




MEMORANDUM

To: The Chairperson and Members

From: Eric Enderlin 
President

Re: Approval of Resolution and Related Written Procedures Governing Use of Videoconferencing During Public Meetings Pursuant to the Open Meetings Law

Date: March 24, 2023

I am pleased to recommend that the Members adopt a resolution (“Resolution”) and written procedures governing the use of videoconferencing by Members to permit participation in public meetings (“Written Procedures”) pursuant to the Open Meetings Law of the State of New York as set forth in Public Officers Law, Article 7, Section 103-a (“OML§103-a”). The Resolution and proposed Written Procedures to be adopted are attached hereto.

Background:

The New York State Legislature permitted State and local government meetings to be held remotely to reduce the need for the congregation at public meetings while a State or local state of emergency due to the COVID-19 Pandemic was in effect. New York State’s COVID-19 state of emergency expired in September. A New York City Mayoral Emergency Executive Order extending the COVID-19 state of emergency that was previously declared is in effect at the time of this memorandum.

In April 2022, to address how public meetings can be held when there is no State or local state of emergency in effect, the New York State Legislature amended the Open Meetings Law to authorize public bodies to permit members who experience extraordinary circumstances to attend meetings through videoconferencing. 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. Pursuant to OML§103-a, all members must be seen, heard, and identified while the meeting is being conducted and there must be a quorum present in the same physical location(s) where the public can attend. A member who is participating from a remote location shall not count toward a quorum.

A public body can use videoconferencing to conduct its meeting pursuant to OML§103-a only if the governing board of the public body adopts a resolution following a public hearing on the proposed written procedures governing member and public attendance that it wishes to adopt. The HDC public hearing for this matter is scheduled for March 30, 2023. OML§103-a will expire on July 1, 2024.

More information can be found in the proposed Written Procedures and Resolution attached hereto.

Action by the Members:

The Members are asked to adopt the proposed Resolution and Written Procedures and authorize the Corporation's staff to implement the Written Procedures in compliance with OML§103-a.



**WRITTEN PROCEDURES GOVERNING USE OF VIDEOCONFERENCING
DURING PUBLIC MEETINGS PURSUANT TO OML§103-a**

In compliance with Open Meetings Law (“OML”) Section (§) 103-a(2), the following procedures are hereby established to satisfy the requirement of OML§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. Members of the Corporation shall be physically present at any public meeting of the Corporation 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 written 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 provide advance notification and justification to the President and General Counsel of the Corporation prior to the scheduled meeting in order for proper notice to the public to be given.
4. If a Member of the Corporation is authorized to participate in a meeting by videoconferencing from a private location due to extraordinary circumstances, the Corporation shall provide the opportunity for members of the public to view such meeting by video.
5. If there is a quorum of Members participating at a physical location(s) open to the public, the Corporation 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 but may participate and vote if there is a quorum of Members at a physical location(s) open to the public.

6. Except in the case of executive sessions, the Corporation 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.
7. The minutes of the meetings involving videoconferencing based on extraordinary circumstances pursuant to OML§103-a shall include which, if any, Members participated by videoconferencing from a private location due to such extraordinary circumstances.
8. 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.
9. The Corporation shall provide that any meeting conducted using videoconferencing due to extraordinary circumstances shall be recorded and such recordings posted or linked on the Corporation's website (www.nychdc.com) 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.
10. The in-person participation requirements of OML§103-a(2)(c) shall not apply during a state disaster emergency declared by the Governor or a local state of emergency proclaimed by the Mayor if the Corporation determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the Corporation to hold an in-person meeting.
11. These procedures shall be conspicuously posted on the Corporation's website (www.nychdc.com).



**RESOLUTION ADOPTING WRITTEN PROCEDURES
GOVERNING USE OF VIDEO-CONFERENCING DURING
PUBLIC MEETINGS PURSUANT TO OML§103-a**

WHEREAS, the New York State Legislature passed Chapter 56 of the Laws of 2022 (“Chapter 56”), amending Section 103 of the Open Meetings Law; and

WHEREAS, Chapter 56 adds Section 103-a of the Open Meetings Law, permitting the New York City Housing Development Corporation (the “Corporation”) to adopt a resolution authorizing its board members (“Members”) to attend meetings by videoconferencing under extraordinary circumstances; and

WHEREAS, Section 103-a (2) allows for hybrid meetings by requiring “that a minimum .number of [M]embers 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 [M]ember 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 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, Section 103-a(2)(g) requires that any meeting where a Member attends by videoconference be recorded, posted to the Corporation’s website within five business days, and transcribed upon request; and

WHEREAS, Section 103-a(2)(h) requires that the public be permitted to attend any meeting by videoconference when a Member attends by videoconference.

BE IT RESOLVED, that the Corporation authorizes Members who experience an extraordinary circumstance, as described above and further defined by any rules or written

procedures later adopted, to attend meetings by videoconference as long as: (i) there is a quorum of Members attending in-person at one or more locations open to the public; (ii) the Member can be seen, heard, and identified while the meeting is being conducted; and (iii) as otherwise permitted under Open Meetings Law Section 103-a; and be it further

RESOLVED, in compliance with Chapter 56 of the Laws of 22, the Members of the Corporation hereby adopt written procedures to govern the use of videoconferencing by Members following a public hearing held on March 30, 2023; and be it further

RESOLVED, that the Corporation shall post the duly adopted written procedures on its website as required.