



Board of Trustees of The City University of New York

RESOLUTION

To

Authorize Members of the Board of Trustees who Experience an Extraordinary Circumstance to Attend Meetings by Videoconference Under Certain Conditions and to Adopt Procedures Governing Member Videoconferencing Pursuant to Public Officers Law §103-a

October 3, 2022

WHEREAS, The Board of Trustees of The City University of New York (the “Board”) has been meeting regularly for the entire duration of the public health emergency with respect to the COVID-19 pandemic, having begun remote meetings in March of 2020 in accordance with the New York State (the “State”) Open Meetings Law as amended by the New York State Governor’s executive orders suspending certain provisions thereof; and

WHEREAS, The Board continued its work and meetings returning to in-person meetings when an Executive Order ended the suspension of the provisions of the State Open Meetings Law and then returning to virtual or hybrid meetings when subsequent changes to the Open Meetings Law permitted and the circumstances of the pandemic required; and

WHEREAS, The ability to be flexible allowed for the Board to vote when they were unable to attend meetings in person due to health or other serious concerns; and

WHEREAS, On April 9, 2022, Governor Hochul signed Chapter 56 of the Laws of 2022, which included an amendment to the State Open Meetings Law (“OML”) to make permanent (until July 1, 2024) the expanded use of videoconferencing by public bodies to conduct open meetings, under *extraordinary circumstances*, regardless of a declaration of emergency; and

WHEREAS, Chapter 56 adds Section 103–a of the OML, permitting the Board to authorize its members to attend meetings by video conferencing under *extraordinary circumstances*; and

WHEREAS, Section 103-a(2)(a) requires the Board to adopt a resolution, following a public hearing, authorizing the limited use of videoconferencing under such circumstances; and

WHEREAS, Section 103-a(2) allows for hybrid meetings by requiring “that a minimum number of members are present to fulfill the public body’s quorum requirement in the same physical location or locations where the public can attend;” and

WHEREAS, Section 103-a(2)(c) requires that members be physically present at any such meeting “unless such member is unable to be physically present at any such meeting location due to *extraordinary circumstances*...including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting;” and

WHEREAS, In accordance with Section 103-a(2)(d), any members attending by videoconference must, except during Executive Session, be “heard, seen and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon”; and

WHEREAS, Members of a public body who would have difficulty participating in person and who would otherwise be eligible for a reasonable accommodation pursuant to the 1990 Americans with Disabilities Act (the “ADA”), as amended, shall be allowed to participate in accordance with state and federal law guidelines; and

WHEREAS, Section 103-a(2)(g) requires that any meeting where a member attends by videoconference be recorded, posted to the Board’s webpage within five business days, and transcribed upon request; and

WHEREAS, The Board has determined that it is necessary and appropriate that the Board utilize videoconferencing to conduct meetings in the manner contemplated by Section 103-a of the Public Officers Law.

NOW THEREFORE, BE IT

RESOLVED, That the Board of Trustees of the City University of New York hereby authorizes its members who experience an *extraordinary circumstance*, as described in Section 103-a (2)(c) above and further defined in the written policy herein, to attend its 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 Chapter 56 of the Laws of 2022; and

BE IT FURTHER

RESOLVED, That in compliance with Public Officers Law §103-a, the Board hereby adopts the Procedures Governing Member Videoconferencing Pursuant to Public Officers Law §103-a herein as Policy 2.20, effective October 24, 2022, which has been established to satisfy the requirements of Public Officers Law §103-a(2)(b) that any public body which in its discretion wishes to permit its members to participate in meetings by videoconferencing from private locations – under *extraordinary circumstances* – must establish written procedures governing member and public attendance; and

BE IT, FURTHER

RESOLVED, That the Board authorizes that all units, departments, and committees among the constituent schools and colleges of the University, which are subject to the Open Meetings Law in accordance with subdivision two of section one hundred two of Article 7 of such Law, now existing or hereafter established, may, in their discretion, use videoconferencing to conduct meetings provided that they are in compliance with Section 103-a of the New York State Open Meetings Law and Board Policy 2.20 - Procedures Governing Member Videoconferencing Pursuant to Public Officers Law §103-a herein.

Explanation

On April 9, 2022, Governor Hochul signed Chapter 56 of the Laws of 2022 relating to the New York State budget for the 2022-2023 state fiscal year. Included in the bill is an amendment to the Open Meetings Law (OML) to make permanent (until July 1, 2024) the expanded use of videoconferencing by public bodies to conduct open meetings, *under extraordinary circumstances*, regardless of a declaration of emergency.

Policy 2.20

**Procedures for Member Videoconferencing
Pursuant to Public Officers Law § 103-a**

In compliance with Public Officers Law § 103-a(2)(a), the Board of Trustees of the City University of New York (“the Board”) following a public hearing, authorized by resolution on October 24, 2022, the use of videoconferencing as described in Public Officers Law § 103-a.

The following procedures are hereby established to satisfy the requirement of Public Officers Law § 103-a(2)(b) that any public body which in its discretion wishes to permit its members to participate in meetings by videoconferencing from private locations – under *extraordinary circumstances* – must establish written procedures governing member and public attendance.

1. Board members shall be physically present at any meeting of the Board of Trustees unless such member is unable to be physically present at one of the designated public meeting locations due to *extraordinary circumstances*.
2. For purposes of these procedures, the term “*extraordinary circumstances*” includes disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting.
3. If a member is unable to be physically present at one of the designated public meeting locations and wishes to participate by videoconferencing from a private location due to *extraordinary circumstances*, the member must notify the Secretary to the Board and/or the Chair of the Board no later than four business days prior to the scheduled meeting in order for proper notice to the public to be given. If a determination has been made by the Chair that such *extraordinary circumstances* exist, then the Secretary to the Board shall take the necessary steps to convene an extraordinary-circumstances videoconferencing meeting. If *extraordinary circumstances* present themselves on an emergent basis within four days of a meeting, the Board shall update its notice as soon as practicable to include that information. If it is not practicable, as determined by the Chair and the Secretary of the Board, for the Board to update its notice, the Board may reschedule its meeting.
4. If there is a quorum of members participating at a physical location(s) open to the public, the Board may properly convene a meeting. A member who is participating from a remote location that is not open to in-person physical attendance by the public *shall not* count toward a quorum of the Board but may participate and vote if there is a quorum of members at a physical location(s) open to the public.
5. Except in the case of Executive Sessions conducted pursuant to Public Officers Law § 105, the Board shall ensure that its members can be heard, seen, and identified while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon. This shall include the use of first and last name placards physically placed in front of the members or, for members participating by videoconferencing from private locations due to *extraordinary circumstances*, such members must ensure that their full first and last name appears on their videoconferencing screen.
6. The minutes of the meetings involving videoconferencing based on extraordinary circumstances pursuant to Public Officers Law § 103-a shall include which, if any, members participated by videoconferencing from a private location due to such *extraordinary circumstances*.

7. The public notice for the meeting shall inform the public: (i) that extraordinary-circumstances videoconferencing will (or may) be used, (ii) where the public can view and/or participate in such meeting, (iii) where required documents and records will be posted or available, and (iv) the physical location(s) for the meeting where the public can attend.

8. The Board shall provide that each open portion of any meeting conducted using extraordinary-circumstances videoconferencing shall be recorded and such recordings posted or linked on the Board website within five business days following the meeting, and shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.

9. If members of the Board are authorized to participate by videoconferencing from a private location due to extraordinary circumstances, the Board shall provide the opportunity for members of the public to view such meeting by video, and to participate in proceedings by videoconference in real time where public comment or participation is authorized. The Board shall ensure that where extraordinary-circumstances videoconferencing is used, it authorizes the same public participation or testimony as in person participation or testimony.

10. Open meetings of the Board of Trustees of the City University of New York and all of its constituent entities conducted using extraordinary-circumstances videoconferencing pursuant to the provisions of POL § 103-a shall be broadcast pursuant to the requirements of POL § 103(f) and 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 guideline, “disability” shall have the meaning defined in Executive Law § 292.

11. The in-person participation requirements of POL § 103-a(2)(c) shall not apply during a state disaster emergency declared by the governor pursuant to Executive Law § 28 or a local state of emergency proclaimed by the chief executive of a county, city, village or town pursuant to § 24 of the Executive Law if the Board determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the Board to hold an in-person meeting.

12. These procedures shall be conspicuously posted on the Board’s website.