

Memorandum

To: Vermont Community Broadband Board (VCBB) – Dan Nelson (Vice Chair),
Holly Groschner, Brian Otley, Laura Sibia

From: Patty Richards (Chair)

Date: August 31, 2023

RE: VCBB Board Practice Proposal Untimely Documents and Agenda Item
Changes

Background

At the July VCBB meeting, we discussed the issue of documents being sent out after a Board packet was circulated. Based on a review of online material as well as discussions with VCBB legal counsel (Toni Clithero), adding new information to Board meetings is allowable but should be done with care and due consideration. In general, sending out information and documents after a board packet has been circulated is discouraged. Changes to the agenda may be made but action items requiring a vote should be avoided unless it is an emergency or necessary situation.

Toni has noted the following in her research of this matter:

With respect to documents, neither Vermont's Open Meeting Law (OML) or Roberts Rules of Order specifically address the issue of which documents may be considered during a public meeting. As a result, the OML does not prohibit the Board from considering documents added after the agenda has been posted as long as those documents fairly relate to an item on the agenda. Likewise, the OML does not prohibit the Board from instituting a practice concerning its consideration of additional documents.

It should be noted that such practice should distinguish between documents submitted by staff and those the public seeks to introduce during a meeting. Whereas it is not unreasonable for the Board to limit late staff submissions to an emergency meeting notification standards (addressed below), submissions of additional documents by the public should be allowed where the documents both concern issues noticed on the agenda and are considered necessary to express the opinion of the member of the public seeking to introduce them. *See* 1 V.S.A. 312(h) (requiring public bodies to provide the public with a "reasonable opportunity to express its opinion on matters considered" during the meeting). In either case, the Board may alternatively postpone consideration of any such additional documents to an adjourned meeting, as long as the time and place for the adjourned meeting is announced before the meeting is adjourned. 1 V.S.A. §312(c)(4).

It is my opinion, based on the past several decades of serving in a public body capacity, untimely documents may lead to imbalance of information; some people may see it and others may not. If material is considered paramount and should be reviewed by the VCBB Board, we should strive to take up the matter at the next regularly scheduled meeting. Allowing material to be submitted after the packet is circulated should be reserved for exceptional or emergency situations.

Toni also opined on changes to the agenda:

With respect to agenda items, Vermont's Open Meeting Law (OML) allows for the addition and deletion of agenda items. 1 V.S.A. § 312(d)(3). Under the OML, public entities may add or delete items from an agenda after it has been posted to the public if the addition or deletion is conducted as the first act of business at the meeting (1 V.S.A. § 312(d)(3)).

My recommendation is that the Board avoid adding agenda items unless it is necessary and is consistent with the recommendations of the Vermont Secretary of State's Office (SOSO). (*See A Guide to Open Meetings*, rev. 2019, at p. 6) (attached). The SASO cautions that "last-minute agenda items, especially those requiring board action, be added at a meeting only in an emergency" and that the better practice is "to handle items that were not included on the posted agenda at the next regular meeting or, if necessary, to call a special meeting so that the public gets notice of the item and has an opportunity to attend and participate." *Id.* The OML allows public notice "as soon as possible before the meeting" where an emergency meeting is necessary to respond to an "unforeseen occurrence or condition." 1 V.S.A. § 312(c)(3). Thus, a practice to limit the addition of agenda items to circumstances where it is necessary to respond to an unforeseen issue constitutes an appropriate Board practice.

As noted by various online sources relative to this matter, there are occasions where items need action or attention after an agenda is posted or a board packet is published.¹ Some items can require quick action due to the nature of the matter. However, as a public body we should assure first there is a **need** for **immediate** action. Second, we became aware **after** the agenda and board packet was publicized

Recommended Practice

In general, I recommend that we avoid sending out documents after the Board packet is posted. Having all the material in one central place (board packet) assures all Board members and

¹ [Public Agency Board Meeting Agendas: Adding an Item After the Agenda Has Been Posted | Lagerlof](#)

stakeholders have the opportunity to review relevant information being considered and discussed.

Also, it is recommended to avoid adding agenda items at the last minute, if possible, but noting there are times it may be necessary. To add an agenda item, it will take a majority of Board members present to revise the agenda. In addition, the item must meet a standard of needing immediate action such as an unforeseen emergency

I look forward to discussing this recommendation at our upcoming meeting.