

2022 OPEN MEETING LAW COVID-19 FAQs

What is Act 78?

[Act 78](#) is a temporary law that suspends certain provisions of Vermont's Open Meeting Law by allowing a quorum of a municipal public body to meet remotely, without designating a physical location for the public to attend. Act 78 also allows public bodies to electronically post meeting agendas and special meeting notices, with some additional requirements in those cases.

What provisions of the Open Meeting Law specifically does Act 78 temporarily change?

Pursuant to [Act 78](#):

- A quorum or more of members of a public body may meet (e.g. regular, special, or emergency meeting) by electronic or other means (i.e., remotely) without being physically present. When meeting by electronic or other means:
 - the public body does not have to designate a physical meeting location where the public can attend; and
 - the members and staff of the public body are not required to be physically present at a designated meeting location.
- Whenever a public body holds a remote meeting, it must:
 - use technology that allows the public to attend by electronic or other means;
 - allow the public to access the meeting by telephone;
 - include and post information that enables the public to directly access and participate in the meeting electronically in its meeting 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 2022 calendar year due to COVID-19, a public body may extend the time limit for posting meeting minutes from five (5) to not more than ten (10) calendar days from the date of the meeting.
- Posting meeting agenda and/or special meeting notice:
 - The Act also allows a public body to post any meeting agenda or special meeting notice in two designated electronic locations in lieu of the two physical locations (or a combination of physical and electronic locations, or both) normally required. As with the underlying Open Meeting Law, posting the notice or agenda in the town clerk's office is still required.
 - Public bodies must also provide a copy of each meeting agenda or special meeting notice to the newspapers of general circulation for the municipality.

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](#).

How long is Act 78 in effect?

The law is set to sunset (i.e. expire) on January 15, 2023.

To whom does Act 78 apply?

The Act applies to any public body. The Open Meeting Law defines a “public body” as, in relevant part, “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...” [1 V.S.A. § 310\(4\)](#). The term “municipality” is defined under law as including “a city, town, town school district, incorporated school or fire district or incorporated village, and all other governmental incorporated units.” [1 V.S.A. § 126](#). The law, therefore, applies to all municipal public bodies.

Does Act 78 apply to quasi-judicial hearings or only to meetings?

Act 78 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](#).

How do we hold a remote meeting?

All members, staff, and members of the public may attend and participate in remote meetings (e.g., telephone, Zoom, GoToMeeting, Skype, etc.). Each member of the public body who attends electronically must identify themselves 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 78 eliminates the physical location requirement for meetings of public bodies until January 15, 2023. During that time, a public body will not have to designate a physical location in order to meet, nor will anyone be required to be physically present for a meeting. The public body will have to post information on how the public may access and participate in its meetings electronically. This information must be included in each meeting’s agenda and we recommend including it in all notices or announcements as well. For more detailed guidance, a checklist, and models for remote meetings, please refer to our [Remote-Only Public Meetings Toolkit](#).

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

No. [Act 78](#) temporarily waives the Open Meeting Law’s physical location requirement until January 15, 2023. 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 act, even through electronic means, the public must still be allowed to access and participate in the meeting. [Act 78](#) 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.

The public body must provide clear instructions on how the public may access and participate in meetings electronically in its 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 impactful public participation possible. The public body must set up their remote meeting in such a way that enables all members of the public body to hear and be heard throughout the meeting.

If we can hold electronic meetings, do we still need to physically post meeting notices and agendas?

Yes, but the posting requirements for meeting agendas and notices of special meetings of public bodies have been relaxed to allow for electronic notification. [Act 78](#) gives municipalities the option, until January 15, 2023, to post any meeting agenda or notice of a special meeting in two designated electronic locations instead of the two designated physical locations that would ordinarily be required under the Open Meeting Law. Alternatively, towns can post meeting notices or agendas in a combination of the two (one physical, one electronic). Public bodies that use either option to post electronically must also post the notice or agenda in or near the town clerk’s office and provide a copy of each notice or agenda to the newspapers of general circulation for the municipality. (Note that the newspaper is not required to publish the notice or agenda.) All the other notice and agenda posting requirements remain the same and must be complied with, as this temporary allowance only applies to the physical posting element. Please see our [Open Meeting Law FAQs](#) for a listing of these requirements.

Does this allowance for electronic posting apply in all instances?

No, electronic posting is only an option for regular and special meeting agendas and special meeting notices.

Does this allowance for electronic posting only apply to meetings that are held remotely?

No. It applies to all meetings, whether they are held in person, remotely, or a combination of the two (i.e. as a hybrid meeting).

Do we have to post meeting notices and agendas electronically?

No. This is an option of which public bodies may, but do not have to, avail themselves. A public body can continue posting meeting notices and agendas in the required physical locations, as usual.

How can we possibly maintain order during a remote meeting?

The same way you would maintain order during a physical meeting. The chairperson should administer the meeting in accordance with 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 a remote 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 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 are still applicable to remote meetings. ([Model Rules of Procedure for Public Bodies](#) can be found at These model rules can be customized and adopted by public bodies to help run their 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 municipalities 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 municipalities 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 remote meetings?

No, only the legislative body's remote meetings must be recorded. Note that this is referring to making an audio recording of a meeting; it is not a requirement to video record a meeting nor is it 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 remote meeting, and most people have recording capabilities with smart phone devices. These recordings can be easily distributed via email and posted to the municipality'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. Meetings minutes are still required by the Open Meeting Law. The new recording requirement for meetings of legislative bodies 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, the safest course of action in our opinion, from both a public health and a liability perspective, is to conduct meetings remotely until further notice.

If a public body absolutely must meet physically, it can do so while still holding the meeting as a remote only meeting under [Act 78](#). In other words, the meeting would be noticed and otherwise run as a remote meeting from the public's perspective with the only difference being that the public body would physically gather. Note that those in physical attendance would still have to hear and be heard by all attendees. Alternatively, public bodies may continue to hold hybrid meetings, combining elements of both remote and in-person attendance. For more information, please see our [Hybrid Public Meeting Toolkit](#).

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 open meetings](#).

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

There is no requirement to have 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 78](#) includes one minor extension to the deadline for posting minutes. If there are staffing shortages due to COVID-19, then, until January 15, 2023, public bodies may post minutes within 10 calendar days from the date of the meeting (versus the former 5 days). We encourage you to make the minutes available as soon as possible after a remote meeting, even if they are simply posted to the town's official website.

If a member is unable to attend a remote 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 remote meetings?

The law does not specify methods for electronic participation of a remote meeting, except to say that it can be through electronic or other means, and that they must allow the public to access and participate in a meeting by telephone. 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 physically 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](#).

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](#).