



- *Accountability*
- *Transparency*
- *Integrity*

Board Meetings: Best Practices Guide for Public Authorities

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INTRODUCTION

The board meetings of State and Local Public Authorities and their subsidiaries (also collectively, Public Authorities or Authorities) are the public setting in which board members exercise their duties. It is during board meetings that the public can best observe directors as they perform their governance responsibilities, exercise management oversight, and make decisions regarding the Public Authority's finances and operations. The better informed, engaged and mission driven the board, the more likely the Public Authority will operate consistent with its stated purpose, policies, and legal obligations.

The board of directors of a Public Authority plays an integral governing role in the organization. The board of directors delegates to staff most of its responsibility for the day-to-day operations of the Public Authority, but is ultimately responsible for all of the Public Authority's decisions and actions. By accepting appointment to the board, a member (or their designee) has made a commitment to the Authority's mission and the public interest. Board members are responsible for defining the culture of the organization, setting its policies, and ensuring that the mission of the Authority is met. The role and responsibilities of board members are codified in the New York Public Authorities Law.¹ A board member's role includes participating in training sessions, consistently attending board and committee meetings, and engaging fully in the board's and committee's decision-making process. Board members exercise their fiduciary duties by knowing and understanding the mission of the Authority they govern, making informed and independent decisions that are in the best interest of the Authority, disclosing any conflicts (or the appearance of a conflict) of interest, and not divulging confidential discussions and confidential matters that come before the board.

Because board meetings are where issues are formally addressed, the public must be able to attend meetings and listen to the deliberations and discussions that lead to decisions. Accordingly, board members should make every effort to ensure that public business is conducted in an open and transparent manner. The more transparent the actions of the Authority, the more likely the public will accept and have confidence in those actions.

This guide was developed to help board members and staff conduct effective board meetings. It is organized in a questions and answers format by topics. Legal requirements (if applicable) and recommended practices are included for each topic. While the law contains the minimum requirements regarding board meetings, best practices go beyond these requirements and provide Authority officials with additional guidance for conducting productive and transparent board meetings.

This document discusses the requirements and expectations that board members and staff of State and Local Public Authorities, and their subsidiaries, are to meet for providing public notice of meetings, conducting board meetings, and keeping board minutes, as well as many other related topics. It is meant to serve as a basic introduction for preparing and holding board meetings, the role and responsibilities of board members, and as a tool directors and staff can refer to when conducting board meetings.

PUBLIC MEETINGS & OPEN MEETINGS LAW

A meeting is the official convening of a public body² for the purpose of conducting public business. According to Open Meetings Law (OML), meetings of public bodies must be open to the public.³ The law does provide that in limited circumstances, directors may vote to discuss specifically permitted matters in executive session (see [Executive Session](#)). The

intention of OML, also known as the “Sunshine Law,” is to promote openness and transparency. This law applies to the regular, committee, and subcommittee meetings of all State and Local Public Authorities, and their subsidiaries.^{4,5}

■ ***When does Open Meetings Law NOT apply?***

There are three situational exemptions from OML:⁶

1. Judicial or quasi-judicial proceedings (except public service commission proceedings and zoning boards of appeals).
2. Deliberations of political committees, conferences and caucuses.
3. Any matter made confidential by federal or state law.

An example of an exemption to open meetings law is attorney-client privileged communications.⁷ To invoke the exemption, an Authority must be seeking legal advice from its attorney, and the attorney must provide relevant legal advice. The scope of attorney-client privilege is considered limited.⁸ Once legal advice is given, if the Authority begins discussing or deliberating independent of the attorney, the attorney-client privilege has ended and OML applies going forward.⁹

In addition to these exceptions, OML does not apply if board members meet by chance, or at a social gathering, as long as there is no intention to conduct public business in such a setting. For instance, if a majority of board members begin to casually discuss business as a group during a social gathering, they should recognize they have started to conduct public business without public notice and immediately end all such discussion.¹⁰

PUBLIC NOTICES

The first step towards ensuring openness and transparency of board meetings is to provide the

public with clear and conspicuous advance notice of meetings (see [Appendix A- Public Notice Sample](#)).

■ ***What information should be included in a public notice?***

A public notice must include the date, time, and location of the meeting, including locations where videoconferencing will take place if applicable, and the URL address to view the meeting on the live-streaming platform.¹¹ It is recommended that the notice include the name of the Public Authority holding the meeting, the type of meeting being held (regular, committee, or special) as well as a contact person or office where interested parties can obtain more information. If multiple meetings are scheduled back-to-back, a public notice must be posted for each meeting type (regular, committee, or special). If the Authority has established rules or procedures requiring additional information for notices, they should be followed.¹²

Although an agenda is not required, it is strongly recommended that Authorities post on their website an agenda that includes the activities planned for the meeting at least one week in advance of a board meeting (see [ABO Policy Guidance 22-01](#)). If multiple meetings are scheduled back-to-back, a separate agenda must be posted for each meeting type (regular, committee, or special). Posting the agenda increases transparency by allowing the public to know in advance what will be discussed and what matters are scheduled for a vote.

■ ***When should the public be notified of the board meeting?***

For meetings scheduled one week or more in advance, notice should be given no less than 72 hours (3 days) in advance.¹³ For meetings scheduled less than a week in advance, notice should be given within a reasonable time frame prior to the meeting. In the absence of emergency situations, it is not reasonable to schedule meetings less than one week

in advance and notices should not be posted less than 3 days in advance.¹⁴

■ ***Where should the public notice be posted?***

Public notice should be given to the news media and conspicuously posted in one or more designated locations.¹⁵ Designated locations should be easily accessible and visible to the public. In addition, notice of the meeting’s time and place should be conspicuously posted on the Authority’s website. The same posting location requirements apply for emergency meetings.

The board should designate by resolution, or through the adoption of a policy or directive, the location(s) where it will routinely post notice of meetings.¹⁶

Public Authorities are not required to publish the notice as a legal notice; giving notice to the news media is sufficient to comply with the law.¹⁷ Authorities can meet this requirement by emailing the notice to the major television, radio, and newspaper outlets, as well as local community papers in their area. The Authority will still be considered in compliance with the law if the newspapers, television, or radio stations that receive the notice choose not to publicize the public meeting.¹⁸

It is recommended that Authorities provide an option to the public to subscribe to a mailing list to receive automatic notice of all meetings. In addition, Authorities can post on their website the schedule of all planned board meetings for the year at the beginning of the fiscal year (see [ABO Policy Guidance 22-01](#)).

■ ***Should a notice be posted if a scheduled board meeting is cancelled?***

While OML does not require publication of a cancellation notice, best practice recommends that

notice of a cancellation or postponement be given to board members, as well as posted at the location(s) where the Authority posts its meeting notices. If the meeting is rescheduled, the public notice for the rescheduled meeting must comply with the same posting requirements as the meeting that was originally scheduled.

■ ***What are the public notice requirements if videoconferencing is used to conduct the meeting?***

If videoconferencing is available at the meeting, the public notice must:

- (1) inform the public this option will be used;
- (2) identify the locations for the meeting;
- (3) state that the public has the right to attend the meeting at any of the identified locations;¹⁹ and
- (4) state where the required documents and records will be posted or available.²⁰

MEETING AGENDA & BOARD MATERIALS

The agenda is a key document for every meeting since it identifies the matters and issues that are before the board for review, discussion, or action. Common items to include in the agenda are call to order, roll call, approval of minutes from previous meeting, an executive director report, committee reports, old business and new business (including resolutions presented for approval), announcements and adjournment (see [Appendix B- Agenda Sample](#)).

■ ***Who should prepare the meeting agenda?***

It is recommended that both the chief executive of the Authority and the Chair of the board of directors collaboratively prepare the agenda. By taking an active part in the agenda preparation, the Chair can ensure that appropriate topics are discussed during board meetings and help create a

setting for board members to exercise their fiduciary duties.

Boards should have a process that allows individual board members to recommend agenda items for consideration, either through the Chair or the executive director.

■ ***What actions should the board take every year to be compliant with Public Authorities Law?***

Public Authorities Law (PAL) requires board approval for all the records submitted by Authorities as part of their annual reports.²¹

To be compliant with PAL, Authorities must annually submit their annual report, mission statement and measurement report,²² budget report, audit report, procurement report, and the board of directors' evaluation.

It is recommended that board of directors and staff collectively develop a calendar that indicates the time of the year when the content of those reports will be discussed and voted on so that the Authority meets its reporting deadlines and is compliant with PAL. The chief executive officer of the Authority and the Chair of the board of directors can refer to this calendar when preparing meeting agendas to ensure that the information required by law is brought to the board at the appropriate time of the year (see [Appendix C- PAL Compliance Calendar Sample](#)).

In addition, the board should annually review, and update as necessary, their policies for defense and indemnification, salary and compensation, travel, time and attendance, whistleblower protection, investments, property guidelines and procurement guidelines, and code of ethics. These reviews do not all have to occur at one meeting, but can be spread throughout the year.

■ ***What materials should board members receive for a board meeting?***

Board members should be provided with the information they need to attend board meetings prepared and ready to participate. Materials distributed to the board prior to a board meeting, sometimes referred to as the *board book* or *board packet*, should include those documents relevant to the items on the agenda. If multiple meetings are scheduled back-to-back, each meeting must have its own separate, distinct board packet (regular, committee, or special). Some common materials distributed to the board in anticipation of a meeting are:

- ✓ Agenda
- ✓ Meeting minutes from previous meeting
- ✓ Financial statements
- ✓ Management reports
- ✓ Committee reports
- ✓ Compliance items
- ✓ Background information of discussion items
- ✓ Resolutions to be voted on and associated documents (i.e. budget, contracts, policies)
- ✓ Update on legal issues affecting the Public Authority or their subsidiaries

It is recommended that meeting materials be distributed to board members at least one week in advance so that they have enough time to prepare for the meeting. A board of directors that is informed, knowledgeable, and engaged is integral to effective corporate governance.

OML states that any proposed resolution, law, rule, regulation, policy, or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request, and to the extent practicable at least twenty-four hours prior to the meeting during which the records will be discussed.²³ Copies of these records shall be made available to the public

for a reasonable fee. Records should also be posted on the Authority's website at least twenty-four hours prior to the meeting.

CONDUCTING BOARD MEETINGS

How frequently a board meets depends on the amount of work that needs to be accomplished. A common practice is for the full board to meet every month. Committee meetings are usually less frequent, but it is recommended that committees meet at least twice a year in order to successfully fulfill all the obligations and duties expected for each of the committees.

The Chair of the board is responsible for conducting meetings, including ensuring that a quorum is present, facilitating all proceedings, moderating discussions, and making sure the meeting runs smoothly. The Chair should ensure that the agenda is appropriate and identifies the routine and new business expected to be addressed by the board.

If the Chair is unable to make a meeting, the vice Chair typically assumes the responsibilities of running the meeting. The board may also choose to elect a temporary Chair in place of the vice Chair to facilitate a meeting.

The Chair should remain communicative with board members and staff between meetings to ensure that agenda items requiring further action or follow through are being addressed.

- ***Are there any requirements for the physical meeting place of board meetings?***

Authorities must provide an opportunity for the public to attend, listen, and observe meetings in at least one physical location at which a member participates.²⁴ Boards of directors are required to ensure that all reasonable efforts are made to hold meetings in an appropriate facility which can

adequately accommodate members of the public who wish to attend (i.e. making sure there is enough space to accommodate the public attending).²⁵ Additionally, they have a responsibility to make all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free access to physically handicapped persons.²⁶ There is no requirement for Authorities to construct a new facility or to renovate an existing facility to permit barrier-free access to physically handicapped persons. However, for Authorities that have the capacity to hold meetings on a first floor that is accessible to handicapped persons rather than a second floor, the meetings should be held in the room that accommodates the needs of the physically handicapped.²⁷

- ***Are there any requirements for the meeting time of board meetings?***

While there is nothing in OML that refers to the time a meeting may be held, it is important that the board hold its meetings at a time that would reasonably allow interested parties to attend since the law requires that every meeting of a public body be open to the general public.²⁸

- ***Can the public speak during a board meeting?***

The board may permit the public to speak at a board meeting, but is not required to do so by law. If the board allows public participation during the meeting, it is recommended that rules and procedures be developed so that the members of the public are treated equally and the meeting is conducted in an orderly manner.²⁹

- ***Can meetings be photographed, broadcast, webcast, or otherwise recorded?***

Any meeting of a Public Authority that is open to the public must be open to being photographed, broadcast, webcast, or otherwise recorded and/or

transmitted by audio or video means.³⁰ The board should adopt rules consistent with recommendations from the Committee on Open Government that reasonably govern the location of equipment and personnel used to photograph, broadcast, webcast, or otherwise record a board meeting so that the meeting is held in an orderly manner and is not disrupted.³¹

■ ***Can a meeting be conducted through teleconferencing?***

No. OML requires board members to be either physically present at meetings or attend the meeting through videoconference. Attendance at a meeting through teleconference is not permitted because voting members and their surroundings have to be visible to those in attendance.³² For this reason, other means of conducting a meeting (such as e-mail or mail) are also impermissible.³³

■ ***Can a meeting be conducted through videoconferencing?***

Yes. OML allows for a public body to use video conferencing provided all the necessary criteria are met, which include:³⁴

1. A resolution following a public hearing that authorizes the use of videoconferencing is adopted.
2. Adopted procedures regarding videoconferencing are posted on the Authority's website.
3. Members must be physically present at the meeting except for disabled members that meet the definition in Section 292 of Executive Law or other extraordinary circumstances, including a significant or unexpected factor or event which precludes physical attendance such as a state disaster emergency declared by the Governor.
4. Members must be able to be heard, seen, and identified.
5. Meeting minutes must indicate which if any members participated remotely.

6. Public notice must include information on how to view/participate via videoconference.
7. A recording of the videoconference must be posted on the Authority's website within five business days and must be maintained for at least five years.
8. The public must be able to participate via videoconference in real time.
9. A Public Authority must maintain an official public website.

■ ***Should Public Authorities broadcast meetings on the internet?***

State and Local Public Authorities, and their subsidiaries, are required, to the extent practicable, to broadcast meetings in real-time, and to post a recording of the meeting on their website within five business days following the meeting, as outlined in General Municipal Law, Public Authorities Law, and Public Officers Law.³⁵

EXECUTIVE SESSION

OML defines "executive session" as a portion of an open meeting not open to the general public.³⁶ Public Authorities are authorized to enter executive session only for the purposes enumerated in OML, provided that no action by formal vote is taken during executive session to appropriate public moneys.³⁷ All board members and any other persons authorized by the board may attend an executive session.³⁸

A board meeting may only go into executive session after a motion identifying the subject to be considered during executive session is passed by the majority of the total members of the board.³⁹

■ ***For what purposes can a Public Authority board conduct executive session?***

Boards of directors should only approve going into executive sessions during meetings for the following eight purposes enumerated in the law:⁴⁰

1. Matters which will imperil the public safety if disclosed.
2. Any matter which may disclose the identity of a law enforcement agent or informer.
3. Information relating to current or future investigation/prosecution of a criminal offense which would imperil effective law enforcement if disclosed.
4. Discussions regarding proposed, pending or current litigation.
5. Collective negotiations pursuant to article fourteen of the Civil Service Law.
6. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.
7. The preparation, grading or administration of examinations.
8. The proposed acquisition, sale, or lease of real property, or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

BOARD MEETINGS ATTENDANCE

Board members are expected to attend and participate in regular meetings of the board, as well as meetings of the committees on which they serve. This is also true for the designees of board members. While it is permissible to schedule multiple meetings back-to-back, each meeting must be kept separate and distinct. This means each meeting must be brought to a close before the next meeting begins, and attendance must be conducted for each new meeting.

Board members and/or their designees are required by law to sign an acknowledgement of

fiduciary duties and responsibilities, which include participating in training sessions, attending board and committee meetings, and engaging fully in the boards and committee's decision-making process (see [ABO Policy Guidance 10-01](#)).⁴¹ As a best practice, the ABO recommends Public Authorities also conduct an internal orientation session for new board members upon their appointment to provide an overview of the Authority's operations (see [ABO New Member Orientation Guidance](#)).

■ *Can designees of board members attend board meetings?*

Board members can only designate an individual to act on their behalf and attend board meetings if they are authorized by law to do so. Public Authorities that were not created in statute must include in their bylaws or certificate of incorporation an authorization that board members may appoint designees to serve on the board and to act in the absence of the board member.

A designee is expected to act in the same capacity as the board member and to exercise the same governmental authority as that vested in a board member. To preserve the consistency and cohesion of board operations and decision making, it is beneficial to limit appointments to a single designee who can regularly participate in all scheduled board and committee meetings, even if the board member is permitted to name multiple designees (see [ABO Policy Guidance 10-04](#)).

BOARD MEETINGS QUORUM

A majority of board members of the public body must be in attendance before a meeting can begin. This number is known as a quorum.⁴²

If videoconferencing is used, a quorum of board members must be present in the same physical location or locations where the public can attend in order to fulfill the quorum requirements. Disabled

members that meet the definition in Section 292 of Executive Law and are unable to meet in person are able to be considered present for the purpose of fulfilling the quorum requirements provided the written procedures governing member and public attendance allow for it.⁴³

Roll call should be taken at the meeting to confirm a quorum is present, including when videoconferencing is in use. Only members physically present at the meeting or present through videoconferencing can be counted towards the quorum. If no quorum is present, those members in attendance may not convene an official meeting. While no official business can be transacted, members may engage in informal discussions. In the absence of a quorum, it is advised that the board members attending fix the time in which to adjourn, recess, or take measures to obtain a quorum.⁴⁴

Once a quorum has been confirmed, the presence of a quorum is presumed until the Chair or any other member notices that a quorum is no longer present. This may occur if board members leave the meeting. Once there is no longer a quorum, the Chair should state such for the record and table further business until a quorum can be achieved.

Board members should be aware of the quorum requirements of the Authority they govern and make sure public business is only conducted when a quorum is present. Any vote or formal action intended to bind the board taken in the absence of a quorum may be challenged as null and void.⁴⁵

BOARD MEETINGS ACTION

Board members are expected to cast a vote only after carefully assessing the action brought to the board for approval, voicing any concerns, asking for clarification if necessary, and being confident that their vote serves the best interest of the Public Authority.

Some actions taken by the board should be documented by the adoption of board resolutions. A board resolution is a formal, written decision of an Authority's board of directors. It is in the best interest of the board of directors to draft a resolution for matters that they consider important so that there is clarity about their decision and their wishes are carried out. As a best practice, the by-laws of the Authority should identify the types of actions that require a board resolution. It is recommended that board resolutions include a consecutive number that identifies each resolution, the date the meeting took place, a description of the decision made, a record of how each member voted, and the signature of the Chair of the board (see [Appendix D- Board Resolution Sample](#)).

■ *How many votes are needed for the board to take action?*

Public Authorities Law states that no less than a majority of the whole of the board may perform and exercise the powers authorized and provided in Public Authorities Law.⁴⁶ For example, if an Authority consists of seven members, four affirmative votes would be needed to approve an action, even if only four or five members are present at the meeting.

This is the general rule to follow, unless an Authority's governing statute provides otherwise. For example, by law a board may have the power to act by a majority of the members present at any meeting in which a quorum is in attendance.

■ *Can abstentions from voting be counted as an affirmative vote?*

No. Courts have consistently found that abstentions are not an affirmative vote. Since it is not counted as an affirmative vote, its effect is similar to a negative vote for purposes of meeting majority voting requirements to take action.⁴⁷

■ *Can board members vote by proxy?*

No. Members can only vote in a meeting when they are physically present or attending through videoconferencing.⁴⁸

CONFLICTS OF INTEREST

A conflict of interest is a situation in which the personal interests of a board member come into actual, potential, or perceived conflict with their fiduciary or public responsibilities as a board member. Board members should always serve the interests of the Public Authority above their own personal interests when conducting public business.

■ ***What are the requirements for a Public Authority regarding conflicts of interest?***

Public Authorities Law requires boards of Public Authorities to adopt a code of ethics applicable to each officer, director and employee.⁴⁹ The code of ethics is a document that sets standards of conduct for board members and employees and should include rules about the procedures to follow when situations involving conflicts of interest arise.

PAL also requires board members to establish a governance committee which is responsible for examining ethical and conflict of interest issues.⁵⁰

In addition to the PAL, Public Officers Law states that no officer or employee of a state agency, member of the legislature or legislative employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of their duties in the public interest.⁵¹

■ ***What should the code of ethics include regarding conflict of interests?***

While PAL does not indicate what the code of ethics should include, it is recommended that an

Authority's code of ethics includes the requirements for conflict of interest policies established by Not-for-Profit Corporation Law:⁵²

1. A definition of the circumstances that constitute a conflict of interest.

2. Procedures for disclosing a conflict of interest or possible conflict of interest to the board.

3. A requirement that the person with the conflict of interest cannot be present or participate in board or committee deliberation or vote on the matter giving rise to such conflict.

4. A prohibition against any attempt by the person with the conflict to influence improperly the deliberation or vote on the matter giving rise to such conflict.

5. A requirement that the existence and resolution of the conflict be documented in the public record, including in the minutes of any meeting at which the conflict was discussed or voted upon.

6. A procedure for disclosing, addressing, and documenting related party transactions in accordance with Section 715 of Not-for-Profit-Corporation-Law.

■ ***What should occur if a board member has a conflict of interest?***

It is important for the public to have confidence in the board of directors of every Public Authority. Board members have a fiduciary duty to disclose all real or potential conflicts of interest and to refrain from participating in discussions or decisions that could cause even the appearance of such a conflict.

The Attorney General has opined that board members with conflicts of interest must recuse themselves from any deliberations or voting concerning the matter creating the conflict.⁵³ The procedure an Authority should follow when a conflict of interest arises should be described in the Authority's code of ethics.

Any person who knowingly and willfully participates in matters that present a clear conflict of interest can be fined, suspended, or

removed from office in the manner provided by law,⁵⁴ and the action taken can be deemed null, void, and wholly unenforceable.⁵⁵

BOARD MEETING MINUTES

Minutes are the official record of a meeting. They contain information about all the actions taken during board meetings and can be considered legal evidence of the facts they report. For this reason, it is important that the minutes be recorded in a way that clearly and accurately reflects all the business transacted during a board meeting. OML requires that minutes be taken at all meetings of public bodies.⁵⁶ This includes meetings of the full Public Authority and their subsidiary boards, as well as committee and subcommittee meetings. If multiple meetings are scheduled back-to-back, the minutes for each meeting must be separate and distinct (regular, committee, or special). The ABO often reviews board meeting minutes of the Public Authorities it oversees to ascertain if the board is fulfilling its fiduciary duties.

■ ***What information should be included in the meeting minutes?***

OML requires that minutes consist of a record or summary of all motions, proposals, resolutions, and any other matter formally voted upon and the voting results.⁵⁷ These are the minimum requirements of what should be included in the board meeting minutes. Best practices call for meeting minutes that include the following information:

- ✓ Name of the organization
- ✓ Type of meeting being held (eg: regular, committee, special, public hearing, etc.)
- ✓ Date, time, and location of meeting
- ✓ Board members in attendance, excused, and absent (including departures, reentries and if a board member participated remotely)

- ✓ Staff and guests in attendance
- ✓ Existence of a quorum
- ✓ Motions made and by whom (including approval/corrections of past meeting minutes)
- ✓ Summaries of reports from officers
- ✓ Brief objective account of any debate
- ✓ Existence of conflicts of interest and how they were resolved
- ✓ Voting results (including names of abstainers and dissenters)
- ✓ Resolutions adopted
- ✓ Reports and documents introduced
- ✓ Future action steps and announcements
- ✓ Time meeting ends
- ✓ Signature of secretary and Chair

It is also recommended that the meeting minutes follow the structure set by the meeting agenda (see [Appendix E –Board Meeting Minutes Sample](#)).

■ ***How much detail should be included in the meeting minutes?***

Minutes must be sufficiently descriptive to enable the public and others (i.e. public officials) to ascertain the nature of action taken by the board.⁵⁸ Minutes should include enough information so that they are useful to understand the decisions that were made and the reasons the decision was made. When there is a debate or discussion, the minutes should include and attribute the major points raised by individual board members. Above all, the minutes should be an accurate record of what occurred at the meeting.⁵⁹ Note that the Freedom of Information Law requires that a record be maintained that indicates how each member cast their vote. The record of the members' votes is commonly included in the minutes of a meeting.⁶⁰

■ ***When should board meeting minutes be available to the public?***

Meeting minutes should be available to the public within two weeks of the date the meeting was held.⁶¹ Minutes taken at executive sessions are subject to shorter time requirements (see [Executive Session Minutes](#)).

If the minutes have not been approved within two weeks of the meeting, it is recommended the minutes be identified as “unapproved”, “draft”, “preliminary”, or other words to that effect when being made public. This way the two-week window for making the meeting minutes available is met, and the public is aware that the minutes are subject to change. While public bodies are not required to approve the minutes of their meetings, they generally do so as a matter of best practice.⁶²

■ ***Should meeting minutes be posted on the Authorities’ website?***

Public Authorities Law requires Authorities to make documentation pertaining to its activities available to the public via its official or shared official website.⁶³ Meeting minutes should be posted on the Authority’s website within two weeks of the date the meeting was held.⁶⁴ For the purposes of complying with this requirement, unabridged video or audio recordings, or unabridged written transcripts may be posted. However, Authorities must still produce written minutes that can serve as the official record of the meeting and make them available to the public within the two-week timeframe.⁶⁵ Meeting minutes should be maintained on the website for at least two years following the date on which the meeting was held ([ABO Policy Guidance 22-01](#)).

■ ***Should minutes of executive session be recorded?***

Yes. Minutes are required for any action taken by vote during executive session. These minutes should include the date the action was taken, a summary of the final determination of the action, and the voting results.⁶⁶ The summary of the action does not need to

include any matters which are not required to be made public by the Freedom of Information Law. Minutes of executive session are to be available to the public within one week of the date of the executive session.⁶⁷ Although not required by law, as a best practice, minutes of executive sessions should be kept to have a record, even if no action is taken.

PENALTIES FOR FAILING TO FOLLOW OML

Section 107 of OML provides the remedy for cases when the board and/or staff of Public Authorities fails to follow OML. Anyone who feels that a public body has not appropriately followed OML can challenge the public body through filing a complaint pursuant to Article 78 of the Civil Practice Law and Rules. Litigation may be initiated against a public body within four months from the date the action was taken by the body. Should the court determine that there was a violation of OML, the court can invalidate action taken at the meeting, and require the public body to participate in training at the Committee on Open Government.⁶⁸ In any action brought pursuant to Section 107 of OML, costs and reasonable attorney fees may be awarded at the court’s discretion to the successful party.

For example, failure to comply with the public notice requirements gives aggrieved persons grounds to file a complaint pursuant to Article 78 of the Civil Practice Law and Rules. This can result in the court invalidating an action taken during the public meeting for which a notice was not posted. However, an unintentional failure to fully comply with the notice provisions required by the OML is not sufficient for invalidating any action taken at a meeting of the board. When a legal challenge is initiated relating to a failure to provide notice, the key issue is to determine whether the failure to post

the meeting notice as required by OML was “unintentional.”⁶⁹

CONCLUSION

From its inception, the ABO’s mission has been to make Public Authorities more accountable and transparent, and to act in ways consistent with their governing statutes and public purpose. One of the ways the ABO accomplishes its missions is by promoting good governance principles through training, policy guidance, and the issuance of best practice recommendations. This document is designed to assist board members and staff of Public Authorities in conducting productive and transparent board meetings and to understand their fiduciary duties and the importance of conducting business in an open and transparent manner. This includes posting public notices, preparing the agenda and distributing information with adequate review time, holding meetings that conform to the requirements of OML, taking and posting meeting minutes, and following up after the meeting (see [Appendix F- Procedures for Holding a Public Authority Board Meeting](#)). Following these procedures ensures that Public Authorities are not only more accountable to the public, but also more effective in pursuing the mission for which they were created.

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END NOTES

- ¹ Public Authorities Law §2824
- ² Public Officers Law §102(2) defines a public body as “any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body consisting of members of such public body, or an entity created or appointed to perform a necessary function in the decision-making process for which a quorum is required in order to conduct public business and which consists of two or more members.”
- ³ Public Officers Law §103(a)
- ⁴ Public Authorities Law §2
- ⁵ Public Authorities Law §2829
- ⁶ Public Officers Law §108
- ⁷ Civil Practice Law and Rules §4503 considers the attorney-client relationship confidential
- ⁸ *White v. Kimball* [Supreme Court, Chautauqua County, January 27, 1997]
- ⁹ *See also* Committee on Open Government. Advisory Opinion #4622
- ¹⁰ Committee on Open Government. Advisory Opinion # 3110
- ¹¹ Public Officers Law §103(f), §104; Public Authorities Law §2829
- ¹² Committee on Open Government. Advisory Opinion # 2256
- ¹³ Public Officers Law §104(1)
- ¹⁴ Committee on Open Government. Advisory Opinion # 2186
- ¹⁵ Public Officers Law §104(1)
- ¹⁶ Committee on Open Government. Advisory Opinion # 2186
- ¹⁷ Public Officers Law § 104(3)
- ¹⁸ Committee on Open Government. Advisory Opinion #2908
- ¹⁹ Public Officers Law §104(4)
- ²⁰ Public Officers Law §103-a(2)(f)
- ²¹ Public Authorities Law §2800
- ²² For more information about the mission statement and measurement report see [ABO Policy Guidance 10-02](#)
- ²³ Public Officers Law §103(e)
- ²⁴ Public Officers Law §103(c)
- ²⁵ Public Officers Law §103(d) as added by Chapter 40 of 2010
- ²⁶ Public Officers Law §103(b)
- ²⁷ Committee on Open Government. Advisory Opinions # 3019
- ²⁸ *See* Committee on Open Government. Advisory Option #5445
- ²⁹ Committee on Open Government. Advisory Opinion # 2199
- ³⁰ Public Officers Law §103(d)(1) as added by Chapter 43 of 2010
- ³¹ *See, e.g.,* Committee on Open Government. Advisory Opinion #4810
- ³² Public Officers Law §103-a(2)(d)
- ³³ Committee on Open Government. Advisory Opinion # 5575, 5396
- ³⁴ Public Officers Law §103-a
- ³⁵ General Municipal Law §857; Public Authorities Law §2829; Public Officers Law §103-a(2)(g)
- ³⁶ Public Officers Law §102(3)
- ³⁷ Public Officers Law §105(1)
- ³⁸ Public Officers Law §105(2)
- ³⁹ Public Officers Law §105(1); Committee on Open Government. Advisory Opinion # 5644
- ⁴⁰ Public Officers Law §105(1)
- ⁴¹ Public Authorities Law §2824(1)(h)
- ⁴² Public Authorities Law §2826, General Construction Law §41
- ⁴³ Public Officers Law §103-a (2)
- ⁴⁴ Robert, H. M. (2008). *Robert's rules of order*. Wildside Press LLC. Pg. 258
- ⁴⁵ Committee on Open Government. Advisory Opinion #5531
- ⁴⁶ Public Authorities Law §2826
- ⁴⁷ Committee on Open Government. Advisory Opinion #2198
- ⁴⁸ Committee on Open Government. Advisory Opinion #3717
- ⁴⁹ Public Authorities Law §2824(1)(d)
- ⁵⁰ Public Authorities Law §2824(7)
- ⁵¹ Public Officers Law §74(2)
- ⁵² Not-For-Profit Corporation Law §715-a(a)-(c)
- ⁵³ NYS Attorney General. Informal Opinion # 1995-02
- ⁵⁴ Public Officers Law §74(4)
- ⁵⁵ General Municipal Law §804
- ⁵⁶ Public Officers Law §106
- ⁵⁷ Public Officers Law §106

⁵⁸ Committee on Open Government. Advisory Opinion #3773

⁵⁹ The decision *Mitzner v. Goshen Central School District Board of Education* [Supreme Court, Orange County, April 15, 1993] presents an example of board meeting minutes that didn't contain enough detail about the actions taken. The case involved complaints made by the petitioner that were reviewed by the School Board president, and the minutes of the Board meeting stated that "the Board hereby ratifies the action of the President in signing and issuing eight Determinations in regard to complaints received from Mr. Bernard Mitzner." The court determined that "these bare-bones resolutions do not qualify as a record or summary of the final determination

as required" by §106 of OML because it failed to indicate the nature of the determination of the complaints.

⁶⁰ Public Officers law §87(3)(a)

⁶¹ Public Officers Law §106(3)

⁶² Committee on Open Government. Advisory Opinion #4146

⁶³ Public Authorities Law §2800

⁶⁴ Public Officers Law §106(3)

⁶⁵ Committee on Open Government. Advisory Opinions #3981, #5658

⁶⁶ Public Officers Law §106(2)

⁶⁷ Public Officers Law §106(3)

⁶⁸ Public Officers Law §107

⁶⁹ Committee on Open Government. Advisory Opinion #2850

Appendix A-BOARD NOTICE SAMPLE

**NOTICE
BOARD MEETING**

A [MEETING TYPE] Board Meeting of the [PUBLIC
AUTHORITY/SUBSIDIARY NAME] will be held on [DATE]
at [TIME] at [ADDRESS/videoconferencing location].

Relevant Documents and Records are available at [URL].

Please contact [NAME OF CONTACT PERSON] at
[PHONE/EMAIL OF CONTACT PERSON] for additional
information.

The meeting will be live streamed and available for viewing
[URL FOR MEETING]

Appendix B-AGENDA SAMPLE

[PUBLIC AUTHORITY/SUBSIDIARY NAME]

Board of Directors Meeting

[DATE] at [TIME]

[ADDRESS]

- I. Call to Order/Roll Call
- II. Approval of minutes
- III. Executive Director Report
- IV. Committee Reports
- V. Review of Compliance Items
- VI. Old Business
 - A. Bids and contracts
 - B. Loans and grants
 - C.
- VII. New Business
 - A. New Projects
 - B. ...
- VIII. Announcements
- IX. Adjournment

Appendix C- PAL COMPLIANCE CALENDAR SAMPLE

| Board Meeting Month | Activity |
|---------------------|---|
| Month 1 | Conduct Evaluation of Board Performance (See Policy 10-05 Annual Board of Directors Evaluation) |
| Month 2 | Annual, audit, procurement, and investment reports are due 90 Days after start of Fiscal Year (Requires board review and approval) |
| Month 3 | |
| Month 4 | |
| Month 5 | Review Policies and Procedures and Update if necessary |
| Month 6 | |
| Month 7 | |
| Month 8 | |
| Month 9 | |
| Month 9 | Budget Report for State Authorities is due 90 days before end of Fiscal Year (Requires board review and approval) |
| Month 10 | Budget Report for Local Authorities is due 60 days before end of Fiscal Year (Requires board review and approval) |
| Month 11 | Review Policies and Procedures and Update if necessary |
| Month 12 | |

Month 1= First month of the fiscal year

Appendix D- BOARD RESOLUTION SAMPLE

BOARD RESOLUTION #

[CREATE A UNIQUE NUMBER FOR EACH RESOLUTION]

At the meeting of the Board of Directors of [PUBLIC AUTHORITY/SUBSIDIARY NAME] on [DATE OF MEETING], the following resolution was proposed and approved by the board:

WHEREAS, [PROVIDE SOME BACKGROUND AND CONTEXT TO THE MATTER THAT WAS RESOLVED]

NOW, THEREFORE BE IT RESOLVED THAT:

[PROVIDE A BRIEF DESCRIPTION OF THE MATTER THAT WAS RESOLVED]

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

| | Yes | No | Abstain | Absent |
|----------------|------------|-----------|----------------|---------------|
| Board Member 1 | [] | [] | [] | [] |
| Board Member 2 | [] | [] | [] | [] |
| Board Member 3 | [] | [] | [] | [] |
| Board Member 4 | [] | [] | [] | [] |
| | | | | |

Signed by:

(Board Chair)

Appendix E- BOARD MEETING MINUTES SAMPLE

[PUBLIC AUTHORITY/SUBSIDIARY NAME]

Board of Directors Meeting

Minutes of [DATE]

The board of directors of [PUBLIC AUTHORITY/SUBSIDIARY NAME] met on [DATE] at [TIME] on [ADDRESS]

Board members present in person: [NAMES OF BOARD MEMBERS THAT ATTENDED IN PERSON]

Board members present remotely: [NAMES OF BOARD MEMBERS THAT ATTENDED REMOTELY]

Board members absent: [NAMES OF BOARD MEMBERS ABSENT]

Staff present: [NAMES AND TITLES OF STAFF PRESENT]

Guests: [NAMES AND AFFILIATIONS OF GUESTS]

I. Call to Order/Roll Call

The meeting was called to order at [ACTUAL TIME OF START]

II. Approval of Minutes

Summary of any discussion regarding the board minutes to be approved (if any)

On a motion by [Director], the Board approved the minutes from the previous meeting.

Positive votes: # Negative votes: #

III. Executive Director Report

Brief summary of key items of the reports and any board discussion.

...

V. Old Business

A. Bids and Contracts

Brief summary of the bids/contracts brought to the board for approval and concise recount of board discussion (if any).

On a motion [Director], the Board approved entering into a contract with [Name of Company] for [goods/services provided] for the amount of [value of contract]

Positive votes: # Negative votes: #

(If anyone abstained from participating in the discussion and/or vote due to a conflict of interests the name of the director it should be noted)

...

VIII. Adjournment

The meeting was adjourned at [ACTUAL TIME OF END OF MEETING]

APPENDIX F- PROCEDURES FOR HOLDING A PUBLIC AUTHORITY/SUBSIDIARY BOARD MEETING

Preparing the Public Notice

- List the name of the organization and type of meeting being held
- Include date, time, and location
 - Ensure meeting time is reasonable to allow the public to attend the meeting
- Identify a contact person
- Include videoconferencing location and where documents and records can be accessed, if applicable
- Include URL address to view the live-stream version of the meeting
- Provide notice to media and post in designated location
 - Provide no less than 72 hour notice for meetings scheduled a week or more in advance
 - Provide reasonable notice to the extent practicable for meetings scheduled less than a week in advance

Preparing the Agenda

- Board Chair and Chief Executive of the Authority should work together to create a list of topics for discussion, allowing for board members to add items
- Ensure compliance with Public Authorities Law by allowing enough time to review appropriate documents (see Appendix C of document – PAL Compliance Calendar Sample)
- Post the agenda to the website at least a week in advance
- Make arrangements to ensure the meeting is broadcast

Meeting Materials for Board Members

- Meeting materials should be distributed at least one week in advance, if possible
- Meeting materials to include in board packet:
 - Agenda
 - Meeting minutes from previous meeting
 - Financial statements
 - Management reports
 - Committee reports
 - Compliance items
 - Background information of discussion items

- Resolutions to be voted on and associated documents (budget, contracts, policies)
- Update on legal issues
- Items planned to be discussed must be made available to the public within 24-hours of the scheduled meeting

Holding the Board Meeting

- Chair of the board, or someone they have designated to lead the meeting, calls the meeting to order
- Determine that a quorum is present through roll call
 - Business cannot be conducted in the absence of a quorum
- Follow order of the meeting agenda
- Conflicts of interest should be identified and those board members in that position, or with an appearance of a conflict, should recuse themselves from any discussion or voting concerning the matter
- Meeting should be live-streamed on the Authority's website

Preparing the meeting minutes

- Best practices call for meeting minutes to include the following:
 - Name of the organization
 - Type of meeting being held (eg: regular, committee, special, etc)
 - Date, time and location of meeting
 - Board members in attendance, excused and absent (including departures, reentries and if a board member participated remotely)
 - Staff and guests in attendance
 - Existence of a quorum
 - Motions made and by whom (including approval/corrections of past meeting minutes)
 - Brief objective account of any debate
 - Existence of conflicts of interest and how they were resolved
 - Voting results
 - Names of abstainers and dissenters
 - Resolutions adopted
 - Reports and documents introduced
 - Future action steps and announcements
 - Time meeting ends
 - Signature of secretary and Chair
- Meeting minutes should be made available to the public within two weeks from the date of the meeting

- Minutes should be marked ‘draft’, ‘unapproved’ or preliminary’ and made available to the public even if they have not been approved in the two weeks after the meeting
- Minutes of action taken in executive session should be available to the public within ONE week of the executive session.
- Minutes should be posted to the Authority’s website or shared website and be maintained for at least two years.
- Video recordings of open meetings and public hearings should be posted on the Authority’s website within five business days and maintained for at least five years.