

Buffalo Urban Development Corporation

95 Perry Street
Suite 404
Buffalo, New York 14203

phone: 716-856-6525

fax: 716-856-6754

web: buffalourbandevelopment.com



Governance Committee Meeting Wednesday January 11, 2023 95 Perry Street, 4th Floor - Vista Room 12:00 pm

Agenda

1. Approval of Minutes of June 23, 2022 Meeting *(Action) (Enclosure)*
2. Draft BUDC Videoconferencing Procedures *(Discussion)(Enclosure)*
3. Draft BUDC Litigation Policy *(Discussion)(Enclosure)*
4. BUDC New Board Member Orientation *(Information)*
5. PAAA Training Update *(Informational)*
6. Adjournment *(Action)*

**Minutes of the Governance Committee Meeting
of
Buffalo Urban Development Corporation**

Via Video Conference Call & Live Stream Audio

**June 23, 2022
2:00 p.m.**

Call to Order:

Committee Members Present:

Dennis W. Elsenbeck
Thomas Halligan
Thomas A. Kucharski (Committee Chair)
Brendan R. Mehaffy
Dennis M. Penman

Committee Members Absent:

Hon. Byron W. Brown

Officers Present:

Brandye Merriweather, President
Rebecca Gandour, Executive Vice President
Mollie M. Profic, Treasurer
Kevin J. Zanner, Secretary
Atiqah Abidi, Assistant Treasurer

Others Present: Alexis M. Florczak, Hurwitz & Fine, P.C.; Ellen Grant, Deputy Mayor, City of Buffalo; Soma Hawramee, ECIDA Compliance Officer; and Laurie Hendrix, ECIDA Administrative Coordinator.

Roll Call: Mr. Kucharski called the meeting to order at 2:00 p.m. A quorum of the Committee was present. Agenda items 3.0, 4.0 and 5.0 were presented first. Mr. Elsenbeck joined the meeting during the presentation of Item 1.0. Mr. Mehaffy left the meeting during the presentation of item 2.0.

The meeting was held via Zoom in accordance with the provisions of Article 7 of the Public Officers Law, as amended effective January 14, 2022, which authorizes public bodies to conduct meetings and take such action authorized by law without permitting in public in-person access to meetings and to authorize such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

- 1.0 Approval of Minutes of the March 8, 2022 Meeting** – The minutes of the March 8, 2022 meeting of the Governance Committee were presented. Mr. Penman made a motion to approve the minutes. The motion was seconded by Mr. Mehaffy and unanimously carried.
- 2.0 BUDC Grant Administration Policy – Discussion Draft** – Ms. Merriweather presented the draft grant administration policy, a copy of which was included in the meeting packet. The draft policy is intended to establish formal procedures relating to pre-application assessment, thresholds, matching requirements, reporting, and the acceptance of donations. The Committee discussed the draft policy and obtained clarification from BUDC staff regarding the proposed

thresholds. Mr. Kucharski indicated that the Committee would undertake a further review of the policy in advance of the next Committee meeting.

3.0 Re-appointment and Appointment of BUDC Citizen Board Members (2022-2025) –

Ms. Merriweather presented Mayor Brown’s June 23, 2022 memorandum to the Committee regarding his re-appointment of Dennis Penman as a citizen member and director of BUDC. The memorandum also proposes the re-appointment of David Nasca and appointment of Elizabeth Holden as citizen members and directors of BUDC. Mr. Mehaffy made a motion to recommend that the Board of Directors: (i) approve the re-appointment of David Nasca as a citizen member and director of BUDC for a term of three (3) years and until his successor is duly elected, and (ii) approve the appointment of Elizabeth Holden as a citizen member and director of BUDC for a term of three (3) years and until her successor is duly elected. The motion was seconded by Mr. Penman and unanimously carried.

4.0 Appointment of Officers (2022-2023) – Ms. Merriweather presented the proposed slate of officers for 2022-2023 as follows:

Chair:	Hon. Byron W. Brown
Vice Chair:	Dennis M. Penman
President:	Brandye Merriweather
Executive Vice President:	Rebecca Gandour
Treasurer:	Mollie M. Profic
Secretary:	Kevin J. Zanner, Esq.
Assistant Treasurer:	Atiqa Abidi

Mr. Mehaffy made a motion to recommend that the Board of Directors approve the proposed slate of officers. The motion was seconded by Mr. Halligan and unanimously carried.

5.0 Appointment of Committee Members (2022-2023) – Ms. Merriweather presented the proposed slate of appointees to the Downtown, Audit & Finance, Governance, Real Estate and Loan Committees. Mr. Mehaffy made a motion to recommend that the Board of Directors approve the committee appointments as presented. The motion was seconded by Mr. Penman and unanimously carried.

6.0 PAAA Training Update – Ms. Profic introduced Soma Hawramee as ECIDA’s new compliance portfolio manager. She then reported on upcoming training opportunities for new Board members requiring new training and Board members eligible for refresher training.

7.0 Adjournment – There being no further business to come before the Governance Committee, upon motion made by Mr. Penman, seconded by Mr. Halligan and unanimously carried, the June 23, 2022 meeting of the Governance Committee was adjourned at 2:23 p.m.

Respectfully submitted,

Kevin J. Zanner, Secretary

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Item 2

MEMORANDUM

TO: BUDC Governance Committee

FROM: Brandye Merriweather, President

SUBJECT: Draft BUDC Videoconferencing Procedures

DATE: January 11, 2023

At the October 25, 2022 meeting of the BUDC Board of Directors, counsel provided an overview of recent amendments to the Open Meetings Law, which permit under “extraordinary circumstances” virtual attendance at Board and Committee meetings. Following that presentation, BUDC staff was asked to refer the matter to the Governance Committee for further consideration.

As background, the Open Meetings Law was amended in April 2022 to authorize attendance of Board and Committee members via use of videoconferencing under extraordinary circumstances. In order to authorize the use of videoconferencing at meetings, a public entity is required to hold a public hearing regarding its proposed use of videoconferencing, followed by a vote of its governing body to adopt a resolution. Written procedures regarding the use of videoconferencing must also be adopted.

It is important to note that these new provisions of the Open Meetings Law do not permit fully remote meetings. Rather, only members of a Board or Committee who are physically present at a meeting location open to the public may count towards a quorum. A member who is participating in a meeting through the use of videoconferencing may only participate and vote during the meeting if there is an in-person quorum at the physical meeting location. For example, meetings of the BUDC Board of Directors will still require that 10 Board members be present at the physical meeting location in order to achieve a quorum. It is also anticipated that administrative challenges would result if such videoconferencing procedures were implemented. For example, in-person versus virtual attendance at each Board and Committee meeting would have to be tracked to ensure that proper notice of the meeting is issued.

Enclosed is a proposed resolution and written procedures governing the use of videoconferencing. Staff is seeking input from the Committee with respect to the proposed resolution and procedures.

**RESOLUTION OF THE
BUFFALO URBAN DEVELOPMENT CORPORATION
BOARD OF DIRECTORS**

**Video Conferencing under Extraordinary Circumstances
Pursuant to the Open Meetings Law, as amended**

WHEREAS, by passing Chapter 56 of the Laws of 2022 (“Chapter 56”), the New York State Legislature amended Section 103 of the Open Meetings Law; and

WHEREAS, Chapter 56 adds Section 103-a of the Open Meetings Law (“OML”), permitting public entities such as the Buffalo Urban Development Corporation (“BUDC”) to authorize its Board of Directors and Committees to attend meetings by videoconferencing under extraordinary circumstances; and

WHEREAS, OML Section 103-a(2)(a) requires BUDC to adopt a resolution following a public hearing authorizing the limited use of videoconferencing under such circumstances; and

WHEREAS, OML Section 103-a(2) allows for hybrid meetings by requiring “that a minimum number of members are present to fulfill the public body’s quorum requirement in the same physical location or locations where the public can attend”; and

WHEREAS, OML Section 103-a (2)(c) requires that members be physically present at any such meeting “unless such member is unable to be physically present at any such meeting location due to extraordinary circumstances”, as set forth in this resolution and the written procedures attached hereto as Exhibit A, including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting; and

WHEREAS, in accordance with OML Section 103-a(2)(d), any members attending by videoconference must, except during executive session, be “heard, seen and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon”; and

WHEREAS, OML Section 103-a(2)(g) requires that any meeting where a member attends by videoconference be recorded, posted to BUDC’s webpage within five business days, and transcribed upon request; and

WHEREAS, OML Section 103-a(2)(h) requires that members of the public be permitted to attend and participate, if authorized, in any meeting by videoconference when a member attends by videoconference.

NOW THEREFORE BE IT RESOLVED, that the BUDC Board of Directors, for itself and its committees hereby authorizes its Directors and committee members who experience an extraordinary circumstance, as defined in OML Section 103-a(2)(c) and further defined by any rules or written procedures later adopted, to attend Board and Committee meetings by videoconference: (i) as long as a quorum of the members attend in-person at one or more locations open to the public; (ii) as long as the member can be seen, heard, and identified while the open portion of the meeting is being conducted; and (iii) as otherwise permitted under Chapter 56 of the Laws of 2022; and be it further

RESOLVED, that BUDC adopt the written procedures attached hereto further governing its use of videoconferencing in compliance with Chapter 56 of the Laws of 2022.

Exhibit A

BUDC Procedures for Videoconferencing Participation

See attached.

Buffalo Urban Development Corporation
Procedures for Videoconferencing Participation
Pursuant to Open Meetings Law § 103-a

In compliance with Open Meetings Law (“OML”) § 103-a(2)(a), the Buffalo Urban Development Corporation (“BUDC”) following a public hearing, has authorized by resolution on _____, 2022 the use of videoconferencing as described in OML § 103-a.

The following procedures are hereby established to satisfy the requirement of OML § 103-a(2)(b) that any public body which in its discretion wishes to permit its members to participate in Board and Committee meetings by videoconferencing from private locations – under extraordinary circumstances – must establish written procedures governing member and public attendance.

1. BUDC’s Board and Committee members (hereinafter “members”) shall be physically present at any meeting of BUDC unless such member is unable to be physically present at one of the designated public meeting locations due to extraordinary circumstances.

2. For purposes of these procedures, the term “extraordinary circumstances” includes disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event that precludes the member’s physical attendance at such meeting.

3. If a member is unable to be physically present at one of the designated public meeting locations and wishes to participate by videoconferencing from a private location due to extraordinary circumstances, the member must notify BUDC’s [who is BUDC’s contact?] no later than five (5) business days prior to the scheduled meeting for proper notice to be given to the public. If extraordinary circumstances present themselves on an emergent basis within five (5) business days of a meeting, BUDC shall update its notice as soon as practicable to include that information. If it is not practicable for BUDC to update its notice, BUDC may either reschedule its meeting or proceed with an in-person meeting without the use of videoconferencing. Note: Five (5) business days is not a statutory requirement.

4. If there is a quorum of members participating at a physical location(s) open to the public, BUDC may properly convene a meeting. A member who is participating from a remote location that is not open to in-person physical attendance by the public *shall not* count toward a quorum of BUDC but may participate and vote if there is a quorum of members at a physical location(s) open to the public.

5. Except in the case of executive sessions conducted pursuant to OML § 105, BUDC shall ensure that its members can be heard, seen, and identified while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon.

6. The minutes of the meetings involving videoconferencing based on extraordinary circumstances pursuant to OML § 103-a shall include which, if any, members participated by videoconferencing from a private location due to such extraordinary circumstances and shall be available to the public pursuant to OML § 106.

7. The public notice for the meeting shall inform the public: (i) that extraordinary circumstances videoconferencing will (or may) be used, (ii) where the public can view and/or participate in such meeting,

(iii) where required documents and records will be posted or available, and (iv) the physical location(s) for the meeting where the public can attend.

8. BUDC shall provide that each open portion of any meeting conducted using extraordinary circumstances videoconferencing shall be recorded and such recordings posted or linked on BUDC's website within five (5) business days following the meeting and shall remain so available for a minimum of five (5) years thereafter. Such recordings shall be transcribed upon request.

9. If members of BUDC are authorized to participate by videoconferencing from a private location due to extraordinary circumstances, BUDC shall provide the opportunity for members of the public to view such meeting by video, and to participate in proceedings by videoconference in real time where public comment or participation is authorized. BUDC shall ensure that where extraordinary circumstances videoconferencing is used, it authorizes the same public participation or testimony as in person participation or testimony.

10. Open meetings of BUDC conducted using extraordinary circumstances videoconferencing pursuant to the provisions of OML § 103-a shall utilize technology to permit access by members of the public with disabilities consistent with the 1990 Americans with Disabilities Act (ADA), as amended, and corresponding guidelines. For the purposes of this guideline, "disability" shall have the meaning defined in Executive Law § 292.

11. The in-person participation requirements of OML § 103-a(2)(c) shall not apply during a state disaster emergency declared by the governor pursuant to Executive Law § 28 or proclaimed pursuant to § 24 of the Executive Law if BUDC determines that the circumstances necessitating the emergency declaration would affect or impair the ability of BUDC to hold an in-person meeting.

12. These procedures shall be conspicuously posted on BUDC's website.

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Item 3

MEMORANDUM

TO: BUDC Governance Committee

FROM: Brandye Merriweather, President

SUBJECT: Draft BUDC Litigation Policy

DATE: January 11, 2023

During 2022 there were several discussions regarding whether BUDC should conduct business with companies that have brought legal claims against BUDC or any of its affiliates or subsidiaries, or against whom BUDC has brought claims. BUDC staff has asked legal counsel whether BUDC could adopt a such a policy. BUDC counsel has indicated that BUDC is permitted to adopt a policy pursuant to which BUDC may decline to do business with individuals or companies that are in active litigation against BUDC. BUDC counsel has further indicated that, in order to implement such a policy, amendments to several policies, including the the Procurement Policy, Property Disposition Guidelines, and Northland Leasing Policy would be required.

If such a policy were to be adopted, the following language could be added to each of the above policies and guidelines:

Buffalo Urban Development Corporation and its subsidiary and affiliated organizations (collectively, "BUDC") reserves the right to refrain from contracting with an individual or company that is involved in active claims in court and administrative proceedings against BUDC, or against whom BUDC has brought claims. BUDC will undertake reasonable efforts prior to entering into a business transaction to determine whether a particular company or individual is involved in such active claims in court or administrative proceedings against BUDC, including but not limited to seeking an affirmative statement or acknowledgment that no such claims exist from the primary contractor or vendor.

This item is being presented to the Governance Committee for input and further discussion.