



# Attorney General Peter F. Neronha

## OPEN MEETINGS ACT CHECKLIST<sup>1</sup> *OPEN GOVERNMENT UNIT*

***It is important to note that the OMA establishes the minimum requirements with which public bodies must comply. Public bodies are encouraged to conduct meetings as openly as possible, consistent with the OMA and its purpose of ensuring that public business is carried out in an open and transparent manner.***

### **WHEN THE OMA APPLIES** *(R.I. Gen. Laws § 42-46-2)*

- ❖ The OMA applies whenever a quorum of a public body convenes for a meeting. The OMA applies when all three elements are present:
  - A **public body** is “any department, agency, commission, board, council, bureau, or authority or any subdivision thereof of state or municipal government,” in addition to certain libraries.
  - A **meeting** is “the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.”
  - A **quorum** is defined as “a simple majority of the membership of a public body.”
    - Note: a “walking” or “rolling” quorum may be created where a majority of the members of a public body attain a quorum by a series of one-on-one conversations or interactions, whether in person or by electronic means.
      - Except as provided in any applicable Executive Order, discussions of a public body by telephone or electronic means are permissible only to schedule a meeting or due to a member being on active duty in the armed services or having a disability. *(R.I. Gen. Laws § 42-46-5(b)).*

### **NOTICE REQUIREMENTS** *(R.I. Gen. Laws § 42-46-6)*

- ❖ Annual Notice (beginning of each calendar year only) *(R.I. Gen. Laws § 42-46-6(a))*.
  - Includes the date(s), time(s), and location(s) of the meetings.
  - Notice must be posted electronically with the Secretary of State **and** provided to a member of the public upon request.
- ❖ Supplemental Notice/Agenda (minimum 48 hours before the date of the scheduled meeting, **excluding** weekends and state holidays) *(R.I. Gen. Laws § 42-46-6(b))*.
  - Notice includes:
    - the date notice was posted;
    - the date(s), time(s), and location(s) of the meetings; and
    - a statement specifying the nature of the business for each matter to be discussed.

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<sup>1</sup> *This checklist is provided by the Office of Attorney General to assist public bodies and provide guidance concerning the Open Meetings Act’s requirements. This checklist 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 July 2020.*

- Statement must give the public fair notice of the nature of the business to be discussed or acted upon. Agenda items such as “Old Business” or “Treasurer’s Report” are insufficient.
  - Cannot take a vote on an item if agenda only states that the item will be discussed and does not indicate that it may be voted upon.
  - A public body may respond to comments initiated by members of the public during an open forum but may not vote on the matter absent an emergency. A public body is not required to hold an open forum or permit open discussion but is encouraged to do so when appropriate.
- Notice must be posted: (*R.I. Gen. Laws § 42-46-6(c)*)
- at the principal office of the public body holding the meeting, **or** if no principal office exists, at the building where the meeting is to be held;
  - in at least one other prominent location within the governmental unit; **and**
  - electronically with the Secretary of State.
- ❖ **Emergency Meetings** may be held without satisfying the usual notice requirements, provided that:
- The majority takes an affirmative vote that the emergency meeting is necessary to address an unexpected occurrence that requires immediate action to protect the public;
  - The public body states for the record why the matter must be addressed without providing the usual notice;
    - The statement regarding why the matter must be addressed without the usual notice must be recorded in the meeting minutes.
  - Notice is posted as soon as practicable and electronically filed on the Secretary of State’s website; and
  - The public body may only address the issue or issues which created the need for an emergency meeting.

## **OPEN MEETINGS**

(*R.I. Gen. Laws § 42-46-3*).

- ❖ All meetings must be open to the public unless closed in accordance with the OMA.
  - The public has a right to record open session meetings.

## **CLOSED MEETINGS**

(*R.I. Gen. Laws § 42-46-4(a)*)

- ❖ Although not required, a meeting may be held in closed or executive session if it concerns at least one of the following:
  - A discussion of the **job performance**, character, or physical or mental health of a person(s), pursuant to *R.I. Gen. Laws § 42-46-5(a)(1)*, provided that:
    - person(s) affected shall be notified in advance in writing;
    - person(s) affected advised they may require discussion held in open session; and
    - A statement in open session (**and** record in open session minutes) that affected person(s) have been notified.
  - Sessions pertaining to **collective bargaining or litigation**. (*R.I. Gen. Laws § 42-46-5(a)(2)*).
  - Discussions regarding a matter of **security**. (*R.I. Gen. Laws § 42-46-5(a)(3)*).
  - **Investigative proceedings** regarding allegations of civil or criminal misconduct. (*R.I. Gen. Laws § 42-46-5(a)(4)*).
  - Discussions or considerations related to the **acquisition or lease of real property** for public purposes, or of the **disposition of publicly held property** wherein advanced public information would be detrimental to the public interest. (*R.I. Gen. Laws § 42-46-5(a)(5)*).
  - Discussions related to or concerning a **prospective business or industry locating in Rhode Island** when an open meeting would have a detrimental effect on the interest of the public. (*R.I. Gen. Laws § 42-46-5(a)(6)*).
  - A matter related to the question of the **investment of public funds**, which includes any investment plan or matter related thereto, where the premature disclosure would adversely affect the public interest. (*R.I. Gen. Laws § 42-46-5(a)(7)*).

- School committee sessions to conduct **student disciplinary hearings** or to review other matters that relate to the privacy of students and their records, provided in either case: *(R.I. Gen. Laws § 42-46-5(a)(8))*.
    - any affected student(s) shall be notified in advance in writing;
    - affected student(s) advised they may require discussion held in open session; and
    - during open call, state in open session **and** record in open session minutes that affected student(s) have been notified.
  - Hearings on, or discussions of, a **grievance filed pursuant to a collective bargaining agreement**. *(R.I. Gen. Laws § 42-46-5(a)(9))*.
  - Discussion of the **personal finances of a prospective donor to a library**. *(R.I. Gen. Laws § 42-46-5(a)(10))*.
- ❖ In order to properly convene in executive session, the following must first be performed by the public body in open session:
- A vote by a majority of the members to convene in executive session;
  - A statement of the specific subsection of R.I. Gen. Laws § 42-46-5(a)(1)-(10) upon which **each** executive session discussion has been convened; **and**
  - A statement specifying the nature of the business for **each** matter to be discussed. *(R.I. Gen. Laws § 42-46-4(a))*.

*\*The above information must also be recorded in the open session minutes.*

## MINUTES

*(R.I. Gen. Laws § 42-46-7)*

- ❖ Open **and** closed session minutes must be maintained and contain:
- The date, time, and place of the meeting;
  - The members of the public body recorded as either present or absent;
  - A record by individual member of any vote taken; **and**
  - Any other information relevant to the business of the public body that a member of the public body requests be included. *(R.I. Gen. Laws § 42-46-7(a))*.

## MAKING MINUTES AVAILABLE

- ❖ For all public bodies:
- **Unofficial** (unapproved) open and closed session minutes must be available at the principal office of the public body within thirty-five (35) days of the meeting, **or** at the next regularly scheduled meeting, whichever is earlier. *(R.I. Gen. Laws § 42-46-7(b))*.
    - **EXCEPTIONS**
      - when a closed session meeting has been properly convened and a majority of the members vote to seal the minutes, or
      - where a majority of the members vote to extend the time period for filing minutes and publicly state the reason for the extension. *(R.I. Gen. Laws § 42-46-7(b))*.
  - **Official**/approved minutes must be maintained **and** electronically filed with the Secretary of State within 35 days of the meeting. *(R.I. Gen. Laws § 42-46-7(d))*.
    - **EXCEPTION**
      - not applicable to public bodies whose responsibilities are *advisory* in nature. *(R.I. Gen. Laws § 42-46-7(d))*.
- ❖ For all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in extinguishing fires and preventing fire hazards:
- must post unofficial minutes on the Secretary of State's website within 21 days of the meeting, but not later than 7 days prior to the next regularly scheduled meeting, whichever is earlier. *(R.I. Gen. Laws § 42-46-7(b)(2))*.

## **DISCLOSING VOTES**

*(R.I. Gen. Laws § 42-46-7(b))*

- ❖ All votes listing how each member voted on each issue shall be available at the office of the public body within two (2) weeks of the vote, and
- ❖ If a vote is cast during **executive session**, the vote must be disclosed once the open session is reopened.
  - **EXCEPTION**
    - a vote taken in executive session need not be disclosed for the period during which its disclosure would jeopardize any strategy, negotiation or investigation undertaken pursuant to a properly closed meeting. *(R.I. Gen. Laws § 42-46-4(b)).*