

**STATE OF NEW YORK
SUPREME COURT: KINGS COUNTY**

In the Matter of the Application of

JOHN LEYVA, DAVID LUTZ,
and BRUCE MAZER,

Petitioners,

-against-

NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION,

Respondent.

Index No. 537131/2025

**REPLY MEMO OF LAW
FOR JUDGMENT PURSUANT
TO ARTICLE 78 OF THE CIVIL
PRACTICE LAW AND RULES**

PRELIMINARY STATEMENT

This case does not ask the Court to evaluate the merits of the Brooklyn Marine Terminal (“BMT”) Vision Plan. Nor does it concern a minor procedural misstep or technical oversight. It concerns compliance with a clear and longstanding statutory mandate designed to protect a core democratic principle: that when public bodies deliberate and decide matters of public consequence, those decisions must be made openly and in view of the public. This fundamental principle of democratic transparency is especially critical at a time when public confidence in government decision-making depends on openness and accountability. The Open Meetings Law (“OML”) embodies the Legislature’s clear direction that public business be conducted in public.

Respondent’s opposition rests on a flawed premise: that external engagement can substitute for compliance with a statute that guarantees the public the right to observe the deliberations and decisions of public bodies. That position is inconsistent with the text, purpose, and case law interpreting the OML. Accepting it would defy the statutory language, caselaw, and importantly, permit future agencies to comply with the law in form while evading it in substance.

Petitioners acknowledge that the New York City Economic Development Corporation (“EDC”) conducted public *outreach* during the planning process, including workshops and other community engagement. Those efforts are not disputed. What Respondent does not, and cannot, cure, however, is the fact that the BMT Task Force deliberated and voted to approve the Vision Plan in a closed meeting, without public notice, access, or the ability for the public to observe the decision-making body itself. That action violated the OML.

POINT I

THE TASK FORCE WAS A PUBLIC BODY SUBJECT TO THE OML

Respondent does not dispute that the BMT Task Force was convened by EDC to review, deliberate upon, and approve a Vision Plan governing the redevelopment of more than 100 acres of publicly owned waterfront land. The Task Force operated pursuant to quorum requirements, voting thresholds, and a defined approval process. Most critically, Respondent concedes that Task Force approval of the Vision Plan was a necessary step before the project could proceed. Those features place the Task Force squarely within the definition of a “public body” under the OML. See Public Officers Law § 102(2).

The statute turns not on labels, but on function. A body that collectively deliberates and votes on matters of public business exercises governmental authority, even if its determinations are later implemented or ratified by others. The fact that the Vision Plan may be subject to later approvals does not render the Task Force advisory: many public bodies make determinations that guide, constrain, or authorize subsequent governmental action. What matters is that the Task Force’s approval carried real legal and practical consequences and marked the culmination of the planning process it was created to conduct.

POINT II

ENGAGEMENT DOES NOT CURE A CLOSED MEETING OR SECRET VOTE

Respondent devotes substantial portions of its opposition to describing the public outreach it conducted. Petitioners do not dispute that public workshops, surveys, site tours, and advisory meetings occurred. Those facts, however, do not resolve the legal violation.

The OML does not guarantee public outreach or participation in a generalized sense. It guarantees public *access* to the meetings of public bodies when they deliberate and decide. See Public Officers Law § 100. The statute exists precisely because external outreach, however robust, is not a substitute for transparency at the decision-making table.

Courts cannot cure an OML violation by weighing how well an agency otherwise performed its outreach. Doing so would transform a mandatory transparency statute into a discretionary balancing test and invite precisely the type of after-the-fact justification Respondent advances here.

Even accepting Respondent's characterization of its outreach efforts, those efforts concluded well before the final version of the Vision Plan was approved. Respondent's own papers reflect that its last public-facing workshops and presentations occurred in June 2025, months before the Task Force's closed-door vote on September 22, 2025. On Respondent's account, the public was therefore not able to observe the Task Force's deliberations or vote on the operative version ultimately approved. As a result, even the outreach failed to inform the public the version of the plan was being reviewed.

No case cited by Respondent endorses the proposition that outreach or engagement excuses a closed deliberation and vote. To the contrary, the case law consistently emphasizes that the OML protects the public's right to observe decision-making bodies themselves.

POINT III

ANNULMENT IS THE NECESSARY AND PROPORTIONATE REMEDY

Respondent characterizes annulment as an extreme remedy. In the context of this case, it is not. Petitioners do not ask the Court to halt the continued planning, technical studies, interagency coordination, funding planning, and any other such efforts. Respondent's own answer and exhibits reflect that the project is multi-phase and will unfold over many years, with numerous approvals and processes still ahead.

Yet it is true that there is no way to retroactively open a meeting that should have been open. That is the circumstance created by Respondent's chosen process. Once the public has been excluded, the statutory violation cannot be cured through after-the-fact disclosures or subsequent engagement. That is because the OML protects the public's right to observe deliberation as it occurs, not merely to receive a final document after the fact. And in a public redevelopment decision of this scale, the deliberations themselves are the substance of democratic accountability, involving negotiation and compromise over substantial public assets, contracts, and expenditures. When those discussions occur behind closed doors, the public is left only with a final document, without any ability to observe how competing priorities were weighed or how the outcome was shaped.

Respondent's opposition seeks to recast the violation here as a minor or technical misstep. That characterization is difficult to reconcile with the circumstances presented. The Task Force was convened by an entity whose central mission is the planning and advancement of large-scale public development projects, which routinely operates within statutory transparency frameworks and is represented by experienced legal counsel. In that context, the decision to conduct deliberations and a final vote in private underscores why meaningful relief is required.

Respondent's own subsequent actions confirm that compliance with the OML is neither novel nor impracticable. After approving the Vision Plan, Respondent dissolved the Task Force and quickly formed the BMT Development Corporation, whose governing documents expressly require that its meetings be conducted in accordance with the OML. See Respondent's Exs. 8, 9. That sequencing exposes a fundamental inconsistency in Respondent's approach: the public body that developed and approved the Vision Plan itself — the document that establishes the governing framework, land-use assumptions, and development parameters that shape all subsequent approvals and implementation — did so through closed deliberations and a private vote, while the successor entity tasked with implementing that plan is required to operate openly. That contrast underscores that open deliberation is both feasible and expected in public development projects of this nature, and reinforces why approval of the Vision Plan through a closed process cannot be excused as a harmless or technical deviation from statutory requirements.

Respondent cites cases emphasizing judicial discretion in fashioning remedies under the OML. None supports excusing a closed deliberation and vote on a major public land-use plan. Where the violation goes to the heart of the statute by excluding the public from observing the decision-making body itself, annulment is not excessive but necessary to restore transparency and public trust.

In a case such as this, annulment is not punitive but remedial. It is the relief the Legislature expressly authorized where a public body deliberated and approved a sweeping plan for public land in a closed meeting. The statute reflects a judgment that public confidence in governmental decision-making depends on the ability to observe deliberation and action as they occur, particularly at moments of final approval. Absent annulment, the OML would offer no

meaningful remedy for violations at the point of decision, and public bodies would be free to exclude the public from the most consequential stages of policymaking without consequence.

POINT IV

THE PETITION IS TIMELY

Respondent's statute of limitations argument mischaracterizes the nature of Petitioners' claim. Petitioners do not challenge each Task Force meeting that occurred during the planning process. They challenge a single, discrete action: the Task Force's closed-door deliberation and vote on September 22, 2025 approving the Vision Plan.

Under settled Article 78 law, the limitations period runs from the date a determination becomes final and binding. Prior to September 22, 2025, no final determination existed. The Vision Plan had not been approved, and there was therefore no action to annul.

The September 22 vote was the operative act that gave rise to Petitioners' injury. This proceeding was commenced within four months of that vote and is timely.

Respondent's reliance on statute of limitations cases is misplaced. Petitioners challenge the closed meeting and vote approving the Vision Plan, not earlier, non-final discussions, which are relevant only as context. Accepting Respondent's theory would allow public bodies to insulate final actions taken in secret by pointing to prior, non-final proceedings. That result is inconsistent with Article 78 jurisprudence and would undermine the OML's core purpose.

POINT V

THE NYS COMMITTEE ON OPEN GOVERNMENT OPINION CONFIRMS THE STATUTE'S APPLICATION

Respondent attempts to minimize the significance of the June 10, 2025 response from the NYS Committee on Open Government. Petitioners do not contend, and have never contended, that the Committee's opinion is binding on this Court. Rather, it is relevant because it reflects

how the State entity charged with administering and interpreting the OML assessed the Task Force's role based on the undisputed facts presented.

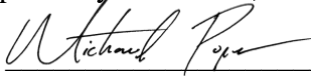
CONCLUSION

Respondent urges the Court to excuse its violation based on extensive outreach while simultaneously warning that annulment would be too disruptive given the scale of the Vision Plan. That position turns the OML on its head. The statute exists to ensure transparency precisely when public decisions are consequential. Where a sophisticated public development entity convened a formal task force that included multiple elected officials to approve a sweeping plan for public land through closed deliberations and a private vote, the scale of the decision does not justify the violation. It underscores why compliance mattered.

For the foregoing reasons, the Court should grant the Petition, annul the September 22, 2025 approval of the BMT Vision Plan, and direct that meetings for the future Vision Plan occur in compliance with the OML.

Dated: February 8, 2026

Respectfully Submitted,

By:  _____

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