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James C. Condos, Secretary of State
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MEMORANDUM

TO: State Agencies and Municipalities

FROM: Secretary of State Jim Condos

DATE: June 14, 2021

SUBJECT: **State of Emergency Expiration and the Open Meeting Law**

The state of emergency declared in 2020 in response to COVID-19 will expire June 15th at midnight. As a result, the temporary measures enacted by the Vermont Legislature and tied to the declared emergency will also expire. Among them are [Act 92](#) and [Act 113](#) of 2020, which had temporarily amended the open meeting law (OML) to allow for fully remote public meetings and electronic posting of notices.

As of Wednesday, June 16 at 12:01 AM, public bodies must now comply with the long-standing OML as it appears in [1 V.S.A. §§ 310-314](#). This means:

A physical meeting location for public participation must be provided. Public bodies must designate a physical meeting location where members of the public can attend and participate in public meetings. At least one member of the public body, staff member, or designee must be physically present at this location throughout each meeting. 1 V.S.A. § 312(a)(2). Public bodies with concerns about their physical space or staffing may need to postpone meetings, consult with their legal counsel, or both.

Members of public bodies may attend meetings remotely. Members attending remotely must self-identify when the meeting convenes and be able to hear and be heard throughout the meeting. If any member attends remotely, votes that are not unanimous must be taken by roll call. If a quorum attends remotely, a staffed physical meeting location must be provided for members of the public to attend and participate. 1 V.S.A. § 312(a)(2).

Options for remote public participation are encouraged. The text of the open meeting law does not explicitly require permitting the public to attend and participate from remote locations. Nonetheless, we at the Secretary of State's office urge public bodies to find means to continue including the voices of members of the public who have limitations that may preclude physical attendance. Supporting the right of *all* members of the public to express their opinions on matters considered is one path to

accountability. See 1 V.S.A. §§ 311, 312(h). Please note also that public meetings under the OML are subject to public accommodation requirements found elsewhere in state law. 1 V.S.A. § 312(a)(1); 9 V.S.A. chapter 139.

Public bodies should review the OML’s advance public notice requirements. The electronic posting in lieu of physical posting allowances during the state of emergency are no longer in effect. Notices and agendas should clearly identify the designated physical meeting location, and, as relevant, any info about how the public may access meetings remotely. Advance public notice for municipal public meetings must be posted in three physical locations, including in or near the municipal office. 1 V.S.A. § 312(c), (d).

The Secretary of State’s office encourages municipal public bodies to consider continuing to post notices and agendas in electronic locations, in addition to physical and website postings. We also remind all public bodies that OML notices and agendas ought not be altered within 48 hours of a regular meeting nor 24 hours of a special meeting. Public bodies that find their posted notices and agendas no longer comply with OML requirements for upcoming meetings may need to reschedule meetings, consult with legal counsel, or both.

Meeting minutes must be made available after five calendar days from the date of the meeting. 1 V.S.A. § 312(b). The 10-day extension relating to staffing shortages during the state of emergency is no longer in effect. In addition, the Secretary of State’s office encourages select boards, school boards, and other municipal legislative bodies to consider continuing the practice of audio- or video-recording their meetings.

As always, we recommend that every municipality be in touch with its own municipal counsel for legal advice about how to handle specific scenarios during this time of transition.

Vermont’s public servants have made it clear that our government can still operate and make critical decisions during a public health emergency without sacrificing the public’s right to know and to participate.

You have persevered under incredibly difficult conditions, with added responsibilities and new daily challenges. Now, as we transition together to the new “new normal,” we hope to hang on to the many successes of the past 15 months, even as we look forward to revisiting our old ways.

We thank you wholeheartedly for everything you’re doing to serve our Vermont communities.