



**Committee on
Open Government**

New York State Open Meetings Law: A Refresher and Update

June 30, 2026

CONTACT INFORMATION

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Public Officers Law
Article 7
Sections 100-111

Legislative Intent

When the Open Meetings Law (OML) was passed in 1976, the declared legislative intent stated:

- It is essential that public business be performed in an open and public manner and that the citizens be “fully aware of and able to observe the performance of public officials.”
- Citizens have the right “to attend and listen to the deliberations and decisions that go into the making of public policy.”



Public Bodies

The OML governs the conduct of meetings of public bodies and that term is defined as:

- any entity, for which a quorum is required in order to conduct public business
- and which consists of two or more members,
- performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law,
- or committee or subcommittee or other similar body consisting of members of such public body
- or an entity created or appointed to perform a necessary function in the decision-making process for which a quorum is required in order to conduct public business and which consists of two or more members.
 - A necessary function in the decision-making process shall not include the provision of recommendations or guidance which is purely advisory and which does not require further action by the state or agency or department thereof or public corporation as defined in section sixty-six of the general construction law.

This definition was amended to include the highlighted language in December of 2021 and again in February 2022.



Participation via Videoconferencing

The OML establishes two methods for allowing members of a public body to participate in a meeting by videoconferencing:

1. “Pre-COVID” way: Since August of 2000 (Ch. 289 of the Laws of 2000), public bodies have had the ability to connect multiple public/noticed physical locations using videoconferencing.
2. “Extraordinary Circumstances” Videoconferencing (Ch. 56 of the Laws of 2022): A member of a public body may participate via videoconferencing from a private/un-noticed location if certain criteria are met and they are experiencing an extraordinary circumstance.



Chapter 56

What is an extraordinary circumstance?

§ 103-a(2)(c) of the OML defines that term to include:

disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member's physical attendance at such meeting

Chapter 56

§ 103-a(2)(a): Governing bodies of municipalities must adopt a local law to allow for extraordinary circumstances videoconferencing.

All other public bodies must adopt a resolution following a public hearing.

§ 103-a(2)(b): Public bodies must establish written procedures and those procedures must be conspicuously posted on the public body's website.



Chapter 56

Section 103-a(2)(a):

a minimum number of members must be present to fulfill the public body's quorum requirement in the same physical location or locations where the public can attend.

Quorum

Who counts towards a quorum?

- Members who are participating from a physical location that has been properly noticed and is open to in-person public attendance.
- Members who **meet the disability criteria established by Chapter 58 of the Laws of 2023** and are videoconferencing from a remote location that is not open to in-person public attendance.

Who does **not** count toward a quorum?

- Any other member of a public body who participates from a remote location that is not open to in-person public attendance

Participation

Who may participate in the meeting (including voting)?

- Members who are participating from a physical location that has been properly noticed and is open to in-person public attendance.
- Members who are videoconferencing from a remote location due to an extraordinary circumstance **but only if a quorum has otherwise been satisfied.**



Definition of “Meeting”

The OML defines “meeting” as "the official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body." (POL 102(1))

There is no authority for a public body to take action outside of a meeting.



Are you having a Meeting?

- Is there a quorum present?
- To discuss public business?
- If yes, you are having a meeting, regardless of intent, or lack thereof, to take action, or characterization.

No Legal Distinction

- Workshop or work session, Agenda Session
- Regular meeting
- Informal gathering
- Pre-board meeting



Other Gatherings

- Site visit
- “Retreat” or educational seminar
- Attendance at committee meeting
- Social



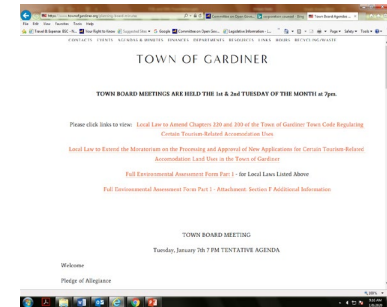
Telephone Calls, Emails

- Definition of “meeting”
 - Requires physical presence at one or more physical locations open to the public, or
 - Videoconferencing permitted if authorized pursuant to Section 103-a under extraordinary circumstances.
- Cannot conduct a meeting via e-mail
- Does not mean that members of the public body cannot share information via e-mail



Notice

- Date, Time, and Location and, if appropriate, instructions for virtual attendance must be given:
- Prior to every meeting:
- To the media (do not need to purchase a legal notice)
- Placed in a designated physical location
- If agency/public body has an active website, must be posted on that website



Notice

- At least 72 hours prior to a meeting scheduled at least one week in advance.
- For meetings on short notice, notice must be given to the extent practicable at a reasonable time prior to the meeting.
- The courts have suggested that the propriety of scheduling a meeting less than a week in advance (and providing less than 72 hours notice) is dependent upon the actual need to do so.
- if “extraordinary circumstances” videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, where the public can view and/or participate in such meeting, where required documents and records will be posted or available, and identify the physical location for the meeting where the public can attend.



RECORDS SCHEDULED TO BE DISCUSSED

On October 19, 2021, Governor Hochul signed into law Chapter 481 of the Laws of 2021 which amends § 103(e) of the OML to require that records to be discussed at an open meeting be made available, to the extent practicable:

- upon request **and**
- posted online, at least 24-hours before the meeting if the agency maintains a regularly and routinely updated website and utilizes a high speed internet connection.
- The obligation to make records available to the public upon request “prior to or at the meeting” and to post the records on the agency or public body website “prior to the meeting” has been in effect since February 2012.
- This amendment simply places a 24-hour minimum time frame for making those records available.

RECORDS SCHEDULED TO BE DISCUSSED

- Proposed resolutions, laws, rules, regulations, policies or any amendment thereto
- Records, or portions thereof, that are public under FOIL
- Agency may, but not required to, spend additional moneys to implement this section
- Does not apply to records discussed in executive session

Minutes

- Must include: Motions/Proposals/Resolutions/Any matter formally voted upon and the votes thereon
- If “extraordinary circumstances” videoconferencing is used, must include which, if any, members participated remotely
- Executive Sessions: Only necessary if actions taken
- Must be available within:
 - Two weeks for open session
 - One week for executive session
- Does not matter whether minutes are unapproved or in draft form.



Minutes

On November 8, 2021, Governor Hochul signed into law Chapter 587 of the Laws of 2021 which amends the OML to require agencies that maintain a website and use a high-speed internet connection **to post meeting minutes on its website** within two weeks of the date of the date of the meeting, or within one week of an executive session. The Law further states:

“For purposes of this subdivision unabridged video recordings or unabridged audio recordings or unabridged written transcripts may be deemed to be meeting minutes. Nothing in this section shall require the creation of minutes if the public body would not otherwise take them.”

Minutes must still be prepared regardless of what gets posted!



Recording

- Any meeting of a public body that is open to the public shall be open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted by audio or video means
- Agency is not obligated to record unless a member is participating remotely as authorized under Section 103-a.
- Agency may establish reasonable rules to limit disruption/interference (model rules available on COOG website)

Executive Session

- Defined in Section 102(3) of the Law as a “portion of a[n open]meeting not open to the public” (not prior to or separate from an open meeting)
- A motion must be made and voted upon during an open meeting
- Specificity of motion



Executive Session

- a. matters which will imperil the public safety if disclosed;
- b. any matter which may disclose the identity of a law enforcement agent 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 fourteen of the civil service 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.



Exemptions

- Section 108 of the OML - Second mechanism for meeting “behind closed doors”
- If an exemption applies, the OML does not – as if the OML does not exist
- Section 108 Exemptions:
 - judicial or quasi-judicial proceedings, except proceedings of the public service commission and zoning boards of appeals;
 - deliberations of political committees, conferences and caucuses;
 - any matter made confidential by federal or state law (e.g., discussions relating to students made confidential by FERPA; meetings with agency attorney covered by attorney client privilege)

Non-Compliance and Enforcement

- The Committee on Open Government does not have enforcement authority
- Enforcement is through the initiation of a CPLR Article 78 proceeding
- Court has authority to:
 - award costs and attorney's fees
 - Invalidate action
 - require training

