

# THE AGENCY

B R O O M E C O U N T Y I D A / L D C

## BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY

### GOVERNANCE COMMITTEE MEETING

May 18, 2022 – 11:30 a.m.

The Agency Conference Room, 2<sup>nd</sup> Floor

FIVE South College Drive, Suite 201

Binghamton, NY 13905

### AGENDA

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|--|-----------|
| 1. Call to Order   | R. Bucci  |
| 2. Accept the March 16, 2022 Governance Committee Meeting Transcript   | R. Bucci  |
| 3. Public Comment  | R. Bucci  |
| 4. Review/Discussion/Recommendation to Authorize an Extension of the June 10, 2021 Sales and Use Tax Exemption Agreement Granted to Kashou Enterprises, Inc. Through, and Including May 19, 2023, and Authorizing an Increase thereof in the Amount of \$91,440.00, for a Total Sales and Use Tax Exemption not to Exceed \$331,440.00 | S. Duncan |
| 5. Review/Discussion/Recommendation to Authorize The Agency to Enter into Three (3) Year Term Contract(s) for Architectural, Engineering, Civil and Environmental Services   | S. Duncan |
| 6. Review/Discussion/Recommendation Regarding an Amendment to the Open Meetings Law  | S. Duncan |
| 7. Executive Session: To Discuss the Sale of Property  | S. Duncan |
| 8. Adjournment   | R. Bucci  |

BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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Governance Committee Meeting Transcript  
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Held via Zoom, March 16, 2022, commencing at  
11:31AM. Adjourned at 12:00PM.

[See attendees at end of transcript.]

Digitally recorded proceeding  
Transcribed by: Elana Hulsey  
Reporters Transcription Center  
P.O. Box 903  
Binghamton, NY 13902

MR. BUCCI: Okay. It's 11:31. We'll call the meeting to order. The first item on our agenda is to accept the February 16, 2022, Governance Committee Meeting transcript. That was sent out by Carrie to all members. They had an opportunity to review it. Any revisions were sent back to her, so we will accept that for the record.

Next item on the agenda is public comment. Anyone in person or online wishing to address the Governance Committee has five minutes to speak. We ask that you just give your name and address, and the floor is yours. At this time, we'll open it up to public comment. Is there anyone at this time who would like to address the Governance Committee meeting?

Okay. Hearing none, we'll close that portion of our meeting and move on to our agenda items. First item is a Review/ Discussion/Recommendation to Approve an Extension of the March 17, 2021, Sales and Use Tax Exemption Agreement with Upstate Hi-Tech Properties, LLC, from March 17, 2021, Through and Including August 31, 2022, the Total of Which Shall Not Exceed \$84,800. Stacey?

MS. DUNCAN: Thank you, Rich. Good morning, everyone. We have a few items related to an extension time on sales tax exemption benefits. Not surprisingly, I see a variation on the theme of delayed materials and labor as well. The first of which is from Dave Jones, Managing Partner, Upstate Hi-Tech Properties, LLC. I believe Margaret Scarinzi is on the line representing the company. There should be a letter that was included in your packet formally requesting an extension of time for their current tax savings plan.

They've encountered some speed bumps with building construction that has it completing more in the second or third quarter and not in the first as they have initially planned. He building contractor has encountered material delays including steel for building, concrete, and early weather impacts and

will not be able to finish construction until spring when the ground is more ready to go. They are experiencing delays with getting electric up and running, and therefore would like to extend to the end of July or August. I would recommend that we give them an extension of August 31 as the timeline for that if the Board so chooses. That's the first one. Any questions?

MR. BUCCI: If there are no questions, I'll entertain a motion.

MR. PEDUTO: Jim.

MS. SACCO: Second. Cheryl.

MR. BUCCI: All in favor?

ALL: Aye.

MR. BUCCI: Any opposed or abstentions? Okay, motion is carried. The next item on the agenda is a Review/Discussion/Recommendation to Approve an Extension of the May 1, 2020, Sales and Use Tax Exemption Agreement with Simulation and Control Technologies, Inc., from April 15, 2022, Through and Including April 15, 2023, of Which the Total Shall Not Exceed \$40,880. Stacey?

MS. DUNCAN: Yes. Similarly, we have Mitch Gorton representing Simulation and Control Technologies on the line. SCT is requesting an extension to the previously approved sales tax exemption that expires this April for an additional year, so through April 15, 2023.

The extension request is necessary due to the project's completion timeframe continuing to shift, in large part because of funding shortfalls as a result of postponed government

contracts related to COVID-19. While they have completed or will complete much of the structural, electrical, and HVAC portions of the project by the April 15th deadline this year, they will still have a fair amount of remaining work in order to complete the project. Any questions?

MR. BUCCI: Okay, hearing no questions, I'll entertain a motion.

MR. PEDUTO: So moved.

MR. BUCCI: Is there a second?

MS. SACCO: Second. Cheryl.

MR. BUCCI: All in favor?

ALL: Aye.

MR. BUCCI: Any opposition? Okay, motion is carried. Next item on the agenda is a Review/Discussion/Recommendation to Approve an Extension of the June 12, 2020, Sales and Use Tax Exemption Agreement with the GJS Property Group, LLC, from May 20, 2022, Through and Including May 20, 2023, of Which the Total Shall Not Exceed \$60,000. Stacey?

MS. DUNCAN: And the third and final request of this nature is from George Slavik, Jr. George is on the line I believe. They're requesting an additional year for their sales tax exemption which is set to expire May of this year. They're having a difficult time finding and scheduling contractors as we've been hearing, as well as long lead times for procuring the appropriate materials. So therefore, they are looking for

an additional year on this benefit in order to complete their project.

MR. BUCCI: Any questions? Okay, I'll entertain a motion.

MR. PEDUTO: Jim. So moved.

MR. BUCCI: Second?

MS. SACCO: Cheryl. Second.

MR. BUCCI: All in favor?

ALL: Aye.

MR. BUCCI: Motion is carried. The next item on the agenda is a Review/Discussion/Recommendation to Accept an Application from 4301 Watson Boulevard, LLC (the "Company") for a Lease/Leaseback Transaction to Facilitate the Financing of the Demolition, Construction, and Equipping of the Building Located at 4301 Watson Boulevard in the Town of Union, to Provide for a Sales and Use Tax Exemption Benefit in an Amount Not to Exceed \$1,754,866, to Provide for a Mortgage Tax Exemption in an Amount Not to Exceed \$395,767, to Provide for a Real Property Tax Exemption in an Amount Not to Exceed \$559,922, and Authorizing The Agency to Set and Conduct a Public Hearing with Respect Thereto. Stacey?

MS. DUNCAN: Thank you. These materials were sent late yesterday afternoon for which I first apologize and also recognize that the timeline is somewhat problematic on this. I do want to give credit to Natalie Abbadessa for working very closely with Conifer. There are a lot of moving parts on this project and working very closely to get this application

complete. This is the continuation, or I should say the beginning, of a new chapter for the IBM Country Club.

Just to give you all a quick status update, we do now officially own the property. It is ours for all of its flaws, and yes, we're dealing with that from a property management side. As well, we did have a conversation with New York State and representatives from Delta Engineers, who are doing a structural review for us, and we did receive a condemnation letter, a letter of recommendation from Delta Engineers, that we've since forwarded to Conifer. Michael Birkby is on the phone here from Conifer

Now our final step, sort of our process, is we are going to meet with Conifer representatives from the Town and County to discuss a path to demolition. There's still some due diligence we need to do on that end, but it is progressing, which is good.

Now looking at what will be the new life for IBM Country Club, Conifer Realty with LeChase Construction is proposing to construct 75 new mixed-income apartments, affordable to families earning between 30% and 90% of area median income. It's a three-story double loaded corridor elevator building. It will be approximately 35 feet tall and contain 18 one-bedroom apartments, 38 two-bedroom apartments, and 19 three-bedroom apartments.

Vehicular access will be provided off Watson Boulevard with parking lots on both ends of the building. The central drive connecting the two parking lots will provide a convenient drop-off area directly in front of the main entrance, canopy, and doors, also providing ADA-accessible parking to the entry. The complex will have ADA-accessible apartments, and I believe Conifer has already had a preliminary introductory meeting with Springbrook, who we've connected them with here locally.

The proposed development will be constructed as a wood frame structure that will hold all 75 apartments as well as

communal amenities such as a fitness center, community room with kitchenette, laundry facilities, outdoor patio and playground, and also an onsite management and maintenance shop.

You have received a copy of the full and completed application, a project review form, which identifies a total benefit of \$2.7 million to the project. I believe total project costs are upwards of \$39.9 million.

You've also received a cost/benefit analysis in your packet. I do want to turn your attention to the last page of the cost/benefit analysis. You will have a document called the Affordable Housing PILOT Determination. In our continued conversations with National Development Council, this would be a standard template for affordable units, which helps determine the PILOT at 10% of the sheltered rent, or the restricted rents, that they are able to charge. It is a new format for us as we continue modifying our UTEP. This would be sort of this the new norm of how we would approach developing PILOT schedules for affordable housing.

Again, I recognize that these materials were sent late, so any questions I can answer and any input you have as to move this forward. Action today would be to provide an inducement resolution so that we can set the public hearing date. It would not assign or approve any benefits at this point in time. I should note that Conifer is applying for the competitive round, the 9% Low Income Housing Tax Credit Program for New York State. That application is due March 31 of this year.

MR. BUCCI: Any questions at this time for Stacey?

MR. CROCKER: I noticed this morning reviewing this, in the application it lists IBM Country Club, LLC, as the owner in the application and in the RFP it lists The Agency as the owner. I don't know when the sale-

MR. MEAGHER: Title may have passed. It's been two weeks-

MS. DUNCAN: It's been two weeks since we've officially owned-

MR. MEAGHER: It went to us some time-

MR. CROCKER: Just so you're aware of it.

MS. DUNCAN: Yes. Thank you. [crosstalk]

MR. BUCCI: Stacey. The question I have is, this was added to the agenda yesterday?

MS. DUNCAN: Yes. It was.

MR. BUCCI: And the reason for being added today is because there's an application due at the end of the month?

MS. DUNCAN: Yeah. Michael, correct me if I'm wrong, is the 9% just an annual application? I know they run it at least once a year, but I don't know if they run it more than once a year. The 9% competitive round, is that only an annual application process?

MR. BIRKBY: For this year we are hearing that there will be the round that is due the end of this month and there will be a second round that will be released sometime the later portion of this year and either due towards the end of this year or early next year.

MS. DUNCAN: Yeah. Part of our reason for expediting was the inducement resolution will be required for enabling them as part of their application as well as the contract for sale

between the LDC, which will meet later on, and Conifer. The purpose of that is so they can make their deadline for application so as to not further delay because I think there is - it is New York State - a minimum three-month or more waiting period on award. If they apply by the end of March, ideally they'd know by end of summer if they are a recipient of the Low Income Housing Tax Credits.

We're just trying to look at the long-term timeline of this project and keep things in an expeditious manner. Today's action just allows us to accept the application and move towards public hearing.

MR. BUCCI: Okay. I understand the urgency of the timeline, but what-

MS. DUNCAN: It's not how we would want to pursue it, but with that timeline, it just made it tight.

MR. BUCCI: What I was wondering though is weren't we aware of this last week? I mean, couldn't this item be posted last week on the agenda or posted Monday? I mean, I'm just wondering why we waited to a day before. We must have known about this for several days.

MS. DUNCAN: We were working with Conifer on the final project costs and getting all the details of the financing lined up in order to prepare a project review and our cost/benefit. We didn't expect we wouldn't receive the information, but we didn't have it listed when the agenda went out by chance that we didn't have all the financial information we needed. We could have theoretically posted it as part of the agenda and just pulled it if we didn't have all of the application complete.

MR. BUCCI: Cheryl, go ahead.

MS. SACCO: I recognize that there's a short timeline and a short turnaround here, but we got this very quickly and a very short time period for the Board to look at this. I understand that, but that's not fair for the Board members. I'm not comfortable making a motion from committee or seconding or voting on it.

My suggestion is we just move the straight to the full Board and let the Board look at it. I don't appreciate when we get things, especially a large project like this, last minute. I don't think it's appropriate, so I'm going to be abstaining on this because I'm not comfortable voting on it.

MR. BUCCI: Stacey, just to backtrack for a second, what I would recommend is what you said. I think in the future, it's probably a better course to put something on the agenda, and if you have to pull it, no big deal because you can say we're pulling it because we didn't have all the data we needed. I think we'd all be more comfortable with that, rather than adding something that didn't meet the threshold of having 24-hour notice for the public to be notified of it.

I understand the need to move aggressively because of a timeline, but I think in the future err on the side of caution. Post it, and then if we have to pull it, I think that's a cleaner approach than putting a major item on the agenda at the last minute. Even though it's a good project, it can raise questions. Why was it just slipped on the agenda is how some people might perceive it.

MS. DUNCAN: Understood. In hindsight, we should have posted the resolution. Yeah, I do recognize that, and I do recognize that the Board needs the ability to review. My thought is if you wanted to move this in full Board for

discussion, I think there's still an opportunity to provide the Board their time to review and get this application in in time for the State's program as well, yeah.

MR. BUCCI: Okay. I think at this point we don't have the votes to move it out anyway, so we can push it to the full Board for their discussion and then see where it goes from there. There's always a possibility. I'd want to speak to other Board members, but for anybody who feels uncomfortable, you can always have a special meeting. In any event, we'll let the full Board take a look at it and make a determination.

MS. DUNCAN: Understood.

MR. BUCCI: Okay. Then we'll move on to the next item, a discussion regarding the Revised Uniform Tax Exemption Policy for Broome County IDA. Stacey?

MS. DUNCAN: Yeah. This is the ongoing conversations we've been having. Just to give you an update, you do have a final copy. We did do a final review. I have Kevin Gremse with NDC here on the call with us to do a final review. We did make a slight modification to our Standard Industrial Improvement structure and that was just with a more gradual 5% abatement decrease per year, which was which was sent out to the Board.

We've added Appendix B, which is the structure for determining standard affordable housing project PILOTS, so that is a formula to determine the PILOT at 10% of the sheltered rent. Using an average of 60% of area median income, which many of these projects fall in line with, the calculation is the monthly rent times the units to get you to gross revenue, less the utilities, and that gives us our starting point. It's a new structure. The developers we've worked with on the affordable side are very familiar with this structure. It's what they use,

so it will be, I think, a seamless process for us to develop PILOTs in the future, having that as part of our UTEP.

There was not a lot of structural changes to what the Board received previously as far as the language on the UTEP. Just for information purposes, we did do two informational sessions February 25th and March 7th. We had combined about a dozen municipal -- whether that's school, local government, county -- officials that participated. We did do an individual meeting with the City of Binghamton with Mayor Kraham, and we also did a meeting with Anthony Bates, the Village of Endicott. We also reached out to Joe Cook and Mark Minioa, Assessors for the Towns of Union, Conklin, and Vestal, respectively, who also provided feedback. Again, with Kevin Gremse and NDC's participation, we feel like we have a solid UTEP to advance for approval this month.

MR. BUCCI: Any questions? Stacey, I have to say that I think that this is one of the more significant things we've done in recent years as we've all discussed. I think it's a solid document. I think it's going to benefit us moving forward and benefit the community because things are spelled out in good detail, and I think it's a more proactive approach. I want to thank everybody involved -- the Committees, the staff, the NDC -- because it was a lot of work. I think it's a real positive addition to the IDA in moving forward. I'm really thrilled with all that's come to fruition through this because I think it is a solid document.

MS. DUNCAN: Thank you. Yeah, I agree. Oh, I'm sorry, Cheryl. Go ahead.

MS. SACCO: Out of all of these meetings, the public ones and the private ones, were there any concerns that were raised

that were not resolved? Are there any unresolved questions or concerns that came out of any of these meetings?

MS. DUNCAN: Cheryl, there really weren't. We had great input from the assessing units. They are actually related to some of our sale requirements. The municipal leaders we met with, the thing they wanted the most clarification on was the process. If it's a deviation, do they need to have a formal Board resolution? We essentially said, "No, it's not required because the intent of this is to make that process collaborative." They felt actually comfortable, which is where I thought there might be some pushback, but we did not see that pushback. That was kind of the area they wanted the most clarification on.

No, everybody I think felt it was a stronger process. I think we all agreed that starting within the IDA for the PILOT structure is going to enhance because we're generally initially going to be more conservative. Also, NDC and Kevin tested all of these formulas that we have now in our PILOTs, and they do fare well for the municipality, but still provide an aggressive and beneficial benefit to the developer. We think we have a much stronger process moving forward.

MS. SACCO: Thank you for that.

MR. PEDUTO: Stacey, do you have anybody that hasn't submitted that this would apply to?

MS. DUNCAN: Not currently. We're still working with Water Street. They were sort of grandfathered into the previous process, if you will. They had provided their schedule in advance of this. Conifer's schedule is following this affordable structure that you have in Appendix B to the determination of the PILOT at the 10% sheltered rent. Right

now, I don't have any other active applications. I know of some projects kicking the tires. 19 Avenue B, another Paulus Development project, I know he's going to be looking for a PILOT. If approved today, this will be the effective UTEP moving forward.

MR. PEDUTO: So as a Board, we'll only see PILOTs under, if it's adopted, the revised policy?

MS. DUNCAN: Yeah, moving forward.

MR. PEDUTO: Great.

MS. SACCO: Even 4301 Watson?

MS. DUNCAN: Yeah. That's using this Appendix B structure, which we worked with Kevin Gremse at NDC in developing. This Appendix B will kind of be the new standard for affordable projects. This the first one using the new UTEP.

MR. GREMSE: Stacey?

MS. DUNCAN: Kevin, go ahead.

MR. GREMSE: Yeah. If I can make a suggestion, just in terms of establishing the baseline PILOT for an affordable housing development, 10% to sheltered rent is a fairly common approach of establishing it. It's important to establish predictability during the affordability period and for a LIHTC development such as this, it's going to be at least 30 years. I know that's a little bit unusual, the length of that PILOT, but you do have built-in rent restrictions for a period of 30 years. That helps just in terms of establishing the predictability.

Plus, the 10% is a function of where the rents are. Affordable is not always affordable. Affordable is not the same in terms of affordability, so when you have vouchers, sometimes the rents can be higher. The PILOT is going to go up based upon when income streams are stronger than other affordable housing developments. It is a good approach of establishing it.

If I could just make one suggestion though. For these tax credit developments, typically the trend for operating expenses is that they're escalating at 2 or 3%. I would suggest that you have at least a 2% escalator on the annual PILOT, not 1%. All the other expenses are escalating at least 2%, so the PILOT should escalate consistent with the other operating expenses.

MS. DUNCAN: Thank you, Kevin. You will notice too, we did not assign a specific term on these because as Kevin mentioned so many of these are determinant by the financing structures and many, if not all, affordables will run coterminous with the mortgage or the LIHTC tax credit terms. That's why you don't see, like you do in Appendix A, 10 or 15 or 20 years. They're really determinant of the financing instrument.

MS. ABBADESSA: And for the record, Conifer did use a 2% escalator, and those numbers reflect that.

MS. SACCO: And staff knows to look at the finances, make those recommendations. If we need the analysis on the finances and what makes it affordable, the IDA Board is going to get that information and staff will make sure it's part of packet when the analysis is done?

MS. DUNCAN: Yes. Absolutely.

MR. BUCCI: Any other comments or questions at this time? Stacey, we don't have to take any action on this at this time, do we? This was an update, right? Or do you want us to approve it?

MS. DUNCAN: I think if the Governance Committee feels comfortable to bring this to the Board for approval, we could advance that. I don't see any structural changes. I don't see any modifications coming. Back to you at this point in time.

MS. SACCO: I move we move it on to the full Board for discussion.

MR. PEDUTO: I'll second that.

MR. BUCCI: All in favor?

ALL: Aye.

MR. BUCCI: Any opposed? The motion is carried. Stacey, do we need to go into Executive Session?

MS. DUNCAN: We do not. No, I do not have any items.

MR. BUCCI: Okay. I'll entertain a motion to adjourn.

[The meeting was adjourned on a motion by Mr. Peduto, seconded by Ms. Sacco, at 12:00PM.]

[Attendees: Rich Bucci, Jim Peduto, Cheryl Sacco, Dan Crocker, John Bernardo, Dan Gates, Stacey Duncan, Natalie Abbadessa, Carrie Hornbeck, Brendan O'Bryan, Theresa Ryan, Amy Williamson, Nicolas Gregoris, Joe Meagher, Margaret Scarinzi, George Slavik, Michael Birkby, Mitch Gorton, Michael Tanzini, Kevin Gremse, Leslie Spurgin, Evan Cleveland, Rita King, Mayor Martin Meaney, Chris Potter, Brenda Lehtonen.]

C E R T I F I C A T E

I, Elana Hulsey, certify that the foregoing transcript of the IDA Governance Committee Meeting on March 16, 2022, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature: \_\_\_\_\_

A handwritten signature in blue ink, appearing to read "Elana Hulsey", is written over a horizontal line.

Date: March 18, 2022

**Kashou Enterprises  
1500 Airport Rd.  
Binghamton NY 13905**

**4/26/2022**

**The Agency  
Broome county IDA  
FIVE south College Dr Suite 201  
Binghamton NY 13905**

Dear Stacey,

As you are aware we had a set back in our building project. Therefore I am writing to ask The Agency for time extension till 5/19/2023 on our sales tax exemption.

In addition we are looking to increase our sales tax exemption to \$331,440 from the original amount of \$240,000.

I will be submitting an application reflecting the additional costs for this project.

Please let me know if you may need any other information from me.

Thank you so much  
Sincerely,

Bob Kashou  
607-343-4487

# THE AGENCY

B R O O M E C O U N T Y I D A / L D C

## SALES TAX INCREASE REQUEST

**PROJECT** Kashou Ent Inc.

Address 1500 Airport Rd  
City/State/Zip Binghamton NY 13905  
**Contact Name** Bob Kashou  
Tax ID No. 16-1389949  
Title President  
Telephone 607-343-4487  
E-Mail bkashou@binghamtonfc.com

### NEW PROJECT COSTS

A. Costs necessary for the new construction, acquisition, rehabilitation, improvement and/or equipping of the project

#### Building Construction or Renovation

a. MATERIALS a. \$ 1,023,000

b. LABOR b. \$ 340,000

#### Site Work

c. MATERIALS c. \$ 70,000

d. LABOR d. \$ 85,000

e. Non-Manufacturing Equipment e. \$ 0

f. Furniture and Fixtures f. \$ 50,000

g. LAND and/or BUILDING Purchase g. \$ 0

h. Soft Costs (Legal, Architect, Engineering) h. \$ 151,800

Other (specify) i. Misc i. \$ 100,000

j. \_\_\_\_\_ j. \$ \_\_\_\_\_

k. \_\_\_\_\_ k. \$ \_\_\_\_\_

#### TOTAL PROJECT COSTS

B. Sources of Funds for Project Costs:

a. Bank Financing \$ 3,100,000

b. Public Sources \$ 0

Identify each state and federal grant/credit

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

c. Equity \$ 4,000,000

**TOTAL SOURCES** \$ 7,100,000

### REASON FOR SALES TAX EXEMPTION INCREASE

### ESTIMATED DURATION OF SALES TAX EXEMPTION

A. The sales tax letter shall be valid for a period of twelve (12) months as specified; unless otherwise noted.





FROM: Ostroff Associates  
DATE: April 13, 2022  
RE: Status of Open Meetings Law (OML)

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On **March 12, 2020**, Executive Order (EO) [202.1](#) was signed as part of the State's COVID-19 Disaster Emergency Declaration, suspending the New York State law that required meetings to take place in person, therefore, allowing for public meetings to be held virtually.

On **June 25, 2021**, the State Disaster Emergency ended, which removed this provision (EO 202.1) that suspended the law.

On **September 2, 2021**, the Governor signed into law Chapter 417 of the Laws of 2021 (S.50001 Kavanagh/A.40001 Dinowitz), which mirrored EO 202.1 and allowed for remote public meetings to continue to be held in the same manner as was allowed during the State Disaster Emergency through January 15, 2022.

On **October 19, 2021**, the Governor signed into law Chapter 481 of the Laws of 2021 (S.1150A Kaplan/A.1228A Paulin) which amends § 103(e) of OML to require that records that will be discussed at a meeting should be made available upon request, as well as posted online at least 24-hours before the meeting.

- The obligation to make records available to the public upon request and to post the records on the agency website has been in effect since February 2012.
- The only change this amendment made was placing a 24-hour minimum time frame for making those records available.

On **November 8, 2021**, the Governor signed into law Chapter 587 of the Laws of 2021 (S.4704A Kaplan/A.1108A Paulin), which amended the OML to require agencies that maintain a website to post meeting minutes on their website within two weeks of the meeting date, or within one week of an executive session.

On **December 21, 2021**, the Governor signed into law Chapter 676 of the Laws of 2021 (S.1625A Skoufis/A.924A Paulin), which amended the definition of “public body” to mean any entity for which a quorum is required in order to conduct public business or where two or more members are performing a governmental function for a public body or entity.

On **January 14, 2022**, Governor Kathy Hochul signed into law Chapter 1 of the Laws of 2022, which was a chapter amendment that amended Chapter 417 of the Laws of 2021 to also allow for meetings to be held by conference call.

- Please note, at this time, Chapter 1 would be repealed should the state disaster emergency end (pursuant to Governor Hochul’s EO 11).
- As of this date, EO 11.3 had extended EO 11 through March 16, 2022.

On **March 16, 2022**, Governor Kathy Hochul signed into law EO [11.4](#) (extending Executive Order 11), which allows for remote public meetings to continue to be held in the same manner as prescribed in Chapter 1, through April 15, 2022.

On **April 9, 2022**, Governor Hochul signed Chapter 56 of the Laws of 2022 (S.8006-C/A.9006-C) relating to ELFA Part WW in the FY22-23 New York State Budget. Included in the bill (ELFA Part WW), was an amendment to OML which would make permanent, the expanded use videoconferencing by public bodies to conduct open meetings, under extraordinary circumstances, regardless of a declaration of emergency, until July 1, 2024.

- Until then, it is important to note that the law permits public bodies to continue to hold remote meetings in the same manner as described in Chapter 1 of the Laws of 2022, for a period of 60 days after its effective date, or until June 8, 2022.

### **The NYS Committee on Open Government Q&A – Chap. 56 of the Laws of 2022**

The full Q&A can be found [here](#).

This new law is not meant to change what has always been required of public bodies complying with the OML. Public bodies may continue to operate now as they did before the onset of the pandemic in early 2020 when the “in person” aspects of the OML were first suspended.

- In other words, if a public body was permitted to do it before the pandemic, this law does not change that.

As noted above, this law is intended to expand, in extraordinary circumstances only, the ability of public bodies to meet using remote access technology.

- Each public body that wishes to allow for remote attendance is required to adopt a local law, joint resolution, or a resolution authorizing remote attendance, and they

must also establish written procedures on what they determine to be “extraordinary circumstances.”

- Any local public body that elects to utilize the “extraordinary circumstances” videoconferencing, must maintain an official website.
- Even if a public body allows its members to participate remotely, under extraordinary circumstances, at locations that do not allow for in-person physical attendance by the public, they still must afford members of the public the opportunity to view the meeting by videoconference.
- Public bodies are not required to allow their members to participate remotely, under extraordinary circumstances, at locations that do not allow for in-person physical attendance by the public. They are allowed to use discretion.

Any member who participates at a physical location that is open to in-person physical attendance by the public (and which location has been included in the meeting notice) may count toward a quorum.

- A member who is participating from a remote location may not be counted toward a quorum of the public body, but can still participate and vote if there is a quorum of members at a physical location.

Each meeting conducted using videoconferencing must be recorded, and posted or linked on the public website of the public body within five business days following the meeting, and remain available for a minimum of five years. These recordings must also be transcribed upon request.

- This law requires that any participating member of a public body must be able to be seen and heard thus, teleconferencing (audio only) is not an acceptable form of member participation under this law.
- Meeting minutes must reflect which members of the public body participated.
- Those participating virtually in a public meeting must have the same access to public participation or testimony as those participating in-person.
- Executive Sessions do not need to be recorded or transcribed. It was determined that this law only applies to portions of the meeting that the public would be able to attend.

Public meetings can still be conducted with members at multiple physical locations as the intent of this expansion was not to limit the existing authority to virtually connect.

- Additionally, fully remote meetings can still be conducted under State Disaster Emergencies or Local State Emergencies.