

New York Coalition



For Open Government, Inc.

***Local Governments Mute the Public
During Remote Meetings***

May 12, 2020

New York Coalition For Open Government

About:

The New York Coalition For Open Government is a nonpartisan charitable organization comprised of journalists, activists, attorneys, educators, news media organizations, and other concerned citizens who value open government and freedom of information.

Mission Statement:

Through education and civic engagement, the New York Coalition For Open Government advocates for open, transparent government and defends citizens' right to access information from public institutions at the city, county, and state levels.

Statement of Purpose:

We believe that, if government is of the people, by the people and for the people, then it should also be open *to* the people. Government exists to serve its citizens. Access to public information should be simple. Freedom of Information Laws and the New York Open Meetings Law make access to public records a right.

When government operates openly and honestly, we, the people, can hold our elected officials accountable, fulfilling our duties as an informed citizenry. The New York Coalition For Open Government works to ensure that all people have full access to government records and proceedings on the city, county, and state levels. Such access fosters responsive, accountable government, stimulates civic involvement, and builds trust in government.

The New York Coalition For Open Government

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New York's Open Meetings Law

The Open Meetings Law has been in effect since 1977, and among its requirements are that:

- Every meeting of a public body must be open to the public.
- Notice must be given to the public and the news media prior to a meeting.
- Meeting documents shall be posted on a local government's website to the extent practicable prior to a meeting.
- To the extent practicable, meetings shall be streamed in real-time and posted for a reasonable amount of time after the meeting.

The Open Meetings Law does not require that the public be heard during a meeting. While the law does not require hearing from the public, most local governments provide an opportunity for public comment during their meetings.

The New York Coalition For Open Government believes that it is important for the public to be heard during every meeting and especially during this emergency time and we have focused on this as part of our report.

Governor's Executive Orders

On March 7, 2020, Governor Cuomo issued Executive Order Number 202.1, thereby declaring a State disaster emergency for the entirety of New York State due to the COVID-19 pandemic. This order suspended a subset of the standard Open Meetings Law requiring meetings to be held in public and in-person. As a result, local governments received authorization to hold governmental meetings 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. This executive order has been extended by way of additional orders through June 6, 2020.

Interpretation of the Governor's Executive Order

The New York State Committee on Open Government is a body authorized to advise, opine, and recommend on issues and questions pertaining to open government laws. Recently, they issued an opinion to the New York State Workers Compensation Board interpreting the requirements of the Governor's Executive Order.

The Board asked if, considering the Governor's executive order, foregoing live streaming their meetings was allowable by law as long as they provided a video of the meeting online within 24 hours.

The New York State Committee on Open Government rejected the Board’s workaround. Instead, the Committee declared the Governor’s Executive Order coexists, rather than supersedes, the Open Meetings Law. Indeed, “In our view, the Order does not suspend the “livestreaming” requirement set forth in § 103(f) of the OML for agencies required to comply with that section, and in fact appears to strengthen during its pendency that underlying provision of law for all public bodies regardless of whether they are required to comply with OML § 103(f).”¹

Bolstering this stance further, Jason Conwall, a spokesman in the Governor's Office, stated the intent of the order is to require public boards to ensure members of the public have the ability to view or listen to public meetings live. Furthermore, Kristin O'Neill, Assistant Director of the State Committee on Open Government, stated “They have an obligation to provide remote, contemporaneous access, the public has to be able to listen or view while the meeting is occurring.”

On April 17, 2020, the Daily Gazette newspaper in Schenectady published an article regarding a recent Greater Amsterdam School Board remote public meeting. This meeting occurred without any live audio or visual available to the public. The District's incorrect interpretation of the public meeting requirements under the Governor's Order, an interpretation they relied upon before their meeting, hinged upon the idea of a meeting being conducted without granting real-time access to the public so long as the meeting was recorded and later made available to the public. Indeed, the School District Spokesman stated “Nowhere in [the Executive Order] does it say [meetings] ha[ve] to be live.” A position in clear and direct opposition to the Committee’s advisory opinion as well as Mr. Conwall’s and Ms. O’Neill’s statements.

Our Study

The New York Coalition For Open Government reviewed the websites of twenty-one local governments to see how their regular meetings were conducted during the month of April 2020, in an attempt to determine if the Open Meetings Law, as well as the Committee’s advisory opinion, were being correctly followed. The locations reviewed included ten New York State counties, eleven cities, and one town. Considering the time to adjust to new Executive Orders, and to provide some fairness across all locations, April was used as a base month instead of March. This affords local governments the ability to pivot and roll out new measures in an acceptable amount of time.

¹ Committee On Open Government, March 26, 2020, *Request for Advisory Opinion on Behalf of New York State Worker’s Compensation Board*, Page 3

There are ten different regions in New York State, the largest local governments based on population were reviewed from each region of the state as follows:

Western New York	–	Erie County; Niagara County ² ; Buffalo; Niagara Falls
Finger Lakes	–	Monroe County; Rochester
Southern Tier	–	Broome County; Binghamton
Central NY	–	Onondaga County; Syracuse
North Country	–	Jefferson County; Watertown
Mohawk Valley	–	Oneida County; Utica
Capital District	–	Saratoga County; Albany ³
Hudson Valley	–	Westchester County; Yonkers
New York City	–	New York City Council
Long Island	–	Suffolk County; Brookhaven

Focus of Report

This report focuses on whether local governments are complying with the Governor’s Executive Order, complying with the Open Meetings Law and whether public comments are being allowed during regular meetings. The criteria reviewed includes:

- Are meetings being live streamed
- Are meeting videos/audio posted online after the meeting
- Are all meeting documents being posted online prior to the meeting
- While not required by the Open Meetings Law are local governments soliciting public comments that are heard/seen during the meeting

² Niagara County is part of this report because our organization began as the Buffalo Niagara Coalition for Open Government and several of our Board members are from Niagara County.

³ Albany is the largest County in the Capital District region, however the Albany County Legislature did not meet during the month of April. As Albany County could not be reviewed, Saratoga County was reviewed as the next county with the largest population in the Capital District region.

Grading Criteria

If a local government did all four of the items stated above they received a grade of an A. Three out of the four items rated as a B; two out of four as a C; one out of four a D and zero out of four an F.

A	4/4 items performed
B	3/4 items performed
C	2/4 items performed
D	1/4 items performed
F	0/4 items performed

Grades

A (4/4) (4 out of 21 local governments)

Albany City Council; Binghamton City Council; Niagara Falls City Council; Rochester City Council

B (3/4) (15 out of 21 local governments)

Brookhaven Town Board

- Did not address public comments at their meeting;

Buffalo City Council

- Did not address public comments at their meeting;

Jefferson County Legislature

- Did not address public comments at their meeting;

Monroe County Legislature

- Did not post meeting documents online prior to their meeting;

New York City

- Did not address public comments at their meeting;

Niagara County Legislature

- Did not address public comments at their meeting;

Oneida County Legislature

- Did not address public comments at their meeting, unanimously waived doing so by motion;

Onondaga County Legislature

- Did not address public comments at their meeting;

Saratoga County Board of Supervisors

- Meeting audio not posted online after meeting;

Suffolk County Legislature

- Did not address public comments at their meeting;

Syracuse City Council

- The video for the meeting held 4/13 is not posted;

Utica City Council

- Did not address public comments at their meeting;

Watertown City Council

- Did not address public comments at their meeting;

Westchester County Legislature

- Did not address public comments at their meeting, unanimously waived doing so by motion;

Yonkers City Council

- Did not address public comments at their meeting;

C (2/4)

Erie County Legislature

- Did not post audio/video of their meetings and did not address public comments at their meetings, which is their usual practice.
- It is our understanding that the Legislature is working on posting audio/video of their meetings after they occur.

D (1/4)

Broome County Legislature

- Not all meeting documents posted online prior to meeting, resolutions are posted but written communications and reports received by Legislature and listed on meeting agenda are not posted for the public to see, video of meeting not posted, without a video or meeting minutes

to review, we do not know if public comments were addressed during the meeting.

- On May 5, 2020, an email was sent to the Clerk of the Legislature asking where meeting videos are posted, no response has been received yet.

Are Meetings Being Live Streamed

Every local government reviewed was in compliance with the Open Meetings Law requirement to live stream their meetings. Although the Open Meetings Law requirement to live stream meetings existed before the COVID-19 crisis, some local governments like the Erie County Legislature recently started live streaming their meetings.

Are Meeting Videos/Audio Posted Online

Eighteen out of twenty-one local governments posted a copy of their meeting audio/video online after the meeting for the public to see. The three local governments that did not post their meeting audio/videos were the Erie County Legislature, Saratoga County Board of Supervisors and the Broome County Legislature.

Are All Meeting Documents Posted Online Before a Meeting Occurs

Nineteen out of twenty-one local governments posted their full meeting documents online for the public to see before their meeting. The public should be able to view the complete meeting package (the same packet that legislators have).

The two local governments that did not post all their meeting documents were the Monroe County Legislature and the Broome County Legislature. The Monroe County Legislature posts an agenda listing meeting topics only. The Broome County Legislature posts copies of resolutions and laws that are being voted on, but does not post copies of communications and reports received by the Legislature, which are on the agenda.

Are Public Comments Being Solicited and Addressed

Only seven out of twenty-one local governments solicited and addressed public comments during their regular April meetings. The Open Meetings Law does not mandate that the public be heard during a local government meeting- a lacking requirement we are fighting to change. While not mandated some but not all local governments set aside a portion of their regular meetings to hear public comments (notably the Erie County Legislature, Buffalo Common Council and the New York City Council do not allow the public to speak

at their regular meetings).

The seven local governments that made an effort to solicit live public comments by video/telephone or by reading/summarizing written comments during their meeting or attaching written comments to their meeting minutes are: Albany City Council, Binghamton City Council, Monroe County Legislature, Niagara Falls City Council, Rochester City Council, Saratoga Board of Supervisors and the Syracuse City Council.

The Rochester City Council has undertaken a great process for obtaining comments from the public through an effort called Speak to Council. The Council created a video which explains three options the public has to send comments to the City Council. The City Council meets by Zoom before their regularly scheduled meeting where interested members of the public can speak by live video, have a voice message played or by having their email comments read live to Council Members.

The Binghamton City Council should be recognized for their effort to obtain public comments live by providing an opportunity for comments to occur by telephone.

The Niagara Falls City Council provided clear instructions on how to submit comments by email, which were read during the meeting. The Albany City Council provided instructions and a form the public could use for submitting comments, which were read during the meeting.

The Saratoga Board of Supervisors attached twenty-nine public comments received by email to their meeting minutes.

To her credit Onondaga County Legislator Mary Kuhn at the April 7th meeting of the Legislature raised the issue of having emails from the public read at future meetings. The Onondaga County Legislature was one of too many local governments that simply waived hearing from the public at their meetings.

The fact that so many local governments waived addressing public comments is disturbing. While no legal requirement exists regarding public comment during the course of a meeting, New York State Law does require that public hearings be held before a local government can act on certain items. By law, the public must have an opportunity to be heard during a public hearing.

The Westchester County Legislature unanimously passed a motion waiving public comments at their April meeting, and at the same meeting, took comments for a public hearing by telephone and read written comments into the record. The same effort that is occurring during public hearings is not being made to address public comments during regular meetings across the State. Local governments clearly have the ability to obtain public comments live during their meetings but they are not legally mandated to do so and most appear to lack interest in doing so. The practice of hearing from the public should continue during this emergency time. Hearing from the public is always important and perhaps even more important now during an emergency situation.

The New York State Open Meetings Law should be amended to mandate that the public be given an opportunity to be heard at every meeting held by a public body. According to research done by the Reporters Committee for Freedom of the Press, thirteen states mandate that the public be heard during meetings: California, New Jersey, Pennsylvania, Vermont, Delaware, Florida, Hawaii, Louisiana, Montana, Nebraska, Nevada, North Carolina and Alaska. The same mandate that exists for public hearings should be implemented for all public meetings. **Without a legal mandate in place, sixty-seven percent of local governments studied have elected not to hear from the public during their regular April meetings.**

Conclusion

The New York Coalition For Open Government recognizes the unprecedented scenario we all find ourselves in. We understand the chaos local governments across the state are going through, and their work through these times is more than appreciated.

Understanding the situation at hand, we hope this report is viewed as fair, constructive criticism aimed at ensuring the Open Meetings Law is followed during times of crisis. There is room for significant and beneficial improvement for many local governments across the state, whether it be in allowing the public to speak, posting meetings online, or posting agenda documents with enough time for the public to review. These changes ensure positive and meaningful public participation in important governmental proceedings during some of the most uncertain times in this Country's history.