

NEW YORK STATE LEGISLATURE AMENDS OPEN MEETINGS LAW TO ALLOW FOR VIDEOCONFERENCING

Hodgson Russ Municipal and Education Alert
April 19, 2022

In a last minute addition to the Budget Legislation, the New York State Legislature authorized local public bodies to conduct meetings via videoconferencing through June 30, 2024.[1] The legislation, which amends the Open Meetings Law, Section 103 of the Public Officers Law, allows a local public body to use videoconferencing so long as the public can attend, listen, and observe the meeting in at least one physical location at which a member of the body participates.[2] The law allows a local public body to utilize videoconferencing at its discretion provided that a minimum number of members to satisfy quorum are present in the same physical location or locations where the public can attend.[3]

Local Law or Resolution Required

Use of videoconferencing will require the local public body pass a local law or resolution.[4] Such action would need to specify whether the use of videoconferencing will be available to the local public body itself and all of its committees and subcommittees, or whether such committees and subcommittees will make such a determination on their own.[5] Community boards in a city with a population of one million or more shall make their own determination as to the use of videoconferencing.[6]

Written Procedures for Videoconferencing

If a local public body authorizes videoconferencing for meetings, it must establish written procedures governing both member and public attendance consistent with the statute.[7] These written procedures must be conspicuously posted on the local public body's website.[8] Maintaining an official website is required if the local public body elects to conduct meetings via videoconferencing.[9]

Physical Presence by Members

Members of the local public body must be physically present at the meeting unless the member is unable due to extraordinary circumstances.[10] The local law or resolution authorizing videoconferencing for meetings must address what circumstances are permissible to excuse physical attendance.[11] These include, for example, "disability, illness, caregiving responsibilities, or any other significant or

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unexpected factor or event which precludes the member's physical attendance at such meeting." [12]

Notice of the Meeting

The notice of any meeting to be conducted by videoconferencing must indicate that videoconferencing will be used, where the public can view and/or participate in the meeting, where the documents and records for the meeting will be available and posted, and also indicate the physical location for the meeting so the public can attend in person. [13] Except in the case of executive session, members of the local public body must ensure that they can be heard, seen, and identified while the meeting is being conducted. [14] The public must be allowed to view and participate in a meeting by videoconferencing in real time. [15]

Recording of Meetings

Such meetings by videoconferencing will be recorded and the recording shall be posted or linked on the local public body's website within five (5) business days. [16] These recordings must remain available for a minimum of five (5) years thereafter, and shall be transcribed upon request. [17] Following the meeting, the minutes of any meeting conducted through videoconferencing must reflect which members, if any, attended remotely, and these must be made available to the public under the Freedom of Information Law. [18] The videoconferencing platform used must comply with the Americans with Disabilities Act, as amended, along with corresponding guidelines. [19]

Emergency Declarations

If there is any state disaster emergency declared by the governor or local state of emergency proclaimed by the chief executive of a county, city, town, or village, the local public body has the ability to waive the in-person meeting requirement. [20]

Committee on Open Government Report

By January 1, 2024, the Committee on Open Government (the "Committee") is to issue a report concerning the application and implementation of the amendment. [21] The report shall address any recommendations the Committee has governing videoconferencing for public bodies. [22] Those entities affected by the amendment should monitor the Committee report as you may wish to submit comments on for consideration. We expect the report will guide the Legislature on potential amendments to the statute, so public comment will be critical.

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NEW YORK STATE LEGISLATURE AMENDS OPEN MEETINGS LAW TO ALLOW FOR VIDEOCONFERENCING

Hodgson Russ Takeaways

This amendment expands the reach of public meetings by allowing videoconferencing. The law is distinct, however, in that pandemic-era remote meetings by conference call will be ending. Recognizing this was permissible under prior executive orders issued during the pandemic, the amendment gives local public bodies the ability to conduct business without being in person and to use a conference call or similar service for such business for the first sixty (60) days following the effective date of the law, which is April 9, 2022.[23] This is permissible as long as the public has the ability to access such a call and the meeting is recorded and later transcribed.[24] Local public bodies should begin transitioning away from conference call platforms in light of the amendment.

While the Open Meetings Law previously allowed videoconferencing as a permissible means under certain conditions, these amendments clarified and broadened such a use. This includes correcting certain limitations. For instance, under the prior law, a “public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe *at any site* at which a member participates.”[25] This, of course, posed issues for those who may be attending meetings by videoconference in private locations, such as their homes. The Legislature rectified this concern by amending Section 103(c) to read: “A public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe meetings *in at least one physical location which a member participates.*” [26]

If you have questions about this amendment, the Open Meetings Law, or municipal law generally, please contact [Charles Malcomb](#) (716.848.1261), [Aaron Saykin](#) (716.848.1345), [Jeff Swiatek](#) (716.848.1449), or any member of our [Municipal](#) or [Education](#) practices.

[1] New York Assembly Bill A09006C/Senate Bill S08006-C, Part WW, signed into law April 9, 2022, available from https://assembly.ny.gov/leg/?default_fld=&leg_video=&bn=A09006&term=0&Summary=Y&Actions=Y&Text=Y.

[2] New York Assembly Bill A09006C/Senate Bill S08006-C, Part WW § 2, Public Officers Law § 103-a(1).

[3] *Id.* § 103-a(2).

[4] *Id.* § 103-a(2)(a).

[5] *Id.* § 103-a(2)(a)(i)-(ii).

[6] *Id.* § 103-a(2)(a)(iii).

[7] *Id.* § 103-a(2)(b).

[8] *Id.*

[9] *Id.* § 103-a(2)(i).

[10] *Id.* § 103-a(2)(c).

NEW YORK STATE LEGISLATURE AMENDS OPEN MEETINGS LAW TO ALLOW FOR VIDEOCONFERENCING

[11] *Id.*

[12] *Id.*

[13] *Id.* § 103-a(2)(f).

[14] *Id.* § 103-a(2)(d).

[15] *Id.* § 103-a(2)(h).

[16] *Id.* § 103-a(2)(g).

[17] *Id.*

[18] *Id.* § 103-a(2)(e).

[19] *Id.* § 103-a(5).

[20] *Id.* § 103-a(3).

[21] *Id.* § 103-a(4).

[22] *Id.*

[23] New York Assembly Bill A09006C/Senate Bill S08006-C, Part WW § 3.

[24] *Id.*

[25] *Id.* § 103(c) (emphasis added).

[26] New York Assembly Bill A09006C/Senate Bill S08006-C, Part WW § 1 (emphasis added).