

## An Overview of Recent Land Use Guidance and Legislation in New Jersey in Response to COVID-19

In the midst of the ongoing COVID-19 public health emergency, New Jersey-based builders, developers, contractors, municipal entities, and other industry shareholders and interested parties should be aware of recently issued land use guidance and legislative action that will undoubtedly have a broad-based impact going forward. The following is a summary of several developments in that regard.

### **DCA Issues Guidance Regarding Construction Inspections During COVID-19 Pandemic**

New Jersey's Department of Community Affairs (DCA) has issued temporary modifications to its rules concerning inspections for construction projects permitted to continue under Governor Phil Murphy's Executive Order 122, which is summarized in this recent [Client Alert](#).

The guidance was issued to establish safe workplace conditions for local enforcing agency personnel (municipal construction code and subcode officials) in compliance with the social distancing orders established by several of the Governor's previous Executive Orders, including Executive Orders 107 and 108.

For construction located in a jurisdiction where the local enforcing agency's (LEA) office remains open, the following provisions apply:

For construction located in a jurisdiction where the LEA's office has closed and inspections cannot take place, construction may continue without inspections subject to the following provisions:

The key takeaway for builders and contractors that are continuing construction during these uncertain times is to document as best as possible - and photograph before, during, and after - all work that is performed. Project owners should also ensure that their design professionals are overseeing all aspects of the construction.

### **NJ Legislature Amends Open Public Meetings Act in Response to COVID-19 Pandemic**

Although it is critical that every level of government remain functional during the current state of emergency, current social distancing protocols have prevented routine functioning and required the implementation of new procedures. One such issue arises from the requirement to hold public, in person, meetings pursuant to the New Jersey Open Public Meetings Act (OPMA) - often referred to as the "Sunshine Law".

Pursuant to OPMA, there is a requirement for municipal governing bodies (including municipal councils and committees and planning and zoning boards) to hold open meetings which the public can attend and, at the discretion of the governing body, provide comment on issues ranging from routine matters (paying municipal bills) to critical concerns (the welfare of citizens and businesses). Often, matters undertaken by a public body require a public hearing during which the public's ability to be heard is mandatory (such as the adoption of an ordinance or an application for site plan or subdivision approval).

In response to the COVID-19 pandemic and current state of emergency, Governor Phil Murphy recently signed legislation ([A3850](#)) amending OPMA in order to address New Jersey's constitutional due process mandates

and applicable laws, while still abiding by recommended safety protocols related to social distancing.

In accordance with OPMA as now amended, during states of emergency declared by any level of government applicable, public bodies in New Jersey may conduct meetings electronically without violating OPMA. With regard to the required 48-hour notice, the law now states, "[t]o the extent practicable, a public body providing only electronic notice of a meeting pursuant to this subsection [1b of the Act] shall limit public business discussed or effectuated thereat to matters necessary for the continuing operation of government and which relate to the applicable emergency declaration." This will enable governments to pay bills and address immediate health and safety concerns.

Additionally, OPMA now permits the New Jersey Department of Community Affairs (DCA) (and to the extent dealing with any board of education, the State Board of Education) to enact rules and regulations. These rules and regulations would be effective upon filing with the Office of Administrative Law, thus initially circumventing many of the process requirements of the Administrative Procedures Act (APA) during the COVID-19 crisis for a period of emergency not to exceed 18 months. Although such rules and regulations will initially be effective upon filing, adoption, amendment or re-adoption following the state of emergency will require conformance with APA requirements for administrative agency rules and regulations.

DCA has issued a guidance document to municipalities (see section below) related to remote public meetings, which summarizes OPMA and provides information related to various available technology platforms, with the intention of ensuring public participation and the satisfaction of due process requirements during this exceptional time, notably the "notice and opportunity to be heard" required for any hearings.

### **DCA Issues Guidance for Planning Boards and Zoning Boards of Adjustment During COVID-19 Pandemic**

The DCA issued guidance for Planning Board and Zoning Board of Adjustment hearings during the COVID-19 pandemic. While the Governor previously signed into law amendments to the OPMA which permit public meetings to be held by electronic or telephonic means on electronic notice (see previous section), those amendments limit the actions that may be undertaken by public bodies to items related to the ongoing public health emergency.

The DCA's new guidance now provides a roadmap for boards to follow "to ensure continuity of Land Use application procedures while New Jersey's Executive Order 103 and Executive Order 107 are in effect."

Provisions of the guidance are as follows:

While the guidelines issued above are directed at the boards, applicants should likewise be cognizant of them to ensure that their hearings are compliant. Further, applicants should discuss with their attorneys the risks of proceeding with an application under the format allowed by this guidance.

For minor, non-controversial applications, this guidance document provides a framework for development applications to continue to be heard to prevent a backlog of applications once this crisis is over. For other applications, it may be advisable to carry until such time that in-person hearings can once again be held. These decisions should be made on a case-by-case basis in consultation with the applicant's attorney.

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We will continue to monitor developments impacting land use issues and New Jersey's building industry and will keep you informed accordingly. If you have any questions, please contact the following co-authors of this Alert:

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