

VERMONT'S OPEN MEETING LAW BASICS FOR MUNICIPAL BOARDS

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What?

Why?

Who?

When?

How?

Exemptions

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AGENDA

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WHAT IS THE OPEN MEETING LAW?

“All 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)

Statutory citation: 1 V.S.A. §§ 310-314, Act 92 (2020), and Act 113 (2020) for COVID-19 related temporary changes.

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WHY DO WE HAVE THE LAW?



Transparency tool to achieve:

- Public Access
- Public Participation
- Accountability

1 V.S.A. § 311

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TO WHOM DOES LAW APPLY?

Selectboard

Every “public body” of a municipality.



Committee

“Public body” means any board, council, or commission of the State or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the State or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils, or commissions...”



Subcommittee

1 V.S.A. § 310(3)

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WHEN DOES THE LAW APPLY?

Whenever a public body holds a “meeting.”

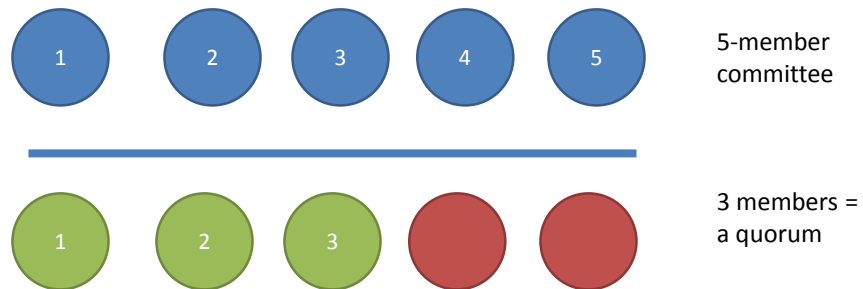
“Meeting” = “A gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.”



1 V.S.A. § 310(2)

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WHEN DOES THE LAW APPLY?



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ARE THESE MEETINGS?



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WHAT IS NOT A MEETING?

Written correspondence or electronic communications for the purpose of:

- Scheduling a meeting;
- Organizing an agenda; or
- Distributing information or materials to discuss at a later meeting **provided that...**

1 V.S.A. § 310(2)

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WHAT IS NOT A MEETING?



When a quorum of members attends:

- Social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers, **provided that** the public body does not discuss specific business of the public body that, at the time of the exchange, the participating members expect to be business of the public body at a later time.
- A duly warned meeting of another public body, **provided that** the attending public body does not take action on its business.

1 V.S.A. § 310(2)

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OPEN MEETING LAW REQUIREMENTS LIST OF ACT 92 TEMPORARY CHANGES

- Whenever a public body holds a remote meeting, it must:
 - use technology that allows the public to attend by electronic or other means;
 - allow the public to access the meeting by telephone whenever feasible;
 - include and post information on how the public can access the meeting electronically in its agenda; and
 - record their meetings, if it is a meeting of a legislative body, unless unusual circumstances make it impossible for them to do so.
- In the event of a staffing shortage during the declared emergency, a public body may extend the time limit for posting meeting minutes from five (5) to ten (10) calendar days.

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OPEN MEETING LAW REQUIREMENTS ELECTRONIC PARTICIPATION, PHYSICAL LOCATION

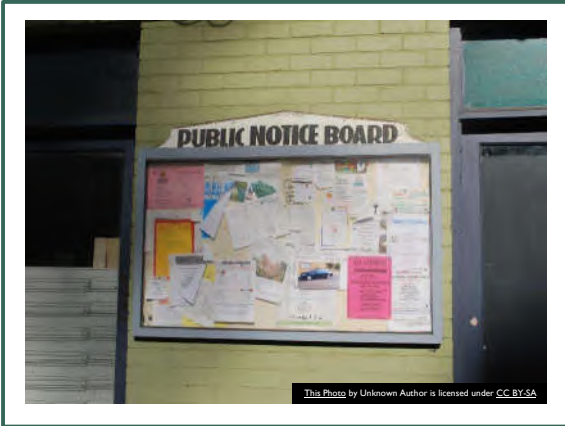
- Electronic participation is always allowed
- Designated physical location requirement waived by Act 92
- Remote meetings are encouraged



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OPEN MEETING LAW REQUIREMENTS PUBLIC NOTICE



Provide advance public notice of meetings. 1 V.S.A. §312(c)

- Regular meeting: 48 hours prior
- Special meeting: 24 hours prior
- Emergency meeting: “some public notice” as soon as possible before the meeting
- Act 113 electronic posting

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OPEN MEETING LAW REQUIREMENTS LIST OF ACT 113 TEMPORARY CHANGES

- Posting requirements of meeting agendas and special meeting notices relaxed to allow for electronic notification
- Optional: may not must

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OPEN MEETING LAW REQUIREMENTS POST AGENDA

Produce and post an agenda. 1 V.S.A. § 312(d)

- Additions/deletions as first item
- Act 92: agendas for remote meetings must include instructions for electronic participation
- Act 113: allows electronic posting as an option instead of physical locations

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OPEN MEETING LAW REQUIREMENTS PUBLIC ACCESS & PARTICIPATION

- Make meetings open to the public.

1 V.S.A. § 312(a)(1)

- Allow for public comment at meetings.

1 V.S.A. § 312(h)



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OPEN MEETING LAW REQUIREMENTS MANAGING PUBLIC PARTICIPATION

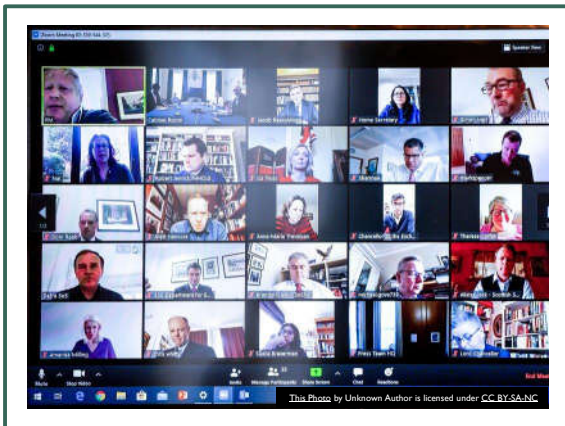


“At an open meeting the public **shall** be given a **reasonable opportunity** to express its opinion on **matters considered** by the public body during the meeting **as long as order is maintained**...Public comment shall be **subject to reasonable rules** established by the chairperson.”

1 V.S.A. § 312(h)

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OPEN MEETING LAW REQUIREMENTS CONDUCTING A REMOTE PUBLIC MEETING



- Minimum legal requirements the same as in-person meetings
- Model script, checklist
- Rules of Procedure

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OPEN MEETING LAW REQUIREMENTS MEETING MINUTES

Take minutes at all meetings. 1 V.S.A. § 312(b)

- Cover all topics and motions that arise; true indication of business
- Minimum information to include listed in statute
- Available and posted within 5 days; 10 days with Act 92 limited extension

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OPEN MEETING LAW EXEMPTIONS

The Open Meeting Law does **not** apply to:

- **Site inspections** for the purposes of assessing damage or making tax assessments or abatements;
- **Clerical work** or work assignments of staff;
- **Routine day-to-day administrative matters** that do not require action by the public body provided no money is appropriated, expended or encumbered.
- **Deliberations** in connection with quasi-judicial proceedings.
- **Executive sessions.**

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EXEMPTIONS

DELIBERATIVE SESSION VS. EXECUTIVE SESSION

A deliberative session occurs only in conjunction with a quasi-judicial proceeding. It occurs when a public body weighs, examines, or discusses the reasons for or against an act or decision based on the evidence received at a public hearing.

An executive session is a closed portion of an open meeting. Only permissible for discussion of one of the subjects listed in 1 V.S.A. § 313(a).

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EXEMPTION FOR DELIBERATIVE SESSION



Deliberations that occur after a quasi-judicial hearing is **closed**:

Do not need to be warned/noticed

Do not need an agenda

Do not have to be open to the public

Do not require the taking of minutes

Do not require votes to be publicly declared

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EXEMPTION FOR EXECUTIVE SESSION

WHAT

- A closed portion of a public meeting from which the public is excluded.
- Only allowed (but not legally required) for discussion of issues articulated in 1 V.S.A. § 313(a).

1 V.S.A. §§ 312(a), 313

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EXEMPTION FOR EXECUTIVE SESSION

WHO

“Attendance is limited to members of the public body, and, in their discretion, its staff, clerical assistants, legal counsel, and persons who are subjects of the discussion or whose information is needed.”

1 V.S.A. §313(b)

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REASONS FOR EXECUTIVE SESSION: ONE OR TWO MOTIONS

WHY

- One motion reasons, 1 V.S.A. §§ 313(a)(2-6) and (10)
- Two-motion reasons; specific finding of substantial disadvantage if premature public knowledge, 1 V.S.A. § 313(a)(1)

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EXEMPTION FOR EXECUTIVE SESSION

HOW

The motion to go into executive session must:

- Be made in an open meeting
- Must indicate the nature of the business to be discussed
- Must get vote of majority of members present
- Must be recorded in the minutes

1 V.S.A. § 313(a)

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EXECUTIVE SESSION

Executive session:

May only occur in the context of an open meeting after a vote.

Does not need to be warned/noticed separately (but **may** be listed on the meeting agenda).

Is not open to the public.

Does not require the taking of minutes.

Does require a decision be made in public.

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1

Avoid intentional violations of the Open Meeting Law.

2

Cure all alleged violations, even if inadvertent.

3

If a complaint of an alleged violation is received, call us or your town attorney immediately for guidance.

OPEN MEETING LAW
ENFORCEMENT

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RESOURCES

VLCT Resources Online

- [Open Meeting Law and COVID-19 Response FAQs](#)
- [Remote Public Meetings Toolkit](#)
- [Open Meeting Law Municipal Topic webpage](#) which contains:
 - Open Meeting Law FAQs (non-COVID-19 related)
 - Open Meeting Law Quick Guide
 - Model Rules of Procedure

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RESOURCES

Other VLCT Resources Online

[Town Operations COVID-19 FAQs](#)

Vermont's Open Meeting Law

[1 V.S.A. § § 310-314](#)

ACCD Guidance

<https://accd.vermont.gov/news/update-new-work-safe-additions-be-smart-stay-safe-order>

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