



# Meeting Management (or how to keep from going viral on YouTube)

VIRGINIA ASSOCIATION OF COUNTIES CHAIRPERSON'S INSTITUTE 2024

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# Conflict Between Members

- [https://www.youtube.com/watch?v=luB5mZA\\_qPQ](https://www.youtube.com/watch?v=luB5mZA_qPQ)



# Conflict Between Manager & Citizen

- ▶ <https://www.youtube.com/watch?v=TlvL-L7UMil>



# Conflict Between Citizen and Chair/Body

- <https://www.kxan.com/news/local/austin/public-forum-on-austin-homelessness-gets-heated/>



# Chair's Role: "Housekeeping"

"We are confronted with insurmountable opportunities." *Walt Kelly*

- ▶ Make sure the meeting's agenda and conduct complies with FOIA
- ▶ Make sure the record of the meeting meets any COIA requirements
- ▶ Control public questioning and responses between the Board and the County attorney to protect the Board's attorney/client privilege

# Chair's Role

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*"We are confronted with insurmountable opportunities."* Walt Kelly

- ▶ Productively run the meeting
  - ▶ Control any disruptive members of the public
  - ▶ Control any obstreperous fellow members of the governing body

# General Advice

*"We gotta make democracy safe for the world"* Walt Kelly

- ▶ While you may be able to resolve crises on the spot, using informal methods we will discuss, you should have some tools available, ready to help.



# General Advice

- ▶ Some governing bodies have considered appointing parliamentarian and “sergeant at arms” or otherwise plan how to enforce the Board’s Rules
- ▶ The Clerk to the Board has expertise in parliamentary procedure
- ▶ Consider a security/escape plan – consider a closed session with Police/Sheriff



# Order of Precedence of Legal Provisions Affecting Meeting Procedures

## 1) Laws -

- a) Federal – U.S. Constitution (First Amendment)
- b) State – Generally, Article 2 of Title 15.2 (§15.2-1415 et seq.), FOIA, COIA
- c) Local

## State Law – Title 15.2

- ▶ §15.2-1415 – Governing body can act at any meeting where a quorum is present; establishes that a majority is a quorum (outside operation of COIA)
- ▶ §15.2-1416 – Requirements for regular meetings, how the annual calendar is set, how to change meeting dates
- ▶ §15.2-1422 – Election of officers

# Meeting FOIA Responsibilities

- ▶ § 2.2-3707(F), VA Code Ann., provides: “At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.”
- ▶ The documents are not required to be available when the meeting is noticed

## Meeting FOIA Responsibilities – cont.

- ▶ §2.2-3707(H) – Members of the public must be allowed to photograph, film, record, and reproduce/broadcast an open meeting. The public body can adopt rules governing these activities to prevent interference with the meeting, but cannot prohibit or prevent it. No public body can conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

# Meeting COIA Responsibilities

- ▶ From time to time, members of public bodies will have personal interests in transactions that require them to disqualify themselves from participation or declare their interest before voting under the Virginia Conflicts of Interest Act, § 2.2-3112, VA Code Ann. To the extent possible, those transactions should be identified before the meeting to the Chair and counsel.

## Meeting COIA Responsibilities – cont.

- ▶ If a member is **disqualified** from voting under COIA, the member must publicly disclose the reason and the member is also prohibited from participating in closed session discussions, or discussing it with any other governmental officers or employees at any time
- ▶ COIA allows members with certain personal interests to participate in matters so long as they make a public statement of their personal interest which is “recorded in the public records” of the member’s governing body

## Meeting COIA Responsibilities – cont.

- ▶ In the event that the locality's minutes do not clearly record the member's contemporaneous statement as to what the personal interest is, the member should complete a written statement on a form prepared for the by the end of the next business day. §2.2-3115(H).
- ▶ Recommend you consult with legal counsel.



# Interacting with Counsel

- ▶ Legal counsel represents the Board as a whole, not individually
- ▶ Legal counsel's job is to advise, defend and protect the Board; counselor and then advocate
- ▶ Communications bearing on the County's legal position between the Board and its attorney are protected by the attorney/client privilege
- ▶ The privilege is held by Board – meaning the majority – not individual members, not staff

## Interacting with Counsel – cont.

- ▶ **BUT** the privilege can be waived by a breach of confidentiality, which takes the act of a single person – and the act need not be authorized, and it need not even be intentional
- ▶ In *Chase v. City of Portsmouth*, 236 F.R.D. 263 (E.D. Va. 2006), Council member quoted a City Attorney's opinion **during a council meeting**; federal court held the privilege waived by Council because no member of council objected to the council member's action

# Interacting with Counsel – cont.

- ▶ There may be serious negative consequences if the Board's confidential attorney/client privilege is waived or lost, or if closed session confidentiality is lost:
  - ▶ Negative impact on litigation – both current and future lawsuits
  - ▶ Possible increased risk of paying more \$ in litigation
  - ▶ Negative impact on the County's reputation for economic development
  - ▶ Negative issues with procurement matters, possible disqualification of vendors, etc.

## Interacting with Counsel -- cont.

- ▶ Agenda has a standing item for closed session
- ▶ Members are encouraged, as a regular matter, to speak off-line to counsel about any matter members wish to discuss in closed session so counsel can determine ahead of time whether closed session is legally permitted for the discussion

## Interacting with Counsel -- cont.

- ▶ It is not recommended to seek legal advice in public, to best serve the Board this should be in closed session – counsel does not want to compromise the position of the Board in public
- ▶ When the attorney appears in doubt during the meeting about whether responding to a question will land the body in legal trouble, ask whether the attorney advises a closed session and give him/her an opportunity to formulate a motion under § 2.2-3711(A)

## Interacting with Counsel -- cont.

- ▶ Directives can be issued to staff, including legal staff, with reports due back at a later time in the appropriate format – confidential Memoranda, closed session briefings, public work session – even draft ordinances

# Tools to have Available if Necessary

*"We gotta make democracy safe for the world"* Walt Kelly

- ▶ Set an agenda in advance for every regular meeting (remember to distribute it to the public at the same time it goes to the members)
- ▶ Adopt Rules of Procedure (or Bylaws) to govern how meetings operate.



# Tools: Rules of Procedure

*"We gotta make democracy safe for the world"* Walt Kelly

- ▶ Rules can put some parameters on debate
- ▶ Things to think about, if needed:
  - ▶ Should a motion be necessary prior to discussion?
  - ▶ Should there be time or other types of limitations on member participation?
  - ▶ Should there be provisions about acceptable demeanor or language?

# Tools: Rules of Procedure

- ▶ Rules of Procedure can establish how business will be put before the Board.
  - ▶ Setting or codifying a standard order of business
  - ▶ Standing CXO's, Attorney's and Department times
  - ▶ Prescribe how county staff makes presentations

# Tools: Rules of Procedure

- ▶ Rules of Procedure can establish how business will be put before the Board.
  - ▶ Discusses how citizens address the body on non-agenda items; time and demeanor limitations are addressed in the Rules
  - ▶ There be standard rules for public participation in public hearings or other agenda items

# Rules of Procedure Address:

*"What's good about March? Well, for one thing, it keeps February and April apart." Walt Kelly*

- ▶ How regular meetings are scheduled if the body has a pattern or procedure for this from year to year.
- ▶ Procedure for calling/setting special meetings, if any
- ▶ Procedure for changing meetings (§ 15.2-1416 requires a resolution to change the time or place of a previously-scheduled meeting, and newspaper publication of the resolution prior to the changed meeting)

## Rules of Procedure Address: – cont.

- ▶ Notice procedure for meetings, if it exceeds the FOIA requirements of §2.2-3707
- ▶ Any policy allowing remote participation of members by electronic means – see §2.2-3708.2 and §2.2-3708.3

# Rules of Procedure Address: cont.

- ▶ Order of business
- ▶ Enough parliamentary procedure for the Chair to be able to control debate – any limitations on member debate
- ▶ Provisions for public comment time – specifically including per speaker time limitations and overall time limitations
- ▶ Limitations on public participation in public hearings
  - ▶ Being mindful of 1<sup>st</sup> Amendment protections

# Essential Parliamentary Steps to Handle a Vote

- ▶ Step 1 Declare a quorum
- ▶ Step II Get the main motion on the floor so the issue can be debated
- ▶ Step II Control debate on the motion (recognize speakers, allow them to question one another, etc.)



## Essential Parliamentary Steps to Handle a Vote cont.

- ▶ Step IV Deal with amendments or substitutions to the main motion, if any
- ▶ Step V Close debate on the motion
- ▶ Step VI Vote on the motion
- ▶ Step VII On occasion, reconsider the motion

# Remember... Rules of Procedure

- ▶ Are adopted for the benefit and convenience of the governing body
- ▶ Can be waived by a majority vote of a quorum, or informally waived
- ▶ The governing body gets to choose what it wants to do when it comes to parliamentary procedure
- ▶ Purpose is to help the governing body conduct its affairs in a timely and efficient manner
- ▶ Do not create substantive rights for the participants in proceedings before a public body. See 59 Am. Jur. 2<sup>nd</sup> *Parliamentary Law*, §4 (1987)

# Failure to Follow Rules of Procedure

- ▶ Does not have any legal effect on the validity of a governing body's action as long as a majority of the governing body voted in favor of the action, (§ 15.2-1427 VA Code, unless otherwise specifically provided for by the (Virginia) Constitution or by other general or specific law, an ordinance may be adopted by a majority of those present and voting at any lawful meeting)
- ▶ *County of Prince William v. Rau*, 239 Va. 616, 39 S.E. 2<sup>nd</sup> 290 (1990) the VA Supreme Court held ample authority exists for the principle that “mere failure to conform to parliamentary usage will not invalidate [an] action when the requisite number of members have agreed to the particular measure.” 4 E. McQuillen, *The Law of Municipal Corporations*, Section 1342a (3d ed. 1985 & Sup at 1989). see also 1 J.Sutherland, *Statutes and Statutory Construction*, §7.04 (5<sup>th</sup> ed. 1994).”

# Informal Methods to Quell Disruption

- ▶ Chair can require that disputing parties direct their remarks to the Chair rather than each other.
- ▶ Chair can call/suggest everyone take a break (need voluntary compliance)
- ▶ Other suggestions?

# Controlling an Unruly Board Meeting

- ▶ Assuming that informal methods fail, Chair can implement full parliamentary procedures (using Roberts Rules of Order, 12<sup>th</sup> Edition as a guide)–
  - ▶ no one speaks without being recognized
  - ▶ no discussions occur without motions
  - ▶ all motions must be seconded

# Controlling an Unruly Board Meeting

cont.

- ▶ limitation on length and number of speeches (using Roberts as a guide, 10 minutes – and each members should speak only once until all have had an opportunity)
- ▶ personal attacks are not permitted
- ▶ speaking adversely on a prior action of the body is not permitted unless the body is reconsidering that action
- ▶ Can adopt code of conduct for Board members

# Calling the Question/Ending Debate

*"Look alive. Here comes a buzzard."* Walt Kelly

- ▶ This motion brings debate to an immediate halt
- ▶ It can only be made by someone who has the floor, but if no one happens to be speaking, the Chair can ask if there is an objection to ending debate. If there is objection, then a motion to end debate can be entertained and must be seconded
- ▶ Vote is taken immediately, and under Roberts, must be approved by 2/3 vote (*Roberts Chapter VI, § 16, p. 201*)



# Controlling an Unruly Board Meeting

## cont.

- ▶ Additional Meeting Procedures
  - ▶ When debate becomes heated, and the body is not ready to call the question, or there is no question before the body, the Chair can entertain a **motion for a recess**. It is not in order when someone has the floor, it requires a second, it is amendable as to the length of the recess, and it needs a majority vote to pass, but as a privileged motion, it is not debatable.

# Controlling an Unruly Board Meeting

cont.

- ▶ Members who do not follow parliamentary procedures or obey the rulings of the Chair can be ruled out of order – suggest, though, ruling the actions out of order rather than the member.
- ▶ Members who do not respond to the firm but fair treatment and who continue to disrupt the meeting after having been gaveled out of order can be asked to leave the meeting (but a recess should be attempted before going to these lengths)

# Preventing Repetitive Discussion

*"I'll tell you son, the minority got us outnumbered.." Walt Kelly*

- ▶ Once a decision has been made, the governing body can take steps to prevent a member from bringing the matter up again and again.
  - ▶ Establish a procedure for reconsideration in Rules of Procedure and enforce it

# Preventing Repetitive Discussion

cont.

- ▶ Without a formal reconsideration process, enforce the basic rule against readdressing the same issue twice in the same meeting, except through a reconsideration motion. Without a proper reconsideration motion and second, when a member tries to renew discussion, the Chair can point out that the matter has been resolved and it is time to move on to something else (*Roberts*, Chapter X, § 38, p. 336)

# Preventing Repetitive Discussion

cont.

- ▶ Another approach is to entertain a motion to object to consideration of a question – must be made before discussion of any motion, no second is needed, it is not debatable, and it requires a 2/3 vote (*Roberts*, Chapter VIII, § 26, p. 267)

# Controlling an Unruly Board Meeting

## cont.

- ▶ Depending upon the conduct, bad behavior of a single board member can pose a liability concern for the jurisdiction.
  - ▶ The body should decide whether it wishes to assume legal responsibility for the behavior. If not, the behavior should be repudiated in the most effective way possible.
  - ▶ Public action may not be necessary. If requested and/or appropriate, it may be sufficient for the county attorney to explain privately to the member that if the behavior is not corrected, and in the event of a claim, the county intends to deny a defense and insurance coverage to the member

# Disciplining a Board member

- ▶ Sometimes, however, the public body must take firm corrective action or publicly repudiate the individual member's behavior in order to avoid legal liability for the jurisdiction
  - ▶ Defamation of government employees
  - ▶ Illegal employment harassment of government employees
  - ▶ Illegal prayer

## Disciplining a Board member

- ▶ Legal authority: Section 15.2-1400(D), VA Code Ann. -- Governing Bodies
  - ▶ D. A governing body may punish or fine a member of the governing body for disorderly behavior.



# Disciplining a Board member

- ▶ Special Authority
  - ▶ Some localities have provisions in their charters that authorize the members of their local governing bodies to discipline a disorderly member.

# Disciplining a Board member

- ▶ Inherent Authority: The Fourth Circuit Court of Appeals ruled in 1997 that a Virginia board of supervisors has the inherent right to discipline a member who fails to follow the board's rules or acts in an inappropriate manner and that to do so is a "core legislative act." *Whitener v. McWatters, et al*, 112 F.3d 740 (4<sup>th</sup> Circuit 1997)  
(Loudoun Board disciplined one of its members for confronting other members, outside course of a meeting, with profanity and abusive language)

## Disciplining a Board member --Legal Risk

- ▶ Constitution
  - ▶ In general, disciplined Board members usually claim that their First amendment rights have been violated. Again, in general, the courts have not been too friendly to such claims. Boards in Virginia traditionally use their discipline powers sparingly, and the examples of behavior that have been rewarded with discipline have been fairly egregious.

## Disciplining a Board member --Legal Risk

- ▶ FOIA – If discipline is discussed in Closed Session
  - ▶ Section 2.2-3711(A)(1) provides an exemption to the open meeting requirement authorizing Closed Session discussions for the performance of public officials.
  - ▶ It must be noted that despite what appears to be clear wording in this statute, you are encouraged to consult with local counsel to obtain his or her advice as to whether Closed Session is an appropriate venue in any particular situation to discuss disciplinary action against a Board member.

# Types of disciplinary action available

- ▶ Censure (public statement condemning inappropriate behavior – such as absenteeism, meeting misconduct, violating confidentiality, moral lapses, failing to follow proper procedures, lying, disloyalty).
- ▶ Censure is one way the body can communicate that it does not agree with the objectionable behavior of the member. Under *Roberts*, a member being censured can speak in his or her defense during the debate on the motion, but can't vote on it. (*Roberts*, Chapter XX, §61, p. 647-648)
- ▶ Removal from committee assignments
- ▶ Fines

# Controlling Unruly Members of the Public

*If I could only write, I'd write a nasty letter to the mayor, if he could only read.* Walt Kelly

- ▶ Establish rules for how, when and where and for how long members of the public may address the body during meetings
- ▶ Require them to use a sign-in sheet
- ▶ Require them to state their name and where they live

# Controlling Unruly Members of the Public

- ▶ Enforce the rules
- ▶ Don't engage in dialog but be alert and attentive
- ▶ Maintain physical separation between them and the governing body

## Controlling Unruly Citizens (cont.)

- ▶ Consult with law enforcement on a security plan – can be done in closed session
- ▶ Law enforcement are there to ensure the laws are enforced, (not personal security guards)
- ▶ Consult with local Commonwealth's Attorney as to what charges she may be willing to prosecute
- ▶ §18.2-415 Disorderly conduct in public places is a possible option



## § 18.2-415 Disorderly conduct in public places

§ 18.2-415. Disorderly conduct in public places.

A person is guilty of disorderly conduct if, with the intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he:

1. In any street, highway, or public building, or while in or on a public conveyance, or while in a public place engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed;

2. Willfully or being intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts any funeral, memorial service, or meeting of the governing body of any political subdivision of this Commonwealth or a division or agency thereof, or of any school, literary society, or place of religious worship, if the disruption (i) prevents or interferes with the orderly conduct of the funeral, memorial service, or meeting or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed; or ...

B. The conduct prohibited under subsection A shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this title.

C. The person in charge of any such building, place, conveyance, meeting, operation, or activity may eject therefrom any person who violates any provision of this section, with the aid, if necessary, of any persons who may be called upon for such purpose....

E. The governing bodies of counties, cities, and towns are authorized to adopt ordinances prohibiting and punishing the acts and conduct prohibited by this section, provided that the punishment fixed therefor shall not exceed that prescribed for a Class 1 misdemeanor. A person violating any provision of this section is guilty of a Class 1 misdemeanor.

# Questions?