

Resolution Addressing Governance Matters

An annual meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 1550 Franklin Avenue, Mineola, County of Nassau, New York, on April 7, 2015, at 5:00 p.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

PRESENT:

Gary Weiss	Secretary
Timothy Williams	Chairman
Christopher Fusco	Asst. Secretary
Michael Rodin	

ABSENT:

John Coumatos	Vice Chairman
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THE FOLLOWING PERSONS WERE ALSO PRESENT:

Joseph J. Kearney	Executive Director
Joseph Foarile	Chief Financial Officer
Colleen Pereira	Administrative Director
Nicholas Terzulli	Director of Business Development
Paul O'Brien, Esq.	Bond/Transaction Counsel

The attached resolution no. 2015-18 was offered by G. Weiss, seconded by T. Williams:

Resolution No. 2015-18

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY (THE "AGENCY")
ADOPTING BY-LAWS, CERTAIN CHARTERS,
POLICIES AND PROCEDURES AND ADDRESSING OTHER MATTERS
IN CONNECTION THEREWITH

WHEREAS, the Nassau County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Agency wishes to amend and restate and/or adopt its by-laws, certain charters, policies and procedures to ensure continued compliance with current best practices in governance and applicable law, including, without limitation, the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Agency hereby adopts the amended and restated by-laws of the Agency annexed hereto in Exhibit A (the "By-Laws") as part of the Agency's Policy Manual. The By-Laws hereby replace any and all by-laws heretofore adopted by the Agency.

Section 2. The Agency hereby adopts the amended and restated charters of the Agency's Audit Committee, Governance Committee, Finance Committee and Transactions Committee annexed hereto in Exhibit A (collectively, the "Charters") as part of the Agency's Policy Manual. The Charters hereby replace any and all charters heretofore adopted by the Agency with respect to the subject matter thereof.

Section 3. The Agency hereby adopts its 2015 Mission Statement and Performance Measurements annexed hereto in Exhibit A (the "Mission Statement") as part of the Agency's Policy Manual. The Mission Statement hereby replaces any and all mission statements heretofore adopted by the Agency.

Section 4. The Agency hereby adopts as formal policies of the Agency the provisions of the policies, practices and procedures annexed hereto in Exhibit A (collectively, the “2015 Policies”) as part of the Agency’s Policy Manual. The 2015 Policies hereby replace any and all policies, practices and procedures heretofore adopted by the Agency with respect to the subject matter thereof.

Section 5. The Agency has reviewed the Uniform Tax Exemption Policy that it adopted on March 12, 2014 (the “UTEP”) and hereby re-adopts the UTEP without change. The UTEP, as re-adopted, is annexed hereto in Exhibit A as part of the Agency’s Policy Manual.

Section 6. Although the members of the Agency believe that the Agency has an exemplary record of conducting its activities in an open, fair and transparent manner, the Agency hereby adopts as “best practices” those recommendations set forth in (i) the publication entitled “Board Meetings: Best Practices Guide for Public Authorities” issued by the New York State Authorities Budget Office (the “ABO”) on January 27, 2015 (the “Guide”) that are underlined in the copy of the Guide annexed hereto in Exhibit A, and (ii) ABO Policy Guidance No. 15-02 (the “Guidance Memo”) that are underlined in the copy of the Guidance Memo annexed hereto in Exhibit A. “Best practices” constitute recommendations rather than requirements of law and, as such, may not apply in certain circumstances or may need to be modified where the circumstances warrant and, therefore, are not adopted as policies or procedures that are legally binding on the members or Staff of the Agency.

Section 7. The Agency hereby designates the following location as the place that it will routinely post notice of its board and committee meetings: Supreme Court Building, Media Room, 100 Supreme Court Drive, Mineola, New York. The Agency shall give notice of all board and committee meetings to the news media by e-mailing copies of same to the following media outlets: News12, Newsday and any applicable local community paper as determined by the Executive Director.

Section 8. This Resolution shall not preclude the Agency from adopting other or further policies relating to governance and activities of the Agency as determined from time to time by the members of the Agency.

Section 9. This Resolution shall take effect immediately.

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

Gary Weiss	VOTING	Aye
Christopher Fusco	VOTING	Aye
Timothy Williams	VOTING	Aye
John Coumatos	EXCUSED	
Michael Rodin	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.


STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

We, the undersigned ~~[Assistant]~~ Secretary and ~~[Vice]~~ Chairman of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on April 7, 2015 with the original thereof on file in our office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matter therein referred to.


WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed the seal of the Agency this 7th day of April, 2015.



[Assistant] Secretary



[Vice] Chairman

(SEAL)

EXHIBIT A

Agency Policy Manual

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

We, the undersigned ~~[Assistant]~~ Secretary and ~~[Vice]~~ Chairman of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on April 7, 2015 with the original thereof on file in our office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matter therein referred to.

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WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed the seal of the Agency this 24 day of April, 2015.



~~[Assistant]~~ Secretary



~~[Vice]~~ Chairman

(SEAL)

Authorities Budget Office Policy Guidance



No. 15-02

Date Issued: March 12, 2015

Supersedes: 06-01

Subject: Board Member Training

Statutory Citation: Section 2824(2) of Public Authorities Law

Provision: Section 2824(2) of the Public Authorities Law, as amended by Section 18 of the Public Authorities Accountability Act, requires directors to “participate in State approved training regarding their legal, fiduciary, financial and ethical responsibilities as board members of an authority within one year of appointment to a board.” It also requires board members to “participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.”

The purpose of this training is to prepare individuals to understand and properly execute their role as board members and to be well-versed in the principles of corporate governance and the requirements of the law. Training provides the foundation for directors to exercise appropriate oversight and to recognize the responsibility they have to the mission of their organization, its management and staff, and to the public.

Authorities Budget Office Policy Guidance: The Authorities Budget Office (ABO) is overseeing the implementation of Section 2824(2) and has developed this Guidance to assist public authorities meet the requirements of the Act.

This Guidance outlines the training requirements and best practices for state and local public authority boards, including the timeframes for board member training, the board members who are required to receive training, board member training that meets this requirement, and the need for refresher training.

Training Requirements

Board members have 12 months from the date of their appointment to participate in training. 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. Guidance on this subject is provided here:

<http://www.abo.ny.gov/recommendedpractices/NewBoardMemberOrientation.pdf>

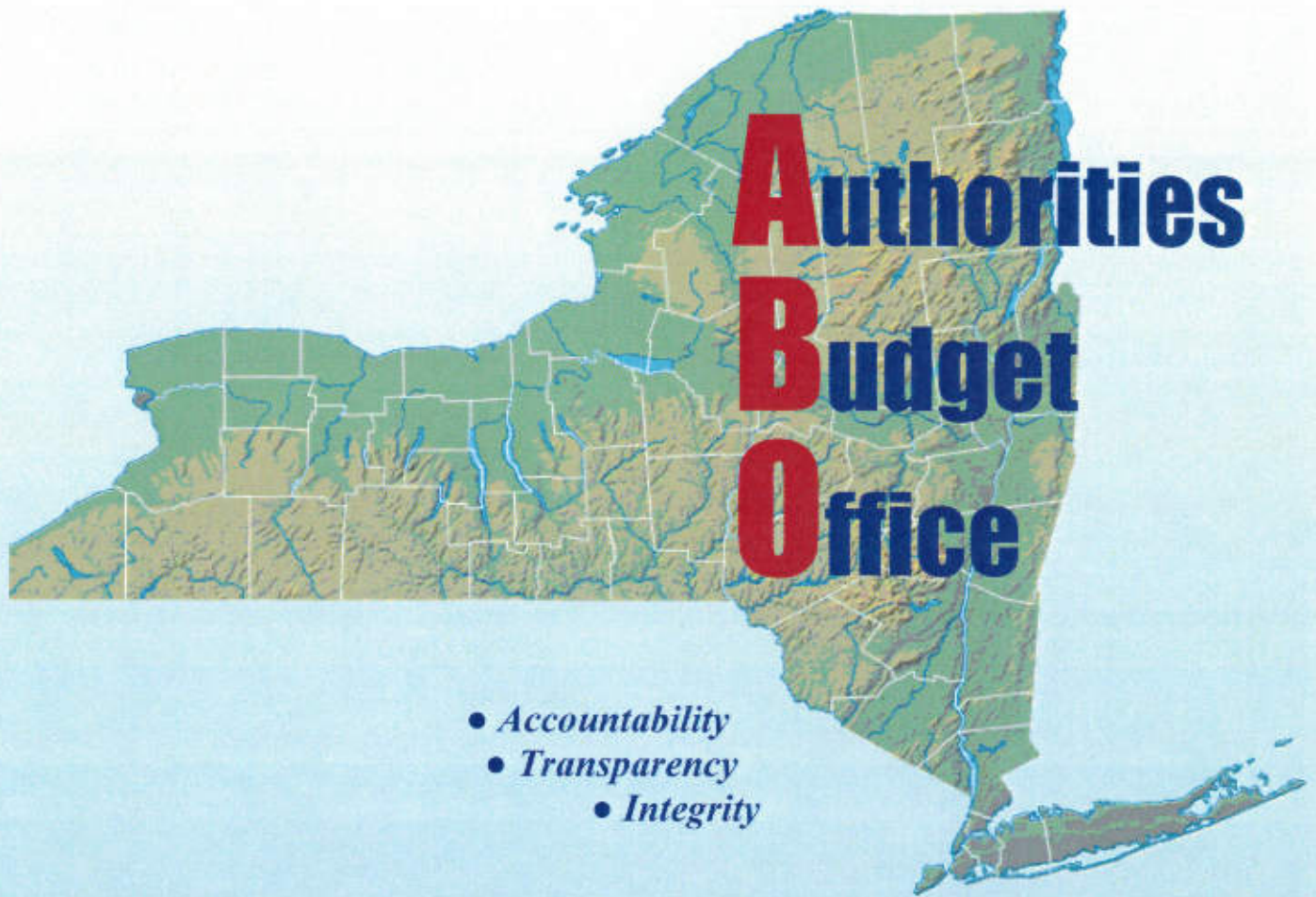
Participation in training extends to all voting members, such as ex officio members or designees. Board members may only have a designee if it is stipulated in law (enabling statute) or articles of incorporation. As a best practice the ABO encourages non-voting members and management staff, including Counsel, to attend training when appropriate.

The Act requires directors to participate in continuing training to "remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance" (Section 2824(2)). As a best practice, the ABO recommends that directors participate in refresher training upon re-appointment to the Board or at least every three years.

The ABO has developed a comprehensive corporate governance curriculum and conducts training for directors and executive management of all state and local public authorities at no cost. Interactive webinar training, conducted by ABO staff is available on a regular basis during regular business hours. Authorities may sign up for training here:

<http://www.abo.ny.gov/training/onlinetraining.html>

It is the responsibility of the public authority to maintain documentation of board member participation in required training and to assure that board members are compliant with this requirement.



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

Board Meetings: Best Practices Guide for Public Authorities

January 27, 2015

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INTRODUCTION

Public Authority board meetings are the public setting in which board members exercise their duties. It is during board meetings that the public can best observe directors 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 his/her 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 assist 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 public authorities are to meet for providing public notice of meetings, conducting board meetings, keeping board minutes, as well as many other related topics. It is meant to serve as a basic introduction to both public authorities' board meetings and the role and responsibilities of board members, as well as a tool that 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. 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 public authorities as defined in Public Authorities Law.³

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

There are three situational exemptions from OML:⁴

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.⁵ 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.⁶ 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.

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.⁷

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.⁸ 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 the authority has established rules or procedures requiring additional information in its notices, they should be followed.⁹

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 10-03](#)). 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 more than one week in advance, notice should be given no less than 72 hours (3 days) in advance.¹⁰ For meetings scheduled less than a week in advance, notice should be given within a reasonable time frame. 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.¹¹

■ ***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.¹² 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 public 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.¹³

Authorities are not required to publish the notice as a legal notice.¹⁴ Public authorities comply with the law by giving notice to the news media. Public authorities can meet this requirement by emailing the information of the meeting to the major television, radio and newspaper outlets as well as local community papers in their area. The newspapers, television, or radio stations that receive the notice can choose not to publicize the public meeting, and the public authority would still be in compliance with the law.

② It is recommended that public authorities provide an option to the public to subscribe to a mailing list to receive automatic notice of all meetings. In addition, public authorities can post on their website the schedule of all planned board meetings for the year at beginning of the fiscal year (see [ABO Policy Guidance 10-03](#)).

■ ***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 has to 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.¹⁵

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 roll call, approval of minutes from previous meeting, an executive director report, committee reports, old business and new business (including resolutions presented for approval) 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 requires board approval for all the records submitted by authorities as part of their annual reports.¹⁶

To be compliant with Public Authorities Law, authorities must annually submit their annual report, mission statement and measurement report¹⁷, 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 reporting deadlines and is compliant with Public Authorities Law. 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. 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

It is recommended to distribute the meeting materials 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, prior to or at the meeting during which the records will be discussed.¹⁸ Copies of these records shall be made available to the public for a reasonable fee. If the public authority maintains a regularly and routinely updated website, records should be posted on the website prior to the meeting.

CONDUCTING BOARD MEETINGS

The frequency 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.

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 meeting place of board meetings?***

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).¹⁸ 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.¹⁹ There is no requirement for an authority to construct a new facility or to renovate an existing facility to permit barrier-free access to physically handicapped persons. However, if an authority has the capacity to hold its meetings in a first floor that is accessible to handicapped persons rather than a second floor, the meeting should be held in the room that accommodates the needs of the physically handicapped.²⁰

If a board member attends a meeting by videoconference, the authority is required by law to allow the public to attend, listen and observe the

meeting at the sites at which the members participate.²¹

■ ***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.

■ ***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.²²

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

Any meeting of a public body 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.²³ 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 not disrupted and is held in an orderly manner.

■ ***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. For this reason, other means of conducting a meeting (such as e-mail or mail) are also impermissible as they are inconsistent with the law.²⁴

This doesn't preclude board members from taking part in the meeting deliberations through teleconferencing, mail or email. However, these members do not count toward a quorum and cannot vote.

■ ***Should public authorities broadcast meetings on the internet?***

State public authorities are required by executive order to webcast meetings.²⁵ It is recommended that local authorities and industrial development agencies with the capacity to do so follow similar practice.

EXECUTIVE SESSION

OML defines "executive session" as a portion of an open meeting not open to the general public. 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.²⁶ All board members and any other persons authorized by the board may attend an executive session.

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.²⁷

■ ***For what purposes can an authority conduct an executive session?***

Boards of directors should only approve going into executive sessions during meetings for the following eight purposes enumerated in the law:²⁸

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.

Board members and/or their designees are required by law to sign an acknowledgement of fiduciary duties and responsibilities, including 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](#)). 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 minimum number of board members of the public body must be in attendance before a meeting can begin. This number is known as a quorum.

Roll call should be taken at the meeting to confirm a quorum is present. 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.²⁹

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.

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.³⁰ 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 rule to follow, unless an authority's governing statute states 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.³¹

■ ***Can board members vote by proxy?***

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

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 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.³² 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.

Public Authorities Law also requires board members to establish a governance committee which is responsible of examining ethical and conflict of interest issues.³³

In addition to the Public Authorities Law, 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 his duties in the public interest.³⁴

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

While Public Authorities Law 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:³⁵

1. A definition of the circumstances that constitute a conflict of interest.
2. Procedures for disclosing a conflict of interest to the board.
3. A requirement that the person with the conflict of interest cannot 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.

■ ***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.³⁶ The procedure an authority should follow when a conflict of interests arises should be described in the Code of Ethics of the authority.

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 law³⁷ and the action taken can be deemed null, void, and wholly unenforceable.³⁸

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. This includes meetings of the full board as well as committee meetings. 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.³⁹ 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
- ✓ Date and time of meeting
- ✓ Board members in attendance, excused, and absent (including departures and reentries)
- ✓ Staff ~~and guests~~ in attendance
- ✓ Existence of a quorum
- ✓ Motions made and by whom
- ✓ 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
- ✓ 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.⁴⁰ 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.⁴¹ Note that the Freedom of Information Law requires that a record be maintained that indicates how each member cast his or her vote. The record of the members' votes commonly is included in minutes of a meeting.⁴²

■ ***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.⁴³ 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.⁴⁴

■ ***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.⁴⁵ Meeting minutes should be maintained on the web site for at least two years following the date on which the meeting was held ([ABO Policy Guidance 10-03](#)).

■ ***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.⁴⁶ 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. Although not required by law, as a best practice, authorities should keep minutes of executive session for their own 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.⁴⁷ 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”.⁴⁸

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 conduct 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 of such public body.”

³ Public Authorities Law §2

⁴ Public Officers Law §108

⁵ Civil Practice Law and Rules §4503 considers the attorney-client relationship confidential

⁶ *White v. Kimball* [Supreme Court, Chautauqua County, January 27, 1997]

⁷ Committee on Open Government. Advisory Opinion # 3110

⁸ Public Officers Law §104

⁹ Committee on Open Government. Advisory Opinion # 2256

¹⁰ Public Officers Law §104

¹¹ Committee on Open Government. Advisory Opinion # 2186

¹² Public Officers Law §104(1)

¹³ Committee on Open Government. Advisory Opinion # 2186)

¹⁴ Public Officers Law § 104(3)

¹⁵ Public Officers Law §104(4)

¹⁶ Public Authorities Law §2800

¹⁷ For more information about the mission statement and measurement report see [ABO Policy Guidance 10-02](#)

¹⁸ Public Officers Law §103(d)

¹⁹ Public Officers Law §103(b)

²⁰ Committee on Open Government. Advisory Opinions # 3019 and #3403

²¹ Public Officers Law §103(c)

²² Committee on Open Government. Advisory Opinion # 2199

²³ Public Officers Law §103(1)

²⁴ Committee on Open Government. Advisory Opinion # 4336

²⁵ NYS Executive Order #3 of 2007. The NYS Office of Information Technology Services has developed best

practice guidelines for webcasting open meetings that can be found at: <http://www.its.ny.gov/policy/G07-002/NYS-G07-002-11-27-2012.pdf>.

²⁶ Public Officers Law §102

²⁷ Public Officers Law §105(1)

²⁸ Public Officers Law §105

²⁹ Robert, H. M. (2008). *Robert's rules of order*. Wildside Press LLC. Pg. 258

³⁰ Public Authorities Law §2826

³¹ Committee on Open Government. Advisory Opinion #2198

³² Public Authorities Law §2824(1)

³³ Public Authorities Law §2824(7)

³⁴ Public Officers Law §74

³⁵ Not-For-Profit Corporation Law §715(a)

³⁶ NYS Attorney General. Informal Opinion # 1995-02

³⁷ Public Officers Law §74(4)

³⁸ General Municipal Law §804

³⁹ Public Officers Law §106

⁴⁰ Committee on Open Government. Advisory Opinion #3773

⁴¹ 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.

⁴² Public Officers law §87(3)(a)

⁴³ Public Officers Law §106

⁴⁴ Committee on Open Government. Advisory Opinion #4146

⁴⁵ Public Authorities Law §2800

⁴⁶ Public Officers Law §105(2)

⁴⁷ Public Officers Law §107

⁴⁸ Committee on Open Government. Advisory Opinion #2850

Appendix A-BOARD NOTICE SAMPLE

NOTICE BOARD MEETING

A Board Meeting of the [PUBLIC AUTHORITY NAME] will
be held on [DATE] at [TIME] at [ADDRESS].
Please contact [NAME OF CONTACT PERSON] at
[PHONE/EMAIL OF CONTACT PERSON] for additional
information.

Appendix B-AGENDA SAMPLE

[PUBLIC AUTHORITY 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. 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	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 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 IT BE 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:

(Chairman)

Appendix E- BOARD MEETING MINUTES SAMPLE

[PUBLIC AUTHORITY NAME]

Board of Directors Meeting

Minutes of [DATE]

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

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

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 BOARD MEETING

Preparing the Public Notice

- 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, if applicable
- 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 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
- Make arrangements to ensure the meeting is broadcast (required for State Authorities, recommended for all others, if able)

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

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

Preparing the meeting minutes

- Best practices call for meeting minutes to include the following:
 - Name of the organization
 - Date and time of meeting
 - Board members in attendance, excused and absent (including departures and reentries)
 - Staff and guests in attendance
 - Existence of a quorum
 - Motions made and by whom
 - Brief objective account of any debate
 - Existence of conflicts of interest and how they were resolved
 - Voting results
 - Names of abstainers and dissenters
 - Reports and documents introduced
 - Future action steps
 - 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.