

CORPORATE:

2. C. (1) **Authorization for Videoconferencing Due to Extraordinary Circumstances**

RECOMMENDATION: General Counsel has reviewed relevant changes in the Open Meetings Law and recommends that the Board adopt the annexed resolution permitting videoconferencing for Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. Board Meetings due to extraordinary circumstances, along with the annexed Procedures for Commissioner Videoconferencing Pursuant to Public Officers Law §103-a.

INFORMATION: The New York State Legislature passed Chapter 56 of the Laws of 2022 which amends Section 103 of the Open Meetings Law to add Section 103-a (the “Law”). The Law permits the NFTA, in its discretion, to authorize its members to attend public meetings by videoconferencing under extraordinary circumstances. To permit its members to attend public meetings by videoconference, the Law requires the NFTA to adopt a resolution authorizing the limited use of videoconferencing under such circumstances. This allows for hybrid meetings by requiring “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”. The Law further requires that members be physically present at any such public 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”. In accordance with the Law, 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”. Any meeting where a member attends by videoconference shall be recorded, posted to the NFTA webpage within five (5) business days, and transcribed upon request. Members of the public shall be permitted to attend and participate, if authorized, in any meeting by videoconference when a member attends by videoconference.

The Law further requires 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. The annexed Procedures for Commissioner Videoconferencing Pursuant to Public Officers Law § 103-a establish the requisite written procedures which govern member and public attendance where videoconferencing may be deemed appropriate and the NFTA’s procedures to maintain records of such meetings.

In accordance with the Law, the NFTA conducted a Public Hearing on December 1, 2022 to hear all persons interested in authorizing the use of videoconferencing for NFTA Board of Commissioners Meetings.

FUNDING: No Funding Necessary.

“RESOLVED, that the Board hereby adopts the annexed resolution which permits videoconferencing for Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. Board Meetings as described therein and;

BE IT FURTHER RESOLVED, that the Board hereby adopts the annexed Procedures for Member Videoconferencing Pursuant to Public Officers Law §103-a (to follow).”

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

WHEREAS, Chapter 56 adds Section 103-a to the Open Meetings Law, permitting the NFTA to authorize its members to attend meetings by videoconferencing under extraordinary circumstances; and

WHEREAS, Section 103-a(2)(a) requires the NFTA to adopt a resolution 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 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 NFTA webpage within five business days, and transcribed upon request; and

WHEREAS, Section 103-a(2)(h) requires that members of the public be permitted to attend and participate, if authorized, in any meeting by videoconference when a member attends by videoconference.

BE IT RESOLVED, that the NFTA authorizes its members who experience an extraordinary circumstance, as described above and further defined by the attached written procedures, to attend 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 meeting is being conducted; and (iii) as otherwise permitted under Chapter 56 of the Laws of 2022; and be it further

RESOLVED, that the NFTA has created the attached written procedures further governing its use of videoconferencing by its members in compliance with Chapter 56 of the Laws of 2022.

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

In compliance with Public Officers Law (POL) § 103-a(2)(a), the NFTA, following a public hearing held on December 1, 2022, authorized by resolution on December 8, 2022 the use of videoconferencing as described in POL § 103-a.

The following procedures are hereby established to satisfy the requirement of POL § 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. NFTA members shall be physically present at any meeting of the NFTA 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 Chair of the NFTA’s Board and the Executive Director of the NFTA no later than four (4) business days prior to the scheduled meeting in order for proper notice to the public to be given.
4. If there is a quorum of members participating at a physical location(s) open to the public, the NFTA 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 NFTA, 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 POL § 105, the NFTA 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 meeting(s) involving videoconferencing based on extraordinary circumstances pursuant to POL § 103-a shall include which, if any, members participated via 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 NFTA 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 NFTA's website (www.nfta.com) within five (5) business days following the meeting, and shall remain so available for a minimum of five (5) years thereafter. Such recordings shall be transcribed upon request.
9. If members of the NFTA are authorized to participate by videoconferencing from a private location due to extraordinary circumstances, the NFTA 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 if public comment or participation is authorized by the NFTA. The NFTA shall ensure that where extraordinary circumstances videoconferencing is used, it authorizes the same public participation or testimony as in-person participation or testimony, if public comment or participation is authorized by the NFTA.
10. Open meetings of the NFTA 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 if the NFTA determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the NFTA to hold an in-person meeting.
12. These procedures shall be conspicuously posted on the NFTA's website (www.nfta.com).