

City of Alexandria, Virginia

# Laws and Rules for Boards and Commissions

Chair/Staff Training  
February 21, 2024



# What will we discuss?



- ✓ Overall Rules – keeping us straight!
  - FOIA meeting and document rules
  - City rules
  - Robert's Rules
  - Conflict of interests

# FOIA

## Structure of FOIA



- The Virginia Freedom of Information Act (or FOIA) has two main components.
  - Laws related to citizen access to public records.
  - Laws related to citizen access to meetings of public bodies.
- The Act is found under Code of Virginia § 2.2-3700 through 2.2-3715.

# FOIA Public Records



- What are public records?
  - “[A]ll writings and recordings . . . regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.”

# FOIA Public Body



- What is a public body?
  - “[A]ny legislative body, authority, board, bureau, commission, district or agency . . . of any political subdivision of the Commonwealth, including cities, . . . municipal councils, . . . and planning commissions; . . . and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds.”
  - “It shall include . . . any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body.”
  - “It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members.”

# FOIA

## Public Records Obligations



- Under FOIA, what are the City's general obligations related to public records?
  - To retain records related to the public business for the required retention period.
  - And to provide those records for inspection upon request by a citizen.

# FOIA

## Public Records Obligations



- Under FOIA, what are the obligations of board members related to public records?
  - You must retain all records related to the business of the board.
  - Any record that is not maintained by or provided to you by staff.
  - Examples
    - Emails
    - Letters
    - Text Messages
    - Online Chats

# FOIA Meetings



- What is a meeting of a public body?
  - A meeting is defined as “. . . when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or as an informal assemblage of (i) as many as three members . . . of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.”
  - **Any gathering of 3 or more members of the board is a meeting if the members are discussing board business.**

# FOIA Meetings



- What procedural requirements are necessary to hold a meeting under FOIA?
  - **Public notice** - must be provided three working days prior to the meeting
  - **Public access** - the meeting must be open to the public.
  - **Minutes** - minutes of the meeting must be prepared.
  - **Agenda materials** - the proposed agenda and agenda packets, unless exempt, must be made available to the public at the same time they are provided to the Commission members.

# FOIA



## Meetings – Physical Assembly

- **Generally, FOIA requires the physical assembly of the members and remote participation is prohibited.**
  - This means no meetings by conference telephone calls, video-conferencing, or other electronic communications.
- However, under certain conditions, FOIA allows public bodies to meet through electronic communication means:
  - When an individual member has a personal matter, disability, or medical condition
  - For an all-virtual public meeting
  - During a declared state of emergency
- The board must adopt an electronic participation policy that complies with FOIA before members may use electronic communication options.\*

# FOIA Meetings – Electronic Communication



- Remote Participation by Individual Members
  - Provides limited ability for one or more members who cannot attend a meeting due to i) temporary or permanent disability, ii) personal medical condition, iii) family member's medical condition, iv) the member's principal residence is more than 60 miles from the meeting location, or v) a personal matter to attend a meeting electronically in compliance with the policy
  - Participation due to "personal matter" is limited to up to two meetings or 25 percent of meetings held per calendar year
  - Meeting must still occur in person and have a quorum
  - Board or Commission must have previously adopted the electronic participation policy and comply with policy
  - Allows participation in the meeting to include participation in discussion and voting

# FOIA Meetings – Electronic Communication



- All-Virtual Meetings
  - Limited ability for most public bodies to hold all-virtual public meetings, provided that the public body has adopted an electronic participation policy and follows the requirements enumerated in Code of Virginia § 2.2-3708.3(C), including:
    - Notice indicates the meeting will be all-virtual
    - Public access is provided via electronic communication means
    - Limited in each calendar year to either two (2) meetings or 25% of the meetings held rounded up to the next whole number, whichever is greater
    - Cannot be held consecutively with another all-virtual meeting
  - Does not apply to the city council, school board, planning commission, architectural review, board of zoning appeals, or boards with the authority to deny, revoke, or suspend a professional or occupational license

# FOIA Meetings – Electronic Communication



- "Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information
  - Applicable to other forms of electronic communications, including chat rooms, instant messaging, texting, etc.
- The closer in time that electronic communications are sent and responded to by 3 or more members of the board, the more likely that a meeting could be found to have occurred.
- In order to avoid problems, it is advisable:
  - To NOT reply all to emails
  - To NOT respond to or email more than one other board member at a time
  - Alternatively, if you have something you would like to say to the entire board, wait to and say it at the next board meeting

# FOIA Non-Meetings



- Gatherings that do not include three or more members, or a quorum if less than three, transacting or discussing public business are not meetings under FOIA.
  - Strictly social occasions.
  - Public forums, candidate appearances, or debates.
  - Information forums not pertaining to public business.
- Whenever possible, avoid gatherings of three or more members.
- If three or more members are inadvertently present at a gathering:
  - Sit separately or in groups no larger than two.
  - If more than two members are present, someone should leave.
  - Politely redirect any discussion away from public business.

# FOIA Voting



- All votes taken to authorize the transaction of any public business must be taken and recorded in an open meeting conducted in accordance with FOIA
- No written or secret ballots
- May reach consensus or take straw polls in closed meetings
- However, decisions made in closed meetings are not effective until a vote is taken in an open meeting that reasonably identifies the substance of the vote

# FOIA



## Closed Meetings – When Permitted

- Public bodies may only hold closed meetings for the purposes set out in Code of Virginia § 2.2-3711(A).
- Generally, closed meetings should be done only after consultation with the City Attorney's and/or Clerk's Office.
- Some of the purposes include:
  - Certain specific personnel matters
  - Discussion of the acquisition or disposition of public property
  - Protection of individual privacy in a personal matter not related to the public business
  - Discussions of the negotiation or award of a contract involving the expenditure of public funds, when public discussion would jeopardize the public body's bargaining position
  - Investment of public funds through competition or bargaining, if disclosure would have an adverse financial impact
  - Consultation with legal counsel or briefings by staff about litigation or other specific matters requiring legal advice
  - Discussion or consideration of medical and mental health records excluded from disclosure under FOIA
- In no event may any public body take action on matters discussed in any closed meeting.
- Before and after a closed meeting, there are statutory requirements regarding certification of the events that occurred in the closed meeting

# FOIA

## Violations of FOIA



- What happens when the City does not comply with FOIA?
  - A single violation of FOIA is enough to trigger the following remedies.
    - If the court finds the denial to be in violation of the provisions of FOIA, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case.
  - Any failure by a public body to follow the procedures established by FOIA shall be presumed to be a violation.
  - A court, if it finds that a violation was willfully and knowingly made, may impose **upon such employee, officer, or member of a public body** a civil penalty of not less than \$500 nor more than \$2,000. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

# City Rules for All Boards and Commissions



General rules apply unless otherwise specified in the enabling legislation of the Board

## Membership:

- Appointed by City Council
- 10 year term limits
- Must attend or have an excused absence for 75% of meetings
- May be removed from the Board by the City Council for neglect of duty or violations of the law
- Board designates chair and secretary

## Meetings:

- At least one regular meeting each year
- Annual report to the City Council listing the Board's principal activities and any recommendations to improve the functions and duties of the Board
- Minutes of each meeting must be prepared and kept

## Procedure:

- Quorum
- Vote requires a majority of those present, unless otherwise specified
- Must establish procedures for the conduct of business (by-laws)
- Robert's Rules of Order applies unless otherwise specified by the law

# City Rules

## General and Membership



- The following general rules apply unless otherwise specified in the enabling legislation of the board
  - Members are appointed by Council
  - Have 10-year term limits
  - May be removed from the board by Council for neglect of duty or violations of the law
  - Board designates a chair and secretary

# City Rules

## Meetings and Reports



- Must have one regular meeting each year
- An annual report must be made to Council for the previous fiscal year
  - Report goes to Council each fall
  - Report must include:
    - Board members
    - Board's primary activities and
    - Any recommendations to improve the functions and duties of the board

# City Rules/FOIA Agendas



- All agendas must be posted a minimum of **three** working days prior to the meeting
- Must be posted in a prominent place
- Electronic posting on the City's website is highly encouraged
- Agendas must include:
  - Time
  - Date
  - Place and
  - Items to be discussed/considered

# City Rules Attendance



- Members of boards and commissions must attend 75% of all meetings
- Absences can be excused by the chairs
  - Excused absences do not count against the 75% attendance rule
- Members who do not meet the 75% attendance rule are removed by Council for non-attendance

# City Rules/FOIA Open Meetings



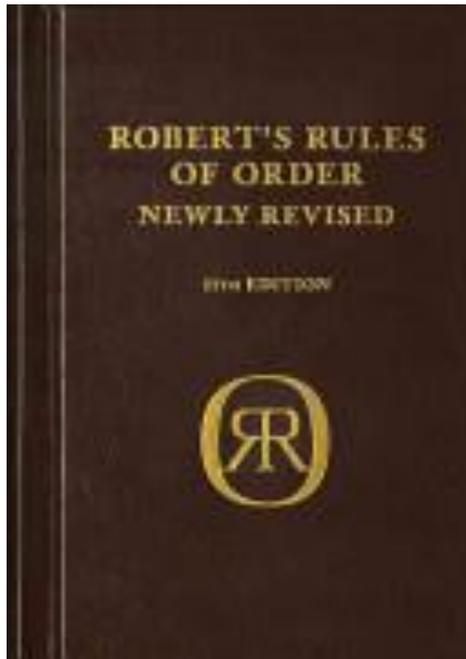
- All meetings of public bodies are open to the public
- Applies to all board meetings, as well as executive committee/subcommittee meetings
- If the meeting is in a public place, then you must provide room for the public to sit in on the meeting

# City Rules/FOIA Meeting Minutes



- Written minutes must be kept for every meeting
- Minutes must include:
  - Date
  - Time
  - Location
  - Those present and absent
  - A summary of discussion and
  - A record of votes taken
- Minutes must be posted the City's website ***within seven working days*** of final approval.

# Robert's Rules of Order



- Robert's Rules of Order apply unless otherwise specified in the law
- Basic Requirements:
  - Chair presides
  - Members need to be recognized to speak
  - Quorum is a majority of members of the board and is needed for business to be conducted
  - A vote requires a majority of those present unless otherwise specified
  - A tie vote means the motion does not pass

# Robert's Rules of Order



- Motions and Amendments

- All motions require a second
- Motions can be amended with an amendment to the motion or a substitute motion
- Amendments need to have a second and be voted on separately
- Main motion, as amended is then on the table for consideration

# Robert's Rules of Order



- Motion to Amend and Substitute Motion
  - Similarities
    - Requires a second
    - Debatable
    - Must be germane to main motion
    - Requires majority vote
  - Differences
    - Substitute Motion - Changes the main motion by substituting an entire sentence or paragraph

# Staff Liaisons Roles and Responsibilities



- Understanding the role of staff liaison
- Meeting requirements and staff liaison responsibilities
- Recruitment Process
- Board Member Training

# Understanding the Staff Liaison Role



- Staff Liaison – primary role of the liaison is to manage the board you represent.
- The liaison is responsible for the coordination and communication with board members (particularly the chairperson) and to provide limited administrative support to the board.
- The liaison has a responsibility to understand the board's role, the authority of the board and how the board should operate through the requirements in the body's bylaws.

# Roles and Responsibilities (cont.)



- Ensure that boards are meeting all legal requirements for meeting notices, ADA accommodations, quorum requirements and attendance requirement.
- Assist the board with recruitment of new members when vacancies are available.

# Roles and Responsibilities (cont.)



- Staff liaisons should assist with record storage and retention for boards and commissions, including storage and posting of minutes of the body.
- Staff liaisons should communicate with the City Clerk's Office any changes to membership, including resignations, changes to leadership, submission of oaths of office and any personal data changes.



Staff Liaisons do not “work for or at the direction of” the board or commission they support. Staff liaisons are professionals working with the bodies to develop recommendations and provide information as needed to the bodies for conducting meetings.

Staff liaisons are also present to clarify city policies and should not participate in the deliberations of the board or commission.

# REMEMBER....



## STAFF LIAISONS...

- Attend meetings
- Coordinate with Chairperson for scheduling and agenda creation
- Assist with administrative duties for the board
- Ensure all legal requirements are met
- Provide professional guidance and support
- Maintain and support positive working relationship with board members
- Submit board documentation/reports to City Clerk for Council consideration and information

# Social Media Use



- Follow City's Social Media Policy
- Social Media is a supplemental resource. The City's website is the primary resource.
- Staff liaisons should have access to the platforms of the body.
- Postings should be similar to those on the website and free from opinion and political activity. Meeting notices, agendas, projects, vacancies, member highlights.
- Boards and Commissions should not speak on behalf of the City or City Council.
- When in doubt, do not post!

# Conflict of Interests



- Conflict of interest laws applicable to board members include the State and Local Government Conflict of Interests Act (Act) and certain provisions of the City's Code of Ordinances.
  - Act is found under Code of Virginia § 2.2-3100 through 2.2-3132.
  - City Ordinances are at City Code § 3-3-121 through 3-3-133.

# Conflict of Interests



- What are the obligations of board members with regard to conflicts of interest?
  - The Code of Virginia and City Code are not codes of ethics but instead merely sets minimum standards of conduct with respect to the interests of board members.
  - They do not protect against all appearances of improper influence.
  - Instead, they place the burden on the individual board member to evaluate whether the facts presented create an appearance of impropriety that is unacceptable or that could affect the confidence of the public in the ability of the board member to be impartial.

# Conflict of Interests



- What conduct is prohibited under the Act?
  - No board member may accept money or any other thing of value or take other advantages based upon his position as a member of the board.
  - Members cannot have a “personal interest” in a “contract” or “transaction.”
    - A “personal interest” is a financial benefit or liability accruing to a board member or to a member of his immediate family.
    - A “contract” is any agreement to which the City is a party or any agreement on behalf of a City that involves the payment of money appropriated by the City.
    - A “transaction” is any matter considered by the board on which official action is taken or contemplated.

# Conflict of Interests – Procurement



- What conduct is prohibited under the City Code?
  - Participation in procurement transactions is proscribed under a variety of circumstances.
    - A procurement transaction means “[a]ll functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.
  - Participants in a procurement transaction cannot accept or solicit gifts.
  - Participants in a procurement transaction must take certain steps if they desire to take a job with a contractor or potential contractor.

# Conflict of Interests – Violations of the Act



- **Criminal Penalties** - Any person who knowingly violates the Act is guilty of a Class 1 misdemeanor, except that knowing violation of the prohibition against a personal interest in a transaction or disclosure of a prohibited interest in a transaction is a Class 3 misdemeanor.
- **Other Penalties**
  - Malfeasance
  - Invalidation of Contracts
  - Rescission of Purchase
  - Civil Penalties & Forfeiture
- Since the question of whether a conflict of interest exists is fact specific, it is advisable to contact the City Attorney's Office related to a particular situation.



# Questions?

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