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ATTORNEY-CLIENT MEMORANDUM

Date: March 17, 2020

To: Mark Rooney, Town Manger
The Honorable Members of the Westerly Town Council

Cc: Donna Giordano, Town Clerk

From: William J. Conley, Jr., Esq., Town Solicitor
Gina Renzulli Lemay, Esq.

Re: Governor Raimondo's Executive Order 20-05 (Dated March 16, 2020)
Third Supplemental Emergency Declaration—Public Meetings and Public Records Requests

On March 16, 2020, Governor Raimondo issued Executive Order 20-05, “Third Supplemental Emergency Declaration—Public Meetings and Public Records Requests,” per her authority under Rhode Island General Laws (“RIGL”) § 30-15-7(1) to issue executive orders that have the force and effect of law. In Executive Order 20-05, the Governor also cites to her authority under RIGL § 30-15-9(e)(1) to suspend the provisions of any regulatory statute proscribing procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the current emergency.

This Executive Order relieves agencies and public bodies from certain statutory restrictions set forth in both in the Open Meetings Act of RIGL § 42-46-1, *et seq.* and the Access to Public Records Act of RIGL § 38-2-1, *et seq.*

This Executive Order was effective immediately, on March 16, 2020, and remains in full force and effect until April 15, 2020 unless renewed, modified or terminated by subsequent Executive Order.

I. Rhode Island Open Meetings Act

- a. Under this Executive Order, the Governor relieved public bodies from the prohibitions regarding use of telephonic or electronic communication to conduct meetings, as contained in RIGL § 42-46-5(b). However, the relief of this prohibition is only for public bodies meeting for an essential purpose and that make provisions to ensure public access to the meeting of the public body for members of the public through adequate, alternative means.

- b. An “essential purpose” is either that which is necessary for continued government operations or to ensure compliance with statutory or regulatory deadlines.
 - i. ***** An “essential purpose,” would not include public meetings being conducted for usual and ordinary business.**

- c. “Adequate alternative means of public access” shall mean measures that provide transparency and permit timely and effective public access to the deliberations of the public body.
 - i. These alternative means may include, without limitation, providing public access through telephone, internet, or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceeding or the public body while the activities of the body are occurring.
 - ii. Alternative means of public access must provide for active, real-time participation by members of the public.
 - 1. If, however, a public body for reasons of economic hardship or despite best efforts is unable to provide alternative means of public access that will enable the public to follow the proceedings of the public body in real-time, the public body may instead post on its website a full and complete transcript, recording or other comprehensive records of the proceedings as soon as practicable upon conclusion of the proceedings. However, this exception shall not apply to proceedings that are conducted pursuant to state or local laws that require allowance for active participation by members of the public.
 - a. *****Accordingly, if the public body conducts a meeting during this time, it must allow for real-time access by members of the public.**

- iii. There may not be any charges to members of the public for access to proceedings of any public meetings provided in real-time.
- d. A public body that elects to conduct its proceedings under this Executive Order shall ensure that any party that is entitled or required to appear before it shall be able to do so through remote means, as if the party were a member of the public body and participating remotely.
- e. All other provisions of the Open Meetings Act shall remain unchanged and fully applicable to the activities of public bodies.

II. Access to Public Records Act

- a. Under this Executive Order, the Governor suspended the statutory timeframes within which an agency or public body must respond to an Access to Public Records (“APRA”) request under RIGL §§ 38-2-2 and 38-2-7, for both new and pending requests.
- b. Any agency or public body may extend the timeline for responding to a request by an additional 20 business days, further to the extension provided in RIGL § 38-2-3(e).
- c. The agency or public body must notify the requestor, in writing, before the regular statutory deadline for the agency or public body’s response and state that the additional time is necessary for reasons related to the current COVID-19 emergency. Any such extension of time must be related to the current COVID-19 emergency.
 - i. ***** We recommend also citing specifically to this Executive Order in any such response to a requestor.**
- d. The requirements under RIGL § 38-2-3 providing that an agency or a public body permit inspection of records in “any and all media” in which they are capable of being provided is suspended for all new and pending public records requests. It shall be sufficient for an agency or public body to provide such records electronically. Agencies and public bodies may continue to permit inspection or provide public records in other media, at their discretion.
- e. The timeframes regarding administrative appeals of agency or public body decisions contained in RIGL § 38-2-8 are hereby suspended for all pending and new administrative appeals. Any agency or public body may extend the timeline within which its chief administrative officer may review a subordinate’s determination and issue a decision regarding an appeal by an additional 10 business days. Any such extension of time must be related to the current COVID-19

emergency and the agency or public body must inform the requestor, in writing, within the original 10 business day timeframe.

- f. All other provisions of the APRA shall remain unchanged and applicable to agencies and public bodies.