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## MEMORANDUM

**TO:** Susan Flynn, Town Clerk (for distribution to Town Council/Boards/Commissions)  
Robert C. Zarnetske, 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 EO 20-05 expired today and was superseded by Executive Order 20-25 (“EO 20-25”), a copy of which is attached hereto.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.