – see IC 5-14-1.5-2(j).
- "Official Action" – see IC 5-14-1.5-2(d).

Rule 2. Remote Participation in Meetings by Members of the Commission (Future Rule).

(a) This rule applies to the Commission if IC 5-14-1.5-3.5 is repealed or otherwise deemed to be inapplicable to the Commission [*by order of the Governor of Indiana*].

(b) A member of the Commission who is not physically present at a Meeting of the Commission may Deliberate with the other members of the Commission during the Meeting by telephone, computer, video conferencing, or any other electronic means of communication, including electronic mail. However, the member may take Official Action (as defined under IC 5-14-1.5-2(d)(3), (d)(4), (d)(5), or (d)(6)) at the Meeting only if the member uses a means of communication that permits:

- (1) the member;
- (2) all other members participating in the Meeting;
- (3) all members of the public (including News Media representatives) physically present at the place where the Meeting is conducted; and
- (4) if the Meeting is conducted under a policy adopted under subsection (g)(7) of this rule, all members of the public (including News Media representatives) physically present at a public location at which a member participates by means of electronic communication;

to simultaneously communicate with each other during the Meeting.

(c) The Commission must also fulfill both of the following requirements for a member to take Official Action under subsection (b) of this rule:

(1) The minimum number of members who must be physically present at the place where the Meeting is conducted is [*insert 3, 4, or 5 – must equal at least one-third of the entire membership of the Commission*].

(2) All votes of the Commission during an electronic Meeting must be taken by roll call vote.

(d) Each member of the Commission is required to physically attend at least one (1) Meeting of the Commission annually.

(e) A member who participates in a Meeting by electronic communication:

(1) is considered to be present at the Meeting;

(2) shall be counted for purposes of establishing a quorum; and

(3) may vote to take Final Action at the Meeting [*optional – insert the phrase "subject to subsection (g)(9) of this rule"*].

(f) The Commission may not conduct Meetings using a means of electronic communication until the Commission meets all requirements of subsections (b), (c), (d), and (h) of this rule.

(g) The Commission hereby adopts the following additional policies to govern participation in the Commission's Meetings by electronic communication [*optional – any or all of these policies may be included*]:

(1) Require a member to request authorization to participate in a Meeting by electronic communication within a certain number of days before the Meeting to allow for arrangements to be made for the member's participation by electronic communication.

(2) Subject to subsection (e), limit the number of members who may participate in any one Meeting by electronic communication.

(3) Limit the total number of Meetings that the Commission may conduct in a calendar year by electronic communication.

(4) Limit the number of Meetings in a calendar year in which any one member of the governing body may participate by electronic communication.

(5) Provide that a member who participates in a Meeting by electronic communication may not cast the deciding vote to take any Final Action. For purposes of this subdivision, a member casts the deciding vote on a Final Action if, regardless of the order in which the votes are cast:

(A) the member votes with the majority; and

(B) the Final Action is adopted or defeated by only one (1) vote.

(6) Require a member participating in a Meeting by electronic communication to confirm in writing the votes cast by the member during the Meeting within a certain number of days after the date of the Meeting.

(7) Provide that in addition to the location where a Meeting is conducted, the public (including News Media representatives) may also attend some or all Meetings of the Commission, excluding executive sessions, at a public place or public places at which a member is physically present and participates by electronic communication. The Commission's Meeting notice must provide the following information:

(A) The identity of each member who will be physically present at a public place and participate in the Meeting by electronic communication.

(B) The address and telephone number of each public place where a member will be physically present and participate by electronic communication.

(C) Unless the Meeting is an executive session, a statement that a location described in clause (B) will be open and accessible to the public.

(8) Require at least a quorum of members to be physically present at the location where the Meeting is conducted.

(9) Provide that a member participating by electronic communication may vote to take Final Action at a Meeting only if, subject to subsection (e) of this rule, [*a specified number of*] members:

(A) are physically present at the location where the Meeting is conducted; and

(B) concur in the Final Action.

(10) Establish procedures, limitations, or conditions that govern participation in Meetings of the Commission by electronic communication whenever an Emergency has been declared.

(h) These rules must be posted on the Internet web site of the Commission or the [*County, City, or Town*].

Rule 3. Electronic Communications by Members Outside of Meetings.

(a) A Commission member may communicate with other Commission members (other than during a Meeting of the Commission) by telephone, computer, videoconferencing, or any other electronic means of communication, including electronic mail, so long as such communications include less than a majority of the entire membership of the Commission and are intended solely for the Commission members to receive information and Deliberate on whether a member or members may be inclined to support another member's proposal or any other matter that may be heard or considered by the Commission and involve no Final Action.

(b) A Commission member may communicate with members of any of the Commission's committees (other than during a Meeting of the committee) by telephone, computer, videoconferencing, or any other electronic means of communication, including electronic mail, so long as such communications include less than a majority of the entire membership of the committee and are intended solely for the committee members to receive information and Deliberate on whether a member or members may be inclined to support another member's proposal or any other matter that may be heard or considered by the committee and involve no Final Action.

Rule 4. Notice Requirements During a Declared Emergency.

(a) After a public hearing is canceled or postponed because an Emergency has been declared, the Commission shall give public notice of the date, time, and place of the rescheduled hearing in accordance with IC 5-14-1.5-5(a).

(b) No additional notice by publication is required under these rules whenever a public hearing is canceled or postponed because an Emergency has been declared, subject to subsection (a) of this rule.