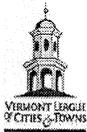


Hinesburg On-Site Workshop
September 22, 2014

Running Effective and Legal Meetings

Sarah Jarvis, Staff Attorney II
Municipal Assistance Center
Vermont League of Cities and Towns



SEPTEMBER 2014

Workshop Overview

- Meeting fundamentals
- Open Meeting Law requirements and exceptions
 - Noticing meetings
 - Agendas
 - Minutes
 - Public Participation
 - Responding to an allegation of violation
- Effective Meetings
 - Role of the Chair
 - Meeting Process
 - Communication with Public



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When must we have a meeting?

“When joint authority is given to three or more, the concurrence of a majority of such number shall be sufficient and shall be required in its exercise.”

1 V.S.A. § 172



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What is a meeting?

- **“(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 purposes of taking any action.”** 1 V.S.A. § 310(2)
- **A quorum is a majority of the members of a board.**



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When are we meeting?

- **Whenever a quorum of the board is present and is discussing the business of the board or taking action.**



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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)

The entire law is found in 1 V.S.A. §§ 310-314.



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When and to whom does it apply?

To every public body of a municipality whenever a quorum of that body is meeting.

- “public body” is any board, council, commission, committee, or subcommittee of a municipality.
- “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.
- “quorum” is a majority of the members of the public body.



1 V.S.A. § § 310(2),(3)

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When does it not apply?

The law does not apply to “written correspondence or electronic communication, including email, telephone, or teleconferencing 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).

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When does it not apply?

Group Email / Telephone Discussions for:

- Scheduling a meeting
- Organizing an agenda
- Distributing information for later discussion



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When does it not apply?

Does not apply in situations where the Legislature has created specific exemptions:

- Site inspections such as those for assessing damage or making tax assessments or abatements. 1 V.S.A. § 312(g)
- Routine administrative matters such as 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



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Requirements of the OML

1. Provide advance notice. 1 V.S.A. §§ 312(c), 310(4)
2. Create and post Agenda. 1 V.S.A. § 312(d)
3. Conduct all business in open meeting (unless exempt). 1 V.S.A. §§ 312(a); 313(a)
4. Vote by roll call when there is electronic participation. 1 V.S.A. § 312(a)(2)(B)
5. Allow public comment. 1 V.S.A. § 312(h)
6. Take and post minutes. 1 V.S.A. § 312(b)
7. Respond to complaints of violation. 1 V.S.A. § 314(b)(2)



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Advance Notice

Regular meetings:

Designate the time and place by charter, regulation, ordinance, bylaw, or resolution, and make the information available to any person upon request.

1 V.S.A. § 312(c)(1)



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Advance Notice

Special Meetings:

Publicly announce the time, place, and purpose for the meeting at least 24 hours in advance by:

- Notice to an editor, publisher, or news director of a newspaper or radio station serving the area, and to any person who has requested to be notified of special meetings. 1 V.S.A. § 310(4)
- Posting notices in or near the clerk's office and in at least two other designated public places in the municipality. 1 V.S.A. § 312(c)(2)
- Oral or written notice to each member of the public body unless waived. 1 V.S.A. § 312(c)(2)



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Advance Notice

Emergency meetings:

- Only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body
- No specific notice or posting requirements
- Must give "some public notice... as soon as possible before any such meeting."

1 V.S.A. § 312(c)(3)



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Advance Notice

If a Quorum will Participate Electronically:

At least 24 hours prior to the meeting, or as soon as practicable prior to an emergency meeting:

1. Create special notice that designates at least one physical location where a member of the public can attend and participate in the meeting;
2. Send notice to news media and post notice in or near the municipal clerk's office and in at least two other designated public places in the municipality;
3. Have at least one member of the public body, or at least one staff or designee, physically present at the designated meeting location. 1 V.S.A. § 312(a)(2)(D).



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Questions



Agendas

Preparation / Posting

Must be posted at least 48 hours in advance of a regular meeting, and at least 24 hours in advance of a special meeting:

- In or near the municipal office;
- In at least two other designated public places in the municipality; and
- To a website, if one exists, that the public body maintains or designates as the official website.

1 V.S.A. § 312(d)



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Agendas

Content

- "Agenda" is not defined in statute
- Dictionary definition: List of items to be discussed and possible actions to be taken



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Agendas

How much specificity?

- Need to give notice and an opportunity to participate (OML requirements)
- Can use agenda as a communication tool
- Can use agenda as a time-management tool

What about "Other Business"?

Don't use for substantive discussions or decisions



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Agendas

Alteration

- New language: An item may only be added or removed from a meeting agenda as the first order of business at the meeting. Other adjustments to an agenda may be made at any time during the meeting.
1 V.S.A. § 312(d)(3)(B).
- Standard remains the same: when possible, give the public adequate notice and an opportunity to be heard.



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Questions



Minutes

Mandatory:

- Meeting Minutes shall be taken of all meetings of public bodies.

Content:

- Cover “all topics and motions that arise at the meeting and give a true indication of the business of the meeting.”
- Minutes must include at least the members present, active participants, motions made, and votes taken.

1 V.S.A. § 312(b)(1)



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Minutes

Posting:

Five days after the meeting minutes must be:

- Available for inspection; and
- Posted to a website, if one exists, that the public body maintains or has designated as the official website of the body.

1 V.S.A. § 312(b)(2)

Note: we interpret as 5 calendar days



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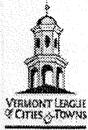
Questions



Public Participation

The open meeting law provides not only a "right-to-know" about the meeting, but also a "right to be present, to be heard, and to participate."

State v. Vt. Emergency Bd., 136 Vt 506 (1978).



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Public Participation

Practical and Political:

- Local decisions directly affect public
- Public plays a critical role in local decision-making
- May provide fresh perspective / valuable insight
- Encourages understanding of the difficulty of your decisions
- May be more easy to digest or understand decisions
- REMEMBER: In some instances, the selectboard's decisions are subject to a voter petition.



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Public Participation

The public body may place limits on 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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Public Participation

Rules of procedure can limit the duration and type of public comment as a way to maintain order, so long as the limitations are:

- Reasonable;
- Content neutral; and
- Applied equally to all members of the public.



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Public Participation

Rules of procedure serve larger function of addressing procedural and administrative matters:

- Voting procedure
- Describe how to get on agenda
- Explain roles of various members [chair, vice chair, clerk]



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Public Participation

The public's right to participate does not apply to quasi-judicial proceedings. 1 V.S.A. § 312(h)



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Questions



Violations

What happens when you don't follow the requirements of the open meeting law?

- Actions taken are not binding
- Potential civil suit against the public body
- Potential criminal liability for individuals



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Violations

Actions taken are not binding

- No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at an open meeting.

1 V.S.A. § 312(a)(1)

Exception: actions to secure real estate options, which may occur in executive session.

1 V.S.A. § 313(a)



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Violations

Potential criminal liability for a person who:

- Knowingly and intentionally violates the law;
- Knowingly and willfully violates the law on behalf of or at the behest of a public body; or
- Knowingly and intentionally participates in the wrongful exclusion of any person or persons from any relevant meeting.

Misdemeanor, punishable with a fine up to \$500.

1 V.S.A. § 314(a)



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Violations

Potential civil suit:

- Either the Attorney General or any person aggrieved by the alleged violation may bring suit against the public body in Superior Court
- Suit must be brought within one year of the alleged violation
- Must first give written notice to the body that alleges a specific violation and requests a specific cure
- Must give an opportunity to respond to allegation and opportunity to cure if applicable

1 V.S.A. § § 314(b), (c)



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Response to Notice of Violation

Legal Requirements

- Respond publicly within seven days business days after receiving written notice
- Either acknowledge that there was an (inadvertent) violation or deny the allegation
- Failure to respond is treated as a denial
- If acknowledge, must cure within 14 calendar days

1 V.S.A. § 314(b)

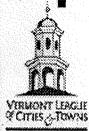


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Response to Notice of Violation

Logistics

- Receive written notice of the alleged violation
- Contact town attorney or MAC immediately
- Call special meeting (notice, agenda, public participation, minutes)
- Determine whether to acknowledge or deny and whether and how to “cure” the violation
- Respond “publicly” within seven business days
- “Cure” within 14 business days of acknowledgement



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Curing a Violation

Either ratify or declare as void the action taken /
decision made

AND

Adopt “specific measures that actually prevent future
violations”

1 V.S.A. § 314 (b)(4)



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Paying for Violation

If a Court finds that there was a violation, it “shall” assess attorney’s fees and other litigation costs unless the public body:

- Cured the violation; or
- Has a reasonable basis in fact and law for its position and acted in good faith (including whether the public body responded in a timely manner to a notice of alleged violation).

1 V.S.A. § 314(d)



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Questions



Exemptions to OML

- Site inspections. 1 V.S.A. § 312(g)
- Clerical work. 1 V.S.A. § 312(g)
- Work assignments of staff. 1 V.S.A. § 312(g)
- Routine administrative matters. 1 V.S.A. § 312(g)
- Deliberative sessions. 1 V.S.A. § 312(e)
- Executive sessions. 1 V.S.A. §§ 312(a), 313



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Deliberative Session

"Quasi-judicial" proceeding is "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)



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Deliberative Session

Different from regular business because

- The legal rights of specific individual(s) are at stake rather than the rights of the community in general
- The public body is acting under specific rules of procedure, witnesses are sworn, only specific people have the right to participate.

Examples include: Tax appeal hearings before the board of civil authority, Vicious dog hearings, Employment termination hearings, and Zoning and Subdivision hearings.



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Deliberative Session

May make a decision in deliberative session so long as the decision is issued in writing and the writing is a public record.

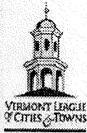
1 V.S.A. § 312(f)



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Executive Session

- A closed portion of a public meeting
- Allowed only in certain limited situations
- No formal or binding action may be taken except for actions relating to the securing of real estate options
- 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(a),(b)

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Motion to Enter Executive Session

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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Reasons for Executive Session

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)



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Reasons for Executive Session

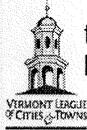
4. A clear and imminent peril to the public safety. 1 V.S.A. § 313(a)(5)
5. Discussion or consideration of records or documents that are exempt from the public records laws (but that does not give authority to discuss the general subject to which the document pertains). 1 V.S.A. § 313(a)(6)
6. Municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety. 1 V.S.A. § 313(a)(10)



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Reasons for Executive Session

7. When premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage, the public body may discuss:
- A. contracts
 - B. labor relations agreements with employees
 - C. arbitration or mediation
 - D. grievances, other than tax grievances
 - E. pending or probable civil litigation or a prosecution, to which the public body is or may be a party
 - F. confidential attorney-client communications made for the purpose of providing professional legal services to the body.
- 1 V.S.A. § 313(a)(1)



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Motion to Enter Executive Session

Making a specific finding of substantial disadvantage:

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 our negotiation strategy*]."

Second Motion: "I move that we enter into 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."



SEPTEMBER 2014

Questions



Effective Meetings

- **Agendas**
- **Rules of Procedure**
- **Role of the Chair**
- **Managing the Meeting**
- **Communication with Public**



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Effective Meetings

Role of Chair

- Frame and reframe the question or issue
- Listen and summarize what is being discussed
- Point out areas of common ground and areas of divergence
- Keep the discussion on track
- Enforce the ground rules (rules of procedure)
- Strike balance between encouraging public participation and promoting efficiency of the board



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Effective Meetings

Role of Chair

- Allow and solicit input from other members first.
- Allows other board members to advocate and debate issues, ask questions and draw out information from the public.
- (Unless charter or rules state otherwise) the Chair has the same voting rights as other members of the board.
- Announce voting results.
- May sign any decision or order approved for issue by the board, when a decision is required to be issued in writing. 24 V.S.A. § 1141



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Effective Meetings

Managing the Meeting

- Process: introduce topic, allow / foster discussion, allow or solicit motion and second, ask if further discussion, vote
- Topic & Discussion
 - Chair initiates the discussion by announcing the topic: “The next item on the agenda is...”
 - Get the ball rolling by asking fellow board members what they think
 - State and restate the question to keep everyone on topic
 - Invite public input



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Effective Meetings

Managing the Meeting

Facilitating Discussion:

- Best chairs focus on facilitating the discussion:
 - Listen for the common ground
 - Maintain civility
 - Discourage repetitive comments or testimony
 - Ask if a motion was offered
- Steer discussions towards idea and issues and away from personalities



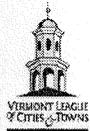
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Effective Meetings

Managing the Meeting

When things get heated...

- Remind everyone about Rules of Procedure
- Make sure the public understands their role in the decision-making process
- Declare a recess, table the item for a later meeting, or adjourn the meeting to a time and date certain



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Effective Meetings

Managing the Meeting

- Soliciting or coaxing the Motion
 - “It sounds as if you believe...is that your motion?”
 - “What’s your pleasure on the issue?”
 - Wait until a member makes a declarative statement and ask whether that is their motion
- The Second
 - Recommended but not required; justifies the motion and keeps things moving
 - If no second, motion dies



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Effective Meetings

Managing the Meeting

The Vote

- Ask the board whether there is any further discussion or if they are ready for the vote
- Chair states the motion one more time
- All in favor say “aye”; All opposed say “nay”
- Members vote
- Chair announces result



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Effective Meetings

Communicating with the Public

- What is your message?
- Who are you trying to convey the message to?
- What does your audience know and think, right now?
- What you would like them to know and think?
- What would you like them to do?



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Effective Meetings

Methods of Communicating with the Public

- Agendas
- Board packets
- Newspaper
- Website or Social Media Platform
- Emails
- Electronic Alert System
- Advisory Committees



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Questions



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