

TO: BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee recommends passage of “A Local Law authorizing the use of videoconferencing for members of the County Board, its committees, and its subcommittees.”

Your Committee is aware that 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 fiscal year. This law also included an amendment to the Open Meetings Law (“OML”)—amending section 103(c) of Article 7 of the New York State Public Officers law, and adding a new section 103-a—enabling public bodies to expand, until July 1, 2024, the use of videoconferencing to conduct open meetings.

Your Committee understands that under the new State law, a county’s governing board—i.e., the County Board—may adopt a local law if it wishes to authorize its members, at the board’s discretion, to attend meetings through videoconferencing without disclosing their remote locations due to extraordinary circumstances. Such a local law would allow a member to participate in a meeting from a remote location that is not open to the public, provided that a quorum of board members is present in the same physical location or locations where the public can attend. The new State law explains that 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 a meeting.

Your Committee is aware that, prior to the passage of the new State law, the OML authorized remote participation in meetings by public body members through videoconferencing only if “an opportunity for the public to attend, listen and observe at any site at which a member

participates” was provided. The unprecedented nature of the COVID-19 pandemic demonstrated the unworkability of in-person meetings and public attendance at any location from which a member participated. Emergency declarations and authorizations during the height of the pandemic allowed public bodies to use remote means, such as videoconferencing and teleconferencing, on a temporary basis to conduct their open meetings. Currently, these measures are set to expire in the near future, pursuant to Chapters 1 and 56 of the New York State Laws of 2022 and Executive Order 11, which extends the state disaster emergency. The State disaster emergency, as extended by Executive Order 11, suspends requirements of the Open Meetings Law to allow public bodies to conduct remote meetings and may be extended for only 30 day increments.

Your Committee understands that with Chapter 56 of the Laws of 2022, the New York State Legislature modified the OML by adding section 103-a in an attempt to expand the pre-pandemic scope of videoconferencing, and make such videoconferencing available for a longer duration. Your Committee also understands the new State law provides that the in-person participation requirements do not apply during states of emergency declared at the state or local levels, if the public body determines that the circumstances necessitating the emergency declaration would affect or impair the ability to hold an in-person meeting.

Your Committee has been informed that in order to conduct meetings through videoconferencing pursuant to new OML § 103-a, the following conditions apply: the public body must establish written procedures that govern member and public attendance, setting forth the

contours of the “extraordinary circumstances” under which a member may participate through videoconferencing, and the public body must post the procedures conspicuously to its public website; any member videoconferencing into a meeting from a remote location not open to in-person public attendance due to extraordinary circumstances may not count towards a quorum, but may participate and vote in the meeting if there is a quorum of members convened at a location (or locations) open to the public; members must be heard, seen, and identified while the meeting is being conducted; the notice for the meeting must inform the public about the use of videoconferencing, and must provide instructions so the public can view and/or participate in—to the extent participation is permitted—the meeting and locate relevant records; the minutes of meetings involving videoconferencing must explicitly identify which, if any, members participated in the meeting remotely; all meetings conducted using videoconferencing must be recorded, with the recordings posted on or linked to the public body’s website within five business days, and must remain available on the site for at least five years; upon request, the recorded meetings must be transcribed; local public bodies using videoconferencing must maintain an official website; and meetings that are broadcast or videoconferenced must use technology that permits access by individuals with disabilities, consistent with the Americans with Disabilities Act.

Your Committee believes that it is in the best interests of the County to pass a local law authorizing the use of videoconferencing for members of the County Board, its committees, and its subcommittees, consistent with New York State Public Officers Law, Article 7, § 103-a, and the written procedures established by the County Board.

Finally, your Committee is informed that this Local Law does not meet the definition of an action under SEQRA and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning dated January 14, 2022, which is on file with the Clerk of the Board of Legislators.

Your Committee recommends adoption of this Local Law.

Dated: _____, 2022
White Plains, New York

COMMITTEE ON

SCM-05/11/2022

RESOLUTION NO. ____ – 2022

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. ____ - 2022, entitled “A Local Law authorizing the use of videoconferencing for members of the County Board, its committees, and its subcommittees.” The public hearing will be held at __.m. on the ____ day of _____, 2022, in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.