

NEW YORK STATE OF OPPORTUNITY. | Division of Local Government Services

Public Meetings & Hearings

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Meetings and hearings defined

- **Public meeting:** The official convening of a public body for the purpose of conducting public business
- **Public body:** Entities consisting of two or more people that conduct public business and perform a governmental function
- **Public hearing:** An official proceeding of a governmental body or officer during which the public is accorded the right to be heard

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Open Meetings Law

Public Officers Law
Article 7 § 100-111

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Purpose and intent

- Meetings allow the public to listen and observe
- Subject to Open Meetings Law
 - Application review and other board business
 - “Work session” or “agenda meeting”
 - “Site visit” if a quorum has gathered to discuss application
 - Riverkeeper v. Planning Board of the Town of Somers
- Exempt from Open Meetings Law
 - Soliciting and receiving legal advice from review board’s attorney
 - Attorney-client privilege

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Quorum

- Number of members needed to legally conduct business (convening meetings, hearings, voting, etc.)
- At least a majority of a fully constituted membership, including absences and vacancies

NY General Construction Law, Article 2 § 41

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Using alternates to achieve quorum

Prepare for board member absences due to conflicts of interest

- Appoint any number of alternates by local law or ordinance
- For other absences, supersede statute by local law
- Terms of office set by governing board, not state statute
- Serve at the call of board chair
- Subject to Public Officers Law, oath of office, and training

Legal Memorandum: “Alternate Members of Planning Boards and Zoning Boards of Appeals” <https://dos.ny.gov/legal-memorandum-lu06-alternate-members-county-and-local-planning-boards-and-zoning-boards-appeals>

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Executive session

Valid only for specific reasons under OML

1. Public safety
2. Protect identity
3. Criminal investigations
4. Actual litigation
5. Collective negotiations
6. History of a person
7. Exams
8. Property value



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Executive session procedure

1. Portion of open meeting from which public may be excluded
2. Pass motion to enter into executive session for stated purpose
3. Close executive session and return to open meeting
4. File minutes of actions taken in executive session within one week



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Meeting access requirements

Open to "the public"

- Not limited to citizenship or residency
- Facility should adequately accommodate all
- Make reasonable efforts to permit barrier-free access to physically handicapped
- Public participation may be permitted but not required

Open to "the media"

- Open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted
- Adopt rules for equipment location and personnel as to conduct proceedings in an orderly manner
- Conspicuously post such rules during meetings and written copies upon request

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Meeting notice requirements

1. Provide time and date to media at least one week in advance (this is not publication as a legal notice)
2. Conspicuously post in designated public locations at least 72 hours in advance
3. Conspicuously post on municipal website where able
4. If videoconferencing, identify meeting locations; state public's right to attend meeting at any of those locations
5. If live streamlining online, include website URL to watch

Planning Board

Regular Meetings

- 1st, 3rd and 5th Tuesdays of every month
- Room: 4th Auditorium
- 400 State Street
- Room: 407 (10th)

Agendas & Minutes

Agendas are available prior to the meetings. Minutes are available following approval.

Virtual Meetings

Due to the COVID-19 outbreak and the transition to public gatherings, meetings will be held on a Zoom Teleconference and Videoconferencing. Audio and video recordings are available upon request to the New York State Office of Information Services.

2021 Workshop and Meeting Dates*			
January 12, 21	April 12, 21	April 19 (Cancelled)	October 12, 21
January 26, 21	April 26, 21	July 27, 21	October 26, 21
February 9, 21	May 11, 21	August 30, 21	November 9, 21
February 23, 21	May 25, 21	September 14, 21	November 23, 21
March 9, 21	June 8, 21	September 28, 21	December 7, 21
March 23, 21	June 22	October 12, 21	December 21, 21

Agendas & Minutes

Agendas are available prior to the meetings. Minutes are available following approval.

*Some dates subject to change and COVID-19.

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Remote participation & videoconferencing

Non-public locations

- OML §103-a authorizes public bodies to adopt local law for Boards to participate & vote via videoconference in **non-public location under "extraordinary circumstances"** (undefined)
- Quorum required in public location(s)
- Public location(s) notice and access required

Public locations

- Boards may participate via videoconferencing where they are seen, heard, AND their remote location is open to public (i.e.; member participates via videoconference in another state in public location)
- Remote public location(s) notice and access required
- No local law needed for this option

More info and model law: <https://opengovernment.ny.gov/>

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Record disclosure requirements

- As of November 2021: Agency records, as well as any proposed resolution, law, rule, regulation, policy or any amendment scheduled to be the subject of discussion during an open meeting shall be made available, upon request, to the extent practicable **at least 24 hours prior** to the meeting
- Copies may be made available for a reasonable fee or posted on a routinely updated municipal website to the extent practicable at least 24 hours prior to the meeting
- More info: <https://www.governor.ny.gov/news/governor-hochul-signs-two-pieces-legislation-boosting-transparency-state-and-local-government>

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Meeting preparation and procedure

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Applications

- Appoint an administrative official (formally or informally)
 - ZEO, municipal clerk, board clerk, etc
- Good forms and communication
 - Include SEQR Environmental Assessment Form
 - Post on website
- Have clear submission requirements, include checklist
- Most approvals require a public hearing within 62 days of a “complete application”
 - Submission deadlines increase efficiency of review
- Ask applicant to provide extra copies of materials
 - County referral (if required); send immediately
 - Other municipal department heads of recommendations

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Organizing meetings

- Prepare agenda
- Confirm that members will attend
- Invite experts and public officials
- Reserve meeting room
- Consider larger spaces for controversial applications
- Arrange for equipment



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Meeting procedures

- Format for meeting and presentations
- Time limits established for agenda items
- When and if questions or comments will be heard
- Additional procedures?



Make all present aware of rules

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Audio & video recording

- Board may adopt procedures for recording that does not detract from the deliberative process
- Should not require permission or advance notice to record
- Absolute ban on recording is not reasonable
- Board member or public reluctance to be recorded is not appropriate reason to prohibit recording



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Public hearings

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Public hearings

- Required for all matters before a ZBA
- Examples for planning boards include:
 - Subdivision
 - Special use permit
 - Preparation of preliminary comprehensive plan
 - Site plan (if required locally)

An official proceeding of a governmental body or officer during which the public is accorded the right to be heard

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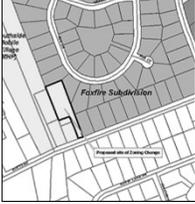
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When to hold a hearing

- When required by state statute, local law or ordinance
- When considering a change to zoning or regulations
- Prior to determination of significance for SEQR (optional)
- When application or issue may be controversial
- When the board is looking for information about a parcel and feedback on a proposal



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Hearing notice requirements

- In Town Law, Village Law & General City Law for special use permits, subdivisions, appeals to the ZBA
- Municipal Home Rule Law
- Legal notice in official newspaper
 - Generally, 5 days prior to hearing date
 - Adoption of and amendments to zoning regulations or comprehensive plans require 10 days advance notice

Content of notice:

- Date, time & place
- Nature of proposed action
- Location of subject property, if applicable

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Hearing notice requirements

- Must mail notice to:
 - Applicant
 - Regional state park commission, if 500' from state park or parkway (ZBAs only)
 - Other agencies, if applicable:
 - GML § 239-m & GML §239-nn
- No state statutes require direct mailing of notices to adjoining neighbors



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Hearing notice requirements

- Municipalities may adopt additional noticing requirements:
 - Signs on application property (best practice)
 - Mailings to neighbors
 - Municipal ListServ
- Municipal Home Rule Law § 20 allows local governments to vary notice requirements for hearings for local law adoption by that municipality



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Hearing procedures

- Applicant's role at hearing
- Handling questions from public
 - Registration
 - Order of speakers
 - Time allotted per speaker
- Consequences for disruptive audience members
- Recording sessions



Outline "Rules of Procedure" to maintain order

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Hearing tips

- Suggest speakers identify themselves (cannot require)
- Clarify to whom speaker is referring
- Beware of rustling paper or chatter near sensitive microphones
- Require visual references to be described or "read" into the record
- Let the public know what's next



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Closing the hearing

- Hearing usually over when all who wished to speak were heard
- After hearing closed, board may keep record open to accept written comments



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Adjournment and continuation

- If board adjourns to UNSPECIFIED TIME and PLACE, then notice must be given in same manner as original notice
- If PRIOR to ADJOURNING, board ANNOUNCES time and place of continuing session, then public notice need not be given again



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Records

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Minutes are a record

- Make available to the public
 - Regular meetings within two weeks
 - Executive sessions within one week
- NYS Archives Records Retention Schedule
 - Official minutes permanently
 - Hearing proceedings permanently
 - Recordings four months after transcription or approval of minutes/proceedings

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Minutes

Meetings	Hearings
<ul style="list-style-type: none"> • List of motions made • Votes taken on those motions 	<ul style="list-style-type: none"> • At least a general summary of views expressed <ul style="list-style-type: none"> – Need not be verbatim – Stenographer not required • Names of speakers (if provided)
<div style="border: 1px solid black; padding: 5px; display: inline-block;">If recording, also take notes</div>	

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Decision document

- Decision
 - Date action taken
 - Motion
 - Vote cast by each board member
 - Any conditions imposed
- Locally establish what constitutes "decision document"
 - Resolution
 - Minutes indicating vote on relevant motion
 - Findings statement that includes decision
 - Copy of applicant's decision letter

DECISION

At a meeting of the Planning Board on _____, 2011, the following decision was made: _____

I move that the Planning Board: deny approve approve with conditions (see below)

The application for: Site Plan Review Approval Planning Board Review Approval Final Board Review Approval Special Use Permit Approval Other _____

Moved by: _____

Mr. property located at: _____

Approval of this application is subject to the following conditions: _____

(If additional conditions are attached)

RECORD OF VOTE	MEMBER NAME	AYES	NAYS
Chair	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____

Approved by Planning Board Members: _____ Date: _____

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Noticing and filing decisions

- Attach findings to decision
- Notify applicant by mail
- Send county "report of final action," if referred
- File with municipal clerk within 5 business days
 - Clerk should date stamp all records
 - Filing establishes start of 30-day period for appeal to NYS Supreme Court under Article 78 of NY Civil Practice Law & Rules

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518-473-3355

localgov@dos.ny.gov

<https://dos.ny.gov/training-assistance>

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When can a meeting be closed?

(Excerpt from the Committee on Open Government publication *Your Right to Know*)

The law provides for closed or “executive” sessions under circumstances prescribed in the law. It is important to emphasize that an executive session is not separate from an open meeting, but rather is defined as a portion of an open meeting during which the public may be excluded.

To close a meeting for executive session, the law requires that a public body take several procedural steps. First, a motion must be made during an open meeting to enter into executive session; second, the motion must identify “the general area or areas of the subject or subjects to be considered;” and third, the motion must be carried by a majority vote of the total membership of a public body.

Further, a public body cannot close its doors to the public to discuss the subject of its choice, for the law specifies and limits the subject matter that may appropriately be discussed in executive session. The eight subjects that may be discussed behind closed doors include:

- (a) matters which will imperil the public safety if disclosed;
- (b) any matter which may disclose the identity of a law enforcement agency or informer;
- (c) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- (d) discussions regarding proposed, pending or current litigation;
- (e) collective negotiations pursuant to Article 14 of the Civil Service Law (the Taylor Law);
- (f) the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- (g) the preparation, grading or administration of examinations; and
- (h) the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

These are the only subjects that may be discussed behind closed doors; all other deliberations must be conducted during open meetings.

It is important to point out that a public body can never vote to appropriate public monies during a closed session. Therefore, although most public bodies may vote during a properly convened executive session, any vote to appropriate public monies must be taken in public.

The law also states that an executive session can be attended by members of the public body and any other persons authorized by the public body.

OML-AO-4028

August 25, 2005

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the facts presented in your correspondence.

Dear [REDACTED]

I have received your letter and the memorandum relating to it. Please accept my apologies for the delay in response.

You indicated that the Hyde Park Town Board conducted an executive session that you did not attend, and when it reconvened in public, "the Supervisor announced that two (2) decisions were made." On the following day, you contacted the Town Attorney to request that he verify that a vote was taken during the executive session. He referred your inquiry to the attorney who was present and wrote that:

"No votes were taken in Executive Session. In both instances the Board simply confirmed decisions it had previously made."

You wrote that you "fail to understand what that answer means." I must admit that I do not understand it either. Nevertheless, I offer the following comments.

First, as you are aware, the Open Meetings Law contains direction concerning minutes of meetings and provides what might be viewed as minimum requirements pertaining to their contents. Specifically, §106 states that:

"1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.

3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meetings except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session."

In view of the foregoing, as a general rule, a public body may take action during a properly convened executive session [see Open Meetings Law, §105(1)]. If action is taken during an executive session, minutes reflective of the action, the date and the vote must generally be

recorded in minutes pursuant to §106(2) of the Law. If no action is taken, there is no requirement that minutes of the executive session be prepared.

I point out that minutes of executive sessions need not include information that may be withheld under the Freedom of Information Law. From my perspective, when a public body makes a final determination during an executive session, that determination will, in most instances, be public. For example, although a discussion to hire or fire a particular employee could clearly be discussed during an executive session [see Open Meetings Law, §105(1)(f), a determination to hire or fire that person would be recorded in minutes and would be available to the public under the Freedom of Information Law. On other hand, if a public body votes to initiate a disciplinary proceeding against a public employee, minutes reflective of its action would not have include reference to or identify the person, for the Freedom of Information Law authorizes an agency to withhold records to the extent that disclosure would result in an unwarranted personal privacy such as unsubstantiated charges or allegations [see Freedom of Information Law, §87(2)(b)].

On occasion, public bodies have taken action by what has been characterized as "consensus." If a public body reaches a consensus upon which it relies, I believe that minutes reflective of decisions reached must be prepared and made available. In *Previdi v. Hirsch* [524 NYS 2d 643 (1988)], the issue involved access to records, i.e., minutes of executive sessions held under the Open Meetings Law. Although it was assumed by the court that the executive sessions were properly held, it was found that "this was no basis for respondents to avoid publication of minutes pertaining to the 'final determination' of any action, and 'the date and vote thereon'" (id., 646). The court stated that:

"The fact that respondents characterize the vote as taken by 'consensus' does not exclude the recording of same as a 'formal vote'. To hold otherwise would invite circumvention of the statute.

"Moreover, respondents' interpretation of what constitutes the 'final determination of such action' is overly restrictive. The reasonable intendment of the statute is that 'final action' refers to the matter voted upon, not final determination of, as in this case, the litigation discussed or finality in terms of exhaustion or remedies" (id. 646).

If the Board reached a "consensus" that is reflective of its final determination of an issue, I believe that minutes must be prepared that indicate its action, as well as the manner in which each member voted. I note that §87(3)(a) of the Freedom of Information Law states that: "Each agency shall maintain...a record of the final vote of each member in every agency proceeding in which the member votes." As such, members of public bodies cannot take action by secret ballot.

I hope that I have been of assistance.

Sincerely,

Robert J. Freeman
Executive Director

RJF:tt

OML-AO-4506

October 30, 2007

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the facts presented in your correspondence.

Dear [REDACTED]

I have received your letter in which you inferred that the board of education in the school district in which you reside fails to comply with the Open Meetings Law by holding "so-called work sessions at which motions, votes are taken, contracts are discussed, and there is no counsel or district clerk present - ever."

In this regard, based on the judicial interpretation of the Open Meetings Law, there is no legal distinction between a "meeting" and "work session."

By way of background, it is noted that the definition of "meeting" has been broadly interpreted by the courts. In a landmark decision rendered in 1978, the Court of Appeals, the state's highest court, found that any gathering of a quorum of a public body, such as a board of education, for the purpose of conducting public business is a "meeting" that must be convened open to the public, whether or not there is an intent to take action and regardless of the manner in which a gathering may be characterized [see Orange County Publications v. Council of the City of Newburgh, 60 AD 2d 409, aff'd 45 NY 2d 947 (1978)].

I point out that the decision rendered by the Court of Appeals was precipitated by contentions made by public bodies that so-called "work sessions" and similar gatherings held for the purpose of discussion, but without an intent to take action, fell outside the scope of the Open Meetings Law. In discussing the issue, the Appellate Division, whose determination was unanimously affirmed by the Court of Appeals, stated that:

"We believe that the Legislature intended to include more than the mere formal act of voting or the formal execution of an official document. Every step of the decision-making process, including the decision itself, is a necessary preliminary to formal action. Formal acts have always been matters of public record and the public has always been made aware of how its officials have voted on an issue. There would be no need for this law if this was all the Legislature intended. Obviously, every thought, as well as every affirmative act of a public official as it relates to and is within the scope of one's official duties is a matter of public concern. It is the entire decision-making process that the Legislature intended to affect by the enactment of this statute" (60 AD 2d 409, 415).

The court also dealt with the characterization of meetings as "informal," stating that:

"The word 'formal' is defined merely as 'following or according with established form, custom, or rule' (Webster's Third New Int. Dictionary). We believe that it was inserted to safeguard the rights of members of a public body to engage in ordinary social transactions, but not to permit the use of this safeguard as a vehicle by which it precludes the

application of the law to gatherings which have as their true purpose the discussion of the business of a public body" (id.).

Based upon the direction given by the courts, if a majority of a public body gathers to discuss public business, any such gathering, in my opinion, would ordinarily constitute a "meeting" subject to the Open Meetings Law. Since a work session held by a majority of a public body is a "meeting", it would have the same responsibilities in relation to notice and the taking of minutes as in the case of a formal meeting, as well as the same ability to introduce motions, to vote and to enter into executive sessions when appropriate .

With respect to minutes of "work sessions", as well as other meetings, the Open Meetings Law contains what might be viewed as minimum requirements concerning the contents of minutes. Specifically, §106 of the Open Meetings Law states that:

"1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.

3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meetings except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session."

Based upon the foregoing, it is clear in my view that minutes need not consist of a verbatim account of what was said at a meeting; similarly, there is no requirement that minutes refer to every topic discussed or identify those who may have spoken. Although a public body may choose to prepare expansive minutes, at a minimum, minutes of open meetings must include reference to all motions, proposals, resolutions and any other matters upon which votes are taken. If those kinds of actions, such as motions or votes, do not occur during work sessions, technically, I do not believe that minutes must be prepared. On the other hand, if motions are made or actions taken, those activities must be memorialized in minutes.

I hope that the foregoing serves to clarify your understanding and that I have been of assistance.

RJF:tt

OML-AO-3812

June 2, 2004

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the facts presented in your correspondence.

Dear [REDACTED]

As you are aware, I have received your letter. Please accept my apologies for the delay in response.

You wrote that the Clerk in the Village of Forestville has suggested that the Board is required only "to put [notice of meetings] in the paper once a year since the meeting where held [sic] at the same time every month." You asked whether that is proper, and whether notice must be given prior to "workshops."

In this regard, I offer the following comments.

First, I do not believe that there is any legal distinction between a "workshop" and a "meeting." By way of background, the definition of "meeting" [see Open Meetings Law, §102(1)] has been broadly interpreted by the courts. In a landmark decision rendered in 1978, the Court of Appeals, the state's highest court, found that any gathering of a majority of a public body for the purpose of conducting public business is a "meeting" that must be conducted open to the public, whether or not there is an intent to have action and regardless of the manner in which a gathering may be characterized [see *Orange County Publications v. Council of the City of Newburgh*, 60 Ad 2d 409, aff'd 45 NY 2d 947 (1978)].

The decision rendered by the Court of Appeals was precipitated by contentions made by public bodies that so-called "work sessions" and similar gatherings held for the purpose of discussion, but without an intent to take action, fell outside the scope of the Open Meetings Law. In discussing the issue, the Appellate Division, whose determination was unanimously affirmed by the Court of Appeals, stated that:

"We believe that the Legislature intended to include more than the mere formal act of voting or the formal execution of an official document. Every step of the decision-making process, including the decision itself, is a necessary preliminary to formal action. Formal acts have always been matters of public record and the public has always been made aware of how its officials have voted on an issue. There would be no need for this law if this was all the Legislature intended. Obviously, every thought, as well as every affirmative act of a public official as it relates to and is within the scope of one's official duties is a matter of public concern. It is the entire decision-making process that the Legislature intended to affect by the enactment of this statute" (60 AD 2d 409, 415).

The court also dealt with the characterization of meetings as "informal," stating that:

"The word 'formal' is defined merely as 'following or according with established form, custom, or rule' (Webster's Third New Int. Dictionary). We believe that it was inserted to safeguard the rights of members of a public body to engage in ordinary social transactions, but not to permit the use of this safeguard as a vehicle by which it precludes the application of the law to gatherings which have as their true purpose the discussion of the business of a public body" (id.).

Based upon the direction given by the courts, when a majority of the Board convenes to discuss the Village business, any such gathering, in my opinion, would constitute a "meeting" subject to the Open Meetings Law, even if it is characterized as a "workshop."

Second, the Open Meetings Law requires that notice be given to the news media and posted prior to every meeting. Specifically, §104 of that statute provides that:

"1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before each meeting.

2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.

3. The public notice provided for by this section shall not be construed to require publication as a legal notice."

Stated differently, if a meeting is scheduled at least a week in advance, notice of the time and place must be given to the news media and to the public by means of posting in one or more designated public locations, not less than seventy-two hours prior to the meeting. If a meeting is scheduled less than a week an advance, again, notice of the time and place must be given to the news media and posted in the same manner as described above, "to the extent practicable", at a reasonable time prior to the meeting. Therefore, if, for example, there is a need to convene quickly, the notice requirements can generally be met by telephoning the local news media and by posting notice in one or more designated locations.

In the context of your inquiry, if a series of meetings have been scheduled in advance to be held at particular times, the posting of a notice of a schedule of those meetings in a conspicuous public location and transmittal of that notice once to the news media would in my view satisfy §104 of the Open Meetings Law regarding those meetings. The only instances in which additional notice would be required would involve unscheduled meetings that are not referenced in the notice.

Therefore, if, for instance, the Board of Trustees, establishes at its organizational meeting that formal meetings will be held on the second Thursday of each month at 7 p.m. in Village Hall, and that workshop meetings will be held on the fourth Thursday of each month at 7 p.m. in Village Hall, and if notice containing that information is posted continuously and transmitted once to the local news media, I believe that the board would satisfy the notice requirements imposed by the Open Meetings Law. Again, the only additional notice would involve unscheduled meetings. I point out, too, that although notice of meetings must be given to the news media, there is no requirement that the news media print or publicize that a meeting will be held.

I hope that I have been of assistance.

RJF:tt

cc: Board of Trustees

NEW YORK STATE COMMITTEE ON OPEN GOVERNMENT

QUESTIONS AND ANSWERS CHAPTER 56 OF THE LAWS OF 2022

On April 9, 2022, Governor Hochul signed Chapter 56 of the Laws of 2022 relating to the New York State budget for the 2022-2023 state fiscal year. Included in the bill is an amendment to the Open Meetings Law (OML) to make permanent (until July 1, 2024) the expanded use of videoconferencing by public bodies to conduct open meetings, *under extraordinary circumstances*, regardless of a declaration of emergency.

As a threshold matter, it is our understanding that the new law is not meant to change or curtail what has always been required of public bodies complying with the Open Meetings Law. Public bodies may continue to operate now as they did *before* the onset of the pandemic in early 2020 when the “in person” aspects of the Open Meetings Law were first suspended. In other words, we believe that if a public body was permitted to do it before the pandemic, this law does not change that. As noted above, this law is intended to expand, in extraordinary circumstances only, the ability of public bodies to meet using remote access technology.

Below we have identified areas of the law that may require clarification.

Q. Are public bodies required to comply with the new videoconferencing requirements right away?

A. No. For sixty days after the effective date of Chapter 56 (April 9, 2022; accordingly through June 8, 2022), public bodies are authorized to meet and take such action authorized by law without permitting in public-in-person access to meetings and authorize such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed. This language closely models the language of Chapter 417 of the Laws of 2021 and [Chapter 1 of the Laws of 2022](#), the requirements of which have been in effect since September 2021.

Q. What is considered an “extraordinary circumstance” under which a public body may permit a member to participate remotely by videoconference from a location not open to the public?

A. Each public body that wishes to allow for remote attendance by its members at locations that do not allow for in-person physical attendance by the public is required to adopt a local law (governing bodies of counties, cities, towns and villages), adopt a joint resolution (New York State Senate and Assembly), or adopt a resolution (any other public body) authorizing such remote attendance, and must establish written procedures that set forth what they determine to be “extraordinary circumstances.” The Law includes a non-exhaustive list of examples of such circumstances, “including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting.”

Q. Are public bodies permitted to conduct its meetings at multiple physical locations from which members of the body may participate if those locations are open to in-person public attendance, regardless of extraordinary circumstances?

A. Yes. We understand that the intent of the amendments to the OML was to *expand* the authority of a public body to allow its members to participate in a meeting using videoconferencing under limited circumstances when the member’s location is not open to in-person public attendance. Before the onset of the pandemic in 2020, public bodies routinely held proper open meetings by videoconference from

multiple physical locations identified in the meeting notice that were open to the public, connected virtually together by videoconference. This remains proper. It was not the intent to limit the existing authority to virtually connect multiple public locations from which members and the public may attend through the use of videoconferencing technology.

Q. Which members of the public body may count toward a quorum?

A. Any member who participates at a physical location that is open to in-person physical attendance by the public (and which location has been included in the meeting notice) may count toward a quorum and may fully participate and vote in the meeting. If there is a quorum of members at a physical location open to the public, the public body may properly convene a meeting; a member who is participating from a remote location that is *not* open to in-person physical attendance by the public may not be counted toward a quorum of the public body (but may participate and vote if there is a quorum of members at a physical location open to the public).

Q. Can members of a public body participate remotely in a meeting, for any reason, without convening at least a quorum of members at a physical location (or locations) open to the public?

A. No. Chapter 56 states that members of the public body “shall be physically present at any such meeting unless such member is unable to be physically present at any such meeting location due to extraordinary circumstances.”

Q. Are public bodies *required* to allow their members to participate remotely, under extraordinary circumstances, at locations that do not allow for in-person physical attendance by the public?

A. No. Chapter 56 states that a public body “may, in its discretion” allow its members to participate remotely, under extraordinary circumstances and so long as there is a quorum of members gathered at a physical location or locations open to the public, at locations that do not allow for in-person physical attendance by the public.

Q. If a public body allows its members to participate remotely, under extraordinary circumstances, at locations that do not allow for in-person physical attendance by the public, must it afford members of the public the opportunity to view the meeting by videoconference as well?

A. Yes. If a public body uses videoconferencing to conduct a meeting, the public notice for the meeting must inform the public that videoconferencing will be used and must include directions for how the public can view and/or participate (if participation is permitted) in such meeting. The public body must provide the opportunity for members of the public to view the meeting, using remote technology or in person, in real time.

Q. If a public body allows for public comment or public participation by members of the public who attend its meetings in-person, must it allow the same for members who attend remotely?

A. Yes. The law requires public bodies to allow members of the public to participate in proceedings by videoconference in real time where public comment or participation is authorized and shall ensure that videoconferencing authorizes the same public participation or testimony as in person participation or testimony.

Q. Is participation by a member of a public body by teleconferencing (audio only) authorized by Chapter 56?

A. No. The Law requires that except in the case of executive sessions, a “public body shall 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.” (Note that an executive session may only be properly convened after a successful motion made during an open session, and that but for the requirement to permit the public to attend and view the session, all other requirements of the Law continue to apply to executive sessions.)

Q. Must the meeting minutes reflect which members of the public body participated remotely?

A. Yes. The Law requires that “minutes of the meetings involving videoconferencing shall include which, if any, members participated remotely.”

Q. Are public bodies required to record and/or transcribe open meetings conducted using videoconferencing?

A. Yes. The Law requires that “each meeting conducted using videoconferencing shall be recorded and such recordings posted or linked on the public website of the public body within five business days following the meeting and shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.”

Q. Are public bodies required to record and/or transcribe the executive session portions of meetings conducted using videoconferencing?

A. No. In our view the obligation to record and transcribe upon request only applies to the open portions of the meeting that the public is entitled to attend.

Q. What if a local public body does not maintain an official website for purposes of posting the recording of its meetings?

A. Any local public body electing to utilize the “extraordinary circumstances” videoconferencing described in the Law to conduct its meetings *must* maintain an official website.

Q. Does the Law address the ability of a public body to hold fully remote meetings during a state of emergency?

A. Yes. The Law states that the “in person” participation requirements of the Law shall not apply during a state disaster emergency declared by the governor pursuant to section twenty-eight of the executive law, or a local state of emergency proclaimed by the chief executive of a county, city, village or town pursuant to section twenty-four of the executive law, if 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.