

# **The Open Meeting Law and Public Records Act**

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**Vermont Agency of Education**

**November 5, 2024**

# Vermont's Open Meeting Law (OML)

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- **Public Body Defined**

- “any board council, or commission of the State or one or more of its political subdivisions... Any committee of any of the foregoing boards...” 1 V.S.A. § 310.

- **Characteristics of Public Bodies**

- Warned, open meetings
- Access to public records
- Rules of order
- Conflict of interest avoidance

# Advisory vs. Non-Advisory Bodies

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- Act 133 (S.55) amends Open Meeting Law to create two different types of public bodies:
  - An “advisory body” is a “public body that does not have supervision, control, or jurisdiction over legislative, quasi-judicial, tax, or budgetary matters.” These are bodies that advise and lack final decision-making authority.
  - All other public bodies are “non-advisory”. These are decision-making public bodies.

# Open Meeting Requirements

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- In general:
  - Provide advance notice of meetings, including agendas.
  - Comply with meeting location requirements, which differ by type of public body.
  - Discuss the body's business in public, unless an exception applies.
  - Allow members of the public to attend and participate.
  - If a quorum or more of the members attend via electronic means, ensure that a roll call is taken for any vote that is not unanimous.
  - Take meeting minutes and make them available to the public.
  - For non-advisory (decision-making) bodies, electronically record the meeting and post in a designated electronic location.

# Notice

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- The time and place of a public body's regular meetings should be designated by bylaw, resolution or other determining authority of the public body.
  - Meetings of Executive Branch agencies, departments, boards or commissions shall be compiled and listed weekly in accordance with 3 V.S.A. § 2222(c).
- The time, place and purpose of each special meeting must be publicly announced at least 24 hours before the meeting.
- Emergency meetings require public notice “as soon as possible before any such meeting” but may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

# Meeting Location

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- Starting January 1, 2025, ***non-advisory bodies*** must hold all ***regular and special meetings*** as hybrid meetings.
  - “Hybrid” means these bodies must designate both (1) a physical meeting location and (2) an electronic meeting platform.
- ***Advisory bodies*** can hold remote-only meetings.
  - “Remote-only” means they can meet electronically without a physical location, and no members of the public body or staff are required to be physically present.
- ***Any public body*** can hold remote-only ***emergency meetings***, or if meeting without a physical meeting location is necessary in response to a “local incident” or declared state of emergency.

# Remote and Hybrid Meeting Requirements

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- The electronic platform used for a remote or hybrid meeting must:
  - Allow direct access, attendance, and participation of the public.
  - Include access by telephone.
- The notice or agenda must include information that allows the public to directly access the designated electronic platform.

# Request for Access

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- A request may be made to designate a physical meeting location or to provide electronic or telephonic access to a regular meeting of any public body.
- The request must be made in writing at least 2 business days before the meeting.
- The request must be granted unless a certain type of hardship would be imposed under 1 V.S.A. § 312(j)(3) and (4).



# Discussion in Public

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- Members of public bodies must avoid participation in unwarned, nonpublic meetings.
- “Meeting” is defined as
  - A gathering of a quorum of a public body
  - For the purpose of discussing the business of the public body or for the purpose of taking action.
- Members should be mindful and avoid unwarned “meetings” in the context of telephone or electronic communication, as well as during recesses of publicly warned meetings.

# Use of Executive Session

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- No executive session may be held except in limited circumstances.
- Some permissible topics of discussion require a “specific finding that premature public knowledge would place the public body at a substantial disadvantage.”

## Requires “Disadvantage” Finding

- Contracts
- Labor relations agreements
- Arbitration/mediation
- Grievances
- Pending or probable litigation
- Legal advice

## Without “Disadvantage” Finding

- Real estate purchase or lease options
- Appointment, employment, or evaluation of a public officer or employee
- Discipline or dismissal of public officer or employee
- Public safety
- Records exempt from public records act, including student academic records

# Use of Executive Session

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- **Procedures:**

- A motion to enter executive session must receive a 2/3 majority of members present.
  - The motion must indicate the nature of the business of the executive session.
  - No other matters may be considered during the executive session.
  - No formal or binding action may be taken\*.
  - Minutes need not be taken, but any minutes are exempt from the public records act.
- **Because topics of executive session are sensitive or privileged, confidentiality considerations are an important norm for public bodies to observe.**

\*Exception for certain real estate transactions. 1 V.S.A. § 313.

# Public Participation

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- At each meeting, the public must be allowed a “reasonable opportunity” to express opinions on matters considered at the meeting, as long as order is maintained.
- Public comment is subject to reasonable rules established by the chair.
- The rules established by the chair must be viewpoint neutral.

# Meeting Minutes

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- Minutes must be kept and must be posted to the body's website no later than five calendar days from the meeting.
- Minutes must include:
  - All topics and motions that arise at the meeting,
  - All members of the public body present,
  - All active participants in the meeting,
  - All motions made, including disposition of the motion,
  - The results of any votes, including a roll call if taken.

# Post Recording

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- All *non-advisory bodies* must electronically record all meetings.
- The recording must be posted in a designated electronic location for at least 30 days following the approval and posting of the official minutes of the meeting.

# Questions on OML?

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- Next stop, public records.

# Public Records Act

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- **Public records are materials “produced or acquired” in the course of the agency business.**
  - Use email responsibly and professionally.
  - The law makes no distinction between personal and official email accounts.
- **Responding to requests for records.**
  - Notify the chairperson, and they will work with AOE’s public records officer.



# Questions About Records?

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- Next stop, Roberts Rules and conflicts of interest.

# Roberts Rules of Order

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- **Non-chair members should be familiar with the basics:**
  - Motions require a second before consideration/debate can commence.
  - One motion may be considered at a time.
  - Motions may be withdrawn or amended with consent of the body.
  - Speakers should address comments during debate to the chair.

# Conflict of Interest Avoidance

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*The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain: and that the public have confidence in the integrity of its government. (Vermont League of Cities and Towns).*

**It is important to avoid actual and perceived conflicts.**

- (1) a situation in which a person has a duty to more than one person or organization, but cannot do justice to the actual or potentially adverse interests of both parties;
  - (2) when a public official's personal interests are contrary to his/her loyalty to the public business and/or interest.
- When a conflict or perceived conflict arises, a member should briefly describe the nature of the conflict and recuse him or herself from the pertinent discussion and vote.