

VERMONT OPEN MEETING LAW

1 V.S.A. §§ 310 et seq.



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2014

The **Vermont League of Cities and Towns** (VLCT) was founded in 1967 as a nonprofit, nonpartisan organization dedicated to serving and strengthening Vermont local government. Today, VLCT supports its member municipalities by offering them a comprehensive insurance program, representation before the state and federal governments, and an extensive educational and technical assistance program.



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A publication of the VLCT Municipal Assistance Center

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This handbook is an on-line publication of the Vermont League of Cities and Towns Municipal Assistance Center.

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This document was created by VLCT to assist municipal bodies subject to Vermont's Open Meeting Law. This document is not meant to take the place of legal advice from the municipality's attorney.

I. VERMONT OPEN MEETING LAW

1 V.S.A. §§ 310-314

Vermont's Open Meeting Law provides that "[a]ll meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title [on executive sessions]." 1 V.S.A. § 312(a)(1). The intent of the law is to create transparency in government by requiring advance public notice and an opportunity for public participation in governmental decisions. **The law generally applies whenever a majority of the members of a municipal board, council, commission, committee, or subcommittee have a conversation or make a decision about municipal business.**

REQUIREMENTS:

- Public announcement of meetings. 1 V.S.A. §§ 312(c), 310(4)
- Preparation and posting of agendas for every regular and special meeting. 1 V.S.A. § 312(d)
- Conducting the business of the municipality in open meetings (unless specifically exempted). 1 V.S.A. § 312(a). Resolutions, rules, appointments, or formal actions that are not taken or made at an open meeting are not considered binding, except actions to secure real estate options. 1 V.S.A. §§ 312(a)(1); 313(a)(2)
- Allowing for public comment at meetings (subject to reasonable rules). 1 V.S.A. § 312(h)
- Taking minutes at meetings, making those minutes available five days after the meeting, and posting on a website, if there is one. 1 V.S.A. § 312(b)
- Responding in a timely manner when there is an allegation of violation of the law. 1 V.S.A. § 314(b)

APPLICATION:

The law applies to every "public body" of a municipality and the requirements are triggered whenever a "quorum" of a public body is "meeting." A public body is any board, council, commission, committee, or subcommittee of a municipality. 1 V.S.A. § 310(3). The law does not apply to community justice boards or community justice centers. 24 V.S.A. § 1964(b). A meeting is a gathering of a quorum of the members of a public body for the purpose of discussing the business of the body or for the purpose of taking any action. 1 V.S.A. § 310(2).

The law does not apply to written correspondence or electronic communication between members of a public body for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, provided that such written correspondence or such an electronic communication that results in written or recorded information shall be available for inspection and copying under Vermont's Public Records Law. 1 V.S.A. § 310(2).

AGENDAS:

An agenda must be created and posted in advance of every regular or special meeting. 1 V.S.A. § 312(d). At least 48 hours in advance of a regular meeting, and at least 24 hours in advance of a special meeting, an agenda must be posted in or near the municipal office and in at least two other designated public places in the municipality. 1 V.S.A. § 312(d). In addition, the public body must

post the agendas of regular and special meetings to an official website, if one exists that is maintained or has been designated as the official website. 1 V.S.A. § 312(d). An item may only be added or removed from a meeting agenda as the first order of business at the meeting. 1 V.S.A. § 312(d)(3)(A). Other adjustments to an agenda may be made at any time during the meeting. 1 V.S.A. § 312(d)(3)(B).

NOTICES:

Meetings must be properly noticed and announced:

- The time and place of all **regular meetings** “shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution or other determining authority of the public body and this information shall be available to any person upon request.” 1 V.S.A. § 312(c)(1).
- The time, place and purpose of a **special meeting** shall be “publicly announced” at least 24 hours before the meeting. 1 V.S.A. § 312(c)(2). Publicly announced means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the state in which the public body has jurisdiction, and to any person who has requested to be notified of special meetings. 1 V.S.A. § 310(4).
Municipal public bodies shall post notices of special meetings in or near the municipal clerk’s office and in at least two other designated public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting. 1 V.S.A. § 312(c)(2).
- **Emergency meetings** “may be held without public announcement, without posting of notices, and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.” 1 V.S.A. § 312(c)(3).

MINUTES:

Meeting Minutes must be taken at every public meeting and must include at least the members present, active participants, motions made, and votes taken. 1 V.S.A. § 312(b)(1). Five days after the meeting, minutes must be available for inspection and must be posted to a website, if one exists, that is maintained or has been designated as the official website. 1 V.S.A. § 312(b)(2). If it is not possible to provide the final approved minutes in five days, then a draft that is marked with words such as “subject to approval” should be posted and made available. Minutes need not be taken in executive session, but if they are, they are not subject to a public records request. 1 V.S.A. § 313(a).

Participation and voting at meetings by electronic means. One or more of the members of a public body may attend and participate in a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location as long as each member who attends electronically identifies himself or herself when the meeting is convened, and is able to hear the conduct of the meeting and be heard throughout the meeting. 1 V.S.A. §§ 312(a)(2)(A) and (C). If one or more members attend a meeting by electronic or other means, any vote of the public body shall be taken by roll call. 1 V.S.A. § 312(a)(2)(B).

If a quorum or more of the members of a public body attend a meeting without being physically present, the following additional requirements shall be met: (i) At least 24 hours prior to the meeting, or as soon as practicable prior to an emergency meeting, the public body shall publicly announce the meeting, shall post notice of the meeting in or near the municipal clerk's office and in at least two other designated public places in the municipality; and (ii) the public announcement and posted notice of the meeting shall designate at least one physical location where a member of the public can attend and participate in the meeting. At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location. 1 V.S.A. § 312(a)(2)(D).

EXCEPTIONS:

The requirements of the law are not imposed on municipal bodies in the following situations:

- **Site inspections** such as those for assessing damage or making tax assessments or abatements. 1 V.S.A. § 312(g)
- **Routine administrative matters** such updating listers' cards. 1 V.S.A. § 312(g)
- **Deliberative sessions** such as hearings by a board of civil authority or zoning board, or employment termination. 1 V.S.A. § 312(e)
- **Executive sessions.** 1 V.S.A. §§ 312(a), 313.

DELIBERATIVE SESSION occurs only in “a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority.” 1 V.S.A. § 310(5). A written decision issued by a public body in connection with a quasi-judicial proceeding “need not be adopted at an open meeting if the decision will be a public record.” 1 V.S.A. § 312(f).

EXECUTIVE SESSION is a closed portion of a public meeting and is allowed only in certain limited situations including the following:

1. Negotiating or securing real estate purchase or lease options. 1 V.S.A. § 313(a)(2)
2. The appointment or employment or evaluation of a public officer or employee (but the public body must make a final decision to hire or appoint in an open meeting and it must explain the reasons for its final decision). 1 V.S.A. § 313(a)(3)
3. A disciplinary or dismissal action against a public officer or employee (but such officer or employee has the right to a public hearing if formal charges are brought). 1 V.S.A. § 313(a)(4)
4. A clear and imminent peril to the public safety. 1 V.S.A. § 313(a)(5)
5. Discussion or consideration of records or documents that are exempt from the public records laws (but that does not give authority to discuss the general subject to which the document pertains). 1 V.S.A. § 313(a)(6)
6. Municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety. 1 V.S.A. § 313(a)(10)

In addition, in instances when the public body finds that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage, it may go into executive session to discuss one of the following:

7. contracts;
8. labor relations agreements with employees;
9. arbitration or mediation;
10. grievances, other than tax grievances;
11. pending or probable civil litigation or a prosecution, to which the public body is or may be a party; or
12. confidential attorney-client communications made for the purpose of providing professional legal services to the body. 1 V.S.A. § 313(a)(1)

A motion to go into executive session must be made during the open portion of a meeting and must indicate the nature of the business to be discussed. 1 V.S.A. § 313(a). The motion must get the vote of a majority of the members present and must be recorded in the minutes of the meeting. 1 V.S.A. § 313(a). To enter into executive session for the reasons noted in 1 V.S.A. § 313(a)(1) (listed in numbers 7-12 above), there must first be a specific finding that premature general public knowledge would place the public body or a person involved at a substantial disadvantage. 1 V.S.A. § 313(a)(1). It is important that the minutes show that there was a careful analysis of the need to enter into executive session before the motion was made.

Attendance in executive session is limited to members of the public body, and, in their discretion, its staff, clerical assistants, legal counsel, and persons who are subject of the discussion or whose information is needed. 1 V.S.A. § 313(b). A motion to go into executive session should state whether individuals other than the members of the public body will attend the session.

No formal or binding action may be taken in executive session except for actions relating to the securing of real estate options. 1 V.S.A. § 313(a).

PENALTY: A person who knowingly and intentionally violates the Open Meeting Law may be guilty of a misdemeanor, punishable with a fine up to \$500. 1 V.S.A. § 314(a). Either the Attorney General or any person aggrieved by the alleged violation may bring suit against the public body in Superior Court. Such a suit must be brought within one year of the alleged violation. 1 V.S.A. § 314(c). Prior to instituting such action, the Attorney General or person aggrieved must provide the public body with written notice of the alleged violation. **Upon receipt of an allegation of violation, contact the town attorney or the Municipal Assistance Center immediately.**

II. LOGISTICS FOR ENTERING INTO EXECUTIVE SESSION

Entering executive session requires a motion and a vote. The motion(s) must be made during the open portion of a meeting and must get the approval of a majority of the members present. 1 V.S.A. §§ 313(a).

At the discretion of the public body, an executive session may include municipal staff, legal counsel, and/or persons who are subjects of the discussion or whose information is needed.

No formal or binding action shall be taken in executive session except actions relating to the securing of real estate options under 1 V.S.A. § 313(2).

The process for entering into executive session requires the body to vote once or twice on the reason for entering executive session.

Subjects for which one motion to enter into executive session is sufficient:

1. Negotiating or securing real estate purchase or lease options. 1 V.S.A. § 313(a)(2)
2. Appointment or employment or evaluation of a public officer or employee.
1 V.S.A. § 313(3)(a)(3) [*Note: The final decision to hire or appoint and the reasons for the body's final decision must be made in an open meeting.*]
3. Disciplinary or dismissal action against a public officer or employee. 1 V.S.A. § 313(4).
4. Clear and imminent peril to the public safety. 1 V.S.A. § 313(a)(5)
5. Discussion or consideration of records or documents excepted from the access to public records laws. 1 V.S.A. § 313(a)(6) [*Note: This does not extend discussion to the general subject to which the record or document pertains.*]
6. Municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety. 1 V.S.A. § 313(a)(10)

To enter executive session for these six reasons, the motion merely needs to identify the subject to be discussed and its corresponding statutory provision. For example, "I move that we enter executive session to discuss a clear and imminent peril to the public safety pursuant to Title 1 Section 313(a)(5) of the Vermont Statutes." More detail should be provided so long as doing so does not undermine the reason for entering executive session. For instance: "Because it is time for our annual evaluation of the town manager, I move that we enter executive session to discuss the evaluation of a public officer or employee pursuant to Title 1, Section 313(a)(3), of the Vermont Statutes."

Subjects for which two motions are required pursuant to 1 V.S.A. § 313(a)(1):

7. contracts;
8. labor relations agreements with employees;
9. arbitration or mediation;
10. grievances (other than tax grievances);
11. pending or probable civil litigation or prosecution, to which the public body is or may be a party;
12. confidential attorney-client communications made for the purpose of providing professional legal services to the body.

To enter executive session for consideration of the above six reasons, there must first be a finding that premature general public knowledge of the subject would clearly place the municipality, other public body, or person involved at a substantial disadvantage. 1 V.S.A. § 313(a)(1). For example:

First motion: “I move to find that premature general public knowledge of [*the pending contract with ABC Company*] will clearly place [*the town*] at a substantial disadvantage by [*disclosing its negotiation strategy*].”

Second motion: “I move that we enter executive session to discuss the [*town’s contract with ABC Company*] under the provisions of Title 1, Section 313(a)(1)] of the Vermont Statutes.”