



CITY COUNCIL Agenda Item #19-088

Date: March 13, 2019

Consent Discussion

SUBJECT: Open Meeting Laws with VLCT Staff

SUBMITTING DEPARTMENT: City Manager

RECOMMENDED ACTION: Receive Presentation; Opportunity for Discussion

STRATEGIC OUTCOME/PRIOR ACTION: Responsive and Responsible Government

EXPENDITURE REQUIRED: None

SOURCE OF FUNDS: N/A

LEGAL REQUIREMENTS: N/A

BACKGROUND INFORMATION: Representatives from the Vermont League of Cities and Towns will provide a presentation on the State's open meetings.

SUPPORTING DOCUMENTS: Presentation (PDF)

INTERESTED PARTIES: City Council, Staff, Committee members

CITY MANAGER'S APPROVAL:

A handwritten signature in black ink, appearing to read "W. Hoffman".

CITY OF MONTPELIER

Understanding and Following Vermont's Open Meeting Law



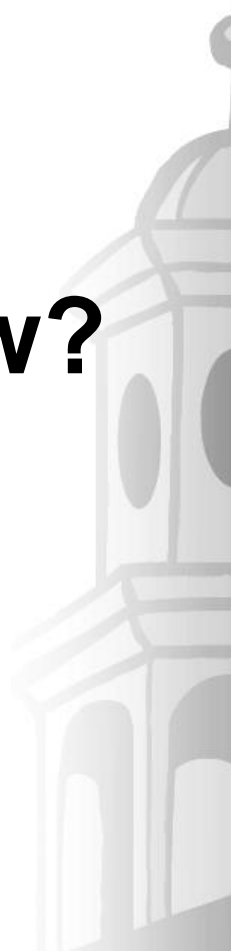
**Municipal Assistance Center
Vermont League of Cities and Towns
*Garrett Baxter, Senior Staff Attorney***

Agenda

- **What is the Open Meeting Law?**
- **Why Do We Have the Open Meeting Law?**
- **Who Does the Open Meeting Law Apply To?**
- **When Does the Open Meeting Law Apply?**
- **Open Meeting Law Requirements**
- **Open Meeting Law Exemptions**



What is the Open Meeting Law?



What is the Open Meeting Law (OML)?

Vermont's Open Meeting Law governs
“meetings” of “public bodies.”



Why Do We Have the Open Meeting Law?



Why Do We Have the OML?



ACCOUNTABILITY:

- Transparency
- Public Access
- Public Participation



Why Do We Have the OML?

- The Open Meeting Law is “entitled to a liberal construction in support of the goal of open access to public meetings for members of the public. Exemptions to these laws must be strictly construed.”

Trombley v. Bellows Falls Union High School District No. 37, 160 Vt. 101 (1993).



Who Does the Open Meeting Law Apply To?



Who Does the OML Apply To?

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

- “All meetings of a public body are declared to be open to the public at all times...”

1 V.S.A. § 312(a)(1).



Who Does the OML Apply To?

What is a “public body”?

- “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).



Who Does the OML Apply To?

Those created by statute or charter, including:

- Legislative body (Selectboard, Council, Trustees, Aldermen)
- Cemetery Commission
- Planning Commission
- DRB/ZBA
- Board of Civil Authority
- Board of Abatement
- Water/Sewer Commissioners
- Local Liquor Control Board
- Board of Listers
- Library Board of Trustees
- Advisory Commissions
- Conservation Commission
- Local Board of Health
- Trustees of Public Funds
- Local Emergency Planning Committee

Who Does the OML Apply To?

...and those created by other public bodies.

Public Body



Committee



Subcommittee



When Does the Open Meeting Law Apply?



When Does the OML Apply?

Whenever a public body is “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).

When Does the OML Apply?

The OML applies every time you have:

1. A quorum (majority of members) of a public body present; and
2. Discussing the **business of the public body** or taking action.



When Does the OML Apply?

What is “business of the public body”?

“**Business of the public body**’ means the public body’s governmental functions, including any matter over which the public body has supervision, control, jurisdiction, or advisory power.”

1 V.S.A. § 310(1).



When Does the OML Apply?

The OML applies every time you have:

1. **A quorum** of a public body;
2. Involved in discussing the business of the public body or taking action.



When Does the OML Apply?

What is a Quorum?

Majority of the total membership of a public body.

1. The minimum number of members a public body needs to hold a meeting;
2. The minimum number of members a public body needs to take action; and
3. The threshold at which the Open Meeting Law applies.



When Does the OML Apply?

Montpelier City Charter

§ 5-302. City Council composition and term of office

- “The City Council shall consist of the Mayor and two Council members from each voting district...”

§ 5-310. Council quorum

- “A quorum of the City Council, **consisting of a majority or four Council members**, shall be necessary to conduct business; however, the transaction of business shall be in accordance with 1 V.S.A. § 172 as may be amended from time to time...”



When Does the OML Apply?



Quorum Counting

When Does the OML Apply?



Count the Seats, Not the People

When Does the OML Apply? Electronic Participation at Meetings

“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).



When Does the OML Apply? Electronic Participation at Meetings

A member participating electronically may fully participate (discuss and vote) so long as:

1. Absent member identifies himself/herself when the meeting is convened;
2. Absent member can hear and be heard throughout the meeting; and
3. Votes that are not unanimous are taken by roll call.

1 V.S.A. § 312(a)(2).



When Does the OML Apply? Electronic Participation at Meetings

If a quorum or more participate electronically:

1. The agenda for meeting must designate at least one physical location where a member of the public can attend and participate in the meeting; and
2. At least one member of the public body, or at least one staff or designee of the public body, must be physically present at each designated meeting location.

1 V.S.A. § 312(a)(2)(D).



Electronic Participation at Meetings

Scenario 1:

- 7 member board.
- 3 of them are physically present in the meeting room and 1 member attends by conference call.

Is that a meeting?



Electronic Participation at Meetings

Scenario 1:

- **Yes, so long as** the member identifies himself/herself when the meeting is convened; and can hear and be heard throughout the meeting.



Electronic Participation at Meetings

Scenario 2:

- 7 member board.
- 3 are physically present in the meeting room.
- 4th members sends an email or a text to member 1 expressing his/her position about an issue on the meeting agenda.

Is that “electronic participation”?



Electronic Participation at Meetings

Scenario 2:

It is impossible to comply with the Open Meeting Law if you “participate” at a meeting by text or email because not all the requirements of 1 V.S.A. § 312(a)(2) can be met:

1. Absent member identifies him/herself when the meeting is convened;
2. **Absent member can hear and be heard throughout the meeting;** and
3. Votes that are not unanimous are taken by roll call.



Electronic Participation at Meetings

Scenario 3:

- 7 member board.
- 3 board members are having a discussion on the street about the condition of the sidewalk when one of them calls a 4th member of the board to include him/her in on the discussion.

Is this a meeting?



Electronic Participation at Meetings

Scenario 3:

Likely a “meeting” in violation of the OML.

- 4 out of 7 members = quorum;
- Discussion of sidewalk = town business;
- Not warned, not open to the public.



Open Meeting Law Requirements



OML Requirements

- **Publicly notice** your 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**. 1 V.S.A. § 312(h);
- Take **minutes**. 1 V.S.A. § 312(b).



OML Requirements: Public Notice

There are different notice requirements for different types of meetings.

- **Three types of meetings:**
 1. Regular;
 2. Special;
 3. Emergency.



OML Requirements: Public Notice

- **Regular meetings:** Meetings scheduled to occur consistently at the same time and place.
- **Special meetings:** Any meeting called for some time or place other than the regular meeting time or place.
- **Emergency meetings:** Only when necessary to respond to an “unforeseen occurrence or condition requiring immediate attention.” 1 V.S.A. § 312(c)(3).



OML Requirements: Public Notice

Regular Meetings do not need to be individually noticed.

- Meeting schedule (date, time and place) must be: clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, etc. and made available to any person upon request.
 - 1 V.S.A. § 312(c)(1).
- VLCT recommends posting year-round at City Hall.



OML Requirements: Public Notice

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 City Clerk’s office and in a least two other designated public places in City;
- (2) Giving oral or written notice to members of the public body, unless previously waived;
- (3) Providing notice to any person who made a written request for such notice; and
- (4) Notifying the press (any editor, publisher or news director of a newspaper or radio station serving the area).



1 V.S.A. § 312(c)(2).

OML Requirements: Public Notice

Emergency Meetings are held only when necessary to respond to an “unforeseen occurrence or condition requiring immediate attention by the public body.”

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

1 V.S.A. § 312(c)(3).



OML Requirements: Public Notice

All hearings are meetings, but not all meetings are hearings

- There are different notice requirements for different types of meetings and hearings;
- The more specific notice controls.



OML Requirements: Public Notice

Public notice for land use hearings

- Development Review Board (DRB);
- Conditional use review, variances, ZA appeals, and final plat review for subdivisions;
- Date, place, and purpose of hearing must be provided at least **15** days prior by:
 1. publication in a newspaper of general circulation;
 2. posting in three or more public places in the City; and
 3. written notification to the applicant and to owners of all adjoining properties.

24 V.S.A. § 4444.



OML Requirements: Public Notice

Public notice for tax appeal hearings

- Board of Civil Authority (BCA);
- Time and place of hearing must be provided at least **5** days prior by:
 1. posting in three or more public places in the City;
 2. mailing to each member of the (Board of Civil Authority) BCA, the Town Agent, the Chair of the Board of Listers; and
 3. mailing to all persons appealing.

32 V.S.A. § 4404(b).



OML Requirements: Agendas

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

An agenda must be posted:

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

1 V.S.A. § 312(d)(1).



NO AGENDA FOR EMERGENCY MEETINGS

OML Requirements: Agendas

- “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).



OML Requirements: 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).



OML 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...**”

1 V.S.A. § 312(h).



OML Requirements: Public Comment

“At an open meeting ... **Public comment shall be subject to reasonable rules established by the chairperson.**”

1 V.S.A. § 312(h).

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

- reasonable;
- content neutral; and
- are applied equally to all members of the public.



OML Requirements: Public Comment



Set and enforce rules such as:

- Comments must have a bearing on the topic of discussion;
- Reasonable time limits;
- No personal attacks;
- All remarks must be addressed to the chair;
- Public must be recognized by the chair in order to comment;
- Only members of the public who raise their hand will be recognized by the chair;
- If someone has already spoken on a topic they may not be recognized again until all others have first been given an opportunity.

OML Requirements: Public Comment

Quasi-judicial hearings are IN the public, but not FOR the public.

“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 . . .

This subsection shall not apply to quasi-judicial proceedings.”

1 V.S.A. § 312(h).



OML Requirements: Minutes

Minutes must be kept for all meetings.

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

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



OML Requirements: Minutes

5 calendar days from the date of the meeting minutes must be:

- Available for inspection and copying; and
- Posted to a website, if one exists, that the public body has designated as its official website (must remain on website for at least 1 year)

1 V.S.A. § 312(b)(2).



Open Meeting Law Exemptions



OML Exemptions

A quorum of a public body attending:

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

...so long as they don't discuss the specific business of the public body that, at the time, the participating members expect to be future business.

1 V.S.A. § 310(3)(C).



OML Exemptions

A quorum of a public body attending the duly warned meeting of another public body, provided...

- the attending public body doesn't conduct any board business.

1 V.S.A. § 310(3)(D).



OML Exemptions

Any communication (e.g., in person, email, telephone, etc.) between members of a public body for the purpose of:

- **Scheduling** a meeting;
- **Organizing** an agenda; or
- **Distributing information** to discuss at a meeting,

provided...

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



1 V.S.A. § 310(3)(B).

OML Exemptions

- **Site inspections** for the purposes of assessing damage or making tax assessments or abatements;
- **Clerical work** or work assignments of staff; or
- **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(3)(B), 312(g).



OML Exemptions

The Open Meeting Law **does not apply to:**

- **Deliberative sessions.** 1 V.S.A. §§ 312(e),(f).
- **Executive sessions.** 1 V.S.A. §§ 312(a), 313.



OML Exemptions Deliberative Session

- A **deliberative session** only occurs in conjunction with a quasi-judicial proceeding.



OML Exemptions: Deliberative Session

Examples:

- Tax appeal hearings before the Board of Civil Authority;
- Vicious dog hearings before the City Council;
- Land use hearings before the DRB;
- Board of Health hearings;
- Tax abatement requests before the Board of Tax Abatement;
- City Council hearings on the laying out, altering, reclassifying or discontinuing public highways.



OML Exemptions: Deliberative Session

Deliberations (may be public or private):

Do not need to be warned/noticed;

Do not need an agenda;

Are not open to the public;

May take place at any time and by any means (phone, e-mail, in-person)

Do not require the taking of minutes;

Do not require public vote or for votes to be publicly declared:

- May vote in private: written decision speaks for the public body.



1 V.S.A. §312(f).

OML Exemptions: Executive Session

Executive Session is a closed portion of an open meeting.

The law permits excluding the public from an open meeting only to discuss one of the subject listed in law. [1 V.S.A. § 313(a)].



OML Exemptions: Executive Session

A public body can only enter executive session when ALL the following conditions have been met:

1. There is a motion (in open session) to go into executive session that indicates the nature of the business;
2. The reason for the executive session is one permitted by law: 1 V.S.A. § 313;
 - The motion is approved by a majority vote of those board members present.
 - The result of the vote must be recorded in the minutes.



1 V.S.A. § 313(a).

Executive Session: One Motion

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).



Executive Session: One Motion

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).



Executive Session: One Motion

Making The Motion:

“I move that we enter executive session to discuss a clear and imminent peril to the public safety pursuant to Title 1, Section 313(a)(5) of the Vermont Statutes.”



Reasons for Executive Session: Two Motions

7. After making a **specific finding** that premature general public knowledge will clearly place the public body or a person involved at a **substantial disadvantage**, the public body may discuss:

- 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
- confidential attorney-client communications made for the purpose of providing professional legal services to the body.



Executive Session: Two Motions

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 City at a substantial disadvantage by [*disclosing its negotiation strategy*]."
- **Second motion:** "I move that we enter executive session to discuss the [*City's contract with ABC Company*] under the provisions of Title 1, Section 313(a)(1)] of the Vermont Statutes."



OML Exemptions: Executive Session

- **Not required to be listed on the agenda:** (though VLCT recommends listing “possible executive session”);
- **May only occur in the context of a duly-warned open meeting;**
- **Not open to the public:** attendance limited to members of the Council and in its discretion: staff, clerical assistants, legal counsel, and those subject to discussion or whose information is needed;
- **No formal or binding action may be taken in executive session:** (except real estate options);
- **No other matter may be discussed;**
- **Minutes of executive session are not required:** (but if taken they are not subject to VT’s Public Records Act).

1 V.S.A. § 313.



Resources

- VLCT Open Meeting Law website:
<https://www.vlct.org/municipal-assistance/municipal-topics/vermonts-open-meeting-law>
- Includes links to OML FAQs, OML Quick Guide, and Model Rules of Procedure for Municipal Boards, Commissions, and Committees.



Questions

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

