

LOCAL LAW NO. “G” FOR 2022

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK ESTABLISHING RULES AND REGULATIONS FOR OPEN MEETINGS OF THE COUNTY OF ALBANY TO PROVIDE FOR MEMBER VIDEOCONFERENCING IN LIMITED CIRCUMSTANCES

Introduction: 6/13/22

By: Mr. A. Joyce

BE IT ENACTED by the Legislature of the County of Albany as follows:

Section 1. Legislative Intent and Purpose

All County bodies with final decision-making authority must comply with the New York Open Meetings Law. Since the COVID-19 pandemic began in March 2020, and pursuant to the various emergency executive orders of the Governor of the State of New York, the County Legislature and various County public bodies have been authorized to and have met remotely with great success.

In March 2022, the State Legislature enacted updates to the Open Meetings Law to allow for videoconferencing in non-state-emergency situations in limited circumstances. These updates authorize members of a public body who experience an “extraordinary circumstance” to attend meetings by videoconference: (i) as long as a quorum of the members attend in-person at one or more locations open to the public; (ii) as long as the member can be seen, heard, and identified while the open portion of the meeting is being conducted; and (iii) as otherwise permitted under State law. A member who participates from a remote location that is not open to in-person physical attendance by the public does not count toward a quorum of the public body, but may participate and vote if there is a quorum of members at the physical location(s) open to the public.

Under State law, advisory bodies are not “public bodies” as they do not have decision-making authority, and thus they do not need to comply with the requirements of the Open Meetings Law. There is tremendous value in ensuring that County advisory body meetings are open to the public and, as such, this Legislature finds that it is appropriate to continue to permit County advisory boards with no final decision-making authority to meet via videoconferencing, to encourage maximum public attendance and participation.

This Local Law [will] establishes the definitions and framework for all decision-making bodies of Albany County, and amends and/or adopts the bylaws language and written procedures contained within the Addendums to this Local Laws. [and these

County public bodies shall incorporate changes into their respective rules or bylaws language that are consistent with this Local Law.] For this purpose alone, the Legislature waives any requirements that bylaws or rules of separate County public bodies be separately approved by the Legislature, insofar as such amendments are not inconsistent with or beyond the scope of this Local Law, and such changes shall be deemed to meet the requirements when submitted to the Legislature.

Because there are many County decision-making bodies which do not have the ability to conduct the type of public hearing necessary here, the Legislature will conduct a public hearing on behalf of all County decision-making bodies.

Section 2. Definitions

As contained in this Local Law, these terms shall have meanings as indicated herein:

“Alternate Presiding Officer” shall be defined as such individual who has been selected or appointed by a public body to make determinations on the applicability of requests for videoconferencing in instances when the Presiding Officer is absent or unavailable.

“Caregiving responsibilities” shall be defined as the provision of care to individuals suffering from conditions that often require the assistance of others, including but not limited to: physical decline; chronic conditions; visual and hearing impairments; sudden medical events; developmental disabilities; mental health or psychiatric disorders; and addiction. Additionally, such term shall also include provision of services for children or adults who are otherwise in need of assistance.

“Disability” shall be defined as (a) a physical, mental or medical impairment which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment.

“Executive session” shall have the meaning as defined as in section 105 of the Public Officers Law.

“Extraordinary circumstances” shall be defined as any significant or unexpected factor or event, which precludes a member's physical attendance at a meeting, including disability, illness, or caregiving responsibilities. [This term shall not include pre-planned events which are not medical in nature, or employment or professional responsibilities.]

“Illness” shall be defined as a disease or period of sickness affecting the body or mind.

“Meeting” shall be defined 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 members of the public body.

“Member” shall be defined as any individual with the ability to cast a vote or who is counted towards a quorum for a public body.

“Presiding Officer” shall be defined as the individual who has been selected or appointed by a public body to preside over its meetings – usually the Chairperson – with authority to facilitate the business of the public body and address issues of order and decorum, who has authority pursuant to this Local Law to review, evaluate, and determine requests for videoconferencing attendance by members.

“Public body” shall be 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 County. Pursuant to State law, this does not include any body which is advisory or does not perform a governmental function.

“Quorum” shall be defined as a majority of members of the body, which is the number needed to take formal action on a matter of public business.

“Videoconferencing” shall be defined as the use of technology allowing for a member of a public body to remotely attend and participate in a meeting while in a separate location from the quorum of members physically present for said meeting, provided that such videoconferencing member can be heard, seen and identified while the meeting is being conducted by the members of the public body and the public.

Section 3. Requiring Bylaws/Rules Changes and Written Procedures by All County Public Bodies.

This Local Law establishes rules regarding member participation via videoconferencing for all County public bodies. Each County public body must adopt changes to its bylaws or rules consistent with this Local Law. By operation of this Local Law, and pursuant to the powers granted to the Albany County Legislature, the existing bylaws for each County public body are hereby amended to reflect the language contained in Addendum “A” of this Local Law. Each County public body must update its existing bylaws to include this language and ensure that the updated bylaws are publically available, including posting on any website maintained by the County public body.

Pursuant to the requirements of the updates to the Open Meetings Law, this Local Law also hereby establishes written procedures applicable to all County public bodies concerning the holding of remote meetings. By operation of this Local Law, and

pursuant to the powers granted to the Albany County Legislature, each County public body hereby adopts the written procedures contained within Addendum "B." Each County public body shall ensure that these written procedures are publically available, including posting on any website maintained by the County public body.

All County public bodies shall provide copies of their revised bylaws or rules to the Legislature, and any other such entities as required by law. This Legislature hereby deems as accepted and approved any amendments to bylaws or rules that would otherwise require legislative approval, insofar as such amendments are not inconsistent with or beyond the scope of this Local Law, provided that such approval is not inconsistent with any other provisions of law.

Section 4. Use and Requirements of Videoconferencing

A. The use of videoconferencing by County public bodies is authorized when the following criteria are met:

1. The County Legislature has adopted this Local Law, following a public hearing;
2. The public body has amended its bylaws or rules consistent with this Local Law to authorize the use of videoconferencing;
3. The public body has established written procedures governing member and public attendance consistent with this Local Law, and such written procedures are conspicuously posted on the County website;
4. The public body has a minimum number of members physically present to fulfill the public body's quorum requirement in physical location(s) where the public can attend;
5. Extraordinary circumstances exist which would prevent a member from meeting in the physical location(s) where a quorum of members are jointly present;
6. [Said member is physically present within the County of Albany;]
7. Said member has provided notice, justification, and documentation (where applicable) to the extent possible for their absence to the Presiding Officer and/or Alternate Presiding Officer of the public body, as far in advance as practicable. For purposes of the County Legislature, such notice shall be provided to the Clerk of the Legislature and the Chairperson of the Legislature. All other public bodies of the County of Albany shall adopt policies related to who is to receive such notice.
8. Said absence has been approved by the Presiding Officer, or the Alternate Presiding Officer, in situations where the Presiding Officer is absent or otherwise unable to attend in person, after a determination that extraordinary circumstances exist.
9. Where documentation supporting a request to videoconference has been provided, the Presiding Officer may publicly confirm receipt of such

documentation, but may not share the contents of such documentation outside of the public body.

B. When videoconferencing is used, the following are required:

1. Except in the case of executive sessions, the public body shall ensure that remote members of the public body can be heard, seen and identified at all times during the meeting;
2. Minutes of such meetings shall include which members participated remotely and shall be available to the public;
3. Public notice(s) 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(s) for the meeting where the public can attend;
4. The meeting shall be recorded and such recordings posted or linked on the Albany County website within five business days following the meeting, shall remain so available for a minimum of five years thereafter, and shall be transcribed upon request;
5. Members of the public must have the opportunity to attend the meeting via videoconferencing and participate where public comment or participation is authorized, in real-time, at all times being permitted the same public participation or testimony as in-person participation or testimony.

Section 5. Americans with Disabilities Act Compliance

Open meetings of any public body that are broadcast or 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 Executive Law Section 292.

Section 6. Public Hearing Requirement

The Albany County Legislature will hold a public hearing prior to the adoption of this Local Law, and said public hearing shall satisfy the requirement that all County public bodies hold a public hearing regarding videoconferencing rules.

Section 7. State of Emergency Provisions

The in-person participation requirements of the Public Officers Law shall not apply during a state disaster emergency declared by the Governor pursuant to the

Executive Law or a local state of emergency proclaimed by the County Executive of Albany County pursuant to the Executive Law, if the Legislature determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the County public bodies to hold an in-person meeting.

Section 8. 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 judgement 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 9. Effective Date

This Local Law shall take effect upon filing with the Secretary of State. **This Local Law shall become null and void after July 1, 2024, unless the New York State Legislature provides further authorization.**

Referred to Law and Rules Reform and Legislative Modernization Committees
– 6/13/22