



Frequently Asked Questions on Governor's Executive Order No. 20-16

***Keep Government Working: Ordering Necessary Measures to
Ensure Safe Public Meetings and Continued Operations by
Local Governments During Coronavirus (COVID-19) Outbreak***

Since the outbreak of the COVID-19 pandemic, city officials have struggled with how to safely conduct public meetings and hearings during this state of emergency. At times, the governor's prohibition of gatherings of 25 or more people, and her March 23 order to "[Stay Home, Save Lives](#)," have seemed incongruous with portions of the Oregon's Public Meetings Law and Local Budget Law.

This FAQ answers basic questions about [Executive Order No. 20-16](#). This document is not intended to be a substitute for legal advice. LOC members with further questions about this executive order, how it relates to the public meetings law, local budget law, and their own local ordinances or charters, are strongly encouraged to contact their city attorney.

1. What bodies are subject to the executive order?

The governor's executive order applies to the governing body of a public body as those terms are defined by ORS 192.610(3) and (4). A governing body means "the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration." A public body means "the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any agency thereof."

Examples of bodies subject to Executive Order No. 20-16 include city councils, planning commissions, and budget committees.

For a more comprehensive explanation of what constitutes a governing body of a public body, please review the Oregon Attorney General's Manual on Public Records and Public Meetings, specifically the provisions related to "[Bodies Subject to the Law](#)."

2. Does the executive order require cities to hold public meetings and hearings electronically or virtually?

To the extent a city can hold a public meeting electronically or virtually, then yes, the city is required to do so. The executive order states that cities "shall hold public meetings and hearings by telephone, video, or through some other electronic or virtual means, *whenever possible*."

If your city has never before had to conduct a meeting via telephone, video or some other type of electronic or virtual meeting, please know that there are a myriad of options

available. The LOC has created a [Digital Meeting Resources](#) guide that may provide some assistance.

3. If a city holds a public meeting or hearing electronically or virtually, does the public still have to be allowed to attend the meeting or hearing?

If a city holds a meeting or hearing by telephone, video, or through some other electronic or virtual means, the city shall make available a method by which the public can listen to or virtually attend the meeting or hearing at the time the meeting or hearing occurs. Cities do not have to provide a physical space for the public to attend the meeting or hearing. Know that the governor's executive order does not modify a city's ability to restrict attendance at executive sessions – the requirements outlined in the state's [Public Meetings Law for executive sessions](#) remain unchanged.

4. If a city holds a public meeting or hearing by telephone, video, or through some other electronic or virtual means, does it still also have to allow citizens an opportunity to provide testimony?

Executive Order 20-16 states that any law or policy which requires testimony to be taken in person during a public meeting or hearing does not apply if the city provides for testimony to be given via any of the below means, provided the public body can consider the testimony in a timely manner:

- Telephone;
- Video;
- Some type of electronic or virtual medium; or
- Submission of written testimony, which may include email.

The above allowances do not apply to contested case hearings held before any state board, commission, department, or division thereof, as described in ORS Chapter 183.

5. My city has the ability to conduct public meetings and hearings telephonically or virtually, what requirement does it have to make these meetings accessible to individuals with disabilities?

The governor's executive order does not alleviate the requirement that cities make reasonable modifications, under the American with Disabilities Act (ADA), for people with disabilities to take part in their public meetings and hearings. While the LOC has not located any specific guidance from the United States government or the state of Oregon on public meetings during this pandemic, the U.S. Department of Justice has created a [Primer for State and Local Governments](#) which provides general guidance on how the government can comply with the ADA.

The primer contains a section on "Communicating with People Who Have Disabilities," within which cities can learn about two free options that may help cities ensure all citizens

can continue to participate in public meetings. Details on a free nationwide telecommunications network that serves as an intermediary between a person who has a hearing or speech disability and a person using a standard telephone is provided in this primer. This same section also includes information on a free video relay service for people who use sign language and have access to videophones, smart phones or computers with video communication capabilities.

6. What if my city can't hold a public meeting or hearing by telephone, video, or through some other electronic or virtual means?

If your city does not have the ability to hold its public meetings or hearings by telephone, video or through some other electronic or virtual means, the governor's executive order requires your city to still comply with all aspects of Oregon's Public Meetings Law **and** your city must **also** require persons who attend the meeting or hearing to maintain appropriate social distancing to the maximum extent possible. This means that if an in-person public meeting or hearing is held, cities must, to the maximum extent possible, ensure that those in attendance maintain six feet or more space between themselves and everyone else in attendance.

Cities who do not have the ability to hold meetings by telephone, video or through some other electronic or virtual mean may have to think creatively to comply with social distancing requirements. Some creative examples the LOC has been made aware of include:

- Cities have specifically identified the places in which members of the governing body, staff and public may physically locate themselves while a public meeting occurs. For example, chairs are identified with signs that say, "Sit Here" and notices are posted that said chairs cannot be relocated. This inherently means that the overall number of people who can attend a meeting has been limited.
- Cities have provided a room with a laptop that members of the public can access, one-at-a-time, to pose their questions during a public meeting. After any member of the public accesses that room and computer, a city staff person quickly cleans the desk, chairs, door handles, and technology inside that room before the next member of the public can enter.
- Cities with small council chambers have relocated their meetings to larger spaces, including gymnasiums, theaters, community rooms, and the like.
- Cities have decided to conduct their meetings and hearings outdoors, ensuring they have adequate space to allow for social distancing requirements to be met.

7. Oregon’s local budget law requires cities to provide members of the public the opportunity to ask questions about or provide comment on the proposed budget. How can cities allow this to occur given the current COVID-19 pandemic?

The governor’s executive order states that cities can satisfy the requirement that it provide members of the public the opportunity to ask questions about or provide comment on its proposed budget by:

- Providing a method for the public to appear at the budget meetings via telephone, video or some other electronic method; and
- Providing a means for the public to submit written communications, including email, that the city can consider in a timely manner.

8. Because of the pandemic, my city is concerned it may have trouble obtaining a quorum of its public bodies. Does the executive order give any guidance on what constitutes a quorum?

The Executive Order 20-16 states that unless otherwise required by law, “a quorum of the governing body of any public body and the number of its members required for an affirmative act *consists of a majority of its members, excluding those unable to attend because of illness due to COVID-19.*”

While the executive order purports to change some quorum requirements during this pandemic, cities are strongly encouraged to review both their local council rules of procedures, ordinances, and especially their charters, to see what local rules and laws apply for their own individual quorum requirements. In the LOC’s experience, charters commonly declare what constitutes a quorum for a city council. Before relying on the governor’s executive order as it relates to what constitutes a quorum, the LOC believes cities in Oregon should first consult with their city attorney.

9. Oregon’s Local Budget Law specifically requires notices related to the budget be posted in certain locations or via certain methods – some of which may be problematic given the COVID-19 pandemic. Does the governor’s executive order give guidance on how to comply with the notice requirements in Oregon’s Local Budget Law?

Yes, Governor Brown’s executive order states that any notice, summary or other document required by the state’s Local Budget Law to be published can be published by posting it in a prominent manner on the internet.

10. What happens if, despite my city’s best efforts and the relaxing of requirements authorized by this executive order, my city cannot get its budget adopted by June 30, 2020?

ORS 294.338 generally prohibits a city from spending money unless it has complied with Oregon’s Local Budget Law, which means having the budget adopted by June 30. Executive Order 20-16 states that if the COVID-19 pandemic causes a city to fail to comply with the

state's Local Budget Law, including not adopting a budget by June 30, 2020, the city may still "make reasonable expenditures for the continued operation" of the city "within its existing and most recently adopted budget" provided the city complies with Oregon's Local Budget law as soon as reasonably practicable.

11. What happens if June arrives, my city has been working on its budget in accordance with the executive order's guidelines, and the governor terminates the executive order?

The allowances made by the governor's executive order are only applicable when the order is in effect. If she terminates the executive order, the LOC has to assume that the statutory provisions outlined in Oregon's Local Budget Law must be followed. The LOC staff is very much aware that this issue exists and will continue to work with both the governor's office and the Legislature to provide cities with as much assistance and protection as possible during this pandemic.

12. Will the allowances for how local budget hearings can be conducted under this executive order impact a city's allocation of state shared revenues?

No. Executive Order 20-16 makes it clear that cities in compliance with the state's Local Budget Law and/or the executive order are still eligible for state shared revenue if they make a certification to the Oregon Department of Administrative Services as soon as reasonably practicable upon adoption of their budget.

13. How long is the governor's order in effect?

Executive Order 20-16 is in effect now. It became effective upon its issuance, April 15, 2020. It will remain in effect until the governor terminates it. The LOC cannot predict the date upon which she will terminate the order.