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**CITY OF KINGSTON**  
Department of Health and Wellness  
cflynn@kingston-ny.gov

Emily Flynn, Director



Steven T. Noble, Mayor

December 2, 2021

Honorable Andrea Shaut  
President/Aldersperson-at-Large  
Kingston Common Council  
420 Broadway  
Kingston, NY 12401

Re: Open Meetings Law Amendment Memorializing Resolution

Dear President Shaut,

As you know, the Live Well Kingston Commission, and all of the City of Kingston's Boards and Commissions are operating under the New York State Open Meetings Law. During COVID, Governor Cuomo issued Executive Order 202.1, which authorized meetings to be held remotely, and under Chapter 417 of the S.50001/A.40001 legislation extended that provision. As of the time I am writing this, Chapter 417 is set to be repealed on January 15<sup>th</sup>, 2022.

The Live Well Kingston Commission has penned a letter to our State representatives asking them to amend the Open Meetings Law to allow Chapter 417 to be extended indefinitely.

Today we are respectfully requesting that this be placed on the agenda of the next appropriate Committee of the Common Council to discuss a memorializing resolution in favor of an amendment to the Open Meetings Law and ask the City Clerk to send a copy to our State Senator Michelle Hinchey and State Assemblymember Kevin Cahill.

Attached is Live Well Kingston's letter and a proposed resolution from the New York State School Boards Association about the same matter.

Sincerely,

Emily Flynn  
Director of Health & Wellness

CC: Troy Ellen Dixon, Chair, Live Well Kingston  
Steven T. Noble, Mayor, City of Kingston  
Barbara Graves-Poller, Corporation Counsel



Live Well Kingston Commission  
420 Broadway, Kingston, NY 12401  
LiveWellKingston.org  
845-334-3909

December 1, 2021

Re: Open Meetings Law Amendment

Dear State Senator Michelle Hinchey and State Assemblymember Kevin Cahill,

We have all learned many things since the start of the COVID pandemic. In this letter, we are focusing on one lesson: that inaccessibility to the physical presence of any member of a public body does not preclude or hinder a citizen's right to be "fully aware of and able to observe the performance of public officials" or a citizen's right "to attend and listen to the deliberations and decisions that go into the making of public policy." And that what we have known as 'business as usual' may actually be counterproductive.

This point was made first under Executive Order 202.1 (March 12, 2020) and under Chapter 417 of the S.50001/A.40001 legislation (September 2, 2021), during which public business of boards, commissions, councils, etc. was conducted via teleconference and/or videoconference and members of the citizenry were able to listen to or view such public meetings. In Kingston NY, and throughout New York State, public bodies noted and reported an increase in the number of citizens who attended these virtual meetings, versus the number present at meetings held in person.

There was a two-month period between the lapse of Executive Order 202.1 and extension of virtual access to public meetings under New York State's Open Meetings Law with Chapter 417, during which time the Live Well Kingston Commission, a body appointed by the mayor, was unable to conduct official business that required a vote for the following reasons:

- A quorum of the commissioners was not present at the July and August meetings.
- A quorum was not present because several commissioners, citing concerns about increases in COVID infections due to the Delta variant, chose to attend the meetings remotely.
- Because commissioners chose to attend remotely, most from their homes, and did not want to publish the address of their location so that any member of the public would have "an opportunity to attend, listen and observe at any site at which a [commissioner] participates," those commissioners did not count toward a quorum. (N.B. Under current socio-political pressures, the thought of publishing the address of a private residence for the purpose of allowing any member of the public to "attend, listen and observe" at that site is chilling.)

This may be unique to this particular commission. It is also possible that other public bodies composed of appointed or elected members have faced the same conundrum.

For the moment, Chapter 417 has solved the quorum issue. But it is scheduled to be repealed on January 15, 2022. At that time Live Well Kingston commissioners will be faced with a difficult decision. With COVID case numbers continuing to increase, then decrease, then increase, etc., long(er)-term vaccine efficacy still being monitored, and whether commissioners have been able to get a booster shot, depending on the vaccine they received originally, some may choose to forego in-person attendance, even if their colleagues are vaccinated and masked, due to concerns about their personal health and well-being. And with that, it is likely that the commission will not have a quorum.

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*The Live Well Kingston Commission promotes the advancement of a healthy and active community by bringing partners and residents together to facilitate policy, environmental and systems changes.*



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There are two possible solutions to address this:

- Extend Chapter 417 indefinitely, until such time that the WHO, CDC, and NYS DOH conclude that COVID is contained and we can all return to 'business as usual'.  
[or]
- If COVID is not contained and we must return to 'business as usual', eliminate the requirement for members of the public body who are participating remotely to publish the address of their location so that any citizen would have "an opportunity to attend, listen and observe at any site at which a member participates."

If the latter, Kingston City Hall provides accessibility to the public according to the following requirements: *It is essential that public business be performed in an open and public manner and that the citizens be "fully aware of and able to observe the performance of public officials" and citizens have the right "to attend and listen to the deliberations and decisions that go into the making of public policy."*

To wit, if a public location (Kingston City Hall) is available for citizens to gather and observe the proceedings of the Live Well Commission, some of whose members may be participating remotely and are able to be seen and heard by members of the public in attendance at that single location, there should be no need for individual commissioners to publish the addresses of and/or make their private homes available to the public. And without that need, those commissioners participating remotely would be counted toward the quorum so that official business may be conducted.

Since March 2020, whether using a fully remote or hybrid model, private and public business has been getting done.

We respectfully request that consideration be given to amending the Open Meetings Law to reflect what we have learned during the pandemic and to ensure that public business is performed in an open and public manner, while providing for the full and fair participation of public body members.

Cordially,

Emily Flynn  
Director, Health and Wellness  
City of Kingston

Troy Ellen Dixon  
Chair, Live Well Kingston Commission

## **PROPOSED RESOLUTION RE AMENDMENT OF OPEN MEETINGS LAW**

**RESOLVED**, that the New York State School Boards Association supports legislation to amend the Open Meetings Law (the “OML”) to (a) provide enhanced opportunities for the conducting of business at a meeting of a public body through the use of remote meeting technology; (b) authorize committees of a public body to meet through the use of videoconferencing without a fixed location for the meeting, and (c) eliminate the requirement that a public body subject to the OML identify the location(s) from which a member of the public body will be attending the meeting remotely and eliminate the requirement that members of the public be accorded the right to attend such meetings at those remote locations.

### **RATIONALE**

School boards strongly support the purpose and intent of the OML (Article 7 of the Public Officers Law) because it is essential that the public have an opportunity to observe discussions and deliberations of school boards and other public bodies. Further, school boards desire to conduct their business meetings in person. However, as recognized by the OML, circumstances may arise in which a member of a public body is unable to attend a meeting in person. Current law states: “A public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates.” [Public Officers Law, §103(c)] Current law also states: “If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.” [Public Officers Law, §104(4)]

On March 7, 2020, because of the coronavirus pandemic, Governor Andrew Cuomo issued Executive Order 202, which among other emergency measures suspended the OML requirements that public bodies conduct in-person meetings and that they provide notice of the locations from which members of the public body were attending such meetings. For more than one year after the issuance of Executive Order and its extension by orders of the Governor, until the Governor’s order of June 25, 2021 cancelling the suspension of the OML requirements of in-person meetings, public bodies conducted business remotely, with full opportunity for the public to attend, listen and observe, using videoconferencing technology such as Zoom, Google Meets, and Microsoft Teams. Public bodies, including school boards, have gained valuable knowledge and experience in utilizing videoconferencing technology to make meetings more accessible to the public and more efficient for members of those public bodies.

Upon the expiration of the suspension of these OML provisions, public bodies (including school boards) are no longer be able to utilize videoconferencing technology as they did during the period of the pandemic emergency. The OML should be amended to enable public bodies to

utilize this technology in the conduct of meetings in a manner that ensures that the public has appropriate opportunity to observe, attend, and participate.

The use of videoconferencing technology was particularly useful to enable school boards committees and subcommittees to engage in their work. The OML defines “public body” to include a “committee or subcommittee or other similar body of such public body.” [Public Officers Law, §102(2)] Thus, board committees and subcommittees (other than advisory committees and task forces that include non-members) are subject to the OML’s location and notice provisions. [See OML-AO-5331 (Committee on Open Government, Dec. 11, 2012)(“the legislative history of [the OML] clearly indicates that a committee or subcommittee consisting solely of members of a governing body is itself a public body.”)] During the suspension of the OML, school board committees functioned effectively through the use of videoconferencing technology, since board members were able to participate remotely without needing to travel to a designated meeting location and without disruption to work or family obligations. Similarly, school administrators were able to participate in committee discussions from their respective offices or other locations (including from home if the administrator was working remotely). Members of the public were accorded full opportunity to attend, listen to and observe committee meetings remotely through the use of videoconferencing technology. The OML should be amended to enable public bodies to conduct committee meetings entirely by videoconferencing, with appropriate opportunity for members of the public to attend the remote meetings in the manner that worked so effectively for school board committees and those of other municipalities for well over a year.

Additionally, during the suspension of the OML, members of public bodies participated in meetings from remote locations without identifying their location. Members of the public have attended numerous meetings remotely in the more than one year that the OML notice and location provisions were suspended—and with only a very few exceptions such meetings have been conducted efficiently and with full opportunity for the public to observe the conduct of public business. Almost all school districts and other public bodies have long provided live stream access to their meetings through videoconferencing and/or social media platforms, even as members of the public attend meetings in person at their noticed location. The past year and a half has demonstrated how remote participation in meetings of public bodies has enhanced the conducting of public business without limiting the access of members of the public to such meetings.

Revealing the location of members participating remotely is not necessary to ensure that the public can attend and observe a meeting. Since meetings of a public body are noticed and conducted at a designated location, members of the public can attend the meeting at the designated location, in the same manner as they would if every member of the public body is present—and the member or members participating remotely will be seen by everyone attending at the meeting location (as well as those who are watching the proceedings through live-streaming). Thus, requiring members of public bodies to open their homes, offices, or other

remote location is unnecessary to ensure the public has full opportunity to attend. Further, and of major concern, revealing remote locations of participating members of a school board or other public body creates a safety or security risk to those members who are participating from their residences or other unprotected locations, and public notice of a member's participation from a location outside the community signals that their residence is likely unoccupied, thereby inviting unlawful entry of their homes. Members of public bodies should not be forced to place their (and their families') personal safety or property in jeopardy when they engage in their civic duty through videoconferencing. For this additional reason, the OML should be amended to remove the requirement that a participating member's remote location be publicized and that the public be permitted to attend the meeting at this remote location.

**THE CITY OF KINGSTON COMMON COUNCIL**

**LAWS & RULES  
COMMITTEE REPORT**

DEPARTMENT: Health & Wellness

DATE: \_\_\_\_\_

Description:

A memorializing resolution that supports legislation to amend the Open Meetings Law (the "OML") to (a) provide enhanced opportunities for the conducting of business at a meeting of a public body through the use of remote meeting technology; (b) authorize committees of a public body to meet through the use of videoconferencing without a fixed location for the meeting, and (c) eliminate the requirement that a public body subject to the OML identify the location(s) from which a member of the public body will be attending the meeting remotely and eliminate the requirement that members of the public be accorded the right to attend such meetings at those remote locations.

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

Motion by \_\_\_\_\_

Seconded by \_\_\_\_\_

Action Required:

SEQRA Decision:

Type I Action \_\_\_\_\_

Type II Action \_\_\_\_\_

Unlisted Action \_\_\_\_\_

Negative Declaration of Environmental Significance: \_\_\_\_\_

Conditioned Negative Declaration: \_\_\_\_\_

Seek Lead Agency Status: \_\_\_\_\_

Positive Declaration of Environmental Significance: \_\_\_\_\_

<b><u>Committee Vote</u></b>	<b><u>YES</u></b>	<b><u>NO</u></b>
Jeffrey Ventura Morell, Chairman		
Patrick O'Reilly Ward 7		
Rennie Scott-Childress, Ward 3		
Don Tallerman, Ward 5		
Rita Worthington, Ward 4		





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**Tinti, Elisa**

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**From:** Shaut, Andrea  
**Sent:** Thursday, December 02, 2021 7:53 AM  
**To:** Tinti, Elisa  
**Cc:** Davis, Tony  
**Subject:** FW: Management Handbook

Good morning Elisa,

Can you put the following communication from Alderman Davis in my folder? I will assign it to December committee.

Thank you,  
Andrea

**From:** Davis, Tony  
**Sent:** Thursday, December 2, 2021 7:07 AM  
**To:** Shaut, Andrea <ashaut@kingston-ny.gov>  
**Subject:** Management Handbook

Good morning,

Could you add this communication to the appropriate committee.

Modified the Management Handbook to include that evaluations must be in writing and both parties will receive a copy.

Also, per John Tuey's request add the position of Director of Housing Initiatives to the list of Management/Confidential.

