



Montana Association of Counties

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MACo Members:

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This guidance document is designed to assist you in determining essential services and how to provide continuity of operations during the [Shelter-in-place/Stay-at-home Directive](#) issued yesterday, March 26, 2020, that goes into effect at 12:01 a.m. on March 28, 2020.

Governor Bullock has continually recognized the importance of local decision-makers in his COVID-19 Directives. Modifications to office hours, work routines, staffing, public access, and mitigation measures should be done in a collaborative process that includes all elected officials and local public health professionals. Be especially mindful of the importance of public health and public safety and encourage collaboration with the officials responsible for carrying out those missions.

The "[Flexibility Directive](#)" the Governor issued requires "approval from their political subdivision or its delegates" when deviating from the open office requirements of [7-4-2211, MCA](#). Neither an elected official nor the Board of County Commissioners should be making unilateral decisions about office hours for the elected offices in county government. Regardless of what hours are established, you need to implement social distancing mitigation measures in accordance with the new Shelter-in-place Order. Cooperation and collaboration are essential in this process. If you cannot implement reasonable social distancing measures your options may be limited to modifying schedules, staffing, and public access hours.

When determining critical staff and critical operations, please consider utilizing the [CISA guidelines](#) in conjunction with the exemptions from the Governor's Directive. Although local governments were granted a categorical exclusion, each individual county must evaluate the necessity of full staffing and normal operations during this emergency.

As you begin determining your course of action, consider the following:

- Is it necessary to implement modified staffing and hours of operation in elected offices?
Use extra caution when discussing changes to those required to respond to public health, safety, and law enforcement functions.
- Which non-elected office staff are you able to send home? At what level are you able to operate payroll and human resources functions to carry out required administrative tasks?
- What precautions may be taken regarding road and bridge crews?
For public safety, road and bridge crews should at least be available.
Possible solutions may include altering schedules, eliminating in-person briefings, and/or modifying work hours.
- How do landfill operations need to be modified for work hours and public access?
- Remember that collective bargaining agreements may play a role in determining revised work hours and the impact to employees. It is advisable to keep union representatives involved in the decision-making process to the extent decisions implicate collective bargaining agreements.

Please remember each county determines essential and non-essential services and employees. That decision can be revisited as time goes on. Please be deliberative in the processes and err on the side of protecting public health during this pandemic.

Consider providing guidance to your volunteer boards and committees. Consider suspending all board or committee meetings not essential to public safety, health and safety, or essential public services until the social distancing requirements and gathering limitations are relaxed or eliminated.

Finally, strongly consider establishing newly revised operations, office hours, or closures in a formal manner. Resolutions should be adopted in conjunction with your emergency declarations (where applicable) and operational plans should be modified and formalized in as public a manner as possible.

Any measure taken *must* comport with all constitutional mandates, including Montana’s constitutional right-to-know and right-of-participation provisions (Mont. Const. Art. II, §§ 8 and 9). This includes the requirements that meetings must be open to the public, duly noticed, and materials under consideration by the governing body be made available to the public. The conduct of public meetings must be in conformance with applicable laws and any subsequent Directives issued during this emergency. Refer to the attached [Attorney General Guidance Letter for Conducting Local Public Meetings During COVID-19 Emergency](#). They include:

1. Cancel non-essential meetings
2. Limit public meetings to critical items only
3. Determine type of meeting (allows remote means)
4. Noticing the Public Meeting – to include information on how the public may participate
5. Meetings by Remote Communication – establishing guidelines for meaningful public participation

The attached Directive follows federal guidance to determine the businesses and operations deemed essential, which are summarized in the Directive and can also be found here: <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>.

RELEVANT CITATIONS FROM THE DIRECTIVE

Governmental Functions

All first responders, emergency management personnel, emergency dispatchers, court personnel, law enforcement and corrections personnel, hazardous materials responders, child protection and child welfare personnel, fire protection personnel, wildland fire fighters, housing and shelter personnel, military, government employees involved in training the above functions, and other government employees are **categorically exempt from this Directive**. For purposes of this Directive, state government employees are categorically exempt from this Directive. **Local governments are permitted to designate which functions and employees are essential and exempt for the purposes of this Directive, apart from those positions and functions named in the Directive.**

Directive Is Public Health Order and Enforceable by County Attorney

This Directive, along with any prior Directive that implements and references the public health authorities of the Department of Public Health and Human Services (DPHHS) provided in Title 50, constitutes a “public health . . . order[]” within the meaning of § 50-1-103(2), MCA, and is enforceable by the Attorney General, DPHHS, a county attorney, or other local authorities under the direction of a county attorney.

Local Public Health Agencies to Assist in Administration of this Public Health Order

Local public health agencies are directed to assist in the administration of this Directive, consistent with § 50-1-202(2)(a), MCA.

Less-Restrictive Local Ordinances Preempted

This Directive is in effect statewide in Montana. In the interest of uniformity of laws and to prevent the spread of disease, all inconsistent emergency county health ordinances are preempted by this Directive, but only to the extent they are less restrictive. Counties may adopt more restrictive ordinances.