

COMMITTEE ON OPEN GOVERNMENT

STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
TELEPHONE: (518) 474-2518
FAX: (518) 474-1927
WWW.DOS.NY.GOV/COOG/

COMMITTEE MEMBERS

ROANN M. DESTITO
PETER D. GRIMM
M. JEAN HILL
KATHY HOCHUL
HADLEY HARRIGAN
ROBERT MUJICA, JR.
ROSSANA ROSADO
DAVID A. SCHULZ
STEPHEN B. WATERS

CHAIRPERSON

FRANKLIN H. STONE

EXECUTIVE DIRECTOR

SHOSHANAH BEWLAY

MEMORANDUM

TO: Interested Parties

FROM: Shoshanah Bewlay
Executive Director, Committee on Open Government

RE: *Open Meetings Law "In-Person" Requirement and Novel Coronavirus*

DATE: March 9, 2020

The Committee has received many inquiries in recent days seeking advice on the question whether public entities subject to the requirements of the Open Meetings Law ("OML") may in light of current concerns about the spread of the novel coronavirus that causes COVID-19 obtain a "waiver" of the requirement that the public be permitted to attend open meetings "in-person."

On Saturday, March 7, 2020, Governor Andrew M. Cuomo issued [Executive Order 202](#), which among other provisions suspended the "in-person" and quorum requirements of the OML *for certain public health entities only* to ensure that such entities could continue conduct necessary business in this time of public health concern (the "Order"). The Order continues to prioritize public access to information by requiring that such meetings be webcast and that there be effective means for public comment.

The Order's suspension of the "in-person" and quorum OML provisions is very limited, and the legislature did not contemplate the potential need for exceptions to the "in-person" requirement for any covered entity when crafting the OML. Moreover, the Committee does not have jurisdiction to grant waivers from legal requirements. Accordingly, there is no provision for obtaining a "waiver" of such requirement under the law.

While it appears that no New York court has yet examined a challenge of this type, the staff of the Committee believe that judicial review of an alleged violation of the OML by a public body will take into consideration that body's desire to protect public health while continuing to perform necessary government functions. However, if any public body determines that limiting public in-person access to an open meeting is necessary given the current public health threat addressed by the Order, the staff of the Committee encourages those bodies to limit discussions and actions taken to those matters for which harm would be caused by delay in order to mitigate potential impact on constituents.