



Summary, Comparison and Excerpt of Changes to Open Meeting Law April 2022

Summary of Changes in Final FY 2023 Budget

- At least one physical location is required for meetings of public bodies.
- A quorum must be present in person.
- Public bodies can use videoconferencing at their discretion (not a mandate for hybrid), with certain requirements:
 - A resolution must be adopted by the public body after a public hearing specifying rules for members to participate via videoconference.
 - The Assembly and Senate must adopt a joint resolution
 - Committees of public bodies can make separate determinations
 - Community boards in NYC make their own individual determinations
 - Members must be in person, except for certain circumstances: illness, caregiving responsibilities, disabilities, and other “significant and unexpected factors” that preclude attendance in person.
 - Members of public bodies participating via videoconference must be able to be seen, heard and identified.
 - Meeting minutes must note which members participated via videoconference.
 - Where public comment is authorized or required, public bodies must allow the public to participate via videoconference in real time, with the same ability to testify as members of the public who are in person.
 - Local bodies that use videoconferencing must have a website.
 - Video must be available within 5 business days, and for a minimum of 5 years after the meeting.
- During states of emergency public bodies at their discretion can meet via videoconference without any in-person requirements.
- By Jan 1, 2024 the Committee on Open Government must produce a report on implementation and application of the new videoconferencing law.
- Meetings that are broadcast or use videoconferencing must use technology to permit access for members of the public with disabilities in compliance with the Americans with Disabilities Act (ADA) - (note: no specific requirements for closed captioning, ASL upon request, etc)
- Phase in: Bodies are allowed for 60 more days after passage of the law (June 2022) to meet remotely without in-person requirements.
- Law takes effect immediately, and expires on July 1, 2024.

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OPEN, ACCOUNTABLE, EFFECTIVE GOVERNMENT

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**Comparison of Groups' Recommendations on Hybrid Meetings
and Final Changes in NYS Budget**

Recommendation in Groups' March 16, 2022 Letter	Included in Final Budget Language? (PART WW - ELFA)
<p>1. Require all state and local public bodies currently subject to OML to provide free, unrestricted remote video and voice access to their public meetings, including via telephone, using web-based video conferencing applications.</p>	<p>Partial. Only required if bodies choose to use videoconferencing. No specificity about phone access. However, webcasting is required for state bodies under Executive Order 3 (Gov Spitzer).</p>
<p>2. Require either a majority of the body OR the presiding official or top deputy to attend all public meetings of public bodies in-person, but allow other members of the body to fully participate remotely, including being counted towards a quorum and voting. However, the presiding official <u>should not</u> be able to designate any colleague or representative for the in-person meeting.</p>	<p>Yes. A quorum is required to attend in person, but for during a state of emergency, where bodies can choose to hold all remote meetings.</p>
<p>3. Require public bodies to provide an in-person, accessible meeting location that allows the interested public to attend per the existing requirement in OML. (Discontinue the requirement that public attendance must include access to other locations where individual members of the body are participating in the meeting.)</p>	<p>Yes. At least one in-person location is required. Removes requirement for public access at all locations where public officials participate remotely.</p>
<p>4. Allow state and local public bodies to meet remotely using widely commercially available web applications like Zoom, Google Meet, Microsoft Teams, etc. as long as they meet basic security requirements established by the NYS Office of Information and Technology Services (ITS). Require ITS to facilitate use of widely available, low-cost applications, and eliminate any requirement that web-based video conferencing apps must be hosted on state or local government-controlled or -owned servers. All such meetings must enable closed captioning, which those services provide, and provide an American Sign Language interpreter upon request.</p>	<p>Partial. Videoconferencing is authorized, but not specific commitment of resources from the state. Technology must be compliant with the Americans with Disability Act (ADA) but no specific language about closed captioning or ASL upon request.</p>

Recommendation in Groups' March 16, 2022 Letter	Included in Final Budget Language? (PART WW - ELFA)
5. Allow ITS to provide a time-limited waiver of two or three years for localities that lack sufficient broadband access to meet requirement #4.	Not included. Videoconferencing is authorized for local governments, but not required.
6. At meetings that allow for public comments, require public bodies to enable the public to provide spoken comment in real-time, both in-person and remotely.	Partial. Where videoconferencing is used and bodies are required to or authorize public comment, public bodies must allow public comment via videoconferencing in real time. The law also requires the same level of participation for the public joining via videoconference as for in-person commenters.
7. Require public bodies to publish online, replayable recordings of their public meetings within one business day.	Partial. Required within five business days.
8. Require public bodies to maintain publicly available online recordings of their open meetings for at least five years.	Yes, required for 5 years.

<https://www.nysenate.gov/legislation/bills/2021/A9006>

Section 1. Subdivision (c) of section 103 of the public officers law, as added by chapter 289 of the laws of 2000, is amended to read as follows:

(c) 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] MEETINGS IN AT LEAST ONE PHYSICAL LOCATION at which a member participates.

§ 2. The public officers law is amended by adding a new section 103-a to read as follows:

§ 103-A. VIDEOCONFERENCING BY PUBLIC BODIES. 1. FOR THE PURPOSES OF THIS SECTION, "LOCAL PUBLIC BODY" SHALL MEAN A PUBLIC CORPORATION AS DEFINED IN SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW, A POLITICAL SUBDIVISION AS DEFINED IN SECTION ONE HUNDRED OF THE GENERAL MUNICIPAL LAW OR A COMMITTEE OR SUBCOMMITTEE OR OTHER SIMILAR BODY OF SUCH ENTITY, OR 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 AN ENTITY LIMITED IN THE EXECUTION OF ITS OFFICIAL FUNCTIONS TO A PORTION ONLY OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE, OR FOR AN AGENCY OR DEPARTMENT THEREOF. FOR THE PURPOSES OF THIS SECTION, A PUBLIC BODY SHALL BE AS DEFINED IN SUBDIVISION TWO OF SECTION ONE HUNDRED TWO OF THIS ARTICLE.

2. A PUBLIC BODY MAY, IN ITS DISCRETION, USE VIDEOCONFERENCING TO CONDUCT ITS MEETINGS PURSUANT TO THE REQUIREMENTS OF THIS ARTICLE PROVIDED THAT A MINIMUM NUMBER OF MEMBERS ARE PRESENT TO FULFILL THE PUBLIC BODY'S QUORUM REQUIREMENT IN THE SAME PHYSICAL LOCATION OR LOCATIONS WHERE THE PUBLIC CAN ATTEND AND THE FOLLOWING CRITERIA ARE MET:

(A) THE GOVERNING BOARD OF A COUNTY, CITY, TOWN OR VILLAGE HAS ADOPTED A LOCAL LAW, OR A PUBLIC BODY HAS ADOPTED A RESOLUTION, OR THE SENATE AND ASSEMBLY HAVE ADOPTED A JOINT RESOLUTION, FOLLOWING A PUBLIC HEARING, AUTHORIZING THE USE OF VIDEOCONFERENCING:

(I) FOR ITSELF AND ITS COMMITTEES OR SUBCOMMITTEES; OR,

(II) SPECIFYING THAT EACH COMMITTEE OR SUBCOMMITTEE MAY MAKE ITS OWN DETERMINATION;

(III) PROVIDED HOWEVER, EACH COMMUNITY BOARD IN A CITY WITH A POPULATION OF ONE MILLION OR MORE SHALL MAKE ITS OWN DETERMINATION;

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(B) THE PUBLIC BODY HAS ESTABLISHED WRITTEN PROCEDURES GOVERNING MEMBER AND PUBLIC ATTENDANCE CONSISTENT WITH THIS SECTION, AND SUCH WRITTEN PROCEDURES SHALL BE CONSPICUOUSLY POSTED ON THE PUBLIC WEBSITE OF THE PUBLIC BODY;

(C) 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, AS SET FORTH IN THE RESOLUTION AND WRITTEN PROCEDURES ADOPTED PURSUANT TO PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION, INCLUDING DISABILITY, ILLNESS, CAREGIVING RESPONSIBILITIES, OR ANY OTHER SIGNIFICANT OR UNEXPECTED FACTOR OR EVENT WHICH PRECLUDES THE MEMBER'S PHYSICAL ATTENDANCE AT SUCH MEETING;

(D) EXCEPT IN THE CASE OF EXECUTIVE SESSIONS CONDUCTED PURSUANT TO SECTION ONE HUNDRED FIVE OF THIS ARTICLE, THE 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;

(E) THE MINUTES OF THE MEETINGS INVOLVING VIDEOCONFERENCING SHALL INCLUDE WHICH, IF ANY, MEMBERS PARTICIPATED REMOTELY AND SHALL BE AVAILABLE TO THE PUBLIC PURSUANT TO SECTION ONE HUNDRED SIX OF THIS ARTICLE;

(F) IF 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;

(G) THE PUBLIC BODY SHALL PROVIDE 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;

(H) IF VIDEOCONFERENCING IS USED TO CONDUCT A MEETING, THE PUBLIC BODY SHALL PROVIDE THE OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO VIEW SUCH MEETING VIA VIDEO, AND TO PARTICIPATE IN PROCEEDINGS VIA 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; AND

(I) A LOCAL PUBLIC BODY ELECTING TO UTILIZE VIDEOCONFERENCING TO CONDUCT ITS MEETINGS MUST MAINTAIN AN OFFICIAL WEBSITE.

3. THE IN PERSON PARTICIPATION REQUIREMENTS OF PARAGRAPH (C) OF SUBDIVISION TWO OF THIS SECTION 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.

4. NO LATER THAN JANUARY FIRST, TWO THOUSAND TWENTY-FOUR, THE COMMIT-

TEE ON OPEN GOVERNMENT, CREATED BY PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION EIGHTY-NINE OF THIS CHAPTER, SHALL ISSUE A REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE CHAIR OF THE SENATE STANDING COMMITTEE ON LOCAL GOVERNMENT, THE CHAIR OF THE SENATE STANDING COMMITTEE ON INVESTIGATIONS AND GOVERNMENT OPERATIONS, THE CHAIR OF THE ASSEMBLY STANDING COMMITTEE ON LOCAL GOVERNMENTS, AND THE CHAIR OF THE ASSEMBLY STANDING COMMITTEE ON GOVERN-

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MENTAL OPERATIONS CONCERNING THE APPLICATION AND IMPLEMENTATION OF SUCH LAW AND ANY FURTHER RECOMMENDATIONS GOVERNING THE USE OF VIDEOCONFERENCING BY PUBLIC BODIES TO CONDUCT MEETINGS PURSUANT TO THIS SECTION.

5. OPEN MEETINGS OF ANY PUBLIC BODY THAT ARE BROADCAST OR THAT USE VIDEOCONFERENCING SHALL UTILIZE TECHNOLOGY TO PERMIT ACCESS BY MEMBERS OF THE PUBLIC WITH DISABILITIES CONSISTENT WITH THE 1990 AMERICANS WITH DISABILITIES ACT (ADA), AS AMENDED, AND CORRESPONDING GUIDELINES. FOR THE PURPOSES OF THIS SECTION, "DISABILITY" SHALL HAVE THE MEANING DEFINED IN SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE LAW.

§ 3. Notwithstanding the provisions of article 7 of the public officers law to the contrary, for sixty days after the effective date of this act any public body shall be 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.

§ 4. This act shall take effect immediately and shall expire and be deemed repealed July 1, 2024.