

Rhode Island*Holding Power Accountable*www.commoncause.org/ri

April 13, 2020

The Honorable Gina M. Raimondo
Office of the Governor
82 Smith Street
Providence, RI 02903

Dear Governor Raimondo:

We write concerning Executive Order 20-05 issued on March 16th and set to expire on April 15th. On March 19th we wrote (see attached), along with the ACLU, with suggestions for changes to the EO should it have to be renewed. Director Smiley of the Department of Administration issued guidance to state public bodies based on our suggestions on March 24th, and we are grateful your administration considered our feedback.

We ask that you incorporate the suggestions from our March 19th letter into your extension of EO 20-05. It is important that the guidance Director Smiley issued on March 24th be included in the EO itself, rather than through guidance, because the vast majority of public bodies in Rhode Island are at the municipal level and are turning to the EO for direction.

We want to highlight one of those suggestions. We believe that the exception for “economic hardship” on the part of public bodies that allows them to withhold public access, must be removed from the reissued EO. The last few weeks have demonstrated that economic hardship is not a viable excuse for any public body to provide public access to their meetings. Public bodies large and small, as well as schools throughout the state, have converted to online learning, and our public bodies must meet the same standard.

Based on our observations from the last several weeks, we also have additional suggestions for the EO. Along with Leadership Rhode Island and the League of Cities and Towns, Common Cause Rhode Island led a webinar for more than 300 municipal officials from around the state. One consistent question about the EO was the definition of an “essential purpose.” It would be helpful if you could provide further clarity regarding what you believe is an essential purpose of government at this time.

In your public statements you have emphasized the importance of maintaining some level of economic activity during the pandemic. Perhaps additional language that makes clear any public business relating to economic development, including zoning and planning, can continue during this time.

Another point of confusion is how EO 20-05 comports with requirements for social distancing. We are aware that some public bodies continue to meet in-person despite the requirement that no more than five people gather in one place. We believe you should clarify under what

circumstances public bodies can continue to meet in-person, and whether members of the public should be allowed to attend. Again, we urge you to clarify that whenever the public is not allowed to attend in person, it must be given remote access.

Due to the unfortunate increase in so-called “Zoombombing” some public bodies are choosing to use features on videoconferencing platforms that prevent the public from being seen and/or heard during meetings. We believe the EO should make clear that even if the law does not otherwise allow for public testimony during a meeting, a public body should provide means for the public to contact those who are running the meeting to indicate any technical difficulties. Without that option Director Smiley’s guidance that a public meeting should pause when a technical difficulty occurs is useless. Instructions for how the public can access the meeting and how they can participate should be put on the meeting agenda.

We thank you for considering our input. Please feel free to contact us should you have any questions.

Sincerely,

John Marion
Executive Director

Enclosure: March 19, 2020 Letter from RI ACLU and Common Cause RI

cc: The Honorable Peter F. Neronha
The Honorable Nellie M. Gorbea
Claire Richards
David Ortiz
Brett Smiley
Kate Sabatini
Jason Martesian





March 19, 2020

The Honorable Gina M. Raimondo
Office of the Governor
82 Smith Street
Providence, RI 02903

VIA EMAIL

Dear Governor Raimondo:

We understand this is an extraordinary time for state and local governments as they cope with the COVID-19 outbreak. In light of that, our organizations recognize the need to relax some of the safeguards in the Rhode Island Open Meetings Act and the Access to Public Records Act as you did in Executive Order 20-05. However, we write to express some concerns, and offer some suggestions, about the Executive Order and how it is being implemented by public bodies.

We ask that you immediately issue an amended Executive Order to clarify two matters that have arisen in the short period of time it has been in effect. We further request that you incorporate other recommendations if this Order is renewed, and, in the meantime, issue immediate guidance to public bodies in keeping with those recommendations.¹

The two amendments that we believe need to be immediately made to EO 20-05 are:

- Clarifying that should a public body continue to meet in person, it must still provide (1) remote access to members of the public; (2) in-person access to the media, by pool arrangement if necessary; and (3) in-person access to members of the public to the extent not inconsistent with the attendance limitations established by EO 20-04.

¹ We are also troubled by the Order's authorization to public bodies to forego contemporaneous public access to a meeting by reason of "economic hardship or despite best efforts." There are many free audio and video conference programs available. Additionally, you announced two days ago that Microsoft has offered free licenses for Office 365 for municipalities. That software suite has scalable video conferencing capabilities that public bodies can use for holding remote meetings. Under the circumstances, no public body should be able to rely on this exemption, and so it should be removed in any future Order.

- Specifying that in the event audio or video coverage of a proceeding or meeting is interrupted, the presiding official shall suspend the discussion until the audio or video is restored.

Additional amendments that should be made if EO 20-05 is renewed, and that public bodies should be asked to abide by in the interim, include:

- When operating remote meetings by video conference, all participating members of the public body should be clearly visible and audible to the public at all times.
- At the start of the meeting, the presiding official should be required to announce the names of any members of the public body participating remotely. During a meeting for which only audio is being provided, anyone speaking should repeat their name prior to making their remarks.
- All votes should be conducted by roll call so that those following by video or audio are aware of how each member of the public body voted.
- Any documents presented to the public body at the public meeting should, if possible, be put on the website of the public body prior to the start of the public meeting.
- The public body should record all meetings and make the recording available on a public website on a timely basis.

We also have separate concerns about those provisions in EO 20-05 suspending portions of the Access to Public Records Act. APRA already gives public bodies up to thirty business days to respond to an APRA request. The Order gives public bodies twenty additional business days to respond. It is our experience that too many public bodies routinely -- sometimes automatically -- seek extensions of time to respond to APRA requests. Allowing agencies to invoke an additional 20 business days extension means that important records could be withheld from the public for almost *two-and-a-half months*.

While the extension can, in theory, only be requested if necessary, for reasons related to this health emergency, its invocation will be virtually impossible to refute, and it can only encourage public bodies to take APRA requests lightly. Government transparency and support of the public's right to know are more, not less, critical during emergency situations. Because this suspension of APRA's deadline is unwarranted and extremely damaging to the public interest, we ask that the additional 20 business day extension for responding to APRA requests be removed from EO 20-05 if it is renewed next month.

We understand that the additional time extension in the Order may be in response to some city and town halls being fully closed at the moment, and therefore having literally nobody available to respond to APRA requests. However, the Order is not in any way limited to those extreme situations. Moreover, by the time that this Order expires a month from now, we expect every city and town hall will be functioning at some level that will enable them to comply with this extremely important law.

It is for this reason that we have not asked for an immediate revocation of this provision, but instead for its non-renewal.² At the very least, any future extension of this deadline must be much more narrowly tailored than that contained in this Order.³

We thank you in advance for your attention to these matters. It is important at this time for all Rhode Islanders to trust what government is doing to protect them and ensuring that the government continues to act in a transparent manner is critical to maintaining that trust. Should you have any questions regarding these suggestions, we are happy to answer them.

Sincerely,

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cc: The Hon. Nellie Gorbea
 The Honorable Peter F. Neronha
 Claire Richards
 David Ortiz
 Brett Smiley
 Kate Sabatini

² Even during this one-month period, we would urge you to ask public bodies to abide by the statutory deadlines if the APRA request specifically seeks documents related to the pandemic. Obviously, timely information from public bodies about this crisis is critical.

³ We also suggest a technical clarification if the Order is renewed. Section 5 is unintentionally ambiguous in one respect. In allowing public bodies to produce records solely in electronic format, one could read this provision as authorizing agencies to withhold any records that cannot be produced electronically.