

Open Meetings and City Governance During a Public Health Emergency

Many cities in Kentucky have operated through a natural disaster of some kind in the past few decades. Now our communities are faced with planning for city operations during a public health emergency. Within hours of confirming the first positive case of COVID-19 in Kentucky, Governor Andy Beshear declared a State of Emergency allowing the state to access emergency federal funds and activating statewide emergency management protocols. As containment measures progress, cities will face maintaining city operations to provide for the health, safety, and welfare of the citizens, in a public health emergency.

Budget

During a state of emergency, Kentucky law recognizes the city mayor as the head of city government. All direction, information, and requests for assistance from state and county officials will flow through the mayor. In a mayor-council form of government, the mayor will have the flexibility to access general fund appropriations for emergency operation. In commission and city manager forms of government, commissioners and city managers will need to work with the mayor to ensure access to such funding. Most cities also have contingency or rainy-day funds. Cities should look at any restrictions or requirements for accessing these contingency funds to make sure the funds can be readily available for a city emergency with little to no delay. Some legislative bodies may want to issue a resolution expressing how the council hopes the monies will be spent. A resolution in this instance is non-binding but may assist officials in articulating expectations.

Meetings

At the request of the Kentucky League of Cities (KLC) and the Kentucky Association of Counties, on March 18, 2020, Attorney General Daniel Cameron issued opinion OAG 20-05. [https://www.klc.org/userfiles/03.18.20_OAG_20-05_\(final\)20200326154926.pdf](https://www.klc.org/userfiles/03.18.20_OAG_20-05_(final)20200326154926.pdf)

The opinion determined that during the extraordinary circumstances presented by the COVID-19 pandemic, public agencies are not required to identify a primary physical location for video teleconference meetings. This opinion is consistent with KLC's previous guidance to cities during this outbreak and provides additional assurance for the conduct of remote meetings and meetings that restrict public attendance.

The opinion relies upon KRS 61.840 to conclude that identifying a primary physical location in which the public may gather to view video teleconference meetings is infeasible given the social distancing requirements issued by the Centers for Disease Control and Prevention (CDC). Public agencies must still conduct meetings via technology that allows the public to see and hear all participating members.

To conduct video teleconferencing, cities must provide a notice that states that the meeting will be held by video teleconference and detail the mechanism by which the video teleconference can be accessed, such as a web address, link, television channel, or other marker that provides public access to see and hear the meeting. Further, the notice must conform to the 24-hour time frame and other transmission and posting requirements of KRS 61.823 for special meetings. This rule will apply whether the meeting is a special or regular meeting that is being teleconferenced. A

detailed agenda must be included in the notice and only those subjects listed on the meeting agenda can be discussed. If at any time the video or audio is disrupted, the meeting must be discontinued until the video and audio are restored in full.

On March 25, 2020, Governor Andy Beshear issued Executive Order 2020-257 suspending in-person government activities unless necessary to protect or sustain life. This order should be interpreted broadly to postpone in-person meetings of city legislative bodies, and their various boards, commissions, and other authorities unless they are related to maintain necessary government activities. It is also important to note that if a quorum of the legislative body or other public agency is meeting in person, media must be permitted within the location of the meeting of the physically present quorum; however, the general public may still be excluded. There are many internet-based options for video teleconferencing that are relatively user-friendly. Microsoft Team, Zoom, and Go To Meeting are a few common options available that can be used with a laptop or smartphone.

KLC is very appreciative to the Kentucky Office of Attorney General for providing this opinion so quickly to assist our cities in navigating city business during these extraordinary times. You can read the entire opinion [here](#).

If the public health emergency degrades to the point in which it becomes “imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual places,” the city governing body can meet any place as directed by the elected chief executive officer, the mayor. KRS 39D.020. The city council or commission must then establish by ordinance or resolution where the temporary government locations will be to provide for public business to occur. In this environment, the city may conduct business “without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto.” KRS 39D.020

Leadership

To ensure continuation of government during a state of emergency, KRS 39D.030 requires the following:

[t]he governing body of each county, urban-county government, charter county government, and city shall enact the ordinances and resolutions necessary to provide for the continuity of government throughout the duration of a state of emergency. The ordinances and resolutions shall provide a method by which temporary emergency appointments to public office are made, except as limited by express constitutional provisions, and shall define the scope of the powers and duties which may be exercised, and provide for termination of the appointment so made. This section shall control notwithstanding any statutory provision to the contrary.

As mentioned above, the mayor will be recognized as the head of city government but what happens if the mayor is incapacitated? In a mayor-council form of government, the mayor can delegate executive “power, duties or responsibilities to subordinate officers and employees...” but must do so by executive order. KRS 83A.130 (7). The mayor cannot delegate executive authority to a member of the council due to separation of powers. Mayors must issue an executive order that

delegates executive authority to a subordinate officer or employee should the mayor become incapacitated. KLC has a model executive order as attached [here](#). This will allow for the city to continue operations if the mayor is unable to perform mayoral duties. In city commission and city manager forms of government, the commission elects a mayor pro-tem who acts for the mayor when the mayor cannot perform mayoral duties. KRS 83A.140 (4) and 83A.150 (3). Cities need to check on whether they have a continuation of government ordinance or resolution and if so, what updates need to occur.