

Resolution No. 1 of 2022

New York State Fire Prevention and Building Code Council (Code Council)

WHEREAS, Part WW of Chapter 56 of the Laws of 2022 (Part WW) amended Article 7 of the Public Officers Law (the Open Meetings Law), in relation to permitting videoconferencing and remote participation in public meetings under certain circumstances; and

WHEREAS, prior to the enactment of Part WW, the Open Meetings Law provided that when videoconferencing is used to conduct a public meeting of a public body, each member of the public body wishing to attend and participate in the meeting must be physically present at such meeting at a location where the public can attend; and

WHEREAS, Section 103-a of the Public Officers Law, as added by Part WW, permits members of a public body, under extraordinary circumstances, to attend and participate in a meeting of the public body by videoconferencing from a remote location that is not open to the public, provided that (1) the public body has adopted a resolution authorizing the use of videoconferencing, (2) the number of members of the public body who attend the meeting at location(s) where the public can attend is at least equal to the number required to satisfy the public body's quorum requirement, (3) the public body has established written procedures governing member and public attendance consistent with Section 103-a of the Public Officers Law, (4) such written procedures are conspicuously posted on the public website of the public body, and (5) the other criteria specified in Section 103-a are satisfied; and

WHEREAS, the Code Council deems it appropriate that the Code Council and any and all committees or subcommittees of the Code Council now existing or hereafter established be authorized to use videoconferencing to conduct meetings in the manner contemplated by Section 103-a of the Public Officers Law, i.e., meetings where a member who is unable to be physically present at any such meeting location due to extraordinary circumstances is permitted to attend and participate in the meeting by videoconferencing from a remote location that is not open to the public; and

WHEREAS, the Code Council also deems it appropriate that the Code Council and any and all committees or subcommittees of the Code Council continue to be authorized to use videoconferencing to conduct meetings where each member wishing to attend and participate in such meeting is physically present at such meeting at a location where the public can attend;

BE IT RESOLVED, that the Code Council hereby authorizes the Code Council and any and all committees or subcommittees of the Code Council now existing or hereafter established to use videoconferencing to conduct meetings in the manner authorized by Section 103-a of the Public Officers Law; including meetings where a member who is unable to be physically present at any such meeting location due to extraordinary circumstances is permitted to attend and participate in the meeting by videoconferencing from a remote location that is not open to the public; and be it further

RESOLVED, that, in addition, the Code Council continues to authorize the Code Council and any and all committees or subcommittees of the Code Council now existing or hereafter established to use videoconferencing to conduct meetings where each member wishing to attend and participate in such meeting is physically present at such meeting at a location where the public can attend; and be it further

RESOLVED, that the Code Council hereby adopts the Procedures Governing Member and Public Attendance at Meetings Conducted by Use of Videoconferencing annexed hereto and made part hereof (the Procedures) and directs that all meetings of the Code Council conducted by use of videoconferencing and all meetings of any committee or subcommittee of the Code Council conducted by use of videoconferencing shall be conducted in accordance with such Procedures and in accordance with the applicable provisions of the Open Meetings Law; and

WHEREAS, the Code Council is a council within the Department of State, and, for the purposes of the Open Meetings Law, the public website of the Department of State is the public website of the Code Council, be it further

RESOLVED, that the attached Procedures be conspicuously posted on the public website of the Department of State.

**PROCEDURES GOVERNING MEMBER AND PUBLIC ATTENDANCE
AT MEETINGS CONDUCTED BY USE OF VIDEOCONFERENCING**

**Adopted by the
New York State Fire Prevention and Building Code Council (Code Council)**

Pursuant to Public Officers Law § 103-a (2)(b), the Code Council adopts these Procedures Governing Member and Public Attendance at Meetings Conducted by use of Videoconferencing (the Procedures). These Procedures shall apply to all public meetings of the Code Council conducted by use of videoconferencing and to all public meetings of any committee or subcommittee of the Code Council now existing or hereafter established conducted by use of videoconferencing. When applying these Procedures to meetings of a committee or subcommittee of the Code Council, references to the Code Council shall be deemed to be references to such committee or subcommittee.

1. Except as provided in paragraph 2, each member of the Code Council who wishes to attend and participate in a public meeting of the Code Council shall be physically present at a meeting location that is open to the public and identified in the public notice for such meeting.

2. If, due to extraordinary circumstances, a member of the Code Council who wishes to attend and participate in a meeting is unable to be physically present at a meeting location that is open to the public and identified in the public notice for such meeting, such member may submit a written request to the Assistant Director of Code Development in the Department of State's Division of Building Standards and Codes to attend the meeting via videoconference from a location that is not open to the public. The written request must be submitted a reasonable time in advance of the meeting (and in no event later than the time required to allow the public notice for the meeting to be revised to indicate that the meeting will be conducted by use of videoconferencing) and must identify the general nature of the extraordinary circumstance that causes such member to be unable to be physically present at a meeting location that is open to the public and identified in the public notice.

3. Extraordinary circumstances shall include:

- a. Disability;
- b. Illness;
- c. Caregiving responsibilities; and
- d. Any other significant or unexpected factor or event which precludes such member's physical attendance at such meeting at a meeting location that is open to the public.

4. Notwithstanding the provisions in these Procedures that permit members to attend a meeting via videoconference from a location that is not open to the public, the Code Council shall not be permitted to conduct a meeting unless the number of members physically present at location(s) where the public can attend is at least equal to the minimum number of members

necessary to fulfill the Code Council's quorum requirement. If such quorum requirement is satisfied, the members physically present at location(s) where the public can attend and the member(s) attending the meeting via videoconference from location(s) not open to the public may participate in the meeting and vote at the meeting.

5. If videoconferencing is used to conduct a meeting, then except in the case of executive sessions, the Code Council shall ensure that each member participating in the meeting, whether at a location where the public can attend or from a remote location that is not open to the public, 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. Members participating from a remote location shall ensure that their visual and audio connections are operational and shall (1) identify their full name on the videoconferencing software so that it appears on the screen or (2) have a name plate with their full name that appears on the screen. Notwithstanding any other provision of these Procedures to the contrary, a member who is otherwise qualified to participate in a meeting from a remote location that is not open to the public shall not be permitted to participate in the meeting from such remote location if such member's visual and audio connections are not operational and/or do not permit such member to be heard, seen, and identified, while the meeting is being conducted.

6. If videoconferencing is used to conduct a meeting, the minutes of the meeting shall identify which, if any, member(s) participated remotely and shall be available to the public pursuant to Section 106 of the Public Officers Law.

7. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used; shall specify where the public can view the meeting (and, when public participation in the meeting is authorized, shall specify where the public can view and/or participate in the meeting); shall specify where required documents and records will be posted or available; shall identify the physical location(s) for the meeting where the public can attend; and shall otherwise comply with all applicable requirements of the Open Meetings Law.

8. If videoconferencing is used to conduct a meeting, the meeting shall be recorded, the recording of the meeting shall be posted or linked on the public website of the Department of State within five business days following the meeting, and such recording shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.

9. If videoconferencing is used to conduct a meeting, the public may attend the meeting at any location that is open to the public and, in addition, the Code Council shall (1) provide the opportunity for members of the public to view such meeting via video, and (2) when public comment or participation is authorized, shall provide the opportunity for members of the public

to participate in proceedings via videoconference in real time and shall ensure that videoconferencing authorizes the same public participation or testimony as in person participation or testimony.

10. If videoconferencing is used to conduct a meeting, the Code Council may require any member of the public who wishes to attend the meeting remotely by videoconference to register for the meeting, provided that such registration shall be open to all and that the manner in which registration can be made is specified in the public notice for the meeting.

11. If videoconferencing is used to conduct a meeting during which public comment is authorized or otherwise accepted, the Code Council may require any member of the public who provides comments during such meeting to submit a Notice of Appearance or otherwise to provide such information as may be deemed necessary by the Department of State for the purposes of fulfilling its obligations under Executive Law § 166. Nothing in this paragraph or elsewhere in these Procedures shall be construed as requiring the Code Council to accept public comments at any meeting or otherwise to permit participation by members of the public in any meeting. If the Code Council does accept public comments at any meeting or does otherwise permit participation by members of the public in any meeting, nothing in this paragraph or elsewhere in these Procedures shall be construed as limiting the right of the Code Council to impose such limits and restrictions on such public comments and/or public participation as may be permitted by applicable law.

12. Neither the in-person participation requirements of paragraph 1 of these Procedures nor the in-person quorum requirements of paragraph 4 of these Procedures shall apply during a State disaster emergency declared by the Governor pursuant to Section 28 of the Executive Law if the Code Council determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the Code Council to hold an in-person meeting. A determination under this paragraph may be made at a meeting in which any or all of the members participate by videoconferencing from remote locations not open to the public.