Pennsylvania State Association of Boroughs

The Leader in Municipal Training and Professional Development

PSAB Update on COVID-19 Health Pandemic Q & A

April 8, 2020

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Upcoming Webinars

PEMA/DCED Update on COVID-19 Health Pandemic  April 15

Q & A with McNees Wallace and Nurick  April 22

Update on Emergency Response and Declaring Disasters  April 29

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Upcoming Online Learning

Your Role as a Municipal Secretary/Administrator

May 6  Everything You Need to Know About Meetings
May 7  Basic Government
May 13  Intro to Budgets and Finance
May 14  Other Duties as Assigned
May 20  Best Practices

Police Civil Service Procedures
Establishing a Rental Property Inspection Program
Sunshine Act and Open Records

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Today’s Goals

• Compile the limited guidance currently available for local government officials

• Do our best to synthesize the guidance

• Provide a range of options to inform your continuation of operations and emergency response efforts.

• Answer your questions
PSAB Staff on Webinar Panel:

• Ed Knittel, Deputy Executive Director

• Wendy Nickerson, Outreach Training Consultant

• Josh Ehrman, Director of Education

Moderator – Judy Chambers

PUBLIC MEETINGS
Public Meetings during COVID-19 Pandemic

- Sunshine Act requires advertised meetings at public facilities open for public participation

- Current public health guidance raises questions about the prudence and viability of holding public meetings
  - Stay at home orders
  - Doctor ordered quarantines
  - Social distancing protocols - how big is your meeting room?

- Brough Code (1001(c)) allows for participation in meetings via telecommunication only if a quorum of officials are physically present at meeting.

- What should boroughs do?

Legislative Remedies? - HB 1564

- Would expressly authorize remote meetings by telecommunication when meetings are not prudent under an emergency declared by the governor.

- Requires transparency safeguards

- Pauses clock on pending land-use applications until Governor's emergency declaration is terminated.

- Bill passed PA House unanimously on March 25. Appears to have stalled in PA Senate. Prospect of passage is unclear.
Legislative Remedies? - SB 841

• Would amend Title 35 to expressly enable remote meetings during a disaster emergency.

• Provides for up to a 30-day pause of municipal land-use permitting response requirements on pending applications due during a disaster emergency

• Provides for extension of local real-estate tax discount periods and waiving of late payment penalties.

Current Guidance on Meetings

A disaster emergency allows for suspension of formal rules including strict rules related to public meetings

• **Office of Open Records (OOR) Advisory**
  – 35 Pa.C.S. § 7501(d) allows agencies under a “declaration of disaster emergency” to suspend the need to comply with certain “formal requirements.”

  – The Sunshine Act is clear that public meetings should be held at public buildings with open public participation whenever possible. **If an official emergency declaration prevents that from happening**, a meeting via teleconference, webinar, or other electronic method that allows for two-way communication is generally permissible.

  – Every effort should be made to allow for public participation in remote meetings

  -- Consultation with solicitor is encouraged
District Attorneys Association
Guidance

As you know, section 714 of the Sunshine Act provides, among other things, that “any member of any agency who participates in a meeting with the intent and purpose by that member of violating this chapter commits a summary offense. . . .” But the law also permits political subdivisions included in a Governor’s declaration of disaster emergency to “exercise the powers vested under this section without regard to time-consuming procedures and formalities prescribed by law. . . .” See 35 Pa.C.S. § 7501(d).

District Attorneys Association

• “With all that said, the best advice we can provide is non-technical. We would recommend that when officials are not able to comply with the [Sunshine] Act, they seek other ways of complying with the spirit of the law, which is to ensure that the public at large has an opportunity to view their government in action. This may be accomplished through conference calls, video chats, transcription of meetings or otherwise recording the meeting and making the recording publicly available or otherwise accessible.”
Public Meetings: Essential Business

If holding remote or emergency meetings, only essential business should be acted on.

- Action required for critical infrastructure repairs
- Procurement or action needed to continue critical services or to support emergency response efforts
- Essential Contracts required for continuation of services

All non-essential business should be deferred until after the disaster emergency ends

Confer with your solicitor if unsure whether a business item is essential.

Public Meetings: Can we postpone meetings?

- The Borough Code typically requires at least one council meeting per month.

- Title 35 allows for suspension of formal rules if they jeopardize effective emergency response. This provision/rule may be a candidate for suspension.

- Recurring business items (i.e. paying utility bills/payroll) can be handled by staff and ratified at a subsequent meeting.
DISASTER EMERGENCY DECLARATIONS

Disaster/Emergency Declarations

Should we declare a local disaster emergency?

• Municipalities were included in the Governor’s March 6th Proclamation of Disaster Emergency

• We still encourage each borough to issue its own local emergency declaration.

• Sample disaster/emergency declarations are available (PSAB Website, DCED’s FAQs webpage)
DCED Guidance

• “Due to the unique nature of the coronavirus (Covid-19), where human contact can have deadly consequences, municipalities are urged to declare a state of emergency which will legally allow you to close your facilities and temporarily stop public meetings, thus helping to limit the spread of the disease. The Emergency Services Management Code in Title 35 references a seven-day local declaration unless an elected body agrees to a different length of time. DCED recommends at least a 14-day proclamation…

What does an emergency declaration do?

• The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local emergency management plans and to authorize the furnishing of aid and assistance thereunder.

• Potential for Federal assistance on costs incurred related to emergency response.
  – See FEMA Public Emergency Assistance Fact Sheet
  – PEMA webinar scheduled
Disaster Declaration: Options to Consider

• Have the governing body (Council/Supervisors) declare a disaster emergency with an extended timeframe or until rescinded.
  – Governor’s proclamation was issued March 6th and is effective for of 90 days (June 4th) unless extended.

• Consider holding an emergency meeting to adopt the disaster emergency declaration

RIGHT TO KNOW LAW
OOR - Guidance on Right to Know Law

• Agencies to continue processing requests to greatest extent of ability to do so

• OOR has advised requesters to not submit new requests during disaster emergency unless there is an “urgent need” for records.
  – Physical Inspection of records will in most cases not be possible

• Days that offices are closed generally do not count as business days against the response deadline

• If unable to respond due to disaster emergency, consult with your solicitor about invoking Title 35 7501(d) suspension of formal rules.

LAND USE/ZONING/PERMITTING
Land Use Permitting

• General rule – if you don’t act within prescribed statutory timeline, applications are “deemed approved.”

• We recommend requesting extensions for any pending zoning hearing or development application.
  – Such extensions are authorized by law (planning code) if the applicant agrees to them.

• Current PA legislative proposals would pause the clock on pending applications due to COVID-19 emergency

Open Q and A

• We do not intend to cover employment law questions
  – A webinar last week covered these topics in depth and a recording is available for review.
  – Resources on new sick leave/expanded FMLA are also available on our website homepage under “latest news”

• No bright-line guidance and the unprecedented nature of this pandemic means we can only provide our best advice. We’re all figuring this out together.

• Our answers shouldn’t be considered legal advice
  – When in doubt, your municipal solicitor should get the last word
Thank You

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