

Governor Cuomo Issues Executive Order Suspending and Postponing Public Hearing Requirements Under State and Local Law

April 14, 2020

Client Advisory

April 14, 2020 by Nicholas W. Tapert and Christopher Rizzo

On April 9, 2020, Governor Cuomo issued Executive Order (EO) [202.15](#), which suspends the public hearing requirements found in many parts of New York's Environmental Conservation Law, while postponing all public hearings scheduled or required to be held under any state or local law in April and May until after June 1.

Given the ubiquity of public hearing requirements in environmental, municipal, and administrative law, this EO provides helpful direction to state agencies and local governments as to how they can comply with the Governor's previous social distancing orders with meeting their legal obligations under state and local laws to hold public hearings that allow for meaningful public participation. The Governor previously issued an order [suspending](#) New York's Open Meetings Law (Article 7 of the Public Officer's Law) requirement that members of the public be permitted to attend public meetings in person, and allowing such meetings to be held remotely "by conference call or similar service" so long as "the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed."

But that order did not address the status of mandatory "public hearings," which have a different legal significance. Many New York statutes require the holding of a public hearing before an agency or other public body may take a specific action. This is especially true under the Environmental Conservation Law, where the issuance of permits and regulations frequently require a public hearing. This EO would also impact any public hearings that a state agency or local body chooses to hold under the State Environmental Quality Review Act (Article 8 of the ECL) or, in the case of New York City agencies, public hearings required to be held under the City Environmental Quality Review regulations. Outside of environmental law, public hearings are required for enacting local laws and adopting budgets, as well establishing reserve funds, granting franchises, adopting comprehensive plans, and approving subdivision plats. Because public hearings are a prerequisite to so much governmental activity, particularly in the environmental realm, EO 202.15 offers important guidance to government officials and the public.

Specifically, EO 202.15 suspends until May 9:

Environmental Conservation Law Articles 3, 8, 9, 13, 15, 17, 19, 23, 24, 25, 27, 33, 34, 35, 37, and 75, and 6 NYCRR Parts 552, 550, 601, and 609 to the extent necessary to suspend the requirement that public hearings are required, provided that public comments shall still be accepted either electronically or by mail, to satisfy public participation requirements;

And further provides that:

Any local official, state official or local government or school, which, by virtue of any law has a public hearing scheduled or otherwise required to take place in April or May of 2020 shall be postponed, until June 1, 2020, without prejudice, however such hearing may continue if the

convening public body or official is able to hold the public hearing remotely, through use of telephone conference, video conference, and/or other similar service.

The two provisions ought to be read and understood separately. The first provision suspends the public hearing requirements found in the enumerated articles of the Environmental Conservation Law, which includes among many others those pertaining to environmental impact review and the regulation of water resources, wetlands, air pollution, and solid waste. Note that until May 9, "public comments shall still be accepted either electronically or by mail, to satisfy public participation requirements." To be clear, the public hearing requirements of the ECL are not postponed by this executive order. They are temporarily suspended, with the submission of public comments the sole avenue for public participation during this time.

By contrast, the second provision above operates more generally on all public hearings scheduled or required to be held under state and local law in April and May, and simply postpones them until after June 1, unless the public body is able to hold the public hearing remotely through appropriate technology, in which case such hearings "may" be held. Public bodies should carefully weigh the benefit of postponing public hearings until after June 1 versus holding virtual public hearings in the next couple of months.

Because Public hearing requirements can mean nothing less than a meaningful opportunity to be heard, it cannot be overlooked that certain groups may be disadvantaged in a remote hearing setting. As such, public bodies that proceed with a remote hearing should take special care to ensure transparency, easy public access to information, and that any remote hearing is maximally accessible to all members of the public. At a minimum, for example, a public hearing should include both a videoconference and a call-in option. This allows viewers to see who is speaking and any exhibits or visuals on display, the presence of an interpreter for the deaf, and people without access to computers to participate in the meeting. Members of the public should also be permitted to submit comments by email, or a video conference chat in real time, to the extent feasible. In addition, any public hearing by remote means should be recorded, transcribed, and made promptly accessible in both formats to the public.

Importantly, the rules guiding government operations during the COVID-19 emergency continue changing on a daily and sometimes hourly basis. The Carter Ledyard COVID-19 Response Group is monitoring developments in this area and will continue providing updates as the situation evolves.

* * *

For more information concerning the matters discussed in this publication, please contact the authors **Christopher Rizzo** (212-238-8677, rizzo@clm.com), **Nicholas W. Tapert** (212-238-8703, tapert@clm.com), or your regular Carter Ledyard attorney.

*Carter Ledyard has created a COVID-19 Response Group to monitor the evolving legal landscape, address client questions and ensure client compliance with the laws and regulations issued in response to the COVID-19 pandemic. The Carter Ledyard COVID-19 Response Group consists of **Jeffery S. Boxer** (212-238-8626, boxer@clm.com), **Judith A. Lockhart** (212-238-8603, lockhart@clm.com), **Bryan J. Hall** (212-238-8894, hall@clm.com), **Alexander G. Malyshev** (212-238-8618, malyshev@clm.com), **Melissa J. Erwin** (212-238-8622, erwin@clm.com), and **Leonardo Trivigno** (212-238-8724, trivigno@clm.com). Clients should contact the attorneys listed above or their regular CLM attorney for any questions concerning legal obligations arising from the COVID-19 pandemic.*

related professionals

Nicholas W. Tapert / Counsel

D 212-238-8703

tapert@clm.com

Christopher Rizzo / Partner

D 212-238-8677

rizzo@clm.com