

APPENDIX IX

CHAPTER 39. PUBLIC MEETINGS BY LOCAL GOVERNMENT ENTITIES

(Expired January 1, 2022)

SUBCHAPTER 1. EMERGENCY REMOTE MEETING PROTOCOL FOR LOCAL PUBLIC BODIES

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SUBCHAPTER 1. EMERGENCY REMOTE MEETING PROTOCOL FOR LOCAL PUBLIC BODIES

5:39-1.1 Purpose

The purpose of this chapter is to ensure that local public bodies can conduct official public business in an open and transparent manner whenever a declared emergency, as defined by this chapter, requires a local public body to conduct a public meeting without physical attendance by members of the public. Nothing in this chapter prevents a local public body from holding a remote public meeting under such other circumstances as may be permitted by the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-1 et seq.

5:39-1.2 Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

“Adequate notice” shall have the same definition as at N.J.S.A. 10:4-8; however, for purposes of this chapter, and to the extent not otherwise set forth at N.J.S.A. 10:4-8, the notice transmitted to at least two newspapers for publication may occur through electronic mail or other electronic means that is accepted or requested by the newspaper.

“Annual notice” means a schedule of regular meetings of the public body to be held in the succeeding year noticed pursuant to N.J.S.A. 10:4-8 and 10:4-18. For purposes of this chapter, the annual notice may be transmitted through electronic mail to newspapers and persons requesting an annual notice pursuant to N.J.S.A. 10:4-18. If the declared emergency prevents the local public body from mailing an annual notice to individuals requesting notice pursuant to N.J.S.A. 10:4-18, it shall be mailed to individuals for whom the local public body does not have an electronic mail account as soon as practicable.

“Application for development” shall have the same definition as at N.J.S.A. 40:55D-3.

“Declared emergency” means a public health emergency, pursuant to the Emergency Health Powers Act, P.L. 2005, c. 222 (N.J.S.A. 26:13-1 et seq.), or a state of emergency, pursuant to P.L. 1942, c. 251 (N.J.S.A. App.A.9-33 et seq.), or both, or a state of local disaster emergency that has been declared by the Governor and is in effect.

“Electronic notice” shall have the same definition as at N.J.S.A. 10:4-9.1.

“Internet” shall have the same definition as at N.J.S.A. 10:4-9.1.

“Land use board” means a board of adjustment as defined at N.J.S.A. 40:55D-3 or a planning board as defined at N.J.S.A. 40:55D-6.

“Live streaming” means the live audio and video transmission of a remote public meeting over the Internet.

“Local public body” means any “public body,” as that term is defined at N.J.S.A. 10:4-8, with territorial jurisdiction equal to or less than a county. This term shall include boards of education, counties, municipalities, boards and commissions created by one or more counties or municipalities, and any authorities subject to N.J.S.A. 40A:5A-1 et seq., including fire districts and other special districts, along with joint meetings or regional service agencies as defined at N.J.S.A. 40A:65-3.

“Public body” shall have the same definition as at N.J.S.A. 10:4-8.

“Public business” shall have the same definition as at N.J.S.A. 10:4-8.

“Public meeting” shall have the same definition as the term “meeting” at N.J.S.A. 10:4-8.

“Remote public meeting” means a public meeting that is conducted by any means of electronic communication equipment permitted pursuant to this chapter.

5:39-1.3 Circumstances under which a local public body may hold a remote public meeting during a declared emergency for conducting public business

(a) In addition to any circumstances under which public meetings held by means of communication equipment may be authorized pursuant to the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-1 et seq., a local public body may hold a remote public meeting to conduct public business during a declared emergency if the emergency reasonably prevents a local public body from safely conducting public business at a physical location with members of the public present.

(b) If, during a declared emergency, a local public body holds a physical meeting in a location where, pursuant to State and/or Federal guidelines meant to mitigate the risk of a 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 public meeting at another location with adequate capacity for the reasonably expected attendance by the public or hold the public meeting as both an in-person meeting and a remote public meeting. As set forth at N.J.A.C. 5:39-1.4(c), no in-person meeting shall proceed if the room capacity does not permit any member of the public to attend.

(c) Nothing in this section shall be interpreted to prevent a local public body from broadcasting the audio and/or video of, or taking remote public comment during, a public meeting that the public can physically attend without being subject to public health-related capacity restrictions.

5:39-1.4 Minimum technological and procedural requirements for remote public meetings necessitated by a declared emergency

(a) If a declared emergency requires a local public body to hold a remote public meeting to conduct public business, a local public body shall use an electronic communications technology that is routinely used in academic, business, and professional settings, and can be accessed by the public at no cost. Participant capacity on the selected platform 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).

(b) 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. If an electronic communications platform or Internet-accessible technology is being utilized for a remote public meeting, a telephonic conference line shall be also be provided to allow members of the public to dial-in by telephone to listen and provide public comment as otherwise required by law. A local public body may require members of the public to state, prior to providing public comment, whether they wish to speak and to identify themselves prior to speaking.

(c) A local public body shall provide the public with similar access to a remote public meeting as members of the local public body, staff of the local public body, and any individuals seeking one or more approvals from the local public body. If a remote public meeting is held by audio and video, the public shall also have the opportunity to participate in the meeting in both audio and video capacities. A local public body meeting held in-person shall not prohibit members of the public from attending in-person.

(d) Any remote public meeting where sworn testimony is being taken shall be broadcast by video, as well as by audio. All individuals giving sworn testimony at a remote public meeting shall appear by video in addition to audio.

(e) Any presentations or documents that would otherwise be viewed or made available to members of the public physically attending a local public body meeting shall be made visible on a video broadcast of the remote public meeting or made available on the Internet website or webpage of the entity governed by the local public body, or the Internet website or webpage of the entity responsible for appointing the members of the local public body. If a document would be made available to individual members of the public in hard copy while physically attending the meeting,

the document shall 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 at the building where the meeting would otherwise be held. If a municipality or board of education does not have its own website, such documents shall be available upon request ahead of the meeting and provided through an official social media account if one exists.

(f) 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, if the remote public meeting is held over both audio and video, during the meeting. In advance of the remote public meeting, the local public body shall allow public comments to be submitted to the official responsible for creating the meeting agenda by electronic mail and in written letter form by a reasonable deadline. The local public body shall have the discretion to accept text-based public comment received during a remote public meeting held through an electronic communications platform or Internet-accessible technology. Public comments submitted before the remote public meeting through electronic mail or by written letter shall be read aloud and addressed during the remote public meeting in a manner audible to all meeting participants and the public. If the local public body imposes a reasonable time limit on public comments, where permitted by law, the same limits can be placed on the reading of written comments. Each comment shall be read from the beginning, until the time limit is reached. A local public body may pass over duplicate written comments; however, each duplicate comment shall be noted for the record with the content summarized. If the local public body elects to summarize duplicative comments, the local public body must not summarize certain duplicative comments while reading other duplicative comments individually.

(g) The electronic communications technology used for a remote public meeting must have a function that allows the local public body to mute the audio of all members of the public, as well as allow members of the public to mute themselves. Any electronic communications platform or Internet-accessible technology used for a remote public meeting shall also allow the local public body to regulate participation by individual members of the public. A telephonic audio conference call line must have a queueing or similar function for regulating public comment.

(h) Subject to (e) and (f) above, the local public body shall adopt, by resolution, standard procedures and requirements for public comment made during a remote public meeting, as well as for public comments submitted in writing ahead of the remote public meeting. Such procedures and requirements shall include standards of conduct to be followed by members of the public when making comment. The procedures and requirements for making public comment, along with an explanation of the audio muting function of the electronic communications platform being used, shall be announced at the beginning of the remote public meeting. Regulation of conduct by members of the public on a remote public meeting shall be consistent with law and practices followed if a member of the public disrupts an in-person meeting. The following procedures shall be incorporated:

1. The local public body shall facilitate a dialogue with the commenter to the extent permitted by the electronic communications technology;

2. 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 continue muting, or direct appropriate staff to mute or continue muting, the disruptive member of the public and warn that continued disruption may result in their being prevented from speaking during the remote public meeting 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; and

3. A member of the public who continues to act in a disruptive manner after receiving an initial warning may be muted while other members of the public are 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 their comment. Should the person remain disruptive, the individual may be muted or kept on mute for the remainder of the remote public meeting, or removed from the remote public meeting.

(i) Electronic communications platforms and Internet-accessible technologies used for remote public meetings shall 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 through a SOC2 audit report. When using cloud services, the technology vendor shall check provider

credentials and contracts to ensure FedRAMP Moderate Impact compliance unless annual evidence of satisfactory internal controls is provided through a SOC2 audit report.

5:39-1.5 Notice of remote public meetings; statement in minutes

(a) Adequate notice of a remote public meeting must include, in addition to the content required pursuant to N.J.S.A. 10:4-8, clear and concise instructions for accessing the remote public meeting, the means for making public comment, and where relevant documents, if any, will be made available.

(b) In addition to adequate notice, a local public body shall also provide electronic notice of a remote public meeting, except as may be permitted pursuant to N.J.S.A. 10:4-9.3 and (c) below. The electronic notice shall contain the content required pursuant to N.J.S.A. 10:4-8 and 10:4-9.1 and (a) above, and shall be posted on the Internet website or webpage of the entity governed by the local public body, or the entity 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. Unless otherwise prohibited by the declared emergency, the content of the electronic notice shall also be posted on the main access door of the building where the public would routinely attend public meetings of the local public body in person. The notice must be viewable from the outside.

(c) If during a declared emergency a local public body elects to issue electronic notice of a remote public meeting in lieu of, rather than in addition to, adequate public notice, as permitted pursuant to N.J.S.A. 10:4-9.3, the local public body shall limit public business discussed or effectuated at the meeting to matters:

1. Necessary for the continuing operation of government and which relate to the emergency declaration connected with the declared emergency; or
2. Requiring decision during the remote public meeting due to imminent time constraints.

(d) Nothing in this chapter prohibits a local public body from holding a remote public meeting, notwithstanding the failure to provide adequate notice and electronic notice where permitted pursuant to N.J.S.A. 10:4-9.

(e) If the local public body expects to conduct remote public meetings for a series of regularly scheduled meetings advertised in its annual notice, the annual notice shall be revised at least seven days prior to the next regularly scheduled meeting, indicating which meeting(s) will be held as a remote public meeting and shall 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. In addition to the means of notice transmission required pursuant to N.J.S.A. 10:4-18, the revised annual notice shall be posted on the Internet website or webpage of the entity governed by the local public body, or the entity responsible for appointing the members of the local public body. If a municipality or board of education does not have its own website, the revised notice shall be provided on an official social media platform unless the municipality or board of education does not have an Internet presence. Unless otherwise prohibited by the declared emergency, the content of the electronic notice shall also be posted on the door of the main public entrance to the building where the public would routinely attend public meetings held by the local public body. Notice must also be posted on the door for any designated and clearly delineated handicap accessible entrance. These notices must be viewable from the outside.

(f) If a previously scheduled local public body meeting was to allow public attendance without a public health-related restriction as to capacity, 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 issued pursuant to (e) above, the local public body shall issue adequate and electronic notice for said meeting pursuant to (a) and (b) above as if the meeting were not included in the annual notice.

(g) At the commencement of every remote public meeting of a local public body, the person presiding shall announce publicly, and shall cause to be entered in the minutes of the meeting, an accurate statement to the effect that:

1. Both adequate and electronic notice of the meeting has been provided, specifying the time, place, and manner in which such notice was provided;

2. Only electronic notice of the meeting has been provided, specifying the time, place, and manner in which such notice was provided, and that discussion and effectuation of public business shall be limited to only those matters:

i. Necessary for the continuing operation of government and that relate to the applicable emergency declaration; or

ii. Requiring decision during the remote public meeting due to imminent time constraints; or

3. That adequate notice and electronic notice was not provided, in which case such announcement shall state:

i. The reason, or reasons, why the matter, or matters, discussed are of such urgency and importance, as contemplated pursuant to N.J.S.A. 10:4-9(b)(1), and the nature of the substantial harm to the public interest likely to result from a delay in the holding of the meeting;

ii. That the remote public meeting will be limited to discussion of, and acting with respect to, such matters of urgency and importance;

iii. The time, place, and manner in which notice of the meeting was provided; and

iv. Either that the need for such meeting could not reasonably have been foreseen at a time when adequate notice and/or electronic notice could have been provided, in which event, such announcement shall specify the reason why such need could not reasonably have been foreseen; or that such need could reasonably have been foreseen at a time when adequate notice and/or electronic notice could have been provided, but such notice was not provided, in which event the announcement shall specify the reason why adequate notice and/or electronic notice was not provided.

(h) Where a local public body is required by law to provide a meeting agenda, or otherwise provides a meeting agenda by practice at its regularly scheduled meetings, prior to the commencement of the remote public meeting, the local public body shall also make a copy of the agenda available to the public for download through an Internet link appearing either on the meeting notice, or near the posting of the meeting notice on the website. The notice shall also be posted at the building where the meeting would otherwise be held prior to the commencement of the remote public meeting.

5:39-1.6 Executive or closed session during remote public meetings

A local public body entering into 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. A separate non-public conference line or e-platform session may be employed for this purpose.

5:39-1.7 Land use boards; public hearings on applications for development

(a) 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 a minimum, the scale of the project, the number of approvals requested, the degree of public interest, and the number of potential objectors.

(b) If a land use board holds a public hearing on one or more applications for development during a remote public meeting, the adequate notice and electronic notice 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. The applicant shall submit all exhibits to the land use board secretary no less than two days in advance of the remote public meeting, and the applicant shall be responsible for converting all exhibits into an electronic format accessible to the public.

(c) Any remote public meeting of a land use board with one or more public hearings on the agenda shall be broadcast by video, as well as by audio. Individuals giving sworn testimony at a public hearing held during a remote public meeting shall appear by video in addition to audio.