

MEMORANDUM

TO: GTC Planning Committee Members & Alternates
FROM: James Stack, Executive Director JS
DATE: May 5, 2022
SUBJECT: Recommendation to the GTC Board concerning amending the GTC By-Laws / Proposed Council Resolution 22-18

The GTC By-Laws currently require the GTC Board to follow New York State Open Meetings Law. During the COVID emergency, GTC demonstrated an ability to conduct business in an open manner utilizing technology that doesn't require meeting participants and observers to be physically present in the same room. This was permitted under emergency orders from Governors Cuomo and Hochul waiving certain requirements. With the COVID emergency easing, those waivers are less likely to be extended and GTC will be required to once again adhere to stricter Open Meetings Law requirements.

Since GTC started conducting remote meetings in May 2020, staff have noted an increase in the level of observation of GTC Board and Planning Committee meetings by members of the public. We believe this is due to deliberate decisions to reduce the barriers to participation such as toll-free telephone access and livestreaming the meeting for viewing on smartphones, computers, or tablets along with various options to interact with the Board or Planning Committee during the meeting. The meetings have also been recorded and archived for viewing on demand.

The New York State Committee on Open Government has issued an opinion that Metropolitan Planning Organizations like GTC are established pursuant to federal requirements and, therefore, are not subject to the Open Meetings Law (see attached). Other MPOs across the state are grappling with this same issue. Following the Open Meetings Law was a decision of past members of the GTC Board and reflects a desire for meaningful opportunity for transparency.

GTC staff would like to explore alternatives to the requirement to adhere to Open Meetings Law while still meeting the spirit of the Law. I think it is important that the GTC Board continue to meet in person in locations that are accessible to all and served by public transit. By offering remote access, meeting participants can reduce travel time and scheduling conflicts. However, it is important that the public have comparable remote access. Offering the public remote access reduces their burdens of travel, childcare, scheduling, etc.

The simplest approach would be to strike the requirement from the By-Laws and use the Public Engagement Plan to set the parameters for conducting meetings in an open manner.

Accordingly, staff is proposing to change Article VII, Section 1 of the By-Laws as follows:

Existing: Meetings of the Council shall be held in accordance with the New York State Open Meetings Law, as amended.

Proposed: Meetings of the Council shall be open to the public and conducted in the spirit of the New York State Open Meetings Law, as amended. Specific requirements are identified in the current version of the GTC Public Engagement Plan.

The following items are provided for your consideration:

1. **Resolution 22-18** (Amending the *GTC By-Laws*)
2. **Advisory Opinion** – NYS Committee on Open Government

Recommended Action:

Recommend action by the GTC Board on approving proposed Council Resolution 22-18 amending the GTC By-Laws.

GENESEE TRANSPORTATION COUNCIL

RESOLUTION

Resolution 22-18 Amending the *By-Laws of the Genesee Transportation Council*

WHEREAS,

1. The Genesee Transportation Council (GTC) has been designated by the Governor of New York State as the Metropolitan Planning Organization (MPO) responsible for transportation planning for the nine-county Genesee-Finger Lakes Region, including the Rochester Metropolitan Planning Area (MPA);
2. The *By-Laws of the Genesee Transportation Council* define the designation, structure, and operation of the MPO;
3. The New York State Committee on Open Government has issued an opinion that Metropolitan Planning Organizations like GTC are established pursuant to federal requirements and, therefore, are not subject to the Open Meetings Law;
4. GTC wishes to allow for meetings that expand opportunities for public information and involvement;
5. The following significant change to the *By-Laws* are proposed:

ARTICLE VII – RULES OF ORDER AND BY-LAW CHANGES

Section 1. Rules of Order. ...Meetings of the Council shall be held in accordance with the ~~New York State Open Meetings Law, as amended~~ open to the public and conducted in the spirit of the New York State Open Meetings Law, as amended. Specific requirements are identified in the current version of the GTC Public Engagement Plan;

NOW, THEREFORE, BE IT RESOLVED

1. That the GTC By-Laws are hereby modified, as noted above, and supersede the current *By-Laws of The Genesee Transportation Council*, dated December 10, 2020;
2. That this resolution takes effect immediately.

CERTIFICATION

The undersigned duly qualified Secretary of the Genesee Transportation Council certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Genesee Transportation Council held on June 30, 2022.

Date _____

CHRISTOPHER REEVE, Secretary
Genesee Transportation Council

COMMITTEE ON OPEN GOVERNMENT

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

COMMITTEE MEMBERS

ROANN M. DESTITO
PETER D. GRIMM
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STEPHEN B. WATERS

CHAIRPERSON

FRANKLIN H. STONE

EXECUTIVE DIRECTOR

SHOSHANAH BEWLAY

By Electronic Mail Only

July 19, 2021

karimeh.shamieh@gmail.com

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence, except as otherwise indicated.

Dear Rima Shamieh:

I am writing in response to your request for an advisory opinion regarding the application of the New York State Open Meetings Law (OML) to a Metropolitan Planning Organization (MPO), an entity established pursuant to federal law. Specifically, you ask whether an MPO, which is the policy board of an organization created and designated to carry out the metropolitan transportation planning process pursuant to § 134(d) of Title 23 of the United States Code ("Metropolitan transportation planning"), must conduct its meetings pursuant to the requirements of the OML.

The OML governs meetings of "public bodies" and defines the that term 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.

OML § 102(2) (emphasis added). As noted above, an MPO is an entity created pursuant to and deriving its authority from the requirements of federal, not state, law. In recognition of the statutory definition of public body in the OML, the New York State Court of Appeals, in *ASPCA v. Board of Trustees of the State University of New York*, 79 N.Y.2d 927, 929 (1992), held with respect to another federally-created body called a Laboratory Animals Use Committee (LAUC) that "the Open Meetings Law excludes Federal bodies from its ambit. The LAUC's constituency, powers and functions derive solely from Federal law and regulations. Thus, even if [the LAUC] could be characterized as a governmental entity, it is at most a Federal body that is not covered under the Open Meetings Law."

Similar to the LAUC discussed in *ASPCA v. Board of Trustees*, MPOs are given effect by an instrumentality of government in New York and MPO members are selected by New York government officials. However, the existence both the LAUC and MPOs "derive[s] solely from Federal law and regulations." Although New York State Transportation Law § 15-a addresses the *functions* of MPOs, in a 1999 opinion issued by the New York State Ethics Commission (a precursor to the Joint Commission on Public Ethics), the Commission noted in relevant part that "Transportation Law § 15-a, enacted in 1975, *recognized* MPOs as the 'organization designated as such by the governor for the purpose of *complying*

with federal statutes. Transportation Law § 15-a *did not provide the statutory authority for the creation of MPOs but recognized their existence as continuing.* NYS Ethics Commission, Advisory Opinion No. 99-9 (May 7, 1999) (emphasis added).

For these reasons, it appears to us that MPOs would not constitute “public bodies” required to comply with the OML. For previously prepared advisory opinions regarding similar entities created pursuant to federal statutory or regulatory authority, see [OML AO 2603](#), [OML AO 2943](#), and [OML AO 3341](#).

I hope this information proves useful.

Sincerely,

/s/ Kristin O'Neill

Kristin O'Neill
Assistant Director