



**First Amendment Clinic**  
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October 13, 2020

**VIA E-MAIL -- KSettle mire@law.ga.gov**

Assistant Attorney General  
Kristen Settle mire  
KSettle mire@law.ga.gov

**RE: City of Forest Park - Open Meetings Act Violations**

Dear Ms. Settle mire:

We write to provide further information and supporting documentation concerning the October 6, 2020 complaint submitted on behalf of our client, Ms. Robin Kemp, regarding the City of Forest Park's violation of Georgia's Open Meetings Act (OMA), O.C.G.A. § 50-14-1.

Ms. Kemp is a journalist and proprietor of the Clayton Crescent news website (<https://claytoncrescent.org/>) who reports on governmental affairs and other matters of public concern in Clayton County, Georgia. Specifically, Ms. Kemp was discriminatorily denied in-person access to two of Forest Park's regularly scheduled City Council meetings on September 21, 2020 and October 5, 2020. Additionally, for several months – including without limitation on August 17, September 21, and October 5, 2020 – the City of Forest Park has failed to provide Ms. Kemp and other members of the public with effective remote access to its regularly scheduled City Council meetings. These concerning acts of non-compliance by the City of Forest Park are further explained below.

### **Timeline of Events**

In March 2020, the City of Forest Park (“the City” or “Forest Park”) announced that all City buildings and public parks were closed until further notice due to COVID-19. See Exhibit A.

#### *Ineffective Remote Access to Meetings*

For the next few months, and even after the City officially re-opened as of June 29, 2020 (see Exhibit J), the City appears to have conducted its regularly scheduled City Council Meetings – which occur every first and third Monday evening of the month – remotely via Zoom, with members of the public able to access the meetings through publicly posted Zoom links and call-in numbers. This occurred, without limitation, on April 6, April 20, May 4, May 18, June 1, June 8, June 15, July 6, July 20, August 3, and August 17. See Exhibits B and D. The audio quality of the remote access provided to these meetings has been poor. Slideshows by people making presentations to the City Council are not always visible. And viewers get a static, one-angle view of the Council that only sometimes includes the podium from which speakers address the Council.

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See Exhibit E at p.2. Public comment at City Council meetings has also significantly declined to be almost nonexistent since public access was relegated to remote only. See *id.*

Exemplifying the failings of remote access, on August 17, 2020 the City Council meeting was intended to be accessible to the public via Zoom, as announced in the public meeting notice. See Exhibit B. However, the visual streaming did not function, and the audio access was of such poor quality that Ms. Kemp and others attempting to hear the meeting could not understand what was being said or voted on by the Mayor and Council members, or discern the outcome of the votes. See Exhibit C. For instance, while the August 17, 2020 Council meeting was still in session, Ms. Kemp asked the City via Facebook message to clarify what was being discussed and voted on. The City responded via Facebook message apologizing for the “audio issues” and advising that Ms. Kemp could submit an Open Records Request to obtain the missed information. See *id.* The City’s response falls woefully short of compliance with the synchronous access the OMA requires. See O.C.G.A. § 50-14-1(g) (“Under circumstances necessitated by emergency conditions involving public safety . . . agencies or committees thereof . . . may meet by means of teleconference so long as the notice required by this chapter is provided *and means are afforded for the public to have simultaneous access to the teleconference meeting.*”) (Emphasis added). The City cannot shirk its obligations under the OMA by placing the onus on constituents to make after-the-fact records requests for information they were entitled to obtain in the moment of the meeting via in-person or remote access.

### *The First Ejection*

On September 21, 2020, the Mayor & City Council met in the Council Chambers in City Hall. See Exhibit E1. The publicly posted notice for this meeting stated, “Welcome to the Mayor and Council meeting of the City of Forest Park[.] This meeting is open to the public,” and, “The Council Meetings will be livestream [sic] and available on the City’s YouTube page.” See *id.* Ms. Kemp and several other individuals who are not members of the Council were physically in attendance at the meeting, all of whom – including Ms. Kemp – wore masks and observed social distancing guidelines. See Exhibit E. Within minutes of Ms. Kemp entering Council Chambers and quietly observing the proceedings, she was approached by Forest Park Police Chief Nathaniel Clark and asked to leave. See Exhibit E. When Ms. Kemp asked Chief Clark why she was being escorted out, he told her that it was at the Mayor’s request. See Exhibit E. As far as we are aware, Ms. Kemp was the only person in attendance at the meeting who was asked to leave.

After being removed, Ms. Kemp attempted to access the meeting remotely, but the video stream was not functioning and the audio stream was, like on August 17<sup>th</sup>, very poor. See Exhibit E2. The description on the City’s YouTube video of the September 21 meeting advises viewers to request audio of the meeting via an Open Records Act request. See Exhibit E3.

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### *The Second Ejection*

On October 5, 2020, Ms. Kemp was ejected from a second regularly scheduled City Council meeting. See Exhibit G. Ms. Kemp recorded the brief encounter on video. See *id.* The agenda for the meeting again stated, “The Council Meetings will be livestream [sic] and available on the City’s YouTube page,” indicating that it was a public meeting. See Exhibit G1. Immediately after Ms. Kemp had entered the meeting chambers and taken a seat, Mayor Butler stated, “We are not open to the public.” Ms. Kemp responded that she was a reporter there to cover the open meeting, and displayed her press identification. The Mayor and Police Chief Clark then conferred and Police Officer Mike Gentry approached Ms. Kemp. See Exhibit G. Ms. Kemp asked if he was removing her, to which Officer Gentry replied, “Yes, ma’am.” See *id.* The video of this encounter shows several people besides Councilmembers in attendance at this October 5th meeting, but as far as we are aware, Ms. Kemp was the only person asked to leave. Once Ms. Kemp was outside the building, she observed two other individuals be denied entry, but a third was allowed in.

To be sure, Ms. Kemp’s reporting has been persistent and critical of the City of Forest Park, and of Mayor Butler in particular. This makes all the more troubling that the Mayor has excluded Ms. Kemp from two public meetings. Not only do these actions contravene the OMA – which exists to insure government transparency and to protect citizens who seek to hold public officials accountable – but these actions raise a concern that the City is unconstitutionally retaliating against Ms. Kemp by excluding her from public meetings because of the content and perspective of her news reporting.

### **Summary of Concerns**

Based on Ms. Kemp’s removal from the City of Forest Park’s September 21, 2020 and October 5, 2020 City Council meetings, the permissibility of in-person attendance at these meetings appears to be operating at the unfettered discretion of the Mayor since some members of the public have been allowed to attend while others, including Ms. Kemp, have not. Indeed, prior to Ms. Kemp’s ejection from the September 21 City Council meeting, a City of Forest Park police officer asked her if she was on “the list” of approved attendees. See Exhibit E at p.2.

The City of Forest Park is also inconsistent in its policies regarding in-person attendance at City functions since the City re-opened on June 29, 2020. See Exhibit J. Specifically, the City has recently hosted events in City facilities and on City grounds that have been open for physical attendance by the public, yet takes the position – at least with respect to Ms. Kemp’s attendance – that City Council meetings are not physically open. For instance, Ms. Kemp has observed that the City re-opened its Recreation Center to at least one event where social distancing was not observed and has re-opened Kiwanis Stadium for football games with fans attending in the stadium. See Exhibit I. The City has also re-opened Forest Park and Starr Park for in-person events, including most recently an in-person Hispanic Heritage Month Festival scheduled for October 17, 2020. See

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Exhibits I and II. Moreover, members of the public were also invited on September 28, 2020 to tour, in-person, the City's new communications and broadcasting hub. See Exhibit F.

If the City allows in-person gatherings for recreational functions and tours of new City facilities, it should allow in-person attendance at City Council meetings where the Mayor and Council members engage in core governance activities, including discussion and voting on issues that impact all City residents. And if in-person attendance at City Council meetings must be limited because of social distancing requirements, the opportunity for physical attendance must at least be available on a content and viewpoint-neutral basis with effective remote access provided for the remainder of the public who wish to synchronously observe the meetings.

Ms. Kemp has successfully attended, via remote means, live public meetings held by the City of Jonesboro and the Clayton County Board of Commissioners. So, it can be done. Given the City of Forest Park's recent expenditures on video and sound production equipment such as a monitor, video cameras, microphones, and a sound mixer for public relations broadcasts from the City's new communications hub, see Exhibit F, the City has no excuse for failing to provide the public with meaningful visual and audio access to its City Council meetings.

Finally, the City of Forest Park has also failed to comply with other aspects of Georgia's Open Meetings and Open Records Acts, including failing to timely post the minutes from City Council and other public meetings held by City committees. For instance, the City must post minutes of Council meetings "in no case later than immediately following its next regular meeting." O.C.G.A. § 50-14-1(e)(2)(B). However, as of October 12, 2020, the City has not posted meeting minutes for its September 8, 2020 and September 21, 2020 meetings, notwithstanding that a regularly scheduled meeting was held on October 5, 2020. See Exhibit H. Even other Councilmembers have complained that budget committee minutes have not been posted. See Exhibit H1.

### **Resolution Goals**

In an effort to resolve the foregoing concerns, on October 8, 2020, the First Amendment Clinic sent a letter to the Mayor, City Council, and City Attorney of Forest Park demanding, without limitation, the following:

- Physical access to Forest Park government meetings with reasonable social-distancing and mask/hand hygiene precautions enforced.
- If social-distancing requirements preclude physical access by the public to government meetings, or if the number of public attendees at government meetings must be limited for social distancing purposes, provision of effective synchronous audio and visual remote access to government meetings, including a trained videographer to manage and troubleshoot the video feed.

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- If social distancing precautions require limitation on the number of in-person attendees at government meetings, two seats to be reserved for the press and a neutral system to be used to determine who else from the public attends in-person, with this neutral system announced in the advance public notice that the OMA requires be posted for the meeting.
- Mayor and City Council votes to be taken orally by roll call with the outcome of the vote audibly announced immediately after voting is concluded so that both those attending in-person and those accessing the meeting remotely will know what was voted on, by whom, and the result.
- Forest Park will not bar Ms. Kemp or other members of the press from attending public meetings of any body, board, or agency where in-person attendance by members of the public is permitted.
- Forest Park will otherwise comply with all requirements of the Open Meetings Act.

We have requested that the City respond by October 15, 2020 as the next regularly scheduled City Council meeting will take place on Monday, October 19, 2020.

We would welcome the Attorney General's assistance in obtaining an enforceable agreement with Forest Park insuring its compliance with the Open Meetings Act and would be happy to provide any additional information that would assist your office in evaluating Ms. Kemp's complaint. We appreciate your time and are available to speak at your convenience regarding further investigation and resolution of this matter.

Sincerely,

Samantha C. Hamilton  
Clare R. Norins  
Taran Harmon-Walker

Cc. S. Derek Bauer  
Robin Kemp