

ORDINANCE 20-09

**TO AMEND TITLE 2 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED
“ADMINISTRATION AND PERSONNEL” AND TO GRANT AUTHORITY TO ACT
IN ACCORDANCE WITH DECLARED DISASTER EMERGENCIES**

**--Re: Amending 2.22.030 Entitled “Employee Policies” and Complying with the State of
Indiana’s Declaration of Disaster Emergency under I.C. § 10-14-3-12**

WHEREAS, Bloomington Municipal Code § 2.22.030 regulates Employee Policies for the City of Bloomington; and

WHEREAS, Governor Holcomb has declared a statewide disaster emergency for the COVID-19 pandemic in accordance with Indiana Code Section 10-14-3-12; and

WHEREAS, in the event of disaster emergencies and in accordance with Indiana Code Section 10-14-3-17(j) (5), municipalities may “waive procedures and formalities otherwise required by law pertaining to:

- (A) the performance of public work;
- (B) the entering into of contracts;
- (C) the incurring of obligations;
- (D) the employment of permanent and temporary workers;
- (E) the use of volunteer workers;
- (F) the rental of equipment;
- (G) the purchase and distribution of supplies, materials, and facilities; and
- (H) the appropriation and expenditure of public funds;” and

WHEREAS, for the protection of the community, the Common Council now believes it is necessary to take affirmative action during this time of emergency; and

WHEREAS, as guidance for localities in this emergency, the State Board of Accounts provided memos which, in part:

- Urge “governing bodies (i.e. City Councils) to work with their attorneys to develop [policies] specific to this emerging situation” that, if possible, “incorporate those items that could be of concern in the coming months;”
- Stress the “urgency to both monitor and address situations as they arise” and for governing bodies to be “flexible in their approach;”
- “Advise that the [policies] have broad language that may reference more specific materials so that the policies do not need to be constantly updated and approved to address quickly changing real-time issues;”¹
- Advise that “policies/actions” should “maintain operations of government as normal or as near normal as possible while maintaining the wellbeing of governmental employees and the public;” and
- Advise that change in policies “should be adopted through normal processes as provided by statute, including public meetings” and where practicable, with written evidence that a governing body has appropriately approved the actions in appropriate forum; and

WHEREAS, in 2018 the City adopted Ordinance 18-10, which provides additional fiscal oversight of the Executive branch by the Common Council and includes a provision regarding emergencies, which is available for use in the event it becomes necessary;

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Section 2.22.030, entitled "Employee Policies" shall be amended to add the following additional section:

(8) Stay Home Pay During a Declared Emergency. The Mayor may require some (non-critical or non-essential) or all employees to refrain from coming to their work stations in the event of a national emergency or state disaster emergency as provided in Indiana Code Section 10-14-3-12. In the event of such emergency declaration, the Mayor may provide that employees directed to refrain from

coming to work receive pay (hourly and/or salary) for their regularly scheduled, non-overtime work hours (“Emergency Stay Home Pay”), subject to the following conditions:

- (a) If some of all of the employee’s job functions can be performed from home, the employee is expected to perform those job functions from home during the employee’s regularly scheduled non-overtime work hours;
- (b) For the duration of the declared emergency, the employee is considered “on duty” and at work during the employee’s regularly scheduled non-overtime work hours, and, therefore, must be available by phone and/or email to respond to calls from other City officials and must be available to return to their work station with two (2) hours of notice from their supervisor, the Mayor, or the Mayor’s designee;
- (c) The employee may not work or earn compensation from any other source during the employee’s regularly scheduled non-overtime work hours (i.e., for which the employee would earn Emergency Stay Home Pay).

SECTION 2. For the duration of the COVID-19 disaster emergency declared by Governor Holcomb under Indiana Code Section 10-14-3-12 (Current Declared Emergency), the Mayor of the City of Bloomington shall have the powers to act in conformity with and waive any and all procedures and formalities in accordance with Indiana Code Section 10-14-3-17(j), the Governor’s executive orders, or any other applicable law, declaration, order, or decree. These powers shall be exercised only after a determination by the Mayor or his designee that the regular practices are not practicable due to the Current Declared Emergency and, in that event, the Mayor or his designee, shall inform the Council in writing, of what was done and why it was necessary, within a reasonable period after the action is taken.

SECTION 3. In accordance with the powers in the preceding Section 2 and the guidance from the State Board of Accounts, the Controller shall have the authority to approve payment of all necessary expenditures on behalf of the City of Bloomington for the duration of the Current Declared Emergency, and any board or commission normally tasked with the approval of such expenditures shall review and approve the Controller’s authorizations once the declared emergency has ended. These authorizations by the Controller shall be limited to expenditures which directly address the Current Declared Emergency and only when use of the regular process is not practicable due to the Current Declared Emergency.

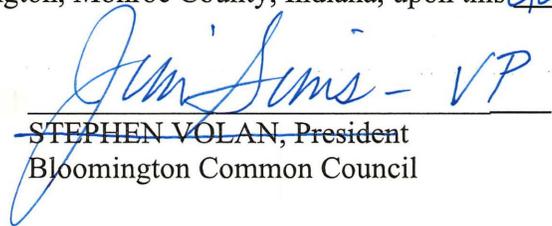
In the event the authorization would normally require Common Council consideration of an appropriation ordinance, the Mayor or his designee, shall: 1) inform the Council in writing, of what was done and why it was necessary, no later than forty-eight (48) hours after the action was taken; and 2) submit an appropriation ordinance as soon as practicable thereafter in consultation with the Council President. In the event the authorization would require action of other boards and commissions, the Mayor or his designee, shall: 1) inform the Council and the applicable board or commission in writing, of what was done and why it was necessary; 2) do so, within a reasonable period after the action was taken.

The temporary waiver or relaxation of authorizations provided for in this ordinance do not replace and shall be read in concert with the Council fiscal oversight provisions set forth in BMC 2.26.200 through BMC 2.26.210. In that regard, the procedures for an emergency expenditure provided under BMC 2.26.200 (d) (Exceptions to Process of Review) are available in the event needed during the Current Declared Emergency.

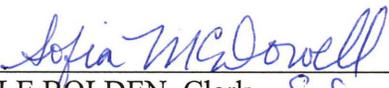
SECTION 4. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 5: This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

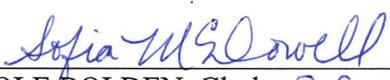
PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 22nd day of March, 2020.


STEPHEN VOLAN, President
Bloomington Common Council

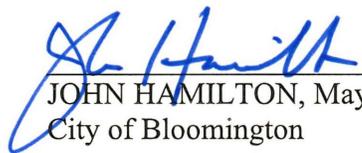
ATTEST:


~~NICOLE BOLDEN, Clerk~~ Sofia McDowell, Chief Deputy Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 23rd day of March, 2020.

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~~NICOLE BOLDEN, Clerk~~ Sofia McDowell, Chief Deputy Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 27th day of ~~March~~ April, 2020.


JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

Ordinance 20-09 addresses the operation of City government during the public health emergency resulting from COVID-19. It amends employee policies to allow the Mayor to order some or all employees of the City of Bloomington to continue to receive pay during their regularly scheduled, non-overtime work hours, for the duration of an emergency declared by the Governor under IC § 10-14-3-12. Then, for the duration of this emergency, it invokes Indiana Code 10-14-3-17(j), which, in part, allows political subdivisions to waive procedures and formalities in regard to certain of its functions, and gives the Mayor the authority to implement those measures, as long as those actions are consistent with that statute, the Governor's executive orders, or any other applicable law, declaration, order, or decree. Also for the duration of this disaster emergency and to the extent consistent with guidance from the State Board of Accounts, it authorizes the Controller to approve the payment of all necessary City expenditures, and defers the action of the boards and commissions which normally review and approve these expenditures, until after the emergency and alters their role, at that time, to the review and approval of the Controller's actions.

Note: On April 22, 2020, the Council passed this ordinance after adopting three amendments, which are briefly described below:

- *Am 01 - amended the initial paragraph of Section 2 and Section 3 to distinguish between actions authorized for this along with future emergencies (Section 1) and actions authorized solely only under the current emergency; and*
- *Am 02 - added a new whereas clause and amended the initial paragraph of Section 2 (as amended by Am 01) to add a determination of impracticability of regular processes and reporting requirement; and*
- *Am 03 - added another, final whereas clause and amended Section 3 by adding a sentence to the first paragraph and adding two new paragraphs. These changes, in general: limited the authorizations of expenditures made by the Controller in advance of review and approval by governing bodies to expenditures directly addressing the emergency; added reporting requirements to the Council and other affected governing bodies; and, clarified that BMC 2.26.200 through 210 were still in effect and include a procedure for reporting emergency expenditures.*

Distributed to Clerk, Controller, Council Attorney, Legal, and Mayor.