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Memorandum to Town or City Clerks and Municipal Government Officials
COVID-19 Impacts and Considerations for Open Meeting Law, Elections and Public Records Access

The Secretary of State's Office is receiving many inquiries about open meeting law compliance and elections in light of the ongoing COVID-19 outbreak. We are now starting to get inquiries about public records access as well. This situation is unprecedented.

The guidance below is our best advice under the current circumstances and may evolve as health risks change, or as the Legislature or Governor take action. For now, we are putting this out to help you in your decision-making.

OPEN MEETINGS

Access to public meetings and public records is based in the Vermont Constitution, so we must not take lightly its mandate:

That all power being originally inherent in and co[n]sequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them.

Current law permits select board members, and other members of public bodies, to fully participate in meetings from a remote location, provided that certain requirements are met. [1 V.S.A. §312\(a\)\(2\) Right to attend meetings of public agencies.](#)

Any member who participates remotely via electronic or other means must be able to hear and be heard throughout the meeting. This means that participating by speakerphone or Skype or Zoom, for example, can be appropriate, while participation by email is not. Each member who participates remotely must identify himself or herself when the meeting is convened. Any vote that is not unanimous must be taken by roll call.

If a quorum or more of members will be participating remotely, the Open Meeting Law requires that the meeting agenda 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, staff member, or other designee must be physically present at the location.

The above requirements do presume that a physical location will always be provided for members of the public to attend, participate, and express their opinions on matters being considered at public meetings. These requirements do not preclude, however, the ability of a public body to provide an additional means

for members of the public to participate from a remote location, if members of the public so choose. Tools such as Zoom, Skype, or GoToMeeting can be used to maximize public participation and to provide community members who cannot physically attend with a way to make their voices heard.

The Secretary of State's Office does not have any authority to amend or waive any portion of the Open Meeting Law – that would generally require action by the Vermont Legislature.

We do suggest that public bodies offer and encourage the use of electronic conferencing tools as an alternative, though not exclusive, means of citizen participation in public meetings.

Other guidance to consider:

- Determine whether these meetings are absolutely necessary or could be cancelled or postponed;
- When necessary, schedule in a location that is large enough to accommodate the [CDC's social distancing recommendations](#) in case people do attend;
- Make extra efforts to notify the public of phone-in and teleconferencing options to encourage remote participation;
- Consult with municipal counsel for advice about legal options in handling specific scenarios;
- Review the Vermont League of Cities and Towns' [list of resources and recommendations for towns](#) preparing for a public health emergency.

We want to acknowledge that we are in an unprecedented situation and that these are disconcerting times. We do think every public body should be in touch with its own attorney in order to thoroughly evaluate the legal risks and options available.

The Legislature may be considering action to amend or waive certain Open Meeting Law requirements, such as the physical location requirement. To date, no changes to the law or its requirements have been made. It is also unclear to our office if the Governor has the authority to amend or waive certain requirements of the law during states of emergency. Questions on the Governor's authority to do so should be directed to the Governor's office.

ELECTIONS

We have also received numerous questions regarding planned local elections. We understand the concern and the difficult situation this puts all of us and our local governments in.

We have provided the Legislature with our recommendations for temporary amendments to the law which would ensure that the elections process can proceed in Vermont under circumstances which may help limit the spread of COVID-19, and limit exposure of Vermonters. These include temporary session laws:

- Allowing a municipality's governing body (versus the voters) to vote to switch from a floor vote to an Australian ballot in an upcoming election;
- Waiving petition signature gathering requirements for candidates to appear on the ballot; and
- Granting the Secretary of State, in conjunction with the Governor, general authority or emergency powers to take any reasonable measures necessary to ensure the safety of voters, election workers, and candidates during elections.

As with the Open Meeting Law, we also strongly recommend that towns consider the “other guidance to consider” we listed above to determine if the election may be postponed and to check in with their counsel for advice in handling specific scenarios.

PUBLIC RECORDS ACCESS

We have only recently started receiving questions about the closure of town halls and vaults to the general public. Again, these are difficult decisions in a time when so many people are concerned about their health. We all recognize the critical role our town offices play in terms of issuing licenses and providing access to the records necessary for real estate conveyance, mortgage refinancing, and other business.

This is a town decision, and one not to be taken lightly given the Town Clerk’s records responsibilities as required by law. A law which we cannot simply waive or ignore. Again, it may be possible to delay searches, postpone records access and reschedule some transactions due to the current health crisis.

However, there are other creative approaches available to try to continue to function safely under the circumstances:

- Allow office or vault access by appointment only to minimize crowding and provide the opportunity to practice social distancing;
- Make records available online, if possible; or
- The Clerk could receive the request by phone or email, research and retrieve the documents requested and then email electronic copies or mail hard copies, for a fee.

This is a time when we all have to try to think outside the box to provide necessary services while following the law and providing for the safety of town staff. We hope this guidance document is helpful and, as stated above, it will most certainly change in the coming weeks. Please do not hesitate to reach out to our office if you have questions or concerns, or have something you would like us to advocate for with the Legislature.

Thank you for your service in these trying times. It is not easy to perform the public services you do in the face of a health crisis. We have great confidence in the dedication of our clerks and town officials, and know you have Vermonters’ best interests in mind as you go about your work every single day.