



# Attorney General Peter F. Neronha

## GUIDANCE FOR CONVENING INTO EXECUTIVE SESSION<sup>1</sup>

Pursuant to the Open Meetings Act (“OMA”), public bodies are required to conduct public business in an open and transparent manner. Accordingly, public bodies may only enter into executive (closed) session for limited, specific reasons and are subject to certain requirements when they do so. Some of the most common purposes for entering executive session, and the steps necessary to go from an open meeting to an executive session, are explained below. The full list of purposes for which executive session may be entered can be found at R.I. Gen. Laws § 42-46-5(a).

We emphasize that public bodies should only resort to executive session when necessary and are encouraged to consider whether business may be conducted in open session, even when the OMA may permit the matter to be discussed in closed session.

In addition to articulating in an open call the particular OMA subsection and providing a statement specifying the nature of the business to be discussed, the open session meeting minutes must also record the particular OMA subsection and the statement specifying the nature of the business to be discussed in executive session. *See* R.I. Gen. Laws § 42-46-4(a). This generally should be more specific than the categories listed below. Examples of how to convene and adjourn an executive session are included below.

### Convening in and out of Executive Session

#### During the Open Session:

- **Councilmember A:** *“Motion to convene into executive session, pursuant to R.I. Gen. Laws § [appropriate section here], to [repeat whatever is on the agenda here].”*

#### Examples:

- (1) *“I move that the XYZ Council go into executive session pursuant to R.I. Gen. Laws §42-46-5(a)(1) to discuss the job performance of the Town Manager. The Town Manager was provided prior written notice that her job performance would be discussed and that she could require that discussion be held during the open session.”*

\* Meeting minutes must reflect that this statement regarding notice was made for the record<sup>2\*</sup>

- (2) *“I move that the XYZ Council go into executive session pursuant to R.I. Gen. Laws §42-46-5(a)(2) to discuss the pending litigation of Leslie Knope v. Ron Swanson, Case Number: KC2019-1234.”*

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<sup>1</sup> This information is provided by the Office of Attorney General to assist public bodies and to provide guidance concerning the Open Meetings Act’s requirements. This information does not list all Open Meetings Act requirements and is neither intended to replace the Open Meetings Act nor should it be construed as legal advice. Public bodies should defer to their legal counsel when questions regarding compliance arise. Revised June 2019.

<sup>2</sup> See R.I. Gen. Laws § 42-46-5(a)(1).

**Councilmember B:** *“I second the motion.”*

\*This motion requires an affirmative vote of the majority of members<sup>3</sup>\*

\*This motion, and the vote of each member on the question of holding a closed meeting must be recorded in the minutes<sup>4</sup>\*

During the Closed Session (at the conclusion of the substantive closed session business):

(1) Motion to convene into open session

**Councilmember A:** *“I move that the XYZ Council reconvene into open session.”*

**Councilmember B:** *“I second the motion.”*

\*This motion requires an affirmative vote of the majority of members\*

**Presiding Councilmember:** *“So ordered. The XYZ Council is now in open session.”*

During Open Session:

(1) Report on Actions Taken in Executive Session (Often Provided by the Presiding Member)

- The [INSERT NAME OF BODY HERE] convened in executive session pursuant to [section] to [agenda], and the following votes were taken:
  - Vote(s), if any, on whatever was noticed
  - Motion, if any, to seal the minutes of executive session
  - Motion to return to open session

*\*Note: Any action/vote taken in closed session **SHALL** be disclosed in **OPEN SESSION** unless disclosure would jeopardize any strategy, negotiation, or investigation undertaken pursuant to discussions conducted under R.I. Gen. Laws § 42-46-5(a). R.I. Gen. Laws § 42-46-4(b).*

(2) Motion to seal the executive session minutes (optional)

**Councilmember A:** *“I move that the minutes of the XYZ Council executive session be sealed.”*

**Councilmember B:** *“I second the motion.”*

\*This motion requires an affirmative vote of the majority of members\*

**Presiding Councilmember:** *“So ordered. The XYZ Council executive session minutes of [DATE] shall be sealed.”*

Minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority votes to keep the minutes sealed. R.I. Gen. Laws § 42-46-7(c). Public bodies are encouraged to not seal minutes unless necessary.

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<sup>3</sup> See R.I. Gen. Laws § 42-46-4(a).

<sup>4</sup> See *id.*