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New Emergency Regulations: Remote Public Meetings Held During a Declared Emergency

The COVID-19 pandemic has forced local government entities and boards of education throughout New Jersey to hold public meetings remotely. Due to the restrictions necessitated by COVID-19, the Division of Local Government Services issued remote meeting guidance in March for local government entities, including the conduct of public meetings held by planning boards and zoning boards of adjustment.

Section 8 of newly enacted [P.L. 2020, c. 34](#) authorizes the Division Director to promulgate regulations establishing standard protocols for remote public meetings held by a "local public body" during a Governor-declared emergency, including minimum procedures to be followed to provide reasonable public notice and allowance for public input. Local public bodies are defined in the law as any public body subject to the Open Public Meetings Act (N.J.S.A. 10:4-8 et seq.) with a territorial jurisdiction equal to or less than a county. In addition to counties, municipalities and boards of education, this law encompasses the public bodies of local authorities, fire districts and other local special districts, any boards, commissions, or other entities that are a creature of one or more counties or municipalities. This law does not apply to advisory committees or similar bodies to which the Open Public Meetings Act does not apply.

The Director has promulgated emergency regulations codified as [N.J.A.C. 5:39-1.1 through 1.7](#) that implement the new law. These protocols aim to ensure continuity of government operations and transparency in conducting public business when an emergency requires a governing body meeting to be held remotely.

The emergency regulations are presently in effect and have been concurrently proposed for permanent adoption in the upcoming October 19, 2020 New Jersey Register. Please submit any comments on the regulations no later than November 18, 2020.

Remote Public Meetings Held During a Declared Emergency

In-person public meetings where the local public body meets in one location and that members of the public may physically attend remain the default. Even during a declared emergency, public meetings held exclusively by remote means are meant to be held under limited circumstances when the declared emergency prevents a public meeting from safely being held in a physical location. The declared emergency must be a public health emergency pursuant to the "Emergency Health Powers Act," or a state of emergency pursuant to the "Disaster Control Act," or a state of local disaster emergency, that has been declared by the Governor and is in effect.

Remote public meetings are any gathering by means of electronic communication equipment, which is attended by, or open to, all of the members of a public body and held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. If a declared emergency requires a local public body to hold a remote public meeting to conduct public business, an electronic communications technology shall be used that is routinely used in academic, business and professional settings, and is widely accessible to the public at no cost. Participant capacity in the meeting room shall be consistent with the reasonable expectation of the public body for public meetings of the type being held. If a remote public meeting is held by audio and video, the public shall also have the opportunity to participate in the meeting by audio and video. Please note that if the local public body meets in person for a meeting, the regulations require members of the public to be able to attend the meeting in person.

If a local public body is holding an in-person meeting in a location where, pursuant to State and/or Federal guidelines meant to mitigate the risk of contagious infection, the declared emergency necessitates capacity restrictions reducing the number of individuals that can be present in the meeting room to an amount below that reasonably expected for the public meeting by the governing body, the local public body must either hold the in-person meeting at another location with adequate socially-distanced capacity for the reasonably expected public attendance, or hold the public meeting both in-person and as a remote public meeting pursuant to N.J.A.C. 5:39-1.1 through 1.7. This requirement seeks to ensure adequate public access. Under other circumstances, nothing prevents a local public body from holding a remote public meeting in conjunction with an in-person meeting as a means of increasing public access and participation.

Technological and Procedural Matters

Remote public meetings may be held by means including, but not limited to, audio-only teleconferencing, electronic communications platforms with video and audio, and Internet-accessible technology such as live-streaming. The method, platform, or application must be in common use among academic, business, and professional settings as well as widely available to the public at no cost. When utilizing an electronic communications platform or Internet-accessible technology to hold a remote public meeting, the local public body shall also provide a telephonic conference line allowing members of public with limited or no internet access to listen and provide public comment. To ensure adequate public access, particularly given the potential for an increase in public participation due to the convenience of viewing a public meeting remotely, participant capacity on the selected technology should be consistent with the reasonable

expectation of the public body for public meetings of the type being held and shall not be limited to fewer than 50 public participants (beyond those persons required to conduct business at the meeting).

Communications technology used for a remote public meeting must allow the local public body to mute the audio of all members of the public and members of the public to mute themselves. Any electronic communications platform or Internet-accessible technology used shall also enable the local public body to regulate participation by individual members of the public such as through an individual muting function. For example, the meeting organizer could accept individuals into a virtual “lobby” with all individuals wishing to speak moved to a main line for the meeting. Although a telephonic audio conference call line does not necessarily have similar capabilities for restricting individual participation, that particular technology must have a queueing or similar function that may be used by a local public body to regulate public comment. For example, [AT&T](#) offers a “question and answer” function as a means of regulating individual public comment on an audio teleconference line.

A local public body holding a remote public meeting shall allow members of the public to make public comment by audio or by audio and video. In advance of the remote public meeting, the local public body shall allow public comments to be submitted by electronic mail and in written letter form to the official responsible for creating the meeting agenda (e.g. municipal clerk, board secretary) by a reasonable deadline. A reasonable deadline should balance the public’s ability to review the meeting agenda while allowing the municipal clerk or similar official sufficient time to prepare public comments to be read at the meeting. The local public body shall have the discretion to accept text-based public comment received during a remote public meeting through an electronic communications platform or internet-accessible technology, such as through Microsoft Teams chat function or by making comments during a Facebook livestream. Public comments submitted through electronic mail or written letter before the remote public meeting shall be read aloud from the beginning, and addressed during the remote public meeting in a manner audible to all meeting participants and the public listening. If the local public body establishes, to the extent permitted by law, a reasonable time limit on public comments at an in-person meeting, the local public body can place a similar time limit on the length of public comments submitted in writing prior to the remote public meeting. For example, if a local public body has established a five-minute limit on each in-person public comment, a similar limitation can be established for written comments that corresponds to the amount of time it would reasonably take to read the comment at the remote public meeting. The local public body may elect to summarize duplicative comments; however, the local public body must not summarize certain duplicative comments while reading other duplicative comments individually.

A local public body may require members of the public to state whether they wish to speak and to identify themselves prior to speaking. Authentication of elected officials appearing by audio only could be performed by means such as an individualized password voiced at the meeting by the elected official.

The local public body shall adopt, by resolution, standard procedures and requirements for public comment made during the meeting along with those written comments submitted in

advance of the meeting. Such procedures and requirements shall include standards of conduct to be followed by members of the public when making comment. The local public body shall facilitate a dialogue with the commenter to the extent permitted by the electronic communications technology. The procedures and requirements for making public comment, along with an explanation of the audio muting function of the communications technology being used, shall be announced at the beginning of the remote public meeting.

If a member of the public becomes disruptive during a remote public meeting, including during any period for public comment, the member of the local public body charged with running the remote public meeting shall mute or keep on mute, or direct appropriate staff to mute or keep on mute, the disruptive member of the public and warn that continued disruption may result in their being prevented from speaking or removed from the remote public meeting. Disruptive conduct includes sustained inappropriate behaviors such as, but not necessarily limited to, shouting, interruption, and use of profanity.

A member of the public continuing to act in a disruptive manner after receiving an initial warning may be muted or kept on mute, with other members of the public allowed to proceed with their questions or comments. If time permits, the disruptive individual shall be allowed to speak after all other members of the public have been given the opportunity to make comment. In the event the individual remains disruptive, the individual may be muted or kept on mute for the remainder of the remote public meeting, or removed altogether from the remote public meeting.

In crafting standard procedures and requirements for public comment, local public bodies are strongly encouraged to consult with their legal counsel to ensure any such restrictions comply with the Open Public Meetings Act and do not infringe upon constitutional rights.

Due process considerations require that all individuals giving sworn testimony be taken by video as well as audio, including during any cross examination. As most land use meetings feature public hearings on development applications, land use board meetings should be held through videoconferencing technology as a default; however, remote land use board meetings shall continue to allow public comment via a telephone conference dial-in number. To ensure maximum transparency and public engagement, the Division strongly encourages local public bodies to use videoconferencing technologies for all remote public meetings.

Any presentations or documents that could be viewed by or made available to members of the public during an in-person public meeting shall either be made visible on a video broadcast of the remote public meeting or made available on the Internet website of the local public body. The link for the public to access documents should, at minimum, be either posted on the meeting notice, or in close proximity to where the meeting notice is posted both on the website and at the building where the meeting would otherwise be held. Local public bodies are also strongly advised to make the link to documents available on or near where the meeting agenda is posted. When hard copies of a document would be available to individual members of the public at an in-person meeting, the document must be provided on the website in advance of the meeting. If the local public body is not a municipality or county and does not have its own website, the presentation or documents must appear on that of the municipality or county responsible for appointing the members of the local public body if those documents are not made visible on video. In the event a municipality or board of education does not have a website, documents that would otherwise be

available to individual members of the public at an in-person meeting shall be available upon request ahead of the meeting and provided through an official social media account if one exists.

A local public body entering an executive or closed session shall ensure that audio or video of the session cannot be accessed except by those individuals that are participating in the session. The clerk or secretary of the local public body should take roll call with each individual affirmatively identifying themselves prior to commencing the closed session. If a closed session is held through a telephonic conference call a separate call-in line should be made available to ensure confidentiality. For closed sessions during remote public meetings held through video conferencing, audio recording should be muted and video recording blocked by a graphic labeled "Executive Session". As with in-person meetings, the local public body shall have read into the record the reason(s) for entering into executive session.

Local public bodies should carefully consider the cybersecurity protections offered by any electronic communications platform or Internet-accessible technology. In limited instances certain local governments have had their remote public meetings hacked and maliciously interfered with. The regulations require Internet-based remote meeting technologies to be hosted on [FedRAMP Moderate Impact Level Authorized](#) dedicated servers or in a FedRAMP Moderate Impact Level Authorized Cloud, unless the host of the dedicated servers or cloud provides annual evidence of satisfactory cybersecurity internal controls is provided through a SOC2 audit report. A SOC2 audit report focuses on a service organization's internal controls as they relate to security, availability, processing integrity, confidentiality, and privacy of a system. FedRAMP authorized services and products can be found on the [FedRAMP Marketplace database](#). Free software should be avoided to ensure data integrity and adequate privacy protections. Please consult with your IT support professionals on how to evaluate the cybersecurity safeguards offered by various platforms and technologies.

The Division recommends that all remote electronic meetings be recorded, at minimum the audio but preferably the video as well. Local public bodies should advise the public at the beginning of a remote public meeting that the meeting is being recorded.

Proper Notice of a Remote Public Meeting

Adequate notice in the context of a remote public meeting must include the time, date, location and, to the extent known, the agenda of the meeting, which notice shall accurately state whether formal action may or may not be taken. With respect to the meeting location, the notice shall state the platform or method (e.g. Microsoft Teams, Facebook Live) by which the remote public meeting is being held, and include the teleconference number along with the web address or means of accessing any remote meeting platform.

In addition to the above-referenced content, adequate notice must also include clear and concise instructions for accessing the remote public meeting, how to make public comment, and where relevant documents, if any, will be made available for the public to view. As discussed previously, such documents shall be displayed by video during the meeting and/or the website on which such documents are posted shall be identified. If a document would be made available to the public in hard copy while physically attending the meeting, the document shall generally be made available for download in advance of the meeting through an internet link at or near the posting of the meeting notice. For public hearings held by a land use board during a remote

public meeting shall also identify where all plans and documents associated with the hearing or hearings may be accessed by the public, and provide clear and concise instructions on accessing the exhibits.

As with an in-person public meeting pursuant to the Open Public Records Act, notice of a remote public meeting shall be transmitted to at least two newspapers. If the declared emergency prevents the local public body from transmitting a public meeting notice to the newspapers by mail, telephone, telegram or hand delivery, e-mailing the public meeting notice to the newspapers shall be sufficient. In addition to transmitting notice to the newspapers, notice must also be posted on:

- on the door of the main public entrance to the building where the public would routinely attend in-person meetings of the local public body, as well as the door for any designated and clearly delineated handicap accessible entrance to said building, such that the notice is viewable from the outside;
- the Internet website or webpage of the local public body or, if the local public body is not a municipality or county and does not have its own website, posted on the website of the municipality or county responsible for appointing the members of the local public body. If a municipality or board of education does not have a website, electronic notice shall be provided on an official social media platform of the municipality or board of education; however, electronic notice is not required if the municipality or board of education does not have an internet presence.

Although not required by the regulations, the Division also recommends distributing notice of the remote meeting by electronic mail, a text messaging system, or any other digital platform that may be used by the entity governed by the local public body, or the entity responsible for appointing the members of the local public body, to disseminate information electronically. Distributing the electronic notice, or a summary thereof with a statement on the link where the full electronic notice may be accessed, through one or more of these mediums provides additional assurance that the public is aware of how to access the remote public meeting.

If a previously scheduled local public body meeting was to allow public attendance without a public health-related capacity restriction, but the local public body intends to hold the same meeting as a remote public meeting due to a declared emergency and the change is not reflected in a revised annual notice, the local public body shall transmit notice of the remote public meeting at least 48 hours in advance to the newspapers and provide electronic notice to the public in the manner discussed above.

Using Solely Electronic Notice for Remote Public Meetings

During a declared emergency, a local public body may issue electronic notice (i.e. the second bullet point referenced above and the third if applicable) at least 48 hours ahead of a remote public meeting in lieu of, rather than in addition to, publishing notice in the newspaper; however, in such instances the local public body shall limit public business discussed or acted upon to matters:

- Necessary for the continuing operation of government and which relate to the emergency declaration connected with the declared emergency; or
- Requiring decision by the local public body due to imminent time constraints.

Emergency Remote Public Meetings without 48-Hour Notice

As with in-person public meetings pursuant to the Open Public Meetings Act, under emergent circumstances a remote public meeting may be held without advance 48-hour notice either to newspapers or through electronic notice upon the affirmative vote of three quarters of the members of the local public body that are present. See N.J.A.C. 5:39-1.5(d) and N.J.S.A. 10:4-9.

Revised Annual Notice for Remote Public Meetings

If the local public body expects to conduct remote public meetings for a series of regularly-scheduled meetings advertised in its annual notice, and the annual notice lists those meetings as in-person, the annual notice shall be revised to contain clear and concise instructions for accessing those remote public meetings, the means for making public comment, and where relevant documents, if any, will be made available.

Pursuant to N.J.S.A. 10:4-18, the revised annual notice shall be mailed to the newspapers and to those requesting notice; however, the revised annual notice may be transmitted via e-mail to newspapers and individual requestors if the declared emergency prevents mailing. The revised annual notice shall be mailed as soon as practicable to those individuals that request notice by mail but do not have e-mail. Similar to the 48-hour electronic notice discussed above, the revised annual notice must also be posted on the Internet website and on the door of the main public entrance to the building where the local public body's regular public meetings are held along with the door for any designated and clearly delineated handicap-accessible entrance. If a municipality or board of education does not have a website, the revised annual notice shall be posted on an official social media platform of the municipality or board of education unless it does not have an internet presence. The revised annual notice should also be distributed by mass e-mail or another digital messaging platform if the entity has the capability.

Statement to be Read at Beginning of Meeting

At the beginning of every remote public meeting of a local public body, the person presiding shall announce publicly for inclusion in the meeting minutes the time, place, and manner in which notice was provided. If the local public body solely provided notice through electronic means without transmittal to the newspapers, the announcement shall also state that discussion of and action on any public business will be limited to only those matters necessary for the continuing operation of government and which relate to the applicable emergency declaration, or matters requiring decision during the remote public meeting due to imminent time constraints. In the event advance 48-hour notice of the remote public meeting was neither transmitted to the newspapers nor provided electronic, a statement compliant with N.J.S.A. 10:4-10 shall be read concerning why the unforeseen need for the meeting and explaining why the local public body could not provide such notice without causing a delay resulting in substantial harm the public interest. As with in-person meetings, when advance 48-hour notice is not provided the remote public meeting must be limited to addressing the urgent matter or matters.

Land Use Board Hearings – Considering the Necessity of an In-Person Meeting

As most land use meetings feature public hearings on development applications, meetings of land use boards should be held through videoconferencing technology as a default; however, remote

land use board meetings shall continue to allow public comment via a telephone conference dial-in number. For public hearings held before a land use board, applicants must submit all exhibits at least two (2) days prior to the remote public hearing. The applicant is responsible for ensuring that all exhibits are converted to an electronic format that can be viewed by the public through the Internet.

Notwithstanding the provisions contained in these regulations to facilitate remote land use board hearings, certain applications may be of such complexity or scale that they require in an in-person public hearing. Before holding a public hearing on an application for development during a remote public meeting, a land use board shall determine whether electronic communication technology can sufficiently facilitate due process of the applicant and any interested party, including the ability to examine exhibits, transcribe testimony and cross-examine witnesses, as well as the ability of the public to comment upon the application. Factors in making this determination shall include, at minimum, the scale of the project, the number of approvals requested, the degree of public interest, and the number of potential objectors. As land use boards must decide pending applications within prescribed timeframes, boards should seek applicant consent to extend decision deadlines to accommodate an in-person public hearing with no health-related capacity restrictions. Boards should consult their legal counsel on how to proceed where an in-person hearing or hearings cannot be held by the decision deadline and the applicant does not consent to an extension.

A local public body such as a municipal governing body that holds a quasi-judicial hearing should use a similar analysis.

Conclusion

Local public bodies have many options available to them to ensure they can continue the operation of government safely, efficiently, and publicly. The emergency regulations establish protocols meant to ensure continuity of government operations and transparency in conducting public business in unusual emergency circumstances. The Division's [March 23, 2020 guidance](#) details the functionality of various remote meeting technologies. Please contact the Division by email at dlgs@dca.nj.gov or by phone at 609-292-6613 with any questions concerning the regulations or this Notice.

Approved: Melanie R. Walter, Director

Document	Internet Address
P.L. 2020, c.34	https://www.njleg.state.nj.us/2020/Bills/PL20/34_.PDF
N.J.A.C. 5:39-1	https://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_39/njac_5391.pdf
AT&T Teleconference Queuing Guidance	https://www.teleconference.att.com/resv/help_IPTouchToneMgmt.html
FedRAMP Standards Guide	https://www.fedramp.gov/understanding-baselines-and-impact-levels/
FedRAMP Product Database	https://marketplace.fedramp.gov/#!/products?sort=productName
3/23/2020 DLGS Remote Public Meeting Guidance	https://nj.gov/dca/divisions/dlgs/pdf/GovConnectNotice-NewRemotePublicMeetingsGuidance.pdf