

## **A GUIDE TO OPEN MEETINGS**

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James Condos, Vermont Secretary of State



Living in Vermont, we expect openness in government. Any day the legislature is in session we can sit down in either chamber, or in the various committee rooms, and see laws being made. Any day we can walk into the county courthouse and attend any hearing or trial, or watch the arguments being given before the Vermont Supreme Court. We can attend Act 250 hearings and meetings of the local zoning board, and any other public body, and we can expect to see notices of those meetings in the newspaper or on public bulletin boards. We can review and copy public documents in state and local offices.

One important foundation of openness in Vermont is the “Right to Know” laws, including those related to open meetings and public records. Together they are the most important public laws we have because they allow us direct access to the decisions that affect us. A full understanding of these laws makes everyone a better citizen. This guide is an introduction to the open meeting law.

You can read the open meeting law for yourself. The open meeting law is found in every town clerk’s office, in Title 1 of the Vermont Statutes Annotated. Title 1 is in the first volume of a set of green law books that include all of the statutory laws of the state. Look for sections 310 through 314, and make sure you check the pocket part to see if there is newer law to review for each section. You can also find this law on the internet at the Vermont State Legislature’s website at:

**<http://www.leg.state.vt.us/statutes/sections.cfm?Title=01&Chapter=005>**

## MEETINGS OF A PUBLIC BODY MUST BE OPEN TO THE PUBLIC

- Public must be given notice of the meeting.
- Public must be allowed to attend the meeting and be heard.
- Minutes of the meeting must be taken.

## WHO DOES THE OPEN MEETING LAW APPLY TO?

Vermont's open meeting laws apply to all boards, councils and commissions of the state and its political sub-divisions (i.e. municipalities), including committees and subcommittees of these bodies. *1 V.S.A. § 310(3)*. This means the open meeting law governs meetings of selectboards, planning commissions, boards of civil authority, recreation commissions, municipal public library trustees, auditors, listers, etc., as well as any committee created by one of these public bodies. The open meeting laws apply to boards and commissions, not to individual officials. There is no right to sit in the town manager's office and watch her conduct town business. There is no right to be present at site visits for tax assessments or abatements, or to oversee the routine day-to-day administration of the town. *1 V.S.A. § 312(g)*.

## WHEN DOES THE OPEN MEETING LAW APPLY?

Whenever a quorum (a majority) of a public body is gathered to discuss the business of the board or to take action, the open meeting laws apply. *1 V.S.A. § 310(2)*. This means that if a majority of a board find themselves together at a social function they must take care not to discuss the business of the board. In 2014 the Vermont legislature clarified that a public body is not meeting if members are exchanging emails "for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, . . . ." Two members of a five-person board may meet without the need for public notice. The entire public body may meet without notice or public attendance when it deliberates on its written decision, following a quasi-judicial hearing on an application or permit. In this instance, although the hearing is open, only interested parties have the right to be heard, and deliberations that follow may be closed to the public. *1 V.S.A. § 312(e) & (f)*. When acting on these cases, a public body must issue its decisions in writing, but may do so without the formality of a meeting where the decision is announced.

## HOW DOES A BOARD PROVIDE NOTICE OF ITS MEETINGS?

- A board schedules **regular meetings** by adopting a resolution setting the time and place of the meeting. This information must be made available to the public. When a board meets, for example, on the first Tuesday of every month, the law does not require formal public notice. However, the board does need to adopt a resolution specifying its regular meeting schedule. *1 V.S.A. § 312(c)(1)*.
- A board holding a **special meeting**, i.e. a meeting that is not a regular or emergency meeting, must, at least 24 hours before the meeting, publicly announce the time, place and purpose of the meeting by notifying the board members and the local news media and any other person that has specifically requested notification, and by posting notice of the meeting in or near the municipal office and in two other designated public places in the municipality. *1 V.S.A. § 312(c)(2)*.
- An **emergency meeting** may be held in the event of a true emergency, i.e. when "necessary to respond to an unforeseen occurrence or condition requiring immediate attention", without public announcement as long as some public notice is given as soon as possible before the meeting. *1 V.S.A. § 312(c)(3)*. An emergency meeting should not be used if the public body is able comply with the 24-hour notice requirements for special meetings.

**N.B.** When a meeting is “adjourned,” or continued to a new time or place, the meeting will not be considered a new meeting and will not require additional notice so long as the time and place of the new meeting is announced before the first meeting is closed. *I V.S.A. § 312(c)(4)*.

### **WHAT ARE THE REQUIREMENTS FOR MINUTES OF A PUBLIC BODY?**

Public bodies are required to take minutes. Minutes must at least include the names of all members of the public body present at the meeting, and other active participants, and all motions, proposals, and resolutions made, and their dispositions, and the results of any votes taken. *I V.S.A. § 312 (b)(1)*. Minutes are public records, which must be available for public inspection and copying after five days from the date of the meeting. Minutes also must be posted no later than five days from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body. *I V.S.A. § 312 (b)(2)*. Minutes are the permanent record of the formal actions of the public body and play an important role in recording the history of municipal business.

### **DO MEMBERS OF A PUBLIC BODY NEED TO BE PHYSICALLY PRESENT?**

As long as the requirements of the open meeting laws are met, one or more members of a public body may fully participate in discussing the business of the public body and vote to take an action at a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location. In this situation, any vote of the public body must be taken by roll call. In addition, if a member is not physically present, the member is required to identify himself or herself when the meeting is convened and be able to hear the conduct of the meeting and be heard throughout the meeting. If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the public body must publicly announce and post notice of the meeting at least 24 hours prior to the meeting. This notice must 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, is required to be physically present at each designated meeting location. *I V.S.A. § 312(a)(2)*.

### **WHEN CAN A BOARD MEET IN PRIVATE?**

- A public body may meet in private to deliberate in connection with a quasi-judicial hearing. This is not an open meeting and does not have to be warned. *I V.S.A. § 312(e)*.
- A public body may enter into executive session, which is a closed meeting within a public meeting. A public body may only enter into executive session upon a majority vote (2/3 vote of a state board), on a motion made in an open meeting, that indicates the reason for going into executive session. The only permissible reasons for going into executive session are set forth in *I V.S.A. § 313*. One category, requires the public body to make a specific finding that “premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage” prior to considering one of the following in executive session:
  - contracts;
  - labor relations agreements with employees;
  - arbitration or mediation;
  - grievances, other than tax grievances;
  - pending or probable civil litigation or a prosecution, to which the public body is or may be a party; or
  - confidential attorney-client communications made for the purpose of providing professional legal services to the body.
- Other things a public body may consider in executive session are:

- The negotiating or securing of real estate purchase or lease options;
  - The appointment or employment or evaluation of a public officer or employee, provided that the public body makes its final decision to hire or appoint a public officer or employee in an open meeting and must explain the reasons for its final decision during the open meeting;
  - A disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;
  - A clear and imminent peril to the public safety;
  - Discussion or consideration of records or documents that are not public documents under the access to public records act. However when the board discusses or considers the excepted record or document it may not also discuss the general subject to which the record pertains;
  - The academic records or suspension or discipline of students;
  - Municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety.
- Abusing the law of executive session is offensive to the purpose of open meetings. Boards should close their meetings rarely, and then only for legitimate purposes. No formal action may be taken in executive session except for those related to securing a real estate purchase option. In all other instances, appropriate topics may be discussed in executive session but ultimate action must be taken by motion and vote in open session. *1 V.S.A. § 313(a)*.
  - A board may invite into executive session its attorney, administrative staff and persons who are subjects of the discussion or whose information is needed. *1 V.S.A. § 313(b)*.
  - No decision may be made in executive session except for actions relating to the securing of real estate options. Decisions may be made in deliberative session so long as there is a written decision that is public record.
  - Some boards go beyond the requirements of the law and do everything in public (except when acting in a quasi-judicial capacity when due process may require private deliberations.) The risks entailed in letting everybody know its business are not small, but there is no penalty for extra openness and a high return on the investment if the public understands you have nothing to hide.

### **WHEN DO AGENDAS HAVE TO BE MADE AVAILABLE?**

At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda must be posted to a website that the public body maintains or designates, if one exists. In addition, a municipal public body must post the agenda in or near the municipal office and in at least two other designated public places in the municipality. A meeting agenda must be made available to a person prior to the meeting upon specific request. Any addition to or deletion from the agenda is required to be made as the first act of business at the meeting, but any other adjustment to the agenda may be made at any time during the meeting. *1 V.S.A. § 312(d)*. Agendas should allow interested members of the public to be reasonably informed of what will be discussed at the meeting.

### **WHAT RIGHTS DO MEMBERS OF THE PUBLIC HAVE?**

- Upon request, the agendas of regular or special meetings must be made available to any person prior to a meeting. *1 V.S.A. § 312(d)*.
- Persons that wish to be notified of special meetings should provide a written request to the public body.

- Members of the public have the right to attend meetings, to express their opinions on matters being considered by the public body, and to tape or videotape meetings so long as it is not done in a manner that disrupts the meeting. *1 V.S.A. § 312(h)*. Many boards allow public comment at the start of the meeting while others place it as the final agenda item. Some boards allow public comment whenever anyone present has something to add to the discussion. Public comment is often the one opportunity that members of the public have to speak openly about their concerns. The public comment period, however, is not a free-for-all. The chair of the board may establish reasonable rules to maintain order, and reasonable limitations on the amount of time for each speaker are not unusual or improper. A school board must provide a written response whenever a member of the public requests a written response to his or her public comments. *16 V.S.A. § 554(b)*.
- The public has the right to know the reason a board is going into executive session.

### **HOW ARE VERMONT'S OPEN MEETING LAWS ENFORCED?**

The following persons can be found guilty of a misdemeanor and fined up to \$500.00:

- A person who is a member of a public body and who knowingly and intentionally violates the provisions of the open meeting laws;
- A person who knowingly and intentionally violates the provisions of the open meeting laws on behalf or at the behest of a public body;
- A person who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting. *1 V.S.A. § 314(a)*.

The Attorney General or any person aggrieved by a violation of the open meeting laws may file suit in the Civil Division of the Superior Court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment. Such an action must be filed no later than one year after the meeting at which the alleged violation occurred or to which the alleged violation relates. The Court is required to give priority to these suits on its docket. Prior filing suit, however, the Attorney General or aggrieved person must provide the public body written notice that alleges a specific violation and requests a specific cure of such violation. The public body will not be liable for attorney's fees and litigation costs if it cures in fact the violation. Upon receipt of written notice of the alleged violation, the public body must respond publicly to the alleged violation within seven business days by either acknowledging the violation and stating an intent to cure the violation within 14 calendar days or by stating that the public body has determined that no violation has occurred and that no cure is necessary. If the public body fails to respond to a written notice of an alleged violation within seven business days, this shall be treated as a denial of the violation. In order to cure a violation, within 14 calendar days after a public body acknowledges a violation, the public body shall cure the violation at an open meeting by ratifying, or declaring as void, any action taken at or resulting from a meeting in violation and adopting specific measures that actually prevent future violations. The Court is required to assess against a public body found to have violated the requirements of this subchapter reasonable attorney's fees and other litigation costs reasonably incurred in which the complainant has substantially prevailed, unless the Court finds that the public body had a reasonable basis in fact and law for its position and the public body acted in good faith. In determining whether a public body acted in good faith, the Court must consider, among other factors, whether the public body responded to a notice of an alleged violation in a timely manner or whether the public body cured the violation. *1 V.S.A. § 314(b)*.