

CHECKLIST FOR INDIANA LOCAL GOVERNMENTS DURING COVID-19 EMERGENCY

(Revised as of March 23, 2020, 7 p.m. EST)

PREPARED BY:

Thomas A. Pitman
Barnes & Thornburg LLP
Thomas.Pitman@btlaw.com
(317) 231-6420

Terry Dawson
Barnes & Thornburg LLP
Terry.Dawson@btlaw.com
(317) 231-7269

A. CHECKLIST OF PROCEDURES FOR PUBLIC MEETINGS UNDER EMERGENCY PROVISIONS (pursuant to Governor's Executive Order No. 20-04, as supplemented by Executive Order No. 20-08)

1. **Cancellation or Postponement of Non-Essential Public Meetings.** Governing bodies should postpone or cancel non-essential meetings.
2. **Notice to Press.** For special meetings, provide notice (at least 48 hours prior to the meeting, not including weekends or holidays) of the date, time and place of the meeting **to the press** (and other organizations that made written request for notices).
3. **Posting of Notice.** For special meetings, post notice (at least 48 hours prior to the meeting, not including weekends or holidays) of the date, time and place of the meeting. This **may (and should) be done electronically** (e.g., on the political subdivision's website) (rather than through physically posting at a government building).
4. **Posting of Agenda.** Required for both special and regular meetings. This **may (and should) be done electronically** (rather than through physically posting at the entrance to the meeting place).
5. **In-person Attendance by Governing Body Members. No member** of the governing body **is required to attend the meeting in person.** All members may attend by any means that allows all members of the governing body to hear one another and all members of the press and the public to hear the governing body members in real time. (Examples: dial-in conference calls or video-conferencing.) Quorum and voting requirements remain in effect. (For public hearings, if no governing body members are present, then the governing body presumably would have to use a communications method that permits all governing body members and all remote audience members and remote members of the press to hear one another in real time.)
 - a. **In-person Attendance by Public and Press.** Members of the public and the press must be permitted to attend the meeting in person if any of the governing body

members attend in person. However, a maximum of 10 persons (spaced at least six feet apart) seems appropriate in light of Executive Order No. 20-08. The right of the press and the public to attend should be given priority over non-essential government employees. Limiting attendees must be done in a manner that ensures attendance by at least some members of the press and the public who wish to attend.

b. Remote Participation by Public.

1. **Use of technology.** Providing a way for the public to attend remotely through the use of technology is **encouraged** (in addition to--not in place of--the public's right to attend in person, as described above). Use livestreaming if possible.
2. **Remote Submissions of Comments.** Political subdivisions are **encouraged** to provide a method for the public to submit comments in writing or by other remote means.

6. SAMPLE SPECIAL MEETING NOTICE (EMERGENCY FORMAT)

**VERSION A:
WHERE AT LEAST ONE GOVERNING BODY MEMBER
WILL ATTEND IN PERSON**

The [Common Council/Town Council/Other Governing Body] of the [City of _____/Town of _____/Other Political Subdivision] (the "Council/Governing Body") will meet for a special meeting on _____, 2020, at _____ .m. (local time), at the _____. The public is invited to attend. The [Council/Governing Body] may impose reasonable restrictions on the number of attendees to control audience density in consideration of the existing COVID-19 national emergency. [Describe any technology (if any) being provided for remote viewing or participation, including instructions for accessing.] [Provide instructions for submitting remote comments, if that will be permitted.]

[For special meetings: At least 48 hours prior to the meeting, (a) provide this notice (by email or otherwise) to (1) newspaper(s) used for public notices by the [city/town/other political subdivision], and (2) any other organization that made a written request to the governing body to receive notices of special meetings, and (b) post this notice electronically (e.g., on the political subdivision's website).]

**VERSION B:
WHERE NO GOVERNING BODY MEMBER
WILL ATTEND IN PERSON**

The [Common Council/Town Council/Other Governing Body] of the [City of _____/Town of _____/Other Political Subdivision] (the "Council/Governing Body") will meet for a special meeting on _____, 2020, at _____ .m. (local time). No governing body members will attend in person, but will instead attend remotely. The public is invited to attend by remote access. [Describe technology being provided for remote viewing or participation, including instructions for accessing.] [Provide instructions for submitting remote comments, if that will be permitted.]

[For special meetings: At least 48 hours prior to the meeting, (a) provide this notice (by email or otherwise) to (1) newspaper(s) used for public notices by the [city/town/other political subdivision], and (2) any other organization that made a written request to the governing body to receive notices of special meetings, and (b) post this notice electronically (e.g., on the political subdivision's website).]

B. EMERGENCY RULES FOR OPEN RECORDS REQUESTS (Pursuant to Governor's Executive Order No. 20-09)

1. **No In-Person or Telephone Requests Permitted.** Until April 7, 2020, persons are not permitted to request public records in person or by telephone; instead, such requests must be made by U.S. mail, fax or email.
2. **No Requirement to Acknowledge Request Until April 7.** Until April 7, 2020, public agencies are not required to acknowledge receipt of a public records request, but must only do so within a reasonable time after April 7.

C. POLICIES REGARDING PUBLIC EMPLOYEES. Common Councils of Cities, Town Councils of Towns, and Boards of Commissioners of Counties should consider holding a special meeting to pass an ordinance to enact emergency policies regarding local government employees. Having due regard for Executive Order No. 20-08 and Federal laws (including those described in 8 below), matters to address might include the following:

1. **Approval of Policies.** The local government legislative body (City Council, Town Council, County Commissioners) should pass an ordinance adopting the policies.
2. **Term of Emergency Policies.** Set the date through which policies will be effective, and whether policies are retroactive to a recent date.
3. **Work Requirements.** Set rules for expectations from healthy employees who are able to work.
4. **Exceptions to Normal Work Rules.** Include exceptions to normal work rules. Such exceptions might provide for full or partial payment of their regular pay for set maximum periods of time:
 - a. Employees who have been diagnosed as having COVID-19 or who have been in close contact with someone diagnosed with COVID-19.
 - b. Employees who have been quarantined (or ordered to self-quarantine) by a healthcare provider or a government official.
 - c. Employees who have symptoms consistent with COVID-19 until such time as a diagnosis is confirmed or for a set number of days after such symptoms have ended.
 - d. Employees who reside in the same house as another person described in a, b or c.
 - e. Employees who have a health condition that puts them at increased risk for complications from COVID-19.
 - f. Employees who are responsible for the care of dependents following school closings.

- g. Employees could be required to obtain the signature of a supervisor on a prescribed form in order to be eligible to receive any benefit under this policy.
5. **Policies for Working Remotely.** Establish rules for circumstances in which employees may work remotely, including any requirement to be on-call to report to work stations within a certain time (e.g., two hours) of being called.
 6. **Policies for Paying Employees in Event of Shutdown.** Establish rules for whether employees will be paid (and how much) during periods in which non-essential services are discontinued (as is presently the case).
 7. **Observe the Mandates of the Governor’s Executive Order No. 20-08 (during its effectiveness, which currently runs through April 6),** including the following:
 - a. “Allow as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing.”
 - b. “Actively encourage sick employees to stay home until they are free of fever (without the use of medication) for at least 72 hours (three full days) AND symptoms have improved for at least 72 hours AND at least seven days have passed since symptoms first began. Do not require a healthcare provider’s note to validate the illness or return to work of employees sick with acute respiratory illness.”
 - c. “Ensure that your sick leave policies are up to date, flexible, and non-punitive in order to allow sick employees to stay home to care for themselves, children, or other family members. Consider encouraging employees to do a self-assessment each day in order to check if they have any COVID-19 type symptoms (fever, cough or shortness of breath).”
 - d. “Separate employees who appear to have acute respiratory illness symptoms from other employees and send them home immediately. Restrict their access to the business until they have recovered.”
 - e. “Reinforce key messages to all employees (including stay home when sick, use cough and sneeze etiquette, and practice hand hygiene), and place posters in areas where they are most likely to be seen. Provide protection supplies such as soap and water, hand sanitizer, tissues, and no-touch disposal receptacles for use by employees.”
 - f. “Frequently perform enhanced environmental cleaning of commonly-touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label. Provide disposable wipes so that commonly used surfaces can be wiped down by employees before each use.”
 8. **Be aware of applicable federal law impacting paid leave time.** There are two immediate laws that take effect April 2, 2020.
 - a. **Emergency Paid Sick Leave.** Full time employees will be paid for 80 hours of sick time, and part time employees will be paid for the average number of hours they work in a 2-week period, if absent because:
 - The employees are subject to a federal, state, or local quarantine or isolation order related to COVID-19.
 - The employees have been advised by a health care provider to self-quarantine due to COVID-19-related concerns.
 - The employees are experiencing COVID-19 symptoms and are seeking medical diagnosis.

- The employees are caring for individuals experiencing symptoms of and seeking diagnosis for COVID-19 or are subject to a governmental order or medical recommendations to quarantine or self-isolate.
 - The employees are caring for children whose schools or places of care have been closed or whose care providers are unavailable due to COVID-19.
 - The employees are experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services, except employers of health care providers or emergency responders who can elect to exclude those employees from receiving paid sick leave.
 - An employee's paid leave is not required to exceed \$511 per day (or \$5,110 total) if leave is taken for the first three reasons listed above. An employee's paid leave is not required to exceed \$200 per day (or \$2,000 total), if leave is taken for the last three reasons listed above.
- b. **The Emergency Family Medical Leave Expansion Act.** This Act requires 12 weeks of leave for an employee who is unable to work or telework in order to care for a child whose school or daycare is closed for Covid-19-related reasons. Employees need only be employed at least 30 days to be eligible for this benefit. The first ten (10) days of this leave may be unpaid, although other employer paid leave time can be used to provide pay for that ten (10) days. The additional 10 weeks of leave under this Emergency Family Medical Leave Expansion Act is paid as follows:
- i. The paid portion amounts to two-thirds of the employee's regular rate of pay based on the number of hours an employee would otherwise normally be scheduled to work, up to a maximum of \$200 per day (and \$10,000 in aggregate).
 - ii. This 12 week period does not extend any time under the FMLA act; it simply adds another reason for leave and specifies payment.
 - iii. If you have fewer than 50 employees in a 75-mile radius, the Emergency FMLA may not apply (although the emergency sick pay leave does), but it remains unclear at this point. Additional guidance is expected soon from the Department of Labor on the applicability of these provisions and any interpretation.

D. POLICIES REGARDING PROVISION OF CITY SERVICES AND OPERATIONS

1. **State Board of Accounts Directives:**

a. **Summary of State Examiner Directive 2020-1 (March 19, 2020, as Updated on March 23, 2020):**

- i. **General Statement:** "During the time of this Public Health Emergency, local governmental units may need to adjust normal procedures for the timely deposit of funds and the approval of claims. The State Board of

Accounts will not take audit exception to the following alternative procedures for the timely deposit of funds or the approval of claims:

- ii. **Timely Deposit of Funds:** IC 5-13-6-1 continues to be effective during the emergency. “However, the State Board of Accounts will not take audit exception if the governing body approves the frequency for deposit of public funds to be limited to two times per week. The approval of the governing body must state that the deposits will be made on Tuesday and Thursday and require the public funds to be secured on those days when a deposit is not made” and subject to adequate internal controls. IC 5-13-6-1 continues to be effective during the emergency.
 - iii. **Approval of Claims:** “IC 5-11-10 continues to apply to the claim approval process. “However, the State Board of Accounts will not take audit exception if the governing body uses the following procedures:
 - 1. “The governing body may designate one of its members to approve claims for payment in advance of board allowance. The board must allow those claims at its first meeting after the Public Health Emergency has ended.
 - 2. “For those units of government which have statutory authority to adopt an ordinance for the preapproved payment of claims, the board may provide written approval to the fiscal officer to pay certain claims during the Public Health Emergency. The board must allow those claims at its first meeting after the Emergency has ended.”
 - iv. **Requirement for Governing Body Ratification of Legally Delegated Actions.** “If there are items or authority that can statutorily be delegated to a presiding officer, a governing body should ratify those actions when normal meetings resume. This includes, but is not limited to, operational or administrative functions and executive or ministerial duties.”
2. **Conducting Municipal Business While Reducing the Spread of COVID-19.** Announce procedures for how municipal employees will conduct business with residents via telephone, email, or other means that reduces person-to-person contact, and enhance sanitation efforts. Suggestions include:
- a. Provide contact information on government websites for the offices of local officials. Include telephone and email contact information.
 - b. Provide online instructions for citizens to make utility payments and other payments to government entities. Include information on how to contact municipal employees for help in creating an account on the municipality’s payment website. At a minimum, ask that payments be placed in a drop box instead of being made in-person at the counter.
 - c. Provide online information on trash services, including contact information to notify the appropriate government entity or service provider if trash is not picked up.
 - d. Announce online which municipal facilities have limited hours or are closed to the public, and through what date.

- e. Provide online links to forms for contractors to complete registration applications and for interested parties to download historic district board of review applications. Provide instructions on how to submit these forms remotely (by email, U.S. mail, or drop-box).
 - f. Provide online instructions and downloadable forms for applying for building permits. Include a phone number or email address so that applicants can request assistance. Provide an email address, postal address, or drop-box for submitting applications, and issue permits remotely via email.
 - g. Encourage residents to obtain public meeting agendas online at a municipal website.
 - h. If applicable, notify residents that all public meetings will be recorded and available to the public on a specified website.
 - i. Assess technology that will enable residents to meet with municipal employees via video-conferencing.
 - j. Consider handling inspections on a case-by-case basis.
 - k. Consider having the Mayor issue an order that restricts public access to City Hall. Keep the building open for essential business. If members of the public cannot conduct business with the municipality by phone or email, then they should make an appointment with the relevant department's personnel. Provide limited open hours during which the public may enter a sectioned-off area of the building where municipal personnel can meet with them. To move beyond the designated area, citizens could be required to provide proof of an appointment or hearing at which they are a party. Alternatively, members of the public could be met at the door of the building by municipal personnel and, after passing a health screening, be permitted to enter the building. The health screening could consist of questions about whether the person has a known exposure or any symptoms, and a health-care professional could take his or her temperature.
 - l. Consider encouraging members of the public to limit visits to municipal buildings to essential business, especially if they are over 60 or have underlying health issues. While Executive Order No. 20-08 remains in effect, make this a requirement.
 - m. Post on exterior doors of municipal buildings the access restrictions and a list of city offices and the phone numbers for each office.
 - n. Consider having the Parks Department cancel all scheduled activities and special events that are to take place at public parks through a specified date. Consider keeping parks and municipal golf courses open, but with notice of reduced hours. (Note: While Executive Order No. 20-08 remains in effect, such activities and events should be cancelled.)
 - o. Consider enhancing the sanitation of some public spaces, such as high-touch areas of municipal buildings and the interior of buses.
 - p. Consider issuing a statement that citizens who have tested positive for COVID-19 should refrain from riding public transportation, such as buses.
 - q. Notify residents on how they can register for text alerts.
3. **Providing Temporary Financial Relief to Those Who Are Hardest Hit.**
- a. Consider suspending water and other utility late fees, through a set date, for residents whose income is impacted by COVID-19.

- b. Consider suspending loan payments that are owed to the municipality by businesses severely impacted by COVID-19.
- c. Consider providing free parking at metered spots for two or more hours.

E. EMERGENCY PLANNING POLICIES (INCLUDING SPECIAL APPROPRIATIONS)

1. **Special Appropriations.** Mayors and Town Council Presidents or County Commissioners may want to consider asking the Common Council, Town Council or County Council for an appropriation of additional funding to help with the political subdivision's response to the coronavirus. The money could be used to help the city (or town or county) purchase supplies, pay workers and provide space for the homeless who may be infected with the virus and who may need to be removed from regular homeless facilities. Creating a separate account for expenses relating to coronavirus might put the political subdivision in a better position to obtain reimbursement from the state or federal government.
2. **Emergency Supplies.** Consider acquiring (and providing funding for) emergency supplies for local hospitals if emergency conditions escalate.
3. **Supplies for Public Safety Personnel.** Ensure that public safety personnel have needed supplies for their personal safety and to fulfill their emergency duties.
4. **Monitor State and Federal Aid.** Encourage state and federal officials to take necessary action to provide local assistance. Stay abreast of state and federal funds that may become available for local governments, families or small businesses. Maintain detailed records of emergency expenditures in case future reimbursement from the state or federal government becomes available. Investigate all available federal and state funding opportunities to help deal with the health emergency.
5. **Establish Safe Areas for Emergency Workers.** Emergency workers who contract the virus should be provided a place where they can be quarantined instead of returning home.
6. **Benefit of Disaster Declarations.** Disaster declarations may make it easier for local governments to qualify for certain state and federal disaster funds.

F. PUBLIC ASSISTANCE

1. **Meals for Children.** Confirm that the local school corporation or others are providing free meals for local children.
2. **Relief for Homebound.** Collaborate with health care entities, religious organizations, the Salvation Army and similar charitable organizations, as well as the township trustee, to provide relief for residents who must stay in their homes because of their age, disability or health conditions. Consider setting up an online site where such residents can register to be contacted each day for safety checks. Organize volunteers to provide for such checks and offer assistance in delivering food or medicine.

3. **Emergency Transportation.** Consider having the local transportation system provide emergency transportation for the city’s elderly population to get to the pharmacy, grocery store, food pantries/soup kitchens (that offer grab and go) or (subject to confirming such office is open) appointments at doctors’ offices or medical facilities.
4. **Applications for Township Assistance.** See State Board of Accounts State Examiner Directive 2020-2 (March 20, 2020) at <https://www.in.gov/sboa/files/Directive%202020-2%20Township%20Assistance%203.20.2020.pdf>

G. INFORMATION REGARDING UNEMPLOYMENT BENEFITS AND ASSISTANCE TO SMALL BUSINESSES

1. **Useful Websites.** Post on the municipality’s webpage a list of useful websites, including:
 - a. www.unemployment.in.gov has information about COVID-19 and updates on unemployment insurance for workers and employers.
 - b. www.in.gov/dwd/2334.htm has information about filing for unemployment assistance online via a computer or smartphone. Use the following link to file from home: <https://www.in.gov/dwd/2362.htm>
 - c. Unemployment insurance and benefits helpline: (800) 891-6449 (operated by Department of Workforce Development).
 - d. www.isbdc.org/indianacovid19smallbusiness is a website for businesses that have been or may be impacted by COVID-19.
2. **Economic Injury Disaster Loan Program.** The federal government has allocated \$50 billion to the Small Business Administration (SBA) for Economic Injury Disaster Loans. Encourage small business owners in your municipality to consider applying for these loans, which can be up to \$2 million.

H. SUMMARY OF CERTAIN STATE MANDATES

1. **Compliance with State and Federal Mandates.** Local governments should comply with directives from the Centers for Disease Control and Prevention, Governor’s Executive Orders, and any other state guidelines and mandates applicable to municipalities and other local governmental entities relating to reducing the spread of the COVID-19 virus.
2. **Discontinuation of Utility Services Prohibited.** During the emergency, utility providers may not discontinue service to any customer.
3. **Prohibition on Eviction Proceedings or Foreclosure.** During the emergency, no residential eviction proceedings or foreclosure actions may be initiated. (Governor’s Executive Order No. 20-06)
4. **Delay of Primary Elections.** Primary elections are delayed to June 2, 2020. (Governor’s Executive Order No. 20-07)

5. **Waiver of Penalties for Late Property Tax Payments.** The due date for property taxes remains May 11, but counties may not impose penalties for payments that are no more than 60 days late. (Executive Order No. 20-05)
6. **Closures of Restaurants and Similar Establishments.** Restaurants, bars, nightclubs, and other establishments that provide dine-in services are required to close to in-person patrons through April 6, 2020, but drive-through, take-out and delivery services are permitted. (See also Governor’s Executive Order No. 20-10, providing rules relating to the enforcement of the order relating to closure of restaurants and similar establishments.)
7. **Stay-at-Home Order:** With exceptions outlined in Executive Order No. 20-08, individuals in Indiana are currently required to remain at home through April 6, 2020. With exceptions outlined in Executive Order No. 20-08, businesses and operations in Indiana are currently required to cease operations through April 6, 2020.
8. **Exception to Stay at Home Order for Essential Governmental Functions.** Executive Order No. 20-08 contains an exception for “Essential Governmental Functions,” defined as “all services provided by the State of Indiana or any municipality, township, county, political subdivision, board, commission, or agency of government and needed to ensure the continuing operation of government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Governmental Functions. **Each governmental body shall determine its Essential Governmental Functions and identify employees and/or contractors necessary to the performance of those functions.** Governmental employees performing Essential Government Functions are exempt from the Order.

I. COLLABORATION WITH OTHER LOCAL GOVERNMENT BODIES (INCLUDING COUNTY DEPARTMENT OF HEALTH)

1. **Communication with County Health Department.** Maintain close communication with the County Health Department and the County Emergency Management Agency.
2. **Travel Restrictions and Orders to Close Businesses.** In some counties in Indiana, the County Health Department has already issued travel restrictions and ordered all non-essential businesses to close for a specified period of time. Closures orders have been applied to businesses deemed non-essential, with exceptions for businesses such as hospital and healthcare facilities, pharmacies, grocery stores and gas stations.
3. **Communications with Other Local Governments.** Cities and towns should maintain close communication with representatives of the county and other cities and towns in the county.
4. **County Courthouse.** The county courthouse is under the jurisdiction of the Indiana Supreme Court.

J. MAYOR'S EXECUTIVE ORDERS, LEGISLATIVE BODY ORDINANCES, AND COUNTY HEALTH DEPARTMENT ORDERS

1. **Ratification of Executive Orders.** Mayors should consider having Executive Orders ratified by the applicable municipal legislative body to avert possible challenges.
2. **Business Closure Orders.** Although mayors may lack the authority to force businesses to close, the County Health Department generally can do so in appropriate circumstances. With exceptions outlined in Executive Order No. 20-08, businesses and operations in Indiana are currently required to cease operations through April 6, 2020.

K. MISCELLANEOUS MATTERS TO CONSIDER

1. **Child Care Options.** Consider alternative child care options for working parents, especially those in the health care industry.
2. **Business Gift Cards.** Encourage the purchase of gift cards from local businesses.
3. **Check on Neighbors.** Encourage residents to check on their neighbors (by telephone) who might be at-risk.
4. **List of Businesses that Deliver.** Post a list of pharmacies and grocery stores that offer deliver in the community.
5. **Blood Donation.** Encourage citizens who can donate blood to go to local blood centers to do so, in view of current low blood supplies. See guidance at www.redcross.org
6. **Access to Online Local News.** Request that the local newspaper temporarily unlocked its paywall to enable non-subscribers to have access to updates and local news.
7. **CDC Recommendations.** Urge your residents to follow all recommendations from the Center for Disease Control and Prevention (CDC), including:
 - a. Wash your hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60 percent alcohol.
 - b. Avoid touching your eyes, nose and mouth.
 - c. Practice social distancing, maintaining a distance of at least 6 feet from others.
 - d. Disinfect frequently used surfaces, like doorknobs, light switches, etc. daily.
 - e. Stay home if you're sick.
 - f. Cover your mouth with a tissue when you cough or sneeze. Throw the tissue away and immediately wash your hands.
 - g. Avoid shaking hands and use alternative greetings like nodding your head.
 - h. Limit meetings and events to 10 people or fewer.
8. **Grocery Hoarding.** Discourage hoarding groceries and other irrational actions.
9. **Debt Refinancing.** Consider refinancing debt where savings can be generated given current interest rates.
10. **IT Security.** Take steps to ensure that secure IT systems are in place, including with respect to work performed remotely.
11. **Document Security.** Establish rules for whether documents may be allowed to be removed from the government office.

Note: These materials are intended for information only and are not to be considered legal advice.