

Open Meeting Law FAQs Related to COVID-19
VLCT Municipal Assistance Center

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).

Q1: Can we hold an electronic meeting?

Yes. One or more members may participate and vote at a meeting by electronic means (e.g., speaker phone, Skype, etc.) as long as those members identify themselves when the meeting is convened, and are able to hear and be heard throughout the meeting. 1 V.S.A. § 312(a)(2).

A quorum or more members of a public body may also participate in a meeting electronically. The agenda for such meeting must designate at least one physical location where a member of the public can attend and participate in the meeting. At least one member of the body or at least one staff person or other designee must be present at that physical location. 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. 1 V.S.A. § 312(a)(2)(C).

Q2: Must the public be allowed to attend our meetings?

Yes. Under the Open Meeting Law, “(a)ll meetings of a public body are declared to be open to the public at all times.” 1 V.S.A. § 312(a)(1). This requirement applies to all meetings (regular, special, and emergency) regardless of how they are conducted.

Q3: Must there be a physical location for the public to attend our meetings?

Yes. When a majority of the members of a public body gather to discuss the business of the body or to take action, either physically or through electronic means, the public must be allowed to attend. When a quorum of the members of a public body physically gather, they must necessarily gather at a physical location.

When a majority or more of a public body participate in an electronic meeting (e.g., conference call, GoToMeeting, or Skype), there must be a designated physical location where the public has the opportunity to attend and participate. The Open Meeting Law protects the right of access to every member of the public. Despite technological advances, internet access continues to be a real barrier to access and participation to electronic meetings for many Vermonters. The agenda for such a meeting must designate a physical location and at least one member of the body or a staff person or other designee must be present at that physical location. 1 V.S.A. § 312(a)(2)(D).

Regardless of the means by which a meeting is held, the law demands that there be a physical location for the conduct of all meetings so its requirement that “all meetings ... be open to the public at all times” may be fulfilled.

Q4: 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. 1 V.S.A. § 312(c)(3). 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>.

Q5: 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 announcing and posting notice for emergency meetings, 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. 1 V.S.A. § 312(c)(3).

Q6: Must there be a physical location for the public to attend an emergency meeting?

Yes. Although the Open Meeting Law does explicitly relieve public bodies from the requirement to post an agenda prior to an emergency meeting due to the impracticality of such a requirement, it does not relieve them of any of their other obligations under the law. And while emergency meetings do not require the posting of an agenda, they still require that some public notice be provided as soon as possible beforehand. At the very least, this notice must necessarily include the time and place of such meeting so that the other requirements of the Open Meeting Law, including the public’s right to attend and participate, may be fully realized. The Vermont Supreme Court has held that the Open Meeting Law protects the public’s “right to be present, to be heard, and to participate.” *State v. Vermont Emergency Bd.*, 136 Vt. 506 at 508 (1978). Holding an emergency meeting, by whatever means, does not relieve public bodies from these requirements.

Q7: What are some best practices if we are holding an electronic meeting?

- Discourage physical attendance and advocate for your citizens to attend by electronic means. In order to do so, your municipality should strive to provide ample technological support.
- Arrange your physical meeting spaces to avoid close contact with people who are sick. According to the Vermont Department of Public Health:
 - Close contact means being within six feet of someone who has tested positive for COVID-19 for a long time. This happens when caring for, being intimate partners with, living with, visiting, or sharing a health care waiting area. If you have been in close contact with someone who has tested positive for COVID-19: stay home, limit contact with others, and call Health Department Epidemiology at 802-863-7240 to discuss whether you need to see a provider and how you will monitor yourself for symptoms. When someone tests positive for COVID-19, the Health Department conducts outreach to close contacts of the individual.
 - Close contact does not mean being more than six feet away in the same indoor environment for a long period of time, walking by, or briefly being in the same room

with someone who has tested positive for COVID-19. In these situations, you should observe yourself for symptoms. You do not need to call the Health Department.

- Follow the CDC recommendations for businesses/employers:
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.
- Follow the CDC recommendations for mass gatherings/large events:
<https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/index.html>.
- Follow the Vermont Department of Health's guidance:
<https://www.healthvermont.gov/response/infectious-disease/2019-novel-coronavirus> , here:
 - Wash your hands often with soap and water for at least 20 seconds. If soap and water are not available, use an alcohol-based hand sanitizer.
 - Avoid touching your eyes, nose, and mouth with unwashed hands.
 - Avoid close contact with people who are sick.
 - Stay home when you are sick.
 - Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
 - Clean and disinfect frequently touched objects and surfaces.

Q8: Must the public be able to participate in (not just attend) an electronic meeting?

The law says that “members” of a public body must be able to hear and be heard throughout the meeting but doesn’t explicitly address public attendees. However, we think in order to have gainful participation in public meeting, the same standard should be applied to public attendees. In other words, the public body should set up their electronic meeting in such a way that enables all public attendees to hear and be heard throughout the meeting.

Q9: If a member is unable to attend a 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). However, it does allow a member to attend a meeting by electronic means (e.g., conference call, GoToMeeting, or Skype), and to vote at that meeting, so long as the other requirements of the Open Meeting Law are met.

Q10: Can we cancel public meetings? How?

Public bodies may cancel meetings at any time. There are no requirements in the Open Meeting Law for how to give public notice of a meeting cancellation, but we recommend giving notice via the same method for noticing a meeting, which is posting the notice in two public places and in the town clerk’s office and to the municipal website if there is one.

Q11: How does payroll and other municipal bills get processed if the legislative body is not meeting?

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. 24 V.S.A. § 1623(a)(2).
- 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 definitely the purpose for which they are drawn. The full legislative body must later be provided with a record of all the orders approved. 24 V.S.A. § 1623(a)(1).

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. 24 V.S.A. § 961(b).