

Statement of Imminent Peril to Public Health, Safety and Welfare Mandating Adoption of New Rules Establishing Standard Procedures for Remote Public Meetings Held by Local Public Bodies at N.J.A.C. 5:39-1.1 through 1.7 by Emergency Procedures

The novel coronavirus, (“COVID-19”) is a severe, potentially fatal respiratory illness, which is transmitted from person-to-person contact. On March 9, 2020, Governor Murphy declared that a Public Health Emergency and State of Emergency existed in New Jersey because of COVID-19. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 13, 2020, the President of the United States declared a national emergency.

State and Federal public health experts, including those at the Center for Disease Control (“CDC”), believe COVID-19 will continue to spread at exponential rates unless aggressive action is taken to reduce person-to-person contact. The highly contagious and life-threatening nature of COVID-19 requires implementation of rigorous social distancing, including as needed the closure of or restricting occupancy in public places throughout the State to reduce the risk and rate of infection. Even as the State proceeds its phased reopening of public places, recent increases in new COVID-19 infections in other areas of the United States reinforce the need to continue enforcing social distancing measures.

In recognition of these unprecedented conditions, local government units have severely curtailed the public aspects of their operations, maintaining essential services through alternative means whenever possible. Many local units’ buildings are closed or have significantly restricted public access. Local unit public bodies have been holding public meetings and conducting votes remotely, instead of at a physical location, by using technologies such as audio telephone conferencing, internet-based video conferencing through applications such as Microsoft Teams and Zoom, and livestreaming through social media sites such as Facebook.

P.L. 2020, c.11, enacted on March 20, 2020, expressly authorizes public bodies subject to the Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.) to hold public meetings and conduct public business through the use of electronic communications equipment during a state of emergency, public health emergency, or state of local disaster emergency. P.L. 2020, c.11 (N.J.S.A. 10:4-9.3) also permits a public body to provide notice of a remote public meeting using exclusively electronic means if, to the extent practicable, a public body limits public business discussed or acted upon to matters necessary for the continuing operation of government and which relate to the applicable emergency declaration. Section 8 of P.L. 2020, c.34, enacted on May 15, 2020, authorized the Director of the Division of Local Government Services to promulgate regulations concerning the reasonable means of conducting and noticing remote public meetings available to local public bodies during a public health emergency, state of emergency, or state of local disaster emergency. These regulations must include minimum procedures to be followed to provide reasonable public notice and allowance for public input. The law defines “local public body” as any public body subject to the Open Public Meetings Act that has a territorial jurisdiction equal to or less than a county. Further, the law states the Director may adopt an emergency rule pursuant to subsection (c) of section 4 of P.L.1968, c.410 (C.52:14B-4) to implement this section.

During the COVID-19 pandemic, local units of government including, but not limited to, municipalities, counties, and boards of education continue to hold remote public meetings using electronic communications technologies. Even as in-person public meetings begin to be held by local public bodies as restrictions ease, room capacity limitations may prevent certain members of the public from attending, particularly if matters of substantial public interest and controversy are being discussed. Moreover, the continuing nationwide pandemic may have additional waves or resurgences in coming months that may require continued social distancing. The proposed emergency regulations establish the circumstances under which a local public body may hold a

remote public meeting, standards for the technologies used in holding a remote meeting, as well as uniform procedures for providing public notice of, and facilitating public comment at, such meetings. These protocols are necessary to ensure members of the public can be informed about, and fully participate in, public business when a public meeting is not held in a physical location. This is particularly the case when individuals may have limited internet access. Establishing standard procedures helps ensure that the objectives of the Open Public Meetings Act concerning transparency, public participation and the integrity of actions affecting public business are maintained when public meetings are held remotely.

For the above-referenced reasons, I therefore find that an imminent peril to the health, safety and welfare of the citizens of this State exists that justifies the adoption of emergency regulations pursuant to N.J.S.A. 52:14B-4(c).

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Date

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