

VLCT Selectboard Institute  
**Vermont's Open Meeting Law**  
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**A. WHAT is the Open Meeting Law?**

- a. The OML is a State law that requires all meetings of a public body to be open to the public. It declares: "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 [executive session]. 1 V.S.A. § 312(a).
- b. Purpose: accountability and accessibility through transparency

**B. To WHOM does it apply?**

- a. **Applies to every "public body" of a municipality**
  - i. "Public body" is defined in 1 V.S.A. § 310(3) as "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..."
  - ii. A group is a "public body" if it was either:
    1. Created by state law or governance charter (this includes selectboards, planning commissions, cemetery commissions, etc.); OR
    2. Created by act or resolution of one of the above public bodies (this includes committees, subcommittees, advisory committees, etc.)

**C. WHEN does it apply?**

- a. **Applies anytime there is a "meeting" of the public body**
  - i. "Meeting" is defined in 1 V.S.A. § 310(2) as: "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. **... when a quorum of the members ...**
      - a. "Quorum" = The minimum number of members required to take action.
      - b. "Quorum" is generally a majority of the total membership of a public body, regardless of vacancies or recusals.
        - 1 V.S.A. § 172 declares: "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."
      - c. The BCA and BOA have different rules for determining quorum
    2. **...are discussing the "business of the body" or taking action.**  
(dealing with issues that are within their authority and responsibility)
- b. **Beware: The application of the Law is Not Necessarily Time or Space Restricted**
  - i. The physical location of the members does not matter; phone calls can be meetings.
  - ii. The Law specifically allows electronic participation (conference call, Skype, FaceTime, etc.)

- iii. The timing of members participation is likely not a factor; group emails may be meetings.
  - iv. Serial, one-to-one, conversations amounting to a quorum may trigger the Law.
- c. **Some communications do not constitute a “meeting” (even if all members participate). The Law allows written or electronic communications to:**
- i. schedule a meeting;
  - ii. organize an agenda; or
  - iii. distribute materials to discuss at a meeting,

**Provided that all** such 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).

#### D. What are the EXEMPTIONS (times when the Law does not apply)?

- a. **Site inspections for the purpose of assessing damage or making tax assessments or abatements**
- b. **Clerical work or work assignments** of staff.
- c. **Routine day-to-day administrative matters** that do not require action by the public body provided no money is appropriated, expend or encumbered. 1 V.S.A. §§ 310(2), 312(g).
- d. **Deliberations in conjunction with a quasi-judicial proceeding. 1 V.S.A. § 312(e).**
  - i. **A “quasi-judicial” proceeding is** defined in 1 V.S.A. § 310(5) as "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. These are situations where the legal rights of specific individual(s) are at stake (rather than the rights of the community in general) and a public body is acting like a judge or jury.
    - 2. Limited situations include: Land use hearings by a DRB or ZBA; Tax assessment appeal hearings before a BCA; Tax abatement hearings before a BOA; Vicious dog hearings; Laying out, Altering, Reclassifying or Discontinuing Public Roads.
  - ii. **“deliberations”** means “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).
  - iii. This exemption is absolute. The deliberations that occur after a quasi-judicial hearing:
    - 1. Do not need to be warned/noticed
    - 2. Do not need an agenda
    - 3. Do not have to be open to the public
    - 4. Do not require the taking of minutes; and
    - 5. Do not require that votes are publicly declared (since the decision speaks for itself, as per 1 V.S.A. § 312(f)).

e. **Executive Sessions**

- i. A closed portion of an open meeting
- ii. Only allowed for discussion of issues that are specifically listed in 1 V.S.A. § 313(a):
  1. Real estate purchase or lease options;
  2. Appointment or employment or evaluation of a public officer or employee
  3. Disciplinary or dismissal action against a public officer or employee;
  4. A clear and imminent peril to the public safety;
  5. Records exempt from public inspection under public records act;
  6. Municipal or school security or emergency response measures;
  7. When premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage, 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.
- iii. Executive session is optional, not required by law.
- iv. Use for discussion only. No formal or binding action may be taken in executive session, except for the securing of real estate options 1 V.S.A. § 313(a).
- v. 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).
- vi. Required procedure: The motion to go into executive session must:
  1. Be made in an open meeting;
  2. Must indicate the nature of the business to be discussed;
  3. Must get vote of majority of members present; and
  4. Must be recorded in the minutes.

**Consult VCLT OML FAQs for practical pointers and sample motions:**

<https://www.vlct.org/resource/open-meeting-law-fags>

- vii. This exemption is only partial. An executive session:
  1. May only occur in the context of an open meeting after a vote;
  2. Does not need to be warned/noticed separately (but may be listed on an agenda);
  3. Is not open to the public;
  4. Does not require the taking of minutes; and
  5. Does require a decision be made in public.

## E. Open Meeting Law Requirements

- a. Public notice of meetings. 1 V.S.A. § 312(c)
  - b. Produce and post an agenda. 1 V.S.A. § 312(d)
  - c. Meetings are open to the public. 1 V.S.A. § 312(a)(1)
  - d. Allow for public comment at meetings. 1 V.S.A. § 312(h)
  - e. Take and post minutes of meetings. 1 V.S.A. § 312(b)
- ✓ **CONSULT** VLCT's Quick Guide to Vermont's Open Meeting Law for details:  
<https://www.vlct.org/resource/quick-guide-vermonts-open-meeting-law>

## F. Public Attendance & Public Participation at Meetings

- a. Required by 1 V.S.A. § 312(a)(1): "All meetings of a public body are declared to be open to the public at all times, except [during executive session], and no resolution, rule regulations, appointment, or formal action shall be considered binding except as taken or made at such open meeting"
- b. The public has the right to:
  - i. know about meetings in advance
  - ii. be present at meetings
  - iii. be heard during meetings
    - 1 V.S.A. § 312(h) states: "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."
    - this right does not apply to quasi-judicial hearings
    - This is not an unlimited right. The limitations are that the public:
      1. must have a "reasonable opportunity"
      2. must be able to comment "on matters considered"
      3. the right exist only "as long as order is maintained"; and
      4. public comment "shall be subject to reasonable rules established by the chairperson" (content neutral, applied equally to all members of public)
        - ✓ VLCT does not recommend Roberts Rules of Order
        - ✓ VLCT does recommend the adoption of a simple set of rules such as VLCT's Model Rules of Procedure. available at: <https://www.vlct.org/resource/vlct-model-rules-procedure-municipal-boards-commissions-and-committees>