

# **A Rough Guide to Vermont Open Meetings<sup>1</sup>**

New England First Amendment Institute 2021

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**1. Is the entity holding the gathering a “public body?”**

Yes, if it is “any board, council, or commission of the State or one or more of its [municipalities], any board, council, or commission of any agency, authority, or instrumentality of the State or one or more of its [municipalities],” or a committee thereof, but not one of the governor’s advisory commissions.<sup>2</sup>

Examples: Are Any of These a Public Body?

- A municipal selectboard ..... yes
- The Governor’s Snowmobile Advisory Commission<sup>3</sup> ..... no
- The Green Mountain Care Board ..... yes

**2. Is the gathering a “meeting?”**

Yes, if there is (a) a quorum of the public body, and the meeting is (b) held to “discuss[] the business of the public body,”<sup>4</sup> or for the public body to take action. Other gatherings, such as email discussions around agenda-setting, are not.<sup>5</sup> You can get records of those via the public records act.

Examples: Are These Meetings?

- Two members of a seven-person city council bump into each other at the gas station and agree to vote against a zoning variance coming up at the next meeting ..... no
- Vermont Board of Cheese meets in a dairy barn to debate a rule on pasteurization ..... yes
- School board gathers to have cake, celebrating birth of superintendent’s first child ..... no
- Most of a solid waste district’s commissioners trade emails discussing whether to raise taxes in the upcoming year ..... yes
- A state administrative agency holds a meeting to discuss American foreign policy ..... no

**3. Must the agency publicly announce the meeting ahead of time?**

For regularly occurring meetings, their scheduled time and place must be established by statute, regulation, ordinance, or order of the public body and is available to anyone upon request.<sup>6</sup> Other meetings must be publicly announced twenty four hours in advance – municipalities must post such announcements in the clerk’s office and at least two other predetermined public places in the municipality.<sup>7</sup> Emergency meetings need not be announced ahead of time, but can only take place where an unforeseen occurrence requires “immediate attention by the public body.”<sup>8</sup>

Examples: Are These Announcements Sufficient?

- Legislature passes statute setting PSB meetings on first Tues. of each month ..... yes
- Selectboard holds scheduled Mon. meeting on Sat. as an emergency b/c the Red Sox could clinch the World Series on Mon. night ..... no
- School bd. calls emergency mtg b/c Town Meeting Day is coming up fast and board hasn’t proposed a budget yet ..... no

<sup>2</sup> 1 V.S.A. § 310(4).

<sup>3</sup> 23 V.S.A. § 3216.

<sup>4</sup> “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).

<sup>5</sup> 1 V.S.A. § 310(3).

<sup>6</sup> *Id.* § 312(c)(1).

<sup>7</sup> *Id.* § 312(c)(2).

<sup>8</sup> *Id.* § 312(c)(3).

**4. Can the public body go into executive session?**

Only by a majority vote of a municipal body (or two-thirds of a state one), and only if the vote specifies the subject of the session.<sup>9</sup> And, the subject matter of the session is somewhat limited: it is only permissible to discuss certain topics. The most common: specified topics about which “public discussion would clearly place the public body or a person involved at a substantial disadvantage”;<sup>10</sup> the hiring, discipline, or evaluation of a public employee;<sup>11</sup> negotiating real estate transactions;<sup>12</sup> academic records of students;<sup>13</sup> or imminent threats to public safety.<sup>14</sup> During executive session, the public body may not take any binding action except for conducting real estate transactions.<sup>15</sup>

Examples: Proper Executive Session Behavior?

- Selectboard goes into exec. sess. w/o a vote b/c it’s a standing part of the agenda ..... no
- School board enters into a real estate lease in executive session ..... yes
- Fire district comm’rs go into executive session to discuss a local controversy b/c deliberating publicly “might get us sued” ..... no
- City council goes into exec. sess. whenever someone mentions the word “lawyer” ..... no
- Student’s appeal of high school expulsion discussed in executive session, followed by public vote reversing the expulsion ..... yes

**5. What kind of minutes of the meeting are available?**

Minutes must be available within five days from the date of the meeting.<sup>16</sup> If the public body has a website, the minutes must be posted to it.<sup>17</sup> Minutes must record the names of the public body’s members who attended the meeting, all motions or proposals considered (and their results), and the names of “other active participants in the meeting.”<sup>18</sup>

Examples

- A town disables its entire website rather than learn how to post minutes online ..... ok, sadly
- School claims that minutes are available in five business days, not five calendar days ... nope
- City sewer subcommittee claims that only voters may inspect the minutes ..... nope

**6. Not satisfied?**

In 2014, the legislature amended the open meetings law so as to effectively guarantee that no court actions will be brought to enforce it. Before filing suit, someone shortchanged by open meeting violations must provide the lawbreaker with written notice of the problem and two weeks to decide whether to fix the problem.<sup>19</sup> Suit may be filed thereafter, but it is very difficult to recoup court costs and attorney’s fees, so the private bar is unlikely to bring enforcement actions.

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<sup>9</sup> *Id.* § 313(a).  
<sup>10</sup> *Id.* § 313(a)(1).  
<sup>11</sup> *Id.* § 313(a)(3),(4).  
<sup>12</sup> *Id.* § 313(a)(2).  
<sup>13</sup> *Id.* § 313(a)(7).  
<sup>14</sup> *See id.* § 313(a)(5),(10).  
<sup>15</sup> *Id.* § 313(a).  
<sup>16</sup> *Id.* § 312(b)(2).  
<sup>17</sup> *Id.*  
<sup>18</sup> *Id.* § 312(b)(1).  
<sup>19</sup> *Id.* § 314(b)(1).