

New York State Open Meetings Law

Background

On June 24th the Governor rescinded Executive Order 202.1 of March 12, 2020, which allowed for our Planning Committee and Policy Board meetings to be held entirely virtually. The result is that the exceptions to the NYS Open Meetings Law which were allowed during the pandemic, no longer exist.

The relevant paragraph in Executive Order 202.1 read:

Suspension of law allowing the attendance of meetings telephonically or 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;

According to the guidance, local governments will no longer be able to conduct virtual meetings pursuant to Executive Order 202.1. Any meeting of a public body conducted after June 24, 2021, may only be conducted pursuant to the NYS Open Meetings Law. The Open Meetings Law allows public bodies to conduct meetings via videoconference, but requires that the public be allowed to attend meetings of public bodies in-person. NOTE: Meeting organizers may NOT prevent unvaccinated individuals from attending meetings of public bodies. However, organizers may require unvaccinated individuals to wear a mask to attend meetings.

This return to the existing Open Meetings Law only impacts CDTC if we decide to offer a video conferencing option for future meeting attendance. According to this law, members of public bodies may only participate via videoconference in a manner that allows the public (a) to view and hear the public body members and (b) to be present at any of the locations from which a public body member is participating in the meeting.

In order to meet the requirement in subparagraph (a), CDTC would need to purchase new video and audio equipment, which would view and hear all the meeting attendees throughout the room (360 degrees). CDRPC is currently testing such equipment and there are several options. The requirement in subparagraph (b) would be more difficult to meet and would place an undue burden on members who attend remotely.

Legislation has already been drafted in the NYS Senate and Assembly which, if enacted, would make permanent the authority for public bodies to hold remote meetings/hearings in a

fashion similar to that allowed during the state of emergency. Some of the other New York State MPOs are seeking legal opinions especially regarding the requirement to allow the public into any locations where a member is participating.

We have the following options:

1. “Wait and see.” There may be changes made to the Open Meetings Law either by the State Legislation or by legal opinions.
2. Purchase new video and audio equipment. This equipment would be beneficial even if it is not required, and would help make our other meetings (Advisory Committee meetings, study meetings, etc.) more accessible and productive. We would work with CDRPC to find the best equipment and options.
3. Offer only in-person meetings. This would be a return to pre-pandemic meetings and would comply with the current law.
4. Offer both in-person and remote attendance (hybrid meetings) and open the other locations to the public. This would comply with the current law, but is probably not desirable.