

ORDINANCE NO.: 2020-08
INTRODUCED BY: Mayor Bodnar

**AN EMERGENCY ORDINANCE REGARDING THE HOLDING OF
PUBLIC MEETINGS AND TO PROVIDE THE MAYOR WITH
EMERGENCY SPENDING AUTHORITY DURING THE
COVID-19 PANDEMIC**

WHEREAS, the Ohio Department of Health has declared that there is community spread of the coronavirus, known as COVID-19, which is a respiratory disease marked by fever, cough and difficulty breathing; and

WHEREAS, on March 9, 2020, Governor Mike DeWine declared an emergency in the State of Ohio due to the spread of COVID-19 in Ohio, followed by a declaration by the World Health Organization (WHO) that the COVID-19 crisis is now a worldwide pandemic; and

WHEREAS, on March 12, 2020, Dr. Amy Acton, Director of the Ohio Department of Health (ODH) issued an order targeted at preventing the spread of COVID-19 by refraining from mass gatherings and urging Ohioans to avoid unnecessary contact with one another; and

WHEREAS, on March 13, 2020, President Donald J. Trump declared the COVID-19 pandemic a national emergency; and

WHEREAS, on March 13, 2020, Ohio Attorney General Dave Yost issued an opinion regarding the applicability of Ohio's Open Meetings Act (OMA) during this time of declared emergency, holding that "where the Governor has declared a state of emergency and the Director of the Ohio Department of Health is limiting gatherings so as to prevent the spread of COVID-19, ... it is reasonable to read the OMA's 'in person' requirement as permitting a member of a public body to appear at a public meeting via teleconference." A copy of OAG Yost's opinion letter is attached hereto as Exhibit A; and

WHEREAS, OAG Yost's March 13, 2020 opinion letter also provides that, given this declared emergency, the requirement for open public meetings can be complied with through live-streaming a meeting through the internet or on telephone, ensuring that the public is able to hear the discussion and deliberations of all members, even those present via telephonic means, and following all other requirements of the OMA and the Ohio Revised Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

Section 1. Council has determined that it is in the best interests of the Village of Mayfield and its citizens to ensure the efficient and continuous operation of the Village government during the COVID-19 crisis. To meet this objective, Council has determined that it shall:

(a) Dispense with Caucus meetings and hold regular meetings of Council at least one time per month, if and when a sufficient number of Council members are available to participate to constitute a quorum;

(b) Allow its members to appear at Council meetings via teleconference or telephone;

(c) Rather than invite the public to attend, Council will live-stream its meetings and, as required by the OMA and recommended in OAG Yost's opinion, notice will be provided to the public and minutes of meetings will be taken as usual and made available to the public as soon as reasonably possible; and

(d) Adopt this emergency ordinance granting the Mayor extraordinary authority to expend funds in order to reduce the need for Council meetings, and to reduce the duration of any meetings, by authorizing the expenditure of money up to Fifty Thousand Dollars (\$50,000.00), without following required bidding procedures, in the case of urgent expenditure for the immediate protection of public property or preservation of public peace, health, safety and welfare.

Section 2. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare for the reason that it is necessary to ensure the efficient and continuous operation of the Village government during the present COVID-19 crisis, to allow for the possibility that Council members may not be able to attend meetings or it may not

be advisable for them to do so during the crisis, to reduce the need for Council meetings, and to reduce the duration of such meetings.

Section 3. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

Section 4. This Ordinance shall take effect immediately upon its enactment and approval by the Mayor and will cease to have force and effect upon Governor DeWine's cancellation of the declaration of emergency in the State of Ohio.



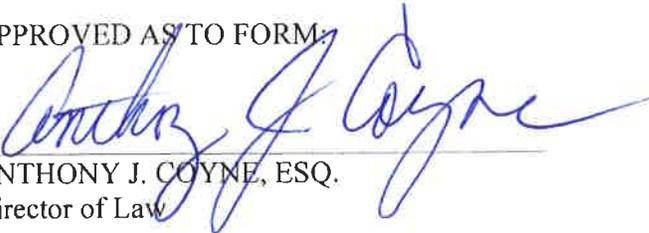
STEPHEN SCHUTT
Council President

First Reading:	March 16	, 2020
Second Reading:	Suspended	, 2020
Third Reading:	Suspended	, 2020
PASSED:	March 16	, 2020

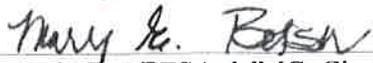


BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:



ANTHONY J. COYNE, ESQ.
Director of Law

ATTEST: 
MARY E. BETSA, MMC, Clerk of Council



March 13, 2020

Dear Local Official:

The Ohio Attorney General's Office has received numerous questions regarding the applicability of Ohio's Open Meetings Act (OMA) during this time of a COVID-19 declared emergency. Under this very limited fact pattern, there may be a basis for local public bodies to use electronic means to meet and comply with the law. You should discuss this matter with your legal counsel before making any decisions.

Ohio's OMA requires public bodies to take official action and conduct all deliberations upon official business in public meetings that are open to the public at all times. R.C. 121.22. When recently asked, I pointed out that the OMA does not contain an exception to the "in person" requirement during the time of a declared emergency. R.C. 121.22(C).

The OMA provides very few exceptions to this requirement. [See e.g., R.C. 3333.02 (applying to the Ohio Board of Regents) and R.C. 3316.05(K) (applying to members of a school district financial planning and supervision commission, if provisions are made for public attendance at any location involved in the teleconference.)]

Yesterday, Dr. Amy Acton, Director of the Ohio Department of Health (ODH), issued an Order targeted at preventing the spread of COVID-19, a highly communicable disease. Dr. Acton issued this Order pursuant to the authority granted to her by Ohio Revised Code Section 3703.13. In relevant portion, that statute gives ODH supervisory authority over "all matters relating to the preservation of the life and health of the people". R.C. 3703.13. It further provides that ODH shall "have *ultimate authority* in matters of quarantine and isolation". *Id.* Dr. Acton and Governor Mike DeWine held a press conference at which they detailed the COVID-19 epidemic in Ohio, the continued spread of this as-yet incurable virus, and how we as Ohioans can best stop it in its tracks. The Order issued by Dr. Acton addresses all of these critical points.

Dr. Acton's Order primarily addresses "mass gatherings", which it defines as "any event that brings together one hundred or more persons in a single room or single space at the same time". It is possible that a meeting that must be public under the OMA qualifies as a "mass gathering" subject to the Order. Thus, on its face, the Order could prevent a public body from holding a meeting necessary for the continuation of governmental operations. But even if it does not, the Order is not so limited such that it only provides guidance as to mass gatherings. Specifically, it also states:

"Regardless of whether an event or gathering falls within the definition of mass gathering, all persons are urged to maintain social distancing (approximately

six feet away from other people) whenever possible and to continue to wash hands, utilize hand sanitizer and practice proper respiratory etiquette (coughing into Elbow, etc.).”

To summarize, ODH with ultimate authority over issues of isolation and quarantine is currently forbidding mass gatherings and advising social distancing at all others. At the press conference both Dr. Acton and Governor DeWine took their advice one step further. In the interest of stopping the spread of this highly communicable disease, both urged Ohioans to stay home and avoid unnecessary contact with one another. Thus, we are now presented with a situation in which a public body might not be able to comply with both the terms of the Order and the Open Meetings Act. Stopping the business of government is not an option, and we must now reconcile the two.

To do so, it is necessary to consider the applicability of the OMA’s “in person” requirement in the context of Dr. Acton’s Order and the rapidly developing information about the spread of COVID-19. As we must always do when faced with the application of two different—and in this situation, somewhat competing—statutes, we must give effect to both. That is, we must give effect to the OMA’s “in person” requirement, while also recognizing and complying with Dr. Acton’s “ultimate authority” over matters of isolation to stop the spread of a highly infectious disease. That task is possible here.

In this limited circumstance, where the Governor has declared a state of emergency and the Director of the Ohio Department of Health is limiting gatherings so as to prevent the spread of COVID-19, but the business of government must continue, it is reasonable to read the OMA’s “in person” requirement as permitting a member of a public body to appear at a public meeting via teleconference. This interpretation gives effect to both R.C. 121.22 and R.C. 3701.13. It is also consistent with the United States Centers for Disease Control’s recent guidance, issued in response to the national COVID-19 epidemic, to use videoconferencing for meetings when possible. See, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/workplace-school-and-home-guidance.pdf>.

Of course, if a member of a public body chooses to appear via teleconference or telephone, it is imperative that all other requirements of the OMA be fulfilled. A quorum must still be present, whether in person, on the phone, or in some combination thereof. In the event that a member appearing telephonically is cut off, the public body should cease all discussions and deliberations until the member can be reconnected.

Further, even in this time of a public health crisis, public access to the business of Ohio’s public bodies is still vital. It is also still required by the OMA. Although the OMA does not specifically dictate how a meeting is made “open” to the public, in the interest of complying with both Dr. Acton’s Order and the OMA a meeting could be made “open” to the public by live-streaming it through the internet or on television. If a public body gives the public access to a meeting electronically and the members of the body appear telephonically, the body must still ensure that

the public is able to hear the discussions and deliberations of *all* of the members, even those who are present via telephonic means. Finally, all other requirements of the OMA will apply, including those that govern notice, executive session, and the taking of meeting minutes.

The practices outlined above would likely satisfy the requirements of the OMA. They are also consistent with the spirit of R.C. 5502.24(B), which provides that if, due to a declared emergency, it becomes “imprudent, inexpedient, or impossible to conduct the affairs of a local government at the regular or usual place,” the governing body may meet at a previously designated alternate location and dispense with legal requirements that qualify as “time-consuming procedures and formalities”. During a declared emergency, certain OMA requirements could fall within that category.

As a final word of unsolicited, non-legal advice: please note that the procedure outlined in this letter is meant to address the unique situation with that all of Ohio is dealing with. Now is not the time to rely on this guidance in order to enact legislation unrelated to the instant emergency that is better reserved for the normal operations of government (e.g. to pass a new tax or enact a new regulatory scheme). It is also important that county prosecutors, local law directors, and city attorneys independently research whether there is any case law in their respective jurisdiction that would specifically prohibit the procedure that I have outlined here. This office does not represent local governments, and this letter is offered as guidance regarding our reading of the law.

This Office’s Sunshine Law Manual addresses the modified duties of a public body during a declared emergency. See, Ohio Attorney General’s 2020 Sunshine Law Manual, at pgs. 107-109. Further, my Office’s Public Records Unit remains available for consultation.

Sincerely,

A handwritten signature in black ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

Dave Yost
Ohio Attorney General