



CITY OF BLOOMINGTON COMMON COUNCIL

NOTICE AND AGENDA
WORK SESSION
TUESDAY | 6:00 PM
30 APRIL 2024

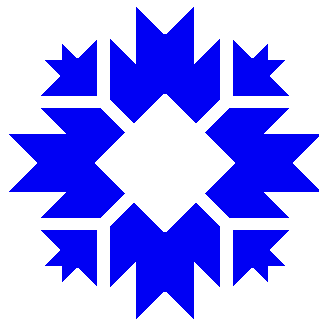
*McCloskey Conference Room (#135), Showers Building, 401 N. Morton Street
The public may also access the meeting at the following link:*

<https://bloomington.zoom.us/j/82058716007?pwd=a5SsVHb3ayPukcZFFQA9CbGYphXB2x.1>

- I. **CALL TO ORDER**
- II. **AGENDA REVIEW**
- III. **DISCUSSION OF PUBLIC COMMENT AT COUNCIL MEETINGS**
 - Review of current Council guidelines and practices related to public comment
 - First Amendment rights in the context of public comment at Council meetings (Stephen Lucas)
 - Identification of problems with public comment that Council should address
 - i. Hate speech
 - ii. Immediate reaction(s) to hate speech
 - iii. Rigidity of current format of Council regular sessions*
 - Ideas for solutions
 - i. Examples of rules and procedures of other Indiana cities
 - ii. Distinction between public comment via Zoom and public comment in person
 - iii. Discussion of possible revisions to Council policies and practices regarding public comment
- IV. **PUBLIC COMMENT**
- V. **NEXT STEPS**
- VI. **ADJOURNMENT**

*Note that the Special Committee on Council Processes is considering a recommendation to hold meetings based on consensus-building activities, whose format would allow for two-way communication between Council Members and members of the public.

Posted: 26 April 2024



REPORTS FROM THE PUBLIC: MAKING COMMENT ON NON-AGENDA ITEMS

The Bloomington Common Council greatly values the voices of its citizens and welcomes public comment on non-agenda items of community concern at two points on its *Regular Session* agenda. Citizens may make general comments at either the beginning of the meeting under *Reports from the Public* (limited to a total cumulative time of 20 minutes) or at the end under *Additional Reports from the Public* (limited to a total of 25 minutes).

In order to conduct meetings in the most effective manner possible, the following rules apply:

- 1) At each meeting, citizens may speak at only *one* of the two opportunities for public comment, but not both.
- 2) Citizens are limited to one report, not to exceed five (5) minutes. If there are many people who wish to speak during one of the public comment periods, the Chair may reduce the time allowed for each individual.
- 3) When giving your report, please state your name for the record and speak directly into the microphone.
- 4) All reports must be made from the podium; speakers may not approach the Council dais without permission of the Chair.
- 5) Reports are intended to be statements from speakers; speakers may not engage the Council in a question-and-answer exchange during the *Reports from the Public* periods.
- 6) The City Council encourages civility in public discourse and requests that speakers refrain from language which would incite an immediate breach of the peace; refrain from undue repetition, extended discussion of irrelevancies, obscenity, and personal attacks against private individuals unrelated to the operation of the City.

These rules are intended to foster a fair, respectful, and productive meeting. Any person who violates these rules will be declared out of order by the Chair. A person who persists in violating these rules may be removed from the meeting.

Bloomington Municipal Code

2.04.380 Order of business at regular sessions.

The council shall transact its business in the following order, but it may by majority vote amend the normal order of business and time limits set forth below:

- (1) Roll call;
- (2) Agenda summation;
- (3) Approval of minutes;
- (4) Reports (a maximum of twenty minutes is set aside for each part of this section):
 - (A) Council members,
 - (B) The mayor and city offices,
 - (C) Council committees, and
 - (D) Public*;
- (5) Appointments to boards and commissions;
- (6) Legislation for second readings and resolutions;
- (7) First readings;
- (8) Additional reports from the public* (a maximum of twenty-five minutes is set aside for this section of the agenda);
- (9) Council schedule;
- (10) Adjournment.

*Members of the public may speak on matters of community concern not listed on the agenda at one of the two reports from the public opportunities. Citizens may speak at one of these periods, but not both. Speakers are allowed five minutes; this time allotment may be reduced by the presiding officer if numerous people wish to speak.

(Ord. 92-4 § 1, 1992; Ord. 85-2 § 1, 1985).

(Ord. No. 10-14, § 1, 9-23-2010)

RESOLUTION 21-17

A RESOLUTION ESTABLISHING AN ELECTRONIC MEETINGS POLICY

WHEREAS, the Indiana General Assembly adopted HEA 1437 in the 2021 Regular Session, which amended Indiana Code (IC) 5-14-1.5-1 et seq. (Act) by amending IC 5-14-1.5-3.5 to prescribe new requirements by which members of the governing body of a public agency of a political subdivision may participate in a meeting by an electronic means of communication; and

WHEREAS, a member of the governing body may participate by any means of communication that:

- allows all participating members of the governing body to simultaneously communicate with each other; and
- except for a meeting that is an executive session, allows the public to simultaneously attend and observe the meeting; and

WHEREAS, the Act requires the governing body to adopt a written policy establishing the procedures that apply to a member's participation in a meeting by an electronic means of communication and allows the governing body to adopt procedures that are more restrictive than the procedures established by IC 5-14-1.5-3.5; and

WHEREAS, the Bloomington Common Council is the governing body of the City of Bloomington, Indiana and wishes to adopt such a policy;

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

Section I. The Bloomington Common Council adopts the following policy on the participation of a member of the Council, city staff, and members of the public in a meeting by an electronic means of communication:

ELECTRONIC MEETINGS POLICY

Section 1.

- (a) The provisions of the Act, including definitions, apply to this resolution.
- (b) This resolution shall be known as the "Electronic Meetings Policy" of the Council and applies to the Council and any of its committees, including committees appointed directly by the Council or its presiding officer.

Section 2.

- (a) Subject to Sections 3 and 5, any member may participate in a meeting by any electronic means of communication that:

- (1) allows all participating members of the governing body to simultaneously communicate with each other; and
- (2) other than a meeting that is an executive session, allows the public to simultaneously attend and observe the meeting.

- (b) A member who participates by an electronic means of communication:

- (1) shall be considered present for purposes of establishing a quorum; and
- (2) may participate in final action only if the member can be seen and heard.

- (c) All votes taken during a meeting at which at least one (1) member participates by an electronic means of communication must be taken by roll call vote.

Section 3.

(a) At least fifty percent (50%) of the members must be physically present at a meeting at which a member will participate by means of electronic communication. Not more than fifty percent (50%) of the members may participate by an electronic means of communication at that same meeting.

(b) A member may not attend more than a fifty percent (50%) of the meetings in a calendar year by an electronic means of communication unless the member's electronic participation is due to:

- (1) military service;
- (2) illness or other medical condition;
- (3) death of a relative; or
- (4) an emergency involving actual or threatened injury to persons or property.

(c) A member may attend two (2) consecutive meetings (a set of meetings) by electronic communication. A member must attend in person at least one (1) meeting between sets of meetings that the member attends by electronic communication, unless the member's absence is due to:

- (1) military service;
- (2) illness or other medical condition;
- (3) death of a relative; or
- (4) an emergency involving actual or threatened injury to persons or property.

Section 4. The memoranda and any minutes prepared for a meeting at which any member participates by electronic means of communication must:

- (1) identify each member who:
 - (A) was physically present at the meeting;
 - (B) participated in the meeting by electronic means of communication; and
 - (C) was absent; and
- (2) identify the electronic means of communication by which:
 - (A) members participated in the meeting; and
 - (B) members of the public attended and observed the meeting, if the meeting was not an executive session.

Section 5. No member of the Council may participate by means of electronic communication in a meeting if the Council is attempting to take final action to:

- (1) adopt a budget;
- (2) make a reduction in personnel;
- (3) initiate a referendum;
- (4) impose or increase a fee;
- (5) impose or increase a penalty;
- (6) use the Council's eminent domain authority; or
- (7) establish, raise or renew a tax.

Section 6. In the event the governor declares a disaster emergency under IC 10-14-3-12 or the executive (as defined in IC 36-1-2-5) of a political subdivision declares a local disaster emergency under IC 10-14-3-29, the Council may meet by any means of electronic communication if the following requirements of IC 5-14-1.5-3.7 are satisfied:

- (1) At least a quorum of the members of the Council participate in the meeting by means of electronic communication or in person.
- (2) The public is able to simultaneously attend and observe the meeting. However, this subdivision does not apply to a meeting held in executive session.
- (3) The memoranda and any minutes prepared for a meeting held under this section must:

- (A) state the name of each member of the Council who:
 - (i) participated in the meeting by using any electronic means of communication; and
 - (ii) was absent; and

- (B) identify the electronic means of communication by which:
 - (i) members of the Council participated in the meeting; and
 - (ii) members of the public attended and observed the meeting, if the meeting was not an executive session.

(4) All votes taken during a meeting under this section must be taken by roll call vote.

Section 7. Members of the public shall be able to attend and observe meetings of the Council via electronic means. Subject to the Council's rules for making public comment, members of the public may also participate in the meeting via electronic means. Meeting notices shall be posted as required by law, and will include information about how to access meetings electronically.

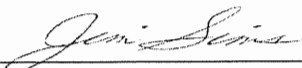
Section 8. Staff members may participate in meetings of the Council via electronic means, provided there is no actual need for a staff member to be physically present at a particular meeting. Such need shall be determined in the sole discretion of the presiding officer.

SECTION II. Until the respective governing bodies within the city adopt their own policies, the policy adopted herein may serve as the electronic meeting policy for each governing body. Each governing body is encouraged to adopt policies that mirror these and that conform to Indiana law at the next opportunity.

SECTION III. If any sections, sentence or provision of this resolution, 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 resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

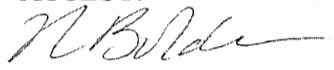
SECTION IV. This resolution shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 26 day of May, 2021.



JIM SIMS, President
Bloomington Common Council

ATTEST:



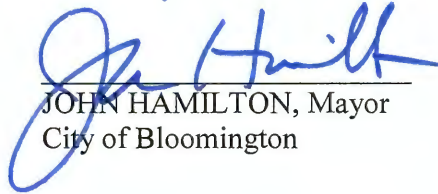
NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 27 day of May, 2021.



NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 28th day of May, 2021.



JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This resolution adopts an Electronic Meetings Policy pursuant to newly-enacted state statutes concerning electronic meetings. The Policy establishes the procedures that apply to a member's participation in a meeting by an electronic means of communication, as well as to the participation of the public and city staff members by electronic means of communication.

Distributed to: Clerk, Council Attorney, Legal, Mayor



**NICOLE BOLDEN
CLERK**

CITY OF BLOOMINGTON

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OFFICE OF THE CITY CLERK

812.349.3408
clerk@bloomington.in.gov

10 April 2024

To the Bloomington Common Council:

I would like to see changes made in the way the council operates, specifically around the issue of public comment.

On April 3, 2024, the Regular Session of the Bloomington Common Council saw several speakers spew hate-filled speech during public comment. Comments about “mud babies”, “white power”, “hail Hitler”, anti-Jewish rhetoric, and anti-Palestine rhetoric were spoken in the course of the evening.

Some commentators and reporters have focused on where the comments came from. Whether it was from the podium or Zoom and whether the speakers were residents or not. It may be a comfort to think that comments made under the veil of anonymity are not really folks from our community. The problem with that view is that it ignores the very real impact on those listening to the rhetorical violence directed at them.

The current council process allows the council to listen to comments, but not directly engage. While this allows members of the public to speak, it does not create a healthy dialogue. We saw that play out in real-time on April 3rd. There were multiple times when the council could or should have spoken up. But the council remained silent.

While members of the public had several minutes to speak at length about their belief in white supremacy, the council seemed frozen under the weight of its processes. By the end of the evening council members had less than one minute each to speak on their thoughts related to an issue that many of you felt passionate about.

We can do better. We should expect better. We can ask our council to revisit their procedures related to public comment. There are several options available to the council, which include:

1. Time limits. Every speaker should be limited to the same amount of time, regardless of the number of speakers.
2. Technology. Provide tools for written comments for all attendees and then publish those comments as a part of the meeting record.
3. Talk! I believe the council does not want to allow nastiness to continue unabated and unaddressed. Saying something can make a big difference for people.

The Special Committee on Council Processes is one place where the council could begin to address the systemic issues that it currently faces. The council could also have a work session to get ideas and workshop the issues. The council could schedule a series of listening sessions or constituent meetings to see what the people of Bloomington would like to see in how the council conducts its meetings.

Rather than chastising speakers who specifically direct their comments toward council members, the council could direct that energy at speakers who specifically direct their hate toward our community. Public service does not have to mean accepting public abuse. The council does not have to remain silent, especially since you do not seem to want that either. The council can use all of the tools at its disposal to make comprehensive changes in its meeting procedures and policies to ensure a safe, equitable, and effective forum for the City of Bloomington.

Thank you for your time and attention,



Clerk Nicole Bolden, *JD, IAMCA, MMC*



Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1338

AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-14-1.5-2, AS AMENDED BY P.L.124-2022, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 2. For the purposes of this chapter:

(a) "Public agency", except as provided in section 2.1 of this chapter, means the following:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
 - (A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or
 - (B) audit by the state board of accounts that is required by statute, rule, or regulation.
- (4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public

HEA 1338 — Concur



facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are any of the following:

(1) A public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business.

(2) The board, commission, council, or other body of a public agency which takes official action upon public business.

(3) Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. **However, the following do not constitute a governing body for purposes of this chapter:**

(A) An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body. **does not constitute a governing body for purposes of this chapter.**

(B) **A committee appointed directly by the governing body or a designee of the governing body:**

(i) **for the sole purpose of receiving information, deliberating, or making recommendations to the governing body; and**

(ii) **that has not more than one (1) member of the governing body as a member.**

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include any of the following:

(1) Any social or chance gathering not intended to avoid this chapter.

(2) Any on-site inspection of any:

(A) project;

(B) program; or

(C) facilities of applicants for incentives or assistance from the governing body.



(3) Traveling to and attending meetings of organizations devoted to betterment of government.

(4) A caucus.

(5) A gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources.

(6) An orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action.

(7) A gathering for the sole purpose of administering an oath of office to an individual.

(8) Collective bargaining discussions that the governing body of a school corporation engages in directly with bargaining adversaries. This subdivision applies only to a governing body that has not appointed an agent or agents to conduct collective bargaining on behalf of the governing body as described in subsection (b)(3).

(d) "Official action" means to:

- (1) receive information;
- (2) deliberate;
- (3) make recommendations;
- (4) establish policy;
- (5) make decisions; or
- (6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose. The governing body may also admit an individual who has been elected to the governing body but has not been sworn in as a member of the governing body.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal



advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

(l) "State educational institution" has the meaning set forth in IC 21-7-13-32.

(m) "Charter school" has the meaning set forth in IC 20-24-1-4). The term includes a virtual charter school (as defined in IC 20-24-1-10).

SECTION 2. IC 5-14-1.5-3.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 3.3. (a) This section applies only to a meeting of the governing body of an entity described in section 2(a)(2) or 2(a)(3) of this chapter.**

(b) This section does not apply to a meeting of the governing body of a school corporation or charter school.

(c) As used in this section, "attendee" means a member of the public who is physically present at a meeting of a governing body.

(d) If a governing body allows attendees to speak on a topic at a meeting, the governing body may designate:

(1) a period for taking public testimony that is:

(A) before or during the governing body's discussion or consideration of the topic; and

(B) before the governing body takes final action on the topic; and

(2) the amount of time allotted for attendees to speak on the topic.

(e) A governing body may adopt reasonable rules or policies governing the conduct of a meeting, including any of the following:

(1) Reasonable restrictions on the time allotted for attendees to speak on a topic.

(2) Reasonable steps to maintain order during a meeting with respect to attendees and the elected officials of the governing body.

(3) A procedure for the presiding member of the governing body to issue warnings to attendees who disrupt a meeting. Subject to subsection (g), the procedure may provide that if an attendee receives three (3) warnings, the presiding member of the governing body may upon issuing the third warning, direct:



- (A) the attendee to leave the meeting; and
- (B) a law enforcement officer to remove the attendee from the meeting, if the attendee refuses to leave when directed by the presiding member for a violation of the rules or policies governing the conduct of the meeting as adopted by the governing body.

(f) The governing body must notify attendees of any rules or policies that are adopted under this section by:

- (1) posting the rules or policies in a visible area at the entrance to the meeting location; or
- (2) making an announcement of the rules or policies at the meeting before taking oral public comment.

(g) Nothing in this section may be construed to prohibit a law enforcement officer from immediately removing an attendee from a meeting if:

- (1) removal of the attendee is necessary to maintain order or ensure the safety of another person;
- (2) the attendee commits a criminal offense; or
- (3) the attendee violates the rules or policies governing the conduct of the meeting as adopted by the governing body.

(h) IC 34-13-3-3(a)(8) applies to this section.

SECTION 3. IC 5-14-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 6. The governor shall appoint a public access counselor for a term of four (4) years at a salary to be fixed by the governor. **The public access counselor shall serve at the pleasure of the governor.**

SECTION 4. IC 5-14-4-7 IS REPEALED [EFFECTIVE JULY 1, 2024]. Sec. 7: ~~The governor may remove the counselor for cause.~~

SECTION 5. IC 5-14-4-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 10.5. When issuing an advisory opinion, the public access counselor shall consider only:**

- (1) the public access laws, as plainly written; and
- (2) valid opinions of Indiana courts.

SECTION 6. IC 35-43-2-2, AS AMENDED BY P.L.79-2023, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 2. (a) As used in this section, "authorized person" means a person authorized by an agricultural operation or a scientific research facility to act on behalf of the agricultural operation or the scientific research facility.

(b) A person who:

- (1) not having a contractual interest in the property, knowingly or



intentionally enters the real property of another person after having been denied entry by the other person or that person's agent;

(2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person's agent;

(3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle;

(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent;

(5) not having a contractual interest in the property, knowingly or intentionally enters the:

(A) property of an agricultural operation that is used for the production, processing, propagation, packaging, cultivation, harvesting, care, management, or storage of an animal, plant, or other agricultural product, including any pasturage or land used for timber management, without the consent of the owner of the agricultural operation or an authorized person; or

(B) dwelling of another person without the person's consent;

(6) knowingly or intentionally:

(A) travels by train without lawful authority or the railroad carrier's consent; and

(B) rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier's consent;

(7) not having a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is:

(A) vacant real property (as defined in IC 36-7-36-5) or a vacant structure (as defined in IC 36-7-36-6); or

(B) designated by a municipality or county enforcement authority to be:

(i) abandoned property or an abandoned structure (as defined in IC 36-7-36-1); or

(ii) an unsafe building or an unsafe premises (as described in IC 36-7-9);

(8) not having a contractual interest in the property, knowingly or



intentionally enters the real property of an agricultural operation (as defined in IC 32-30-6-1) without the permission of the owner of the agricultural operation or an authorized person, and knowingly or intentionally engages in conduct that causes property damage to:

- (A) the owner of or a person having a contractual interest in the agricultural operation;
- (B) the operator of the agricultural operation; or
- (C) a person having personal property located on the property of the agricultural operation;

(9) not having a contractual interest in the property, knowingly or intentionally enters the real property of a scientific research facility (as defined in IC 35-31.5-2-287) without the permission of, or with permission which was fraudulently obtained from, the owner of the scientific research facility or an authorized person, and knowingly or intentionally engages in conduct that causes property damage to:

- (A) the owner of or a person having a contractual interest in the scientific research facility;
- (B) the operator of the scientific research facility; or
- (C) a person having personal property located on the property of the scientific research facility;

(10) knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by conspicuous posting on or around the premises in areas where a person can observe the order when the property has been designated by a municipality or county enforcement authority to be:

- (A) a vacant property;
- (B) an abandoned property;
- (C) an abandoned structure (as defined in IC 36-7-36-1); or
- (D) an unsafe building or an unsafe premises (as described in IC 36-7-9); **or**

(11) knowingly or intentionally enters or refuses to leave the polls (as defined in IC 3-5-2-39) or chute (as defined in IC 3-5-2-10) after having been prohibited from entering or asked to leave the polls or chute by a precinct election officer (as defined in IC 3-5-2-40.1) or a law enforcement officer acting on behalf of a precinct election officer; **or**

(12) knowingly or intentionally:

- (A) without permission or prior authorization, enters an**



area of property that is locked; or
(B) refuses to leave an area of a property that is otherwise not accessible to the public, after being asked to leave the area of a property by a law enforcement officer or an employee or agent of the owner or operator of the property;

commits criminal trespass, a Class A misdemeanor. However, the offense is a Level 6 felony if it is committed on a scientific research facility, on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a)), on school property, or on a school bus or the person has a prior unrelated conviction for an offense under this section concerning the same property. The offense is a Level 6 felony, for purposes of subdivision (8), if the property damage is more than seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000). The offense is a Level 5 felony, for purposes of subdivisions (8) and (9), if the property damage is at least fifty thousand dollars (\$50,000).

(c) A person has been denied entry under subsection (b)(1) when the person has been denied entry by means of:

- (1) personal communication, oral or written;
- (2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public;
- (3) a hearing authority or court order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36; or
- (4) posting the property by placing identifying purple marks on trees or posts around the area where entry is denied.

(d) For the purposes of subsection (c)(4):

- (1) each purple mark must be readily visible to any person approaching the property and must be placed:
 - (A) on a tree:
 - (i) as a vertical line of at least eight (8) inches in length and with the bottom of the mark at least three (3) feet and not more than five (5) feet from the ground; and
 - (ii) not more than one hundred (100) feet from the nearest other marked tree; or
 - (B) on a post:
 - (i) with the mark covering at least the top two (2) inches of the post, and with the bottom of the mark at least three (3) feet and not more than five (5) feet six (6) inches from the ground; and
 - (ii) not more than thirty-six (36) feet from the nearest other



marked post; and

(2) before a purple mark that would be visible from both sides of a fence shared by different property owners or lessees may be applied, all of the owners or lessees of the properties must agree to post the properties with purple marks under subsection (c)(4).

(e) A law enforcement officer may not deny entry to property or ask a person to leave a property under subsection (b)(7) unless there is reasonable suspicion that criminal activity has occurred or is occurring.

(f) A person described in subsection (b)(7) or (b)(10) violates subsection (b)(7) or (b)(10), as applicable, unless the person has the written permission of the owner, the owner's agent, an enforcement authority, or a court to come onto the property for purposes of performing maintenance, repair, or demolition.

(g) A person described in subsection (b)(10) violates subsection (b)(10) unless the court that issued the order denying the person entry grants permission for the person to come onto the property.

(h) Subsections (b), (c), and (g) do not apply to the following:

(1) A passenger on a train.

(2) An employee of a railroad carrier while engaged in the performance of official duties.

(3) A law enforcement officer, firefighter, or emergency response personnel while engaged in the performance of official duties.

(4) A person going on railroad property in an emergency to rescue a person or animal from harm's way or to remove an object that the person reasonably believes poses an imminent threat to life or limb.

(5) A person on the station grounds or in the depot of a railroad carrier:

(A) as a passenger; or

(B) for the purpose of transacting lawful business.

(6) A:

(A) person; or

(B) person's:

(i) family member;

(ii) invitee;

(iii) employee;

(iv) agent; or

(v) independent contractor;

going on a railroad's right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to land that the person owns, leases, or operates.

(7) A person having written permission from the railroad carrier



to go on specified railroad property.

(8) A representative of the Indiana department of transportation while engaged in the performance of official duties.

(9) A representative of the federal Railroad Administration while engaged in the performance of official duties.

(10) A representative of the National Transportation Safety Board while engaged in the performance of official duties.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

HEA 1338 — Concur

