

Previous Executive Orders Regarding Government Functions

Indiana's Executive Order 20-22, ordering Indiana citizens to "stay at home", due to the effects of COVID-19, expired at 11:59 p.m. on May 1, 2020. This Order, which replaced Executive Order 20-18, required everyone to stay at home, limit gatherings to 10 people or less, and maintain a social distance of at least six feet. Governmental employees working for, or to support, essential businesses and operations, were exempt from the Executive Order. "Essential government functions" was defined to include services provided by municipalities and political subdivisions, and needed to ensure the continuing operation of government agencies or provide for or support the health, safety, and welfare of the public. Each governmental body was to determine its essential governmental functions and identify employees and/or contractors necessary to perform those functions.

Importantly, Executive Order 20-22 incorporated and extended provisions regarding government functions found in Executive Orders 20-04 and 20-09. Relevant provisions from those previous Executive Orders are below:

- The requirement to explicitly adopt a policy for electronic participation is suspended.
- The requirement to have any members physically present for essential meetings is suspended.
- Governing bodies may meet by videoconference or telephone, as long as a quorum is present and meetings are made available to members of the public and media.
- Public records requests during this time must be submitted via mail, fax, or email.
- At this time, public records requests are not deemed denied if not responded to in seven days.
- Public access counselor deadlines concerning formal complaints for public access violations are suspended.
- Deposits may be reduced to no less than twice weekly. Funds must be secured on intervening days, and subject to adequate internal controls.
- An additional year has been added to the ability of an officer to exercise powers before completing basic training.
- At this time, public meetings are limited to essential matters critical to government operations.

- Statutory deadlines requiring a governing body to meet are suspended as long as cancellations do not disrupt essential government decisions or services, or if the meetings are required by federal law.
- Meetings should adhere to CDC guidelines and allow the public to participate electronically, if feasible.
- A governmental body may post notices and agendas by electronic means.

“Back on Track” Plan and Effect on Government Operations

Governor Holcomb issued Executive Order 20-26, which became effective at 11:59 p.m. on May 1, 2020 and remains in effect through May 23, 2020. Guidelines regarding Indiana’s “Back on Track” Plan are also instructive. The state is currently in “stage one” of its fight against COVID-19, and stages two through five are slated to occur between early May and early July. On Monday, May 4, social gatherings of 25 people or less may take place, but CDC social distancing guidelines must be followed. Essential travel restrictions will be lifted and local non-essential travel will be permitted, but remote work is encouraged when possible. *County and local governments will make decisions based on their policies and CDC guidelines, and will continue to decide how and when to reopen and provide services.* Governor Holcomb reiterated the fact that local governments may tighten restrictions if necessary.

The next “stages”, slated to occur between late May and early July, are subject to change based on the impact of COVID-19 throughout the state. On May 24, social gatherings of up to 100 people may take place, but CDC social distancing guidelines must be followed. On June 14, social gatherings of up to 250 people may take place, but CDC social distancing guidelines must be followed. As of July 4, social gatherings of any size may take place, but CDC social distancing guidelines must be followed. Throughout each of these stages, local governments may make decisions based on their own policies and CDC guidelines.

As of May 4, Council meetings *may* take place in-person, if members and attendees practice social distancing and no more than 25 people are present. Importantly, Executive Order 20-26 states that, subject to modifications in Executive Order 20-26, Executive Orders 20-04 and 20-09 will remain in full force and effect through May 23, 2020, or until modified, extended, or rescinded. Executive Order 20-26 states that “local units of government will continue to decide how and when to reopen and provide services”, but is silent on issues such as electronic meetings, physical presence at meetings, dates for deposits, etc. Thus, it appears that *the various provisions regarding local governments found in Executive Orders 20-04 and 20-09 (indicated in bullet-point form above) will remain in effect through May 23.*

Looking ahead to the expiration of Executive Order 20-26, the City may need to adopt policies addressing how to hold meetings in light of statutory requirements and the risks posed by the pandemic. Pursuant to Ind. Code § 5-14-1.5-3.5, a Council member not physically present may participate by electronic communication, but may not participate in final action (unless expressly authorized by statute) and may not be considered to be “present” at the meeting (unless expressly authorized by statute). The meeting minutes must state the name of all members physically present, each member who participated via electronic communication, and each member who was absent. Thus, the City should begin looking forward and determine how and when to hold in-person meetings while also adhering to CDC social distancing guidelines.