

Amendments to Open Meetings Law and Videoconferencing

An AOT Guide with Sample Local Law

General overview

The 2022-2023 NYS Budget added Public Officers Law § 103-a, which allows members of public bodies to participate in meetings via videoconference from a location that is not accessible to the public so long as certain conditions are met, including that a majority of the board meets from a publicly accessible location(s).

Local law and local policy requirements

The town board must adopt a local law authorizing the use of videoconferencing for its meetings. The local law may provide authority to all committees, or it may specify that each committee can make its own determination via resolution. The town board must also adopt a written policy that is consistent with the law establishing member and public attendance procedures and post the policy on the town website.

Allowable reasons to videoconference

The law says that members of a public body should be physically present unless "extraordinary circumstances" exist. The town board may outline what are considered "extraordinary circumstances" in its written policy. They include, but are not limited to, disability, illness, caregiving responsibilities, "or any other significant or unexpected factor or event" that precludes physical attendance. In other words, you should probably have a better reason than "I winter for four months of the year in Florida."

Quorum physically present at locations accessible to public

A quorum of the board **MUST** participate

in a location that is accessible to the public for members of the board to use videoconferencing. This means that if you have a five-member board, then three members must be at the town hall where the public can attend if the other two members want to videoconference in. The Committee on Open Government has also interpreted the law to mean that if you have a five-member board, three members of the board may videoconference in the meeting from locations that are accessible to the public (and included in the public notice) to satisfy this requirement.

Town website and posting requirements

To take advantage of the ability to videoconference the town **MUST** maintain a website. A recording of the meeting must be posted or linked to the town website within five business days and "shall remain for five years thereafter." Additionally, the policy regarding videoconferencing must be on the town website.

Minutes requirements and transcriptions

Minutes must include who participated via videoconference and made available consistent with the current law (i.e. minutes must be made available within one week of executive session and two weeks of a regular meeting). A transcription of the meeting need only be done upon request.

Public Participation

If a member of the board participates via videoconference, the public must also be allowed to participate via videoconference the same as they would be able to if attending in person. Remember, the board is not required to allow public comment. It can also limit the



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subject matter and length of topic (e.g. the town might say members of the public can only comment on items on the agenda and are limited to three minutes). ****AOT strongly recommends creating a written policy on public participation at meetings.**

Public Notice

If a public body uses videoconferencing to conduct a meeting, the public notice for the meeting must inform the public that videoconferencing will be used and must include directions for how the public can view and/or participate in such meeting via videoconference. The notice also must include the physical location(s) where the quorum of the body will be located.

Videoconference - NOT teleconference

Despite the preference of many (author included) to turn their cameras off during Zoom meetings, the law requires that, except during executive session, the public must be able to **see**, hear, and identify members of the public body while the meeting is going on including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted on.

ADA compliance

The town must use videoconferencing technology that allows members of the public with disabilities to participate in a manner consistent with the American with Disabilities Act. AOT recommends working with your town attorney on this issue, and the American Bar Association has a list of best practices and considerations for ADA-compliant videoconferences available [here](#).

States of emergency

If the governor, county, or town declares a state of emergency pursuant to Executive Law § 24, the in-person attendance requirement is suspended. In other words, let's say there's a massive snow storm and the town declares a state of emergency, all members of the board can videoconference in to a meeting from locations that are not accessible to the public (like their homes) for the duration of the state of emergency.

Is videoconferencing mandatory?

Nope, a town is not required to adopt a local law authorizing videoconferencing.

Effective date

This law became effective on April 9, 2022 and will expire in 2024. However, towns have 60 days from April 9, 2022 to continue videoconferencing using the authority granted during the pandemic – aka everyone can videoconference in a meeting without allowing any in-person attendance.

Special note about town board meetings

There is a small hiccup with videoconferencing as it applies to town board meetings because Town Law § 62 requires town board meetings to take place within the jurisdiction of the town; therefore it's unclear if a board member could videoconference into a meeting from outside the town's limits. However, if the town is concerned about this, the board can always adopt a local law authorizing this, and AOT has drafted a sample that your town can use. We strongly recommend that you consult with your town attorney before adopting any local law.



Sample Local Law Allowing Members of the Town Board (*or Public Bodies of the Town) to Participate in Meetings via Videoconference

Local Law No _____ of the year 2022

Town of _____, County of _____

A local law authorizing the Town Board (*or public bodies of the town) to use videoconferencing technology to participate in public meetings

Section 1. Legislative Intent

It is the intent of this local law to give the town board (*the town's public bodies as that term is defined in Public Officers Law § 102) the authority to participate in meetings via videoconference in a manner consistent with the town's videoconferencing policy and the authority granted in Public Officers Law § 103-a.

Section 2. Authority

This local law is adopted pursuant to Public Officers Law § 103-a which expressly authorizes the town board to adopt a local law giving the town board (*public bodies) the authority to participate in meetings via videoconference from locations not accessible to the public so long as a quorum of the board/body participates from locations where the public may be physically present and other conditions are met.

Section 3. Videoconferencing for Public Meetings

The Town Board of the Town of _____ hereby authorizes members of the town board (*all members of the town's public bodies) to participate in meetings using videoconferencing technology in a manner consistent with Public Officers Law § 103-a and the town's videoconferencing policy adopted by the town board.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 5. Effective date.

This local law shall take effect immediately upon filing with the Secretary of State.

