

# Open Meetings Law: Changes to the Videoconferencing Procedure

The following guidance summarizes recent amendments to New York's Open Meetings Law. **PLEASE READ THE ENTIRE DOCUMENT BEFORE CONTACTING NYCOM WITH QUESTIONS REGARDING CONDUCTING MEETINGS AND PUBLIC HEARINGS.**

## Overview

As part of the 2022 Enacted State Budget,<sup>1</sup> the NY Legislature amended the NYS Open Meetings Law to provide when and how public bodies may conduct meetings via videoconference technology. Accordingly, the previous videoconference authorization, which was enacted in 2000, has been repealed and replaced with a new, **substantially different videoconference provision**. In addition, public bodies may continue to conduct meetings through June 14, 2022, following the remote meeting procedure that was authorized pursuant to Executive Order 202.1 and Chapter 1 of the Laws of 2022 during the pandemic.<sup>2</sup>

## The NYS Open Meetings Law

The Open Meetings Law (OML), Article 7 of the Public Officers Law (§§ 100-111), outlines basic requirements for meetings conducted by public bodies.

Public Officers Law § 102(1) defines a "meeting" as "the official convening of a public body for the purpose of conducting public business." Any time a quorum of a public body gathers for the purpose of discussing public business, the meeting must be open to the public, whether or not the body intends to take action or vote on a particular issue.<sup>3</sup> Consequently, meetings include "workshops," "work sessions," and "agenda sessions."<sup>4</sup> Chance meetings or social gatherings are not covered by the OML since these are not official meetings. However, public officials may not discuss public business at chance meetings or social gatherings.<sup>5</sup>

## Basic Requirements of the Open Meetings Law

There are four basic requirements of the New York State Open Meetings Law:

1. All meetings must be noticed;
2. The public must be allowed to attend and observe the meetings in person except that portion of a meeting which is in executive session;
3. Proposed local laws, rules, regulations, resolutions, and policies, and any record which is subject to disclosure under FOIL which is scheduled to be discussed at the meeting must be made available to the public to the extent practicable; and
4. The public body must make minutes of the meeting available within two weeks of the meeting and within one week of the executive session.

For more information on the OML's specific requirements, see the NYCOM Handbook for Village Officials, Chapter 6, and the NYCOM Handbook for City Officials, Chapter 4, as well as the NYS Committee on Open Government website at <https://opengovernment.ny.gov>.

## The OML's New Videoconference Procedure

As of April 9, 2022, the previous videoconferencing provisions found in Public Officers Law § 103(c) are removed, and public bodies wishing to conduct meetings via videoconference must comply with the new requirements of Public Officers Law § 103-a.

Specifically, Public Officers Law § 103-a(2) authorizes public bodies to conduct meetings using videoconference technology so long as a **quorum of the public body is physically present at one or more of the locations where the public can also attend in person**. This requirement can be satisfied, for example, if three members of a five-member public body are physically present in the municipal hall and the public is allowed to attend at that

location, or if three members of a five-member public body are participating via videoconference from three different locations and the public is allowed to be physically present at each of those locations.

Additionally, the law requires public bodies to comply with the following in order to conduct meetings via videoconference:

1. The local government must adopt a local law or an individual public body must adopt a resolution after a public hearing<sup>6</sup> authorizing the use of videoconferencing
  - a. For itself and its committees or subcommittees or
  - b. Specifying that each committee or subcommittee may make its own determination.
2. The public body must (a) adopt written procedures governing member and public attendance consistent with Public Officers Law § 103-a and (b) conspicuously post those written procedures on the public body's website.
3. Members of the public body must be physically present at the meeting location(s) at which the public can attend in person **unless the member is unable to be physically present due to extraordinary circumstances, as set forth in the public body's adopted meeting procedures, which include disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member's physical attendance at such meeting.** Members of a public body do not have a right to attend meetings remotely but may participate remotely via videoconference only at the discretion of the public body.
4. Except in the case of executive sessions conducted pursuant to Public Officers Law § 105, the public body must ensure that members of the public body can be heard, seen, and identified while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon.
5. The minutes of meetings involving videoconferencing must include which, if any, members participated remotely and must be made available to the public pursuant to Public Officers Law § 106.
6. The public notice for the meeting must:
  - a. inform the public
    - i. that videoconferencing will be used,
    - ii. where they can view and/or participate in such meeting, and
    - iii. where required documents and records will be posted or available, and
  - b. identify the physical location(s) where members of the public body will be participating in the meeting and where the public can attend the meeting in person.
7. The public body must record each meeting that uses videoconferencing and such recordings must be posted or linked to on the public body's website within five business days of the meeting. The recordings must remain available for a minimum of five years thereafter, and recordings must be transcribed upon request.
8. The public body must provide the opportunity for members of the public to view the meeting via video. Additionally, at meetings where public comment or participation is authorized, members of the public must be able to participate in the proceedings via videoconference in real time. The public body must ensure that the videoconferencing provides the same opportunities for public participation or testimony as in-person participation or testimony.
9. A local public body electing to utilize videoconferencing to conduct its meetings must maintain an official website.

If a public body broadcasts its meetings or conducts its meetings via videoconference, it must use technology that permits members of the public with disabilities to access the video in a manner consistent with the 1990 Americans with Disabilities Act (ADA). Information on how meetings can be made accessible to attendees with disabilities can be found online at [www.section508.gov/create/accessible-meetings/](http://www.section508.gov/create/accessible-meetings/). In addition, local officials should consult with their municipal attorney to ensure compliance with this requirement.

In summary, the Open Meeting Law's new videoconference provisions allow a member of a public body to participate in a meeting of a public body without allowing members of the public to be physically present at the location from which they are participating in the meeting if (a) extraordinary circumstances exists such as

disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member's physical attendance at such meeting, and (b) at least a quorum of the public body are participating in the meeting from a location or locations at which members of the public may physically attend in person. Note that the public notice for the meeting must inform the public that videoconference will be used at the meeting. In addition, Public Officers Law § 103-a continues to prohibit meetings from being conducted using only teleconferencing technologies.

## Emergency Meetings

Part WW of Chapter 56 of the Laws of 2022 also creates an emergency exception to the in person requirement associated with videoconference meetings. Specifically, if (1) the Governor has declared a state of emergency or the local chief executive has declared a local state of emergency pursuant to NYS Executive Law § 24 **and** (2) the public body determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the public body to hold an in person meeting, then the public body is not required to hold an in person meeting.<sup>7</sup> Local governments must authorize videoconferencing pursuant to Public Officers Law § 103-a before utilizing the emergency meeting authority during a local state of emergency.

Although not required by Public Officers Law § 103-a(3), NYCOM recommends that, when a public body invokes this emergency exception and takes action at a meeting without allowing members of the public to be present, at its next meeting where the public is allowed to attend, the public body should acknowledge the previous meeting and summarize any action taken thereat. Moreover, public bodies must still produce minutes of such emergency meetings pursuant to the requirements of the Open Meetings Law. Finally, local governments are strongly encouraged to consult with their municipal attorney before holding an emergency meeting where the public is not allowed to attend in person.

## Expiration of Videoconference and Emergency Meetings Provisions

The videoconference and emergency meeting provisions of Public Officers Law § 103-a, as enacted by Part WW of Chapter 56 of the Laws of 2022 and described above, took effect on April 9, 2022, and will expire and be deemed repealed July 1, 2024.

## Temporary Remote Meeting Authorization

On January 14, 2022, Governor Hochul signed into law Chapter 1 of the Laws of 2022, which suspends Article 7 of the Public Officers Law (also known as the Open Meetings Law) to the extent necessary to permit any public body to meet and take such actions authorized by law without allowing the public to be physically present at the meeting. Chapter 1 authorizes public bodies to meet remotely by conference call or similar service. If a public body restricts in-person access to its meetings or conducts a meeting remotely by conference call or similar service, the public body must provide the public the ability to view or listen to such meetings live and must record and later transcribe such meetings. This language mirrors the language found in Governor Cuomo's Executive Order 202.1, which suspended the in-person requirement of the NYS Open Meetings Law for most of the State's declared COVID state of emergency.

This remote meeting authorization is continued for as long as Governor Hochul's Executive Order 11, which declared a State disaster emergency related to COVID-19, is effective. On May 15, 2022, Governor Hochul issued Executive Order 11.6, extending the State Disaster Emergency and, as a result, remote meeting authorization through June 14, 2022.

**Consequently, pursuant to Chapter 1 of the Laws of 2022, public bodies may conduct meetings and public hearings either remotely pursuant to the requirements of Chapter 1. Public officials may monitor the status of Executive Order 11 (and thus this remote meetings authorization) by visiting [www.governor.ny.gov/executiveorders](http://www.governor.ny.gov/executiveorders).**

If a public body conducts a meeting pursuant to Chapter 1 of the Laws of 2022, it **must still prepare meeting minutes** within two weeks of the meeting, and within one week of an executive session. The transcription

requirement does not obviate the obligation to prepare minutes in accordance with the requirements of the Open Meetings Law.

The notice for remote meetings conducted pursuant to Chapter 1 of 2022 must clearly state the specifics of the meeting:

1. The name of the public body meeting;
2. The date and time of the meeting;
3. Whether the meeting is being conducted in accordance with Chapter 1 of the Laws of 2022;
4. The method that the public body will be using to conduct the meeting (e.g., videoconference or teleconference);
5. How the public can view or listen to the meeting;
6. If a meeting will be streamed live over the internet, the public notice for the meeting shall inform the public of the internet address of the website streaming such meeting; and
7. If the meeting will have a public comment period or if a public hearing is being conducted, the noticed should indicate that individuals may submit comments via email or regular mail, whether such written comments must be received prior to the commencement of the meeting or whether the meeting/public hearing will be held open for a specific number of days for the receipt of such written comments, and that the written comments will be made part of the record.

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<sup>1</sup> Part WW of Chapter 56 of the Laws of 2022.

<sup>2</sup> Part WW of Chapter 56 of the Laws of 2022 authorizes remote meeting through June 8, 2022. Chapter 1 of the Laws of 2022 authorize remote meetings so long as the COVID-19 State Disaster Emergency remains in place. Consequently, the remote meeting authorization has been extended through June 14, 2022 pursuant to Executive Order 11.6.

<sup>3</sup> Orange Co. Publications v. City of Newburgh, 60 A.D.2d 409 (2d Dep't. 1978), aff'd. 45 N.Y.2d 947.

<sup>4</sup> N.Y. St. Comm. Open Gov't. OML-AO-4506.

<sup>5</sup> Kissel v. D'Amato, 97 Misc.2d 675 (Sup. Ct. Nassau Co. 1979), mod on other grounds, 72 A.D.2d 790 (2d Dep't. 1979).

<sup>6</sup> Public Officers Law § 103-a(3) does not address the type or timing of the notice of the public hearing for resolutions.

<sup>7</sup> Public Officers Law § 103-a(3).