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Did you say this expires June 15?

I am unclear about the two-motion reasons; i.e. the specific finding of substantial disadvantage that are necessary to be found for entering Executive Session under 1 VSA 313(a)(1). Could you clarify?

If there is a designated physical location for a meeting under COVID-19 exceptions, does the governing body have the right to limit the public to telephone participation only? For instance, if three board members are meeting at the town office, but due to the limited space in the conference room, they only want the public to participate via phone. Is this acceptable?

At the end of our Selectboard meetings, we review pending Town invoices to be paid, and then sign them. It's not uncommon to have a hundred invoices to sign. There is usually no discussion, but do we need to do this online?

The legislature in their bill did not seem to have a problem with "access" to the public via the conferencing platform. However, the platforms generally charge an exorbitant amount for a Toll-Free call-in number. I don't feel that the meeting is really accessible if it can't be accessed without high priced internet access and/or a Toll call.

In the case of remote meetings, how long must the recording of the meeting be maintained?

I have a question about warning remote meetings. Our Town Clerk posts a public call in number but asks the public to call her for the Conference ID for the meeting. Is that OK, or do we need to warn both phone and conf. ID numbers?

Our Selectboard hopes to meet next week in person outside (with a call-in number available for the public). Is this OK, or are we encouraged to continue meeting remotely?
What sort of public access is required for meeting recordings? We have been saving recordings on Microsoft Teams. Should we be posting them on the Town's website? (They are very large files.)

Our Planning Commission has not met since Town Meeting Day but has scheduled a special meeting next week. Are they required to hold their annual organizational meeting to determine officers first?

Is public comment required for every municipal body such as a DRB or Planning Commission?

Is a warning sufficient if it requires a member of the public to telephone the Zoning Administrator to get the remote connection information?

You said that public comment can be limited to agenda items. This would discourage members of the public from bringing the entire public body (the Selectboard) aware of an issue of significant public concern which is not on the agenda.

What if someone "crashes" an electronic meeting and becomes disruptive? May the meeting host block their participation?

Do BCA and BOA need recording or are they like the conservation committee just mentioned?

Neither are required to be recorded, though it is considered a best practice.

Act 92 provision regarding Open Meeting Law lapses at midnight on June 15. So we are less than 2 weeks away from reverting to previous requirements. What are the expectations regarding an extension? Based on past experience, when might we know?

So Selectboard and Trustee meetings need to be recorded and the recording must be kept or just the minutes?

My questions may be answered later, but what happens when the state of emergency ends, and our City does not have accessible space that to accommodate folks within physical distancing rules? Can we still hold meetings virtually? Many of our public body members are in high-risk groups?

How do these laws apply to advisory committees?

Listers required to record grievance?

What is the Town required to do with recordings of meetings?

We are a small town and must approve warrants at Selectboard meetings--- do we really need to go into great detail as to what's in the warrant? The warrant itself is part of the record.
Does a member of the public, whether attending a meeting in person or by remote access have to identify themselves or can they be anonymous? ................................................... 13

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Woodbury select board would like to go back to meetings in a physical place. We have our school gym that would allow physical space and all would be required to wear masks. Is this okay to do?......................................................................................................................... 14

This is a recurring question, but once again, how can board members communicate via email without violating the Open Meeting Law?
The law allows certain communications as a quorum without violating the law. The law says that a meeting shall NOT mean "any communication, including in person or through e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting...." 1 V.S.A. § 310(3)(B).

If a board concludes that it must conduct an "emergency" meeting, such as taking actions to deal with immediate pandemic related dangers, what is required to do so lawfully and what are the procedural requirements?
Emergency meetings require "some notice." The law however, doesn't define "some notice," so there's some discretion and judgment on how this notice is achieved. Agendas are not required for emergency meetings. If the action to be taken can wait 24 hours, we recommend not holding an emergency meeting, but instead warning a special meeting, which only requires 24-hour notice.

Is it a requirement or up to the board whether they offer electronic means for a meeting?
It is up to each public body to decide whether a meeting will be held remotely (electronic means) or in-person. The State guidance continues to be that all government operations must use remote work whenever possible, and this would include meetings.
If a remote only meeting is being held, then the temporary amendments to the Open Meeting Law (e.g. Act 92) require that technology be used that allows the public to attend by electronic or other means. Due to occupancy limits and health concerns, affording the public their right to access, would necessitate making remote access available to all.

Are members allowed to discuss items from Executive Session to the public?
The Open Meeting Law does not prohibit members from discussing matters discussed in Executive Session with members of the public, though it certainly may not be in the best interests of the municipality to do so and could cause issues with fellow members who expect such conversations to be kept confidential.

What are guidelines for speaking about a specific personnel issue in open meeting? Can you talk about someone's wage or disciplinary actions? As a general matter, the Open Meeting Law does not act to limit what may be discussed during the public portion of a duly warned open meeting. In certain instances, however it may be in the municipality’s best interests to have certain discussions in Executive Session if allowed by law.

How long will we be able to meet remotely - is it only until the end of the executive order?
The Open Meeting Law has allowed remote meetings for some time whether by individual members or by a quorum or more of a public body. Act 92, which allows for meetings to be held without a physical location, is in effect for as long as the declared state of emergency remains in effect.

What about distributing materials for discussion at a meeting that hasn't been warned yet, but is expected to be warned shortly?
It's perfectly fine to distribute materials in advance of a meeting whether by e-mail or any other means so long as no discussion accompanies those materials. The Open Meeting Law explicitly allows a quorum of a public body to interact without triggering its requirements when:

- scheduling a meeting;
- organizing an agenda; or
- distributing materials to discuss at a meeting.

Thinking of auditors and listers, who often have to work together to do our job - when we are discussing what we are working on but not making decisions, we typically do not consider this a meeting. Is this acceptable?
The requirements of the Open Meeting Law do not apply to routine day-to-day administrative matters which don’t require action by the public body. This would include certain activities of municipal Listers and Auditors such as updating the Lister cards and examining the Treasurer’s books, which are not acts required to be taken by law as a public body. 1 V.S.A. § 312(g).
Can a meeting be held physically for officials, but the public be required to only attend remotely?
We think public bodies can hold an Act 92 (remote only) meetings, meaning those Act’s requirements are met, while the members meet in-person in accordance with the State’s health and safety guidelines.

Currently, with remote meetings, I believe Selectboards have to record their meetings. What if a meeting doesn’t record properly, or you forget to record one?
Correct. Act 92 requires legislative bodies, and only legislative bodies, to record their remote meetings, "unless unusual circumstances make it impossible for them to do so." Do your best. If the recording does not work due to circumstances outside of your control this would likely be covered by that allowance.

In regards to the earlier question where the attendee must call the town clerk for the conference number- would that access need to be available to a member of the public up to and during a meeting in order to allow full access? If not, wouldn't it be the same as locking the door after a meeting starts?
Yes. It should be available until the meeting adjourns in order to ensure that meetings are accessible to all members of the public who wish to attend, at all times.

By adding an item to the agenda during public comments, can it be acted on during this meeting even though it was not warned ahead of time? Or is it only for discussion purposes?
We would caution against doing so. We would recommend using the same standard for adding business to your agenda that we recommend using for holding emergency meetings which is to ask yourself, “is this something that is an unforeseen occurrence or condition requiring our immediate attention?” If the answer to that question is “no” and it can wait until the next regular or special meeting, then add it to that meeting’s agenda instead.

Why this standard?
Because the law doesn’t give you carte blanche authority to make any and every addition to the agenda as long as it is done as the first act of business. If this were the case, then a public body could just add whatever it wanted at the beginning of a blank piece of paper and the law would have no meaning. Remember that the Legislature’s intent behind this law is to ensure that your meetings are open and transparent to the public. To that end, you have to give the public adequate notice for them to decide whether or not to attend your meetings and to participate.
We have employee evaluations coming up. We usually meet in Executive Session in our large Town Hall room. It would just be the 5 Board members and 1 employee at a time. Can this be done in person? If we are spread out, do we still need masks etc.?
The guidance from the State continues to be to work remotely as much as possible and that if you must meet physically, to do so in conformance with the Agency of Commerce and Community Development’s (ACCD) sector specific guidance: https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-sector-specific-guidance#municipalities Due to occupancy limits and health concerns, affording the public their right to access, would necessitate making remote access available to all.

Can you offer any updated guidance on how towns should hold listers grievance hearings and BCA hearings? Are in person hearings still being discouraged? We are in a town wide reappraisal and expecting 70+ hearings. Holding them remotely seems impractical.
The Vermont Department of Taxes Division of Property Valuation and Review (PVR) recommends not to hold face-to-face hearings and offers the following guidance: https://tax.vermont.gov/municipal-officials/listers-and-assessors/hearings
We have discovered that audience members are using the chat feature to ask questions and converse with each other during the meetings. I have had to make a rule to say you can’t use the chat unless you’re asking to be recognized to speak, because the content of the chat does not go into the meeting minutes.
The Open Meeting Law authorizes public bodies to establish reasonable rules of procedure by which to conduct their meetings. 1 V.S.A. § 312(h). This includes a rule such as being recognized before you can ask a question or speak which, for remote meetings, would apply to the chat function.

We may have a Selectboard meeting tomorrow night and practice social distancing and mask wearing. Do we have to take attendees’ temperatures?
ACCD’s guidance on this question is not clear. ACCD requires health pre-screenings of all employees which, for purposes of a meeting, would appear to at least include all municipal officers in attendance. According to ACCD’s Sector Specific Guidance, “(p)rior to the commencement of each work shift, pre-screening and health survey shall be required to verify each employee has no symptoms of respiratory illness (fever, cough, and/or shortness of breath).
At the present time non-contact thermometers are in short supply, however employers shall immediately order, and use their best efforts to obtain, thermometers in order to conduct routine temperature checks.” Since ACCD is the final authority on implementing the Governor’s executive order, we strongly recommending contacting ACCD prior to conducting any in-person
Does the Open Meeting Law apply to task forces? When a task force reports to the Selectboard, does all that info need to be made public?

The Open Meeting Law applies to all municipal public bodies. A “public body” is defined under the law as “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). If the “task force” meets this definition, then it is required to comport itself to the demands of the Open Meeting Law. Any reports acquired by a Selectboard during the course of agency business would constitute “public records” under Vermont’s Public Records Act and would be subject to public disclosure unless otherwise specifically exempted, whether whole or in part. 1 V.S.A. §§ 315 et seq.

Did you say this expires June 15?

The temporary Open Meeting Law procedures set forth by Act 92 in response to COVID-19 are in effect for the duration of the Governor’s declared state of emergency which, according to Addendum 14, is set to expire on June 15th. This could be extended by subsequent Addendums, as it has been extended already.

I am unclear about the two-motion reasons; i.e. the specific finding of substantial disadvantage that are necessary to be found for entering Executive Session under 1 VSA 313(a)(1). Could you clarify?

To enter into executive session for the reasons noted in 1 V.S.A. §§ 313(a)(1) (e.g. contracts, labor relations agreements, arbitration or mediation, grievances, pending or probably civil litigation, or confidential attorney-client communications) you must make a finding that premature general public knowledge would place the public body or a person involved at a substantial disadvantage. 1 V.S.A. §§ 313(a)(1). Therefore, we recommend that you make two separate motions.

We have an example for you available on page 12 of our Open Meeting Law FAQs on our website here:
If there is a designated physical location for a meeting under COVID-19 exceptions, does the governing body have the right to limit the public to telephone participation only? For instance, if three board members are meeting at the town office, but due to the limited space in the conference room, they only want the public to participate via phone. Is this acceptable?

Act 92 (https://www.vlct.org/resource/open-meeting-law-and-covid-19-response-faqs) allows public bodies to waive the physical public access requirement of meetings, but does not explicitly require meetings to be remote. Currently, the State continues to discourage all physical meetings; however, if a public body must meet it must do so within the restrictions set forth by the State [https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-sector-specific-guidance] and that includes limiting the number of attendees in accordance with State occupancy limits. In such instances, remote access including telephone access to the meeting, if feasible, would be required.

At the end of our Selectboard meetings, we review pending Town invoices to be paid, and then sign them. It’s not uncommon to have a hundred invoices to sign. There is usually no discussion, but do we need to do this online?

All board actions, including the approval and signing of orders, must occur during the context of a duly warned public meeting. When signing orders, there are some exceptions to this rule. Please see VLCT’s "Open Meeting Law FAQs Related to COVID-19" for alternatives to board approval and signing of orders:

As a conservation commission, we regularly take minutes and then post them a few days after the meeting. Am I right in understanding from this presentation that we must also record the meeting? If so, where does that recording reside?

No, the conservation commission is not required to record their meeting under the Open Meeting Law or Act 92. Minutes are always required. A recording (video and audio, or just audio) is required for Act 92 remote only meetings for legislative bodies.

The legislature in their bill did not seem to have a problem with "access" to the public via the conferencing platform. However, the platforms generally charge an exorbitant amount for a Toll-Free call-in number. I don’t feel that the meeting is really accessible if it can't be accessed without high priced internet access and/or a Toll call. There are several free and low-cost digital meeting software options available. Vendors may provide both free and tiered software options. Please see VLCT's "Remote Public Meeting
In the case of remote meetings, how long must the recording of the meeting be maintained? The State of Vermont Archives and Records Administration (VSARA) is charged by the VT Legislature with coming up with the general/specific retention schedules and is also responsible for working with those seeking individual disposition orders of all town records. Since retention and disposition is the exclusive purview of VSARA, I would strongly suggest that you contact RIM Specialist Megan Wheaton-Book by e-mail at megan.wheaton-book@vermont.gov or by phone 802-828-3897 for targeted assistance and guidance with respect to records management matters, in particular the disposition order, if any, for these particular records.

I have a question about warning remote meetings. Our Town Clerk posts a public call in number but asks the public to call her for the Conference ID for the meeting. Is that OK, or do we need to warn both phone and conf. ID numbers? Yes. All the temporary law (Act 92) requires is to "post information on how the public may access meetings electronically and to include this information in the published agenda for each meeting." This fulfills that requirement.

Our Selectboard hopes to meet next week in person outside (with a call-in number available for the public). Is this OK, or are we encouraged to continue meeting remotely? The Agency of Commerce and Community Development (ACCD) is still encouraging working remotely as much as possible, their guidance is here: https://accd.vermont.gov/news/update-new-work-safe-additions-be-smart-stay-safe-order#low-or-no-contact-professional-services. However, we think the Selectboard may meet in the manner you describe, as long as it adheres to the State’s required occupancy limits and health and safety guidelines (e.g. masks and social distancing). Note that the public attending remotely should be able to hear and be heard by all.

What sort of public access is required for meeting recordings? We have been saving recordings on Microsoft Teams. Should we be posting them on the Town’s website? (They are very large files.) There is no requirement to post the recording online, but it will constitute a public record under Vermont’s Public Records Act and must be managed accordingly. Please contact the State of Vermont Archives and Records Administration (VSARA) for guidance regarding records management. You can choose to post the recordings online.

Our Planning Commission has not met since Town Meeting Day but has scheduled a special meeting next week. Are they required to hold their annual organizational meeting to determine officers first?
There is no statutory requirement for a Planning Commission to hold an organizational meeting, although it’s best practice to hold one in order to elect a chair and review any rules of procedure and other rules, such as rules for ethical conduct/conflict of interest.

Is public comment required for every municipal body such as a DRB or Planning Commission? Yes, public comment is required for every "meeting" but not for every "hearing." Hearings related to an individual’s permit/application are quasi-judicial proceedings and, therefore, only those interested parties have a right to participate.

Is a warning sufficient if it requires a member of the public to telephone the Zoning Administrator to get the remote connection information? Yes. All that Act 92 demands of municipalities in this regard is to "post information on how the public may access meetings electronically and . . . include this information in the published agenda for each meeting." Requiring a member of the public to call to obtain remote connection information fulfills this requirement.

You said that public comment can be limited to agenda items. This would discourage members of the public from bringing the entire public body (the Selectboard) aware of an issue of significant public concern which is not on the agenda. We agree and recommend as a best practice that, in addition to allowing public comment on each agenda item after it’s discussed but before you take action (this will both help you make more informed decisions and also impress upon the public that their comments will actually be given consideration), you also provide a more open-ended opportunity for public comment that falls under the heading of “other business” either towards the beginning or the end of your meetings. If an item is raised that is not on the current meeting agenda, you can take it under consideration for warning it on a future meeting agenda if any action is required.

What if someone "crashes" an electronic meeting and becomes disruptive? May the meeting host block their participation? Yes, and they should consistent with the board's existing Rules of Procedure.

Do BCA and BOA need recording or are they like the conservation committee just mentioned. Neither are required to be recorded, though it is considered a best practice. Act 92 provision regarding Open Meeting Law lapses at midnight on June 15. So we are less than 2 weeks away from reverting to previous requirements. What are the expectations regarding an extension? Based on past experience, when might we know? We don’t know when or how the Governor will extend the state of emergency. Given the past Addendums (Executive Orders), he has typically issued new guidance and Orders on Fridays.
So Selectboard and Trustee meetings need to be recorded and the recording must be kept or just the minutes?
The remote meetings of all municipal legislative bodies (e.g. selectboards, city councils, boards of trustees, prudential committees, etc.) must be recorded and minutes of such meetings must also be kept. These are two separate requirements. The recording can be audio only and constitutes a public record. This requirement does not mean the audio recording must be posted; it would just have to be maintained as a public record.

My questions may be answered later, but what happens when the state of emergency ends, and our City does not have accessible space that to accommodate folks within physical distancing rules? Can we still hold meetings virtually? Many of our public body members are in high-risk groups?
The Open Meeting Law allows remote meetings, but if the State of Emergency ends, then Act 92's allowance for remote only meetings will no longer be in effect. Therefore, while the meetings can be help remotely, the public body would still be required to designate a physical location for the public to attend if they choose (and the public body must have someone from the body or town staff that location).

How do these laws apply to advisory committees?
Advisory committees fall under the intentionally broad definition of "public bodies" ("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, except that "public body" does not include councils or similar groups established by the Governor for the sole purpose of advising the Governor with respect to policy." 1 V.S.A. § 310(4)) and so they too must also comply with the Open Meeting Law's requirements.

Listers required to record grievance?
No, but the VT Tax Department considers it a best practice https://tax.vermont.gov/municipal-officials/listers-and-assessors/hearings

What is the Town required to do with recordings of meetings?
The recordings (again only required for the legislative body when it is holding a remote only meeting under Act 92) becomes a public record that must be retained according to the Vermont State Archives and Records Administration (VSARA) rules, accessible here: https://sos.vermont.gov/vsara/manage/retention-disposition/
We also recommend contacting them -- see contact info on same link.
We are a small town and must approve warrants at Selectboard meetings—do we really need to go into great detail as to what’s in the warrant? The warrant itself is part of the record.
The law doesn't state what detail must be in orders authorized by the legislative body. I think the detail should be enough so that auditors can clearly identify the purpose of the order. Note that the law allows the legislative body to authorize one or more members to authorize orders on behalf of the board. In this case, the law states "orders shall state definitely the purpose for which they are drawn and shall serve as full authority to the treasurer to make the payments." This standard is a good standard to apply to full board approved orders. Alternatively, the law also allows the legislative body to "submit to the town treasurer a certified copy of those portions of the Selectboard minutes, properly signed by the clerk and chair or by a majority of the board, showing to whom, and for what purpose each payment is to be made by the treasurer. The certified copy of the minutes shall serve as full authority to the treasurer to make the approved payments."

Does a member of the public, whether attending a meeting in person or by remote access have to identify themselves or can they be anonymous?

Act 92 (which is the temporary change in the open meeting law to allow remote only meetings) doesn't require members of the public to identify themselves. However, given that the Open Meeting Law's s requires that members of a public body attending remotely to "identify himself or herself when the meeting is convened" (1 V.S.A. § 312(a)(2)(C)), we think that this requirement could be reasonably extended to the public through its rules of procedure for meetings.

Does the public have to identify themselves? Can they attend anonymously and not identify themselves in person or online?
The law's requirement to identify oneself when a meeting of a public body convenes only explicitly applies to members of public bodies, not to the general public, but a public body can certainly require this of the public in its rules of procedure. The minutes must reflect active participants, though, so be sure the person states their name before speaking so they can be identified.

What if Public refuses to identify self?
If this is part of the public body's rules of procedure, the first step is to remind those attending of the rules. If the person continues to refuse to identify themselves, while the public body may want to "mute" the person based on violating the rules of procedure, I think this would be last step and recommend that the public bod only do so if the person was being disruptive or otherwise interfering with the meeting.
If you meet in person are you still required to record the meeting?
If the legislative body is holding a remote only meeting under Act 92 (even though the
members only will meet physically) it must be recorded under Act 92. If the legislative body is
holding a non-Act 92 remote meeting (i.e., just a remote meeting under 1 V.S.A. § 312(a)(2), no
recording is required (but minutes are always required).

Are you required to allow electronic participation if you meet in person?
The requirements of Act 92 are effective for as long as the state of emergency is in place.
Certainly, access by electronic means will be required for the duration of the state of
emergency for both members of a public body and those of the general public regardless of
whether a public body meets in person.

If you meet in person must you have electronic access available also? and are you required to
record if meeting in person?
We would recommend it, at least for the duration of the state of emergency. Although Act 92
doesn’t require public bodies to hold remote only meetings, ACCD is advising working remotely
as much as possible. If a public body held an in-person only meeting (i.e., no remote access
options), there are still capacity and social distancing limitations. For these reasons, we
recommend holding Act 92 remote only meetings until the State’s guidance changes. Even
without the state of emergency in place, Vermont (Public Accommodations Act) and federal law
(Americans with Disabilities Act) prohibits municipalities from excluding individuals with
disabilities from participation in or deny them the benefits of its services, programs, or activities
and may require providing remote access by electronic means to the meetings of public bodies.

Is there a VLCT link enumerating reasons allowed for executive session?
Yes, please see our Open Meeting Law FAQs available on our website at:
https://www.vlct.org/resource/open-meeting-law-faqs

Woodbury select board would like to go back to meetings in a physical place. We have our
school gym that would allow physical space and all would be required to wear masks. Is this
okay to do?
It’s not expressly prohibited, but it is not recommended. The Selectboard can require that
everyone coming into the building must wear masks. Selectboard members and
staff/employees are considered to be “conducting business” according to a recent ACCD
webinar, so they must wear masks per the guidance and otherwise abide by the State’s health
and safety guidance: https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-sector-
specific-guidance#municipalities