

New York State Temporarily Suspends Certain Open Meetings Law Requirements

Public bodies required to conduct business at meetings open to the general public can now take full advantage of virtual teleconferencing or telephone options to conduct their meetings. The Governor's Executive Order 202.1 responding to the COVID-19 pandemic suspended some requirements that previously limited the feasibility of holding public meetings through electronic means. This is welcome news for public bodies like municipal boards, school boards and industrial development agencies—and anyone with business before those bodies—because they now have options to keep their operations moving while the board members remain at home.

What does the Governor's Order change about the Open Meetings Law?

Under Article 7 of the New York Public Officers Law (the Open Meetings Law or OML), every meeting of a public body, except for an executive session, must be open to the general public. The existing provisions of the OML allow the use of videoconferencing by a public body to conduct a public meeting so long as the public is provided an opportunity "to attend, listen and observe at any site at which a member participates."

Gov. Cuomo's Executive Order 202.1 (the Order), issued on March 13, 2020, temporarily suspended the requirements to provide public in-person access to meetings and authorizes the meetings to be held remotely "by conference call or similar service." However, the Order requires that the public have the ability to view or listen to the proceedings and requires that all virtual meetings be "recorded and later transcribed."

On March 25, 2020, the New York State Committee on Open Government (the Committee) offered the opinion to the General Counsel for the New York State Department of State that the Order may be read to temporarily "suspend the OML requirement that notice of the meeting include the physical location of each Board member who is participating by telephone or similar means." This interpretation means that the physical location of board members participating in a teleconference (like their homes) temporarily does not have to be made publicly available.

In a second advisory opinion dated March 26, 2020, addressed to the Supervising Attorney & Records Access Officer for the New York State Workers' Compensation Board, the Committee addressed the existing obligation under OML § 103(f) for public bodies with a website and a high-speed internet connection to "livestream" the meeting "to the extent practicable and within available funds." In the Committee's view, "the Order does not suspend the 'livestreaming' requirement set forth in § 103(f) of the OML for agencies required to comply with that section." In fact, the Committee goes on to say, the Order "appears to strengthen during its pendency that underlying provision of law for all public bodies regardless of whether they are required to comply with OML § 103(f)."

How does the Order change how I hold my public meeting?

The key changes arising from the Governor's Order, to take note of in preparation of your public meeting, are: (1) the suspension of all public in-person access to your meeting; (2) the authorization to hold your meeting remotely by electronic means (video conference, telephone conference, or both) without the need to notify the public of the physical location of any board members participating; (3) the need to provide the public with an opportunity to view or listen to your meeting; and (4) the need to record and transcribe your meeting.

All other requirements for public meetings under the OML are still in effect and must be followed, including all meeting notice requirements. When utilizing videoconferencing or teleconferencing to conduct your meeting, the public notice for the meeting must inform the public about that electronic method(s) that will be used. The notice should also provide information about how the public can view or listen to the meeting (e.g., provide the website URL and log-in information for an online videoconference meeting or the dial-in instructions for a telephone connection to a meeting). There are a number of platforms and service providers that public bodies can use to hold their meetings, and those public bodies have options for how to engage with members of the public on issues discussed during each meeting. For example, some municipalities are directing the public to submit questions by email rather than receiving comments during the conference call or video conference. To further support public engagement, municipalities and any public body required to hold public meeting should try to provide meeting materials online in advance.

If you have questions on information contained in this Information Memo, contact [Brody Smith](#) or any attorney in our [Municipalities](#) or [School Law](#) practices or the Bond attorney with whom you regularly work.



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