



**OLYMPIC REGIONAL
NEW YORK
DEVELOPMENT AUTHORITY**

GOVERNANCE COMMITTEE MEETING

Lake Placid, NY

February 4, 2022

1:00 p.m.

AGENDA

I. INTRODUCTION

- a. Welcome
- b. Roll Call
- c. Approval of Minutes from August 20, 2021 Governance Committee Meeting

II. DISCUSSION

- a. Amendment to the Governance Committee Charter to Increase the Number of Committee Members and Proposed Resolution #438
- b. Meeting Schedule
- c. Board Member Training & Education
- d. Board Evaluations
- e. Mission Statement

III. ADJOURN



**NYS Olympic Regional Development Authority
Governance Committee Meeting Minutes
August 20, 2021**

Present: Chris Pushkarsh, Chair
Stephen Hunt
Diane Munro

Also Present: Michael Pratt, President/CEO
Michelle Crew, General Counsel

Introduction: Chair Chris Pushkarsh called the meeting to order at 11:05 a.m. and welcomed everyone in attendance.

Chris Pushkarsh then asked for a roll call, to confirm who was present.

Chris Pushkarsh explained that the meeting was being videotaped and a link to the recording would be made available on www.orda.org.

New Business: The first item on the agenda was a review of the draft Governance Committee Charter.

Diane Munro inquired about training for the committee members, to keep ORDA board members informed of best practices. Chris Pushkarsh responded that the authority has access to documents and training that are always being updated. He commented that the proposed charter was well-aligned with current issues and best practices, and the committee could research the availability of other resources.

Steve Hunt asked for clarification of an “independent member,” which Michelle Crew explained as a board member that does not have more than \$15,000 dollars a year annual interest in the business of ORDA, either directly or through a company that is doing business with the authority.

Diane Munro commented on her interest in ORDA being competitive in the areas of hiring and staffing, and how that would relate to the Governance Committee. Chris Pushkarsh commended



ORDA's current personnel, and how a plan for the future to maintain that level of quality was important.

Chris Pushkarsh requested a motion that the Governance Committee advise that the ORDA Board of Directors adopt the proposed charter.

On a motion by Diane Munro, seconded by Steve Hunt.

3 in favor, 0 opposed, the motion carries unanimously.

The next Governance Committee agenda item were policy updates relating to Defense and Indemnification and the Code of Ethics.

Steve Hunt made a motion that the Governance Committee advise that the ORDA Board of Directors adopt the Defense and Indemnification Policy as presented.

Seconded by Diane Munro.

3 in favor, 0 opposed, the motion carries unanimously.

Chris Pushkarsh requested a motion to adopt the Code of Ethics as amended, subject to the addition of the word "not" at the end of the last sentence of Section VI, second paragraph.

On a motion by Diane Munro, seconded by Steve Hunt.

3 in favor, 0 opposed, the motion carries unanimously.

Chair:

Chris Pushkarsh announced that the meeting's business had concluded. He noted that ORDA's new Board Secretary Renee Fitzgerald would be in touch about scheduling the next Governance Committee meeting.

Adjournment:

On a motion by Diane Munro, seconded by Steve Hunt, the meeting of the Governance Committee was adjourned at 11:32 a.m.



NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Resolution # 438

**RESOLUTION APPROVING UPDATE TO ORDA
GOVERNANCE COMMITTEE CHARTER**

At a meeting of the Board of Directors of the Olympic Regional Development Authority (ORDA) held on February 25, 2022, the Chair offered the following resolution:

WHEREAS, pursuant to Public Authorities Law § 2824, the ORDA Board of Directors is charged with establishing written policies and procedures regarding the corporate governance of ORDA; and

WHEREAS, pursuant to Public Authorities Law § 2824 (7) and the ORDA By-Laws, Article II Section 4, respectively, the ORDA Board of Directors is required to establish a Governance Committee, and the ORDA Board Chair is authorized to establish other committees and to select their members; and

WHEREAS, by Resolution #417 duly passed by the Board of Directors on June 25, 2021, the ORDA Board of Directors established a Governance Committee comprised of three members appointed by the Chair and approved by the Board in accordance with the ORDA By-Laws Article II Section 1; and

WHEREAS, by Resolution #427 duly passed by the Board of Directors on August 20, 2021, the ORDA Board of Directors established the Governance Committee Charter (“Charter”), which sets out the purpose and composition of the Committee, the schedule and process for its meetings, the powers and duties of the Committee, and its reporting responsibilities to the Board of Directors; and

WHEREAS, ORDA has found and determined that it is both necessary and desirable to amend and update its existing Charter to increase the number of members on the Committee; and

WHEREAS, annexed hereto and made a part hereof as if fully restated herein, is ORDA’s proposed revised Charter; and

WHEREAS, the proposed amendment is consistent with the language in Public Authorities Law § 2824 (7), which states that a governance committee shall be comprised “of *not less than three* independent members” (Public Authorities Law § 2824 [emphasis added]); and

WHEREAS, the Governance Committee seeks approval by the Board to adopt the updated Charter attached hereto;

NOW THEREFORE BE IT RESOLVED, that after careful consideration and due deliberation, the ORDA Board of Directors hereby approves and adopts the attached Governance

Committee Charter, effective immediately, which will be posted with Board materials on the ORDA website, for access by the public.

SO RESOLVED,

MOVED BY: _____

SECONDED BY: _____

and

ADOPTED BY the following vote:

Excused/Abstained:

Against:

Renee Fitzgerald, Secretary to the Board, being duly sworn, deposes and says:

The above Resolution # 438 was duly passed by the Board of Directors on February 25, 2022

Signature _____

Title: Secretary to the Board of Directors

Sworn before me this _____ day of February 2022

Notary Public, State of New York



ORDA BOARD OF DIRECTORS GOVERNANCE COMMITTEE CHARTER

I. Purpose

The purpose of the Governance Committee is to: keep the Board of Directors informed of current best practices in corporate governance by reviewing corporate governance trends for their applicability to ORDA, and updating ORDA's corporate governance principles and practices accordingly; advise those responsible for appointing directors to the Board on the skills, qualities, and professional or educational experiences necessary to be effective Board members; monitor and evaluate Board effectiveness; address potential ethical and/or conflict of interest issues affecting Board members; review and recommend by-laws which include rules and procedures for conduct of Board business; and perform such other responsibilities as the Board shall assign to it.

II. Composition

The Committee shall consist of not less than three (3) independent members of the Board as designated by the Chair and approved by the Board of Directors in accordance with the By-Laws. The Chair of the Board shall appoint the Chair of the Governance Committee. The Chair of the Board may appoint himself or herself to serve as a voting member of the Committee but shall not be permitted to serve as Chair of the Committee. Each voting member of the Governance Committee shall be an independent member as that term is defined in subdivision two of section 2825 of the Public Authorities Law. All Governance Committee members should be knowledgeable in matters pertaining to governance including practices to address transparency, independence, accountability, fiduciary responsibilities, and management oversight. Governance Committee members shall serve until the end of the term of their appointment to the Board of Directors, except that, a committee member may resign and continue to serve as a Board Member. In the event of a vacancy on the committee,

the Board Chair shall appoint a successor who shall be approved by the Board of Directors at its next regularly scheduled meeting.

III. Meetings of the Governance Committee

A. The Governance Committee shall meet at least twice in a fiscal year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in the charter. A majority of the Governance Committee members present or participating through videoconference shall constitute a quorum.

B. Members of the Governance Committee are expected to attend each committee meeting, in person or via such videoconferencing technology as may be available for the purpose of conducting such meetings. The Governance Committee may invite other individuals, such as members of management, auditors or other technical experts, to attend meetings and provide pertinent information, as necessary.

C. Meeting agendas shall be prepared prior to every meeting and announced to the public at least five (5) calendar days prior to the date of the scheduled meeting. The agenda and meeting materials, including any necessary briefing materials, shall be provided to Governance Committee members at least two (2) business days before the scheduled Governance Committee meeting, and all such public meeting materials shall be posted on the ORDA website for public access. Email may be used as a valid means of providing such materials to members of the Governance Committee.

D. The Governance Committee may act only on the affirmative vote of a majority of the Committee members or by unanimous consent. Minutes of all Governance Committee meetings shall be recorded.

E. Meetings of the Governance Committee are open to the public, and the Committee shall be governed by the rules regarding public meetings as set forth in the applicable provisions of the Public Authorities Law and Article 7 of the Public Officers Law as they relate to public notice and the conduct of executive session.

IV. Powers and Duties of the Governance Committee

It shall be the responsibility of the Governance Committee to:

A. Make recommendations on the structure of Board meetings and the skills and experience that should be required of potential board members, and develop and

recommend to the Board the number and structure of committees to be created by the Board;

B. Develop and provide recommendations to the Board regarding Board member education, including new member orientation and regularly scheduled board member training to be obtained from State-approved trainers;

C. Develop and recommend to the Board any policies or other documents relating to effective ORDA governance, and regularly review and update such policies or documents, including but not limited to:

- a. the ORDA Mission Statement;
- b. the rules and procedures for conducting the business of the ORDA Board such as the ORDA By-Laws;
- c. the promotion of honest and ethical conduct by ORDA's directors, officers, and employees, and enhance public confidence in the authority, which such policies shall be at least as stringent as the laws, rules, and regulations applicable to State officers and employees;
- d. the procurement of goods and services, including policies relating to the disclosure of persons who attempt to influence ORDA's procurement process;
- e. the acquisition of real property or interests therein, and the disposition of real and personal property;
- f. the protection of whistleblowers from retaliation;
- g. equal opportunity and affirmative action policies;
- h. time and attendance, and salary and compensation, for ORDA's chief executive and management;

D. Recommend, and review on an annual basis, performance measurements by which the performance of ORDA and the achievement of its goals articulated in its Mission Statement may be evaluated;

E. Obtain advice and assistance from in-house or outside counsel, accounting and other advisors as the Committee deems necessary, and with Board approval, solicit at ORDA's expense, persons having special competencies, including legal, accounting, or other consultants as the Committee deems necessary to fulfill its responsibilities;

F. Meet with and obtain any information it may require from ORDA senior management to accomplish these responsibilities.

V. Reporting

A. A report of any meeting of the Governance Committee shall be prepared and presented to the Board at its next regularly scheduled meeting following any meeting of the Committee.

B. The Governance Committee shall review and report to the Board, at least annually, on the compensation and benefits for the President & CEO and other ORDA senior officials, any proposed changes to the Governance Charter; and a self-evaluation of the Governance Committee's functions.



Board Meetings: Best Practices Guide for Public Authorities

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TABLE OF CONTENTS

INTRODUCTION	1
PUBLIC MEETINGS & OPEN MEETINGS LAW	1
PUBLIC NOTICES	2
MEETING AGENDA & BOARD MATERIALS.....	3
CONDUCTING BOARD MEETINGS	4
EXECUTIVE SESSION.....	6
BOARD MEETINGS ATTENDANCE	6
BOARD MEETINGS QUORUM	7
BOARD MEETINGS ACTION	7
CONFLICTS OF INTEREST.....	8
BOARD MEETING MINUTES.....	9
PENALTIES FOR FAILING TO FOLLOW OML	10
CONCLUSION.....	11
REFERENCES	11
Appendix A-BOARD NOTICE SAMPLE.....	13
Appendix B-AGENDA SAMPLE	14
Appendix C- PAL COMPLIANCE CALENDAR SAMPLE.....	15
Appendix D- BOARD RESOLUTION SAMPLE.....	15
Appendix E- BOARD MEETING MINUTES SAMPLE	16
Appendix F- PROCEDURES FOR HOLDING A PUBLIC AUTHORITY BOARD MEETING.....	17

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

Because board meetings are where issues are formally addressed, the public must be able to attend meetings and listen to the deliberations and discussions that lead to decisions. Accordingly,

board members should make every effort to ensure that public business is conducted in an open and transparent manner. The more transparent the actions of the authority, the more likely the public will accept and have confidence in those actions.

This guide was developed to 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 21-01](#)). 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.

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 21-01](#)).

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

While OML does not require publication of a cancellation notice, best practice recommends that notice of a cancellation or postponement be given to board members, as well as posted at the location(s) where the authority posts its meeting notices. If the meeting is rescheduled, the public notice for the rescheduled meeting 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 In addition, General Municipal Law, Public Authorities Law and Public Officers Law outline requirements for public authorities to video record open meetings, which includes broadcasting the meeting on the authority's website in real-time and posted for future access.

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 their 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 their 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 21-01](#)).

- *Should minutes of executive session be recorded?*

Yes. Minutes are required for any action taken by vote during executive session. These minutes should include the date the action was taken, a summary of the final determination of the action, and the voting results.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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- Townsend, R. S., Brown, J. R., & Buster, W. L. (2005). *A practical guide to effective school board meetings*. Corwin Press

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: <https://its.ny.gov/executive-order-3>.
- 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 Month 6 Month 7 Month 8		
	Review Policies and Procedures and Update if necessary	
		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:

(Board Chair)

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 meetings 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.



**Olympic Regional
Development Authority**

Board Member Training:

October 30, 2020

Today's Agenda

1. ORDA History & Background
 - *why ORDA was created*
 - *the most significant laws and agreements that govern ORDA's organization and management*
 - *ORDA's statutory powers*
2. The Committee on Open Government (COOG), the Open Meetings Law, and board meeting processes
3. The Authorities Budget Office
4. Ethics requirements and considerations

Legislative Findings (1981)

PUBLIC AUTHORITIES LAW § 2606

- I. **ORDA was created in 1981, following the 1980 Olympic Games, to:**
 - Insure optimum year-round use of the Olympic facilities
 - Provide economic and social benefit to the region
 - Minimize financial burden on state and local governments by maximizing revenue opportunities for maintaining and operating the Olympic facilities
 - Use the facilities to improve physical fitness and athletic and recreational education of the public
 - Schedule and conduct national and international athletic training and competitions and other activities at the facilities
 - Construct/operate the OTC with USOPC's training center program and ORDA's conduct of national and international sporting events.

- II. **The corporate programs and powers conferred on ORDA by the legislature were declared to be in furtherance of a valid public interest and public purpose**

- III. **Facilities in 1981 were located in Lake Placid and the Town of North Elba**

Most ORDA facilities are managed and operated under agreements required by the Public Authorities Law:

- Town of North Elba Parks and Playground District:
OC, ski jumps, Olympic Oval (part belongs to the LP School District)
- State of New York Department of Environmental Conservation:
Whiteface, Mt. Van Hoevenberg, Gore (added in 1984), Belleayre (added in 2012)
- Town of Johnsburg: North Creek Ski Bowl (added in 2000)

Public Authorities Law § 2614

Slutzky v Cuomo, 128 Misc.2d 365 (S.Ct. Albany County 1985);
affd 114 AD2d 166 (3d Dept. 1986), *appeal dismissed* 68 NY2d 663 (1986):
discussed the establishment of ORDA and rejected a Constitutional challenge to the State's authority to enter into an operating agreement for Gore Mountain, located on Forest Preserve land.

Association for the Protection of the Adirondacks v. MacDonald, 228 AD 73 (3d Dept. 1930), *affirmed* 253 NY 234 (1930):

Under the “forever wild” provisions of Article XIV, the courts declared unconstitutional the plan authorized by the legislature to build a bobsled run for the 1932 Olympics on Forest Preserve land.



ORDA operates part of Mt. Van Hoevenberg under a permanent easement granted by the Town of North Elba in 1965.

Constitution of the State of New York, Article XIV, § 1

‘The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.’

NYS Constitution Article XIV
(forever wild)

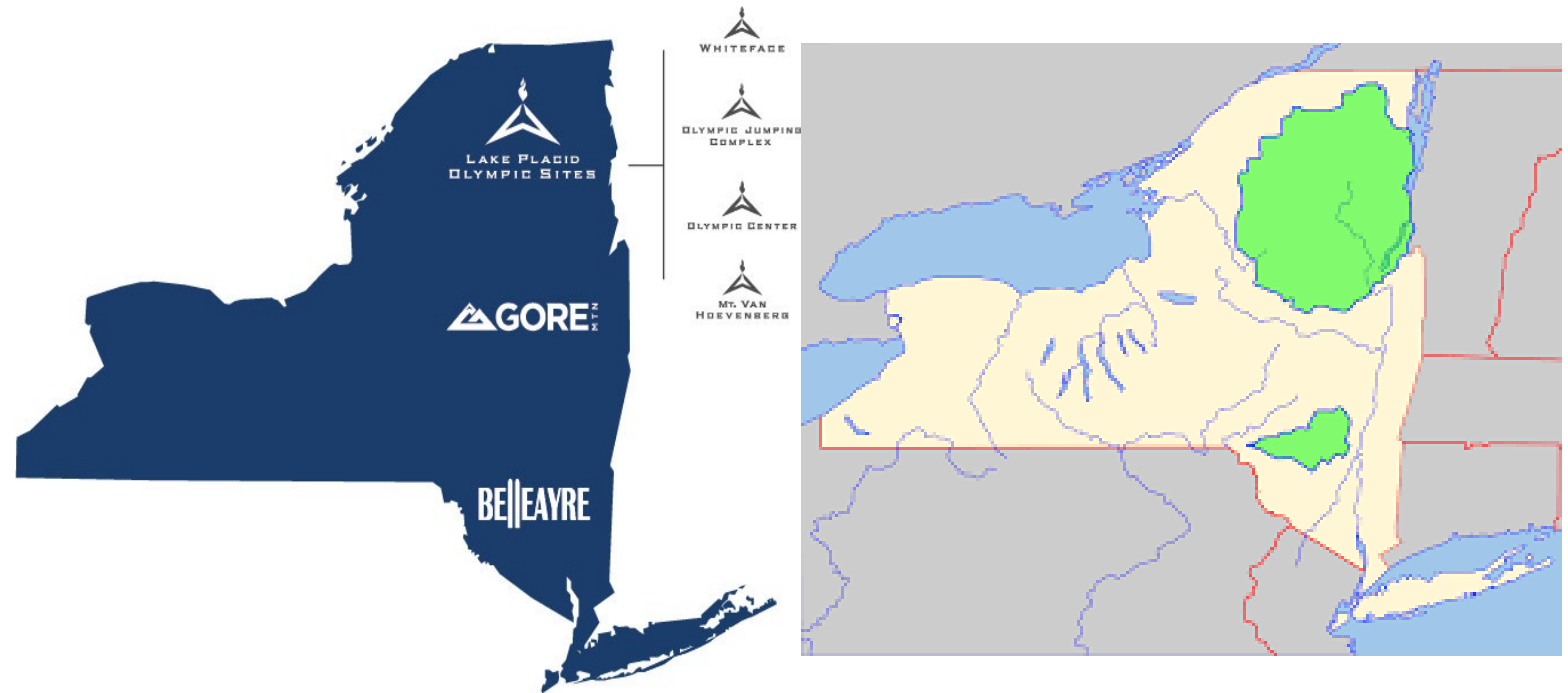
Environmental Conservation Law
Article 9, 6 NYCRR part 190
(DEC Div. of Lands & Forests)

Catskill Park State Land Master
Plan & Belleayre Mountain Ski
Center UMP

Executive Law Article 27
(Adirondack Park Agency –
Adirondack Park State Land Master
Plan & UMPs)

ORDA's alpine venues, and a part of the Mt. Van Hoevenberg Nordic venue, are on Forest Preserve land in either the Adirondack Park or Catskill Park

All plans for those venues have to comply with land use laws and regulations that apply to Forest Preserve Land



E.g., trail mileage; tree cutting; commercial uses; signage

Significant Agreements

USOPC Agreements for Core Program and Olympic Training Center

- Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017
- Ted Stevens Olympic and Amateur Sports Act: trademarks the Olympic brand

Town of North Elba Parks & Playground District – 1982 (Town of N. Elba – L.P. School District Agreement 1981)

DEC MOUs

Whiteface, Mt. Van Hoevenberg - 1982;

Gore added – 1984;

Procedural clarifications - 1984;

20-year extension – 1987;

Capital improvements and UMP compliance – 1991;

Belleayre Cooperative Agreement – 2012;

Little Whiteface Cooperative Agreement (installation of public safety radio antennas) - 2013;

Consolidation Agreement for Whiteface, Gore, Mount Van Hoevenberg agreements – 2013;

First Amendment to Consolidation Agreement – 2015

Attribution Contract with FISU for the 2023 World University Games



Powers of the Authority

Public Authorities Law § 2611

7. **To enter into contracts**, leases and subleases and to execute all instruments necessary or convenient **for the conduct of authority business**, including agreements with the park district and any state agency which administers, owns or supervises any olympic facility or Belleayre Mountain ski center, as provided in [sections twenty-six hundred twelve](#) and [twenty-six hundred fourteen](#) of this title, and **including contracts or other agreements to plan, prepare for and host the two thousand twenty-three World University Games to be held in Lake Placid, New York where such contracts or agreements would obligate the authority to defend, indemnify and/or insure third parties in connection with, arising out of, or relating to such games, such authority to be limited by the amount of any lawful appropriation or other funding such as a performance bond surety, or other collateral instrument for that purpose. With respect to the two thousand twenty-three World University Games, the amount of such appropriation shall be no more than sixteen million dollars;**

Powers of the Authority

Public Authorities Law § 2611

1. To sue and be sued;
 - Court of Claims self-insurance on State land – OAG representation
 - Essex County Supreme Court for all else – outside counsel
2. To have a seal and alter the same at pleasure;
3. To acquire, lease, hold and dispose of real and personal property or any interest therein for its corporate purposes;
4. To make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this title. Such rules and regulations must be filed with the secretary of state and the town clerk of North Elba and the town clerks of the towns of Johnsburg, Shandaken and Middletown;

Powers of the Authority

Public Authorities Law § 2611

5. To enter into contracts for employment of such officers and employees as it may require for the performance of its duties, and to fix and determine their qualifications, duties and compensation and to retain or employ such personnel as may be required for its corporate purposes and private consultants on a contract basis or otherwise for rendering professional or technical services and advice;

6. To schedule and book events at participating olympic facilities, and the facilities of Belleayre Mountain ski center and other properties owned or controlled by the authority with public and private individuals, organizations, groups and other entities desiring to use such facilities for conducting events and activities appropriate to the purposes of the authority;

Powers of the Authority

Public Authorities Law § 2611

8. To undertake or cause to be undertaken plans, surveys, analyses and studies necessary, convenient or desirable for the effectuation of the purposes and powers of the authority and to prepare recommendations in regard thereto;
9. To enter into contracts to operate, maintain and manage olympic facilities and the Belleayre Mountain ski center;
10. To fix and collect fees, rents and other charges for the use of olympic facilities and to authorize any other person on its behalf to collect same;

Powers of the Authority

Public Authorities Law § 2611

11. To conduct or contract for the conduct of all necessary or convenient services relevant to the publicizing, advertising, marketing and promoting of participating olympic facilities and events scheduled at such facilities, including, without limitation, the sale of media rights;

Sponsorship agreements; USOPC trademark considerations

12. To operate, or contract for the operation of, concession services at any participating olympic facility or the Belleayre Mountain ski center;

Recent resolution regarding concession services for Mountain Pass Lodge at Mt. Van Hoevenberg

Powers of the Authority

Public Authorities Law § 2611

13. To contract for and to accept any gifts or grants, subsidies, or loans of funds or property or financial or other aid in any form from the federal or state government or any agency or instrumentality thereof, or from any other source, public or private, and to comply, subject to the provisions of this title, with the terms and conditions thereof; provided however, the authority shall not contract for the payment of debt evidenced by bonds or notes or other evidence of indebtedness issued by any public corporation for capital improvements either directly or through public corporation without the prior approval of the public authorities control board;

Powers of the Authority

Public Authorities Law § 2611

14. To develop and construct, or participate in the development and construction of, a facility or facilities, whether or not to be owned by the authority, and to operate, maintain and manage any such facilities, for the training and housing of amateur athletes in connection with the United States olympic training center program and the authority's conduct of national and international sports events;

The Olympic Training Center

15. To procure insurance against any loss or liability in connection with the use, management, maintenance and operation of the participating olympic facilities and/or Belleayre Mountain ski center, in such amounts and from such insurers, subject to public bidding as it deems desirable; and

Recent resolution for insurance contracts

16. To do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted in this title.

§100. Legislative declaration.

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it.

The Open Meetings Law – Public Officers Law Article 7

<https://www.dos.ny.gov/coog/openmeetlaw.html>

The Committee On Open Government staff will provide training for us in the future if the board would benefit from it

Allowable subject matter for executive session (Executive Law § 105 [1]):

- a. matters which will imperil the public safety if disclosed;
- b. any matter which may disclose the identity of a law enforcement agent or informer;
- c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- d. discussions regarding proposed, pending or current litigation;
- e. collective negotiations pursuant to article fourteen of the civil service law;
- f. 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;

105 (f) covers the subject of pending contracts

- g. the preparation, grading or administration of examinations; and
- h. 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.

Allowable subject matter for executive session

§108. Exemptions.

Nothing contained in this article shall be construed as extending the provisions hereof to:

3. any matter made confidential by federal or state law:

COOG advises that this must be a mandatory privilege

e.g., - attorney client privileged communications

- personal privacy matters protected by federal or state law

Additional Motion Considerations

For votes on resolutions:

- Motion
- Second
- Discussion

If as a result of the discussion one or more members want to make an amendment to the resolution, or for any reason the resolution that was provided to the public needs to be changed, this requires a separate vote:

- Motion and Second
- Discussion on the amendment only
- Vote on the amendment only

If passed, go back to the original resolution and vote on the resolution as amended.

(No need to move and second as that has already been done for the original resolution.)

Authorities Budget Office: <https://www.abo.ny.gov/#>

Created 2009 to make public authorities more accountable and transparent

Promotes good governance principles with policy guidance, training, recommended best practices:

- “Board Meetings: Best Practices Guide for Public Authorities”
- Policy guidance: “Appropriate Use of Executive Session”, “Independence of Board Members”, “Understanding Corporate Governance Concepts”
- Model committee charters
- Model code of ethics and conflict of interest policy

Evaluates compliance of authorities with their mission statements and NYS laws

Enforcement, investigation of complaints, reporting

e.g. Whistleblower Policy

(http://www.orda.org/corporate/pdf/policy/whistleblower_policy.pdf)

Service Animal Policy (result of an ADA complaint)

(http://www.orda.org/corporate/pdf/policy/orda_service_animal_policy_2019.pdf)

Public Officers Law § 74:

State Code of Ethics – standards to avoid conflicts of interest

<https://jcope.ny.gov/sites/g/files/oe746/files/documents/2017/09/public-officers-law-74.pdf>

Section 1:

This section of the Public Officers Law applies to any public benefit corporation or public authority at least one of whose members is appointed by the Governor.

Section 2: Rules with respect to conflicts of interest

No officer or employee of a state agency should engage in any business transaction which is in substantial conflict with the proper discharge of his or her duties in the public interest, including giving the impression of being able to be improperly influenced or engaging in conduct that would raise suspicion of violating the public trust.

ABO Model Code of Ethics

- transparency in duties, refrain from outside matters that could impair independence or prevent proper exercise of duties
- do not directly or indirectly make, advise or assist any person to make a financial investment based on information available through board position that could create a conflict of interest
- do not accept gifts that would permit the inference that the gift is intended to influence the board member or is a reward for an official act
- do not use official position to secure unwarranted privileges

ABO Model Code of Ethics

- avoid any appearance that a board member could be improperly influenced or acting in violation of public trust
- no engagement in official transactions with an outside entity in which the board member has a financial interest that could create a conflict of interest
- manage all matters within the scope of the authority's mission
- do not disclose information acquired in the course of the board member's official duties in a manner inconsistent with State law or authority mission
- 2-year bar

THANK YOU

Questions?



**Olympic Regional
Development Authority**

Authorities Budget Office Policy Guidance



No. 10-05

Date Issued: October 26, 2010

Supersedes: New

Subject: Annual Board of Directors Evaluation

Statutory Citation: Public Authorities Law sections 2800(1)(a)(15) and 2800(2)(a)(15) and Section 2824(7)

Provision: The 2009 Public Authorities Reform Act requires that the board of every state and local public authority conduct an annual evaluation of its performance. Board member comments are protected from disclosure under Article 6 of Public Officers Law, but the results of the assessment are to be provided to the ABO.

Authorities Budget Office Policy Guidance: Board members must be committed to the highest standards of corporate governance. The board must hold itself accountable to the mission of the authority and the public interest. This annual assessment is a reminder to each board member of their duties, why those responsibilities are important, and whether they are performing those duties appropriately. The evaluation provides an opportunity for board members to measure their individual and collective effectiveness, determine if they are following their own policies and procedures, identify areas for board improvement, and to compare how their evaluation of the board's performance compares to that of other board members. This annual evaluation can be a learning tool to educate board members and build a well functioning board.

The Authorities Budget Office recommends that each board member annually perform their own evaluation of the whole board. The evaluation should be conducted confidentially with the results compiled by the governance committee. Furthermore, the ABO consulted with the Committee on Open Government, which advised that a board discussion of its performance "would constitute a matter made confidential, by state law that, therefore, could be conducted in private."

To the extent that the results of this evaluation demonstrate the need for the board to improve its performance, amend its practices or procedures, or clarify its expectations of board members, the board is expected to implement suitable corrective actions immediately.

The Authorities Budget Office has developed the following model board evaluation tool that can be adopted by public authorities to meet the needs of their boards of directors. This document should be completed by each board member.

Confidential Evaluation of Board Performance

Criteria	Agree	Somewhat Agree	Somewhat Disagree	Disagree
Board members have a shared understanding of the mission and purpose of the Authority.				
The policies, practices and decisions of the Board are always consistent with this mission.				
Board members comprehend their role and fiduciary responsibilities and hold themselves and each other to these principles.				
The Board has adopted policies, by-laws, and practices for the effective governance, management and operations of the Authority and reviews these annually.				
The Board sets clear and measurable performance goals for the Authority that contribute to accomplishing its mission.				
The decisions made by Board members are arrived at through independent judgment and deliberation, free of political influence, pressure or self-interest.				
Individual Board members communicate effectively with executive staff so as to be well informed on the status of all important issues.				
Board members are knowledgeable about the Authority's programs, financial statements, reporting requirements, and other transactions.				
The Board meets to review and approve all documents and reports prior to public release and is confident that the information being presented is accurate and complete.				
The Board knows the statutory obligations of the Authority and if the Authority is in compliance with state law.				
Board and committee meetings facilitate open, deliberate and thorough discussion, and the active participation of members.				
Board members have sufficient opportunity to research, discuss, question and prepare before decisions are made and votes taken.				
Individual Board members feel empowered to delay votes, defer agenda items, or table actions if they feel additional information or discussion is required.				
The Board exercises appropriate oversight of the CEO and other executive staff, including setting performance expectations and reviewing performance annually.				
The Board has identified the areas of most risk to the Authority and works with management to implement risk mitigation strategies before problems occur.				
Board members demonstrate leadership and vision and work respectfully with each other.				

Date Completed: _____

The member responses to the Board Evaluation questionnaire should be aggregated and the results submitted to the ABO via email (Subject: CONFIDENTIAL Results of Board of Directors Evaluation) within 90 days of the close of the authority's fiscal year. The board evaluation is required annually beginning with fiscal years ending on or after September 30, 2010.

A model summary reporting form has been provided, below, that should be revised to reflect the evaluation tool adopted by your public authority. Enter in each cell the number of board members who answered the question with that response.

Results should be sent to: info@abo.ny.gov

Summary Results of Confidential Evaluation of Board Performance

Criteria	Agree	Somewhat Agree	Somewhat Disagree	Disagree
Board members have a shared understanding of the mission and purpose of the Authority.	#	#	#	#
The policies, practices and decisions of the Board are always consistent with this mission.				
Board members comprehend their role and fiduciary responsibilities and hold themselves and each other to these principles.				
The Board has adopted policies, by-laws, and practices for the effective governance, management and operations of the Authority and reviews these annually.				
The Board sets clear and measurable performance goals for the Authority that contribute to accomplishing its mission.				
The decisions made by Board members are arrived at through independent judgment and deliberation, free of political influence or self-interest.				
Individual Board members communicate effectively with executive staff so as to be well informed on the status of all important issues.				
Board members are knowledgeable about the Authority's programs, financial statements, reporting requirements, and other transactions.				
The Board meets to review and approve all documents and reports prior to public release and is confident that the information being presented is accurate and complete.				
The Board knows the statutory obligations of the Authority and if the Authority is in compliance with state law.				
Board and committee meetings facilitate open, deliberate and thorough discussion, and the active participation of members.				
Board members have sufficient opportunity to research, discuss, question and prepare before decisions are made and votes taken.				
Individual Board members feel empowered to delay votes, defer agenda items, or table actions if they feel additional information or discussion is required.				
The Board exercises appropriate oversight of the CEO and other executive staff, including setting performance expectations and reviewing performance annually.				
The Board has identified the areas of most risk to the Authority and works with management to implement risk mitigation strategies before problems occur.				
Board members demonstrate leadership and vision and work respectfully with each other.				

Name of Authority: _____

Date Completed: _____

Authorities Budget Office Policy Guidance



No. 10-02

Date Issued: March 1, 2010

Supersedes: New

Subject: Public Authority Mission Statements and Measurement Reports

Statutory Citation: Section 2824-a, Public Authorities Law
Section 2800 of Public Authorities Law

Provisions: Chapter 506 of the Laws of 2009 (“The 2009 Public Authorities Reform Act”) added a new Section 2824-a in Public Authorities Law requiring state and local public authorities to develop and adopt a mission statement. The law also requires public authorities to develop performance measures to assist the authority determine how well it is carrying out its mission. Pursuant to this section, each state authority is to provide a copy of its mission statement and performance measures to the Authorities Budget Office, using the attached form, on or before March 31, 2010. Every local authority is to file a mission statement and performance measures with the ABO using the attached form by March 31, 2011.

For subsequent reporting years the mission statement is to be included as part of the Annual Report required to be filed with the ABO pursuant to Section 2800 of Public Authorities Law. Every public authority is also expected to annually review its mission statement and measures and publish a measurement report.

Public authorities are also required to post and maintain their mission statement and performance report on their web site.

Authorities Budget Office Policy Guidance: The mission statement is the prism through which a public authority’s actions are evaluated and its policy decisions are judged. Given its importance in defining how the public authority will operate, the board, in conjunction with the executive management of the authority, should exercise due diligence when developing and reviewing the authority’s mission statement, and the goals and measures that will be used to evaluate whether the authority is fulfilling its mission. Boards of directors should take time to thoroughly discuss, re-think, and reach agreement on the actual mission of their authority and to draft a mission statement that reflects this agreement. Only after undertaking this process and adopting a new mission statement should the authority submit its mission statement to the ABO and post it to their web site.

As a matter of law, public policy, and sound management, it is imperative that directors define and understand the purpose of the authority and the public interests it serves, and reflect these concepts in a mission statement. A board

member cannot properly execute their fiduciary duty without first understanding the mission and interests served by the authority.

A mission statement should capture in a few clear and concise sentences the purpose of the public authority, its goals and its reason for existence. The mission statement should address the intent and purpose for which the public authority was created. It should express the philosophy and guiding principles of the public authority, and provide staff and the public with an understanding of the values and culture of the organization. It should describe generally the services the public authority provides, the community it serves, and the reasonable expectations of its stakeholders. The mission statement should also be specific enough to be able to assess the organization's performance and to measure its success in achieving its intended public purpose.

When drafting an appropriate mission statement and evaluating its effectiveness, it may be helpful to answer the following questions:

- What is the public purpose for which the authority was created?
- How can we best achieve that purpose?
- How do we assess whether an action or decision before the board is consistent with this mission and the public interest?
- Who are the authority's stakeholders?
- What are the authority's goals?
- What are the values of the authority?

Once a public authority defines its mission and the interests and expectations of the community it serves, policies must be implemented to achieve those objectives. Performance measures are a means for the board and management to evaluate and monitor whether the authority's policies and operating practices are in accordance with its mission. Performance measures need not be complex or detailed. Performance measures will also vary depending on the purpose, size, and resources of the authority. They should be designed to answer some fundamental questions:

- How do we know if we are performing our mission?
- How do we know if we are performing that mission well?
- How can we be more effective and efficient?
- How do we know if we are meeting the interests of those we serve?

An authority's board must annually review the authority's mission statement and performance results to ensure that its mission has not changed and that the authority's performance goals continue to support its mission. Authorities are to annually report their performance results and revise their goals as necessary.

Implementation of Statutory Requirements: Authorities should complete the attached form and submit the entire document to the ABO via e-mail (info@abo.state.ny.us).

Authority Mission Statement and Performance Measurements

Name of Public Authority:

Public Authority's Mission Statement:

Date Adopted:

List of Performance Goals (If additional space is needed, please attach):

-

Additional questions:

1. Have the board members acknowledged that they have read and understood the mission of the public authority?
2. Who has the power to appoint the management of the public authority?
3. If the Board appoints management, do you have a policy you follow when appointing the management of the public authority?

4. Briefly describe the role of the Board and the role of management in the implementation of the mission.

5. Has the Board acknowledged that they have read and understood the responses to each of these questions?