Virtual Public Meetings: Legal Issues

Part 1 of a 2-Part Series

Cory Kegerise, Chair, National Alliance of Preservation Commissions & Community Preservation Coordinator, Pennsylvania SHPO

Sara C. Bronin, Advisor, National Trust for Historic Preservation & Law Professor

Anne Nelson, Associate General Counsel, National Trust for Historic Preservation
Cory Kegerise
Board Chair, National Alliance of Preservation Commissions
Community Preservation Coordinator, Pennsylvania SHPO
Agenda

1. Introduction
2. Legal Issues
3. Case Studies: Connecticut & Pennsylvania
4. Advocating for Flexibility
5. Q&A
JOIN US:

Virtual Public Meetings
Part 2: Lessons from the Field

Thursday, June 11, 2020
2:00 – 3:00 PM EST

Have an experience you would like to share?
Email Cory Kegerise at chair@napcommissions.org
The Jetsons (1962).  

Swedish Prime Minister Tage Erlander tries a videophone and speaks with Lennart Hyland (1969). via Wikimedia Commons
Pandemic Forces Local Governments’ Hands into Era of Virtual Public Meetings

Local governments have a legal obligation to keep conducting business and engaging the public during the global pandemic, but there can often be more to virtual public meetings than meets the eye.

JED PRESSGROVE, GOVERNMENT TECHNOLOGY | APRIL 8, 2020 | ANALYSIS

Local government bodies switch to virtual meetings during COVID-19 pandemic, raising questions about public comment and essential business

BY ALEXANDRA KUKULKA
POST-TRIBUNE | APR 15, 2020 | 7:53 AM

Coronavirus
NOTICE OF VIRTUAL PUBLIC MEETING

APRIL 29, 2020 SPECIAL VILLAGE COUNCIL MEETING

The Village Council will conduct a virtual meeting on Wednesday, April 29, 2020, at 2:00 p.m.

The meeting agenda is available at www.pinecrest-fl.gov/agendas

Live streaming video is available at www.pinecrest-fl.gov/live

Public comments on any agenda item may be submitted to clerk@pinecrest-fl.gov

This virtual meeting is held pursuant to Florida Governor Ron DeSantis’ Executive Order 20-49, the emergency order suspends any Florida statute that requires a quorum to be present in person or requires a local government body to meet at a specific public place. The emergency order also provides that local government bodies may utilize communications media technology, such as telephonic and video conferencing, to conduct meetings.

SAFER AT HOME

https://www.pinecrest-fl.gov/home/components/calendar/events?676/653

CITY COUNCIL MEETINGS ARE GOING VIRTUAL

Next Meeting:
April 14, 2020 at 6:00 p.m.*

Visit youtube.com/whbg20

Send Public Comment to:
publiccomment@harrisburgpa.gov

*Please Note: Caucus is at 5:45 p.m., followed immediately by the Legislative Session at 6:00 p.m.

For details, visit harrisburgpa.gov

https://patch.com/illinois/joliet/northpoint-virtual-meeting-joliet-urged-decline-project

QUESTION:

• How has your local historic review commission dealt with COVID-19? (select all that apply)
  – Virtual meetings
  – Canceling meetings
  – Postponing controversial applications
  – Allowing projects to be automatically approved/denied
  – No change—we’re still functioning normally!
Transparency in the time of coronavirus: Tips for virtual government meetings

Posted on March 20, 2020 by Kathy


For Some, Virtual Government Meetings Limit Accessibility

Like many government meetings, Florida’s Miami-Dade region has gone online for health and safety reasons. The only problem with virtual meetings is that those without access to technology cannot participate.

Public meetings notice: Meetings of the Historical Commission and its committees have moved online. The next meeting of the Historical Commission’s Committee on Historic Designation will be held on Wednesday, May 20, at 9:30 a.m. on the Webex platform. To learn how to participate, view the meeting agenda (PDF) and the FAQs (PDF). The Historical Commission’s Architectural Committee meeting of Tuesday, May 26, 2020 will also be held online. Information on how to participate in that meeting will be provided online one week in advance of the meeting date.


https://allevents.in/rome/april-historic-preservation-commission-meeting-hpc/200019520508255
Sara Bronin
National Trust Advisor and Law Professor
Anne Nelson
Associate General Counsel, National Trust for Historic Preservation
State & Local Laws

• All 50 states have issued executive orders and/or taken legislative action related to COVID-19

• Local governments have seen mayoral executive orders or adopted temporary/emergency ordinances

• What have they done?
  – Designated government meetings as "essential"
  – Suspended or relaxed open meeting ("sunshine") laws
  – Changed requirements for conducting virtual meetings
  – Extended or tolled deadlines
State & Local Laws

• Each state and local government will have distinct legal rules
• Today, we're providing a broad overview, but not delving too deeply into each jurisdiction
Top 3 Legal Issues

1. Open Meeting Laws
2. Due Process
3. Deadlines for Applications & Decisions
QUESTION:

• Have you had any legal challenges or issues to date related to virtual meetings? (select all that apply)
  – Yes: Hosting virtual meetings in accordance with state/local emergency laws
  – Yes: Public notices (before or after meetings)
  – Yes: Appeals
  – Yes: Timeline/deadline issues
  – Issues? No, we don’t have any issues!
Open Meeting Laws

• Government **meetings** must be open to the public
  – People must be able to attend *in real time*

• Government **actions** must be conducted at open, public meetings
  – Includes votes, decisions
  – Excludes executive sessions (e.g., lawsuit settlement talks)

• Government **records** must be well-maintained
  – Video or audio recordings, or written transcripts
  – Maintain meeting minutes and records of decisions
Open Meeting Laws During COVID-19

• Government **meetings** can occur by conference call or web streaming

• Government **actions** must still be conducted at open, public meetings
  – But voting or quorum requirements may be reduced
  – Notice requirements (e.g., in newspapers) may be eliminated

• Government **records** may be kept or recorded in new formats
  – May not have to be filed at the Town Clerk's physical office or be kept in hard copy in an administrator's office
Due Process

• 5\textsuperscript{th} & 14\textsuperscript{th} Amendments to the U.S. Constitution
  – “No person shall…be deprived of life, liberty, or property without due process of law.”
  – “[N]or shall any State deprive any person of life, liberty, or property without due process of law.”
Due Process

• Procedural due process requires:
  – Adequate notice of something affecting your rights by: mail, newspaper publication, or sign posting
  – A chance to be heard, e.g., at a public hearing
  – Uniform procedures, fairly applied

• When does this apply to historic properties?
  – Designations
  – Certificates of appropriateness
  – Zoning reviews
Due Process During COVID19

• **Notice**
  – Newspaper, mailing, and/or sign notice may be suspended
  – Website notice - is it sufficient?

• **A Chance to be Heard**
  – Applicants may have trouble with signals, body language
  – Third parties may find it easier to communicate by phone/email/streaming, than in person – but some may find it harder

• **Uniform Procedures**
  – In some cases, review standards or quorum requirements may be changed
Deadlines for Applications & Decisions

• Local historic preservation & zoning ordinances may set timeframes for:
  – Reviewing applications
  – Automatic approvals/denials of applications

• Demolition delay provisions require applicants wishing to demolish a historic property to wait some # of days
Deadlines During COVID19

• Timeframes in various states have been:
  – Tolled (paused)
  – Extended
  – No action (!)

• Is this a fairness issue, to applicants and third parties?
Case Study: Connecticut

Sara C. Bronin
Governor's Orders 7B & 7I

• "Covered Laws" to the contrary are suspended and rewritten

• Covered Laws include:
  – State statues
  – Special Acts
  – Local charters & ordinances
  – Local resolutions & regulations
What Changed:

- Open Meeting Laws
- Due Process - Notice
- Deadlines
- Petitions
Open Meeting Laws

• Public meetings OK by phone/video IF:
  – Public can listen in
  – Meeting is recorded/transcribed
  – Recording/transcription is posted online within 7 days
  – Recording/transcription is available within a “reasonable” time in agency office
Open Meeting Laws

• Public meetings OK by phone/video IF:
  – Meeting materials (e.g., agendas, applications) are uploaded 24 hours prior
  – Exhibits from the public “to the extent feasible” are uploaded 24 hours prior
  – Speakers state their names/titles
1. **Suspension of In-Person Open Meeting Requirements.** Sections 1-206, 1-225, and 1-226 of the Connecticut General Statutes, and any open meeting provision of any municipal charter, ordinance, or regulation that conflicts with this order, are suspended to the extent necessary to permit any public agency to meet and take such actions authorized by the law without permitting or requiring in-person, public access to such meetings, and to hold such meetings or proceedings remotely by conference call, videoconference or other technology, provided that: 1) the public has the ability to view or listen to each meeting or proceeding in real time, by telephone, video, or other technology; 2) any such meeting or proceeding is recorded or transcribed, and such recording or transcript shall be posted on the agency’s website within seven (7) days of the meeting or proceeding, and made available within a reasonable time in the agency’s office; 3) the required notice and agenda for each meeting or proceeding is posted on the agency’s website and shall include information about how the meeting will be conducted and how the public can access it; 4) any materials relevant to matters on the agenda, including but not limited to materials related to specific applications, if applicable, shall be submitted to the agency a minimum of twenty four (24) hours prior and posted to the agency’s website for public inspection prior to, during, and after the meeting, and any exhibits to be submitted by members of the public shall, to the extent feasible, also be submitted to the agency a minimum of twenty-four (24) hours prior to the meeting and posted to the agency’s website for public inspection prior to, during, and after the meeting; and 5) all speakers taking part in any such meeting or proceeding shall clearly state their name and title, if applicable, before speaking on each occasion that they speak.
If We Didn’t Act:

Preservation Leadership Forum

Miami governments grapple with coronavirus by canceling or closing public meetings

JOEY FLECHAS, MARTIN VASOLO, AND AARON LEIBOWITZ

Zoning Board of Appeals

Cook County's Resources and Response to Coronavirus (COVID-19)

April Public Hearing Cancelled

Coronavirus in NY: NYC council clears out City Hall, suspends hearings and meetings

By Laura Italiano and Bernadette Hogan

March 15, 2020 | 2:53am | Updated
Notices:

• Website notice is OK in lieu of all notice requirements by:
  – Newspaper
  – Clerk office filing
  – Physical sign
Notices:

• Email is OK in lieu of all direct/personal notice to:
  – People
  – Agencies
  – Municipal clerks
  – Municipality
  – Utility/water company

• … if an email is “known or reasonably available”
Notices:

- If an email is not “known or reasonably available”:
  - Post a physical, weatherproof, 2’x3’ sign (with certain info)
  OR
  - Rely on regular mail to a list provided by a municipality
c. Any Covered Law requiring a municipality or agency to publish any notice or notices in a newspaper of general or substantial circulation is suspended and modified to allow a single notice to be published electronically on a municipality’s or agency’s website, provided the earlier deadline required for posting notice by the Covered Law is maintained for the electronic posting, and such posting shall remain visible on the municipality’s or agency’s website until completion of the action, meeting, or proceeding for which such notice is provided, and for any notice of decision, for the duration of the applicable appeal period provided by the Covered Laws.

d. Any Covered Law requiring any notice to be filed in the office of any municipal clerk, including any town, city, borough, or district clerk, is suspended and modified to allow said notice to be posted electronically on a municipality’s website, provided the deadline required for posting remains unchanged, and such posting shall remain visible on the municipality’s or agency’s website until the completion of the action, meeting, or proceeding for which such notice is provided, and for any notice of decision, for the duration of the applicable appeal period provided by the Covered Laws.

e. Any Covered Law requiring a physical sign to be posted in relation to any zoning, inland wetlands, planning, or historic district petition, application or proposal, may be satisfied by the electronic posting on a municipality’s website described in paragraph (c) above.
f. Any Covered Law requiring direct or personal notice by mail from a municipality, agency or applicant to any other person, agency, municipal clerk (including any town, city, borough, or district clerk), municipality, utility company or water company regarding the filing or pendency of any petition, application, or other proposal is suspended and modified to allow said notice requirement to be satisfied by electronic mail notification, if electronic mailing addresses are known or reasonably available for the party to be noticed, provided the same deadline for publication of the electronic notice is met; provided that if electronic mailing addresses are not known or reasonably available, said notice requirement is satisfied by: (i) the posting of a physical, weatherproof sign of at least two feet by three feet in area, in a prominent location on the parcel of land which is the subject of any petition, application, or proposal, specifying the existence of such petition, application, or proposal, and information regarding the date, time, and location of any hearings (including remote access details) related thereto, provided that such sign shall be posted for the duration of the period for which notice is otherwise required by the Covered Laws; or (ii) the mailing of letters (via regular U.S. mail) to addressees provided by a municipality or agency, or agent thereof, where the noticing party has relied in good faith on the accuracy and completion of said list of addressees.
Deadlines for Applications & Reviews

• Extension by 90 days for:
  – Starting a public hearing
  – Making a decision
  – Submitting something to a State agency (by a municipality)
  – Demolition delays
Deadlines for Applications & Reviews

• Extensions can be added to existing extensions
  – e.g., site plan reviews can add 90 days to the existing 65-day extension
Deadlines for Applications & Reviews

• Extensions can be allocated among multiple deadlines – *at the option of the applicant or commission*
  – e.g., applicant can add 30 days to a public hearing start date, and commission can add 30 days to its required decision-making time
a. Any time deadlines contained in the Covered Laws that may pass or expire during the public health and civil preparedness emergency declared by me on March 10, 2020 ("state of emergency") are extended by an additional 90 days for any and all of the following circumstances: the commencement or completion of any public hearing; the rendering of any decision required to be made within a particular period; and the submission or reporting by any municipality to any agency or quasi-public agency of the State; provided, however, that such preceding 90-day extension shall not apply to any time extensions that are already expressly allowed by the Covered Laws, meaning that, for example, a decision for which the statute already allows up to a total of 65 days of extension (such as site plan decisions) may be further extended by no more than an additional 90 days, for a total of 155 extension days (in this example); and further provided that each individual petition, application, or other proposal, or adoption or amendment of any municipal plan, regulations, or ordinance shall only obtain one 90-day extension period in total, which may be allocated, in part, by an applicant or municipality or agency, for each deadline period, and not multiple 90-day extensions for each time deadline related thereto.

b. If the 90-day demolition delay required by Section 7-147j would commence or expire during the state of emergency, such period of delay shall be extended for 90 days.
If We Didn’t Act:

Automatic approvals!

Automatic denials!
Petitions:

• Email signing is OK
• Email delivery is OK
• Timelines are the same
g. Any Covered Law prescribing the procedure for any petition, including petition of a decision, to an agency or legislative body, is suspended and modified to allow such petition to be signed electronically (including by pdf or other imaging technology or compilation of emails or other electronic communication) and to allow applicable notice requirements to be fully satisfied by electronic mail notice of such petition on the designated entity. The time period to commence and submit said petition shall remain unchanged.
If We Didn’t Act:

Gubernatorial candidates press Utah governor to change election rules amid coronavirus pandemic

Coronavirus sparks bill letting Mass. communities postpone certain special elections, but signature collection deadline remains unchanged

Updated Mar 23, 2020; Posted Mar 23, 2020

From left, House Speaker Robert DeLeo, Gov. Charlie Baker and Senate President Karen Spilka meet on Monday in the Senate Reading Room next to the Senate chamber.
The People’s Business Continues.
The People’s Business Continues.
Will the Laws Ever Be the Same?

No more snow cancellations?
Goodbye to newspaper notice?
Wanton time extensions?
Email service for appeals?
Case Study: Pennsylvania

Cory Kegerise
Act 15 of 2020 (Pennsylvania)

• Signed by Gov. Wolf on April 20, 2020
• Addresses a number of meeting and deadline related issues:
  – Public meetings
  – Development and land use applications
  – Tax deadlines
  – Notarization
What Changed:

• Open Meeting Laws
• Due Process - Notice
• Deadlines
Open Meeting Laws

• Meetings of governing body, boards, and commissions OK by "authorized telecommunication device" if:
  – Quorum can be established
  – Notice is given on government website, in newspaper, or both
  – To extent possible, public participation is allowed through telecommunications or written comments
Notice

• Non-COVID-19 related business requires at least 5 days advance notice
  – application, plat, plan, submission, appeal or curative amendment
Deadlines for Applications & Reviews

• All development related applications are tolled
  – Applies to any application received between March 6, 2020 (Governor's emergency declaration) and May 20, 2020
  – Tolling extends for 30 days after enactment of legislation (May 20, 2020)
  – Applicant must be notified and allowed opportunity to request hearing via "telecommunications device"
  – Government has discretion to proceed with request
  – All parties waive challenges under Sunshine Act
Advocating for Flexibility

Sara Bronin
**QUESTION:**

- What area do you wish policymakers in your state/town would address? (select all that apply)
  - Meetings
  - Notices
  - Deadlines
  - Appeals
  - None—they are doing a great job!
Suggestions

• Consult with three entities:
  – State Historic Preservation Office
  – Statewide Bar Association – Land Use Section
  – Statewide Planners' Association

• Publicize applications that have been automatically denied, or buildings that have been demolished

• Focus on executives: mayors and governors

• Point to Connecticut, "Land of Steady Habits"
Questions & Answers

Sara Bronin – sara.bronin@gmail.com
Cory Kegerise – chair@napcommissions.org
Anne Nelson – anelson@savingplaces.org
Keep Talking

• **Forum Connect** is Forum’s online community

• FREE and open to everyone

• Keep Learning

• Upcoming Webinars:

Virtual Preservation Month: A Conversation with Phylicia Rashad
May 22, 2020 1:30 PM EDT
SavingPlaces.org/preservationmonth

Increasing Congressional Support for Preservation During the Pandemic
May 28, 2020 3:00-4:00pm EDT

Virtual Public Meetings Part 2: Lessons from the Field
June 11, 2020 2:00-3:00 EDT
Register at https://savingplaces.org/2z1bxLb
Thank you

• Jim Lindberg
  – Senior Policy Director, National Trust for Historic Preservation

• Stephanie Paul
  – Executive Director, National Alliance of Preservation Commissions

• Rhonda Sincavage
  – Director of Publications and Programs, National Trust for Historic Preservation
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