



A quick guide to **Executive Order 20-46** impacting public meetings and public records requests

Now, more than ever, Rhode Islanders need to have trust and confidence in their state and local government. We encourage public bodies and agencies to continue to operate as openly and transparently as possible.

On June 12, 2020, Governor Gina Raimondo issued [Executive Order 20-46](#), which modifies certain provisions of the [Open Meetings Act \("OMA"\)](#) and [Access to Public Records Act \("APRA"\)](#) as part of the State's emergency response to COVID-19.

Similar to the prior Executive Order pertaining to the [OMA](#) and [APRA](#) (Executive Order 20-25, extended by Executive Order 20-34), [Executive Order 20-46](#) permits meetings to be held by virtual means for any purpose, not just an "essential" purpose; does not include a hardship exception to the requirement that the public have real-time access to the meeting; and makes clear that public bodies must provide remote access to their meetings, even if they are able to convene in person. Unlike Executive Order 20-25, the option to assert an additional extension of time for responding to [APRA](#) requests for reasons related to the COVID-19 emergency only applies to the Rhode Island Department of Health ("RIDOH"). No other public body may assert an additional extension beyond the 20-business-day extension provided in the [APRA](#).

The following is intended to serve as a quick guide to the [OMA](#) and [APRA](#) modifications contained in the Order.

OMA: What has changed?

Public bodies **may now conduct meetings by telephone or audio or video conferencing**, provided that the public body ensures public access to the meeting through adequate, alternative means.

- **Adequate alternative means of public access:** Measures that provide transparency and permit timely and effective public access to the deliberations of a public body. Examples include conferencing via telephone, video, or audio, enabling the public to clearly follow the proceedings of a public body in real time.
- Any adequate alternative means of public access must be provided for free.
- Any meetings must provide adequate alternative means for public access, even if the members of the public body are able to convene in person.
- If a state or local law requires real-time participation by members of the public, any alternative means must provide for such participation.
- Any public body that conducts its proceedings under this executive order must ensure that any party required to appear before it is able to do so remotely.
- [All other provisions of the OMA remain unchanged.](#)



APRA: What has changed?

- RI DOH may extend the timeline for responding to requests by an additional 20 business days if RIDOH notifies the requestor in writing that the extension is necessary for reasons related to the COVID-19 emergency. This extension is in addition to the 20-business-day extension already permitted by statute.

If RI DOH requires an extension and believes that it meets the legal requirements for invoking an extension, RI DOH may invoke one 20-business-day extension and then re-evaluate at a later date whether the second 20-business-day extension is necessary, and whether RI DOH satisfies the requirements for invoking an extension under the [APRA](#) and/or Executive Order. RI DOH may not assert both 20-business-day extensions at the same time.

- RI DOH may produce public records in electronic format, instead of being required to produce records "in any and all media" in which they are capable of being provided or accommodating in-person public inspection.
- The deadline for RIDOH to respond to administrative appeals may be extended by an additional 10 business days if for reasons related to the COVID-19 emergency. The requestor must be notified in writing within the regular 10-business-day timeframe.
- All other provisions of the APRA remain unchanged.

Questions & Guidance

If you have questions, our open government team is available to provide guidance on these statutes.

Email opengovernment@riag.ri.gov or call 401-274-4400.

This guide is provided as a public service by the Office of Attorney General and is intended to assist public bodies and provide guidance concerning Executive Order 20-46. This guide does not address all questions about Executive Order 20-46's requirements and is not intended to replace Executive Order 20-46, the Open Meetings Act, or the Access to Public Records Act. This guide should not be construed as legal advice. Public bodies should refer to their legal counsel when questions regarding compliance arise. Revised June 2020.





Frequently Asked Questions

1. Do meetings conducted via adequate alternative means have to pertain to an essential purpose?

A: No. Under [Executive Order 20-46](#), a public body may hold a meeting about any topic as long as the public has access through adequate alternative means and the other requirements of the [OMA](#) are satisfied.

2. What constitutes “adequate alternative means of public access”?

A: “Adequate alternative means” may include conferencing via telephone or video in a manner that allows the public to follow the meeting in real time. Any adequate alternative means of public access must be provided to the public at no cost.

The public body must make the teleconferencing number or audio/video link available to the public. The public body should provide this information in the meeting agenda or state in the agenda where the information will be made available.

3. Are there any exceptions to the requirement that public bodies have to provide adequate alternative means for public access to meetings?

A: No. Under [Executive Order 20-46](#), all meetings must offer adequate alternative means of public access. There are multiple free or low-cost technology options available.

4. What should be listed as the “place” of the meeting on the agenda for a virtual meeting?

A: The telephone number, URL address, or other means the public has of accessing the meeting should be listed as the “place” of the meeting. Additionally, if the meeting is being broadcast from one central location where members of the public body are present, that location should also be listed and the agenda should indicate if any members of the public may attend in person, if doing so complies with social distancing guidelines.

5. Can a public body use a telephone, live streaming, or other similar technology service that requires participants to register for an account?

A: A public body may use a service that requires participants to register for an account so long as the service is available to the public at large and there is no cost associated with creating an account as a member of the public.



Frequently Asked Questions

6. Can the Office of Attorney General recommend any virtual meeting services?

A: The Office of Attorney General cannot and does not endorse any particular virtual meeting services. However, we are aware of several little to no-cost services available for public bodies, such as [Zoom](#), [GoTo Meeting](#), [Ring Central](#), [Google Hangouts](#), [Webex](#), [Skype](#), and [Facebook Live](#).

7. Does a public body still have to post notice of the meeting as required in the OMA?

A: Yes. [Executive Order 20-46](#) does not suspend the OMA's notice requirements. Public bodies are required to post supplemental notice at least 48 hours prior to the meeting on the Secretary of State's website, at the principal office of the public body, and at one other prominent location within the public body. See [R.I. Gen. Laws §§ 42-46-6\(b\),\(c\)](#). If the physical locations where notice is usually posted are closed, notice may be affixed to the outside of the building. If a public body must convene an emergency meeting, the usual requirements of the OMA remain applicable – the agenda must be posted as soon as practicable. See [R.I. Gen. Laws § 42-46-6\(c\)](#).

8. Do the members of the public body have to be physically present in the same room to convene the meeting?

A: No. Consistent with [Executive Order 20-46](#), public body members may participate in the meeting from different locations via telephone or video conferencing.

9. If a public body is able to meet in person, does public access still have to be provided through adequate alternative means?

A: Yes. Under [Executive Order 20-46](#), any meetings occurring during the timeframe when the 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. Even if a public body convenes in person and social distancing guidelines permit in-person attendance by a limited number of members of the public, the meeting still must be made accessible to the public through adequate alternative means.



Frequently Asked Questions

10. Can a public body still convene in executive session during a virtual meeting?

A: Yes, so long as the requirements for doing so under the [OMA](#) are met. See [R.I. Gen. Laws §§ 42-46-4, -5](#). The public body may choose to convene in a separate telephone or video conference to conduct its executive session, then reconvene into the publicly available conference. The other requirements for executive session, such as beginning with an open call, must still be satisfied. Any public body wishing to convene in executive session should first convene with an open call in open session, and at the conclusion of the executive session, should return to open session to report out any votes from the executive session. See [R.I. Gen. Laws §§ 42-46-4\(a\), \(b\)](#).

11. Can the public body require citizen-participants to mute themselves during the meeting or can the public body mute all non-members?

A: Yes, under the Open Meetings Act, which does not require a public body to hold an open forum session. See [R.I. Gen. Laws § 42-46-6\(d\)](#). Therefore, a public body may require members of the public to mute themselves. However, this answer is limited to the requirements of the [OMA](#). Other local laws or statutes may impose additional requirements.

12. Under the Executive Order, is a public body required to comply with state and federal laws regarding nondiscrimination on the basis of disability?

A: Yes. The accessibility requirements under the [OMA](#) have not been suspended and a public body must ensure that all meetings convened pursuant to the [OMA](#) and the Executive Order are open and accessible to persons with disabilities. See [R.I. Gen. Laws § 42-46-13](#).

13. Can RIDOH extend the time to respond to an [APRA](#) request for the 20 business days allotted under the [APRA](#) and the 20 business days allotted under [Executive Order 20-46](#)?

A: Under both [Executive Order 20-46](#) and the [APRA](#), RIDOH may only invoke an extension when doing so is necessary and where the legal requirements for invoking the extension are satisfied. Every situation is different. Any extensions must be based upon the specific circumstances of each request.

If RIDOH requires an extension and believes that it meets the legal requirements for invoking an extension, RIDOH may invoke one 20-business-day extension. RIDOH should then re-evaluate at a later date whether the second 20-business-day extension is necessary, and whether RIDOH satisfies the requirements for invoking an extension under the [APRA](#) and/or Executive Order. RIDOH may not assert both 20 business day extensions at the same time.



Frequently Asked Questions

14. May other public bodies or agencies besides RIDOH assert an additional 20 business day extension for reasons related to COVID-19?

A: No. Pursuant to [Executive Order 20-46](#), only RIDOH may assert an additional extension for reasons related to COVID-19. All other public bodies and agencies may only assert the one 20-business-day extension provided for in the APRA, if the conditions for doing so are satisfied, and may not assert any other extensions.

15. If a public body already asserted an extension of time for reasons related to COVID-19 pursuant to a prior Executive Order, is that extension still valid?

A: Yes. Any extensions of time already invoked based on prior executive orders remain valid. However, as of June 12, 2020 when [Executive Order 20-46](#) took effect, no public bodies or agencies besides RIDOH may assert an extension of time pursuant to any executive order, even for [APRA](#) requests that were pending during the time period when the prior executive orders were in effect.

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