



CITY OF ALLENTOWN

**R-122**

**RESOLUTION**

**R – 2020**

***Introduced by City Council on October 7, 2020***

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**Prohibits electronic (including cell phone) communications during public meetings**

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***Resolved by the Council of the City of Allentown, That***

**WHEREAS**, the use of electronic communication devices, such as cell phones, during a City Council meeting may lead to the public's perception that a Councilmember is not paying attention to the subject matter at hand or that a Councilmember is receiving information relative to the subject matter at hand that other Councilmembers are not privy to, or they are receiving recommendations to take certain course of action or say certain things which council and members of the public are not receiving; and

**WHEREAS**, notes that such communication during meetings is subject to Right-to-Know and Council believes in the full transparency of communications during council meetings; and

**WHEREAS**, City Council believes information received during council meetings should be shared amongst all councilpersons; and

**WHEREAS**, the City Council accordingly desires to amend the City Council Policy by adding Council Policy entitled "Use of Electronic Communication Devices During City Council Meetings."

**NOW, THEREFORE, BE IT RESOLVED** that the Council members that the following be added to **RULE VII - PRESIDING OFFICER, I** and read as follows:

I. Use of Electronic Communication Devices During City Council Meetings

Councilmember's use of electronic communication devices (including cell phones), other than for the purpose of accessing agenda materials that are on a Councilmember's I-pad/tablet device or lap top computer, is prohibited during Council meetings.

Council members should not be sending or receiving email, or texting or receiving texts during the meeting.

This policy does not prohibit using an electronic communications device in the event of an urgent family matter.

Should council inadvertently receive such messaging it shall be immediately shared with the council and the public during the meeting.

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In order for the text messages to be subject to release under the RTKL, they must meet the definition of a record.

The RTKL defines a record as: "Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document."

This definition contains two parts. First, the information must "document a transaction or activity of the agency" The Commonwealth Court has interpreted "documents" to mean "proves, supports [or] evidences." Second, the information must be "created, received, or retained" in connection with the activity of the agency.

Once it is determined that the text messages are a record, they must also qualify as a "public record" under the RTKL.

Under Section 305 of the RTKL, "a record in the possession of a Commonwealth agency . . . shall be presumed to be a public record." The true inquiry is whether the document is subject to the control of the agency. In other words, constructive possession qualifies as possession under the RTKL. Emails existing in Council members personal accounts were found to be in the possession of the agency and subject to the agency's control. See Barkeyville v. Stearns, 34 A.3d 91 (Pa. Cmwlth. 2011).

The last step of the RTKL analysis would be to determine if the record is exempt under Section 708 of RTKL, is exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or is protected by a privilege.

## **RULE 24 PROHIBITING USE OF CELL PHONES, PAGERS, OR OTHER AUDIBLE ELECTRONIC DEVICES DURING COUNCIL MEETINGS.**

(a) No person shall have in his or her possession or under his or her control any cellular phone, pager or other electronic device that creates a noise during the conducting of Council business.

(b) Any cellular phone, pager or other electronic device that creates a noise during a convened Council meeting shall be confiscated by any city police officer or his or her designee. The item shall be returned after the meeting only upon payment of a fee of \$10 to the Department of Finance.

(Res. 03-04, passed 1-20-2004)