

## CLOSED MEETING GUIDELINES

Closed Meetings of public bodies are permitted only for one or more of the purposes specified in the Virginia Freedom of Information Act (FOIA), § 2.2-3711(A). Any exemption from public access to meetings or records shall be narrowly construed.

### GOING INTO CLOSED MEETINGS:

1. A motion by a public body to hold a Closed Meeting must consist of three specific items. The motion must: (1) identify the subject matter, (2) state the purpose(s) of the closed meeting, and (3) make specific reference to the statutory authority for the Closed Meeting. § 2.2-3712(A) of the *Code of Virginia*. \*See “Sample Motions for Going into Closed Meetings” below.
2. Only matters specifically noted in the closed meeting motion may be discussed during a Closed Meeting. § 2.2-3712(C) of the *Code of Virginia*.
3. Minutes are not required to be taken during a Closed Meeting. Any minutes taken during a Closed Meeting are not subject to mandatory public disclosure under FOIA. § 2.2-3712(I) of the *Code of Virginia*.
4. Only directors and those invited by the public body shall be included in the Closed Meeting. § 2.2-3712(F) of the *Code of Virginia*.
5. Though not specifically required by law, an estimated time to reconvene should be announced or included in the motion so that the public will know when to return.

### \*Sample Motions for Going into Closed Meetings

- 1) “I move that the {*name of public body*} go into Closed Meeting in accordance with the Virginia Freedom of Information Act § 2.2-3711(A)(1) to discuss merit pay increases for {named individual employee(s)}.”
- 2) “I move that the {*name of public body*} go into Closed Meeting in accordance with the Virginia Freedom of Information Act § 2.2-3711(A)(3) to discuss possible purchase of the property, known as Stumpy Hill.”
- 3) “I move that the {*name of public body*} go into Closed Meeting pursuant to the Virginia Freedom of Information Act § 2.2-3711(A)(11) to discuss possible recipients of the Virginia Clean Water Farm Award.”
- 4) “I move that the {*name of public body*} go into Closed Meeting pursuant to the Code of Virginia § 2.2-3711(A)(45) for discussion or consideration of personal and proprietary information excluded from the provisions of this chapter pursuant to (i) § 2.2-3705.6.25, or (ii) § 10.1-104.7(E), Review of a Resource Management Plan.”

This information was prepared by staff of the Virginia Department of Conservation and Recreation for members of the Commonwealth’s Soil and Water Conservation Districts as a means of raising awareness and understanding about certain provisions of the Virginia Freedom of Information Act. It should be used as a companion reference to the Code of Virginia. It is not intended to serve as a legally binding interpretation of the act or its provisions. Should an interpretation be needed, contact the VA FOIA Advisory Council ([foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov) or 1-866-448-4100) or your OAG representative. You may also visit the FOIA Advisory Council’s website at <http://foiacouncil.dls.virginia.gov/> for additional information.

January 2019

COMING OUT OF CLOSED MEETINGS:

1. At the conclusion of any closed meeting, the public body must immediately reconvene in an open meeting. § 2.2-3712(D) of the *Code of Virginia*.
2. The public body must have a roll call or other recorded vote to be included in the minutes that states that the members in the Closed Meeting heard, discussed or considered only:

(1) Public business matters lawfully exempted from open meeting requirements,

AND

(2) Public business matters specifically identified in the original motion to convene into Closed Meeting. § 2.2-3712(D) of the Code of Virginia.

\*See “Sample Motions for Certifying Closed Meetings” below.

3. A Certification of Closed Meeting that becomes a part of the official minutes must be adopted when the open meeting reconvenes. This can be in the form of a motion to certify the closed meeting or it can be in the form of a resolution approved by the board. A resolution assures the public body fulfills the obligations set forth in FOIA. (See certification document example on page 3).
4. Any resolution or decision made during the Closed Meeting must be presented and voted on during an open meeting of the public body. §§ 2.2-3711(B) and 2.2-3712(H) of the *Code of Virginia*.
5. Any member of the public body who believes that there was a departure from the requirements of clauses (i) and (ii) as outlined above shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body. § 2.2-3712(D) of the *Code of Virginia*.

\*Sample Motions for Certifying Closed Meetings

- 1) “Pursuant to the *Code of Virginia* § 2.2-3712(D), I move to certify that, to the best of each member’s knowledge, only matters lawfully exempted and as identified in the motion by which the Closed Meeting was convened were heard or discussed by this {*name of public body*} during the Closed Meeting.” (This motion is considered a Certification of a Closed Meeting and can be used in lieu of a roll call vote. Please note that if there are any abstentions or dissenting votes on this motion, then a roll call vote must be taken and the protocol outlined in § 2.2-3712(D) must be followed.)
- 2) “I move for the adoption of resolution #{X}, “Certification of Closed Meeting”, which confirms that only those matters that were identified and lawfully exempted were discussed during the Closed Meeting.” (A sample certification document is included on page 3).

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January 2019

RESOLUTION #: \_\_\_\_\_

MEETING DATE: \_\_\_\_\_

CERTIFICATION OF CLOSED MEETING

WHEREAS, the {Public Body} has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712 of the Code of Virginia requires a certification by the {Public Body} that a closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the {Public Body} hereby certifies that, to the best of each member’s knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as identified in the motion convening the closed meeting were heard, discussed or considered by the {public body}.

MOTION BY: \_\_\_\_\_

SECOND BY: \_\_\_\_\_

**VOTES (Requires Roll Call Vote):**

AYES:

NAYS:

[For each nay vote, the substance of the departure from the requirements of the Act should be described]

ABSENT DURING VOTE:

ABSENT DURING MEETING:

\_\_\_\_\_  
Secretary of {Public Body}

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