

UPDATED Open Meeting Law FAQs Related to COVID-19

This FAQ has been updated to include revisions from Act 92 (H.681) which Governor Scott signed into law on March 30, 2020. The act sets forth new Open Meeting Law procedures in response to COVID-19 which will be effective throughout the duration of the Governor’s declared state of emergency. The stated intent of the law is to encourage public bodies to meet electronically while also providing the public with electronic access to meetings in lieu of a designated physical location.

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Introduction

In response to questions posed by our members about the Open Meeting Law in light of COVID-19 (commonly known as coronavirus), the Municipal Assistance Center (MAC) has assembled the following information related to public meetings and how public bodies can continue to meet and take action through, for example, electronic meetings. The information is primarily excerpted from our Open Meeting Law FAQ. For the full document, please visit www.vlct.org/municipal-assistance/municipal-topics/vermonts-open-meeting-law.

For additional information about municipal emergency planning assistance and coordination, please visit our Coronavirus Resources and Recommendations webpage, www.vlct.org/coronavirus.

Note that these requirements for electronic meetings are in addition to the notice and agenda requirements for non-electronic public meetings (except for emergency meetings).

What does Act 92 temporarily change?

Pursuant to Act 92:

- A quorum or more of members of a public body may meet by electronic or other means without being physically present;
- The public body does not have to designate a physical meeting place where the public can attend;
- Whenever a public body meets electronically it must:
 - use technology that allows the public to attend by electronic or other means;
 - allow the public to access the meeting by telephone whenever feasible;
 - include and post information on how the public can access the meeting electronically in its agenda; and
 - record their meetings, if it is a meeting of a legislative body, unless unusual circumstances make it impossible for them to do so.
- In the event of a staffing shortage during the declared emergency, a public body may extend the time limit for posting meeting minutes from five (5) to ten (10) calendar days.

All other requirements of the Open Meeting Law not explicitly overridden or relaxed by this temporary law remain in effect and must be followed. For more information about Open Meeting Law (OML) requirements, please see our OML FAQs here: https://www.vlct.org/sites/default/files/documents/Resource/Open%20Meeting%20Law%20FAQs_0.pdf.



Does Act 92 apply to quasi-judicial hearings or only to meetings?

Act 92 also applies to quasi-judicial hearings, as hearings are just a different type of meeting (i.e. a gathering of a quorum of members of a public body to discuss business of the public body or to take action). A quasi-judicial hearing (“hearing”) occurs when the rights of parties are considered. Examples include applications for zoning approval before the development review board (DRB), appeals of lister grievances before the board of civil authority (BCA), and dog bite hearings before the selectboard. The Open Meeting Law requirements apply equally to hearings as they do to other meetings, with a few exceptions. For instance, hearings have their own specific notice requirements. Also, as opposed to other types of meetings, the public has no right to comment during a hearing and boards can make decisions (i.e. “deliberate”) in private. For more information about how the Open Meetings Law applies to quasi-judicial hearings, please refer to our Open Meeting Law FAQs at: <https://www.vlct.org/resource/open-meeting-law-faqs>.

Can we hold a remote meeting?

Yes. All members, staff, and members of the public may attend and participate in remote meetings (e.g., telephone, Zoom, GoToMeeting, Skype, etc.). Each member who attends electronically must identify himself or herself when the meeting is convened and must be able to hear and be heard throughout the meeting. Any voting that occurs at the meeting that is not unanimous must be done by roll call.

Act 92 eliminates the physical location requirement for meetings of public bodies for the duration of the Governor's declared state of emergency. A public body will not have to designate a physical location in order to meet and, therefore, no one is required to be physically present for a duly warned meeting. The public body must post information on how the public may access meetings electronically. This information must be included in each meeting's agenda and we recommend including it in all notices or announcements as well. The notice and agenda requirements otherwise remain the same. [For more detailed guidance, a checklist, and models for remote meetings, please refer to our Remote Public Meetings Toolkit at https://www.vlct.org/coronavirus#FAQs.](https://www.vlct.org/coronavirus#FAQs)

Must there be a physical location for the public to attend our meetings?

No. Act 92 temporarily waives the physical location requirement throughout the duration of the Governor's declared state of emergency. During this time, meetings can be solely electronic and remote for all participants. However, when a majority of the members of a public body gather to discuss the business of the body or to take action, even through electronic means, the public must still be allowed to access the meeting. Act 92 requires the use of technology that permits public attendance at all meetings through electronic or other means. The law also requires the public body to allow public participation by telephone, if feasible.

The public body must provide clear instructions on how the public may access meetings electronically in the meeting agenda. We encourage public bodies to advertise these instructions in additional ways beyond the minimum that is required by the law in order to achieve the most meaningful public participation possible. The public body must set up their electronic meeting in such a way that enables all public attendees to hear and be heard throughout the meeting.

Must there be physical postings of notices, warnings, and agendas?



Yes. While Act 92 explicitly allows public bodies to waive the public's right to physically access meetings, it does not similarly waive the requirement to physically post meeting notices and agendas. The underlying Open Meeting Law requirements for postings continue to apply. Notices must be posted in or near the town clerk's office and in at least two other designated public places at the required time in advance of a meeting. Agendas must be posted to a website that the public body maintains or is designated as the official website of the public body, if one exists, and also posted in or near the town clerk's office and in at least two other designated public places in the municipality. If these offices are closed, you may have to be creative. For instance, either someone with access to the building can post them in a window so they are visible from outside, or you can post them outside the usual posting location on a window or a sandwich board. They could also be posted at the post office or at the local park or green if so designated by the selectboard. During this state of emergency, we recommend posting in more locations than usual to ensure the notice is meaningful and so members of the public understands how business will proceed and can participate if they wish.

How can we possibly maintain order during an electronic meeting?

The same way you would maintain order during a physical meeting. The chairperson should administer the meeting in accordance to your public body's rules of procedure. The Open Meeting Law requirement that the public be given a reasonable opportunity to express its opinion on matters considered by a public body has not been lifted or relaxed and still applies equally to all meetings, regardless of how they are conducted.

Civility, decorum, and order are all essential elements of a successful public meeting and they are at times difficult to achieve even under the best of circumstances. One of the additional challenges posed by conducting an electronic meeting is the absence or delay of any real time physical cues. For example, if a meeting is conducted by conference call only, the chairperson will be unable to see who has their hand raised in order to be recognized. Members of the public body and the public must also be mindful not to talk over one another and to speak clearly so that meetings can be properly recorded (if applicable) and that all can hear and be heard throughout the meeting. It is important therefore that the public body review its rules of procedure and amend them if necessary, so that they're still applicable for electronic meetings. More than ever, it is incumbent upon public bodies to educate its members and the public as to its rules of procedure and how they will be enforced.

Some towns have had success using available electronic meeting software to manage meetings. Some meeting software allows participants to press a button and electronically "raise their hand." Other towns have requested that those wishing to publicly speak fill out and submit a participant comment form prior to the meeting.

Must all public bodies record electronic meetings?

No, only the legislative body's electronic meetings must be recorded. Note that this is referring to making an audio recording of a meeting; it is not creating a new requirement to record meeting minutes in the land records. If "unusual circumstances" make it impossible for the legislative body to record its meetings, then this requirement will not apply. The term "unusual circumstances" is not defined, but impossible is a rather high hurdle to clear so we recommend recording meetings of your legislative bodies if at all possible. Note that only one person must record the electronic meeting, and most people have recording capabilities with smart phone devices. These recordings can be easily distributed via email and posted to the town's official website. The recording will be considered a public record. Please contact the State of Vermont Archives and Records Administration (VSARA) for guidance regarding records management.

Does the new recording requirement mean we do not have to take minutes of those meetings?

No. Meeting minutes are still required. The new recording requirement for meetings of legislative body is in addition to the existing minutes requirement, which has not been changed.

Can we continue to meet in physical locations if we so choose?

The temporary changes to the Open Meeting Law are permissive, not restrictive so the law does not explicitly prevent members of a public body from physically gathering in the same location in order to meet. However, executive orders are currently in place that restrict the size of mass gatherings to 10 or less and that orders Vermonters to stay at home. The only safe course of action in our opinion, from both a public health and a legal perspective, is to cancel or postpone any scheduled meetings or hearings or to conduct them electronically until further notice.

Are we restricted to what we can meet about?

No. You can meet about any business of the public body as you normally would. However, you should be sensitive to the concerns of those who may believe that, just because some of the requirements of the Open Meeting Law are relaxed,, public bodies will take advantage and take far reaching action on controversial issues or matters of great importance while the public isn't looking. In light of those concerns, whether real or perceived, public bodies may want to meet electronically only if absolutely necessary and save those bigger issues for when things return to normal.

Can we hold an emergency meeting?

Yes. An emergency meeting may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body. In general, we think that if the public body can wait 24 hours, a special meeting should be noticed. To learn how to notice a special meeting please reference our quick guide to meetings here: <https://www.vlct.org/sites/default/files/documents/Resource/December%202017%20OML%20Quick%20Guide.pdf>

What are the notice and minutes requirements for an emergency meeting?

There is no requirement for an agenda for an emergency meeting. There is also no specific requirement for noticing an emergency meeting, although some public notice must be given as soon as possible before any such meeting. Minutes must be taken at every public meeting, including an emergency meeting. Act 92 includes one minor extension to the deadline for posting minutes. If there are staffing shortages due to the COVID-19 crisis, then public bodies may post minutes within 10 calendar days of the meeting (versus the former 5 days). We encourage you to make the minutes available as soon as possible after an electronic meeting, even if they are simply posted to the town's official website.

If a member is unable to attend an electronic meeting, can they vote by email or proxy?

No. The law does not allow for voting by email or by proxy (i.e., having another person vote on behalf of the member).

What are some methods or technology we can use for electronic meetings?

The law does not specify methods for electronic participation, except to say that it can be through electronic or other means, and by telephone whenever feasible. Some electronic meeting software options include Zoom, GoToMeeting, RingCentral, UberConference, Skype, Google Hangouts, FreeConferenceCall.com, and Vast Conference. You should also contact your local telephone service provider to ask about standard conference call options that use just a telephone system.

We encourage public bodies to use various means concurrently, if possible, to ensure members of the public have options. Broadband is not always a reliable option for Vermonters so offering a menu of choices to enable participation in the same meeting, concurrently, is ideal. For instance, you can set up a Zoom or Skype video meeting but also have a speaker phone positioned near someone's computer to capture audio for a conference call option. Think creatively but be sure to provide clear instructions so everyone has notice of these options and understands how to participate.

Can we cancel meetings/hearings of public bodies? How?

Public bodies may cancel meetings/hearings at any time. There are no requirements in the Open Meeting Law for how to give public notice of a meeting/hearing cancellation, but we recommend giving notice via the same method for noticing a meeting/hearing.

How does payroll and other municipal bills get processed if the legislative body is not meeting or is meeting electronically?

Individual members may not merely show up at the municipal office and sign payment orders at their convenience. Doing so would be a violation of the Open Meeting Law, which requires that whenever a majority of the members take an action or make a decision (e.g., sign an order approving payment), they must do so within the context of a duly warned open meeting.

There are two exceptions to the above general rule.

- First, the legislative body can vote at a duly warned legislative body meeting to approve certain payments in advance so that there is no need for members to actually sign orders. Such a vote must identify the person(s) to whom payment is to be made and the purpose(s) for that payment. The treasurer may then use a certified copy of the minutes of the meeting as full authority to make the approved payment.
- The second exception allows the legislative body to authorize one or more members to review and approve orders on behalf of the entire board. A vote to give such authorization must take place at a duly warned legislative body meeting and must be reflected in the meeting minutes. A motion to give such authorization might be phrased as, "I move that we appoint [insert name(s) of legislative body member(s)] to approve and sign orders for [insert types of claims that the person has authorization to approve such as "payroll," "operating expenses," etc.] for [insert period of time]." Any orders that are approved under this authority must state definitively the purpose for which they are drawn. The full legislative body must later be provided with a record of all the orders approved.

Relatedly, in the event that there are so many vacancies on the legislative body that a quorum cannot be achieved, the remaining member(s) have the authority to draw orders for payment of continuing obligations and necessary expenses until the vacancies are filled.

What about decisions or orders that are required to be in writing?

The law authorizes the chair or vice chair of a public body to sign any decision or order approved for issue which is required by law to be in writing. This law is useful particularly in the context of deliberative sessions that occur after quasi-judicial hearings. For example, a local board of health must give notice and hold a hearing if it is considering issuing a health order. Using this law, the local board of health may deliberate remotely after the hearing and then the chair or vice chair can sign the written decision approved by the board.

If we can meet remotely, can we sign documents remotely?

Documents may be signed by a quorum of a public body or by an individual member (if authorized by law as described above) or delegated the authority by the public body. Generally, whether electronic signatures can be used in the State of Vermont depends on the circumstances. Under the VT Uniform Electronic Transactions Act, if a law requires a signature, an electronic signature will suffice. An "electronic signature" is defined under the law as "an electronic sound, symbol, or

process attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.” The full law may be accessed here: <http://legislature.vermont.gov/statutes/chapter/09/020>.

For additional guidance on best practices and answers to frequently asked questions regarding electronic signatures, including their retention, please visit the VT State Archives and Records Division (VSARA) website at: https://sos.vermont.gov/media/ftxacfzq/electronic signatures best practice_eff20100408.pdf.