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## MEMORANDUM

**TO:** Leigh Carney, Town Clerk (for distribution to Town Council/Boards/Commissions)  
Andrew E. Nota, Town Manager

**FROM:** Michael A. Ursillo, Town Solicitor  
Andrew M. Teitz, Amy H. Goins,  
and Peter F. Skwirz, Assistant Town Solicitors

**DATE:** April 15, 2020

**SUBJECT:** Guidance on the Open Meetings Act, as Modified by Governor Raimondo's Executive Order 20-25 (issued 4/15/2020)

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As you know, on March 16, Governor Raimondo issued Executive Order 20-05 (“EO 20-05”), which modified certain provisions of the Open Meetings Act (the “OMA”), as well as certain provisions of the Access to Public Records Act. EO 20-05 expired today and was superseded by Executive Order 20-25 (“EO 20-25”), a copy of which is attached hereto. This memorandum sets forth the key points of EO 20-25, which expires on May 15.

It is our understanding that EO 20-25 may be further modified or supplemented by guidance from the Governor or Attorney General. We will keep you informed, and please contact us with questions as they arise.

### **Essential Purpose Requirement Eliminated**

The most significant aspect of EO 20-25 is that the “essential purpose” requirement is eliminated. EO 20-05 allowed remote meetings only where the public body was meeting for an “essential purpose.” Many questions had arisen in the last month regarding how this should be interpreted. Fortunately, in EO 20-25, this requirement has been eliminated altogether. Now all public bodies can meet remotely, via Zoom, teleconference, or otherwise, without regard to the content of the meeting or the identity of the public body.

## **Economic Hardship/Despite Best Efforts Exception Eliminated**

EO 20-05 contained a savings clause of sorts for a public body that “for reasons of economic hardship or despite best efforts is unable to provide alternative means of public access.” This clause has been eliminated in EO 20-25. Therefore, all public bodies who wish to meet remotely must provide “adequate alternative means of public access,” defined as “measures that provide transparency and permit timely and effective public access to the deliberations of the public body.” In other words, remote meetings must be done correctly or not at all. For example, if there are technological issues that occur during the meeting, the meeting should be adjourned and resumed with proper notice.

## **Best Practices Referenced**

EO 20-25 references best practices for public bodies. It should be noted that these are not specifically binding on municipal public bodies; however, we strongly recommend that they be followed. They are available at the following link and are copied below. (Note that as of this writing, the link in EO 20-25 is incorrect.) <http://www.doit.ri.gov/covid-19/>

Finally, based on our experience over the last month, it is our recommendation that all boards/commissions that wish to meet remotely conduct a practice meeting to familiarize board members and the public with the remote meeting platform. This is especially important if the board/commission takes public comment or conducts public hearings. The practice meetings should be posted in accordance with the OMA.

Note that neither EO 20-05 nor EO 20-25 eliminated the requirement that, in addition to posting on the Secretary of State’s website, agendas be physically posted “at the principal office of the public body holding the meeting, or if no principal office exists, at the building in which the meeting is to be held, and in at least one other prominent place within the governmental unit.” It is our recommendation that because Town Hall is open by appointment only, the agendas for all remote meetings should be posted on the Town’s website as well as on the Secretary of State’s website.

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In conjunction with the issuance of Executive Order 20-25, which supersedes Executive Order 20-05, by the Honorable Governor Gina M. Raimondo (see <http://governor.ri.gov/newsroom/orders/>), the Department of Administration is providing the following updated guidance for public meetings:

1. In the event that a public body meets in-person, and the public body has the capability of providing remote audio and/or video access by the general public, it should do so. For Executive Branch agencies, such capability may be available through services that the Division of Information Technology (“DOIT”) can identify for you.

2. In the event that a meeting is held at a physical location, the media, on a pool basis if appropriate, and the public should be permitted to attend, while being mindful of the attendance limitations set forth in Executive Order 20-14, as and may be further supplemented and/or amended (see <http://governor.ri.gov/newsroom/orders/>).
3. In the event that either audio and/or video coverage of a meeting is interrupted, the meeting shall be suspended, with the record reflecting such suspension, until such time as functionality is restored.
4. Should the members of the public body have the technology available to them during a remote video meeting, the members should allow themselves to be visible to the public during the entirety of the meeting.
5. At the commencement of a meeting, the record should reflect which members are in attendance in person, if any, and which members are participating remotely, if any.
6. It is important that each member identify themselves before speaking so that the record is clear as to who is discussing or questioning a matter. And, it is prudent to have all votes be taken by roll call with identification of the person voting.
7. If possible, all documents anticipated to be publicly presented at a meeting should be posted on the public body's website prior to the start of the meeting. Such posting should not be considered as part of any record until admitted into evidence and/or the record by the presiding officer. In the event that an unanticipated document is introduced at the open meeting, the public body should post the document to its website as soon as practicable.
8. Instructions for how the public may access and participate in the meeting shall be placed in the agenda for the meeting. Additionally, the agenda shall contain contact information for a representative of the public body who may be notified in the event of technical difficulties.



# COVID-19 Information Technology Resources

## For Public Entities Regarding Remote Public Meetings

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## State of Rhode Island and Providence Plantations

Gina M. Raimondo  
Governor

### EXECUTIVE ORDER

20-25

April 15, 2020

#### TWENTY-SECOND SUPPLEMENTAL EMERGENCY DECLARATION – PUBLIC MEETINGS AND PUBLIC RECORDS REQUESTS

WHEREAS, on March 9, 2020, I declared a state of emergency due to the dangers to health and life posed by COVID-19 and that declaration has been extended to at least May 8, 2020;

WHEREAS, on March 16, 2020, I issued Executive Order 20-05 enabling remote public meetings and providing certain relief relating to managing public records requests and appeals;

WHEREAS, on March 28, 2020, I issued Executive Order 20-14 announcing a stay-at-home requirement and further reducing the size of gatherings to 5 people, among other things, and that Executive Order has been extended to at least May 8, 2020;

WHEREAS, as a result of these directives, many public and private employees have been working remotely;

WHEREAS, many important functions of state and local government are executed in meetings of “public bodies,” as that term is defined in the Open Meetings Act, Rhode Island General Laws § 42-6-1 et seq. (OMA);

WHEREAS, according to the public policy articulated in OMA, “[i]t is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy;”

WHEREAS, guidance on best practices for conducting public meetings remotely and otherwise can be found at the Rhode Island Department of Administration, Division of Information Technology website at <http://www.doit.ri.gov/covid-19/>;

WHEREAS, the Rhode Island Access to Public Records Act, Rhode Island General Laws § 38-2-1, et seq. (APRA), protects the public’s right to access public records within statutory timeframes;

WHEREAS, Rhode Island General Laws § 30-15-9(e)(1) permits the Governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency and Rhode Island General Laws § 30-15-7(1) authorizes the Governor to issue executive orders that have the force and effect of law.

NOW THEREFORE, I, GINA M. RAIMONDO, by virtue of the authority vested in me as Governor of the State of Rhode Island and Providence Plantations, pursuant to Article IX of the Rhode Island Constitution and the Rhode Island General Laws, including, but not limited to, Title 30, Chapter 15, and Title 23, Chapter 8, do hereby order and direct the following:

*Open Meetings*

1. Public bodies conducting meetings, as those terms are defined by OMA, are hereby relieved from the prohibitions regarding use of telephonic or electronic communication to conduct meetings, contained in Rhode Island General Laws § 42-46-5(b), and are required to make provisions to ensure public access to the meeting of the public body for members of the public through adequate, alternative means.

- a. Adequate alternative means of public access shall mean measures that provide transparency and permit timely and effective public access to the deliberations of the public body. Such means may include, without limitation, providing public access through telephone, internet, or satellite-enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body while those activities are occurring.
  - b. Where allowance for active, real-time participation by members of the public is a specific requirement of a state or local law, pursuant to which the proceeding is conducted, any alternative means of public access must provide for such participation.
  - c. A public body must offer its selected alternative means of access to its proceedings without subscription, toll, or similar charge to the public.
  - d. Any meetings occurring during the timeframe when this Executive Order is in effect must provide adequate alternative means for public access, even if the members of the public body are able to convene in person.
2. A public body that elects to conduct its proceedings under the relief provided in section (1) shall ensure that any party entitled or required to appear before it shall be able to do so through remote means, as if the party were a member of the public body and participating remotely.
  3. All other OMA provisions shall remain unchanged and fully applicable to the activities of public bodies.

*Public Records*

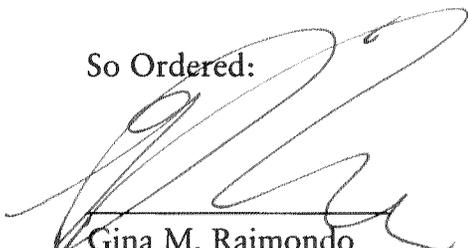
4. The statutory timeframes within which to respond to an APRA request contained in Rhode Island General Laws § 38-2-3 and § 38-2-7 are hereby suspended for all pending and new public records requests. Any agency or public body as defined by APRA may extend the timeline for responding to a records request by an additional 20-business-day period, further to the extension provided in Rhode Island General Laws § 38-2-3(e), if the agency or public body notifies the requestor in writing before the regular statutory deadline for the agency's or public body's response and states that the additional time is necessary for reasons related to the current

COVID-19 emergency. Any such further extension of time must be related to the current COVID-19 emergency and be based on a reasonable belief that additional time is needed beyond the 20-business-day statutory extension. An agency or public body may only assert one 20-business-day extension at a time and evaluate at a later date whether the second 20-business-day extension is necessary.

5. The requirements in Rhode Island General Laws § 38-2-3 providing that an agency or a public body permit inspection of records and produce records in “any and all media” in which they are capable of being provided is hereby suspended for all pending and new public records requests. It shall be sufficient for an agency or public body to provide such records electronically. Agencies and public bodies may continue to permit inspection or provide public records in other media, at their discretion.
6. The timeframes regarding administrative appeals of agency or public body decisions contained in Rhode Island General Laws § 38-2-8 are hereby suspended for all pending and new administrative appeals. Any agency or public body as defined by APRA may extend the timeline within which its chief administrative officer may review his or her subordinate’s determination and issue a decision regarding an administrative appeal by an additional 10 business days. Any such extension of time must be related to the current COVID-19 emergency and the agency or public body must inform the requestor in writing within the regular 10 business day timeframe.
7. All other provisions of APRA shall remain unchanged and applicable to agencies and public bodies.

This Order supersedes Executive Order 20-05. It shall take effect immediately and remain in full force and effect until May 15, 2020 unless renewed, modified or terminated by subsequent Executive Order.

So Ordered:



Gina M. Raimondo  
Governor