

MEMORANDUM

TO: Clarks Summit Borough Council and Mayor Johnson
FROM: Kevin Hayes, Esquire
DATE: March 18, 2020
RE: Public Meetings during Threat of Coronavirus (COVID-19)

1. Introduction

On March 13, 2020, U.S. President Donald Trump declared a national emergency and invoked the Stafford Act. On Monday, President Trump released strict new guidelines to limit people's interactions in effort to slow the virus in the next two weeks before U.S. hospitals are overwhelmed. The guidelines included a strict recommendation that anyone with even minor symptoms stay home. The President also recommended that the public avoiding gatherings of more than ten (10) people.

On March 6, 2020, Governor Tom Wolf issued a "Proclamation of Disaster Emergency" based on the public health emergency arising from a novel coronavirus (now known as "COVID-19"). Governor Wolf has implemented numerous statewide COVID-19 mitigation efforts and emphasized the need for every Pennsylvanian to take actions that may contribute to stopping the spread and flattening the curve. On March 16th, the Wolf Administration strongly urged non-essential businesses across the state to close for at least 14 days to help mitigate the spread of COVID-19. The Governor's Office has explained that essential services may remain open but are encouraged to employ social distancing practices.

2. Governing Laws

A. Borough Code

Pursuant to Section 1006(2) of the Borough Code, Council is required to meet at least once a month. Special meetings may be called by the president of council or upon written request of at least one-third of the members of council. Members shall have at least 24 hours' notice of the special meetings. *Id.* The notice shall state whether it is for general or special purposes, and, if it is for special purposes, the notice shall contain a general statement of the nature of the business to be transacted. *Id.*

B. Pennsylvania Sunshine Act

Pursuant to Sections 704 and 710.1 of the Pennsylvania Sunshine Act, public meetings should be held at public buildings with open public participation. *See* 65 Pa. C.S. § 704 and 710.1. The Sunshine Act also requires the Borough to provide notice at least 24 hours in advance of the time of the convening of a special meeting or rescheduled meeting. *See* 65 Pa. C.S. § 709(a). Public notice is not required in the case of an emergency meeting or a conference. *Id.* Lastly, the Sunshine Act requires Borough Council to prepare and maintain written minutes of its public meetings. *See* 65 Pa. C.S. § 706.

3. Directives of Office of Open Records

Pennsylvania's Office of Open Records ("OOR") issued a written advisory on March 11, 2020 (last updated 03/18/2020 at 10:25 a.m.) in response to inquiries that the agency received regarding compliance with the Sunshine Act during the spread of COVID-19. In that advisory, the OOR provided the following:

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 permissible in most circumstances. (Some agencies may be governed by laws which add requirements beyond those included in the Sunshine Act.)

However, it is important to note that any agency taking that step must provide a reasonably accessible method for the public to participate and comment pursuant to Section 710.1 of the Sunshine Act. That method should be clearly explained to the public in advance of and during the meeting.

Further, the Office of Open Records strongly recommends that any agency holding such a meeting record the meeting and proactively make the recording available (preferably online) so that a full and complete record of the meeting is available to the public.

Further, the OOR cited 35 Pa. C.S. 7501(d) as permitting agencies to suspend compliance with certain laws and requirements when “a declaration of disaster emergency” is signed by the Governor.

4. Recommendation

A. March 26, 2020 Work Session

In light of the foregoing and the directives of President Trump and Governor Wolf, it is my recommendation that the March 26, 2020 Work Session be cancelled as there is no matter which requires immediate attention and Council has already fulfilled its obligations under the Borough Code by meeting on March 4, 2020.

B. April 1, 2020 Council Meeting

As we proceed forward, Borough Council should continue to have its regularly scheduled meetings on a monthly basis; however, members of the public will not be permitted to attend these meeting in person while the directives of President Trump and Governor Wolf remain in

effect. Instead, Council shall provide members of the public and media with the option of participating in the meeting by way of teleconference or videoconference.

I would recommend that Council utilize Zoom.com which will allow members of Council, the Mayor and the public to call into the meeting. President Carey, Borough Manager Kehoe and I can be at the Borough Building during the April 1st meeting in order to ensure that the meetings is properly recorded and that all members of Council, the Mayor and the public can hear and be heard. President Carey's presence is necessary in order for her to sign official paperwork.

The telephone number for the meeting will be circulated and posted on our agenda. Likewise, minutes shall be recorded and posted in the same manner as other Council Meetings.