



**State of New York
Department of State
Committee on Open Government**

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By Electronic Mail Only

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

Dear:

Thank you for contacting the Committee on Open Government with your inquiries regarding the relationship between “quorum” as that term defined in the General Construction Law and the New York City Charter as it applies to the number of members of a Community Board necessary in order to take an action. Upon an examination of New York City Charter § 2801, our library of advisory opinions, and available legal databases, I learned that, as far as I can determine, the Committee has never addressed the question of the relationship between these two laws. I will do so in this opinion.

By way of background, General Construction Law § 41 provides that “not less than a majority of the whole number” of a public body may perform and exercise the powers granted to that body. The statute then goes on to state that “the words ‘whole number’ shall be construed to mean the total number which the board, commission, body or other group of persons or officers would have were there no vacancies and were none of the persons or officers disqualified from acting.” This is the rule that generally applies to public bodies subject to the Open Meetings Law.

However, § 2801(b) of the City Charter provides that

Whenever any act is authorized to be done or any determination or decision made by any community board, the act, determination or decision of the majority of the members present entitled to vote during the presence of a quorum, shall be held to be the act, determination or decision of such board.

In general, a local law such as this provision of the City Charter does not preempt the requirements of state law. However, there are some exceptions to that rule; in this instance, § 110 of the General Construction Law provides that “[t]his chapter is applicable to every statute unless its general object, or the context of the language construed, or other provisions of law indicate that a different meaning or application was intended from that required to be given by this chapter.” While City Charter § 2801(b) does not define “quorum” in a different way than does the General Construction Law, it is a “provision of law” that “indicate[s] that a different meaning or application was intended.” Attached to this advisory opinion is a 2005 decision from the Appellate Division, Second Department, which supports the position that New York City Community Boards are permitted “to act by a majority of the members present” as opposed to a majority of the entire Board. *See Alabi v. Community Board No. 2 of Brooklyn*, 17 A.D.3d 459, 460 (2d Dep’t 2005).

December 1, 2023

Page 2 of 2

Given the language of General Construction Law, the New York City Charter, and the above referenced judicial precedent, it is our opinion that a community board is permitted to take action based on the approval of a majority of members present at a meeting held in compliance with the Open Meetings Law, as long as a quorum (as defined by General Construction Law § 41) is present at such meeting.

We appreciate you taking the time to discuss your questions with us and bringing to our attention a provision of the New York City Charter that will affect the guidance we provide to the public.

Sincerely,

Kristin O'Neill
Assistant Director