

## **Public Meetings in NY and COVID-19**

Local governments need to keep doing business during this public health crisis. Commission staff have compiled some information and references in this document to help towns and villages figure out their next steps. This will be an evolving document, so please check back regularly. Contact your circuit rider if you need more assistance.

### **TAKE AWAYS**

- Still need to public notice meetings – sample language can be found in this document.
- Holding meetings via webinar or conference calling, where the public can join in, is still allowable currently through **September 4**, and should still be seriously considered if social distancing or proper cleaning and hygiene practices for those gathering cannot be accomplished (most recently EO 202.55).
- Public hearings **MUST** be held with a video or teleconference **component if they are held prior to September 5, 2020** (most recently EO 202.55).
- Executive Order 202.45 (June 15, 2020) allows “gatherings of fifty (50) or fewer individuals for any lawful purpose or reason, so long as any such gatherings occurring indoors do not exceed 50% of the maximum occupancy for a particular indoor area, and provided that the location of the gathering is in a region that has reached Phase 4 of the State’s reopening, and provided further that social distancing, face covering, and cleaning and disinfection protocols required by the Department of Health are adhered to.” The full text of EO 202.45 can be found at [www.governor.ny.gov/news/no-20245-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency](http://www.governor.ny.gov/news/no-20245-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency). It amended Executive Order 202.42 which altered the limit on groups of 10 or more to a limit on groups of 25 or more for regions in Phase III of reopening.
- Violations of occupancy limits can be enforced by local code enforcement officials and fire marshals (EO 202.11).

### **PUBLIC MEETINGS: Continuing suspension of law allowing the attendance of meetings telephonically or other similar service:**

Governor Cuomo enacted Executive Order 202.55 on August 5, which continues various suspensions and modifications of law made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.14 and including EO 202.38 (among others), through September 4, 2020. This includes, among other things,

*“Suspension of law allowing the attendance of meetings telephonically or by other similar service: Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing 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;”*

Executive Order 202.55 also combined the provision relating to public hearings which had previously been listed in separate EOs (202.39, 202.29, 202.21, 202.15). This means the **requirement** to offer a virtual component for public hearings is also extended through September 4, 2020.

The full text of EO 202.55 can be found at [www.governor.ny.gov/news/no-20255-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency](http://www.governor.ny.gov/news/no-20255-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency)

Previously, the temporary suspension of public meeting requirements was enacted/renewed by Executive Orders 202.38, 202.28, 202.14, 202.1.

**PUBLIC HEARINGS: Continuing temporary suspension and modification of laws relating to the disaster emergency:**

Governor Cuomo enacted Executive Order 202.55 on August 5, which continues various suspensions and modifications of law made by Executive Order 202.15 through Executive Order 202.21 and Executive Order 202.29 and 202.39 through September 4, 2020.

Executive Order 202.15, states, *"Any local official, state official or local government or school, which, by virtue of any law has a public hearing scheduled or otherwise required to take place in April or May of 2020 shall be postponed, until June 1, 2020, without prejudice, however such hearing may continue if the convening public body or official is able to hold the public hearing remotely, through use of telephone conference, video conference, and/or other similar service."*

---

**VIOLATION OF OCCUPANCY Limits, Executive Order [202.11](#), issued March 27, 2020.**

During the period when an Executive Order limiting operation of a type of facility or limiting the number of persons who may occupy any space is in effect, any operation of such a facility or occupancy of any such space by more than the number of persons allowed by said Executive Order shall be deemed to be a violation of law and in particular, but not by way of limitation, shall be deemed to be a violation of the Uniform Code or other local building code in effect in the jurisdiction in which the facility or space is located. In the event of any such violation, any state, county, or local police officer authorized to enforce laws within the jurisdiction in which the space or facility is located is authorized to remove persons from such space or facility. ***In addition, in the event of such violation, any state, county, or local code enforcement official or fire marshal authorized to enforce the Uniform Code or other local building code within the jurisdiction in which the facility or space is located is authorized to issue an appearance ticket, a Notice of Violation, an Order to Remedy such violation, which shall require immediate compliance, and/or a Do Not Occupy Order to any owner, operator, or occupant of any such facility or space.*** Nothing in this provision shall limit the authority of any governmental unit or agency to take such other and/or additional enforcement actions to the extent necessary to ensure compliance with such occupancy-related directives or facility operation-related directives.

---

**[Association of Towns of NYS guidance](#)**

“Town Board Meetings and Coronavirus ***Scheduling and Cancellation:***

The town board may schedule meetings by resolution and may cancel meetings by resolution (Town Law, §§63, 64). The town board should review its rules of procedure and other board resolutions and protocols regarding meeting cancellations. In the event the board does not have an established meeting cancellation procedure, the board could consider adopting such a meeting cancellation policy. In the event a meeting scheduled by the town board needs to be canceled but the town board is unable to convene to do so, the town board could consider adopting a resolution delegating to the supervisor the authority to cancel a town board scheduled meeting. The delegation must put forth the procedures and criteria for the supervisor to cancel a meeting scheduled by the town board. In addition, the supervisor may schedule and cancel special town board meetings (Town Law, §62). As with all board actions and protocols, we recommend working with the town attorney for guidance and advice.”

---

**NY Conference of Mayors guidance**

“Public Officers Law § 102[1] defines a “meeting” as “the official convening of a public body for the purpose of conducting public business.” Historically, this meant that the members of the public body physical gathered to conduct business, but in 2000, Section 102 was amended to allow public body members to attend and participate in meetings via videoconferencing. Pursuant to Public Officers Law § 103, any time a quorum of a public body gathers (either in person or via videoconference) for the purpose of discussing public business, the meeting must be open to the general public, whether or not the body intends to take action. This includes “workshops,” “work sessions,” and “agenda sessions.” Chance meetings or social gatherings are not covered by the law since these are not official meetings; however, public officials should not discuss public business at chance meetings or social gatherings. In addition, Public Officers Law § 104 requires public bodies to notify the public of the time and place of every meeting. The OML requires notice of every meeting to be:

- Conspicuously posted in one or more public locations;
- Given to the news media (television, radio and newspaper); and
- Conspicuously posted on the village’s website, if it has the ability to do so.

Moreover, Open Meetings Law § 104(4) provides that if videoconferencing is used to conduct the meeting, the notice of the meeting must indicate that members of the public body will be participating via videoconferencing technology. Additionally, the notice must identify the locations from which the members will be participating and state that the public has the right to attend the meeting at any of the meeting locations. The OML does NOT require public bodies to pay for an official advertisement in a newspaper. Rather, the OML merely requires that the news media be notified. NYCOM recommends that public bodies fax or email meeting notices to the news media.”

“A Summary of Meeting Options During the COVID-19 Pandemic

As a result of Executive Order 202.1, public bodies, such as city councils and village boards of trustees,

now have three options for conducting meetings:

Members of the public body are either physically present or participating via videoconferencing, and the general public is allowed to physically attend the meeting location(s) as is provided for under the Open Meetings Law;

Members of the public body are physically present but the general public is not allowed to physically attend the meeting location; the public must be allowed to view or listen to such meetings and the public body must record and later transcribe such meetings; or

***Members of the public body meet via conference call or videoconference, with no in-person location; the public must be allowed to listen to or view such meetings and the public body must record and later transcribe such meetings.***

The Executive Order does not indicate by when the recordings must be transcribed. Local officials are encouraged to have the meetings transcribed within a reasonable time, given the circumstances. Moreover, the public bodies must still prepare the meeting minutes within two weeks of the meeting, and within one week of an executive session. The notice for these meetings must clearly state the specifics of the meeting (e.g., how it is taking place, where it is taking place, what technology is going to be used, and how the public may listen to or view the meeting if method two or three is going to be used). Additionally, if a public body is using method two or three, it should clearly state that it is conducting the meeting in that manner pursuant to Governor Cuomo's Executive Order 202.1.

“while State law does not expressly allow public bodies to conduct a meeting without allowing the public to be actually present, ***if local officials deem that conducting in-person meetings would threaten public health, they should limit non-in-person meetings to discussions and actions of business which must be conducted to keep the local government operating and to protect the public's health, safety, and welfare.*** Moreover, public bodies should consider implementing technology that allows the public to observe such meetings via web-based video technology.

Alternatively, public bodies may wish to consider minimizing the number of attendees at meetings or holding meetings in larger venues so that the recommended minimum social distancing of 6 feet may be maintained by members of the public who do attend the meeting. See below for more recommendations for conducting in- person meetings.”

---

### **Public Hearings and COVID-19 (from NYCOM)**

The common meaning of a public hearing is to allow for in-person public comment, although written comments should always be accepted and even encouraged. Some local officials have inquired whether an online video portal or teleconference that offered the opportunity for the public to comment could be employed in place of an in-person public hearing. In normal times, under normal circumstances, NYCOM is of the opinion that State mandated public hearings must always have a reasonable opportunity for the public to comment in person before the public body.

These, however, are not normal times or normal conditions. Public bodies must balance the need to take action with the right of the public to attend a public hearing in person. If a public body determines that, in the interest of the public safety, an in-person public hearing should not be held, then the public

body should take steps to allow the public a meaningful opportunity to comment at a hearing.

While there is no case law to support this position, **if a public body gives the public a reasonable opportunity to submit meaningful comment via online videoconferencing technology and in writing via email, local officials are likely to have a strong case should their actions be challenged.** If local officials decide to allow for in-person public participating at a public hearing, they could impose a limit on the maximum number of individuals allowed at a hearing based upon the capacity of the meeting room. If local officials consider implementing such a limit, they should establish a policy whereby individuals interested in speaking in person can sign-up and then be selected randomly. Individuals who are not selected to participate in-person should be given the opportunity to participate via video or teleconference and to submit written comments.

Local officials are strongly encouraged to consult with their municipal attorney before undertaking any course of action that is not expressly set forth in State law or one of the Governor's Executive Orders.

***SAMPLE Language for public meeting postings:***

Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 220.1 issued on March 12, 2020 suspending the Open Meetings Law, the [Name of Board] (the "Agency") [Board] [Committee] Meeting scheduled for\_, 2020 will be held electronically via [conference call][webinar] instead of a public meeting open for the public to attend in person. Members of the public may [listen to] or [view] the [Board] [Committee] meeting by [insert instructions to dial into the conference call or log into the webinar]. Minutes of the [Board] [Committee] Meeting will transcribed and posted on the [Agency's] website.

[Attach Agenda here.]

**Retention Requirements Related to Recorded Meetings and Transcripts related to EO 202.1 (from State Archives, [www.archives.nysed.gov/records/retention\\_mu-1](http://www.archives.nysed.gov/records/retention_mu-1))**

The recorded meeting (e.g., audio recording, recorded webcast) and transcripts are subject to item 2 below (4 months after transcription and/or approval of minutes). Official minutes, are of course, subject to item 1 below (permanent).

 1.[1] Official minutes and hearing proceedings of governing body or board, commission or committee thereof including all records accepted as part of minutes:

RETENTION: PERMANENT

 2.[2] Recording of voice conversations, including audio tape, videotape, stenotype or stenographer's notebook and also including verbatim minutes used to produce official minutes and hearing proceedings, report, or other record

Recording of public meeting of governing body or board, committee or commission thereof:

RETENTION: 4 months after transcription and/or approval of minutes or proceedings

NOTE: Appraise these records for historical significance prior to disposition. Audio and videotapes of public hearings and meetings at which significant matters are discussed may have continuing value for historical or other research and should be retained permanently. Contact the State Archives for additional advice on the long-term maintenance of these records.

Recording other than of public meeting: RETENTION: 0 after no longer needed

 3.[3] Meeting files for meeting of governing body or board or agency, commission or committee thereof, including agendas, background materials and other records used at meetings:

RETENTION: 1 year

NOTE: Appraise these records for continuing administrative or historical value prior to disposition. Agendas may have continuing administrative value and may be useful for accessing information in unindexed minutes and for indexing those minutes. Other records prepared for or used at meetings may have administrative or historical value for documenting issues discussed at the meetings and referenced in the minutes. See item no. 1, above, for records which are accepted as part of the minutes.