

CATHERINE KIM, Counsel
ckim@cgajlaw.com

Reply to: Matawan Office

**ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK-PRODUCT
PRIVILEGED AND CONFIDENTIAL
ADVISORY, CONSULTATIVE & DELIBERATIVE
NOT A PUBLIC RECORD
MEMORANDUM**

To: Steven Reinman, Executive Director of the Lakewood Industrial Commission
From: Catherine Kim, Esq.
Re: Remote Public Meetings
Date: September 13, 2023

My office is in receipt of Chananya Gold's letter dated June 14, 2023 regarding the legality of remote public meetings held by the Lakewood Industrial Commission ("LIC") since the COVID-19 pandemic.

The Open Public Meetings Act (OPMA) provides in relevant part:

The legislature finds and declares that the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision-making of public bodies, is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society, and hereby declares it to be the public policy of this State to insure the right of its citizens to have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in any way except only in those circumstances where otherwise the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

N.J.S.A. 10:4-7.

OPMA defines a meeting as: "any gathering whether corporeal or **by means of communication equipment**, which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. Meeting does not mean or include any such gathering (1) attended by less than an effective majority of the members of a public body, or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering." N.J.S.A. 10:4-8.

Matawan Office: 955 State Route 34, Suite 200, Matawan, NJ 07747 Tel 732 583-7474 Fax 732 290-0753
Oakland Office: 169 Ramapo Valley Road, UL 105, Oakland, NJ 07436 Tel 973 845-6700 Fax 201 644-7601
Somerville Office: 50 Division Street, Suite 501, Somerville, NJ 08876 Tel 732 583-7474 Fax 201 644-7601

The OPMA therefore permits a meeting to take place either in person or by means of communication equipment as long as it is open to all of the members of a public body. The OPMA also significantly provides “this section shall not be construed to limit any authorization under law to perform the functions as specified herein irrespective of any emergency.” N.J.S.A. 10:4-9.3(c). For years, boards and agencies have acknowledged that public agencies could hold public meetings via conference call, provided that the public is given advance notice, the opportunity to listen, and the means to comment on the record. Public meetings via conference calls have always been legal and any form of secret meeting (via conference call, internet, or in-person) or email is barred by the OPMA.

The New Jersey statute permits the LIC to continue conducting remote public meetings as long as the requirements of the OPMA are satisfied as well as the mandates of the DCA regulations.

Secondly, Mr. Gold alleges that the LIC violated the OPMA by failing to “specifying the time, place, and manner in which such notice was provided.” Our Supreme Court has held that our courts should require “strict adherence” with the provisions of the Open Public Meetings Act. Polillo v. Deane, 74 N.J. 562, 578 (1977) (invalidating commission's final action because it had failed to provide the requisite notice of its meetings). Because “[t]he purpose of the statute is to provide adequate notice to the public so that any member thereof may attend and object to the proposed action,” Gober v. Pemberton Tp., 185 N.J. Super. 323, 330, 448 A.2d 516 (App.Div.1982), a failure to give adequate notice is a violation of the fundamental purpose of the act and requires invalidation of the subject governmental action.

In AQN Associates, Inc. v. Twp. of Florence, 248 N.J. Super. 597, 613 (App. Div. 1991), the Township Clerk read the following statement: “This meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the Municipal Office.” The Court in AQN Associates held that the Township Clerk did provide the requisite notice since the notice was sufficient to ensure that any citizen interested would know the time, place, and manner. Unfortunately, inconvenience does not rise to any level of OPMA violation.