

Open Meeting Law Workshop

Town of Greensboro
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May 2016

Topics

- **What is the Open Meeting Law?**
- **When does it apply?**
- **Open Meeting Law Requirements:**
 - **Public notice**
 - **Agendas**
 - **Open to the public**
 - **Public comment**
 - **Minutes**
- **Exemptions**



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)

The entire law is found in 1 V.S.A. § § 310-314
(sections 310-314 of the Vermont Statutes Annotated)



Open Meeting Law - Why?

“In enacting this subchapter, the legislature finds and declares that public commissions, boards, and councils and other public agencies in this State exist to aid in the conduct of the people’s business and are accountable to them pursuant to Chapter 1, Article VI of the Vermont Constitution.”

V.S.A. § 311(a)

“...all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them.”

Chapter 1, Article VI of the Vermont Constitution



To Whom Does the Law Apply?

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(3)



What is a Public Body?

Created by statute or Charter:

- Selectboard
- Planning Commission
- Cemetery Commission
- Board of Listers
- Library Board of Trustees
- DRB/ZBA
- Advisory Commissions
- Board of Civil Authority
- Conservation Commission
- Board of Auditors
- Board of Abatement
- Local Board of Health
- Water/Sewer Commission
- Trustees of Public Funds
- Local Liquor Control Board
- Local Emergency Planning Committee



What is a Public Body?

Public Bodies Created by Resolution

Public Body



Committee



Subcommittee



When does the Open Meeting Law apply?

Whenever a public body is holding a “meeting”

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 public body or for the purpose of taking action.

1 V.S.A. § 310(2)



What is a Quorum?

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 public body or for the purpose of taking action.

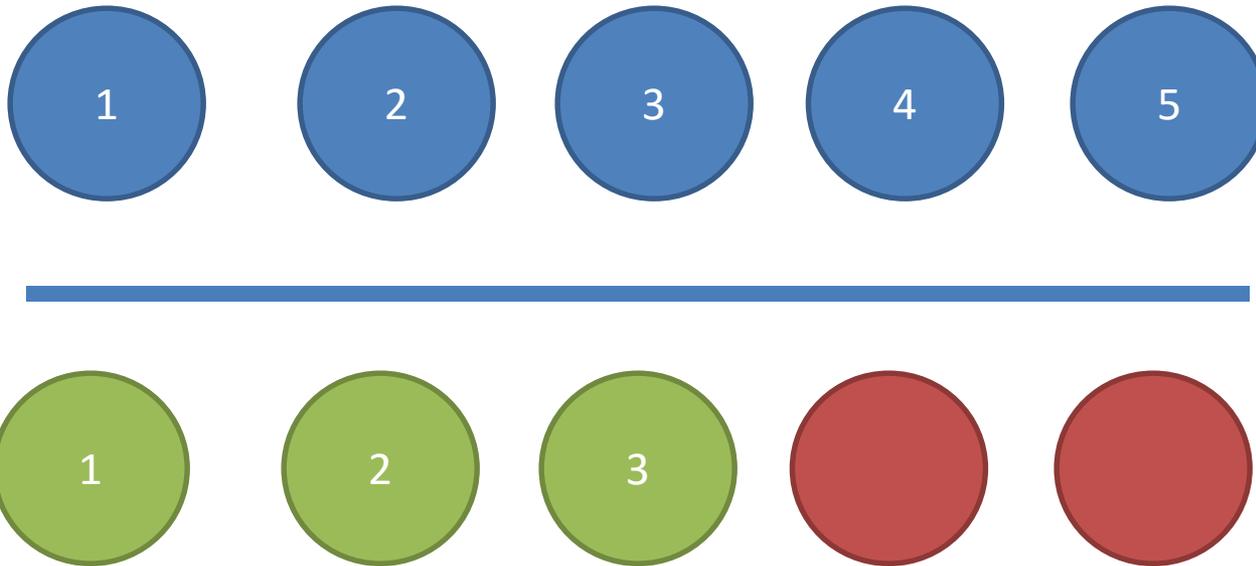
1 V.S.A. § 310(2)

- 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

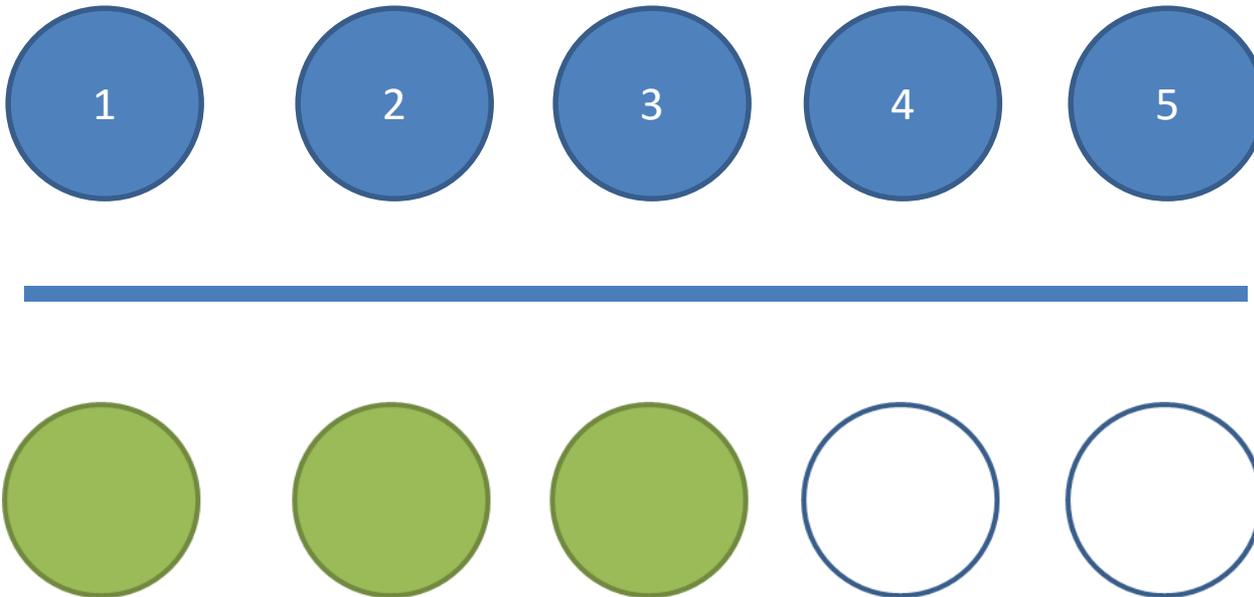


What is a Quorum?



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

What is a Quorum?



Why is Quorum Important?

1. Quorum gathered = OML applies
2. Quorum = minimum number required to take action



What is a “Gathering”?

The Law applies regardless of the physical location of the members.

Phone calls may be “meetings”

The timing of a member’s participation is not a factor.

Group emails may be “meetings”

Comments on social media may be “meetings”



Open Meeting Law

What is NOT a Meeting?

“Meeting” shall not mean written correspondence or an electronic communication, including e-mail, 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 a written correspondence or such an electronic communication that results in written or recorded information shall be available for inspection and copying under the Public Records act...”



1 V.S.A. § 310(2)

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Open Meeting Law Requirements



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Open Meeting Law Requirements

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

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

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)

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



Public Notice

Notice requirements depend on the type of the meeting.

Three types of meetings:

- 1. Regular**
- 2. Special**
- 3. Emergency**



Public Notice

Regular meetings: Meetings scheduled to occur consistently at the same time and place.

Special meeting: Any meeting called for some time or place other than the regular meeting date, time, or location.

Emergency meeting: Only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention.



Public Notice: Regular Meetings

Regular Meetings do not need to be individually noticed.

Meeting schedule (time and place) must be: **clearly designated** by statute, charter, regulation, ordinance, bylaw, resolution; and made available to any person upon request.

1 V.S.A. § 312(c)(1)

We recommend: posted year-round at the town office.



Public Notice: Special Meetings

Special Meetings : time, place and purpose must be “publicly announced” at least 24 hours before the meeting by:

- (1) Posting notices in or near the town clerk’s office and in a least two other designated public places in town;
- (2) Giving oral or written notice to members of the public body, unless previously waived;
- (3) Provide notice to any person who has provided a written request for such notice; and
- (4) Notify any editor, publisher or news director serving the area.

1 V.S.A. § 312(c)(2)



Public Notice: Emergency Meetings

Emergency Meetings are held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention...

“**Some public notice**” must be given as soon as possible before the meeting.

1 V.S.A. § 312(c)(3)



Electronic Participation

“As long as the requirements of this subchapter are met, one or more of the members of a public body may attend a regular, special or emergency meeting by electronic or other means without being physically present at a designated location... [and] may fully participate in discussing the business of the body and voting to take action...”

1 V.S.A. § 312(a)(2)



Electronic Participation

Requirements of electronic participation:

1. Identify yourself when the meeting is convened;
2. Be able to hear and be heard throughout the meeting; and
3. Take all votes by roll call*

1 V.S.A. § 312(a)(2)

* If S.114 is signed into law: only need to take votes by roll call if they are not unanimous



Public Notice

Electronic Participation

If quorum or more of the members attend a meeting without being physically present then:

At least **24 hours prior to a regular or special meeting**, or as **soon as practicable prior to an emergency meeting**, the meeting the body must “**publicly announce**” the meeting and **post notice** in or near the town clerk’s office and in at least two other designated public places in town.

The **notice must designate at least one physical location** where the public can attend and participate in the meeting.

At least one member of the body or staff/designee must be physically present at each designated meeting location.

1 V.S.A. § 312(a)(2)(D)



Public Notice Electronic Participation

If S.114 is signed into law:

If quorum or more of the members attend a meeting without being physically present then:

The **agenda must designate at least one physical location** where a member of the public can attend and participate in the meeting; and

At least one member of the body or staff/designee must be physically present at each designated meeting location.

1 V.S.A. § 312(a)(2)(D)



Agendas



Agendas

48 hours prior to a REGULAR meeting, and
24 hours prior to a SPECIAL meeting,

An agenda must be posted:

- in or near the town office and in at least two other designated public places in town;
 - to a website, if one exists, that the body either maintains or designates as the body's official website;
- and
- made available to any person prior to the meeting upon specific request.

1 V.S.A. § 312(d)(1)



What is an “Agenda”?

“Agenda” not defined by the Open Meeting Law

Dictionary definition: **“a list or outline of things to be done, subjects to be discussed, or business to be transacted.”**

Practical pointer: Give **actual notice** of the specific topics to be addressed and the action that may be taken.



Changing the Agenda

- “Any additions to, or deletions from the agenda must be made as the first act of business at the meeting.”
- “Any other adjustments to the agenda may be made at any time during the meeting.”

1 V.S.A. § 312(d)(3)





Minutes



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What are “Minutes”?

Minutes must be kept at all meetings.

Minutes must give a true indication of the business of the meeting and include, at a minimum:

1. All topics and motions that arise;
2. A true indication of the business of the meeting;
3. All members of the public body present;
4. All other active participants;
5. All motions, proposals, and resolutions made and their result; and
6. Results of any votes, with a record of individual votes if a roll call is taken.



Minutes

Minutes must be available after 5 **[calendar]** days from the date of the meeting for inspection and copying.

Minutes must be posted no later than 5 **[calendar]** days from the date of the meeting to a website, if one exists, that the public body has designated as its official website.

1 V.S.A. § 312(b)(2)

*If S.114 signed: "Except for draft minutes that have been substituted with updated minutes, posted minutes shall not be removed from the website sooner than one year from the date of the meeting for which the minutes were taken."



Public Attendance and Participation



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Open to the Public

All meetings of a public body are **declared to be open to the public at all times**, except as provided in section 313 (Executive Session) of this title.

1 V.S.A. § 312(a)(1)



“Open to the Public”?

The protections of the Open Meeting Law include 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)



Public Comment

“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)



Public Comment

Managing 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
- they are applied equally to all members of the public.



Public Comment

Managing Public Participation

Tips to prevent/deal with the “unruly speaker”:

- **Comments must have a bearing on the topic of discussion;**
- **Under no circumstances can a board member/general public personally attack another;**
- **All remarks (from board members and the public) must be addressed to the chair.**
- **Members of the public must first be recognized by the chair in order to provide comment;**



No Public Comment During Quasi-Judicial Hearings

“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 so long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. **This subsection shall not apply to quasi-judicial proceedings.**”

1 V.S.A. § 312(h)



Open Meeting Law Exemptions



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Exemptions

The Open Meeting Law does not apply to:

- Communications to schedule a meeting, organize an agenda, or distribute materials for discussion at a meeting.
- 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.

1 V.S.A. §§ 310(2), 312(g)



Exemptions

The Open Meeting Law does not apply to:

- Deliberations in connection with quasi-judicial proceedings. 1 V.S.A. § 312(e)
- Executive sessions. 1 V.S.A. §§ 312(a), 313



Executive Session vs. Deliberative Session

An executive session is a closed portion of an open meeting. May only be used for one of subjects listed in 1 V.S.A. § 313(a).

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 held in conjunction with a quasi-judicial proceeding.



Deliberations in connection with quasi-judicial proceedings

A “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)



Deliberations in connection with quasi-judicial proceedings

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.



Deliberations in connection with quasi-judicial proceedings

Limited situations include:

- Land use hearings before a DRB or ZBA
- Tax assessment appeal hearings before a BCA
- Tax abatement hearings before a BOA
- Vicious dog hearings
- Employment termination hearings
- Board of Health hearings
- Laying out, Altering, Reclassifying or Discontinuing Public Roads



Deliberations in connection with quasi-judicial proceedings

What are “deliberations”?

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(1)



Deliberations in connection with quasi-judicial proceedings

Decision may be made in deliberative session so long as the decision is issued in writing.

Need not return to open session to announce the decision.

“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)



Deliberations in connection with quasi-judicial proceedings

Deliberations (may be public or private):

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

- Minutes/written decision speaks for the public body.



Questions



Executive Session

WHAT:

- A closed portion of a public meeting.
- Only for issues articulated in 1 V.S.A. § 313(a)
- No formal or binding action may be taken except for actions relating to the securing of real estate options. 1 V.S.A. § 313(a)



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)



Motion to Enter 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)



Executive Sessions

Executive sessions (always private):

- May only** occur in the context of an open meeting after a vote
- Do not** need to be warned/noticed separately
- May** be listed on an agenda
- Are not** open to the public
- Do not** require the taking of minutes
- Do** require a decision be made in public



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)



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)



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)



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.”



Open Meeting Law: Penalties and Enforcement



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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



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)



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)



Response to Notice of Violation

Legal Requirements

- Respond publicly within ~~seven (7) business~~ ten (10) calendar* 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)

***If S.114 signed**



Curing a Violation

Either ratify or declare as void the action taken / decision made resulting from: (i) a meeting that was not properly noticed; or (ii) a meeting that a person or the public was wrongfully excluded from attending; or (iii) an executive session or portion thereof not authorized under the Open Meeting Law*

*If S.114 signed

AND

Adopt “specific measures that actually prevent future violations”



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
- Had 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)



Questions

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**Contact VLCT's
Municipal Assistance Center:
(800) 649-7915
info@vlct.org**

