

**STANDARD OPERATING PROCEDURES MANUAL
OF THE
SOUTH BEND COMMON COUNCIL**



CITY CLERK BIANCA L. TIRADO

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Preface

On January 1, 2024, a newly elected 9-member South Bend City Council and newly elected South Bend City Clerk officially took office to serve the citizens of the city.

In the interest of further promoting best practices in the legislative branch of city government, as well as in the Office of the City Clerk, the following *Standard Operating Procedures Manual* has been developed. This document is intended to address day-to-day operational procedures, policies, and practices. These standard operating procedures are supplemental to the Common Council governing rules and regulations, which were duly passed by ordinance and codified into [Chapter 2 of the South Bend Municipal Code](#).

This *Manual* will serve as a quick reference to address routine policies and procedural questions, so that when an issue may arise that each may be timely and reasonably addressed. These SOPs may be amended or updated from time to time to achieve greater operational efficiencies. Additional SOPs may be added, as deemed necessary, with all members of the South Bend Common Council, their Administrative Staff, and the Office of the City Clerk, as well as, the standing committees, boards, and commissions being updated on all additions and/or changes.

This *Manual* is also designed to complement the Common Council’s Mission Statement:

“To make certain that our City Government is always responsive to the needs of our residents and that the betterment of South Bend is always our highest priority”.

This *Manual* is authorized pursuant to the authority granted to the Council President to “perform any function proper and necessary for the effective and efficient operation of the office as deemed in the public interest” as set forth in [South Bend Municipal Code § 2-6](#); and in furtherance of the “duties of the City Clerk as Clerk of the Council” as set forth in [South Bend Municipal Code § 2-7](#).

If any Council Member has any questions or concerns, they should be brought to the attention of the Council President so that each may be timely and reasonably addressed.

We look forward to a very productive and positive term of office, as we work together for the betterment of the citizens of South Bend. Thank you!

Sharon L. McBride

Sharon L, McBride Council President

Bianca L. Tirado

Bianca Tirado, City Clerk

Sheila Niezgodski

Sheila Niezgodski, Vice President

Sec. 2-6. - President of Common Council, powers and duties; Vice-President of Common Council, powers and duties.

- (a) The presiding officer or President of the Common Council, after being duly elected pursuant to Section 2-3 of this Code, and after taking the oath of office, shall take the chair and preside over all regular, special and informal meetings of the Council.
- (b) The President shall call the Council to order at the hour for the opening of the meetings and upon the appearance of a quorum.
- (c) The President or other presiding officer shall have the right to participate in the discussion of the Council after all other Council Members have had an initial opportunity to speak on an issue and shall have the right to vote on all matters, without taking leave of the chair.
- (d) The President shall:
 - (1) Preserve strict order and decorum among Council Members and/or members of the public;
 - (2) Decide all questions of order, and such decisions shall be final unless appeals are taken to the Council;
 - (3) Appoint all standing committees at the commencement of the term of the Council; provided that such standing committees shall serve only during the term of the appointing President;
 - (4) Appoint all special committees which may be ordered by the Council;
 - (5) Fill all vacancies which may occur in any of the standing or special committees;
 - (6) Sign all ordinances and resolutions adopted by the Council prior to their presentation to the Mayor, as well as all ordinances after enrollment, and the journal of the proceedings;
 - (7) Perform any function proper and necessary for the effective and efficient operation of the President's office as deemed in the public interest.
- (e) The Vice-President and the Chairperson of the Committee of the whole of the Council shall be elected at the same time and for the same term and manner as the President of the Council.
- (f) The Vice-President or other presiding officer shall possess the powers and perform the duties of the President of the Council when the President is absent, or when a temporary vacancy occurs in the Office of the President.

(Code 1916, § 3; Code 1962, § 2-8; Ord. No. 6114-77, § 1; Ord. No. 6237-77, § 2; Ord. No. 7025-82, § 2; Ord. No. 7929-88, § 1; Ord. No. 10877-22, § 1, 9-12-22)

Sec. 2-7. - Duties of City Clerk as Clerk of Council.

- (a) The City Clerk shall be the Clerk of the Common Council.
- (b) The City Clerk shall be elected by the voters of the City at the time and in the same manner as other City officers are elected. The term of office shall commence on the first day of January following the Clerk's election and shall continue for four (4) years thereafter.
- (c) The Clerk, or a designated representative of the Clerk's Office, in addition to the powers and duties enumerated in Section 2-14 of this Code, shall attend all regular and special meetings of the Council and shall keep an accurate journal of the proceedings of the Council and exercise and perform the powers and duties as provided and prescribed by law, this Code or ordinances. The City Clerk's Office shall prepare minutes without consultation with anyone not a part of said office.
- (d) The Clerk shall call the roll at the beginning of each session of the Council and on the vote of every ordinance and resolution and whenever requested by two (2) members on any other votes and record the ayes and nays by Council Member name in the minutes.
- (e) The Council Members shall be called in the following order: First, the District Council Members in the order of their districts; next the Council Members-at-Large in alphabetical order; last, the presiding officer. On all requested roll call votes when sitting as Committee of the Whole, on all third readings of bills, and on all resolutions, the Clerk shall call the roll rotating the call of each Council Member by one (1) position.
- (f) The Clerk shall provide and maintain in the City Clerk's Office a supply of forms for all matters required to be filed with the City Clerk.
- (g) The Clerk shall have the power to administer oaths of office.
- (h) The Clerk shall make available to the press and any other interested person, upon request, all public information which is available concerning the subjects to be discussed at any regular, special or informal meetings of the Council, and shall also make available the time, date and place of such meetings.
- (i) Upon the request of any Council Member or the Council Attorney on behalf of any Council Member, the Office of the City Clerk shall provide other supportive clerical assistance and other related services to the Council, its standing committees, and such other committees which include Council representatives. Such services shall be provided to further effectuate the necessary obligations, responsibilities and duties required of the Council Members and to further the effective and efficient operation of the Council.
- (j) The City Clerk's Office shall maintain all minutes of the standing and special committees of the Common Council which are duly filed with said office by the Chairperson of the Committee. The minutes shall be maintained with the notices of such meetings in a separate and permanent

folder for each committee. All folders shall be open for public inspection and available for copying at a reasonable cost to members of the public.

(Code 1916, § 4; Code 1962, § 2-7; Ord. No. 6114-77, § 1; Ord. No. 6814-80, § 1; Ord. No. 7025-82, § 2; Ord. No. 7862-88, § 1; Ord. No. 7929-88, § 1; Ord. No. 10877-22, § 1, 9-12-22)

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Standard Operating Procedure # 01-2024-SBCC

Addressing

Use of South Bend Common Council Stationery

Effective Date: January 1, 2024

Purpose: This Standard Operating Procedure (SOP) establishes policies and procedures addressing the use of Council stationery, so that professional and systematic standards are routinely followed by all Council Members, their support staff, and the Office of the City Clerk.

Scope: This SOP governs when Council stationery may be used by a Council Member.

Responsibility: It is the responsibility of each Council Member to comply with this SOP.

Procedure and Governing Rules:

South Bend Common Council stationery may only be used when a Council Member desires to address a matter concerning official government business of the City of South Bend. In limited circumstances, if a Council Member is requested to issue a letter of reference for an individual, Council stationery may be used so long as it is limited to his/her knowledge of the individual and does not convey a recommendation on behalf of the Common Council or the City of South Bend, Indiana.

Council stationery is defined as that which contains the City Seal and the name of the Common Council.

In order to comply with the Americans With Disabilities Act (ADA), the stationery must also contain the street address, telephone contact information and the TDD number 574.235.9221.

It is the responsibility of the Council Member using Council stationery, and not that of the Office of the City Clerk, to maintain copies of all documents issued on Council stationery, in the event that a request for public records is received by the City pursuant to the Indiana Public Records Act. Compliance with this governing law is the duty of the Council Member.

In the event that a Council Member desires to issue a statement which is an opinion or editorial comment which does not pertain to pending proposed legislation or city governmental issues or topics, in such instances the Council support staff, and the staff of the Office of the City Clerk shall not assist, and such statement shall only be issued on personal letterhead. In such instances the individual Council Member shall be solely responsible for the dissemination of such opinions and editorial comments.

In the event that a Council Member needs assistance in the preparation of a document he/she wishes to issue on Council stationery, he/she must give reasonable notice to the Council Attorney and the Legislative Research Assistant, especially if the document is also to be issued in Spanish.

1. In the event that a Council Member needs assistance in having a communication typed on Council stationery, he/she shall contact the staff member assigned by the City Clerk, in a reasonable period of time to complete such task.
2. All usage of Council stationery shall be done in a manner which is consistent with all rules of decorum governing members of the South Bend Common Council, and in particular the provisions of [South Bend Municipal Code § 2-8 \(k\)](#) which provides in part that “*no member shall impugn a motive of another*”, and [South Bend Municipal Code § 2-8 \(o\)](#) which provides in part that “*each Council Member shall observe the highest standards of dignity, propriety, courtesy, respect and decorum...*”

Sec. 2-8. - Decorum and debate regulating Common Council.

- (a) The presiding officer shall preserve order and decorum at all Council meetings. When necessary, the presiding officer may seek the assistance of the Sergeant-at-Arms in the enforcement of this provision.
- (b) Each member of the Common Council shall be present within the Council Chamber during the sessions of the Council and shall vote on each question put unless excused from voting by a majority of the members present. Any Council Member not present shall be noted in the minutes as absent.
- (c) A Council Member shall not vote or take any other discretionary action in the Member's official capacity, except in the exercise of the Member's own independent judgment, reached after due regard for the collective interests of the Member's constituency as a whole, and of the citizens and the community of the City of South Bend. The prohibition in this subsection extends to any agreement to take action in violation of this subsection and to any effort to induce other Council Members to violate it.
- (d) Whenever a Council Member has or is likely to have a substantial conflict of interest in connection with a matter pending before the Council in which the Member's action may be influenced by possible economic benefits or material personal gain, the Member shall disclose fully the nature of the potential conflict of interest, in which event the Member may continue to participate in the deliberations and vote on the matter if it is determined by a majority of the Council present that it is not a substantial conflict of interest.
- (e) Whenever a Council Member has or is likely to have a substantial conflict of interest in connection with any official matter other than one pending before the Council, the Member shall either:
 - (1) Disqualify himself or herself from further participation in the proceeding; or
 - (2) Conduct himself or herself in accordance with an advisory opinion from the Council Rules Committee.
- (f) Council Members shall not derive or attempt to derive any unjustified enrichment from their office. This subsection forbids:
 - (1) The solicitation or acceptance of any bribe, or any gift, or other material, economic or personal benefit, or of any promise of similar benefit, which the Member believes or reasonably should believe was intended to influence the Member's vote or other action to be taken in the Member's official capacity; or
 - (2) The solicitation or acceptance of any gift or other economic or personal benefit conferred because of any vote or other action in the Member's official capacity already taken by the Member; or
 - (3)

The acquisition or use for personal purposes of any property, services or funds of the City, unless authorized by law; or

- (4) The use for personal gain of information pertaining to the City of South Bend, which is not a matter of public record, at a time when it is treated as confidential by the officials of the City.
- (g) When any Council Member is about to speak or deliver any matter to the Council, he or she shall respectfully address himself or herself to the presiding officer, and upon being recognized, confine himself or herself to the question in debate, and avoid personality, the presiding officer shall not recognize any Council Member as in order, unless he or she is in his or her proper seat.
- (h) When two (2) or more Members seek recognition at once, the presiding officer shall name the Member entitled to speak.
- (i) No member shall speak more than twice nor for more than five (5) minutes on the second occasion, upon any one (1) question or issue in debate during the same meeting. A member shall only be granted the right to speak a second time on the same question or issue after each member has had an opportunity to speak on said issue or question.
- (j) While the presiding officer is putting the question or addressing the Council, no Member shall walk out of or across the Council Chamber or engage in private discourse.
- (k) No Member shall impugn the motive of another.
- (l) Any member may change their vote before the announcement of the result by the presiding officer.
- (m) If any Member, in speaking or otherwise, shall transgress the rules of the Council, the presiding officer shall, or any Member may, call that Member to order, in which case the Member shall immediately cease the transgression unless permitted, on motion of another Member, to explain; and the Council shall, if appealed to, decide the case without debate by a majority vote of the Members present. If the decision is in favor of the Member called to order, that Member shall be at liberty to proceed, but not otherwise, and if the case requires it, that Member shall be liable to the censure of the Council.
- (n) Should any Council Member, in the course of the Member's remarks, violate a second time any rule of the Council, and again be called to order that Member shall not speak further upon the pending question, except by permission of two-thirds ($\frac{2}{3}$) of the members present.
- (o) Each Council Member shall observe the highest standards of dignity, propriety, courtesy, respect and decorum when with other Council Members, officers and employees of the City, and all other persons, and when carrying out any of the responsibilities, duties and services allowed or mandated by the office of a Council Member.
- (p) Unless excused in advance by the presiding officer, persons in the Council Chambers and in the Council Informal Meeting Room shall turn all cell phones, and any other electronic devices to silent mode when the Common Council is in session and when any Standing Committee meeting

is in progress. Council Members and citizen members of any Standing Committee may not send, view or listen to any electronic message communications while a Council or citizen member is part of the quorum for such meeting or while such meeting is in progress. Any electronic device which is used through City-controlled access and which is needed during the Common Council or any Standing Committee is permitted for the purpose of accessing city information, city presentations, and to record minutes and notes.

(q) As used in this article, "electronic device" means a wireless and/or portable electronic handheld piece of equipment that includes, but is not limited to, existing and emerging mobile communication systems and smart technologies (cell phones, smart phones walkie-talkies, pagers, etc.) portable internet devices (mobile managers, mobile messengers, BlackBerry T handset, etc.) Personal Digital Assistants (PDAs), (Palm organizers, pocket PCs, etc.) and any other convergent communication technologies that do any number of the previously mentioned functions. "Electronic device" also includes any current or emerging wireless handheld technologies or portable information technology systems that can be used for word processing, wireless internet access and information transmitting/receiving, etc. Tape recorders, cameras, and hearing aids³ shall be excluded from the definition of "electronic devices" as used in this article. Emergency communication devices used by sworn police officers and medical first responders who are in attendance of a Common Council or Standing Committee meeting shall be in excluded from the provisions of this article. ^[2]

(Code 1916, § 5; Code 1962, § 2-9; Ord. No. 6114-77, § 1; Ord. No. 7929-88, § 1; Ord. No. 9504-04, § I; Ord. No. 10080-11, § I, 4-11-11; Ord. No. 10877-22, § I, 9-12-22)

Footnotes:

--- (2) ---

Hearing aids are defined by the National Institute of Deafness and Other Communication Disorders (NIDCD) as a "small electronic device that you wear in or behind an ear which is designed to make some sounds louder so that a person with hearing loss can listen, communicate and participate more fully in daily activities."

Standard Operating Procedure # 02-2024-SBCC

Addressing

News or Press Releases Issued by South Bend Council Members

Effective Date: January 1, 2024

Purpose: This Standard Operating Procedure (SOP) addresses news or press release policies and procedures of the Common Council, so that professional and systematic standards are routinely followed by all Council Members, their support staff, and the Office of the City Clerk.

Scope: This SOP governs any and all press or news media releases concerning official government business of the City of South Bend which a Council Member wishes to issue.

Responsibility: It is the responsibility of each Council Member to comply with this SOP.

Procedure and Governing Rules:

Any proposed News Release may only use the City Seal and picture of the Council Member issuing such release, if the subject matter pertains to official government business of the City of South Bend.

The group picture of the Common Council may only be used on a News Release if the release is being issued on behalf of the entire Council.

Each News Release must conspicuously list the date, the name of the Council Member(s), contact telephone number(s), the TDD number 574-235-9221, and the subject matter being addressed.

Assistance in drafting a proposed News Release may be given by the Council Attorney and the Chief Deputy City Clerk/ Chief of Staff upon reasonable notice being given by the requesting Council Member(s).

If a proposed News Release is also to be simultaneously issued in Spanish, as well as English, a reasonable period of time must be given to the Legislative Research Intern to prepare such a translation.

Each proposed News Release must be consistent with all rules of decorum governing members of the South Bend Common Council, and in particular the provisions of [South Bend Municipal Code § 2-8 \(k\)](#) which provides in part that “*no member shall impugn a motive of another*”, and [South Bend Municipal Code § 2-8 \(o\)](#) which provides in part that:

“...each Council Member shall observe the highest standards of dignity, propriety, courtesy, respect and decorum...” Any proposed News Release found to be in violation of this provision, or which contains editorial comments not pertaining to proposed legislation will not be issued by the Office of the City Clerk. In such circumstances, the Council Member submitting such a proposed News Release shall be advised by the Office of the City Clerk so that he/she may take appropriate corrective actions to edit said News Release, with notice also being given to the Council President of such action.

1. Drafts of News Releases will be checked for grammar and spelling, however the Council Member planning to issue such a release is responsible for the facts being addressed.
2. The final version of each News Release which meets the standards set forth in this SOP must be initialed, signed by the Council Member(s), or must have been officially authorized by the issuing Council Member(s) to use his or her stamped signature stamp by the staff member assigned by the City Clerk who is in charge of issuing such releases. Proposed News Releases found to be in compliance with the SOP shall then be stamp-filed with the date and time by the individual assigned by the City Clerk to receive and review such documents, and then publicly released and disseminated by the Office of the City Clerk.
3. The Office of the City Clerk shall only transmit News Releases complying with this SOP to the news media, the Common Council and support staff, affected City departments, the Mayor's Office, and those who may have jurisdiction over the subject matter of the release. The Office of the City Clerk shall have such release posted on the Common Council website within a reasonable period of time, with limited paper copies placed in the Office of the City Clerk. The Office of the City Clerk may assist in preparing the requested number of copies for a properly called News or Press Conference so long as there is compliance with Standard Operating Procedure # 03-2016. The Office of the City Clerk shall maintain a copy of all issued releases.

Standard Operating Procedure # 03-2024-SBCC

Addressing

Use of Council Informal Meeting Room

Effective Date: January 1, 2024

Updated: January 1, 2024

Purpose: This Standard Operating Procedure (SOP) establishes policies and procedures addressing the use of the Council Informal Meeting Room, so that professional and systematic standards are routinely followed by all Council Members, their support staff, and the Office of the City Clerk. This standard operating procedure (SOP) shall also apply to all standing committees, boards, and commissions.

Scope: This SOP governs the process for reserving and using the Council Informal Meeting Room.

Responsibility: It is the responsibility of each Council Member, standing committee, board, and commission to comply with this SOP.

Procedure and Governing Rules:

The Council Informal Meeting Room located on the 4th Floor of the County-City Building is used by many other governmental agencies and departments. So that there is proper scheduling of the use of that room, the following procedure and rules must be adhered to:

1. Any Council Member or officer of a board or commission may request to reserve the Council Informal Meeting Room for a specific date and time; with the approximate duration of time that the room will be needed.
2. If the request to reserve the Council Informal Meeting Room is for an official meeting of a standing committee, board, or commission, then the Office of the City Clerk must be provided with the topic of discussion for the meeting and agenda, if applicable. The Office of the City Clerk will post notice of the meeting in compliance with Indiana's Open Door Law and Public Records Act.
3. Notification of an official meeting of a standing committee, board or commission may be completed by contact the Chief Deputy City Clerk with the Office of the City Clerk.
4. Such request must be made to the staff person assigned by the City Clerk who oversees the scheduling of the use of the Council Informal Meeting Room.
5. Requests shall be handled on a first-come first-served basis, unless another governmental entity or department has prior confirmation for the usage of such room on a regular basis.

6. When confidentiality is needed for Council Members, the Council Informal Meeting Room may be used by such individuals on an as needed basis with limited notice being required in such instances.
7. If there is a need to use any technology equipment, a request must be made at time of initial notification to the Office of the City Clerk. The Council Chambers is equipped with recording equipment that may be used for official meetings.
8. In no instance may the room exceed the Fire Marshal's maximum occupancy of thirty-five (35) persons.
9. The room shall be used for official Council government business only.
10. It is the responsibility of the Council Member(s) reserving the room to return the room free of any papers or other objects which were not in the room initially, and with all furniture returned to their original locations.
11. If the request for use of the Council Informal Meeting Room is for a news or press conference, the Office of the City Clerk shall be advised, so that the appropriate number of copies of News or Press Releases which comply with SOP # 02-2024-SBCC, may be available for the requesting Council Member(s) prior to the conference.
12. All News or Press Conferences must be conducted in a manner which is consistent with all rules of decorum governing members of the South Bend Common Council, and in particular the provisions of the [*South Bend Municipal Code § 2-8 \(k\)*](#) which provides in part that "*no member shall impugn a motive of another*", and [*South Bend Municipal Code § 2-8 \(o\)*](#) which provides in part that "*each Council Member shall observe the highest standards of dignity, propriety, courtesy, respect and decorum...*"

Standard Operating Procedure # 04-2023-SBCC

Addressing

Off-Site Council Member News or Press Conferences & Working with Media

Effective Date: January 1, 2024

Purpose: This Standard Operating Procedure (SOP) establishes policies and procedures addressing off-site Council Member News or Press Conferences, so that professional and systematic standards are routinely followed by all Council Members, their support staff, and the Office of the City Clerk.

Scope: This SOP governs the process to be followed in the event that a Council Member desires to hold a news or press conference which would not be either in the Council Member's Council Office or in the Council Informal Meeting Room on the 4th Floor of the County-City Building.

Responsibility: It is the responsibility of each Council Member to comply with this SOP.

Procedure and Governing Rules:

Providing information to the news media when a Council Member initiates or is working on a key project or is planning to introduce proposed legislation which is of significant interest to the public, may be appropriate from time to time. Calling a news conference where the press is invited to hear a Council Member speak and address questions at a location in the City, is usually reserved to significant news-worthy topics. This may be at times be the most efficient and effective means to deliver information to the public. In light of the background preparation which includes but is not limited to proper scheduling, notice of the proposed news conference by the Office of the City Clerk, handout preparation, and post-news conference posting of releases on the Council's website, the following procedure and rules must be adhered to:

1. Advanced reasonable notice of twenty- four to forty-eight (24-48) hours to the Office of the City Clerk must be given by the Council Member(s) of the specific date, time, and location of where the proposed off-site news conference is to be held.
2. Such a request must be made to the Chief Deputy City Clerk/Chief of Staff assigned by the City Clerk who oversees the scheduling of the use of the Council Informal Meeting Room.
3. Assistance from the Office of the City Clerk and Council Support Staff shall be used only for official Council government business, and reasonable time for such assistance must be given.
4. If handouts are anticipated to be used, the Office of the City Clerk shall be advised, so that the appropriate number of copies of News or Press Releases which comply with SOP # 02-2023-SBCC, may be available for the requesting Council Member(s) prior to the conference.
5. If links from the news or press conference are anticipated to be made to the Common Council's Facebook page, the Council Member must comply with Policy #02-2024.

6. All News or Press Conferences must be conducted in a manner which is consistent with all rules of decorum governing members of the South Bend Common Council, and in particular the provisions of [South Bend Municipal Code § 2-8 \(k\)](#) which provides in part that “*no member shall impugn a motive of another*”, and [South Bend Municipal Code § 2-8 \(o\)](#) which provides in part that “*each Council Member shall observe the highest standards of dignity, propriety, courtesy, respect and decorum...*”
7. Some points to keep in mind when conducting a News or Press Conference include:
 - Think about the subject matter and identify key messages
 - Speak clearly and pause when asked a question so that your response is factual
 - Politely correct a reporter if he or she makes an incorrect statement. You may ask the reporter to repeat or summarize an item to make sure that they understand it correctly.
 - Only discuss items which you have firsthand knowledge about and never exaggerate, guess, or discuss confidential information.
 - Always be prepared to provide further background information if requested.

Standard Operating Procedure # 05-2024-SBCC

Addressing

Standing Committee Meetings

Effective Date: January 1, 2024

Updated: January 1, 2024

Purpose: This Standard Operating Procedure (SOP) establishes policies and procedures addressing when the “Standing Meeting Request Protocol” is to be used, so that professional and systematic standards are routinely followed by all Council Members, their support staff, and the Office of the City Clerk.

Scope: This SOP governs when a Council Member who is a Chairperson of a Standing Committee is required to use the Standing Meeting Request Protocol Form.

Responsibility: It is the responsibility of each Council Member to comply with this SOP.

Procedure and Governing Rules:

1. The Office of the City Clerk maintains and regularly updates a process entitled “Standing Meeting Request which is a email notification to the Office of the City to request a standing Council Committee Meeting. To request a Council standing Committee Meeting, an email to the City Clerk and Deputy City Clerk/Director of Policy and with the requested information; name of committee, purpose/reason, date, and presentation request.
2. This process was originally developed several years ago for the purposes of:
 - Helping streamline the process for calling a Committee meeting;
 - Assuring that there was proper notification to key people, who may be involved with the topic under discussion, were given reasonable notice and preparation time of the proposed committee meeting;
 - Enabling compliance with Indiana’s Open Door Law and Public Records Act with regard to timely notice to City officials, the public and media, proper posting of the meeting notice, collaboration with off-site individuals in charge of a location for recording of the meeting by the Office of the City Clerk;
 - Enabling compliance with the Americans With Disabilities Act (ADA) with regard to accessibility to the meeting location.
3. The Standing Meeting Request Protocol is required to be completed by a Committee Chairperson when:
 - a) A proposed committee meeting is planned to be held on a date other than the 2nd or 4th Monday of the month; or
 - b) A proposed committee meeting is requested to be held on a 2nd or 4th Monday but would have no proposed resolutions or proposed ordinances on the committee agenda which are scheduled for public hearing that evening at the 7 p.m. South Bend Common Council meeting.

4. Proposed committee meetings which fall into the category described in paragraph 3b above, must submit their request to the Office of the City Clerk no later than noon on the Wednesday prior to the Monday regular Common Council meeting.
5. Standing Committees which have Bills referred to them for review and recommendation for the Monday Common Council meeting will always take precedence for scheduling over requests for meetings having non-agenda items. If a reasonable time exists for a Standing Committee meeting which does not have a 7 p.m. Council agenda item, it may be scheduled as the last Committee meeting, immediately prior to the Informal Meeting of the Council.
6. If time does not exist for the scheduling of a Standing Committee which meets the criteria of paragraph 3b above, the Office of the City Clerk shall notify the requesting Committee Chairperson and the Council President. Notification that a request to schedule a Committee meeting cannot be granted shall be given no later than the close of business on the Thursday following the Wednesday deadline when the request was received.

Standard Operating Procedure # 06-2024-SBCC

Addressing

Conflict of Interest Annual Review

Effective Date: January 1, 2024

Purpose: This Standard Operating Procedure (SOP) establishes policies and procedures addressing an annual conflict of interest review by each Council Member, so that professional and systematic standards are routinely followed by all Council Members, their support staff, and the Office of the City Clerk.

Scope: This SOP governs the annual conflict of interest review required to be conducted by Council Member and by each citizen member which a Standing Committee Chairperson may appoint to a standing committee.

Responsibility: It is the responsibility of each Council Member to comply with this SOP.

Procedure and Governing Rules:

Following the Organizational Meeting held on the first (1st) Monday of January of each year, the Council President elected to serve in that capacity for the calendar year has the responsibility to appoint members of the Council to each of the Council's eleven Standing Committees. Following those appointments, each Common Council Member has the responsibility to:

1. To abide by the State of Indiana's Uniform Conflict of Interest Disclosure Statement policies and procedures set forth in [Indiana Code § 35-44.1-1-1, et seq.](#), and [South Bend Municipal Code § 1-10\(p\)](#).
2. Determine whether he or she needs to complete a conflict-of-interest form and have it accepted by the Common Council at a public meeting, and then have it filed with the appropriate offices.
3. Complete the Uniform Conflict of Interest Disclosure Form ([Form #236](#)) available from the Office of the City Clerk and then return the completed form to the City Clerk for acceptance at the next regular Common Council meeting under "Unfinished Business" and then have it filed with the Office of the City Clerk, the Clerk of the Circuit Court, and the (St Joesph County Clerk) State Board of Accounts by [uploading here](#):
4. Review this process with any and all citizen members who may be appointed to a Standing Committee by the Council Member who chairs a committee during the orientation session.

CHAPTER 7
CONFLICT OF INTEREST

PUBLIC SERVANTS - STATUTORY CONFLICT OF INTEREST [IC 35-44.1-1-4]

Conflict of Interest

A public servant who knowingly or intentionally; (1) has a pecuniary interest in; (2) or derives a profit from, a contract or purchase connected with an action by the government entity served by the public servant, commits conflict of interest, a Level 6 felony. [IC 35-44.1-1-4(b)]

Exception for Compensation and Expenses

A public servant is not prohibited from receiving compensation for services provided as a public servant or for expenses incurred by the public servant as provided by law. [IC 35-44.1-1-4(c)]

Other Exceptions

IC 35-44.1-1-4 does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the following conditions:

1. If the public servant is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity; the functions and duties the public servant performs for the governmental entity are unrelated to the contract or purchase; and the public servant makes a disclosure as provided in IC 35-44.1-1-4(d). [IC 35-44.1-14(c)(6)]
2. If the contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government. [IC 35-44.1-1-4(c)(3)]

Definition of Pecuniary Interest

A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:

1. The public servant; or
2. A dependent of the public servant who:
 - a. is under the direct or indirect administrative control of the public servant; or
 - b. receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant. [IC 35-44.1-1-4(a)(3)]

Definition of Dependent

A dependent means any of the following:

1. The spouse of a public servant.
2. A child, stepchild, or adoptee of a public servant who is:
 - a. unemancipated, and
 - b. less than 18 years of age.
3. An individual more than one-half of whose support is provided during a year by the public servant. [IC 35-44.1-1-4(a)]

Disclosure Requirements

A disclosure as required above must:

1. Be in writing.
2. Describe the contract or purchase to be made by the governmental entity.
3. Describe the pecuniary interest that the public servant has in the contract or purchase.
4. Be affirmed under penalty of perjury.
5. Be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity before final action on the contract or purchase.
6. Be filed within fifteen days after final action on the contract or purchase with; (a) the state board of accounts; and (b) the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase.
7. Contain, if the public servant is appointed, the written approval of the elected public servant (if any) that appointed the public servant.

Defense

It is not an offense in a prosecution under this section that the public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars (\$250) or less. [IC 35-44.1-1-4(c)(2)]

Form

A suggested format for the disclosure of conflict of interest for board members and employees is located at the end of this section. The attorney for the governmental entity or a private attorney should be consulted in regard to whether a conflict of interest statement should be filed and whether the format of the disclosure is sufficient.

CONSULTANTS - STATUTORY CONFLICT OF INTEREST [IC 5-16-11]Conflict of Interest

Pursuant to IC 5-16-11-5.5, a consultant has a conflict of interest if any of the following apply:

1. The entity has given a gift or gifts:
 - a. to the consultant, the consultant's spouse, or the consultant's unemancipated children;
 - b. that have a total fair market value of more than one hundred dollars (\$100); and
 - c. within the preceding year.
2. The consultant, the consultant's spouse, or the consultant's unemancipated children have an equitable or a legal interest in real property the value of which:
 - a. either is at least \$5,000 or comprises at least ten percent (10%) of the net worth of the consultant, the consultant's spouse, or the consultant's unemancipated children; and
 - b. has been or would be increased or decreased if a contract were awarded to the entity.
3. The consultant or the consultant's spouse is employed by the entity.
4. The entity is the sole proprietorship or professional practice of the consultant or the consultant's spouse.
5. The consultant or the consultant's spouse is a partner in the entity.
6. The consultant or the consultant's spouse is an officer or a director of the entity.
7. The consultant, the consultant's spouse, or the consultant's unemancipated children own stock or options to purchase stock in the entity and the stock or the options to purchase stock have a fair market value of more than ten thousand dollars (\$10,000). This subdivision does not apply to the following:
 - a. Time deposits or demand deposits in a financial institution.
 - b. An insurance policy.

Definition of Consultant

"Consultant" means an individual who, under a contract with the state or a political subdivision, does either of the following for the state or the political subdivision:

1. Evaluates bids for contracts.
2. Awards contracts.

The term does not include a public employee (as defined in IC 34-6-2-38).

An individual is not required to be a party to the contract with the state or the political subdivision to be a consultant under this section. [IC 5-16-11-2]

Definition of Entity

As used in this chapter, "entity" refers to a person that:

1. has submitted a bid to be evaluated by a consultant; or
2. was awarded a contract by a consultant. (IC 5-16-11-3.5)

Disclosure Requirements

A conflict of interest must be disclosed as follows:

1. A consultant shall file a conflict of interest disclosure if the consultant has a conflict of interest under IC 5-16-11-5.5.
2. The disclosure must describe the conflict of interest.
3. The consultant shall file the disclosure within ten (10) days of the earlier of the following events:
 - a. The closing day for receipt of bids.
 - b. The award of the contract.
4. The consultant shall file the disclosure required by IC 5-16-11-6 with the governing board, if the consultant contracts with the political subdivision. [IC 5-16-11-7]
5. The consultant shall make the disclosure required by IC 5-16-11-6 under affirmation. [IC 5-16-11-6,7,8]

Penalties

A consultant who fails to file a disclosure required by this chapter commits a Class A infraction. [IC 5-15-11-11]

A consultant who files a false disclosure under this chapter is subject to the penalties for perjury under IC 35-44-2-1. [IC 5-16-11-12]

LUCRATIVE OFFICE

Article 2, Section 9 of the Constitution of Indiana, states in part: ". . . no person may hold more than one lucrative office at the same time, except as expressly permitted in this Constitution." Any person holding two offices which have been or may be deemed lucrative should obtain the written opinion of the attorney for the unit or units served to determine compliance with Article 2, Section 9 of the Constitution of Indiana.



UNIFORM CONFLICT OF INTEREST DISCLOSURE STATEMENT

State Form 54266 (R / 6-12) / Form 236
STATE BOARD OF ACCOUNTS

Indiana Code 35-44.1-1-4

A public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D Felony. A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is unemancipated and less than eighteen (18) years of age; and any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

The foregoing consists only of excerpts from IC 35-44.1-1-4. Care should be taken to review IC 35-44.1-1-4 in its entirety.

1. **Name and Address of Public Servant Submitting Statement:** _____

2. **Title or Position With Governmental Entity:** _____

3. a. **Governmental Entity:** _____

b. **County:** _____

4. **This statement is submitted (check one):**

a. as a "single transaction" disclosure statement, as to my financial interest in a specific contract or purchase connected with the governmental entity which I serve, proposed to be made by the governmental entity with or from a particular contractor or vendor; or

b. as an "annual" disclosure statement, as to my financial interest connected with any contracts or purchases of the governmental entity which I serve, which are made on an ongoing basis with or from particular contractors or vendors.

5. **Name(s) of Contractor(s) or Vendor(s):** _____

6. **Description(s) of Contract(s) or Purchase(s)** *(Describe the kind of contract involved, and the effective date and term of the contract or purchase if reasonably determinable. Dates required if 4(a) is selected above. If "dependent" is involved, provide dependent's name and relationship.):*

- 7. **Description of My Financial Interest** *(Describe in what manner the public servant or "dependent" expects to derive a profit or financial benefit from, or otherwise has a pecuniary interest in, the above contract(s) or purchase(s); if reasonably determinable, state the approximate dollar value of such profit or benefit.):*

(Attach extra pages if additional space is needed.)

- 8. **Approval of Appointing Officer or Body** *(To be completed if the public servant was appointed by an elected public servant or the board of trustees of a state-supported college or university.):*

I (We) being the _____ of
(Title of Officer or Name of Governing Body)

_____ and having the power to appoint
(Name of Governmental Entity)

the above named public servant to the public position to which he or she holds, hereby approve the participation to the appointed disclosing public servant in the above described contract(s) or purchase(s) in which said public servant has a conflict of interest as defined in Indiana Code 35-44.1-1-4; however, this approval does not waive any objection to any conflict prohibited by statute, rule, or regulation and is not to be construed as a consent to any illegal act.

_____	_____
_____	_____
_____	_____
Elected Official	Office

- 9. **Effective Dates** *(Conflict of interest statements must be submitted to the governmental entity prior to final action on the contract or purchase.):*

_____	_____
<i>Date Submitted (month, day, year)</i>	<i>Date of Action on Contract or Purchase (month, day, year)</i>

- 10. **Affirmation of Public Servant:** This disclosure was submitted to the governmental entity and accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase. I affirm, under penalty of perjury, the truth and completeness of the statements made above, and that I am the above named public servant.

Signed: _____
(Signature of Public Servant)

Date: _____
(month, day, year)

Within fifteen (15) days after final action on the contract or purchase, copies of this statement must be filed with the State Board of Accounts, Indiana Government Center South, 302 West Washington Street, Room E418, Indianapolis, Indiana, 46204 and the Clerk of the Circuit Court of the county where the governmental entity took final action on the contract or purchase.

Standard Operating Procedure # 07-2024-SBCC

Addressing

Annual Standing Committee Organizational Meetings and Orientation Sessions With Persons Appointed As Committee Citizen Members

Effective Date: January 1, 2024

Updated: January 1, 2024

Purpose: This Standard Operating Procedure (SOP) establishes policies and procedures addressing initial duties of Standing Committee Chairpersons and Appointed Committee Citizen Members, so that professional and systematic standards are routinely followed by all Council Members, their support staff, and the Office of the City Clerk.

Scope: This SOP governs the activities a Standing Committee Chairperson is initially responsible for, after being appointed to chair a Committee in January of each year. As well as, the duties and responsibilities of a Citizen Member selected to serve on a Standing Committee.

Responsibility: It is the responsibility of each Council Member and citizen member to comply with this SOP.

Procedure and Governing Rules:

The eleven (11) Standing Committees of the South Bend Common Council are responsible for carrying out due diligence requirements on all matters referred to a committee for review and recommendation. In the interest of having the most informed advisory recommendations being made by each of these committees, the Committee Chairpersons have the responsibility to:

1. Schedule an organizational meeting of the Standing Committee no later than the 2nd Monday of February of each year, to review the Committee's duties and responsibilities, to review and discuss the most recent Committee Annual Report filed with the Office of the City Clerk, and to discuss and recommend goals and objectives for the calendar year.
2. To review all applications filed with the Office of the City Clerk by citizens expressing a desire to be appointed as a citizen member. This provision does not apply to the Council Rules Committee Chairperson.
3. To select a qualified citizen member. That person would then be invited to the Office of the City Clerk to be sworn in, followed by a mandatory one-time orientation session where the Office of the City Clerk have the opportunity to share and discuss relevant information which would include but not be limited to responsibilities and duties, attendance requirements, procedures, and compliance with the State of Indiana's Uniform Conflict of Interest Disclosure Statement policies and procedures set forth in [Indiana Code § 35-44.1-1-1, et seq.](#), and [South Bend Municipal Code § 2-10\(p\)](#). This provision does not apply to the Council Rules Committee Chairperson.

Standard Operating Procedure # 08-2024-SBCC

Addressing

Procedures Governing Travel by Council Members

Effective Date: January 1, 2024

Purpose: This Standard Operating Procedure (SOP) re-establishes policies and procedures governing travel by Council Members, so that professional and systematic standards are routinely followed by all Council Members, their support staff, and the Office of the City Clerk.

Scope: This SOP governs all travel for governmental purposes such as mileage, airfare, hotel, meals, parking fees and other related necessary expenses

Responsibility: It is the responsibility of each Council Member to comply with this SOP.

Procedure and Governing Rules:

This Standard Operating Procedure governing travel by South Bend Common Council Members is supplemental to the [City of South Bend Travel Policy](#) which has been in effect since January 1, 2020. This Standard Operating Procedure conforms to the provisions codified in Section 2-2 of the *South Bend Municipal Code* which provides in part that "...each Council Member may use up to one-ninth (1/9) of the monies budgeted for travel and expenses". The referenced *South Bend Municipal Code* section permits an allocation of some or all of a Council Member's 1/9 of the budgeted monies to another Council Member.

SBCC Travel request must be properly completed communicated by email to the Council President, submitted and approved for such allocation(s) to be considered. The Office of the City Clerk shall complete the necessary steps with [DFO System](#) and maintain a current summary of the balances of each of the approved budgeted amounts throughout the calendar year, as well as a breakdown of approved usage of such funds listing the dollar amount expended by the name of each Council Member to assure that the 1/9 allocation is documented and available for review.

Operating Procedure #09-2024-SBCC

Addressing

Use of City-Owned Technologies

Effective Date: January 1, 2024

Purpose: This Standard Operating Procedure (SOP) re-establishes policies and procedures governing use of city-owned technologies by Council Members, so that professional and systematic standards are routinely followed by all Council Members, their support staff, and the Office of the City Clerk.

Scope: This SOP governs all city-owned technologies including but not limited to iPads, computers made available at Council Member workstations or offices, and other city-owned technologies as they may become available.

Responsibility: It is the responsibility of each Council Member to comply with this SOP.

Procedure and Governing Rules:

This Standard Operating Procedure reaffirms the provisions originally issued as interim policies and procedures in Policy # 01-2024. This SOP summarizes the appropriate use of technology resources which are made available to the Common Council and owned by the City of South Bend.

1. Technology resources are to primarily serve the governmental needs of the City of South Bend.
2. Such technology resources may be used for personal purposes on a limited basis, provided there is:
 - a. No marginal cost to the City of South Bend
 - b. No interference with city government responsibilities
 - c. No political activities
 - d. No access of sites which promote laws or actions which are contrary to the city, state, or federal government
 - e. No accessing of inappropriate sites including but not limited to adult content, online gambling, dating services, online shopping, or similar activities
 - f. No accessing of sites which promote illegal activities or copyright violations
 - g. No accessing of sites which distribute computer security exploits (hacking sites)
3. If any of the prohibited use items listed in ¶ 2 above are required for a legitimate city governmental reason, the exception process set forth in ¶ 6 of this SOP must be followed.
4. **No Expectation of Privacy:** Nothing in this SOP confers an individual right or is to be construed to provide an expectation of privacy. The provisions of the *Indiana Open Door Law* codified at [Indiana Code § 5-14-1.5](#) and Indiana's *Access to Public Records Law* codified at [Indiana Code § 5-14-3](#) govern.

5. Additional Responsibilities: Each Council Member is expected to:
 - a. Monitor personal use of the internet, messaging, and other applications to ensure that the City of South Bend is being appropriately served
 - b. Adhere to the provisions of the SOP at all times when city-owned technologies are being used
 - c. Read and abide by relevant policies and procedures developed by the Council's Information and Technology Committee

6. Exception Process: Any exception to the policies and procedures set forth in this SOP must be requested in advance and in writing to the Chairperson of the Council's Information and Technology Committee. All exceptions must be documented in writing and retained in the Office of the City Clerk according to the retention schedules and policies. The requested exception which may be granted shall be done on a limited time basis only and shall be reviewed on a case-by-case basis.

7. South Bend Municipal Code: All governing provisions codified into Chapter 2 of the *South Bend Municipal Code* addressing the Common Council shall be adhered to when using city-owned technologies.

Standard Operating Procedure # 10-2024-SBCC

Addressing

Expenditure Request

Effective Date: January 1, 2024

Purpose: This Standard Operating Procedure (SOP) addresses expenditure requests, so that professional and systematic standards are routinely followed by all Council Members, their support staff, and the Office of the City Clerk.

Scope: This SOP governs all requests for an expenditure, other than those related to travel which are addressed in Standard Operating Procedure # 08-2023-SBCC.

Responsibility: It is the responsibility of each Council Member to comply with this SOP.

Procedure and Governing Rules:

The annual budget governing the South Bend Common Council may from time to time include very limited monies for small miscellaneous expenditures. All such funds are governed by City of South Bend Policy Operating and Budgeting Policy which has been in effect since January 1, 2020; as well as provisions of the *Indiana Code* and regulations issued by the Department of Local Government Finance (DLGF).

In the interest of maintaining an accurate internal control system which ensures that all proposed spending is within approved budgetary expenditures, the following rules apply:

1. Supplies needed for day-to-day operations in carrying out the duties of a Council Member are maintained in the Office of the City Clerk. Requests shall be made to that office on an add-needed and first-come first-serve basis.
2. Any supplies not readily available, may be made to the Chief of Staff to handle such duties by the City Clerk, for review and consideration by the Council President.
3. Any supplies which may not be available per paragraphs 1 and 2 above, or other miscellaneous expenditures which a Council Member believes are needed in order to carry out his or her Council manic duties may be considered on a case-by-case basis. In such limited instances, a requisition form as depicted on the following page must be submitted to the Council President for review. No proposed expenditure may be considered or approved without the Council President's approval after he or she has reviewed the Council's budget balances maintained by a staff person assigned to carry out such duties by the City Clerk.

Standard Operating Procedure # 11-2024-SBCC

Addressing

Off-Site Meetings of a Standing Committee, Board or Commission

Effective Date: January 1, 2024

Purpose: This Standard Operating Procedure (SOP) establishes policies and procedures addressing off-site meetings of standing committees so that professional and systematic standards are routinely followed by all Council Members, their support staff, and the Office of the City Clerk. This standard operating procedure (SOP) shall apply to all standing committees.

Scope: This SOP governs the procedures and responsibilities for holding an off-site standing committee meeting at a location other than the Council Chambers.

Responsibility: It is the responsibility of each Council Member and standing committee, to comply with this SOP.

Procedure and Governing Rules:

All Standing Committees of the South Bend Common Council are responsible for conducting meetings pursuant to Indiana's Open Door Law, Indiana Code § 5-14-1.5, "*all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.*" In order to ensure compliance with state law, off-site meetings must adhere to the following rules and regulations:

1. The Office of the City Clerk must be notified one (1) week in advance of all official meetings of standing committees. The notification must include a specific date, time, and location with the topic of discussion for the meeting and an agenda. The Office of the City Clerk will provide assistance with proper notice and posting at the off-site location.
2. The Office of the City Clerk maintains and regularly updates a process entitled "Standing Meeting Request" which is an email notification to the Office of the City to request a standing Council Committee Meeting. To request a Council standing Committee Meeting, an email to the City Clerk and Deputy City Clerk/Director of Policy and with the requested information; name of committee, purpose/reason, date, and presentation request.
3. The designated Clerk's Staff is required to submit meeting minutes to the Office of the City Clerk, no later than 24 hours (business days) after the meeting. The meeting minutes *will* and *must* include the following:
 - A brief and formal record of the content of the meeting;
 - The order of business items must be consistent with the agenda;
 - A list of the members and presenters at the meeting;
 - Any documents, presentations or handouts from the meeting;
 - Name, address and topic of discussion of members of the public that spoke at the meeting;
 - Any motions or actions taken including topics and results;
 - Recommendations or advisory information that needs to be forwarded to the Council;
 - Appeals or request for information that needs to be forwarded to the Council.

4. It is the preference of the Office of the City Clerk that all meetings of standing committees be recorded for accurate record keeping. If needed, handheld recording devices are available for use in the Office of the City Clerk. Request for additional assistance with IT for off-site meeting equipment should be made when providing notification of a meeting.
5. The location must meet the standards and procedures to capture the minutes and proper record of the meeting. Councilmembers must comply with the procedure and be prepared to request additional assistance with IT and any equipment needed to comply with the recording needs of the meeting.
6. The meeting location must be in compliance with the Americans With Disabilities Act (ADA). Contact the Office of the City Clerk for more information. Identify any ADA accommodations needed for the meeting (audio, video, recorder, translator, etc.) to the Office of the City Clerk.

Complete list of all standing committees of the South Bend Common Council

STANDING COMMITTEES	REQUIREMENTS
Community Investment Committee	South Bend Municipal Code Section 2-10
Community Relations Committee	South Bend Municipal Code Section 2-10
Council Rules Committee	South Bend Municipal Code Section 2-10
Health and Public Safety Committee	South Bend Municipal Code Section 2-10
Information and Technology Committee	South Bend Municipal Code Section 2-10
PARC Committee (Parks, Recreation, Cultural Arts & Entertainment)	South Bend Municipal Code Section 2-10
Personnel and Finance Committee	South Bend Municipal Code Section 2-10
Public Works and Property Vacation Committee	South Bend Municipal Code Section 2-10
Residential Neighborhoods Committee	South Bend Municipal Code Section 2-10
Utilities Committee	South Bend Municipal Code Section 2-10
Zoning and Annexation Committee	South Bend Municipal Code Section 2-10

References/Links:

1. [Chapter 2 of the South Bend Municipal Code.](#)
2. Duties of the City Clerk as Clerk of the Council [South Bend Municipal Code § 2-7](#)
3. [South Bend Municipal Code § 2-8 \(k\)](#)
4. [South Bend Municipal Code § 2-8 \(o\)](#)
5. Conflict of Interest Disclosure Form [\(Form #236\)](#)
6. [Indiana Code § 35-44.1-1-1, et seq](#)
7. Conflict of Interest Disclosure Statement policies and procedures [South Bend Municipal Code § 2-10\(p\)](#)
8. *Indiana Open Door Law* codified at [Indiana Code § 5-14-1.5](#)
9. *Indiana's Access to Public Records Law* codified at [Indiana Code § 5-14-3](#)

Sec. 2-10. - Eleven standing committees of the Common Council; powers and duties.

- (a) There shall be eleven (11) standing committees organized within the Common Council. Each standing committee, except the Council Rules Committee, shall consist of not less than three (3) Council Members. Council Members shall be appointed to each committee by the Council President at the beginning of each calendar year.
- (b) Each standing committee, except the Council Rules Committee, shall have not less than one (1) citizen member and at no time shall the number of citizen members constitute more than one-third ($\frac{1}{3}$) of the total membership of each standing committee.
- (c) A person desiring to serve as a citizen member of any of the Council's standing committees, except the Council Rules Committee, must have been a resident of the City of South Bend for not less than one (1) year prior to being considered for appointment. City residency shall be a continuing requirement for membership on all such standing committees. Citizen members shall serve without compensation for one-year terms, with each appointment expiring by the first meeting of the succeeding calendar year of such appointment.
- (d) Citizen members shall be appointed by the Chairperson of each standing committee. In making such appointments, the Chairperson shall assure that the citizen members are broadly representative of the South Bend Community.
- (e) The Chairperson, with the assistance of the City Clerk or his designee, shall be responsible for filing Committee minutes with the Office of the City Clerk within two (2) weeks after each committee meeting. Such minutes shall comply with the Open Door Law and shall include but not be limited to:
 - (1) The date, time and place of the meeting;
 - (2) Persons in attendance;
 - (3) Summary of all items discussed including all references to proposed resolution and ordinances referred to it for review and recommendation;
 - (4) A record of all votes taken; and the time of adjournment.Any documents submitted to a Committee shall be filed with the original of the committee minutes with the Office of the City Clerk. Any majority or minority reports filed with a Committee shall also be attached to such Committee minutes. Upon the approval and signing of such minutes by the Committee Chairperson, the Office of the City Clerk shall see that the minutes are properly posted on the Common Council's website.
- (f) The Office of the City Clerk shall send to each citizen member notices of all Committee meetings to which they are appointed, along with copies of proposed resolutions or ordinances sent to such Committee for review and recommendation no later than two (2) business days prior to the Committee meeting.

- (g) Any citizen member vacancy of a standing committee shall be filled for the unexpired term in the same manner as the original appointment. A vacancy shall be deemed to exist upon the occurrence of any one (1) of the following conditions:
- (1) If a citizen member moves his or her permanent place of domicile out of the City of South Bend, dies, resigns, or for any reason refuses to serve during the period for which he or she was appointed; or
 - (2) If a citizen member fails to attend and participate in the meetings of the standing committee as may be determined by the Committee Chairperson in consultation with the Council President.
- (h) All duly appointed citizen members shall have the right to make appropriate motions at Committee meetings and participate in Committee discussions. All such citizen members shall have the right to vote on all matters coming before the Committee to which he or she has been appointed.
- (i) There shall be eleven (11) standing committees of the South Bend Common Council. These committees and their area of jurisdiction are as follows:
- (1) Parks, Arts, Recreation and Culture (PARC) Committee: Overseeing the various activities of the Century Center, Regional Museum of Art, College Football Hall of Fame, Morris Performing Arts Center, Department of Parks and Recreation, Studebaker Museum and related activities.
 - (2) Community Investment Committee: Overseeing the various activities of the Community Investment Department and programs directed by this Department.
 - (3) Community Relations Committee: Overseeing the various activities of the Office of Community Affairs and the relationships and ongoing communications with other public and private entities operating within the City of South Bend. The Chairperson of the Community Relations Committee shall schedule not less than two (2) committee meetings each calendar year inviting the superintendent, school trustees of the South Bend Community School Corporation Board of Trustees, their committees or designated representatives and other nonpublic school officials operating within the City of South Bend to discuss school/community relations. The Chairperson may schedule any additional meetings in a calendar year on school/community relations as he or she deems appropriate. The Chairperson shall additionally schedule committee meetings with the Residential Neighborhoods Committee to receive and discuss information from the Community/Campus Advisory Coalition (CCAC) and all City agencies, offices and departments involved with public safety regulations, as further addressed in Section 14-60 of the South Bend Municipal Code.
 - (4) Council Rules Committee: Overseeing rules and regulations governing the operation of the South Bend Common Council, as well as all matters of public trust as more specifically set forth in Section 2-10.1 of the Municipal Code and applicable State and Federal laws.

- (5) Health and Public Safety Committee: Overseeing the various activities performed by the Department of Code Enforcement, EMS, Fire Department, Police Department, ordinance violations and related public health and safety issues.
- (6) Information and Technology Committee: Overseeing the various activities of the City's information technologies so that all computer systems, websites, and related technologies are maintained and upgraded so as to remain competitive and up to date with current industry standards.
- (7) Personnel and Finance Committee: Overseeing the various activities performed by the Department of Administration and Finance, salaries, budgets, fiscal matters and personnel policies and procedures of the City.
- (8) Public Works and Property Vacation Committee: Overseeing the various activities performed by the Building Department, the Department of Public Works and related public works and property vacation issues.
- (9) Residential Neighborhoods Committee: Overseeing the various activities of the Neighborhood Partnership Centers and issues related to neighborhood development and enhancement.
- (10) Utilities Committee: Overseeing the various activities of all enterprise entities including, but not limited to the Bureau of Waterworks, Bureau of Sewers and all related entities.
- (11) Zoning and Annexation: Overseeing the various activities related to the Board of Zoning Appeals, Area Plan Commission and the Historic Preservation Commission as well as all related matters addressing annexation and zoning.

The general responsibilities of each standing committee shall include the right to review all legislative proposals, reports and other pertinent information under its jurisdiction; and to monitor on a continuing basis the department(s), bureau(s) and public officials under its jurisdiction. All committees shall deal with any issues referred to it by the Council President or referred to it by a majority of the Common Council. Each standing committee shall report periodically to the Common Council with an annual committee report highlighting activities of the past year by the second Monday of December of each year.

The Chairperson, with the assistance of the City Clerk, or his or her a authorized representative from the Office of the City Clerk, shall be responsible for filing Committee minutes with the Office of the City Clerk within two (2) weeks after each committee meeting. Such minutes shall comply with the Open Door Law and shall include but not be limited to: (1) the date, time and place of the meeting; (2) persons in attendance; (3) summary of all items discussed including all references to proposed resolutions and ordinances referred to in it for review and recommendation; (4) a record of all votes taken; and the time of adjournment. Any documents submitted to a Committee shall be filed with the original of the committee minutes with the Office of the City Clerk. Any majority or minority reports filed with a committee shall also be attached to such committee minutes.

The Council President shall appoint the Chairperson and Vice Chairperson of each standing committee following his or her election as Council President. A majority of the total membership of a standing committee shall constitute a quorum. The Council President shall have the right to vote on each standing committee only in the event of a tie.

The Office of the City Clerk shall provide notice of all committee meetings, pursuant to applicable State law. Such notice(s) shall also be sent to all citizen members on a committee calling a meeting, along with all copies of documents sent to a standing committee for review and recommendation.

- (j) The Council President may appoint special or ad hoc committees. Such committees shall be considered advisory to the Common Council. Such committees shall file appropriate written reports addressing the issue(s) for which they were created with the Council President. Following the completion of their purpose, such special or ad hoc committee shall be dissolved by the Council President unless a majority of the Common Council determines to continue the existence of such committee for a long period of time.
- (k) The governing rules of the Common Council as far as they are applicable shall be the rules of each of the standing committees unless determined otherwise by the Committee Chairperson.
- (l) It shall be the duty of the Chair Person of each Council Committee to report promptly to the Common Council on all proposed resolutions, ordinances and other matters referred to it for review and recommendation.
- (m) Public hearings on proposed resolutions or ordinances coming before a standing committee shall be conducted pursuant to the following procedures:
 - (1) Report by an entity having advisory review [Example: Area Plan, Board of Zoning Appeals, Board of Public Works, Community Development, etc.];
 - (2) Presentation by the parties filing the proposed legislation with copies of all handouts being presented to all Council Members and for the public record;
 - (3) Public portion: Those speaking in favor shall be followed by those speaking in opposition;
 - (4) Rebuttal by the petitioning parties; and
 - (5) Committee discussion and recommendation by proper motions.
- (n) The standing committees are authorized to receive exhibits, hear witnesses, and use all applicable powers to procure relevant information on issues referred for review and recommendation. The Committee Chairperson shall report to the Common Council verbally on all action taken on proposed resolutions and ordinances.
- (o) In order to assure proper respect to the conduct of all standing committee hearings, the highest standards of dignity, propriety, courtesy and decorum shall be upheld in order to assure the proper fact finding mission through the hearing process. The Chairperson may establish special rules governing such hearings as circumstances may require.

(p) All Council Members and all citizen members of a Council Standing Committee shall abide by the State of Indiana's Uniform Conflict of Interest Disclosure Statement policies and procedures.

(Code 1916, § 7; Code 1962, § 2-11; Ord. No. 5484-73, § 1; Ord. No. 5783-75, § 1; Ord. No. 6032-76, § 1; Ord. No. 6114-77, § 1; Ord. No. 6139-77, § 1; Ord. No. 6237-77, § 3; Ord. No. 6814-80, § 2; Ord. No. 7248-83, § 1; Ord. No. 7297-84, § 1; Ord. No. 7862-88, § 1; Ord. No. 7929-88, § 1; Ord. No. 8237-92, § 1; Ord. No. 8462-94, §§ 3, 4; Ord. No. 9211-01, § II; Ord. No. 9488-04, § I; Ord. No. 9504-04, § V; Ord. No. 9830-08, § 1; Ord. No. 9964-09, § I, 9-28-09; Ord. No. 10080-11, § II, 4-11-11; Ord. No. 10195-12, § III, 10-22-12; Ord. No. 10214-13, § I, 1-14-13)

IC 5-14-1.5 Chapter 1.5. Public Meetings (Open Door Law)

5-14-1.5-1	Purpose
5-14-1.5-2	Definitions
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5-14-1.5-3	Open meetings; secret ballot votes; member participating by electronic means of communication
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5-14-1.5-3.5	Electronic meetings of political subdivisions; statutory authorization required
5-14-1.5-3.6	Electronic communications by certain governing bodies
5-14-1.5-3.7	Electronic meetings during disaster emergency
5-14-1.5-4	Posting agenda; memoranda of meetings; public inspection of minutes
5-14-1.5-5	Public notice of meetings
5-14-1.5-6	Repealed
5-14-1.5-6.1	Executive sessions
5-14-1.5-6.5	Collective bargaining meetings; applicable requirements
5-14-1.5-7	Violations; remedies; limitations; costs and fees
5-14-1.5-7.5	Civil penalties imposed on public agency, officer, or management level employee
5-14-1.5-8	Accessibility to individuals with disabilities

IC 5-14-1.5-1 Purpose

Sec. 1. In enacting this chapter, the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. 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. The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy.

As added by Acts 1977, P.L.57, SEC.1. Amended by P.L.67-1987, SEC.1.

IC 5-14-1.5-2 Definitions

Sec. 2. For the purposes of this chapter:

(a) "Public agency", except as provided in section 2.1 of this chapter, means the following:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
 - (A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or
 - (B) audit by the state board of accounts that is required by statute, rule, or regulation.
- (4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.
- (5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.
- (6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.
- (7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

- (b) "Governing body" means two (2) or more individuals who are any of the following:
- (1) A public agency that:
 - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
 - (B) takes official action on public business.
 - (2) The board, commission, council, or other body of a public agency which takes official action upon public business.
 - (3) Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter.
- (c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include any of the following:
- (1) Any social or chance gathering not intended to avoid this chapter.
 - (2) Any on-site inspection of any:
 - (A) project;
 - (B) program; or
 - (C) facilities of applicants for incentives or assistance from the governing body.
 - (3) Traveling to and attending meetings of organizations devoted to betterment of government.
 - (4) A caucus.
 - (5) A gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources.
 - (6) An orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action.
 - (7) A gathering for the sole purpose of administering an oath of office to an individual.
 - (8) Collective bargaining discussions that the governing body of a school corporation engages in directly with bargaining adversaries. This subdivision applies only to a governing body that has not appointed an agent or agents to conduct collective bargaining on behalf of the governing body as described in subsection (b)(3).
- (d) "Official action" means to:
- (1) receive information;
 - (2) deliberate;
 - (3) make recommendations;
 - (4) establish policy;
 - (5) make decisions; or
 - (6) take final action.
- (e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.
- (f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose. The governing body may also admit an individual who has been elected to the governing body but has not been sworn in as a member of the governing body.
- (g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.
- (h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.
- (i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

(l) "State educational institution" has the meaning set forth in IC 21-7-13-32.

(m) "Charter school" has the meaning set forth in IC 20-24-1-4). The term includes a virtual charter school (as defined in IC 20-24-1-10).

As added by Acts 1977, P.L.57, SEC.1. Amended by Acts 1979, P.L.39, SEC.1; P.L.33-1984, SEC.1; P.L.67-1987, SEC.2; P.L.8-1993, SEC.56; P.L.277-1993(ss), SEC.127; P.L.1-1994, SEC.20; P.L.50-1995, SEC.14; P.L.1-1998, SEC.71; P.L.90-2002, SEC.16; P.L.35-2003, SEC.1; P.L.179-2007, SEC.1; P.L.103-2013, SEC.1; P.L.197-2017, SEC.1; P.L.124-2022, SEC.1.

IC 5-14-1.5-2.1 "Public agency"; certain providers exempted

Sec. 2.1. "Public agency", for purposes of this chapter, does not mean a provider of goods, services, or other benefits that meets the following requirements:

(1) The provider receives public funds through an agreement with the state, a county, or a municipality that meets the following requirements:

(A) The agreement provides for the payment of fees to the entity in exchange for services, goods, or other benefits.

(B) The amount of fees received by the entity under the agreement is not based upon or does not involve a consideration of the tax revenues or receipts of the state, county, or municipality.

(C) The amount of the fees are negotiated by the entity and the state, county, or municipality.

(D) The state, county, or municipality is billed for fees by the entity for the services, goods, or other benefits actually provided by the entity.

(2) The provider is not required by statute, rule, or regulation to be audited by the state board of accounts.

As added by P.L.179-2007, SEC.2.

IC 5-14-1.5-3 Open meetings; secret ballot votes; member participating by electronic means of communication

Sec. 3. (a) Except as provided in section 6.1 of this chapter, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.

(b) A secret ballot vote may not be taken at a meeting.

(c) A meeting conducted in compliance with section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication does not violate this section.

(d) This subsection applies only to the governing body of a school corporation or charter school. The governing body:

(1) shall allow a member of the public who is physically present at the meeting location, including a meeting conducted under section 3.5 of this chapter, to provide oral public comment; and

(2) may allow a member of the public to provide oral public comment during a meeting conducted under section 3.7 of this chapter.

A governing body may adopt reasonable rules to govern the taking of oral public comment at a meeting. However, the taking of oral public comment on a topic must occur before the governing body takes final action on the topic. The governing body may set a limit on the total amount of time for receiving oral public comment on a topic.

(e) Nothing in this section prohibits a governing body from taking reasonable steps to

maintain order in a meeting, including removal of any person who is willfully disruptive of the meeting.

As added by Acts 1977, P.L.57, SEC.1. Amended by P.L.38-1988, SEC.6; P.L.1-1991, SEC.35; P.L.179-2007, SEC.3; P.L.134-2012, SEC.10; P.L.116-2022, SEC.1; P.L.124-2022, SEC.2.

IC 5-14-1.5-3.1 Serial meetings

Sec. 3.1. (a) Except as provided in subsection (b), the governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets all of the following criteria:

- (1) One (1) of the gatherings is attended by at least three (3) members but less than a quorum of the members of the governing body and the other gatherings include at least two (2) members of the governing body.
- (2) The sum of the number of different members of the governing body attending any of the gatherings at least equals a quorum of the governing body.
- (3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.
- (4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of a governing body attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

(b) This subsection applies only to the city-county council of a consolidated city or county having a consolidated city. The city-county council violates this chapter if its members participate in a series of at least two (2) gatherings of members of the city-county council and the series of gatherings meets all of the following criteria:

- (1) One (1) of the gatherings is attended by at least five (5) members of the city-county council and the other gatherings include at least three (3) members of the city-county council.
- (2) The sum of the number of different members of the city-county council attending any of the gatherings at least equals a quorum of the city-county council.
- (3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.
- (4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of the city-county council attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

(c) A gathering under subsection (a) or (b) does not include:

- (1) a social or chance gathering not intended by any member of the governing body to avoid the requirements of this chapter;
- (2) an onsite inspection of any:
 - (A) project;
 - (B) program; or
 - (C) facilities of applicants for incentives or assistance from the governing body;
- (3) traveling to and attending meetings of organizations devoted to the betterment of government;
- (4) a caucus;
- (5) a gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources;
- (6) an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action;
- (7) a gathering for the sole purpose of administering an oath of office to an individual;

or

(8) a gathering between less than a quorum of the members of the governing body intended solely for members to receive information and deliberate on whether a member or members may be inclined to support a member's proposal or a particular piece of legislation and at which no other official action will occur.

(d) A violation described in subsection (a) or (b) is subject to section 7 of this chapter.

As added by P.L.179-2007, SEC.4.

IC 5-14-1.5-3.2 School corporation or charter school; oral public comment

Sec. 3.2. (a) This section applies only to the governing body of a:

- (1) school corporation; or
- (2) charter school.

(b) The governing body shall allow oral public comment at a meeting as set forth in section 3 of this chapter.

As added by P.L.124-2022, SEC.3.

IC 5-14-1.5-3.5 Electronic meetings of political subdivisions; statutory authorization required

Sec. 3.5. (a) This section applies only to a governing body of a public agency of a political subdivision, other than a governing body of an airport authority, a department of aviation, or a conservancy district as set forth in section 3.6 of this chapter.

(b) Subject to subsection (i), a member of the governing body of a public agency who is not physically present at a meeting of the governing body may participate in a meeting by any electronic means of communication that does the following:

- (1) Allows all participating members of the governing body to simultaneously communicate with each other.
- (2) Allows the public to simultaneously attend and observe the meeting. However, this subdivision does not apply to a meeting held in executive session.

Subject to subsection (i), a governing body member who participates in the meeting by an electronic means of communication shall be considered present for purposes of establishing a quorum but may participate in any final action taken at the meeting only if the member can be seen and heard.

(c) A technological failure in an electronic means of communication that disrupts or prevents:

- (1) the simultaneous communication between a member who is not physically present at the meeting and the governing body; or
- (2) a member of the public who is not present at the meeting from attending and observing the meeting;

does not prevent the governing body from conducting the meeting or affect the validity of an action taken by the governing body at the meeting if the sum of the governing body members physically present at the meeting and the governing body members participating by electronic communication without technological failure satisfy the quorum and (if a final action is taken) the voting requirements of the governing body.

(d) The governing body shall adopt a written policy establishing the procedures that apply to a member's participation in a meeting by an electronic means of communication. The governing body may establish procedures that are more restrictive than the procedures established by this section. The policy adopted under this section may include:

- (1) limiting the number of members who may participate by electronic communication in any one (1) meeting;
- (2) limiting the total number of meetings that the governing body may conduct in a calendar year by electronic communication; and
- (3) requiring a member, except in the case of a meeting called to deal with an emergency under section 5(d) of this chapter, who plans to attend a meeting by any

electronic means of communication to notify the presiding officer within a certain period of time before the meeting, as specified by the governing body, so that arrangements may be made for the member's participation by electronic communication.

(e) The memoranda prepared under section 4 of this chapter for a meeting in which a member participates by an electronic means of communication must:

- (1) state the name of each member of the governing body who:
 - (A) was physically present at the place where the meeting was conducted;
 - (B) participated in the meeting by using any electronic means of communication; and
 - (C) was absent; and
- (2) identify the electronic means of communication by which:
 - (A) members of the governing body participated in the meeting; and
 - (B) the public attended and observed the meeting, if the meeting was not held in executive session.

(f) All votes taken during a meeting under this section must be taken by roll call vote.

(g) At least fifty percent (50%) of the members of the governing body must be physically present at a meeting.

(h) A member of the governing body may not attend more than fifty percent (50%) of the governing body's meetings in a calendar year by means of electronic communication, unless the member's electronic participation is due to:

- (1) military service;
- (2) illness or other medical condition;
- (3) death of a relative; or
- (4) an emergency involving actual or threatened injury to persons or property.

(i) A member of a governing body may not participate in a meeting of the governing body by electronic communication if the governing body is attempting to take final action to:

- (1) adopt a budget;
- (2) make a reduction in personnel;
- (3) initiate a referendum;
- (4) establish or increase a fee;
- (5) establish or increase a penalty;
- (6) use the governing body's eminent domain authority; or
- (7) establish, raise, or renew a tax.

(j) A governing body may not prohibit a member of the governing body from attending consecutive meetings by electronic communication. A member may attend two (2) consecutive meetings (a set of meetings) by electronic communication. A member shall physically attend at least one (1) meeting between sets of meetings that the member attends by electronic communication, unless the member's absence is due to:

- (1) military service;
- (2) illness or other medical condition;
- (3) death of a relative; or
- (4) an emergency involving actual or threatened injury to persons or property.

As added by P.L.134-2012, SEC.11. Amended by P.L.154-2016, SEC.1; P.L.88-2021, SEC.5; P.L.107-2021, SEC.1; P.L.137-2021, SEC.22.

IC 5-14-1.5-3.6 Electronic communications by certain governing bodies

Sec. 3.6. (a) This section applies only to a governing body of the following:

- (1) A charter school.
- (2) A public agency of the state, including a body corporate and politic established as an instrumentality of the state.
- (3) An airport authority or a department of aviation under IC 8-22.
- (4) A conservancy district under IC 14-33.

(b) A member of a governing body who is not physically present at a meeting of the

governing body may participate in a meeting of the governing body by electronic communication 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 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), all members of the public 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 governing body must fulfill both of the following requirements for a member of the governing body to participate in a meeting by electronic communication:

- (1) This subdivision does not apply to committees appointed by a board of trustees of a state educational institution, by the commission for higher education, by the board of the Indiana economic development corporation, or by the board of directors of the Indiana secondary market for education loans, as established, incorporated, and designated under IC 21-16-5-1. This subdivision does not apply to a governing body if at least fifty-one percent (51%) of the governing body membership consists of individuals with a disability (as described in IC 12-12-8-3.4) or individuals with a significant disability (as described in IC 12-12-8-3.6), or both. The minimum number of members who must be physically present at the place where the meeting is conducted must be the greater of:

- (A) two (2) of the members; or
- (B) one-third (1/3) of the members.

- (2) All votes of the governing body during the electronic meeting must be taken by roll call vote.

Nothing in this section affects the public's right under this chapter to attend a meeting of the governing body at the place where the meeting is conducted and the minimum number of members is physically present as provided for in subdivision (1).

(d) Each member of the governing body is required to physically attend at least one (1) meeting of the governing body annually. This subsection does not apply to a governing body if at least fifty-one percent (51%) of the governing body membership consists of individuals with a disability (as described in IC 12-12-8-3.4) or individuals with a significant disability (as described in IC 12-12-8-3.6), or both.

(e) Unless a policy adopted by a governing body under subsection (g) provides otherwise, 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 at the meeting.

(f) A governing body may not conduct meetings using a means of electronic communication until the governing body:

- (1) meets all requirements of this chapter; and
- (2) by a favorable vote of a majority of the members of the governing body, adopts a policy under subsection (g) governing participation in meetings of the governing body by electronic communication.

(g) A policy adopted by a governing body to govern participation in the governing body's meetings by electronic communication may do any of the following:

- (1) Require a member to request authorization to participate in a meeting of the governing body 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 (1) meeting by electronic communication.

(3) Limit the total number of meetings that the governing body may conduct in a calendar year by electronic communication.

(4) Limit the number of meetings in a calendar year in which any one (1) 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 on any official action. For purposes of this subdivision, a member casts the deciding vote on an official action if, regardless of the order in which the votes are cast:

(A) the member votes with the majority; and

(B) the official action is adopted or defeated by 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 may also attend some or all meetings of the governing body, excluding executive sessions, at a public place or public places at which a member is physically present and participates by electronic communication. If the governing body's policy includes this provision, a 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 on official action only if, subject to subsection (e), a specified number of members:

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

(B) concur in the official action.

(10) Establish any other procedures, limitations, or conditions that govern participation in meetings of the governing body by electronic communication and are not in conflict with this chapter.

(h) The policy adopted by the governing body must be posted on the Internet web site of the governing body, the charter school, the airport, the conservancy district, or the public agency.

(i) Nothing in this section affects a public agency's or charter school's right to exclude the public from an executive session in which a member participates by electronic communication.

As added by P.L.134-2012, SEC.12. Amended by P.L.62-2013, SEC.1; P.L.132-2013, SEC.1; P.L.280-2013, SEC.4; P.L.30-2015, SEC.1; P.L.154-2016, SEC.2; P.L.237-2017, SEC.13; P.L.88-2021, SEC.6; P.L.107-2021, SEC.2; P.L.137-2021, SEC.23; P.L.124-2022, SEC.4.

IC 5-14-1.5-3.7 Electronic meetings during disaster emergency

Sec. 3.7. (a) As used in this section, "disaster emergency" means:

(1) a disaster emergency declared by the governor under IC 10-14-3-12; or

(2) a local disaster emergency declared by the executive (as defined in IC 36-1-2-5) of a political subdivision under IC 10-14-3-29.

(b) Notwithstanding section 3.5 or 3.6 of this chapter, if a disaster emergency is in effect for all or part of the area within the governing body's jurisdiction, the members of a governing body are not required to be physically present at a meeting:

(1) if meeting in person would present an imminent risk to the health or safety of the

members of the public and the governing body who attend the meeting because of the particular danger, threat, or emergency conditions that are the basis for the declaration of the disaster emergency; and

(2) if the members are of the governing body of a school corporation or charter school, one (1) or more schools within the jurisdiction of the governing body of the school corporation or the charter school are closed at the time of the meeting because of the particular danger, threat, or emergency conditions that are the basis for the declaration of the disaster emergency.

(c) The members of a governing body may meet by any means of electronic communication, if the following are satisfied:

(1) At least a quorum of the members of the governing body participate in the meeting by means of electronic communication or in person.

(2) The public is able to simultaneously attend and observe the meeting. However, this subdivision does not apply to a meeting held in executive session.

(d) The memoranda for a meeting prepared under section 4 of this chapter for a meeting held under this section must:

(1) state the name of each member of the governing body who:

(A) participated in the meeting by using any electronic means of communication; and
(B) was absent; and

(2) identify the electronic means of communication by which:

(A) members of the governing body participated in the meeting; and
(B) the public attended and observed the meeting, if the meeting was not held in executive session.

(e) All votes taken during a meeting under this section must be taken by roll call vote.

As added by P.L. 88-2021, SEC. 7. Amended by P.L. 116-2022, SEC. 2; P.L. 124-2022, SEC. 5.

IC 5-14-1.5-4 Posting agenda; memoranda of meetings; public inspection of minutes

Sec. 4. (a) A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void.

(b) As the meeting progresses, the following memoranda shall be kept:

(1) The date, time, and place of the meeting.

(2) The members of the governing body recorded as either present or absent.

(3) The general substance of all matters proposed, discussed, or decided.

(4) A record of all votes taken by individual members if there is a roll call.

(5) Any additional information required under section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.

(c) The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, if any, are to be open for public inspection and copying.

As added by Acts 1977, P.L. 57, SEC. 1. Amended by P.L. 38-1988, SEC. 7; P.L. 76-1995, SEC. 1; P.L. 2-2007, SEC. 99; P.L. 134-2012, SEC. 13.

IC 5-14-1.5-5 Public notice of meetings

Sec. 5. (a) Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the

agenda.

(b) Public notice shall be given by the governing body of a public agency as follows:

(1) The governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.

(2) The governing body of a public agency shall give public notice by delivering notice to all news media which deliver an annual written request for the notices not later than December 31 for the next succeeding calendar year to the governing body of the public agency. The governing body shall give notice by one (1) of the following methods, which shall be determined by the governing body:

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail, if the public agency has the capacity to transmit electronic mail.

(C) Transmitting the notice by facsimile (fax).

(3) This subdivision applies only to the governing body of a public agency of a political subdivision described in section 2(a)(2), 2(a)(4), or 2(a)(5) of this chapter that adopts a policy to provide notice under this subdivision. Notice under this subdivision is in addition to providing notice under subdivisions (1) and (2). If the governing body adopts a policy under this subdivision, the governing body of a public agency shall give public notice by delivering notice to any person (other than news media) who delivers to the governing body of the public agency an annual written request for the notices not later than December 31 for the next succeeding calendar year. The governing body shall give notice by one (1) of the following methods, which shall be determined by the governing body:

(A) Transmitting the notice by electronic mail, if the public agency has the capacity to send electronic mail.

(B) Publishing the notice on the public agency's Internet web site at least forty-eight (48) hours in advance of the meeting, if the public agency has an Internet web site.

A court may not declare void any policy, decision, or final action under section 7 of this chapter based on a failure to give a person notice under subdivision (3) if the public agency made a good faith effort to comply with subdivision (3). If a governing body comes into existence after December 31, it shall comply with this subsection upon receipt of a written request for notice. In addition, a state agency (as defined in IC 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

(c) Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions.

(d) 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 the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

(1) news media which have requested notice of meetings under subsection (b)(2) must be given the same notice as is given to the members of the governing body; and

(2) the public must be notified by posting a copy of the notice according to subsection (b)(1).

(e) This section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation.

(f) This section shall not apply to the following:

(1) The department of local government finance, the Indiana board of tax review, or any other governing body which meets in continuous session, except that this section applies to meetings of these governing bodies which are required by or held pursuant to statute, ordinance, rule, or regulation.

(2) The executive of a county or the legislative body of a town if the meetings are held solely to carry out the administrative functions related to the county executive or town legislative body's executive powers. "Administrative functions" means only routine activities that are reasonably related to the everyday internal management of the county or town, including conferring with, receiving information from, and making recommendations to staff members and other county or town officials or employees.

"Administrative functions" does not include:

- (A) taking final action on public business;
- (B) the exercise of legislative powers; or
- (C) awarding of or entering into contracts, or any other action creating an obligation or otherwise binding the county or town.

(g) This section does not apply to the general assembly.

(h) Notice has not been given in accordance with this section if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting.

As added by Acts 1977, P.L.57, SEC.1. Amended by Acts 1979, P.L.39, SEC.2; P.L.67-1987, SEC.3; P.L.8-1989, SEC.22; P.L.3-1989, SEC.29; P.L.46-1990, SEC.1; P.L.251-1999, SEC.4; P.L.90-2002, SEC.17; P.L.200-2003, SEC.1; P.L.177-2005, SEC.14; P.L.134-2012, SEC.14; P.L.171-2018, SEC.1; P.L.10-2019, SEC.32.

IC 5-14-1.5-6 Repealed

As added by Acts 1977, P.L.57, SEC.1. Amended by Acts 1979, P.L.39, SEC.3; P.L.33-1984, SEC.2; P.L.67-1987, SEC.4; P.L.20-1988, SEC.11; P.L.11-1990, SEC.110; P.L.46-1990, SEC.4. Repealed by P.L.1-1991, SEC.36 and P.L.10-1991, SEC.10.

IC 5-14-1.5-6.1 Executive sessions

Sec. 6.1. (a) As used in this section, "public official" means a person:

- (1) who is a member of a governing body of a public agency; or
- (2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

- (1) Where authorized by federal or state statute.
- (2) For discussion of strategy with respect to any of the following:

- (A) Collective bargaining.
- (B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing. As used in this clause, "litigation" includes any judicial action or administrative law proceeding under federal or state law.
- (C) The implementation of security systems.
- (D) A real property transaction including:
 - (i) a purchase;
 - (ii) a lease as lessor;
 - (iii) a lease as lessee;
 - (iv) a transfer;
 - (v) an exchange; or
 - (vi) a sale;

by the governing body up to the time a contract or option is executed by the parties. This clause does not affect a political subdivision's duty to comply with any other statute that governs the conduct of the real property transaction, including IC 36-1-10 or IC 36-1-11.

(E) School consolidation.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation of school safety and

security measures, plans, and systems.

(4) Interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects by:

- (A) the Indiana economic development corporation;
- (B) the office of tourism development (before July 1, 2020) or the Indiana destination development corporation (after June 30, 2020);
- (C) the Indiana finance authority;
- (D) the ports of Indiana;
- (E) an economic development commission;
- (F) the Indiana state department of agriculture;
- (G) the Indiana White River state park development commission;
- (H) a local economic development organization that is a nonprofit corporation established under state law whose primary purpose is the promotion of industrial or business development in Indiana, the retention or expansion of Indiana businesses, or the development of entrepreneurial activities in Indiana; or
- (I) a governing body of a political subdivision.

However, this subdivision does not apply to any discussions regarding research that is prohibited under IC 16-34.5-1-2 or under any other law.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

- (A) to receive information concerning the individual's alleged misconduct; and
- (B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:
 - (i) a physician; or
 - (ii) a school bus driver.

(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do the following:

- (A) Develop a list of prospective appointees.
- (B) Consider applications.
- (C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 25.

(13) To discuss information and intelligence intended to prevent, mitigate, or respond to the threat of terrorism.

(14) To train members of a board of aviation commissioners appointed under IC 8-22-2 or members of an airport authority board appointed under IC 8-22-3 with an outside consultant about the performance of the role of the members as public officials. A board may hold not more than one (1) executive session per calendar year under this

subdivision.

(15) For discussion by the governing body of a state educational institution of:

(A) the assessment of; or

(B) negotiation with another entity concerning;

the establishment of a collaborative relationship or venture to advance the research, engagement, or education mission of the state educational institution. However, this subdivision does not apply to any discussions regarding research that is prohibited under IC 16-34.5-1-2 or under any other law.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection.

As added by P.L.1-1991, SEC.37 and P.L.10-1991, SEC.8. Amended by P.L.48-1991, SEC.1; P.L.37-2000, SEC.1; P.L.200-2003, SEC.2; P.L.4-2005, SEC.28; P.L.229-2005, SEC.2; P.L.235-2005, SEC.84; P.L.101-2006, SEC.3; P.L.179-2007, SEC.5; P.L.2-2008, SEC.20; P.L.98-2008, SEC.3; P.L.120-2008, SEC.1; P.L.139-2011, SEC.1; P.L.24-2012, SEC.1; P.L.103-2013, SEC.2; P.L.145-2016, SEC.2; P.L.197-2017, SEC.2; P.L.78-2019, SEC.2; P.L.164-2019, SEC.1; P.L.197-2021, SEC.1.

IC 5-14-1.5-6.5 Collective bargaining meetings; applicable requirements

Sec. 6.5. (a) Whenever a governing body, or any person authorized to act for a governing body, meets with an employee organization, or any person authorized to act for an employee organization, for the purpose of collective bargaining or discussion, the following apply:

(1) Any party may inform the public of the status of collective bargaining or discussion as it progresses by release of factual information and expression of opinion based upon factual information.

(2) If a mediator is appointed, any report the mediator may file at the conclusion of mediation is a public record open to public inspection.

(3) If a factfinder is appointed, any hearings the factfinder holds must be open at all times for the purpose of permitting members of the public to observe and record them. Any findings and recommendations the factfinder makes are public records open to public inspection as provided by any applicable statute relating to factfinding in connection with public collective bargaining.

(b) This section supplements and does not limit any other provision of this chapter.

As added by Acts 1979, P.L.39, SEC.4. Amended by P.L.67-1987, SEC.5; P.L.1-2005, SEC.80; P.L.48-2011, SEC.1.

IC 5-14-1.5-7 Violations; remedies; limitations; costs and fees

Sec. 7. (a) An action may be filed by any person in any court of competent jurisdiction to:

(1) obtain a declaratory judgment;

(2) enjoin continuing, threatened, or future violations of this chapter; or

(3) declare void any policy, decision, or final action:

(A) taken at an executive session in violation of section 3(a) of this chapter;

(B) taken at any meeting of which notice is not given in accordance with section 5 of this chapter;

(C) that is based in whole or in part upon official action taken at any:

(i) executive session in violation of section 3(a) of this chapter;

(ii) meeting of which notice is not given in accordance with section 5 of this chapter; or

(iii) series of gatherings in violation of section 3.1 of this chapter; or

(D) taken at a meeting held in a location in violation of section 8 of this chapter.

The plaintiff need not allege or prove special damage different from that suffered by the public at large.

(b) Regardless of whether a formal complaint or an informal inquiry is pending before the public access counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

(1) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted, of invalidating the notes, bonds, or obligations; or

(2) with respect to any other subject matter, within thirty (30) days of either:

(A) the date of the act or failure to act complained of; or

(B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred;

whichever is later. If the challenged policy, decision, or final action is recorded in the memoranda or minutes of a governing body, a plaintiff is considered to have known that the act or failure to act complained of had occurred not later than the date that the memoranda or minutes are first available for public inspection.

(c) If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

(d) In determining whether to declare any policy, decision, or final action void, a court shall consider the following factors among other relevant factors:

(1) The extent to which the violation:

(A) affected the substance of the policy, decision, or final action;

(B) denied or impaired access to any meetings that the public had a right to observe and record; and

(C) prevented or impaired public knowledge or understanding of the public's business.

(2) Whether voiding of the policy, decision, or final action is a necessary prerequisite to a substantial reconsideration of the subject matter.

(3) Whether the public interest will be served by voiding the policy, decision, or final action by determining which of the following factors outweighs the other:

(A) The remedial benefits gained by effectuating the public policy of the state declared in section 1 of this chapter.

(B) The prejudice likely to accrue to the public if the policy, decision, or final action is voided, including the extent to which persons have relied upon the validity of the challenged action and the effect declaring the challenged action void would have on them.

(4) Whether the defendant acted in compliance with an informal inquiry response or advisory opinion issued by the public access counselor concerning the violation.

(e) If a court declares a policy, decision, or final action of a governing body of a public agency void, the court may enjoin the governing body from subsequently acting upon the subject matter of the voided act until it has been given substantial reconsideration at a meeting or meetings that comply with this chapter.

(f) In any action filed under this section, a court shall award reasonable attorney's fees,

court costs, and other reasonable expenses of litigation to the prevailing party if:

- (1) the plaintiff prevails; or
- (2) the defendant prevails and the court finds that the action is frivolous and vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary to prevent a violation of this chapter.

(g) A court may assess a civil penalty under section 7.5 of this chapter only if the plaintiff obtained an advisory opinion from the public access counselor before filing an action under this section as set forth in section 7.5 of this chapter.

(h) A court shall expedite the hearing of an action filed under this section.

As added by Acts 1977, P.L.57, SEC.1. Amended by Acts 1979, P.L.39, SEC.5; P.L.67-1987, SEC.6; P.L.38-1992, SEC.1; P.L.70-1999, SEC.1 and P.L.191-1999, SEC.1; P.L.179-2007, SEC.6; P.L.134-2012, SEC.15.

IC 5-14-1.5-7.5 Civil penalties imposed on public agency, officer, or management level employee

Sec. 7.5. (a) This section applies only to an individual who is:

- (1) an officer of a public agency; or
- (2) employed in a management level position with a public agency.

(b) If an individual with the specific intent to violate the law fails to perform a duty imposed on the individual under this chapter by:

- (1) failing to give proper notice of a regular meeting, special meeting, or executive session;
- (2) taking final action outside a regular meeting or special meeting;
- (3) participating in a secret ballot during a meeting;
- (4) discussing in an executive session subjects not eligible for discussion in an executive session;
- (5) failing to prepare a memorandum of a meeting as required by section 4 of this chapter; or
- (6) participating in at least one (1) gathering of a series of gatherings under section 3.1 of this chapter;

the individual and the public agency are subject to a civil penalty under subsection (f).

(c) A civil penalty may only be imposed as part of an action filed under section 7 of this chapter. A court may not impose a civil penalty under this section unless the public access counselor has issued an advisory opinion:

- (1) to the complainant and the public agency;
- (2) that finds that the individual or public agency violated this chapter; and
- (3) before the action under section 7 of this chapter is filed.

Nothing in this section prevents both the complainant and the public agency from requesting an advisory opinion from the public access counselor.

(d) It is a defense to the imposition of a civil penalty under this section that the individual failed to perform a duty under subsection (b) in reliance on either of the following:

- (1) An opinion of the public agency's legal counsel.
- (2) An opinion of the attorney general.

(e) Except as provided in subsection (i), in an action filed under section 7 of this chapter, a court may impose a civil penalty against one (1) or more of the following:

- (1) The individual named as a defendant in the action.
- (2) The public agency named as a defendant in the action.

(f) The court may impose against each defendant listed in subsection (c) the following civil penalties:

- (1) Not more than one hundred dollars (\$100) for the first violation.
- (2) Not more than five hundred dollars (\$500) for each additional violation.

A civil penalty imposed under this section is in addition to any other civil or criminal penalty imposed. However, in any one (1) action brought under section 7 of this chapter, a court may impose only one (1) civil penalty against an individual, even if the court finds that the individual committed multiple violations. This subsection does not preclude a court from imposing another civil penalty against an individual in a separate action, but an individual may not be assessed more than one (1) civil penalty in any one (1) action brought under this section.

(g) A court shall distribute monthly to the auditor of state any penalties collected under this section for deposit in the education fund established by IC 5-14-4-14.

(h) An individual is personally liable for a civil penalty imposed on the individual under this section. A civil penalty imposed against a public agency under this section shall be paid from the public agency's budget.

(i) If an officer of a public agency directs an individual who is employed in a management level position to fail to give proper notice as described in subsection (b)(1), the management level employee is not subject to civil penalties under subsection (f).

As added by P.L.134-2012, SEC.16.

IC 5-14-1.5-8 Accessibility to individuals with disabilities

Sec. 8. (a) This section applies only to the following public agencies:

(1) A public agency described in section 2(a)(1) of this chapter.

(2) A public agency:

(A) described in section 2(a)(5) of this chapter; and

(B) created to advise the governing body of a public agency described in section 2(a)(1) of this chapter.

(b) As used in this section, "accessible" means the design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (41 C.F.R. 101-19.6, App. A (1991)) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (56 Fed. Reg. 35605 (1991)).

(c) As used in this section, "individual with a disability" means an individual who has a temporary or permanent physical disability.

(d) A public agency may not hold a meeting at a location that is not accessible to an individual with a disability.

As added by P.L.38-1992, SEC.2.

EXECUTIVE SESSION

EXCEPTIONS UNDER THE ODL

- To discuss records classified as confidential by state or federal statute
- To discuss the alleged misconduct of an employee
- To receive information and interview prospective employees
- To discuss strategy with respect to pending litigation or litigation threatened in writing
- To discuss information and intelligence intended to prevent, mitigate or response to threat of terrorism

IMPROPER EXECUTIVE SESSION NOTICE

Notice of Executive Session

Xavier Town Council Executive Session

Wednesday, November 16, 2011

5:00 p.m.

City Hall, Room 104

123 Main Street Xavier, Indiana

Personnel and Litigation to be discussed

EXECUTIVE SESSION PUBLIC NOTICE

Notice of Executive Session

Xavier Town Council Executive Session

Wednesday, November 16, 2011

5:00 p.m.

City Hall, Room 104

123 Main Street Xavier, Indiana

The Council will meet to discuss a job
performance of an individual employee
as authorized under

I.C. 5-14-1.5-6.1(b)(9)

MEETINGS UNDER THE ODL

No right to speak under ODL unless some other statute requires it (i.e. public hearings)

Minutes/Memoranda (Draft copies)

Electronic Meetings of State Agencies

ACCESS TO PUBLIC RECORDS ACT (APRA)

- Indiana Code § 5-14-3-1 through 5-14-3-10
- Enacted in 1983 (“APRA”)

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master.

Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.

Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.

This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.”

WHAT IS A PUBLIC RECORD

“Public record” means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Indiana Code § 5-14-3-2(n)

RESPONDING TO APRA REQUESTS

Time frames for responding to APRA Requests depends on the manner in which the public agency receives the request.

IC 5-14-3-9:

- If requestor is **physically present** in the office of the agency, makes the request by **telephone**, or requests **enhanced access** to a document, the agency has twenty-four (24) hours to respond (***enhanced access=on disk or through remote computer***).
- If the request is made by **mail or by facsimile** the public agency has 7 days from the date the public agency received the request to respond.
- Important: Production of documents is not required in these time frames, but within a reasonable time.

REASONABLE PERIOD OF TIME

All records must be provided within a “reasonable period of time” after the request is received

Factors considered:

- How broad is the request
- Where are the records located
- How much redaction is necessary
- Busy time at the agency
- Common sense factors

What I like to see:

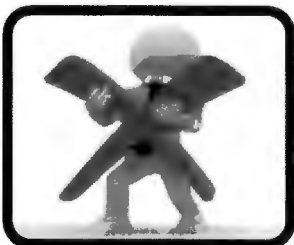
- Communication – Status Updates
- Piecemeal disclosures



THREE CATEGORIES OF PUBLIC RECORDS



Must be disclosed



Confidential



Released at the discretion
of the public agency

DENIALS

IC §5-14-3-9 provides procedure for denying a request under the APRA:

If a request is made orally, the agency may deny the request orally.

If request is made in writing, the agency may deny the request if the denial is in writing, the denial includes the specific exemption authorizing the withholding of all or part of the record, and the name and title/position of the person responsible for the denial.

Before the trial court, the burden is on the agency to demonstrate that the denial complied with the APRA. The agency may not simply rely on a conclusory statement or affidavit.

Court may review the records in-camera; the court shall review the records if redaction of the record has occurred.

CONFIDENTIAL PUBLIC RECORDS



Those confidential by state statute or federal law (i.e. IC 4-6-9-4)



Social Security Numbers contained in public records



Patient medical records unless the patient gives written consent



Trade secret information



Certain foreclosure information



Grade transcripts/license exam scores in licensure process

DISCRETIONARY CATEGORIES

I.C. 5-14-3-4(B)

Investigatory records of law enforcement agencies

The work product of an attorney representing, pursuant to state employment or an appointment by a public agency, a public agency, the state or an individual.

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Personnel files of public employees and files of applicants for public employment, however, certain information must be provided upon request including compensation, business telephone number, dates of first and last employment, etc..

ACCESS TO PUBLIC RECORDS ACT

Electronic Mail

- A public record is any record, including electronic media, that is created received, retained, maintained, or filed by or with a public agency.
- Electronic mail must be available for inspection and copying by the governing body unless an exception to disclosure, based on the content of the email, applies.
- Electronic mail must be maintained in accordance with records retention schedules, pursuant to I.C. 5-15.
 - Most agencies have their own retention schedules.

COMMON MISCONCEPTIONS OF CITIZENS

A public agency has to answer my questions under APRA.

A public agency has to keep public records forever so it is not appropriate to respond that the record no longer exists.

A public agency must handle public records requests before handling other matters of the public agency.

A public agency must keep public records in a format that is most convenient for me.



COMMON MISCONCEPTIONS OF AGENCIES

Offering to allow inspection is always sufficient.

All disclosable records requested must be produced within 7 days of receiving the request. **See 11-FC-74**

Denials do not have to be explained with specificity.

Any document containing confidential information may be omitted from public records response. **See 10-FC-7**

REMEDIES AND PENALTIES FOR NONCOMPLIANCE



Complaint to Public Access Counselor

Bad press and damage to public perception

Court action seeking order to produce records
and potentially order to pay attorney's fees

Fines for knowing and intentional withholding of
public records or violation of the ODL

THANK YOU

Contact Information:

Indiana Public Access Counselor
402 W. Washington St, W470
Indianapolis, IN 46204
317.234.0906
pac@icpr.in.gov

Public Access Handbook:

http://www.in.gov/pac/files/pac_handbook.pdf

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