



## Guidance on Public Bodies Returning to In-Person Meetings and Remote Public Participation in Open Meetings

The Open Meetings Act (“OMA”) provides the Office of Attorney General with the statutory authority to investigate alleged violations of the OMA, as well as to interpret the requirements of the OMA. See R.I. Gen. Laws §§ 42-46-8(a), 42-46-12. Pursuant to that authority, the Attorney General frequently issues findings and offers trainings and guidance regarding the provisions of the OMA.

This Office has recently received many inquiries related to the expected expiration of Executive Order 21-72, which provides for virtual and hybrid meetings of public bodies for reasons related to the state of emergency resulting from COVID-19. That Executive Order is set to expire at the end of the day on July 23, 2021, and the Governor has indicated that it will not be renewed. To be clear, after the expiration of the Executive Order, meetings of public bodies must conform to the requirements of the OMA.

However, many public bodies and individuals have questions related to returning to in-person meetings, particularly in light of the widespread adoption of technologies and platforms that facilitate virtual access and participation. Accordingly, in anticipation of the expiration of the Executive Order, this guidance document is intended to provide clarity on the requirements of the OMA, for both members of public bodies and members of the public.

As set forth in greater detail below, this guidance clarifies that:

- **Members of the Public Body Must Attend Meetings In-Person**
- **Members of the Public Must Be Permitted to Attend Open Meetings in Person**
- **Public Bodies May Livestream Their Meetings to the Public**
- **Public Bodies May Permit Members of the Public to Participate Remotely in Open Meetings**



## Members of the Public Body Must Attend Meetings In-Person

**All members of a public body who are participating in a meeting in any fashion must be physically present at the meeting, unless one of the limited exceptions provided for in the OMA applies.** The OMA expressly provides that “discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted *only to schedule a meeting.*” R.I. Gen. Laws § 42-46-5(b)(1) (emphasis added). The OMA provides only two exceptions to this rule: “a member of a public body may participate by use of electronic communication or telephone communication while on active duty in the armed services of the United States” or if a member has a disability and cannot otherwise participate as further described in the OMA. R.I. Gen. Laws §§ 42-46-5(b) (2), (3). Except in these very limited circumstances, all members of the public body must be physically present at any meetings in which they are participating.

## Members of the Public Must Be Permitted to Attend Open Meetings in Person

The OMA expressly provides that “[e]very meeting of all public bodies shall be open to the public” unless closed for one of the specific reasons permitted by the statute. R.I. Gen. Laws § 42-46-3. **As such, members of the public must be permitted, in-person, to attend the open meetings of public bodies and to observe the conducting of those open meetings.** Although there may be certain particular circumstances where granting in-person attendance to an unlimited number of people may not be feasible, for example due to fire codes or health occupancy restrictions, open meetings must be available to the public for in-person attendance in a manner that conforms with the OMA and with this Office’s precedent. See *Brunetti, et al. v. Town of Johnston*, OM 17-19.



## Public Bodies May Livestream Their Meetings to the Public

Even prior to COVID-19, a number of public bodies livestreamed their meetings to permit citizens to observe the open meetings in real-time even if they were unable to attend in person. Although the OMA does not require livestreaming open meetings, nothing in the OMA prevents a public body from doing so. In fact, livestreaming open meetings via television, Youtube, Zoom, or some other technology increases access to public meetings and promotes the OMA's purpose of ensuring that "public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy." R.I. Gen. Laws § 42-46-1. **Although offering livestreaming does not relieve public bodies of their obligation to permit in-person attendance at public meetings, public bodies are permitted and encouraged to livestream their open meetings when feasible in order to promote additional public access.**

## Public Bodies May Permit Members of the Public to Participate Remotely in Open Meetings

Many public bodies have reported that, during the time when the executive orders regarding the OMA were in effect, they found it beneficial to offer members of the public the ability to participate in the open meeting remotely by offering public comment, testimony, or other remarks through virtual means. **Although the OMA is clear that members of the public body may not participate remotely in open meetings unless expressly permitted by an OMA exception, there is nothing in the OMA that prevents public bodies from permitting members of the public the ability to participate in a meeting remotely, including, for example, offering public comment via Zoom.**

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The Rhode Island Supreme Court has been clear that “[i]n determining legislative intent, ‘[i]t is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meaning.’” *State v. Badessa*, 869 A.2d 61, 65 (R.I. 2005) (quoting *State v. Martini*, 860 A.2d 689, 691 (R.I. 2004)). Moreover, “[w]e glean the intent and purpose of the Legislature ‘from a consideration of the entire statute, keeping in mind [the] nature, object, language and arrangement’ of the provisions to be construed \* \* \*.” *Id.* (quoting *In re Advisory to the Governor (Judicial Nominating Commission)*, 668 A.2d 1246, 1248 (R.I. 1996)). “In a nutshell, ‘[i]n matters of statutory interpretation our ultimate goal is to give effect to the purpose of the act as intended by the legislature.’” *Id.* (quoting *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001)).

Here, the OMA's provisions restricting meeting by virtual means expressly pertain to “discussions of a public body” and “member[s] of a public body.” See R.I. Gen. Laws §§ 42-46-5(b)(1), (2), (3). Nothing in the language of the OMA expressly prohibits members of the public from participating remotely. Additionally, offering remote participation to members of the public is consistent with the intent of the OMA, which is for government business to be performed in an open and transparent manner that is accessible to the public. See R.I. Gen. Laws §§ 42-46-1, 42-46-3. As such, under the OMA, public bodies may permit members of the public to participate remotely in meetings.

We note that any such remote participation by members of the public must be able to be heard/observed by everyone in attendance at the in-person meeting and carried out in a manner that conforms with any other requirements of the OMA or other applicable laws. Although the OMA does not require public bodies to permit public comment or to permit remote participation by members of the public, public bodies are free to do so and are encouraged to do so when they find that it would advance the purpose of the OMA. We also note that although nothing in the OMA prevents members of the public from providing remote testimony, it is outside this Office's purview under the OMA to address whether doing so would conform with other legal requirements.

**We hope that this guidance is helpful as public bodies return to meeting in person. The Open Government Unit is available to answer questions and provide guidance on these and other issues related to the OMA and can be reached at:**