

VERMONT'S OPEN MEETING LAW WOODSTOCK

MUNICIPAL ASSISTANCE CENTER



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AGENDA

- ? What?
- Why?
- Who?
- When?
- Requirements
- Exemptions
- Resources



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WHAT... IS THE OPEN MEETING LAW (OML)?

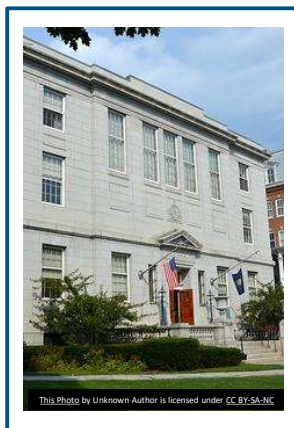


“All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title [i.e. executive sessions].”

[1 V.S.A. § 312\(a\)\(1\)](#)

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WHY... DO WE HAVE THE OML?

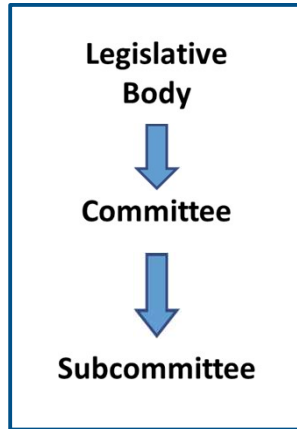


“[The law] protects the interest of the public to hold its elected officers accountable by, among other ways, requiring meetings of a public body to be ‘open to the public at all times,’ except when in executive session, 1 V.S.A. § 312(a), and by requiring that the public be given a ‘reasonable opportunity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

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

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WHO... DOES THE OML APPLY TO?



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 or subcommittee of any of the foregoing boards, councils, or commissions...”

[1 V.S.A. § 310\(6\)](#)

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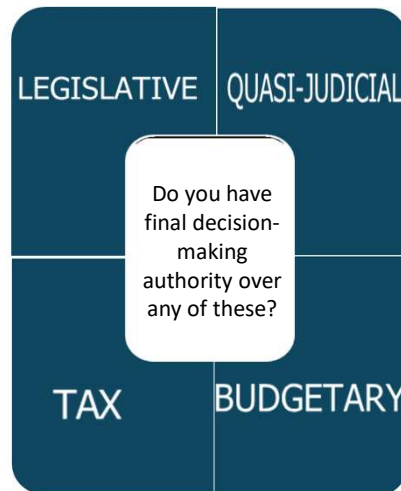
WHO... DOES THE OML APPLY TO?

Non-advisory body

A decision-making body, one that has supervision, control, or jurisdiction over legislative, quasi-judicial, tax, or budgetary matters.

Advisory body

A public body that does not have supervision, control, or jurisdiction over legislative, quasi-judicial, tax, or budgetary matters.
 An advisory body, by its very name, advises, which means that it lacks final statutory decision-making authority.



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WHEN... DOES THE OML APPLY?

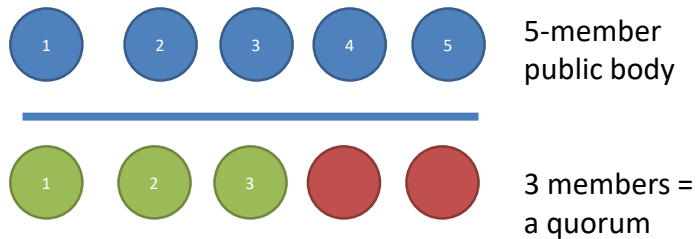
Whenever a public body is “meeting”

“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\(5\)\(A\)](#)

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WHEN... DOES THE OML APPLY?



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WHEN... DOES THE OML APPLY?



Any time a “quorum” holds a “meeting.”



Quorum = a majority of the entire public body.



Meeting = a gathering of a quorum to discuss business or take action.

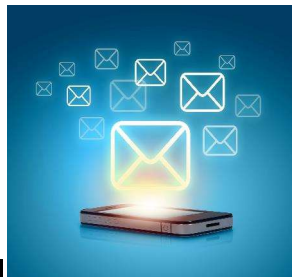


Business means the body’s government functions, including matters over which it has supervision, control, jurisdiction, or advisory power.

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ARE THESE MEETINGS?

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WHEN... DOES THE OML APPLY?



Electronic participation by members allowed so long as:

- Designated, staffed physical location available for public;
- Non-unanimous votes are taken by roll call;
- Members participating electronically must:
 - Identify themselves at the beginning of the meeting; and
 - Be able to hear and be heard through the meeting.

[1 V.S.A. § 312\(a\)\(2\)](#)

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WHEN... DOES THE OML NOT APPLY?

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:

- No other board business is discussed/conducted; and
- Any resulting written communication is made available for inspection and copying under the Public Records Act.

When a quorum of members attends:

- Social gatherings, conventions, press conferences, training programs, media events, or otherwise gathers,

provided that....

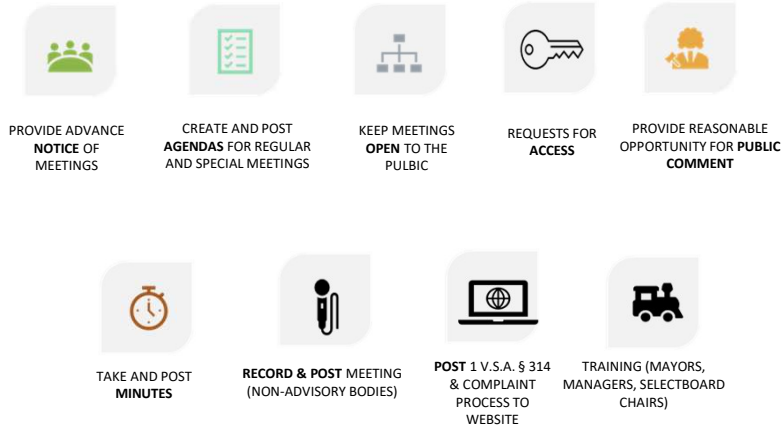
- they don't discuss the specific business of the public body that, at the time, the participating members expect to be future business.
- A duly warned meeting of another public body,

provided that:

 - the attending body doesn't conduct any business.

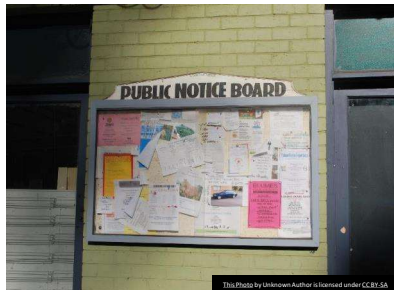
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REQUIREMENTS



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REQUIREMENTS: PUBLIC NOTICE



Provide advance public **notice** of meetings. [1 V.S.A. § 312\(c\)](#)

- Regular meeting: clearly designated by resolution, ordinance, bylaw, charter, etc.
- Special meeting: 24 hours prior
- Emergency meeting: “some public notice” as soon as possible before the meeting.

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REQUIREMENTS: AGENDAS

Produce and post an **agenda**. [1 V.S.A. § 312\(d\)](#)

- Contain sufficient details concerning the specific matters to be discussed;
- Additions/deletions as first item;
- Recommend agendas for hybrid meetings, if offered, include instructions for electronic participation; and
- List “proposed executive session” whenever included on agendas.

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REQUIREMENTS: OPEN TO THE PUBLIC

Make meetings
open to the public.

[1 V.S.A. § 312\(a\)\(1\)](#)



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Non-Advisory Public Bodies ("decisionmaking")

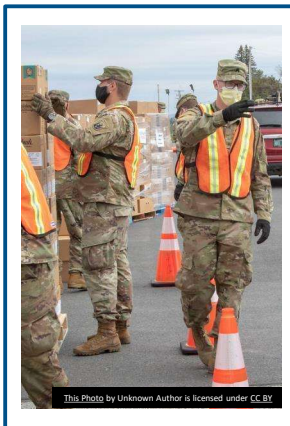
- All regular and special meetings must include a staffed, physical location.
- May continue to hold hybrid meetings.
- Emergency meetings, and meetings held during a local incident or state of emergency, may be remote-only.

Advisory Public Bodies

- May hold remote-only regular, special, or emergency meetings, by electronic or other means. Remote meetings must:
 - Designate and use an electronic platform that allows the public direct access, attendance, and participation, including telephone access.
 - Post info that enables the public to directly access the electronic platform and include info. in the meeting's published agenda or public notice.
- May continue to hold hybrid meetings.

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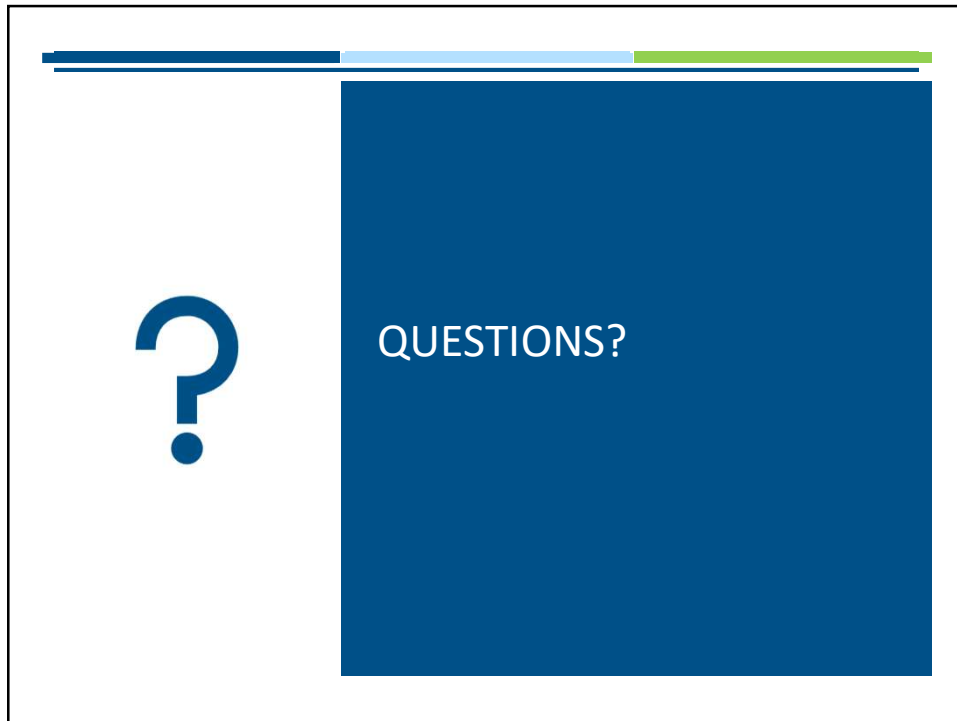
REQUIREMENTS: OPEN TO THE PUBLIC



During either a declared state of emergency or a "local incident," any affected public body (advisory or not) may:

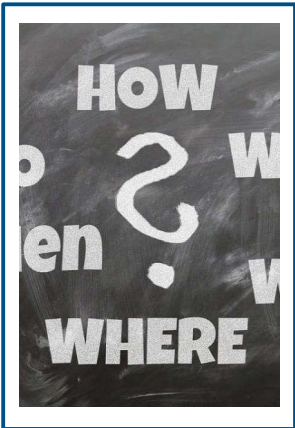
- Hold any public meeting as remote, without a designated staffed physical location.
- Meet exclusively at a designated physical meeting location, if the local incident impedes the body's ability to hold a meeting electronically.
- For municipal public bodies, substitute one or two physical postings of a meeting agenda/notice with one or two electronic postings, respectively.

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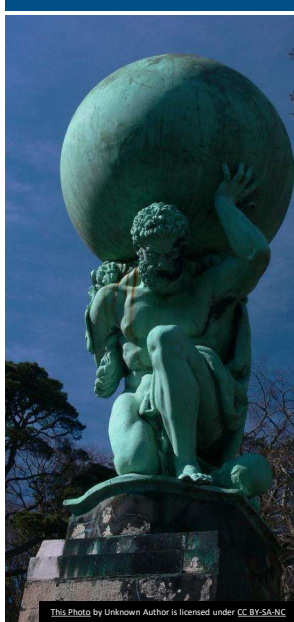
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**REQUIREMENTS:
REQUESTS FOR ACCESS**



- A resident of the geographic area in which the public body has jurisdiction, a member of the public body, or a member the press.
- May request, in writing, either a designated physical location (in-person) or electronic/telephone (remote access to a regular meeting of any public body.
- 2+ business days before meeting
- The public body **MUST** grant the request, unless exception applies

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REQUIREMENTS: RESPONSE TO REQUESTS

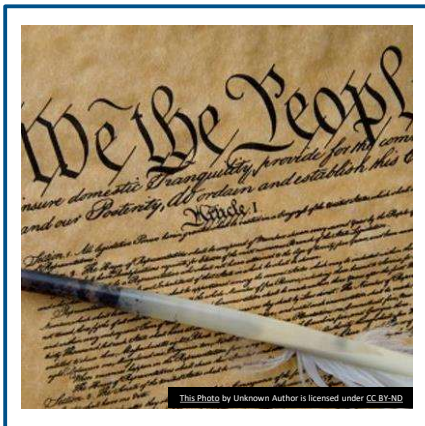
UNDUE HARDSHIP

(9) “Undue hardship” means an action requiring significant difficulty or expense to the unit of government to which a public body belongs, considered in light of factors including the overall size of the entity, the availability of necessary personnel and staff, the entity’s available resources, and the costs associated with compliance. [1 V.S.A. § 310\(9\)](#)

NOTE: The municipality must prove undue hardship.

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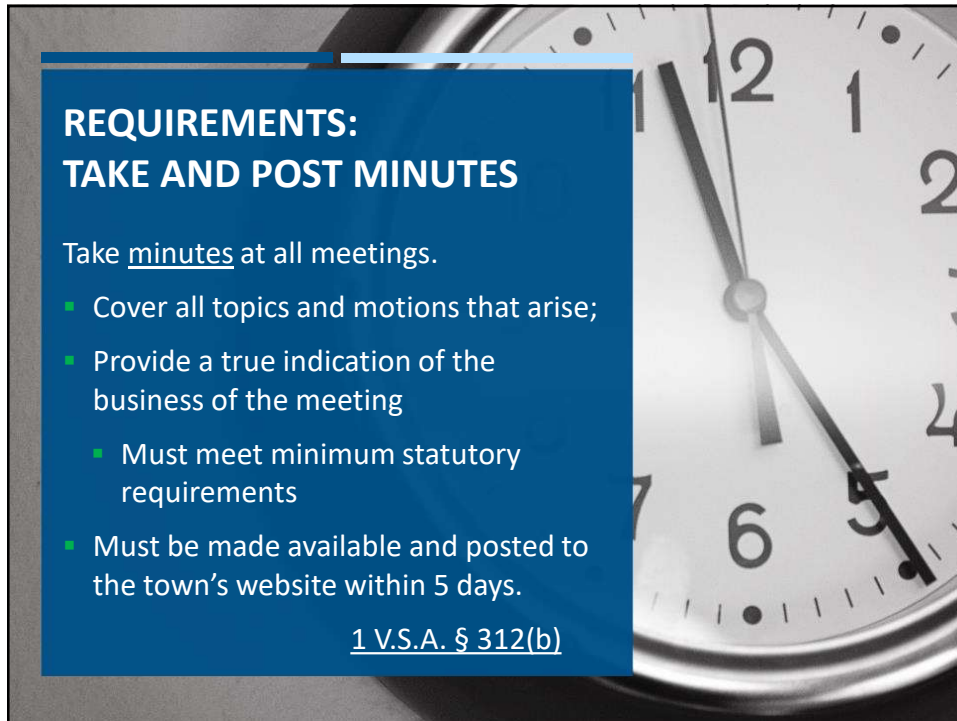
REQUIREMENTS: PUBLIC COMMENT



“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\(h\)](#)

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**REQUIREMENTS:
TAKE AND POST MINUTES**

Take minutes at all meetings.

- Cover all topics and motions that arise;
- Provide a true indication of the business of the meeting
 - Must meet minimum statutory requirements
- Must be made available and posted to the town's website within 5 days.

1 V.S.A. § 312(b)

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**REQUIREMENTS:
RECORD & POST MEETINGS**

- Non-advisory public bodies only.
- Must electronically record or cause to record (either video or audio) all meetings and retain and post recordings in a designated location for at least 30 days after posting of minutes, unless doing so would pose an “undue hardship” on the municipality.

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REQUIREMENTS: WEBSITE POSTING AND TRAININGS



Municipalities must **post** on their websites, if they maintain one:

- An explanation of procedures for submitting notice of OML violation to the public body and the VT Attorney General;
- A copy of the text of [1 V.S.A. § 314](#).



The following officers must **participate** in an annual OML **training** by SOS:

- Local chairs of legislative bodies, town managers, and mayors.

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EXEMPTIONS

The Open Meeting Law does not apply to:

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

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EXECUTIVE SESSION



A private/closed portion of a duly warned/noticed open meeting

- Must follow process to enter and exit
- Must attach use to a *specific* legal provision
- No action can be taken in close session

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EXECUTIVE SESSION

Method 1: 1 V.S.A. § 313(a)(2), (3), (4), (5), (6), (10),

- Negotiating or securing real estate or lease options
- Appointment or evaluation of public officer or employee
- Disciplinary or dismissal action of public officer or employee
- Clear and imminent peril to public safety
- Exempt record(s)

Method 2: 1 V.S.A. § 313(a)(1) finding of “premature general public knowledge” required; TWO motions

- Contracts
- Labor relations agreements with employees
- Arbitration or mediation
- Grievances, other than tax grievances
- Pending or probable civil litigation, to which board is or may be party
- Confidential attorney-client communications

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ENFORCEMENT / INADVERTENT VIOLATIONS

- Upon receipt of the written notice complaining of an open meeting law violation, the public body must respond PUBLICLY within 10 calendar days.
- The body must either:
 - Acknowledge the violation and state an intent to cure the violation within 14 calendar days, OR,
 - State that the body determines no violation has occurred and therefore no cure is necessary.
- A failure to respond within 10 calendar days will be treated as a DENIAL of the violation.

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VLCT RESOURCES



[MAC's Open Meeting Law Topic Webpage](#)

- Open Meeting Law FAQs
 - Effective and Legal Meetings Toolkit
 - Quick Guide to VT's Open Meeting Law
 - Hybrid and Remote-Only Public Meetings Resources
- ... AND MORE!!

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QUESTIONS?

ASK A QUESTION

INFO@VLCT.ORG

(802) 229-9111

