



Real-Time Risk



TIMELY NEWS AND TIPS TO HELP REDUCE RISK

May 2020

Logistical Guidance for Reopening Local Governments' Buildings to the Public

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](#).")

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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. See [Interim Guidance for Oregon OSHA Related to COVID-19](#) (“First and foremost, 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

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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. See Executive Order No. 20-12; "[Reopening Oregon: Details on Restarting Public Life and Business](#)" (issued May 7, 2020). 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. (See [Interim Guidance for Oregon OSHA Related to COVID-19](#).)"

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 possible². 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.

CIS will be issuing more detailed guidance on this in the near future. In the meantime, 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](#)."

²For example, consider which building has the widest hallway so that social distancing guidelines (six feet apart) can be adhered to. Consider whether certain "front desks" can be equipped with plastic "walls" or protective shields to prevent transmission of the virus. Finally, consider whether a building can provide one-way signage to control the flow of foot traffic, and specific entrances for exiting and entrancing.



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4. Decide what requirements (if any) will be imposed on in-person visitors.

CIS recommends that any member 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 (see below). **Whether a member chooses to use some or all of the options below is up to the individual member; there may also be other options not listed here.**

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.³

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 well⁴;" 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."

See [Reopening Oregon: Details on Restarting Public Life and](#)

³See <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2288K.pdf>. Dated May 2, 2020.

⁴An employer, per the EEOC, can require employees to wear masks because of "direct threat" implications during a pandemic such as this one. See "[Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)" (dated March 21, 2020).

NOTE: Because local governments are subject to the public accommodation provisions of the Americans with Disabilities Act, accommodations may need to be provided to citizens who are unable to wear a face mask due to a legitimate health reason (e.g., a person with a respiratory condition who cannot have their breathing restricted). In that situation, the local government should attempt to accommodate that citizen in an alternative manner that would continue to protect the local government's employees and other visitors while also providing service to the citizen (e.g., assistance via online or telephone services).



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Option c. Consider taking the temperature of all visitors.

Currently, neither the federal government nor the State of Oregon have issued any mandates to local governments or businesses to take the temperatures of visitors/customers.

In the employer-employee context, however, it is clear that employers can take the temperatures of employees returning to the workplace as a screening tool. See OR-OSHA's guidance ("[Interim Guidance for Oregon OSHA Related to COVID-19](#)") Under Oregon and federal disability law, an employer can require employees to undergo temperature testing because of "direct threat" implications during a pandemic such as this one. See, e.g., "[Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)" (dated March 21, 2020).

Because local governments would be taking a visitor's temperature to screen out individuals who might pose a health risk from COVID-19 infection to employees or other visitors, such a practice appears acceptable under the law. CIS, however, does not take a position as to whether members should require visitors to have their temperature taken. CIS provides some best practices recommendations for implementing a program to take visitors' temperatures below for those members who wish to do so.

Option d. Consider requiring COVID-19 health information from all visitors (or those who have a particular temperature).

Currently, neither the federal government nor the State of Oregon have issued any mandates to local governments or businesses to conduct COVID-19-related health assessments of visitors/customers. The State of Oregon has imposed such a requirement on "personal services" businesses that would apply equally well in the local government setting. See [Guidance for Personal Services Providers](#) (issued May 11, 2020). Following the State's guidance, local governments could ask the following questions of anyone with an appointment (before entering the building):

- Have you had a cough?
- Have you had a fever?
- Have you had shortness of breath?
- Have you been in close contact with anyone with these symptoms or anyone who has been diagnosed with COVID-19 in the past 14 days?

If the visitor says "yes" to any of these questions, the local government would then deny access to the building until 14 days have passed or until the visitor presents information from a health care provider stating that the visitor has not tested positive for COVID-19.

NOTE: Oregon disability law and the Americans with Disabilities Act prohibits employers from taking the temperatures of **applicants**, even if they are being treated like all other visitors to a local government's building. Instead, interview applicants via telephone or video conferencing. Or implement an exception to the mask-wearing policy for applicants, but ensure that social distancing is used, and all cleaning protocols applied.

NOTE: If a local government wishes to ask such questions of visitors, it should do so only after consulting its county's contact tracing guidelines. Those guidelines should be consulted regarding whether specific questions might trigger reports to the county, and what the local government should do with the information it collects, particularly if a visitor answers "yes" to any of the questions asked.

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Option e. Consider refusing entry to any visitor who shows signs of COVID-19 infection.

A local government could choose to deny access to one of their buildings if the visitor is observed coughing, appearing short of breath, or showing any of the recognized signs and symptoms of COVID-19 infection. Signs outside the buildings open to the public could instruct visitors that they should leave if they show any of the signs or symptoms. Consult the latest CDC and OHA guidance for the recognized signs and symptoms of COVID-19 infection.

5. Publicize the local government’s plan for re-opening some buildings, and the requirements that will be imposed on visitors.

This helps educate visitors about what to expect, and how to prepare. From a legal perspective, notice about what procedures will be required (e.g., temperature taking, COVID-19-related questions) will make it more difficult for the visitor to argue that privacy rights were violated. It is extremely important to list all restrictions and requirements the local government will be implementing and using, and to discuss the consequences of a visitor who does not comply.

Some other suggestions:

- a. Use as many different means as possible to educate the public. Consider social media platforms, press releases, website updates, and email signatures. Post a sign at the entrance of each building that will be open to the public.
- b. If temperatures will be taken of all visitors, be clear about what happens if a visitor has a temperature above a certain number (discussed below).

- Specify why the testing is occurring and how the information will be used.

Example: “We’re taking the temperature [and asking COVID-19-related questions] because we want to provide a safe environment for our visitors and a safe workplace for our employees. We are not asking for general health histories or genetic information. We are not asking for personal identifying information, so nothing will be reported to health authorities.”

If the local government’s county has any contact tracing requirements in connection with the temperature taking, this should be noted in the announcement.

- c. If masks will be required, explain why — similar reasoning to temperature taking.
 - Consider whether the local government will provide masks to those who don’t bring them.

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- Note that exceptions to the policy will be provided to accommodate people with certain health conditions (discussed above), 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.
- d. 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.

Best Practices for Implementing a Program for Taking Visitors' Temperatures During the COVID-19 Pandemic

This "best practices" guidance will be updated as new information is received from Oregon and federal health authorities. See, e.g., [Interim Guidance for Oregon OSHA Related to COVID-19](#).

1. Find the most noninvasive manner in which to take someone's temperature.

Look for a device that eliminates or significantly minimizes contact between the employee who is taking the temperature and the visitor.

- What cleaning or disinfecting protocols need to be followed to re-use the temperature-taking instrument?

2. Regardless of the manner used, the employees who will be taking the temperatures should receive training and the local government should have proof of that training.

This is not a situation where an employee simply grabs a thermometer off the shelves of a local store and starts using it after reading the pamphlet that comes with the thermometer. It is possible — though not yet verified — that the Red Cross or a local health authority (maybe a county) could provide some kind of training.

- If training is not available, make sure that the employee administering the temperature check has ample time to review all instructional materials available relating to the device that will be used.



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- Also, the local government should determine what the appropriate protocol will be if there is an error or a result that seems inconsistent with common sense (examples: the reading is below 97 degrees, or above 110 degrees).

The local government needs to designate a handful of people for this task — it can't just be anyone who is available on a day in question.

The local government must also provide adequate personal protective equipment for the employees who will be administering the temperature test.

3. There needs to be a decision about what temperature renders a visitor unable to enter a building.

- One suggested standard: 100.4 degrees or more, based on CDC guidance regarding what is a "fever."

4. The local government will need to decide what to do if a visitor has a temperature that meets or crosses the temperature threshold established by the local government.

A local government appears to be able to lawfully take one of two approaches if a visitor came to one of their buildings with a temperature higher than the local government's designated temperature:

- Ask follow-up questions limited to the symptoms typically shown for someone who is infected with COVID-19. Although this seems invasive, it is what the CDC and EEOC recommends for employees. With proper notice, and with proper limitations on the scope of the questions asked, this should be allowed by law⁵; or
- Don't let anyone in the buildings who has a temperature that is higher than 100.4, regardless of the reason. This would eliminate the need for asking questions about COVID-19 symptoms and avoid the concern about keeping information on a citizen's health.

In either situation, train employees to discreetly tell the visitor about their temperature reading and find out if there is an alternative way to provide the services the visitor seeks.

Alternatively, if the visitor came back to the building with a note from a health care provider indicating that they tested negative for COVID-19 within a certain reasonable time period, they would be allowed to enter.

Depending on the State's or local county's contact tracing requirements, the local government may need to keep a confidential record of the visitor's temperature reading and other personal identifying information. See discussion below regarding "Contact Tracing" for more discussion about possible record-keeping ramifications. Consider simply recording "no" (meaning the employee's temperature is under the appropriate

⁵There is so little a local government can ask under Title II of the ADA when it comes to citizens with disabilities who want access. Thus, the questions asked of a visitor who has a temperature that meets or exceeds the local government's temperature threshold must be limited in scope and limited to COVID-19-related situations.

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threshold) or “yes” (meaning the visitor has a fever at 100.4 degrees or above) for each visitor, instead of recording each visitor’s individual temperature.

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. As noted above, the 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.

As a last resort, the local government may wish to issue a temporary trespass order against an individual who refuses to comply with the published requirements. Although this may not have yet been tested in an Oregon court during this pandemic, the argument would be that the local government needs to protect law-abiding citizens in their use of public buildings, and the employees who work there, and that by failing to follow the local government’s reasonable requirements for building use, the visitor is attempting to engage in conduct that is unsafe and disruptive. The local government should review their ordinance or charter provision relating to the exclusion of individuals from their public places to determine whether it could be used during the pandemic.

Contact Tracing

Governor Brown requires counties who seek to 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. Some issues that will need to be considered:

1. Is a temperature above the reading identified by the local government enough to trigger the requirement to collect personal identifying information from the individual with a high temperature?

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- What if the individual has a high temperature but denies any other symptoms (and no other symptoms are observed)?
2. What information does the State/County require us to collect?
 3. What safeguards must be put in place to ensure that the maintenance of such information is not inadvertently disclosed? Does the State/County tell us anything about this?
 - Is such information protected from publication under Oregon's public records laws?
 4. How long is such information kept? Which [Oregon Secretary of State Record Retention Schedules](#) apply? If an employee collects contact tracing data or receives information from a visitor indicating possible COVID-19 infection an exposure to a "harmful physical agent" that requires recordkeeping pursuant to [OR-OSHA regulations](#)?
 5. How do we communicate to visitors what information is collected, and why it's being collected? Example: "This business is collecting basic information to share with public health in the event a COVID-19 case is identified associated with this business."

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.

