



VIRTUAL PUBLIC MEETINGS AND HEARINGS PERMITTED DUE TO GOVERNOR CUOMO'S SUSPENSION OF PARTS OF THE OPEN MEETINGS LAW

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Responding to the current health crisis in New York, Governor Cuomo has issued various executive orders over the past two weeks. Among other things, these executive orders amend certain state laws to assist local governments in continuing to function in their essential capacity while taking into consideration the health and safety of municipal employees and the general public. One area of the state laws that the Governor has addressed in recent executive orders is Article 7 of the Public Officers Law, known as the Open Meetings Law. Shortly after issuing Executive Order 202 declaring a State disaster emergency on March 7, 2020, Governor Cuomo issued Executive Order 202.1, which, among other things, suspended Article 7 of the Public Officers Law as follows:

Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

The intention of this change to the Open Meetings Law is to assist public bodies by permitting public meetings, which include both meetings and hearings, to be held via video conference, telephone conference or a combination of both.

Public Officers Law §102 defines a meeting as “the official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body.” Under normal circumstances, both applicants presenting to a public body and members of the general public are required to participate in person. Executive Order 202.1 allows all participants to attend via the same method through which the members of the public body are participating.

This change in the law was made even more critical because Executive Order 202.10, issued on March 23, 2020, cancelled or postponed all non-essential gatherings of any size until at least April 15, 2020 and likely to a later date. Although certain government functions are considered essential, the general opinion of municipal attorneys is that public board meetings are non-essential and therefore cannot be held in person given the language of Executive Order 202.10.

When holding public meetings under current conditions, there are several items a public board must consider. Video conference is the preferred method of having a public meeting, although telephone conference is also an available option. Things a public body must be cognizant of include providing adequate notice to the applicants and general public concerning how the meeting will be held and especially how they can participate. Public bodies should include the video or telephone conference information in the public notice. Additionally at the beginning of the public meeting the chairperson should explain on the record that the meeting is being held in accordance with Executive Order 202.1. It is also highly recommended that the public board have a practice run prior to the actual public meeting so that any technical problems can be fixed ahead of time. Of course, during the practice run the public body must not discuss any public business as doing so would be in conflict with Open Meetings Law.

Any documents, drawings or plans that an applicant will refer to should be made available for the public to view online during the meeting. Any public comments received via email should be read into the record. It is suggested that time for comments to be received should go beyond the meeting date although a public body may vote on an application during the meeting as is permitted under ordinary circumstances.

Public bodies have been given an option to conduct meetings and hearings using available technology and this option should be taken advantage of by those boards that have available staff and other necessary resources during this unusual time. Moving forward with meetings and hearings, to the extent humanly possible, will allow municipal applications to continue on anticipated timelines once the business world is back to normal.

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