

# GOVERNOR CUOMO SUSPENDS THE REQUIREMENT TO HOLD PUBLIC HEARINGS

*Hodgson Russ Municipal Alert*  
April 10, 2020

On April 9, 2020, Governor Cuomo issued Executive Order 202.15, which, among other things, provides that any public hearing scheduled or otherwise required to occur in April or May of 2020 **shall** be postponed until June 1, 2020, without prejudice. Of note, if the public body is able to hold the public hearing remotely, through use of telephone conference, video conference, and/or other similar service, it may go forward. This is the first instance where the Governor has specifically authorized the holding of public hearings remotely, as opposed to meetings, although most communities had interpreted the prior orders as conveying that authority. This Executive Order confirms that approach.

Thus, it appears that the “without prejudice” language would suspend statutory time frames or default approval provisions where a public hearing has not yet occurred. But if the public hearing has been held and closed, the deadlines would seem to be applicable. This is particularly critical where there are state and local default approval provisions.

With respect to SEQRA, the Executive Order addresses Article 8 of the Environmental Conservation Law and 6 NYCRR 617.9 to suspend the requirement that public hearings be held, provided that public comments shall still be accepted either electronically or by mail, to satisfy participation requirements. Under SEQRA, the requirement to hold a public hearing is discretionary and is determined on a case-by-case basis by the Lead Agency. However, a public hearing typically should be held where there is a high degree of interest in the action, where there is substantive or significant adverse environmental impacts, whether there is adequate mitigation and alternatives proposed, and where a public hearing can effectively aid the Lead Agency in a decision-making process. 6 NYCRR 617.9(a)(4). Under Executive Order 202.15, the Lead Agency need not conduct this balancing, may suspend public hearings, provided that public comments continue to be accepted. Nothing in this Executive Order addresses other SEQRA time periods within which the Lead Agency must act.

The Executive Order is in effect through May 9, 2020.

If you have any questions on this, please contact Dan Spitzer (716.848.1420) or Chuck Malcomb (716.848.1261).

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## Practices & Industries

Municipal

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