

New Pandemic Requirements for Remote & In-Person Meetings

Whenever a public health emergency, state of emergency or a disaster emergency has been declared by the Governor and is in effect, a local public body may conduct public meetings remotely. The Governor extended the current public health emergency on September 25, 2020 and it remains in effect. Under the controlling statute, the Director of the Division of Local Government Services in the Department of Community Affairs is granted the authority to promulgate rules and regulations concerning the conduct of such meetings. Emergency regulations have been issued which directly impact the conduct of remote and in-person meetings of public bodies during a declared health emergency. The regulations are now in effect and are expected to be permanently approved on or about October 19, 2020. The updated regulations are extensive and warrant careful consideration, as failure to comply with them potentially constitutes a violation of the Open Public Meetings Act, which could impair and/or invalidate any action taken by a public body at an unduly structured meeting.

A public body may hold a remote public meeting if the emergency reasonably prevents a local public body from safely conducting public business at a physical location with members of the public present. The new regulations provide far more detail than the previous ones, including:

- Specific provisions for hybrid meetings;
- Clear public notice requirements;
- Specific instructions for receiving comments;
- Technology requirements

Highlights of the emergency regulations include the following:

Public Notice

- “**Adequate notice**” of a remote public meeting must include all information typically required for a non-emergent, physical meeting, as well as clear and concise directions for accessing the remote public meeting, making public comment, and where relevant documents, including agendas, will be made available.
- In addition to or alternatively, “**electronic notice**” may be used and must be posted on the public body’s web page. The content of the electronic notice also must be posted on the main access door of the building where the public meeting normally would be held, unless prohibited by the public emergency.

REPLY TO

387 PARK AVENUE S
5TH FLOOR
NY, NY 10016
212 278 0058

450 MAIN STREET
METUCHEN, NJ 08840
732 243 9588
FAX: 732 243 9590

309 FELLOWSHIP RD
STE 200
MT LAUREL, NJ 08054
863 350 1030

- If a board decides to use electronic notice instead of, rather than in addition to, adequate notice, then the board must limit public business discussed or effectuated to those matters necessary for continued operation which relate to the declared emergency, and require decision due to imminent time constraints.
- If a board expects to conduct a series of regular public meetings remotely, it must revise its annual notice at least seven days prior to the next regularly scheduled meeting.
- If a previously scheduled in-person meeting without health-related restrictions is being changed to a remote meeting, the board must provide both adequate and electronic notice of the meeting.

Required Announcements at Opening of Meeting

- At the beginning of every remote meeting, the president must explain whether both adequate and electronic notice have been provided:
 - If only electronic notice was provided, the president must explain that the discussion and effectuation of public business will be limited to only those matters necessary for continued operation that relate to the declared emergency, or require decision due to imminent time constraints;
 - If neither adequate nor electronic notice were provided, the president must explain the reasons why the matters to be discussed are of such urgency and importance that the meeting could not wait, as well as the nature of the harm to the public interest likely to result from any delay.
- All school boards are required to adopt by resolution standard procedures for comments submitted in writing ahead of a remote public meeting which must include standards of conduct to be followed by commenters. These procedures, along with an explanation of the muting process, must be announced at the beginning of the remote meeting, and should include a description of inappropriate conduct and how it will be dealt with, including muting the commenter and potential removal from the meeting. Disruptive conduct includes, but is not limited to: shouting, interruption and use of profanity.

Room Requirements

- Indoor capacity requirements and limitations remain in effect, as amended most recently by the Governor's Executive Order No. 173, although opinions vary regarding how the requirements apply to school board meetings, especially what, if any, capacity limits apply. A recent analysis by the New Jersey School Boards Association explaining the competing points of view may be found at: <https://www.njsba.org/news-publications/school-board-notes/september-1-2020-vol-xliv-no-9/legal-analysis-is-a-board-of-education-exempt-from-restrictions-on-indoor-gatherings/>
- Under the emergency rules, if capacity and social distancing requirements related to the declared emergency limit the number of members of the public reasonably expected to attend in person, then the Board must either hold the meeting at another location with a larger capacity that would accommodate the expected number, or hold it as both an in-person and remote public meeting.
- No in-person meeting may proceed if the room capacity, with social distancing, does not permit any members of the public to attend; members of the public shall not be prohibited from attending in person. Therefore, we recommend that an overflow room be set up and ready for use, if needed.

Public Comments

- Boards must allow public comments to be submitted in advance of a remote meeting to the official responsible for creating the agenda by email and in written form by a reasonable deadline. These comments must be read aloud during the public meeting in a manner that is audible to all meeting participants and the public.
- Boards must allow public comment via audio, or audio and video if the meeting is held over both audio and video.
- Boards may, in their discretion, permit text-based comments during a remote meeting.
- A Board's customary time limit for each individual comment may be imposed on the reading of each comment which must be read from its beginning, until the time limit expires.
- The Board may require all commenters to identify themselves prior to speaking.

- Boards may elect to pass over duplicate comments, however, they must be noted for the record with the content summarized.

Documents

- All presentations or documents that would otherwise be viewed or made available to those physically attending an in-person meeting must be made visible on a video broadcast, or made available on the Internet website of the public body.
- Any document that would have been made available during a physical meeting in hard copy must be made available in advance of the meeting for download through an Internet link appearing either on the meeting notice or near the posting of the meeting notice both on the website and the building where the meeting would otherwise have been held.

Required Technology

- The technology used for remote meetings must be accessible by the public at no cost to users and must accommodate no less than 50 participants (excluding those persons required to conduct the meeting).
- The technology used by the Board must permit the Board to mute the audio of all members of the public as well as allow the members of the public to mute themselves.
- A telephonic conference line shall also be provided to all the public to dial in by telephone to listen and provide comment.

The Busch Law Group will continue to provide legal updates on this and other significant COVID-19 related issues as necessary. Should you have any questions or concerns, our attorneys are always available to assist you.

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