

PSATS COVID-19 TOWN HALL Q&A

March 26, 2020

PLEASE NOTE THAT THESE ANSWERS DO NOT CONSTITUTE LEGAL ADVICE BY PSATS OR ITS EMPLOYEES TO YOUR TOWNSHIP AND SHOULD BE USED FOR INFORMATIONAL PURPOSES ONLY. YOU SHOULD CONSULT YOUR TOWNSHIP'S SOLICITOR FOR FORMAL LEGAL ADVICE.

THE FIRST SET OF QUESTIONS WERE SUBMITTED BEFORE THE MARCH 26, 2020 TOWN HALL; THE SECOND SET OF QUESTIONS WERE SUBMITTED DURING THE TOWN HALL; AS A RESULT, THERE MAY BE DUPLICATION AND/OR SLIGHT VARIATION IN THE QUESTIONS AND ANSWERS.

Public Meetings

1. Can we still have our township meeting on April 1, 2020?

Yes.

2. Are we still required to have a monthly meeting under the Second Class Township Code?

While there is a requirement under the Second Class Township Code to conduct monthly meetings, if the township does not have business that it needs to conduct, then PSATS believes that it would be appropriate under these emergency circumstances to cancel or postpone the meeting.

3. Can you provide clear guidance on suggested best practices in telecommunications for public meetings?

If your township board is participating remotely, they all need to be able to hear everyone on the call and vice versa. The township also needs to make a good faith effort to provide a remote option for its residents to participate.

4. If the supervisors meet via teleconference for a public meeting, then does anyone have to physically be at the township building?

No, provided that the township is providing a remote participation option to residents.

5. Will virtual meetings, when announced on both township website and Facebook page with links to join, be considered public?

Yes. The virtual participation option(s) should also be advertised in the same newspaper in which you regularly advertise your meetings.

6. Can other township boards and commissions hold teleconference or virtual meetings?

Yes.

7. Should we cancel our planning commission meetings and, if so, what do we need to do to notify the public since all meeting have been advertised already?

The same analysis would apply here as applies to township board meetings; if the planning commission does not need to take any official action, then cancel or postpone and make reasonable efforts to notify the public that you are doing so.

8. How can we hold a BOS meeting allowing for public input in a primarily Amish community? Virtual meetings are not an option.

The township could consider reaching out to leaders in the Amish community to solicit written comments in advance of the meeting so that they can be considered.

9. Can the township pass a resolution to preapprove normal operating expenses such as payroll taxes, insurance, payroll between meetings?

Yes, the township board can always delegate various non-legislative authorities to township employees to perform outside of public meetings.

10. Can we pay bills without approving at a meeting?

See answer to No 9.

11. How do we limit the number of residents that attend our meeting without violating any laws? Can we have more than 10 individuals at our public meeting?

Offer remote participation options for residents. You can rely on the Governor's orders to limit the number of in-person attendees.

12. Where it has otherwise closed the municipal office doors to the public, must a municipality open its office doors to members of the public interested in attending an in-person BOS meeting (subject to the Sunshine Act)?

See answer to No. 11.

13. Can we have a meeting with just the supervisors & secretary? If so, how do we include our residents' concerns.

See answers to Nos. 4 and 5.

14. If townships are considering a drive-in meeting, how far apart should cars be parked, if the car windows would be down?

The township should ensure that all participants are complying with social distancing requirements during any meeting of this type.

15. Can we have an executive session by telephone at this time?

Yes.

16. To inform residents is it possible to send out a letter describing the actions of meeting covered?

Yes, that would be an excellent idea to continue to keep residents informed of township actions if they are unable to remotely participate in the meeting. You can also that information through your social media platforms and website, if any. You can also provide a news release to your local newspaper so that it will not be a paid advertisement.

17. Our Auditors have completed the annual report and are scheduled to hold their final meeting on April 6th. May they reschedule?

The auditors may contact remote meetings in the same manner conducted by the township board. If the auditors cannot complete their obligations because of COVID-19-related issues, then the township should document that the audit will be completed as soon as possible after the emergency is lifted or whenever circumstances permit it to be completed.

Non-Life Sustaining Business Closure/Stay at Home Orders

18. Do municipalities have some flexibility in doing work that the Governor has declared as non-essential?

Municipalities are exempt from the life-sustaining business order. Therefore, it is a decision of the township as to which of its normal operations it wishes to continue, provided that they continue to abide by social distancing requirements.

19. How does a county stay at home order differ from the non-essential order for the entire state? Are townships still exempt?

There are different requirements between the general statewide mitigation orders and the “stay at home” orders. For more information, go to the Department of Health’s COVID-19 page at <https://www.pa.gov/guides/responding-to-covid-19/>. Townships remain exempt from the stay-at-home orders. Having said that, townships should take all appropriate precautions, practice required social distancing, and permit employees to work from home where possible.

20.If our county goes under a stay in place order by the Governor how do we enforce it?

Enforcement of the stay-at-home orders will be handled by the Pennsylvania State Police and representatives of several state agencies. Local law enforcement may assist in those efforts.

21.What are considered essential functions within the township?

That is a decision left to the township.

22.How a builder can be granted an exemption from the Governor's Executive Orders for new home construction & violate the SAH order discussed?

That is a question best directed to DCED. A list of frequently asked questions about life-sustaining businesses can be accessed through this link:

<https://dced.pa.gov/wp-content/uploads/2020/03/452553495-Life-Sustaining-Business-FAQs.pdf>

Public Works

23.Will a small rural township still be allowed to work on the roads, etc. as long as it's not in a county with a Stay at Home Order? Should township employees perform road work as usual? What about larger repair tasks?

See answer to No. 18.

24.Are you seeing any trends with townships furloughing public works and other employees during this timeframe?

Townships are using several different options, from continuing to work, working as needed, working in shifts and layoffs.

25.Does this effect municipal sewer systems in any way?

We have not received anything from PEMA or DEP. However, guidance issued by the Occupational Safety and Health Administration (OSHA) indicates no additional protections are needed for wastewater treatment operators beyond routine hygienic practices.

Personnel Management

26. Please define the different job duties as non-essential. We have office staff and a road crew, should they all be off or what?

See answer to No. 18. There is not a list of essential/non-essential employees within municipalities in the Governor's orders.

27. What are municipalities doing with their employees for payroll?

Some are continuing to pay all employees, regardless of whether they are work, and others are paying only those who are working.

28. Do you know the necessary steps to collect from the Families First Coronavirus Relief Act (FFCRA)?

Eligible employees are to be paid by the township when taking leave authorized by the FFCRA.

29. Are municipalities eligible for reimbursement through tax credits for sick leave paid under the Emergency Paid Sick Leave Act (Division E of the Families First Coronavirus Response Act)?

No.

30. When is an employee eligible for paid sick leave under the Emergency Paid Sick Leave Act (Division E of the Families First Coronavirus Response Act) – section 5108 states the effective date of the Act is “not later than 15 days after the date of enactment”?

The effective date of the FFCRA is April 1, 2020.

31. Does FMLA now apply to every Township; if so, must the employee first use accrued sick/vacation time?

The provisions of the FFCRA apply to every township (certain employers may seek exemptions).

32. How will the FFCRA Act affect a small township whose employees are all part time with no set work schedule – we all work as needed? Mainly, if we're required to pay sick and/or family medical leave how will we calculate this pay and will there be any federal or state grant money to help pay for this?

The U.S. Department of Labor has guidance on how to calculate FFCRA leave for part-time employees. To access the Department of Labor's FFCRA's page, click on the attached link: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

Permits and Inspections

33. How should townships handle things such as Sewer and Watershed permits and inspections going forward should this linger longer?

That is left up to the discretion of the township.

34. Update about requiring building inspections and in general guidelines of coordinating UCC with the emergency declaration.

See answer to No. 33.

35. Are the legal time fences for conditional use, planning submissions, etc. still required to be met?

At this time, PSATS understands that they are to required to be met. Many townships are working with applicants to get extensions or are otherwise conducting virtual meetings/hearings.

36. We need clarity on legislative relief on sunshine law requirements and MPC timeline waivers, to name a few.

The House has passed a bill that is awaiting action in the Senate, but no vote has been scheduled. It is PSATS' understanding that there may not be immediate action regarding the tolling of permit deadlines.

Emergency Declarations

37. Is it recommended for townships to declare a state of emergency and/or disaster concerning COVID-19?

Yes.

38. What are the implications/benefits of declaring an emergency in your township?

Emergency declarations allow townships to engage in emergency-related purchasing without complying with the bid requirements, engage the EOP plans, and become eligible to receive potential disaster-related funding, among other things.

39. Regarding emergency declarations, does that allow townships to pay operating expenses without formal meeting approval or only disaster related expenses?

The township should continue to take official action on matters such as bill payment at meetings, even if those meetings are conducted remotely, unless they decide at a meeting to delegate authority to pay bills to township employees.

40. Do townships need to advertise that they have filed a declaration for disaster emergency?

It does not need to advertise that it has done so but should take action at a public meeting or ratify that fact at an upcoming meeting.

Right-to-Know Law

41. What is the proper protocol for right-to-know requests at this time, since many officers are working remotely?

The Office of Open Records is not currently addressing RTKL appeals. If the township receives a RTKL request, an initial option would be to reach out to the requester and ask if it is truly information that is needed or if the township can delay providing a response. In addition, the township can invoke the 30-day extension as necessary and appropriate.

Positive COVID-19 Test Results

42. Why can't municipalities be notified when there is a positive test result for someone residing within their borders?

That is a question that is best directed to the Department of Health.

43. Should municipal employees be informed if a local resident tests positive for the virus if they are presently working?

See answer to No. 42.

QUESTIONS SUBMITTED DURING TOWN HALL

1. Is the PSATS Annual Conference cancelled?

The PSATS Annual Conference has been postponed. PSATS is currently investigating options for a conference to be held later in 2020.

2. Can we bring invoices home so that we can work remotely?

There is nothing wrong with township employees bringing files home with them. The township should make clear that employees are to maintain the confidentiality of files just as they would if they were in the township office.

3. Do you have to declare an emergency to be eligible for stabilization fund reimbursement?

Townships are encouraged to adopt declarations of emergency so that they can potentially access disaster-relief funding that may later be made available through PEMA.

4. Our school resource officer has applied for unemployment already. Would this qualify for the Families First Act? Can an employee receive both?

We are not aware of a situation in which an employee can obtain unemployment compensation benefits and the paid leave provided through the Families First Act at the same time. If they are still employed, they cannot receive unemployment compensation. If they are laid off, they are not eligible for employee leave benefits.

5. We've received guidance that recorded meetings are not ADA compliant unless they have subtitles. Does this remain a concern if it is in good faith to make available to residents?

In order to comply with ADA requirements, the township should include in its meeting advertisements that anyone who may need an accommodation can contact the township office to discuss. If there are regular attendees at township meetings who may benefit from such accommodations, the township could also reach out to them directly in order to find a solution. Under the guidance that PSATS has received, municipalities should be making a good faith effort to provide for public participation.

6. If an employee is not being paid, is that employee considered as being laid off? Do they have to be removed from health insurance?

We would need to have additional facts in order to answer this question. Having said that, if an employee has been laid off, they would not be entitled to continue to receive employee benefits.

7. Can we obtain a report from DOH on number of cases in our township? Our county has no health department and doesn't provide a break down per township.

You should reach out to DOH regarding that request. At this time, we are not aware of whether DOH is providing that information on a municipality by municipality basis.

8. For RTKL requests, is the 5-day response deadline calculated based off of when the township office is open or when the ORO is working?

The RTKL's 5-day response deadline applies to the days that the township office is open for business, not the days that the open records officer works, which may be less.

9. Does the general exemption for municipal governments on the Governor's orders also extend to contractors doing work for us?

That will depend on the type of work that the contractors are performing. For example, zoning officers and code enforcement officers may continue to perform services. You should contact DCED for specific questions (or PSATS can do so as well if you provide additional details).

10. Will we be eligible for reimbursement for wages and benefits through the stimulus bill if we continue to pay our staff.

At this time, PSATS does not have information as to how federal stimulus resources will be allocated at the state and local level.

11. What restrictions should we put in place for the use of township parks?

Many townships are allowing continued use of their parks for walking, biking, etc., but are prohibiting access to buildings, restrooms and playgrounds. State parks have closed access to facilities through April 30.

12. Would these same meeting requirements apply to planning commissions? or is the MPC different?

Requirements for meetings would apply equally to boards, planning commissions, ZHBs, and other township boards and commissions.

13. When advertising a virtual meeting, can we state in the advertisement that the meeting login information can be found on the website or Facebook page?

Yes.

14. Can we announce that the public cannot attend in person? That they must call in, if we are having an actual meeting?

Given the guidance that PSATS has received from numerous sources, including state Senators, the Office of Open Records, and the District Attorneys Association, townships can prohibit the public from attending their meetings in-person provided that they provide in good faith a remote participation option.

15. If we use Zoom or Facebook Live do we have to also provide for call-in for those that do not have internet?

That would be an excellent way to accommodate as many of your residents as possible to participate in your meeting.

16. Zoom, GoTo, etc. all assign a long-distance number that our residents would need to call in order to listen to our meeting. Is it acceptable to require them to call a long distance number that would cost them dollars?

PSATS' recommendation is that your township use remote participation methods that will reach as many residents as possible.

17. Work such as ditching being done. That keeps employees inside of vehicles and excavator. Any issues with continuing that type of work?

The township is permitted to make the decision to continue various township operations, including maintenance. The township must ensure that social distancing is taking place and should consider ways to reduce the potential spread of COVID-19 such as by having employees assigned to specific equipment.

18.If we have a physical meeting are we able to say only the number of public until we reach 10-person total?

Yes, provided that the township also offers remote participation options to those who cannot attend.

19.Do we have to NOT pay the first 10 days for the Families First or is that a choice...?

If the employees are accessing the paid sick leave under the Families First Act, they are entitled to two weeks of paid leave. If they are accessing the extended family and medical leave (to care for a child whose school or childcare facility is closed), they are entitled to 10 weeks at 2/3 their normal rate of pay. The first two weeks before that 10 weeks of leave kicks in may be unpaid, but employees can use the paid sick leave or other leave available to them to bridge that gap. In addition, townships are permitted to provide benefits that go beyond what is required under state/federal law.

20. Regarding adopting an emergency declaration, what is the best time frame to set on something like this?

Many townships have adopted their emergency declarations so that they track the dates set in the Commonwealth's declarations. PSATS recommends a time period longer than 7 days to avoid multiple renewals, which takes time and costs. For example, a 30-day declaration could allow your township to make renewals, as needed, at your regular monthly meetings.

21.I have posted on our website, Items to be voted on during our meeting. There are of course Financials and just updates, are they required to be listed also?

If the township needs to conduct official action by the board, then that official action should take place at a meeting that provides public participation. If there are township-related tasks that can be delegated by the board to township employees, that may be something that the township wishes to do to limit the amount of business that needs to be conducted at a meeting.

22. Would we need permission to call our employees working at home?

Employers may require that their employees provide them with up-to-date contact information (that is excellent practice, especially given the current situation). However, townships should be careful not to share such information beyond those who have a need to access it.

23. Attorneys are not allowed in their office and our township Solicitor did not give us any other way to contact him. What does our township do?

Your township solicitor should have provided you with a means through which to contact him or her. If not, then you are always permitted to seek out new/additional solicitors.

24. How do we pay bills?

If your township ordinarily pays bills at township meetings, then the township should conduct a meeting to do so (albeit remotely). At that meeting, the township may also delegate authority to pay bills to a township employee.

25. Can we limit the meeting to only bill paying for this month?

Yes. There should still be a good faith effort to provide for public participation.

26. Can we still meet with contractors to discuss bids even though they are not allowed to work?

Yes, however, this would be something that you should be doing via remote means.

27. With the Family First Act, should they complete FMLA paperwork to receive the benefit?

It is PSATS' understanding that employees would need to complete FMLA paperwork. We will provide additional information as we receive it.

28. Are the stimulus funds available for general wages, i.e., police services, managers wages, secretary, roads etc.... or does it only come into play if the service is directly related to COVID -19 services

PSATS is awaiting guidance on how stimulus funds will be allocated.

29. We have a water authority and may need to go inside a residence - is there PPE available for us?

You should check with your county EMA or PEMA regional office for information regarding available resources.

30. How long does DCED take to decide regarding an essential business. We are having large gatherings at AirBnB's.

DCED has received over 25,000 exemption requests. PSATS is not aware of the specific timetables in which DCED is acting on requests. PSATS has made outreach to DCED regarding whether it considers short-term rentals to be "boarding houses," which are permitted under the life-sustaining business list.

31. Can the public comment by email before the meeting or during the meeting?

That is an option that many townships are employing to provide a public participation option.

32. Can you clarify if employers with under 50 employees are exempt from Family First Act?

There are limited exceptions potentially available to employers with under 50 employees.

33. Here is our policy for permits. Are we ok doing this? As Residential and Non-residential Building Construction is one of the businesses/activities the Governor's Order prohibits as not Life Sustaining, and as such much cease, the Township will not be scheduling inspections for these type of permits at this time. (Since work must cease, there is no need for an inspection at this time.) This in no way alleviates or waives the requirement for inspections. This includes inspections on active permits for new structures, additions, decks, septic systems and wells for new structures, etc. Inspections will resume once the Order is lifted.

DCED has provided guidance to PSATS regarding permits; it is a decision of the township as to whether it plans to accept permits at this time.

34. How do we handle virtual executive sessions?

Townships are permitted to conduct executive sessions by telephone or internet-based platforms.

35. How do we make the declaration for longer than 7 days? Just in the motion?

Yes, you could include that in the motion, or you could include that in the text of the declaration. You should double check with your county EMA and your solicitor regarding whether to extend the timeframe beyond 7 days.

36. Our audit is not done, and our CPA said that they aren't able to come in and finish it because of health and safety. What should we do?

If that is the case, your township should document the reasons why the audit will not be completed on time (public safety, etc.) and then complete the audit as soon as practical and safe.

37.If we advertised for road bids, can we still go through with reviewing those bids and doing the bid opening?

Yes, the township could do so. However, the township should also inquire as to whether it will be possible to obtain all necessary materials on time.

38.Can the Supervisors get their monthly check if we don't have a meeting?

Yes.

39.What are the different duties allowed if there is a stay at home order?

Municipalities are exempted from the Governor's stay-at-home orders. Therefore, townships need to decide which of their normal functions should continue to be provided, adjusted in some manner, or put off during the pendency of the orders.

40.RTK question. Office open to the public or only to staff.
Business day?

If the township is open for business, then that is a business day for purposes of the RTKL.

41.We don't have the ability to use the phone or Skype etc. ability.

There are lots of different options for providing remote meeting access. For example, there are conference call platforms that allow you to circulate a call-in number to all residents. If residents and board members have a landline or cell phone, you would be good to go.

42. What should we do for our tax collector as everyone has to either mail or go to her to pay? if she wants that changed should it be voted on or brought up at the township meeting?

Your tax collector could let residents know that he or she will only be accepting drop-off payments and/or to contact them to set up specific times to discuss issues to be addressed.

43. So, if a part time employee, has to self-quarantine.....they should be or can be paid for those two weeks?

The Department of Labor has a Q&A available on its website (dol.gov) for how to calculate hours for part-time employees who are eligible to receive sick leave or extended family and medical leave under the FFCRA.

44. Should municipalities be assessing late fees for Sewer or Water bills that are paid late during this time if the building is closed to the public but a drop off option is made available to residents?

The township would be permitted to waive late fees for sewer and water bills.

45. Do I have to advertise the Skype or Zoom option?

Yes, if you are using that remote participation option.

46. If an employee does not feel safe coming to work can we lay them off?

The township may wish to consider having a conversation with that employee as to whether there are options available to work from home. Before taking action to lay off any employees, the township should also consult with its solicitor and/or labor counsel to make sure that all appropriate action has been taken and that such action has been properly communicated.

47.If an employee asks to be laid off because they do not feel safe coming to work, can we lay them off so they can draw unemployment? Again, this is not punitive, but at their request.

If a township decides to lay off employees during this time, the employees would be immediately eligible to apply for unemployment compensation benefits.

48.Are we able to get a list of the businesses that have a waiver to remain open in our townships?

You would need to contact DCED for that information.

49.Can zoning officer review plans and issue permits?

If the township wishes for its zoning officer to review plans and issue permits, it may do so.

50.Am I correct to think that the Families First Relief Act is a requirement if one of those situations is in place and all Townships have to comply with paying the employee ?

Correct.

51.Even if you provide the meeting remotely what do we do for those who don't have internet? Do we need to still provide the ability for public comment at the township building?

The township needs to make a good faith effort to provide for public participation. That does not mean that every township resident needs to be able to access the options provided by the township.

52.If our township building is closed do I have to proceed the RTKL request at all until the Township reopens?

The RTKL response deadline only includes the dates on which the township is open for business.

53. Can an emergency declaration be stated to say "until rescinded"?

It would be a best practice to include a specific date for the end of the declaration and then renew as necessary; that way the township does not forget to rescind the declaration.

54. Are public meetings limited to ten people per the governor's mandate?

The Governor's orders have requirements regarding gatherings of groups of people; given that, townships should consider implementing remote meetings.

55. Should we model declaration off the template or model to our ordinance or are we free to adopt how we see fit; what are the rules for a declaration and what can be included or excluded?

Implementing a model provided by your county EMA would be an efficient way to conduct business. Having said that, if the township wants to draft its own declaration it is permitted to do so.

56. We currently require three signatures on all checks issued by township. Can we waive this during this emergency?

The township could change its policies to reduce the number of signatures.

57. We were forwarded PEMA Directive D2008-1 from our county that outlines what restrictions would apply to local governments

on personnel travel should this escalate to a point where the governor would shut down the road system except to emergency personnel. Is there any talk that such measure could be implemented? Is there any planning a township should do in case it does escalate to that point?

PSATS is not aware of any plans by the Commonwealth to shut down the road system except to emergency personnel.

58.Does the FFCRA cover part time employees?

Yes.

59.What if you don't know how to use Skype, Zoom or Facebook?

Township officials will need to educate themselves on how to use those platforms (or find a resident who can assist).

60.We were told by county, just sign the Emergency Declaration--no meeting....thoughts?

Considering the emergency, municipalities can adopt an emergency declaration in an emergency meeting and then should ratify that actual at the next regularly scheduled or special meeting.

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