New Requirements for Public Meetings During a State of Emergency

October 12, 2020

Porzio Client Alert

On May 15, 2020, New Jersey Governor Philip Murphy signed P.L. 2020, c. 34 into law, which allows public bodies (*e.g.*, municipalities, boards of education, *etc.*) to conduct public meetings remotely during a state of emergency, and permits the Director of Local Government Services to enact emergency regulations clarifying the new law. In late September, the Director enacted emergency regulations that establish "minimum procedures to be followed" by all public bodies, and currently are in effect.

Under the emergency regulations, public bodies may now only conduct remote meetings "if the [state of] emergency reasonably prevents a local public body from safely conducting public business at a physical location[.]" Otherwise, the public bodies must attempt to hold the meetings in-person. If a public body does conduct an in-person public meeting, the public body must either: (1) hold the meeting in a location with adequate capacity for the reasonably expected attendance by the public; or (2) hold the public meeting as both an in-person and remote public meeting. If a public body conducts either an in-person meeting or a hybrid in-person/remote meeting, the regulations require members of the public to be able to attend the meeting in person.

If the public body conducts a remote meeting, the public body must include in the notice "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." To meet the "adequate notice" required under the Open Public Meetings Act, the regulations require all public bodies transmit the notice to at least two newspapers for publication and post the notice electronically on the public body's website. The regulations allow a public body to hold a meeting by providing electronic notice in lieu of the traditional "adequate notice" (*i.e.*, notifying two newspapers), but the public body shall only be permitted to discuss matters:

- necessary for the continuing operation of government and which relate to the emergency declaration connected with the declared emergency; or
- requiring decision during the remote public meeting due to imminent time constraints.

Public bodies also must adopt procedures and requirements for public comments during a meeting, which must include, at a minimum:

- An announcement during the beginning of the meeting that explains the muting functions of the software (*e.g.*, the public body is permitted to mute all citizens until the public comment section, and will then unmute each individual wishing to comment in the order the requests are received);
- The public body shall facilitate a dialogue with the commenter to the extent permitted by the technology;

- If a member of the public becomes disruptive, the public body may mute the individual, and provide a warning that further disruptive behavior will result in either the removal of the individual from the meeting or a continuous mute until the conclusion of the meeting.

To reiterate, the emergency regulations currently are in effect, and will be considered for permanent adoption on October 19, 2020. Should you require any assistance to ensure your notices, resolutions, and comment procedures are in compliance with the regulations, the Porzio team would be happy to assist.