

December 22, 2022

### New York Open Meetings Law – Current Requirements for Videoconferencing

Certain nonprofit corporations (for example, charter schools) are subject to the New York Open Meetings Law (OML), which requires meetings of the board to be open to members of the public. This includes work sessions and committee meetings, shared decision-making committee meetings, and full board meetings. All public meetings must be accompanied by a public notice and should be posted at least one week in advance. The notice must be posted on one more public location at least 72 hours prior to the meeting and all documents that will be acted upon or considered must be made public available 24 hours as a well.

Prior to the pandemic, virtual participation was only allowed under strict circumstances. At the beginning of the pandemic, these requirements were temporarily suspended. Governor Hochul later approved an amendment to the OML to allow continued use of videoconferencing for public meetings without a requisite in-person component during any local, state, or federal state of emergency.<sup>1</sup> The declared state disaster emergency from Governor Hochul expired on September 12, 2022. However, the New York City state of emergency remains in effect - on December 21, 2022, Mayor Adams extended New York City's local COVID-19 state of emergency for an additional 30 days. This means that nonprofits in the New York City area can still operate virtually under pandemic guidelines and hold meetings without the notice requirements for virtual participants, and where such participants count towards quorum. Nonprofits located in other parts of New York State that have no local ordinance for a state of disaster are subject to the new OML provisions and now have two options for virtual meeting participation. Once state of emergency expires in New York City (or any other area subject to local state of emergency), nonprofits in those areas will then have the same two options.

This Legal Alert outlines what options nonprofits subject to the OML (and not under an active state of emergency) have with respect to virtual meeting participation.

#### Option 1: Return to the pre-pandemic rules of virtual meetings

Under these rules:

1. Remote participants are required to attend by videoconference only (i.e. telephonic participation is **not** allowed).
2. The exact physical location of the board member participating virtually must be included in the meeting notice.
3. The remote location from which the board member is participating must be accessible to the public.

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<sup>1</sup> Open Meetings Law, §103-a (effective until July 1, 2024)  
<https://opengovernment.ny.gov/system/files/documents/2022/09/oml-text-09152022.pdf>

- Ex. A charter school holds monthly meetings at school. A few board members want to take the meeting from their personal residence. *In order for those board members to count as part of quorum and vote, they must put their personal address on the notice and, if anyone requests access, allow them to attend.*

*Option 2: Virtual participation in board meeting requirements*

Under the changes to the OML, and in the absence of any local, state, or federal state of emergency, nonprofits will have a second option. If a nonprofit organization opts for this route, it must adopt resolutions to that effect and establish written procedures that are publicly posted on a website maintained by the nonprofit. Notices for such meetings must also state that videoconferencing will be used and provide information about where the public can view and participate in such meetings, as well as where documents will be available and the physical location.

In addition, the following criteria must also be met:

1. The meeting must be conducted at a physical location with public access where a quorum of the participating members are present. ***This means that any members participating remotely do not count towards quorum.***
2. Virtual participation by board members is only allowed if a member cannot by physically present due to extraordinary circumstances (i.e. illness, family emergency, or other circumstances which precludes the member's physical attendance). These circumstances **must** be defined by board policy.
3. All remote members must participate by videoconference only (no telephonic conferencing) and remain on camera so that any board participating remotely can be seen, heard, and identified throughout any public portions of the meeting. This requirement **does not** apply to Executive Sessions.
4. Members of the public must be able to view and participate in such meetings in real time to the same extent as in person meetings.

Following any meeting that is conducted using videoconferencing, nonprofits must publicly post minutes which should include which members participated remotely, and a recording of the meeting must be posted within five (5) business days following the meeting and must remain on the nonprofit's website for five years; any such recording must be transcribed if requested.

See the FAQ issued by the Committee on Open Government for more details about these and other requirements.<sup>2</sup>

***This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Ciarra Chavarria at [cchavarria@lawyersalliance.org](mailto:cchavarria@lawyersalliance.org)***

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<sup>2</sup> <https://opengovernment.ny.gov/system/files/documents/2021/01/open-meetings-law-faqs.pdf>