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| To: | Mike DeMarco, President, Exchange Place Alliance  |
| From: | Scarinci Hollenbeck |
| Date: | September 24, 2018 |
| RE: | Requirements of The Open Public Meetings Act pertaining to The Regular Meetings of The Exchange Place Alliance District Management Corp.  |
| Our File N | 12014.1012 |

The requirements of the New Jersey Open Public Meetings Act are set forth in N.J.S.A. 10:4-6 through N.J.S.A. 10:4-21 (the “Law”). The requirements boil down to essentially three fundamental principles – (a) to provide adequate notice of public meetings, (b) to allow the public to attend and (3) to publish minutes of actions taken at public meetings. There is no requirement to provide the public an opportunity to speak or otherwise participate. While it is generally permissible to record public meetings, the right to do so is subject to reasonable restrictions.

**I WHAT MUST A PUBLIC BODY DO TO SATISFY THE REQUIREMENTS OF THE OPEN PUBLIC MEETINGS LAW?**

The Law requires public bodies to provide the public with: (a) adequate advance notice of all its meetings, (b) the right to attend its meetings, and (c) reasonable comprehensive minutes of all its meetings.

1. **ADEQUATE NOTICE**. The Law requires the public bodies provide the public with adequate advance notice of all its meetings. This can be accomplished by either: (1) an “Annual Notice” or (2) a “48-hour notice.” The “Annual Notice” containing the time, date, and, to the extent known, the location of each meeting, must be provided within seven days of the annual organization or reorganization meeting of the public body. If there is no organization or reorganization meeting, “Annual Notice” must be provided by January 10th. A “48-Hour Notice” is required when a public body wishes to convene a meeting which has not been listed on the annual notice or regularly scheduled meetings. Both the “Annual Notice” and the “48-Hour Notice” must be (1) prominently posted in at least one public place reserved for such announcements, (2) transmitted to two newspapers in time for publication 48-hours in advance of the meeting, (3) filed with appropriate Municipal or County Clerk or the Secretary of State if the public body has statewide authority, and (4) mailed to any person upon request.
2. **MEETINGS.** The Law requires that public bodies permit all members of the public to attend their meetings. The public body may exclude the public only from portions of a meeting known as the “executive” or “closed session.” Prior to excluding the public, the public body must first adopt a resolution at a meeting which is open to the public indicating generally what matters will be discussed in closed session and when these discussions will be disclosed to the public. Items permitted to be discussed in closed session include: (1) any matter involving the purchase, lease or acquisition of real property, (2) Any tactics and techniques used in protecting the safety and property of the public and investigations of violations or possible violations of the law, (3) any pending or anticipated litigation or contract negotiations in which the public body is or may become a party, and any matter falling within the attorney-client privilege, to the extent that confidentiality is required to preserve the attorney-client relationship, or (4) personnel matters related to the employment, appointment or termination of current or prospective employees, unless all individuals who could be adversely affected request, in writing, that the matter be discussed at a public meeting.
3. **MINUTES**. The Law requires the public body to keep reasonably comprehensible minutes of all its meetings, showing the time and place, the members present, the subjects considered, the actions taken, the votes of each member and any other information required by law to be recorded by minutes. These minutes are to be made promptly available to the public. In addition, the Law requires that a statement be entered into the minutes at the outset of each meeting indicating (1) that adequate notice has been provided (specifying the time, date, and manner in which the notice was provided), or (2) that adequate notice was not provided and an explanation for the failure of public body to provide adequate notice.

**II. THE RIGHT OF THE PUBLIC TO PARTICIPATE.**

The right of the public to attend meetings does not include the right to comment or participate. Governing bodies of municipalities must set aside a portion of every meeting for public comment, but the requirement does not extend beyond municipal governing bodies. See N.J.S.A. 10:4-12(a).

**III. THE RIGHT OF THE PUBLIC TO RECORD PUBLIC MEETINGS**

The Open Public Meetings Act does not address the rights of the public to record meetings. However, New Jersey law in general allows recording in any public setting subject to reasonable restrictions such as advance notice. See Tarus v Pine Hill. New Jersey courts have held that where the parties to a conversation did not have a "reasonable expectation of privacy," the conversation may be recorded without breaking the law. One court decision found that a conversation between two police officers during a traffic stop alongside a highway could be recorded without their permission, because they were talking in a place "more akin to an open, accessible place than an enclosed, indoor room." Another example is making an audio and video recording of a public meeting, which should ordinarily be permitted. However, as noted, the right to videotape is not absolute, but is subject to reasonable limitations. Here, the right to record in a public setting must be weighed against the right of Mack-Cali to prohibit recording in general in its offices. I believe that if recording is generally prohibited, enforcement of that general rule is reasonable and an exception need not be made for the Exchange Place Alliance meetings.