

## **School/Library Board Meetings During COVID-19 Pandemic**

In order to further promote social distancing, Governor Cuomo issued an [Executive Order 202.1](#) (“EO 202.1”) which allows boards to meet via videoconference or teleconference. Specifically, EO 202.1 states in pertinent part that Article 7 of the Public Officers Law is suspended through April 11, 2020:

to the extent necessary to permit any public body to meet and take such actions authorized by 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.

Prior to this order, under Article 7 of the NY Public Officers Law, board members were prohibited from attending a meeting by phone, or being counted for purposes of quorum or voting.<sup>1</sup> EO 202.1 appears to lift that restriction through April 11, 2020. This enables the following options for school or library board meetings through April 11, 2020:

### 1. Meeting in Person

Boards may continue to meet in person. If doing so, please consider the following:

- Current social distancing guidelines suggest that there be a minimum of 6 feet between people.<sup>2</sup> Thus, consideration may be given to holding the meeting in a different room and/or in a different configuration than before.
- EO 202.1 permits the board to close the meeting to “in-person access”, however, if it does so, it must allow the public the opportunity to view or listen to the meeting and record as well as transcribe the meeting thereafter. Presumably, this also permits allowing an audience, but minimizing its size.
- Public Officers Law provides that if a meeting will be streamed live over the internet, the public notice for the meeting must give the public the internet address of the website streaming the meeting.<sup>3</sup>

<sup>1</sup> See, e.g., NYS COOG Advisory Opinion 5396.

<sup>2</sup> President Trump also suggested on March 16, 2020, that individuals should “avoid gathering in groups of more than 10 people.”

<sup>3</sup> NY Public Officers Law Section 104.

- The meeting should be properly noticed and there must be a quorum of the board participating.

## 2. Meeting via Videoconference

- NY Public Officers Law has allowed for the videoconferencing of a meeting, irrespective of EO 202.1. If videoconferencing will be used, the District must inform the public of such in the notice for the meeting. Under Public Officer's Law, that notice must identify the locations for the meeting and indicate that the public has a right to attend the meeting in any of the locations. However, given that EO 202.1 permits the board to close the meeting to "in-person access", presumably it may close that access during meetings conducted via video, as well. Again, however, if it does so, it must allow the public the opportunity to view or listen to the meeting and record as well as transcribe the meeting thereafter.
- Public Officers Law provides that if a meeting will be streamed live over the internet, the public notice for the meeting must give the public the internet address of the website streaming the meeting.
- There is nothing in the Public Officers Law that requires boards to permit community members to speak at a meeting. The COOG has advised that a policy or rule prohibiting the public to speak would be valid but that such a prohibition would need to be applied equally (similarly so with any rules permitting the public to speak in a limited manner). Given such, there is support for a Board to be able to conduct a video meeting without an opportunity for public comment/questions. If the Board does provide a platform for the community to comment or ask questions, it must allow access to that platform in an equal way. The Board should announce what its rules and mechanisms will be for public comment at the outset of the meeting.<sup>4</sup>
- The meeting must be properly noticed and a quorum of the board present, irrespective of the location. If the public is not permitted to attend the meeting, then the notice should indicate how the public may view or listen to the proceeding and that the meeting will be recorded with a transcript of the meeting made available thereafter.

## 3. Meeting via Teleconference:

<sup>4</sup> See, e.g., OML AO-05210 (December 2, 2011)

- Although typically prohibited by Public Officers Law, EO 202.1 allows boards to convene by telephone through April 11, 2020.
- Boards choosing this option must provide the public with the ability to view or listen to such proceeding and must ensure that such meetings are recorded and later transcribed.
- Although not specifically set forth in the order, it is recommended that Boards, in their notice, advertise the fact that the Board meeting will be held via teleconference.
- As set forth above, there is nothing in the Public Officers Law that requires boards to permit community members to speak at a meeting. The COOG has advised that a policy or rule prohibiting the public to speak would be valid but that such prohibition would need to be applied equally (similarly so with any rules permitting the public to speak in a limited manner). Given such, there is support for a Board to be able to conduct a teleconferenced meeting without an opportunity for public comment/questions. If the Board does provide a platform for the community to comment or ask questions, it must allow access to that platform in an equal way. The Board should announce what its rules and mechanisms will be for public comment at the outset of the meeting.
- The meeting should be properly noticed and a quorum of the Board present. The notice should indicate how the public may view or listen to the proceeding and that the meeting will be recorded with a transcript of the meeting made available thereafter.
- In order to maintain order and to allow for transcription later, boards may wish to implement a rule whereby no one may speak until recognized by the president. That will minimize multiple voices at the same time.

#### 4. A Combination of the Above

- Boards may conduct meetings via a combination of the above. For example, some board members could participate in person and others by videoconference or phone, provided a quorum of the whole board is participating.
- The notice of the meeting should advertise the ways in which the meeting will be conducted, how the public may view or listen to

the meeting, and that the meeting will be recorded with a transcript of the meeting made available thereafter.

In addition, Boards should remember to continue to adopt proper resolutions to move into Executive Session and, when using video or teleconferencing, ensure that the Executive Session portion of the meeting is not audible or viewable.