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# VERMONT'S OPEN MEETING LAW BASICS FOR MUNICIPAL BOARDS

MUNICIPAL ASSISTANCE CENTER (MAC)



**Vermont League  
of Cities & Towns**

What? Why? Who? When? Where?

Requirements

Exceptions/Exemptions

Violations & “Curing”

**AGENDA**

# WHAT IS THE OPEN MEETING LAW?

A law that advances the openness and accessibility of meetings of public bodies so that the public may serve both as an active participant and a check on government.

“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**

# WHY DO WE HAVE THE OPEN MEETING LAW?

## **YOU are the government.**



“...(T)he legislature finds and declares that public [bodies] in this State exist to aid in the conduct of the people's business and are accountable to them pursuant to Chapter I, Article VI of the Vermont Constitution.” 1 V.S.A. § 311(a)

“[The law] protects the interest of the public to hold its elected officers accountable by, among other ways, requiring meetings of a public body to be ‘open to the public at all times,’ except when in executive session, 1 V.S.A. § 312(a), and by requiring that the public be given a ‘reasonable opportunity to express its opinion’ on matters being considered.”

*Town of Brattleboro v. Garfield*, 180 Vt. 90 (2006)

# WHO MUST FOLLOW THE OPEN MEETING LAW?

**Selectboard**



**Committee**



**Subcommittee**

Every “**public body**” of a municipality.

“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...”

1 V.S.A. § 310(4)

# WHEN DOES THE OPEN MEETING LAW APPLY? MEETING = QUORUM; BUSINESS/ACTION



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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(3)(A)

# WHEN DOES THE OPEN MEETING LAW APPLY?

## QUORUM



5-member  
committee



3 members =  
a quorum

# WHERE DOES THE OPEN MEETING LAW APPLY? ARE THESE MEETINGS?





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## WHAT IS NOT A MEETING? EXCEPTIONS

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Communicating (verbally, in writing, electronically, etc.) for the purpose of:

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

1 V.S.A. § 310(3)(B)

# WHAT IS NOT A MEETING? EXCEPTIONS

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(3)(C)



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## WHAT DOES THE OPEN MEETING LAW REQUIRE?

Provide advance **notice** of meetings;

Create and post an **agenda** for all regular and special meetings;

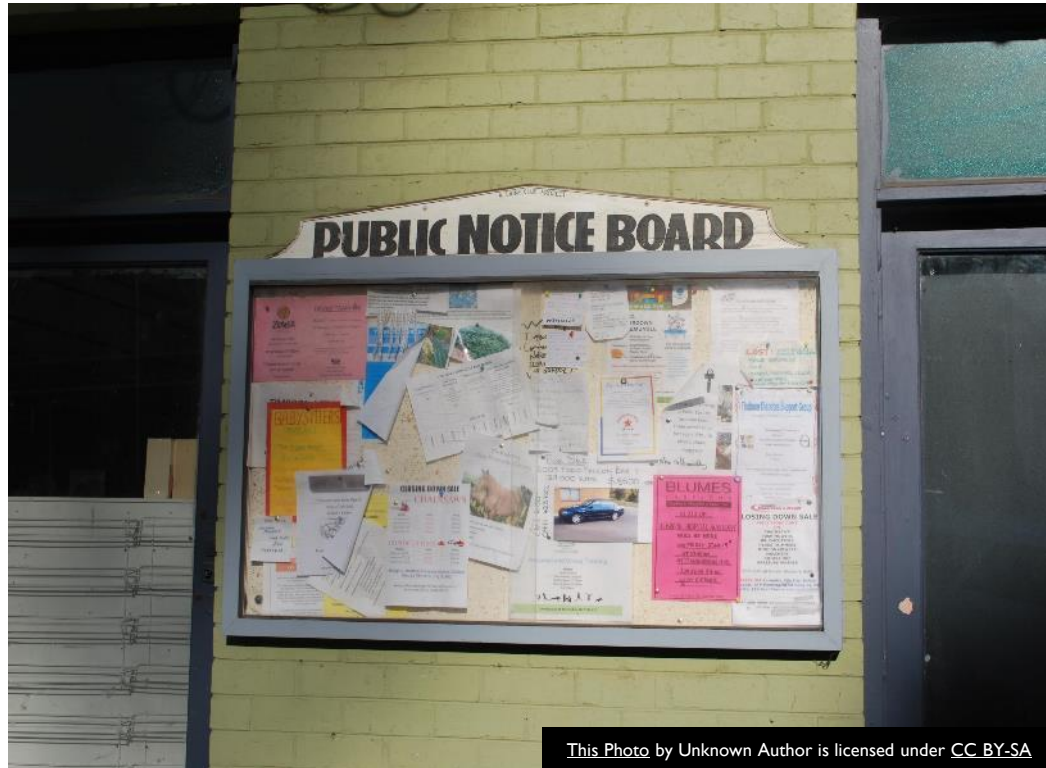
All meetings must always be **open** to the public, unless an exception applies;

Allow reasonable opportunity for public **comment** at meetings; and

Take and post **minutes**.

# OPEN MEETING LAW REQUIREMENTS

## PUBLIC NOTICE



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

- Regular meeting: set it and forget it
- Special meeting: 24 hours prior
- Emergency meeting: “some public notice” as soon as possible before the meeting

## OPEN MEETING LAW REQUIREMENTS POST AGENDA

Produce and post an **agenda**.

1 V.S.A. § 312(d)

- 48 hours prior to a regular meeting;
- 24 hours prior to a special meeting;
- Additions/deletions can only be made as the first act of business;
- Any other adjustments may be made at any time during the meeting.

# OPEN MEETING LAW REQUIREMENTS

## PUBLIC ACCESS & PARTICIPATION



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- 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)

# OPEN MEETING LAW REQUIREMENTS

## PUBLIC ACCESS & 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)

# OPEN MEETING LAW REQUIREMENTS

## MEETING MINUTES

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

- True indication of business;
- Minimum information to include listed in statute;
- Available and posted within 5 calendar days.



# OPEN MEETING LAW REQUIREMENTS

## PHYSICAL LOCATION, ELECTRONIC PARTICIPATION



- Designated, staffed physical location available for public
- Electronic participation is always allowed

1 V.S.A. § 312(a)(2)

## WHAT IS ACT 78?

- COVID-19 related temporary procedural changes to the Open Meeting Law
- Responds to health and safety risks posed by ongoing pandemic
- Establishes new requirements for remote meetings

<https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT078/ACT078%20As%20Enacted.pdf>

## WHAT DOES ACT 78 REQUIRE IF YOUR PUBLIC BODY CHOOSES TO USE IT?

When a public body holds a **remote meeting**, it must:

use technology that allows the public to attend by electronic or other means (**telephone access required when feasible**);

include information on how the public can **access and participate** in the meeting in agenda; and

for legislative bodies, **record** the meeting (unless unusual circumstances make it impossible).

Note: (1) Minutes may be posted up to 10 calendar days due to staffing; (2) **Act 78** also allows the public body to post notice and agenda to two designated **electronic** locations--

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# OPEN MEETING LAW EXEMPTIONS

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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.**

# 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).

# EXEMPTION FOR DELIBERATIVE SESSION

“Deliberations” involve weighing, examining and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

1 V.S.A. § 310(2)



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# EXEMPTION FOR DELIBERATIVE SESSION



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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

# 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

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## 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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# EXEMPTION FOR EXECUTIVE SESSION

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## HOW

The motion to go into executive session must:

- Be made in an open meeting;
- Reason must be permitted by law;
- Must indicate the nature of the business to be discussed;
- Must obtain vote of majority of members present;
- Must be recorded in the minutes.

1 V.S.A. § 313(a)

# 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 to the public body or person involved if there's premature public knowledge, 1 V.S.A. § 313(a)(1)

# EXEMPTION FOR 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.

**Only** discuss executive session matter.

**Does** require a decision be made in public.



Avoid intentional violations of the Open Meeting Law.



Cure all alleged violations, even if inadvertent.



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

**OPEN MEETING LAW  
VIOLATIONS & ENFORCEMENT & “CURING”**

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## RESOURCES @:

<https://www.vlct.org/municipal-assistance/municipal-topics/vermonts-open-meeting-law>

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**VLCT.org → Municipal Assistance → Municipal Topics → Open Meeting Law**

- Contains:
  - Open Meeting Law FAQs (non-COVID-19 related)
  - Open Meeting Law Quick Guide
  - Model Rules of Procedure
- Open Meeting Law 2022 COVID-19 FAQs
- Remote Only Public Meetings Toolkit
- Hybrid Public Meetings Toolkit



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