Let Me Speak!

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I. Introduction:

A. Meetings of local legislative and other public bodies are largely just that – meetings of local public bodies. The public is entitled under most Freedom of Information Acts to attend such meetings and, if not disruptive, to record (audio and video) such meetings – at least those portions not legitimately conducted as a closed meeting.

B. FOIA does not, however, permit any member of the public to speak at such meetings, just attend. State law customarily mandates public hearings to change rates of taxation, to rezone private property, to convey an interest in public property and for other specific legislative actions. Additionally, legislative bodies themselves may "open the mic" to allow citizens to speak at specified times during a public meeting and on specified topics or subject to specific restrictions.

C. But there is no absolute right for a citizen to speak at a public meeting unless that right is granted by the General Assembly or the governing body itself. "The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy." Minnesota State Bd. for Community Colleges v. Knight, 465 U.S. 271 (1984).

II. What's the Forum?
[Perry Education Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37 (1983)]

A. Since all localities must hold some public hearings and most localities grant some additional opportunity to receive public comment or "input", the government has created a public forum for citizen expression or speech.

B. Traditional Public Forum. These fora are not "created by" the government but already exist by law (that "law" being tradition). These fora encompass government-owned property where free speech has traditionally been permitted such as in front of the courthouse ("the courthouse square"), on certain sidewalks, in the parks (to a point), in the streets (to a point). Speakers can speak free of any government-imposed restrictions unless the restrictions are reasonable time, place, and manner restrictions; are content-neutral; and are "narrowly tailored" to serve a significant government interest. Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293, 295 (1984).

C. Limited Public Forum (sometimes called a "designated public forum" and occasionally a "limited designated public forum" or a "designated limited public forum"). A law review article in 2003 declared that the concepts of "limited" versus "designated" public fora might actually be legally distinct and that the courts were "dazed and confused" over the distinction, if any. 101 Dick L. Rev. 639, 657 (2003). A limited public forum is created by the government and is limited by the government to certain substantive topics and certain restrictions on the duration and civility of the speech. Once a limited public forum has been created, the government cannot, however, discriminate in its treatment of speakers based on the content of speech. City of Madison v. Wisconsin Employment Relations Commission, 429 U.S. 167, 176 (1976).

D. Designated Public Forum. To the extent it is different from a limited public forum, a designated public forum is a place specifically opened by the government for expressive activity of a certain kind or for a certain class. For example:

1) A state fair. Heffron v. Int'l Soc'y for Krishna Consciousness, Inc., 452 U.S. 640 (1981) (the government may require pamphlet distribution from specified locations)

2) An art gallery. Hopper v. City of Pasco, 241 F. 3d 1067 (9th Cir. 2001) (locality cannot ban "controversial" art from public art gallery)

3) A theater. Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975) (city could not declare outright ban on staging a production of "Hair")

If person or group falls within the class for which the forum was designated, restrictions on speech are judged under a strict scrutiny test just like a traditional public forum. Good News Club v. Milford Cent. Sch., 533 U.S. 98 (2001). (See Appendix A – Chesterfield County Library Meeting Room Policy)

E. Non-Public Forum. The vast majority of what happens at a public meeting falls into this category. This includes the discussions, debates, and deliberations of the public body itself. See also United States v. Kokinda, 497 U.S. 720 (1990) (USPS may ban solicitation on post office sidewalk).

F. The Ever-Changing Fora: Throughout a public meeting, the forum is constantly changing between non-public and limited public fora. Public comment periods generally permit speech on a wide variety of topics Roberts Rules and many local government meeting procedures permit the chair – at will – to recognize members of the public and allow them to address the body, thereby opening a momentary limited public forum. Public hearings open a limited public forum but when the hearing is closed, so is the forum. Time limitations imposed on speakers, if enforced, close the limited forum for that speaker and open a new limited forum for the next speaker.

III. Citizen Comment Periods and Public Hearings

A. The government can grant greater speaking opportunities for citizens than those mandated by law. Many localities conduct public hearings on all ordinance enactments and amendments. Many localities have also created "citizen comment periods"; "citizen comment on unscheduled matters": "citizens' time" and so on to allow general commentary by the public on whatever topics interest them. Such open discussion sessions can arise on the agenda at every meeting, one meeting a month, and at multiple times during the same meeting, etc. (three different public comment periods per meeting in Chesterfield County).

B. It is customary to place some limits on the topics to be discussed at such public comment sessions such as:

1) no issue otherwise on the agenda can be discussed
2) matters currently in litigation cannot be discussed
3) no promotion of private business ventures
4) no campaigning for public office

These kinds of limitations should be contained in formally adopted written procedural rules.

C. Other common restrictions include 1) number of speakers (no more than five per comment session), 2) time (no more than three minutes per speaker and speakers may not donate or yield time to other speakers), 3) signing up to speak in advance of the meeting, 4) number of times a citizen may speak per meeting, 5) prohibition on profanity, vulgarity or personal attacks on members of the governing body or anyone else. See:

1) Collinson v. Gott, 895 F.2d 994 (4th Cir. 1990) (two-minute limitation per speaker constitutionally appropriate)

2) Leonard v. Robinson, 477 F. 3d (6th Cir. 2007) (unconstitutional to eject and arrest citizen for saying "god damn" while speaking to town council when the utterance did not disrupt the meeting and the chair did not rule the speaker out of order).

3) McMahon v. Ritter, 2002 WL 1067808 (Cal. Ct. App. 2002) (not a First Amendment violation to have citizen arrested who dumps a pile of trash on floor during school board meeting to "dramatize" the school system's failure to keep school grounds clean)

4) McClure v. City of Hurricane, 2011 WL 1485599 (S.D.W.Va.) (developer not denied First Amendment rights when he was denied permission to speak at meeting on a issue that was in litigation.)

D. For public hearings and other limited forum speech opportunities that are limited to a particular topic, the body can mandate that speakers address only that topic and can cut off speech which wanders beyond that topic.

E. Adams v. City of Wellsburg, 2008 WL 2340374 (N.D.W.Va) Governing body may limit speech to "city business"; impose time limits on public comment; enforce restrictions to preserve decorum and civility necessary to conduct public business; and "cut off speech which it reasonably perceives to be or imminently to threaten a disruption of the orderly and fair progress of discussion whether by virtue of its irrelevance, its duration or its very tone or manner." quoting Steinburg, infra

F. Liggins v. Clarke County School Board, 2010 WL 3664054 (W.D.Va.) Citizen silenced for saying that issue at hand "reminded me that you all did – and with willful intent – violate Section 7 of the Civil Rights Act." Citizen immediately told by the chair to sit down because "the Board will not tolerate being accused of an illegal act:…You will not accuse this Board of an illegal act…You will not accuse us of an illegal act." Court held that the citizen's comment was not disruptive speech under Steinburg and noted that the chair, in the litigation, had changed his original justification for silencing the citizen and was now claiming that he believed that the accusation of illegal conduct threatened to disrupt the orderly conduct of the meeting.

IV. Personal Attack and Good Conduct Rules and Limitations

A. Limits on citizens' speech must be reasonable and narrowly drawn to serve a significant governmental interest and must be content-neutral.

B. In Bach v. School Board of the City of Virginia Beach, 139 F. Supp. 2d (E.D. Va. 2001), the court struck down a school board by-law provision prohibiting "personal attacks" during public comment periods. The provision prohibited" attacks or accusations regarding the honesty, character, integrity or other personal attributes of any identified individual or group."

C. 1) The decision in Bach was effectively overruled in Steinburg v. Chesterfield County Planning Commission, 527 F. 3d 377 (4th Cir. 2008). The Court cited Good News Club v. Milford Cent. Sch. 533 U.S. 98 (2001) and Collinson v. Gott, 895 F.2d 994 (4th Cir. 1990) for the proposition that governing bodies may limit discussion to specified agenda items and may impose restrictions to preserve civility and decorum "necessary to further the forum's purpose of conducting public business."

2) The Court found that a "no personal attacks policy" focuses on two evils that could erode the "beneficence of orderly public discussion":

a) A comment that is an insult directed at a person and not on a topic of discussion is per se irrelevant (unless the topic is the qualifications of a person, of course).

b) An insulting comment leads to a defensive response and counter-attack that has "the real potential to disrupt the orderly conduct of the meeting,"

3) A public body has a "significant governmental interest" in preventing both of these "evils" and enforcement of a personal attacks policy is constitutionally appropriate even if it has the incidental effect of interfering with the content of a speaker's speech.

4) The Court also found that an insulting speaker has an "ample alternative channel" for communication of his substantive ideas, that is, he can make the same speech without the insults.

D. Bad conduct by a citizen may be sufficient to warrant removal from or being silenced at a public meeting. "Rules of Conduct" are appropriate and enforceable and can be used to justify ejection of an unruly citizen if he is actually disturbing or impeding a meeting. White v. City of Norwalk, 900 F. 2d 1421 (9th Cir. 1990); Steinburg, (government can impose and enforce rules to ensure proper decorum at public meetings). Collinson (same).

Disruptions that can be stopped by a presiding officer include:

a) continuing to talk about irrelevancies when told to stop and to address the topic at hand

b) not stopping speech after time deadline has passed

c) tone or matter of speech that threatens to create a disruption of the "orderly and fair progress of the discussion"

Stopping such speech obviously targets (albeit indirectly) the content of the speech. But this is an incidental effect of enforcement that is legally appropriate under Steinburg and Collinson so long as the enforcement action itself is content-neutral (that is, not taken because the enforcer disagrees with the content of the speech).

E. Some conduct while offensive is not necessarily disruptive to the public process and therefore cannot be squelched. In Norse v. Town of Santa Cruz, 629 F. 3d 966 (9th Cir. 2010) Norse was ejected from a Santa Cruz City Council meeting when – to express his displeasure with Council – he gave them a brief Nazi salute. It is clear from the video tape that the meeting was no disputed in any meaningful way until one council member began to demand loudly that Norse be thrown out. (some Council member did not even see the salute) The Court held that the salute could not be construed to have created or threatened to create a disturbance and that the City officials were not entitled to summary judgment.

F. A public body may not impose a "life sentence" prohibiting a citizen from addressing the body in the future for a present display of bad conduct. Surita v. Hyde, 665 F. 3d 860 (7th Cir. 2011). In Surita, opponents of a city towing ordinance protested at a variety of rallies and marches. During a large rally at a local mall, a protest organizer (Surita) was reported to have exhibited behavior that caused the city's community liaison officer to believe that Suirta intended to

attack her physically. (Surita's account of the confrontation was very different) Surita later appeared at a city council meeting to speak during a public comment period about the towing ordinance. He was told he could not speak until he had apologized to the liaison officer. The mayor told Surita that his behavior was inexcusable and that "any man that does that to a woman is lower than a rat." The mayor went on to say that if Surita did not apologize, the "next time" Surita confronts the liaison officer, the major "will have [Surita] arrested and booked on intimidation." Surita sued the mayor for unconstitutional infringement on his Free Speech rights.

The Court found that there was "no doubt" that the public comment period was "a designated public forum", citing Collinson, City of Madison and White v. City of Norwalk. It said that, just as in Rosenberger, the government cannot favor one speaker over another but "neither may it disfavor one speaker over another". By banning Surita's speech altogether that action is subject to strict scrutiny under Ark. Educ Television Comm'n v. Forbes, 523 U.S. 666 (1998). Thus the government must show that exclusion serves a compelling state interest and is narrowly drawn to achieve that end. Other speaks were allowed to talk about towing but not Surita. Significantly, Surita's speech would have been on topic and there was no evidence he was acting in a disorderly or belligerent manner at the meeting. Banning speech as a consequence for prior speech or conduct alone, without evidence of current disruptive behavior, fails the strict scrutiny test.

G. But bad behavior may be punishable after the fact when the citizen is also a government employee. Meaney v. Dever, 326 F. 3d 283 (1st Cir. 2003) An off-duty police officer blowing a truck horn outside the room where the mayor's inauguration was being held was not engaging in protected speech (although it was expressive speech) because it was inherently disruptive. It was also not intended to communicate any point of view but was intended to anger the mayor for whom the officer was carrying a grudge. Thus the "speech" can be regulated in a content-neutral fashion and speech that is disruptive can be proscribed or – as in this situation – punished after the fact. Accordingly, city officials did not violate the officer's rights under the First Amendment (nor engage in unlawful retaliation) by disciplining him for his horn-blowing behavior.

V. Sticking to and Wandering From the Topic

A. Since public hearings and comment periods are limited public fora, the government can place limits on the topics of discussion and insist that speakers remain on topic. Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829 (1995) ("When the State establishes a limited pubic forum…the State may be justified in reserving [its forum] for certain groups or for the discussion of certain topics.").

B. In Steinburg, the Chesterfield County Planning Commission held a public hearing on a request by a rezoning applicant to defer the public hearing of the substantive application for 30 days. Three speakers spoke to the deferral. The first two wandered into a monologue about the substance of the rezoning application rather than speaking to the deferral but, when brought back to the deferral topic by the

chair, both speakers stated that they supported the deferral. Mr. Steinburg, despite efforts by the chair to have him address the deferral, never once gave his position for or against it. Instead, he used his time to attack one of the Planning Commissioners (and current chair of the Board of Supervisors) for talking while the other two speakers were speaking and "not paying attention".

C. The chair eventually declared that Steinburg was out of order for failing (refusing) to address the deferral and ordered him to sit down. When Steinburg refused, he was escorted from the room by two police officers. Both the district court and the Fourth Circuit concluded from watching the videotape that Steinburg was removed because he would not address the topic of the deferral and not because he had personally attacked a Commission member. The Court, by overruling Bach, seemed to be saying however, that Steinburg could have been removed for either reason. However, removal was an option (regardless of which of the two reasons was the impetus) only because Steinburg's behavior was disrupting the orderly progress of the meeting.

VI. Chesterfield County Public Comment Procedures

1) Section 1a. The board's parliamentary procedures shall conform with law and the historical practices of the Board of Supervisors. The county attorney shall act as parliamentarian to the board. To the extent necessary to address any ambiguities in procedure, the county attorney may consider the most recent edition of Robert's Rules of Order, a Manual of General Parliamentary Law for guidance. Any questions involving the application of rules of procedure or the interpretation of Robert's Rules shall be decided by the county attorney.

2) Section 1c. The presiding officer shall preserve order and decorum. He may speak, make motions and vote on all questions, and he shall decide questions of order and procedure. The chairman may set reasonable time limits for speakers and public hearings; provided that by majority vote the board may reject such time limits.

3) Section 6. When a motion is under debate, no additional motions may be made except a motion to withdraw, defer, substitute or to amend. If the maker of a motion and the member seconding the motion agree, a motion may be amended or withdrawn. Such motions shall take precedence in the order listed above. Only one substitute motion shall be in order for a principal motion. All motions to defer shall be to a date certain. Prior to voting on a motion to defer or remand, the board shall hear public comments on the issue of deferral or remand if the scheduled item requires a public hearing.

4) Section 7d. No matter on the scheduled agenda shall be considered after 11 p.m. without the unanimous consent of the board. Any matter not heard shall be automatically continued to the next appropriate scheduled meeting of the board.

5) Section 9b. Any person may speak at a public hearing for up to three minutes. An applicant in a zoning case may give an opening presentation of the zoning case for up to 15 minutes, regardless of the number of speakers the applicant

chooses to give the presentation, and may give a rebuttal after all citizens have spoken for up to five minutes, regardless of the number of speakers the applicant chooses to give the rebuttal.

6) Public Comment Period

Section 10. Each citizen comment period shall be limited to 15 minutes and each speaker may not exceed three minutes. Citizens may only speak once per meeting during the citizen comment periods. Comments must be germane to the services or policies of the county. No citizen shall speak on any matter of business that is a subject on the board's agenda for that day. Citizens may not yield time to other speakers. Any person desiring to speak shall sign up at the meeting prior to the afternoon or evening session. At the beginning of the citizen comment period, the clerk will read the names and comments will be given in the order of the sign-up sheet. Each citizen comment period will end after 15 minutes, regardless of the number of people who have signed up to speak.

Persons speaking before the board will not be allowed to:

a. Campaign for public office;

b. Promote private business ventures;

c. Use profanity or vulgar language; or

d. Address pending litigation or matters to be addressed at that meeting.

Complete Procedural Rules of Chesterfield County, Virginia Board of Supervisors attached as Appendix B.

The following portion of this outline was created by Walter C. Erwin, Lynchburg, Virginia, City Attorney. I would like to thank him for graciously allowing me to pirate his work

"*We Have Met The Enemy and He Is Us.*" Pogo by Walt Kelly

PART I—THE DILEMA

Every governing body is different, with its own individual personalities meshing for one common cause: to conduct the affairs of the locality. Some members have years of experience. Others are neophytes. Some governing body members are reticent, thoughtful and measured in their approaches. Others are more vociferous, taking charge and moving things forward quickly and aggressively. These are all legitimate approaches to running a locality, and any one of them can work well for the benefit of the community.

The Proper Role of the Local Government Attorney as the Parliamentarian. The local government attorney is frequently designated to serve as the parliamentarian for the local governing body. It is important to remember that in serving as parliamentarian it is not the local government attorney's role to try and direct the course of the meeting or to rule on points of order. Those are the roles of the presiding officer. Only the presiding officer may rule on matters of procedure. *Robert's*, Chapter XV, Officers; Minutes and Officers' Reports, §47, at page 449. In serving as the parliamentarian it is the local government attorney's role to advise the presiding officer when points of order are raised. It is a misconception to think that once the meeting is in a state of collapse the local government attorney rides in on a white horse, pronounces a ruling, restores order and then rides off into the sunset. The parliamentarian's role in a meeting is purely an advisory and a consultative one. However, a good parliamentarian does not have to wait to be asked for an opinion. As the parliamentarian the local government attorney should try to stay one step ahead of the meeting and alert the presiding office of an impending problem. But the local government attorney's role as the parliamentarian is to try and stay in the background as much as possible and to make the presiding office look good.

In some instances the governing body may wish to give the local government attorney expanded responsibility beyond the traditional role of the parliamentarian and allow the parliamentarian to offer suggested procedural rulings in the hopes the parliamentarian's participation in the parliamentary process will reduce the friction between the members of the governing body. If this is the case, it is a good idea for the local government attorney to determine how closely the governing body wishes to follow *Robert's.* Some governing bodies might prefer to follow an informal version of *Robert's* rather than the strict technical rules. For example, the Lynchburg City Council once told me that when it comes to rules of procedure "Treat council meetings like the ACC Tournament. When we're about to commit a flagrant foul that would invalidate a decision let us know. Otherwise, let us play and don't worry about calling fouls."

The Role of the Presiding Officer in Maintaining Decorum. In order to try and maintain decorum and prevent an unruly member of the public body from disrupting the meeting there are a number of additional rules of parliamentary procedure that can be utilized by the presiding officer. In order for this approach to be successful, the presiding officer must be willing to invoke these procedures and the other members of the public body must be willing to support the presiding officer's efforts to run the meetings in strict compliance with the rules of procedure.

Some of the rules of parliamentary procedure the presiding officer can use to try and control a disruptive member and maintain proper decorum during a meeting include:

Rules of Procedure

A. Less Formal Rules of Procedure

Robert's recognizes that some of the formality necessary in a large assembly may not be needed for smaller bodies. A smaller body is one in which there are no more than a dozen members present. Therefore, a smaller body may elect to follow the more informal rules of procedure. The usual parliamentary rules apply, but with several exceptions, the most notable being:

- members may speak or make motions without being recognized by the presiding officer
- motions do not need to be seconded
- there is no limit on the number of times a person can speak on an issue
- informal discussion is permitted even it there is no motion pending
- the presiding officer can speak, make motions and vote without relinquishing the chair

Robert's, Chapter XVI, Boards and Committees, §49, at page 487-488.

If a governing body decides to follow the more informal rules of procedure it will be more difficult for the presiding officer to use parliamentary procedure to try and maintain decorum and prevent an unruly member of the governing body from disrupting the meeting.

B. Alternative Rules of Procedure

Robert's Rules of Order was not developed with governing bodies in mind. Accordingly, there are a number of provisions in *Robert's* that do not apply to a governing body (e.g. voting by mail, expelling a member from office, etc.). Therefore, a governing body may decide that its interests are better served by choosing to use alternative rules of procedure. There are several alternative rules of procedure a locality can follow instead of *Robert's. Modern Parliamentary Procedure* by Ray Keesey, *The Modern Rules of Order*, Second Edition by Donald Tortorice and *Suggested Rules of Procedure for Small Local Government Boards* by the Institute of Government of the University of North Carolina at Chapel Hill are all alternatives a local governing body can use in place of *Robert's.*

A governing body may also choose to adopt its own rules of procedure or bylaws instead of following *Robert's Rules of Order.* Adopting its own rules or procedure or bylaws allows the governing body to address issues that are of particular concern to the body and go beyond the general provisions in *Robert's*. For example, local rules or procedure or bylaws can include a code of ethics detailing how the members of the governing body will act in conducting the public business. Spotsylvania County's bylaws include a code of ethics that not only applies to the board of supervisors but to all county boards, commissions and committees. In 2008 the Lynchburg City Council adopted its own rules of procedure that completely replace *Robert's.* City's Council's rules of procedure went from over 600 pages to 20. In addition to rules for the conduct of meetings Lynchburg's the rules of procedure also address such issues as:

- citizen behavior during meetings

● decorum among the council members
● council will only discuss issues concerning the "services, policies or affairs of the city
● how a member of council places an item on an upcoming agenda
● how seating arrangements are decided
● the procedure for electing the mayor and vice-mayor
● appointments to boards and committees
● give the presiding officer the authority to call a recess if things become heated

From a parliamentary procedure standpoint City Council's meetings have become a lot less complicated since Council abandoned *Robert's* and adopted its own rules of procedure. Council does use *Robert's* as a guide if issues come up that are not covered in Council's rules of procedure. Like Lynchburg, Chesterfield County and Spotsylvania County have also adopted their own rules of procedure that can serve as a guide to other localities that may wish to consider a similar approach.

PART II-- DISCIPLINING AN UNRULY MEMBER

If a private discussion and the use of the rules of parliamentary procedure have not been successful in dealing with a disruptive member of the governing body, the other members of a governing body may wish to consider the extreme step of taking some type of disciplinary action against the member who continues to engage inappropriate conduct. A governing body gets its authority to discipline a disruptive member from a number of sources and has the authority to impose a variety of disciplinary measures on an unruly member with the hope that the disciplinary action will convince the member not to behave in the same way again.

A. Where does a Governing Body get its Authority to Discipline one of its Members

1. The Code of Virginia

Section 15.2-1400 of the Virginia Code gives governing body the authority to discipline a member of the body for disorderly behavior.

§ 15.2-1400. Governing bodies.

A. The qualified voters of every locality shall elect a governing body for such locality. The date, place, number, term and other details of the election shall be as specified by law, general or special. Qualification for office is provided in § 15.2-1522 et seq.

B. The governing body of every locality shall be composed of not fewer than three nor more than eleven members.

C. Chairmen, mayors, supervisors and councilmen are subject to the prohibitions set forth in §§ 15.2-1534 and 15.2-1535.

D. A governing body may punish or fine a member of the governing body for disorderly behavior.

2. Special Authority

Some localities may have provisions in their charters that authorize the members of a governing body to discipline an unruly member.

Section 37 of the Lynchburg City Charter provides:

> The council shall have authority to adopt such rules and appoint such officers and clerks as it may deem proper for the regulation of its proceedings, and for the convenient transaction of business may compel the attendance of absent members, may punish its members for disorderly behavior, and by a vote of two-thirds of its members may expel a member for malfeasance or misfeasance in office.

3. Inherent Authority

In the case of *Steven D.Whitener v. David McWatters, et al,* 112 F. 3d 740 (4th Circuit 1997) the Loudoun County Board of Supervisors disciplined one of its members for confronting other members of the board with profanity and abusive language (outside the course of a meeting). The disciplined member filed suit alleging that the board violated his First Amendment rights by such discipline. The district court dismissed the complaint and the Fourth Circuit affirmed the dismissal, holding that a legislative body's discipline of a misbehaving member was a core legislative act and the members of a public body have the inherent right to discipline a member of the body that fails to follow the public body's rules or acts in an inappropriate manner.

4. *Robert's Rules of Order*

Robert's Rules of Order has procedures to discipline members that engage in conduct that is injurious to the organization or its purposes. *Robert's*, Chapter XX, Disciplinary Procedures, §61, at page 643. If a local governing body has elected to follow *Robert's Rules of Order* it may wish to consider supplementing Robert's with "local" or "special" rules of procedure that deal with disciplinary measures. In effect, the local governing body would be adopting alternative rules of procedure that would parallel the disciplinary procedures in *Robert's*, essentially implementing the statutory authority given to the governing body in § 15.2-1400. Adopting its own disciplinary procedures would allow the members of the governing body to establish a process that allows them to discuss a disciplinary matter in the calmer atmosphere of the organizational meeting rather than in the heat of a confrontation.

B. Holding a Closed Meeting to Discuss the Discipline of a Member

There is a difference of opinion as to whether or not the members of a governing body can hold a closed meeting to discuss the discipline of a fellow member. Section 2.2-3711(A) (1) of the Virginia Freedom of Information Act allows a governing body to hold a closed meeting for the "discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body…" The plain language of the section seems to allow a governing body to hold a closed meeting to discuss the performance and possible discipline of another member of the body. However, two opinions of the Attorney General have created confusion and disagreement over this issue.

In one of the opinions the Attorney General concluded that a public body may not use the exemption to hold a closed meeting to discuss which of its members will be selected as the

presiding officer. *See, 1999 Opinions of the Attorney General at 15.* In the second opinion the Attorney General concluded that the only employees of a locality that the governing body can discuss in a closed meeting are the employees that are selected, employed and supervised by the public body itself. *See, 2000 Opinions of the Attorney General at 19.* The Attorney General's opinions ignore the very language of the statute itself which imposes no such limitations on a governing body's right to hold a closed meeting to discuss personnel matters.

Also, the definition of "public records" in §2.2-370 of the FOIA includes "all [records] in the possession of a public body or its employees" has been interpreted to mean all of the employees of a locality regardless of who hires or appoints them. It is inconsistent to say that everyone is an employee for purposes of record keeping but not for personnel matters. *See, M. Packer and M. Flynn, "Access to Government Information: Failure to understand Recent Amendments to Virginia's FOIA could be Expensive," Journal of Local Government Law (Va. State Bar), v. X, No. 4, at 10,* for a full discussion of this issue.

Further, clouding this issue is a 2003 opinion from Virginia Freedom of Information Advisory Council advising that a school board may not meet in a closed meeting to discuss the performance or censure of individual members of the board. *See, Va. FOI Advisory Council AO-17-03, July 7, 2003*. In the opinion the Advisory Council seemed to assume that the members of the school board had no authority to exercise any discipline over a fellow member and concluded that if the board could not exercise discipline over a member of the board it could not hold a closed meeting to discuss discipline the board could not impose. However, as discussed in Part IV, A. Where does a Governing Body get its Authority to Discipline one of its Members, *supra*, the members of governing body have both express and inherent authority to discipline a fellow member of the body that engages in disorderly behavior. Therefore, it seem appropriate for a governing body to hold a closed meeting to discuss the possible discipline of a member of the body since it clearly has the authority to impose such discipline.

I think it is safe to say that a majority of local government attorneys do not agree with the Attorney General's opinions and advise their local governing bodies they can hold closed meetings to discuss personnel matters involving employees that are not selected, employed and supervised by the public body itself. However, local government attorneys and others will continue to disagree over this issue in the absence of an amendment to the FOIA or a decision from the Virginia Supreme Court. It is worth noting that as discussed in Part IV, D., 4. Fines, *infra*, in 2009 the Portsmouth City Council held a closed meeting to discuss imposing a fine upon its mayor for engaging in abusive conduct toward a staff member.

It is possible that if the members of a governing body decide to hold a closed meeting to discuss the discipline of a fellow member, the member in question might claim that he has the right to attend the closed meeting since he is a duly elected member of the body. In the past a majority of the governing body could appoint a committee to consider the possibility of discipline and then appoint everyone to serve on the committee but the offending member. However, House Bill 480 which was adopted during the 2012 session of the General Assembly amended Section 2.2-3712 of the State Code to provide that a member of public body shall be permitted to attend the closed meetings of any committee or subcommittee of the public body to observe the closed meeting as long as the non-member does not participate in the closed meeting.

C. Does Disciplining a Member Violate the Member's First Amendment Rights

When a member of a governing body is disciplined for engaging in disruptive behavior the member frequently files a §1983 lawsuit alleging that he is being retaliated against for exercising his First Amendment rights. In most instances the courts have not been very receptive to such arguments. The courts have tended to hold that while the First Amendment allows a member of a governing body to speak his mind, the First Amendment does not shield him from the consequences of his actions if he speaks or behaves in an inappropriate manner. However, discipline should only be imposed for inappropriate behavior and not because the person is not a team player or expresses unpopular views.

In *Steven D. Whitener v. David McWatters, et al,* 112 F. 3d 740 (4th Circuit 1997) the Loudoun County Board of Supervisors had disciplined one of its members for confronting other members of the board with profanity and abusive language. The disciplined member filed suit alleging that the board violated his First Amendment rights by such discipline. The district court dismissed the complaint. The Fourth Circuit affirmed the dismissal, holding that a legislative body's inherent right to discipline a member of the body that fails to follow the body's rules or acts in an inappropriate manner did not amount to a violation of his First Amendment rights. The court also held that the members of the board acted in a legislative capacity when they voted to discipline the wayward member and their actions were protected by absolute legislative immunity.

In *Nevada Commission on Ethics v. Carrington*, No. 10-568 (06/13/2011), a city councilman from Sparks, Nevada was censured by the Nevada Commission on Ethics because he voted in favor of a hotel and casino project that was backed by his campaign manager. In finding that the councilman's First Amendment rights had not been violated the U. S. Supreme Court held that the First Amendment has no application to voting by members of a legislative body. A legislator does not vote as an individual but as a political representative engaged in the legislative process.

In *Blair v. Bethel School District*, 608 F. 3d 540 (9th Cir. 2010) a former vice-president of a school board was removed as vice-president for repeatedly attacking the integrity and competence of the school superintendent. After the other board members voted to remove him from his position he brought a §1983 action alleging he was retaliated against for exercising his First Amendment rights. In dismissing the action the court held that while the school board member was entitled to speak his mind on an issue, the constitution did not protect him from the political consequences of his speech.

In *Zilch v. Lango,* 34 F. 3d 359 (6th Cir. 1994) the court held that defendant council members who adopted a resolution stating that a member whose term was coming to an end and who had been a thorn in their side had never been qualified to hold office did not violate the member's First Amendment rights.

D. What Types of Discipline can be Imposed

If the members of a governing body decide they wish to discipline a disruptive member, a variety of different types of discipline are possible. Discipline is most often political, for example, denial of desired approvals, removal from choice committee appointments, paybacks of various kinds, a public censure, etc.

1. Censuring a Member

One of the most common forms of discipline is for the governing body to "censure" a wayward member. The censure of a member of a governing body is public statement condemning the member's inappropriate behavior with the hopes of reforming him or her so that he or she won't behave in the same way again. Members can be censured for misconduct at meetings, failing to follow proper procedures, violating confidentiality, moral misconduct, absenteeism, lying, disloyalty, working against the organization, conspiracy, and violating other values that the governing body holds dear. Censure is one way for the other members of the governing body to avoid the appearance of agreement with the objectionable behavior of a fellow member. The presiding officer cannot censure a member of the governing body for misbehavior; only the body can do so. The presiding officer can also be censured for not following parliamentary rules in meetings, and for denying members their basic rights to make motions, participate in debate, and vote.

In *Steven D.Whitener v. David McWatters, et al*, *supra,* the Loudoun County Board of Supervisors voted to censure one of its members for confronting other members of the board with profanity and abusive language.

In *Phelan v. Laramie Community College Board of Trustees*, 235 F. 3d 1243 (10th Cir.) the members of a public body censured a member of the body for violating its ethics policy and requested that she refrain from such behavior in the future. The member filed a §1983 action alleging that the censure tarnished her reputation and violated her free speech rights. In dismissing the suit the court held that censuring the member for violating the ethics policy did not penalize or restrict the member's First Amendment rights.

Under *Robert's Rules of Order* a motion to censure

- needs a second
- is amendable
- is debatable
- requires a majority vote
- cannot be reconsidered

The motion to censure is an incidental main motion and can be made only when no other business is pending. All subsidiary and incidental motions can be applied to the motion to censure. The member being censured may come to his own defense during the debate but cannot vote on the motion. *Robert's*, Chapter XX, Disciplinary Procedures, §61, at page 647-648.

(a) Motion to censure a member of the governing body. A motion to censure a member of the governing body would be along the following lines:

> **Member 1:** I call to the attention of the Council that Member Gates has been telling the public what has been discussed in Council's closed meetings, thereby breaking Council's rule that what is said in a closed meeting is confidential. This breach of confidentiality is causing great harm Council and we must show our disapproval of this behavior. I therefore move that we censure Council Member Gates.
>
> **Member 2:** I second the motion.

Presiding Office: It is moved and seconded to censure Member Gates. Is there any discussion?

After discussion, the presiding officer takes a vote. If a majority of the governing body votes to censure the member, the presiding officer states:

President: The affirmative has it. The motion is carried. Member Gates, you have been censured by the assembly. The censure indicates the Council's displeasure with your conduct. This censure is a warning. If you do not conduct yourself according to Council's rules in the future, you may face further disciplinary action.

(b) Motion to ensure the presiding officer. In censuring the presiding officer, a member informs the presiding officer that he is going to do so, and then turns to the vice president to make the motion. If the vice president refuses to entertain the motion or is not present, the member presents the motion to the governing body. The presiding officer can speak in his or her defense but cannot vote on the motion to censure.

To censure the presiding officer, a member presents a motion along the following lines:

Member 1: Mr. Presiding Officer, I am going to propose a motion to censure you, which I have a right to do. When a motion to censure the presiding officer is made, it is addressed to and entertained by the vice president. *[The member turns to the vice president and presents it as a resolution.]*

Mr. Vice President, I move the following resolution to censure:

"*Whereas,* The presiding officer has repeatedly denied the members of Council their right to make motions and debate; refused to entertain points of order and proper appeals; recognized only those who have upheld his views and denied the opposition the right to speak; and

Whereas, he has been obnoxious, rude, and arrogant; and

Whereas, such conduct is detrimental to the City; now, therefore, be it

Resolved, that the presiding officer be censured.

Member 2: I second the motion.

Vice President: It is moved and seconded to censure the presiding officer. Is there any discussion?

After discussion, the vice president takes a vote. If the affirmative has it, the vice president states:

Vice President: There are 4 votes in the affirmative and 2 in the negative. The affirmative has it and the motion is carried.

The vice president then turns to the presiding officer and states:

Vice President: Mr. Presiding Officer, you have been censured by the Council for the reasons contained in the resolution. I now return control of the meeting to you.

2. Removal from Committees

In *Steven D.Whitener v. David McWatters, et al*, *supra,* the Loudoun County Board of Supervisors voted to discipline one of its members by removing him from his standing committee assignments as well as his assignments to outside committees and commissions for a period of one year for confronting other members of the board with profanity and abusive language. The court held that his removal from such committees and commissions did not violate his First Amendment rights.

3. Fines

In 2009 the Portsmouth City Council used §15.2-1400 of the Virginia Code to fine its mayor $2,500 for engaging in "an extended pattern of abusive conduct involving a member of the City Clerk's office." The members of City Council, absent the mayor, met in a closed meeting to discuss the proposed discipline and subsequently presented the mayor with a letter fining him for his inappropriate behavior towards a staff member. In the disciplinary letter, the council members stated that the employee was asked to perform numerous personal chores for the mayor as part of her official duties, and when she didn't perform the duties to his liking, the mayor treated her in an "insulting and demeaning" fashion. City Council did not adopt a formal resolution of discipline; it simply presented the mayor with the disciplinary letter.

In a letter that was leaked to the press the employee listed 44 personal chores she claims Mayor Holley made her perform. Things such as labeling his socks, canceling his subscription to Playboy Magazine, placing internet orders for his stomach support t-shirts, calling stores looking for Gillette hair paste, scheduling repairs to the sprinkler system at the mayor's home and finding a Taser on the internet for the mayor to use to scare geese away from his home.

After the governing body fines a member the collections procedures authorized by §58.1-3952 of the Virginia Code can be used to collect the fine if the member refuses to voluntarily pay it. The collection procedures could include withholding the member's salary from the locality, levying on his bank accounts, garnishing his wages, etc.

4. Removal from a Meeting

Just as a member of the public can be removed from a meeting for inappropriate behavior, a member of the governing body can also be asked to leave for engaging in disruptive behavior. If a member of the governing body is asked to leave the meeting and refuses, the presiding officer can take the steps necessary to see that the request to leave is enforced. The presiding officer must carefully appraise the situation and act wisely in requesting that someone be removed from a meeting. The decision to remove someone from a meeting must not be motivated by a desire to silence the individual, anger or personal animosity, but a desire to maintain an orderly meeting.

In *Olasz v. Welsh*, 547 F. 3d 187 (3rd 10/14/08) on two separate occasions a council member engaged in disruptive behavior so the president had him removed from the meeting. As a result of his removal the council member filed a §1983 malicious prosecution action against the president. The court dismissed the action holding that it was not a violation of the council

member's First Amendment rights for the president to have him removed from the meeting because his badgering and constant interruptions of the president disrupted the decorum of the meetings.

In *Monteiro v. City of Elizabeth*, 436 F. 3d 397 (3rd Cir, 2006), a member of the Elizabeth City Council who disagreed with the presiding council president over budgetary matters during a budget hearing was ordered removed from the hearing, and when he refused to leave, was handcuffed by two officers and arrested on a disorderly persons charge (the charge was dismissed). The record showed that the president verbally attacked the plaintiff, and cut him off and would not let him explain his position, stating "[t]this man can't keep his mouth shut." The plaintiff sued, claiming that his First Amendment rights had been violated, and a jury awarded him $10,000 in compensatory and $750 in punitive damages. The 3rd Circuit upheld the award, finding that the president's suppression of the plaintiff's speech constituted "viewpoint discrimination." The court concluded that the president's removal of the council member was motivated by a desire to silence him, anger and personal animosity rather than a desire to maintain an orderly meeting.

5. Removal from Office

If a member of a governing body behaves badly enough it is possible he or she could face the ultimate disciplinary action of removal from office. There are several ways in which a member of a governing body can be removed from office. In most situations the members of the governing body play a very limited role in efforts to remove a fellow member from office, the removal efforts are initiated by citizens. However, there may be a few limited situations in which the members of a governing body can initiate removal efforts.

(a) Removal by the circuit court. Sections 24.2-230 through 24.2-237 of the Virginia Code establish a procedure by which a member of a local governing body who is determined to be "incapacitated" or who engages in specified types of misconduct can be removed from office. The types of misconduct for which an elected official may be removed from office are set forth in Section 24.2-233 of the Virginia Code.

> § 24.2-233. Removal of elected and certain appointed officers by courts.
>
> Upon petition, a circuit court may remove from office any elected officer or officer who has been appointed to fill an elective office, residing within the jurisdiction of the court:
>
> 1. For neglect of duty, misuse of office, or incompetence in the performance of duties when that neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse effect upon the conduct of the office, or
>
> 2. Upon conviction of a misdemeanor pursuant to Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and after all rights of appeal have terminated involving the:
>
> a. Manufacture, sale, gift, distribution, or possession with intent to manufacture, sell, give, or distribute a controlled substance, marijuana, or synthetic cannabinoids as defined in § 18.2-248.1:1, or

b. Sale, possession with intent to sell, or placing an advertisement for the purpose of selling drug paraphernalia, or

c. Possession of any controlled substance, marijuana, or synthetic cannabinoids as defined in § 18.2-248.1:1, and such conviction under a, b, or c has a material adverse effect upon the conduct of such office, or

3. Upon conviction, and after all rights of appeal have terminated, of a misdemeanor involving a "hate crime" as that term is defined in § 52-8.5 when the conviction has a material adverse effect upon the conduct of such office.

The petition must be signed by a number of registered voters who reside within the jurisdiction of the officer equal to ten percent of the total number of votes cast at the last election for the office that the officer holds.

Any person removed from office under the provisions of subdivision 2 or 3 may not be subsequently subject to the provisions of this section for the same criminal offense.

Once a removal petition is filed with the circuit court the court issues a rule requiring the member of the governing body to appear and show cause why he should not be removed from office. *See, § 24.2-234 of the Virginia Code*. The Commonwealth's Attorney represents the Commonwealth in the removal hearing. *See, § 24.2-237 of the Virginia Code*. If the removal petition is dismissed the locality can be ordered by the court to pay the court costs and attorney's fees for the respondent. However, the persons that circulated or signed the removal petition cannot be assessed for any costs associated with the removal petition. *See, § 24.2-238 of the Virginia Code*.

Note: Wikipedia notes that James W. Holley, a former mayor and council member for Portsmouth, is the only known politician in American history to be twice recalled from office. His first term as mayor came to an end in 1984 when he was forced from office following an expense account scandal, becoming the first Virginia politician in modern times to be recalled. In 2008 he was reelected as mayor. He was recalled for a second time in 2010 after he was accused of mistreating subordinates.

(b) Special Charter provisions allowing removal. Some localities have provisions in their charters that authorize the members of a governing body to remove a fellow member for malfeasance or misfeasance in office. For example:

Section 3.04.1 of the Richmond City Charter provides:

> In addition to being subject to the procedure set forth in §24.2-233 of the Code of Virginia, any member of the council may be removed by the council but only for malfeasance in office or neglect of duty. He/she shall be entitled to notice and hearing. It shall be the duty of the council, at the request of the person sought to be removed, to subpoena witnesses whose testimony would be pertinent to the matter in hand. From the decision of the council an appeal shall lie to the Circuit Court of the City of Richmond, Division 1.

The Richmond City Charter makes it clear that a member of city council who is subject to removal by follow council members has the right to a full trial before the city council and a right of appeal to the circuit court.

Section 37 of the Lynchburg City Charter provides:

> The council shall have authority to adopt such rules and appoint such officers and clerks as it may deem proper for the regulation of its proceedings, and for the convenient transaction of business may compel the attendance of absent members, may punish its members for disorderly behavior, and by a vote of two-thirds of its members may expel a member for malfeasance or misfeasance in office.

Unlike the Richmond City Charter, the Lynchburg City Charter does not address the issue of a hearing before the city council or an appeal to the circuit court. However, because removing a member of the governing body from office is such a significant event the member in question would have to be given *due process* - to be notified of the grounds for the proposed removal, given time to prepare a defense, and given the right to appear and defend himself or herself.

It would be interesting to see if the provisions in local charters that allow members of a local governing bodies to remove a fellow member would withstand a legal challenge or if the courts would hold that the removal process contained in Sections 24.2-230 through 24.2-237 of the Virginia Code is the only proper procedure to use in removing a member from office. I can only tell you that I sincerely hope this is an issue that I never have to confront.

PART III--SOME FINAL THOUGHTS

● Many localities experience disruptive members from time to time. Disruptive behavior may run the gamut from a member misbehaving at meetings, overstepping the boundaries of his office or behaving inappropriately to staff or citizens. If such behavior is not corrected, it can escalate into something more serious.

● Take issue with the member's behavior, but not his motives. Sometimes a member's behavior or mistakes are a result of a misunderstanding, a lack of experience, or miscommunications.

● Sometimes the problems that cause difficulties among a local governing body are the result of inflated egos, personality conflicts, or ignorance of proper procedures. If egos or personalities are the root cause, it will take diplomacy, patience, and skill to solve these problems.

● While inappropriate behavior should be dealt with, it is the responsibility of the members of the governing body—not the local government attorney— to decide how to take care of it.

● Good behavior is largely a result of peer pressure among the members of the governing body and mutual understanding that if you do it to them, the others can do it to you, too.

● "Come let us reason together" should be the first step in trying to deal with disruptive behavior. A private discussion with the disruptive member is less threatening and allows them to save face without embarrassing the person or the organization. This approach can even work in the middle of a meeting when tempers are running high. The presiding officer can suggest a recess to let members cool down.

●Parliamentary procedure can be a useful tool in trying to deal with disruptive behavior during meetings. It is often the absence of structure in a meeting rather than too much structure that allows demanding voices to try and fill the vacuum.

● The members of a governing body have the authority to impose of variety of disciplinary measures on a disruptive member and in my opinion can hold a closed meeting to discuss the performance and discipline of a fellow member.

● Censuring a person or using other disciplinary procedures may not solve the problem and may even make matters worse.

● Dealing with difficult individuals is part of the local government attorney's lot. When tensions flare and bring out the worst in a member of the governing body, remember it is not the end of the world. Take comfort from the old Persian proverb, "*This too shall pass."*

● While working with the occasional difficult member of a governing body may be inevitable, you must deal with such individuals in a way that preserves your integrity and promotes the well-being of the locality, realizing that there will be future elections and in all likelihood the days of the difficult member are numbered. Unfortunately, the individual who is elected in their place, may be just as difficult to deal with or even worse, things may not end up being any calmer but at least they will be different.

LIBRARY MEETING ROOM POLICY

A. Community Organizations Eligible to Use Meeting Rooms

Public library meeting rooms are designated public forums and the First Amendment of the United States Constitution does not permit access to such rooms to be denied on the basis of the content of the message of the community organization using the Library. In recognition of this legal reality, the County adopts the following content neutral policy:

1. Existing community organizations with an office located in Chesterfield County or in any adjacent locality with which Chesterfield County maintains an interjurisdictional library agreement may meet in the library meeting rooms for any public, non-commercial activity, including but not limited to, educational, cultural, community, religious and political purposes. Community organizations with no office may meet in library meeting rooms for the same public, non-commercial activities if all members of the community organization reside in Chesterfield County or in adjacent localities with which Chesterfield County maintains an interjurisdictional library agreement.

2. For purposes of this policy, "commercial" shall mean buying, selling or exchanging goods for financial gain or for the purpose of advertising, soliciting, planning or promoting the purchase, sale or exchange of any such goods.

3. For purposes of this policy, "office" shall mean any building or space in a building, other than a private residence, where the predominant activity is the regular transaction of the primary activities of the community organization.

4. To qualify as a "community organization," a group must demonstrate that its members regularly meet at a specified location in Chesterfield County or in an adjacent locality with which Chesterfield County maintains an interjurisdictional library agreement and that the group has an established institutional structure and membership that is reasonably calculated to sustain the community organization as a viable entity. A combination of individuals without such organizational structure, membership or demonstrated regular meeting schedule will not qualify as a community organization.

B. Prohibited Activities

1. Commercial activity and fund raising are prohibited.

2. Meetings which are not open to the general public, such as private parties and other social activities, are prohibited.

3. Activities which would interfere with the operation of the library are prohibited.

4. No admission fee shall be charged for any event held at the library.

5. Alcoholic beverages may not be served or consumed.

6. Attendance above the posted capacity or the number of chairs available for use in the room, whichever is less, is prohibited.

7. Smoking of any tobacco product, and the use of any smokeless tobacco product, is prohibited.

8. Users of the Library shall not violate any Federal, State or County laws or regulations.

9. No animals shall be allowed in the Library except for guide or hearing dogs required to assist attendees of meetings.

C. Application for Use of Rooms

1. Community organizations requesting the use of a room shall complete an application for use of the room and return it to the Library at least seven days prior to the proposed date of the meeting.

2. All applications shall be signed by a representative of the community organization with actual or apparent authority to bind the community organization. The representative must be a resident of Chesterfield County or of an adjacent locality with which Chesterfield County maintains an interjurisdictional library agreement and must have a valid Chesterfield County library card.

3. Each application shall include the following information:

   a. Name and address of the applicant's designated representative.

   b. Nature of the meeting and the meeting's purpose.

   c. The time and date of the proposed meeting.

   d. The number of people expected to attend the meeting.

D. Costs

1. For after-hours meetings, a fee of $35 per hour will be charged for Library staff to open and close the building and be present in the Library while the meeting is being conducted.

2. There will be a $25 custodial fee for setting up a room.

3. Community organizations will be required to provide a deposit for law enforcement protection arising solely from the actions of the community organization itself if the community organization has demonstrated in the past that its members pose a threat to the personal safety or property of others. Payment of actual costs incurred by the County shall be made from the deposit, and any remaining portion of the deposit shall be returned to the community organization's representative within 14 days after the meeting.

4. The deposit shall be the man-hour cost of public safety officials plus any other related costs required to provide assistance based on documented past incidents in Chesterfield or in other localities where the community organization has met. The Police Department will determine the requisite number of police officers based on past incidents involving the community organization.

5. If a community organization has previously caused personal injury or property damage, the community organization will be required to provide a comprehensive general liability insurance policy for the protection of itself, Chesterfield County and the agents, servants and employees of itself and Chesterfield County, in an amount equal to ten times the amount of damage previously caused by the community organization. The form of proof of proper insurance coverage must be approved by the County Attorney.

E. Additional Rules and Regulations

1. At least one adult must be present to supervise all meetings.

2. The arrangement of furniture in the room is the applicant's responsibility. At the conclusion of the meeting, the applicant shall return the furniture in the room to the arrangement in which the applicant found it.

3. The applicant shall turn off all lights and secure all doors at the conclusion of the meeting.

4. The applicant shall be financially responsible for paying the cost of any damage to library property.

5. The library is not responsible for any private property used or left in the library before, during or after the meeting, whether left by the applicant or by anyone who attends the applicant's meeting.

6. Meeting rooms may be reserved up to six months in advance of the meeting. Applications shall be completed and returned to the branch where the meeting is to be held. Arrangements for the use of kitchen facilities and library equipment must be made at the time the application is made.

7. Use of meetings outside the regular library hours may be arranged by picking up a key to the meeting room in advance and returning it into the book drop immediately following the meeting.

8. Violation by an applicant of any of the provisions of this policy shall constitute grounds for revoking permission to use the Library.

9. Publicity about the meeting must state that the County/Library is not a sponsor of the meeting.

10. The Library reserves the right to assign the particular branch library and room at which a meeting will take place.

11. Library or County-sponsored activities shall receive priority over other requests to reserve meeting rooms, but previously scheduled meetings of other groups shall not be cancelled to effectuate this priority within 30 days of the previously scheduled meeting.

12. Decisions on all completed applications will be made by Library staff in writing within 10 days after receipt of the application.

13. A community organization may appeal denial of a permit based on residency requirements, or security deposit or insurance requirements, to the Chesterfield County Circuit Court for an expedited hearing. The appeal must be filed within seven days of notification of denial of the permit or of the security deposit or insurance requirement.

2014 PROCEDURES OF THE

BOARD OF SUPERVISORS

Providing a FIRST CHOICE community through excellence in public service

Chesterfield County, Virginia

2014 PROCEDURES OF THE BOARD OF SUPERVISORS

BE IT RESOLVED by the Board of Supervisors of the County of Chesterfield in accordance with Section 3.4 of the County Charter that the following rules of procedures shall govern the conduct of meetings and work sessions of the Board of Supervisors during the 2014 calendar year.

Presiding Officer

Section 1a. The board's parliamentary procedures shall conform with law and the historical practices of the Board of Supervisors. The county attorney shall act as parliamentarian to the board. To the extent necessary to address any ambiguities in procedure, the County Attorney may consider the most recent edition of Robert's Rules of Order, a Manual of General Parliamentary Law for guidance. Any questions involving the application of rules of procedure or the interpretation of Robert's Rules shall be decided by the county attorney.

Section 1b. The chairman or the vice chairman, or in their absence the most senior member of the board alphabetically, shall preside at all meetings of the board, and on the appearance of a quorum shall call the meeting to order, and the board shall then proceed with its business.

Section 1c. The presiding officer shall preserve order and decorum. He may speak, make motions and vote on all questions, and he shall decide questions of order and procedure. The chairman may set reasonable time limits for speakers and public hearings; provided that by majority vote the board may reject such time limits.

Regular Meetings

Section 2. Each year at its organizational meeting the board shall set the regular meeting times and dates for the following year provided, however, that the board shall meet at least once each month. Whenever the regularly scheduled meeting date shall fall on a legal holiday, the regular meeting of the board shall be held on the following day in accordance with §15.2-1416 of the Code of Virginia, 1950, as amended. The chairman may cancel any meeting because of inclement weather and should reschedule any canceled meeting at the earliest possible date by sending written notice to each member of the board.

Special Meetings

Section 3. Special meetings of the board may be called by two members of the board or the chairman in accordance with §§ 15.2-1417 and 15.2-1418 of the Code of Virginia, 1950, as amended. Upon making such request, the clerk shall specify the matters to be considered and shall notify in writing all members of the board and the county attorney immediately. The meeting may be held only if waivers are signed by every member of the board and the county attorney, or if every member and the county attorney attend the special

meeting. The order of business at a special meeting shall follow that of a regular meeting to the greatest extent possible.

Voting

Section 4. A quorum shall consist of at least three members of the board. A majority of a quorum shall be sufficient to carry any question except tax issues, incurring of debt and appropriations in excess of $500, all of which shall require a majority of the full board for adoption. No board member is required to vote on any question, but an abstention, although not a vote in favor of carrying a question, shall be counted as a vote for the purpose of determining a quorum. A tie vote shall defeat the motion, resolution or issue voted on, provided that all zoning cases must be disposed of by a motion approved by a majority of those voting. An abstention is considered a vote for all purposes and defeats a motion requiring a unanimous vote. The board shall not designate a tiebreaker pursuant to § 15.2-1421 of the Code of Virginia.

Debate and Reconsideration of Vote

Section 5a. Each board member may participate in discussion of any issue only after being recognized by the chairman. The chairman shall not recognize a motion to "call the question" until every member desiring to speak has had a chance to speak. At the conclusion of debate, the question shall be called, and no further debate shall be in order.

Section 5b. Any vote by a board member is final once cast. Planning Commission decisions are final once made. No ordinance, resolution or motion previously voted upon by the board shall be brought forward for reconsideration during the same meeting of the board and shall be final unless changed by the board at a subsequent meeting in accordance with law.

Motions

Section 6. When a motion is under debate, no additional motions may be made except a motion to withdraw, defer, substitute or to amend. If the maker of a motion and the member seconding the motion agree, a motion may be amended or withdrawn. Such motions shall take precedence in the order listed above. Only one substitute motion shall be in order for a principal motion. All motions to defer shall be to a date certain. Prior to voting on a motion to defer or remand, the board shall hear public comments on the issue of deferral or remand if the scheduled item requires a public hearing.

Agenda

Section 7a. The county administrator shall prepare an agenda for each regular or special meeting of the board on which shall appear the title of each matter on which action is to be taken at that meeting. The agenda for each regular meeting shall (a) be prepared at least five days prior to the meeting, (b) be promptly mailed or delivered to each member of

the board or placed in the repository assigned to such board member, and (c) be distributed to appropriate officers and employees of the county government and members of the public and media requesting copies.

Section 7b. Upon a majority vote of the Board of Supervisors, any item may be added when the agenda is voted on, and the chairman may allow any agenda item to be called out of sequence.

Section 7c. Any matter not on the scheduled agenda may be heard after the agenda has been approved by the board only upon the unanimous vote of the board members present. Any such matter must be of an emergency nature, vital to the continued proper and lawful operation of the county.

Section 7d. No matter on the scheduled agenda shall be considered after 11 p.m. without the unanimous consent of the board. Any matter not heard shall be automatically continued to the next appropriate scheduled meeting of the board.

Section 7e. Requests for tax exemptions shall only be considered in December of each year, and real estate tax exemptions shall be limited to $5,000 per year.

Order of Business

Section 8. The order of business at a regular meeting of the board shall be as follows beginning at 3 p.m. or an alternate specified meeting time:

a. Call to order.

b. Approval of minutes of the previous meeting. Reading of the minutes shall be automatically dispensed with.

c. County administrator's comments.

d. Board committee reports.

e. Requests to postpone action, additions, deletions or changes in the order of presentation with respect to any matter on the agenda.

f. Special resolutions of recognition.

g. Work sessions.

h. Deferred agenda items not requiring a public hearing.

i. New county business not requiring a public hearing, including deferred and new appointments and claims against the board or county.

j. Reports.

k. Fifteen-minute citizen comment period on unscheduled matters involving the services, policies and affairs of the county government.

l. Dinner at 5 p.m.

m. Nonsectarian invocations in accordance with the clerk's scheduling policy followed by the pledge of allegiance at 6:30 p.m.

n. Special resolutions of recognition not heard at the afternoon session.

o. Fifteen-minute citizen comment period on unscheduled matters involving the services, policies and affairs of the county government.

p. Deferred public hearings.

q. Zoning and mobile home public hearings placed on the consent agenda by the Planning Department.

r. Remaining public hearings or zoning public hearings based on appropriate meeting date.

s. Fifteen-minute citizen comment period on unscheduled matters involving the services, policies and affairs of the county government.

t. Adjournment.

The board shall confine their decisions to the matters presented on the agenda.

Consent Agenda and Public Hearings

Section 9a. Any board member may remove an item from the consent agenda for comment by the board. Any person may publicly speak to an item on that meeting's "Consent Agenda" for up to three minutes, so long as the board votes to remove a consent item from the Consent Agenda for public comment. The board may accept written comments in lieu of oral statements.

Section 9b. Any person may speak at a public hearing for up to three minutes. An applicant in a zoning case may give an opening presentation of the zoning case for up to 15 minutes, regardless of the number of speakers the applicant chooses to give the presentation, and may give a rebuttal after all citizens have spoken for up to five minutes, regardless of the number of speakers the applicant chooses to give the rebuttal.

Public Comment Period

Section 10. Each citizen comment period shall be limited to 15 minutes and each speaker may not exceed three minutes. Citizens may only speak once per meeting during the citizen comment periods. Comments must be germane to the services or policies of the

county. No citizen shall speak on any matter of business that is a subject on the board's agenda for that day. Citizens may not yield time to other speakers. Any person desiring to speak shall sign up at the meeting prior to the afternoon or evening session. At the beginning of the citizen comment period, the clerk will read the names and comments will be given in the order of the sign-up sheet. Each citizen comment period will end after 15 minutes, regardless of the number of people who have signed up to speak.

Persons speaking before the board will not be allowed to:

a. Campaign for public office;

b. Promote private business ventures;

c. Use profanity or vulgar language; or

d. Address pending litigation or matters to be addressed at that meeting.

Minutes of Meeting

Section 11a. The clerk of the board shall prepare and maintain adequate minutes of the proceedings of the board in accordance with the requirements of the Code of Virginia, 1950, as amended. Each recorded vote shall indicate how each member of the board voted. Preparation of minutes will not include every aspect of the board's meetings relating specifically to discussion and debate, but will include all significant events relating to official action. Minutes shall be included as part of the agenda package for the subsequent meeting of the board.

Section 11b. The board may correct its minutes after approval of the minutes only upon a clear showing that a clerical or administrative mistake was made.

Zoning

Section 12a. No zoning case shall be considered by the Board of Supervisors if amendments, changes, withdrawals or proffers have been submitted by the applicant after the case has appeared in the newspaper pursuant to the required publication. All such cases shall be deferred to the next appropriate board meeting for consideration or remanded to the Planning Commission after proper readvertising.

Section 12b. If a majority of the board is not re-elected, no appropriation for any capital project or operational program for a magisterial district or zoning case shall be considered by the Board of Supervisors after November 3, 2015 until the organizational meeting in January 2016 unless such delay for the zoning case would exceed 12 months.

Section 12c. Without further action by the board, rezoning applications (including conditional uses, conditional use planned developments and conditional zoning) are automatically referred to the Planning Commission for its recommendation upon completion of a zoning application with the Planning Department.

Appointments

Section 13. Appointments to committees of the board and to authorities, boards and commissions shall be made only by resolution adopted by a majority of the full board at a meeting subsequent to the meeting when the name has been offered to the board for consideration. Prior to consideration of the nomination, the nominee shall be notified to determine his willingness to serve and to determine if he meets the minimum qualifications for such appointment.

Committees

Section 14. The chairman or the board may create committees and shall appoint members to such committees in the same fashion in which the committee was created. Committees may hold hearings and perform such other duties as may be prescribed. A committee may be instructed concerning the form of any report it shall be requested to make, and a time may be fixed for submission of any report. The chairman may create, and appoint members to, a Budget and Audit Committee, a School Board Liaison Committee and a County Employee Benefits Committee and other committees as necessary.

Amendment of Rules

Section 15a. The rules of procedure of the governing body may be amended at any time during the year by a unanimous vote of the full board.

Section 15b. The Board of Supervisors may suspend the application of any section of these rules by a unanimous affirmative vote of all board members present at any time during the agenda.

Section 15c. A deputy sheriff shall serve as sergeant at arms.