

Opening Public Buildings During the Covid-19 Pandemic

Excerpted from CIS (previously published guidance, with permission)

Logistical Guidance for Reopening Local Governments' Buildings to the Public

Local Government Personnel Services of LCOG strongly encourages members to consult with CIS or your risk advisor on this topic.

On May 7, 2020, Governor Brown announced plans to tentatively and slowly lift restrictions placed on citizens, businesses and employers pursuant to her stay-at-home order (Executive Order 20-12). These plans, developed by the Governor's policy advisors in consultation with others, addressed (among other issues) the use of face masks on a statewide basis and conditions individual businesses must comply with to reopen. The Governor's guidance and other resources can be found here.

The Governor's plans were not specific to local governments who wish to reopen their buildings to the public. Local governments working in counties whose Phase 1 plans have been approved by the State of Oregon, however, may have questions about how they can reopen their buildings to provide in-person services while maintaining a safe workplace for the employees who would be providing these services. 1Previously, on April 14, 2020, Governor Brown released "Reopening Oregon: A Public Health Framework for Restarting Public Life and Business while maintaining healthy Oregon communities" ("Framework.")

CIS provides this Logistical Guidance and checklist of considerations to assist local governments as they develop plans to reopen their buildings to the public. It is designed to be useful to the widest possible audience and may require personalization to address the unique needs of your organization or a particular department within your organization. If the local government works in a county whose Phase 1 plan has been approved by the State of Oregon, any reopening plans must be made in conformance with the Phase 1 plan.

The "Big Picture" and the Legal Requirements Placed on Local Governments

- 1.Lack of available testing, no reliable COVID-19 antibody test, no vaccine. Limited capacity for large-scale contact tracing.
- 2.Meanwhile, OR-OSHA requires local governments and all other employers to provide a safe workplace for their employees, even during a pandemic. Employers do need to understand that, even in unusual times like this, employees are still exposed to hazards and it is still the employers' responsibility to ensure that their employees are adequately protected from those hazards.
- 3.Under Title II of the Americans with Disabilities Act, local governments are required to ensure (among other provisions) that qualified individuals with disabilities are protected against discrimination on the basis of disability in the "services, programs, or activities" of local governments. Similar provisions in other federal and state laws prohibit other kinds of discrimination with respect to the services, programs or activities provided by local governments.

Bottom Line: A local government must provide equal access to its services, programs, or activities. But there appears to be no law that gives a citizen a right to access local government buildings if the "services, programs or activities" located in those buildings are made available

via other means. This is consistent with municipalities' right to enact and enforce trespass ordinances.

Consider What Requirements (if any) the Local Government Will Impose on Visitors

1. Identify which services require in-person contact.

As a preliminary matter, the local government should identify essential services that require in-person attendance by members of the public as opposed to services members of the public may desire to conduct in person, but can be conducted other ways.

For example, a citizen might prefer to pay a utility bill in person, but such a service does not require in-person attendance or personal contact with a local government employee. Alternatively, a municipal court may have good reason to require in-person presence of a defendant in a criminal proceeding. In all cases, the local government must identify legitimate differences in the nature of the services that justify in-person presence by the citizen in one situation versus another, and provide equal access to services to those citizens who will be denied in-person contact with local government employees.

This is consistent with the State of Oregon's plan to gradually modify Governor Brown's stay-at-home order and re-open services and businesses to minimize the likelihood of further COVID-19 infection. Similarly, OR-OSHA "encourages" local governments to

close to the public to the maximum extent possible and to provide services by phone and online during regular business hours. When contact with the public must take place, social distancing measures must be enforced to the maximum extent possible . . . [and] requires teleworking to the maximum extent possible.

2. Identify which buildings will open.

It is recommended that local governments not open all of their buildings to the public at first. Instead, CIS recommends selecting one or two buildings where citizens are most likely to visit in person to conduct services, and where in-person services can be provided in a manner that protects both the visitor and employees as much as possible. This gives the local government time to test its procedures and safety and cleaning protocols and, to make adjustments as needed.

If there are more than two buildings that citizens frequently visit, consider temporarily moving the personnel from those buildings to the one or two selected by the local government for public access.

3. Identify which employees must be brought back into the workplace, if they are currently working remotely, and plan for those employees' return.

Various government agencies have issued guidance that will be of assistance to local governments with this planning process:

- The CDC's "Cleaning and Disinfection for Community Facilities"
- The Oregon Health Authority's "Oregon General Guidance for Employers on COVID-19" (issued May 7, 2020)
- OR-OSHA's "Interim Guidance for Oregon OSHA Related to COVID-19"
- OSHA's "Guidance on Preparing Workplaces for COVID-19"
- The CDC's "Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)"

- The EEOC’s “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws” and “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act.”

4. Decide what requirements (if any) will be imposed on in-person visits. CIS recommends that any agency wishing to open their buildings to the public implement some level of safety protocols to protect their employees and minimize the likelihood of COVID-19 infection. Pursuant to Governor Brown’s recent reopening plan, face masks are now recommended in most circumstances and required in some.

Option a. Consider requiring, initially, that all in-person meetings will be arranged by appointment only; no walk-ins. Limit appointments during normal business hours to ensure that the local government’s cleaning and disinfecting protocols are applied between visits, and to adhere to social distancing guidelines.

Option b. Consider requiring visitors to wear masks before entering a building. The wearing of “face coverings” is recommended by the Oregon Health Authority:

Consistent with the Centers for Disease Control and Prevention (CDC) recommendations, the Oregon Health Authority recognizes the use of face coverings may reduce the spread of COVID-19 among Oregonians. This includes viral spread from people who have the infection, but no symptoms. As businesses and public spaces reopen in Oregon, it may be difficult to always keep 6 feet between people. Therefore, OHA recommends that the public use face coverings in businesses and public settings.

Similarly, Governor Brown’s “Statewide Face Covering Policy” now “strongly recommends” that: (1) “businesses where employees are required to wear face coverings establish a mandatory face-covering policy for their customers as well;” and (2) “a mask or cloth material that covers the nose and mouth be worn in any indoor public space, especially where six feet of physical distance cannot be maintained.”

If masks will be required, explain why:

- Consider whether the local government will provide masks to those who don’t bring them.
- Note that exceptions to the policy will be provided to accommodate people with certain health conditions (check with CIS or your risk advisor), or children under two years of age.
- Take into account that requiring people to wear face coverings affects people differently including people of color who may have heightened concerns about racial profiling and harassment due to wearing face coverings in public.

If in-person appointments are allowed, provide information about how to request an appointment, how the appointments will be staggered, and describe what safety measures are in place to protect both the visitor and the local government’s employees once the visitor is inside the building.

- If possible, during the scheduling of initial in-person visits, let potential visitors know about alternatives to in-person meetings. Remind the potential visitors that alternatives are provided out of the local government’s interest in their own health and the health of their family members, and those who work for the local government.

Responding to Visitors Who do Not Abide by the Local Government’s Restrictions

The local government should initially deny access to the visitor who refuses to comply with the published requirements for entering buildings. An employee(s) denying the access should be prepared to explain to the visitor what must occur for the visitor to have access to the building (discussed above). Let the visitor know what the options are for accessing local government services without in-person participation.

Any employee who is confronted with a visitor who becomes angry or threatening should follow the local government's policy and procedure on addressing potential and real acts of violence in the workplace. This may require the employee to be trained to contact local law enforcement for assistance and protection.

Contact Tracing

Governor Brown requires counties who reopen under the phased reopening plans to “have a minimum of 15 contact tracers for every 100,000 people. Every county must be prepared to contact trace 95% of all new cases within 24 hours.” See “Prerequisites for Phased Reopening of Oregon” and “COVID-19 Interim Investigative Guidelines” (issued May 1, 2020).

Local governments wishing to reopen their buildings to the public must consult with their respective county health authorities to determine whether any reopening strategy implicates the county's contact tracing requirements and to comply with those requirements, as needed, including records retention requirements.

Parting Thoughts

Although there is great and understandable temptation to “return to normal,” local governments do not have the luxury of reopening buildings without the potential for liability. Neither do local governments have the “luxury” of simply shutting down operations. Until and when adequate testing becomes available, until a vaccine can be administered on a widespread basis, all local governments should think twice before jumping to the conclusion that all buildings must be open to conduct business.

In addition to reopening buildings on a gradual basis with thoughtful planning and putting protocols in place, it is recommend that local governments do a review of how its existing services have been provided during the pandemic and find out where (if at all) there has been a shortcoming — and how can that shortcoming be addressed? Is opening a building up to the public the only way to address the service shortcoming?

CIS remains available to assist its members with questions regarding the reopening process.