

To: Chair Matt Birong, House Committee on Government Operations

From: Josh Hanford, Director of Intergovernmental Relations; Samantha Sheehan, Municipal Policy and Advocacy Specialist

Date: January 17, 2025

RE: Technical Changes and Modernizations to Open Meeting Law

Thank you for supporting and championing the interests of so many communities throughout Vermont. As we begin the new legislative biennium, the VLCT team looks forward to working in partnership with you to help Vermont's cities and towns meet the obligations and functions of today's local government and take the action needed to solve the challenges of the 21st century. The purpose of this memo is to communicate necessary changes to clarify and modernize Open Meeting Law to enable compliance and to ensure consistency of application and judicial interpretation.

### **VLCT Recommendations**

These recommendations have been vetted by VLCT's Municipal Assistance Center, a team of experienced municipal law attorneys who provide low-cost professional services and confidential legal guidance to Vermont municipal officials, and have arisen directly from questions, concerns, and confusion from municipal staff, boards, and commissions attempting to comply with the law.

### **Managing Digital Records**

1. Posting of recorded meetings: Amend 1 V.S.A. § 312(a)(6)(A) to eliminate "a designated electronic location" and instead require the audio or video record be posted to a website that the public body maintains, if one exists. This would address the problem of not being able to force private, third-party entities to comply with the timeframe for posting or potential public records requests and would conform with how other types of posting requirements are handled in 1 V.S.A. § 312(b)(2), 24 V.S.A. § 1972(a)(1), and 17 V.S.A. § 2641(b).
2. Posting of recorded meetings and meeting minutes: Amend 1 V.S.A. § 312(a)(6)(A) to clarify when recordings must be posted by eliminating "approval" and "official" to read "following the posting of the minutes for a meeting." Vermont state law does not explicitly require minutes be approved and does not define "official minutes". Presently, some municipal bodies either don't approve their minutes at all or don't hold a successive meeting for several months.
3. Timeline for posting recorded meetings: Amend 1 V.S.A. § 312(a)(6)(A) to require that recordings shall be posted no later than five calendar days from the date of the meeting and keep them posted for 30 days from that date. This would be consistent with the requirement for meeting minutes, and the faster timeline would likely decrease the volume of public records requests between successive meetings.

4. Locations for posting public notice: Amend public notice laws to allow municipalities to post in public places located in neighboring communities known to be frequented by their citizenry and/or allow for a municipal website to substitute for one of the required physical public places used for posting public notices, when necessary. Many small towns don't have three public buildings and instead resort to placing signage in the public highway right-of-way. We believe allowing greater flexibility will improve compliance and accessibility.

### Compliance and Clarifications for Non-advisory Bodies

1. Define non-advisory body: Amend 1 V.S.A. § 310(1) to better define non-advisory bodies and quasi-judicial bodies, and/or enumerate in statute the advisory and non-advisory boards by name. The current definition for advisory bodies has been unworkable for our members since the most recent amendments to open meeting law and has driven a high volume of questions and concerns. Clarification is necessary to ensure full and equal compliance.
2. Exempt site visits from the recorded meeting requirements: Amend 1 V.S.A. § 312(g) and 32 V.S.A. § 4404(c)(1) to include site inspections, such as those regularly conducted by land use boards, so long as it is related to the business of the body as that term is defined by 1 V.S.A. § 310(1)), and so long as the public body doesn't take action or admit evidence or testimony while on site. Aside from the practical difficulty of recording such inspections and capturing all that transpires, site inspections are often located on private property. Local governments cannot guarantee public access to private property, and recording images of a private home or business for the purpose of public posting may raise legitimate privacy concerns and could dissuade the property owner from full participation or compliance with the proceedings.
3. Create provisions to exempt "working groups", or meetings of the members of non-advisory bodies to undertake advisory work: A lack of clarity in Open Meeting Law for officials from legislative bodies conducting advisory work has generated confusion and recent litigation (see Town of Norwich Motion to Dismiss) over where the line is drawn between a "subcommittee" and what many people call a "working group". A subcommittee constitutes a public body and must adhere to Open Meeting Law requirements. A "working group" is commonly used to describe situations when less than a quorum gathers to perform some delegated, time-limited work including research, outreach, or policy development to later be considered and acted on by the full body. There is a widespread misperception that a "working groups" exception exists. To remedy this, VLCT recommends that an exemption be created for gatherings of less than a quorum of a public body when no subcommittee exists and when no decision is made. A practical example of this may be some selectboard members meeting with or without state agency representatives and other experts to research recent state regulatory changes or to develop new policy to later summarize for the full selectboard prior to adopting a change in

local ordinance or bylaw. This is a common practice for small communities that rely on volunteer work by elected officials due to a lack of appropriate municipal staff available to advise the selectboard on the wide range of issues it must consider. Without legislative action to provide this exception, it is all but certain that further suits will be brought against municipalities.

### Addressing Public Safety and Security

1. Allow executive sessions for the discussion of cyber security and public safety: Amend 1 V.S.A. § 313(a)(10) to read, “security, including cyber, or emergency response measures, the disclosure of which could jeopardize public safety” as a basis for public bodies to enter executive session. Recent legislative changes pushing municipal government toward electronic accessibility has necessitated planning and responses related to cyber-attacks and digital security. Sensitive discussions pertaining to public safety and security should be exempt from public discussion where exposure could place public safety in a vulnerable position.
2. Address pornographic content in recorded municipal materials: Amend 1 V.S.A. § 312(a)(6)(A) to empower municipalities to edit obscene content from recordings prior to posting, so long as the original record is maintained in its unaltered state. Municipal meetings have been “zoom-bombed” with images, videos, and sound which is captured in the meeting recording. We don’t believe there’s a relevant provision in the public records act allowing members to exempt a clearly obscene portion of a meeting, which could violate [Crimes and Criminal Procedure](#). State law, in 13 V.S.A. § 2827, 13 V.S.A. § 2606, prohibits disseminating in the presence of a minor “any such representation or image which is stored electronically” depicting nudity or sexual conduct.

### Next Steps

Thank you for the opportunity to share some of VLCT’s ideas with you. We welcome your feedback and hope to continue working together to strengthen and modernize Vermont Open Meeting Law. If you are able to support any or all of the changes proposed here, VLCT staff would be happy to answer questions, connect you with local officials who can provide first-hand perspective, and provide recommended language for legislative consideration.

### Attachments

[Decision on motions for summary judgement, Katucki v. Town of Norwich, its Selectboard](#)

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