

OFFICE OF OPEN GOVERNMENT
NOTICE OF SECOND PROPOSED RULEMAKING

The Director of the Office of Open Government, pursuant to the authority set forth in Section 205c(a)(3) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective October 30, 2018 (D.C. Law 19-124; D.C. Official Code § 1-1162.05c(a)(3) (2016 Repl. & 2018 Supp.)), hereby gives notice of her intent to adopt the following amendments to Chapter 104 (Office of Open Government) to Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

The proposed rulemaking creates a new section, 10411, that sets forth the procedural requirements public bodies must follow to enter into closed meetings. Additionally, the rulemaking makes clarifying and conforming amendments consistent with the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code §§ 2-571 et seq. (2016 Repl.)).

This rulemaking is necessary because the newly added section 10411 provides specific instructions for the procedures public bodies must follow before entering into closed meetings or closing portions of a meeting. Specifically, the newly added section clarifies that public bodies must hold closed sessions immediately after the public body votes to close the meeting, except where a public body authorized to adjudicate matters or hear contested cases intends to close a meeting or portion of a meeting for the purpose of meeting with their attorney for a legal briefing (pursuant to D.C. Official Code § 2-575(b)(4)) to prepare for the adjudication or hearing. In such a scenario the public body may vote to hold a closed session of a public meeting no earlier than the public meeting that occurs immediately before the date of the planned closed session.

An initial Notice of Proposed Rulemaking was published in the *District of Columbia Register* on January 16, 2026, at 73 DCR 000518. In response to the Proposed Rulemaking, the Office of Open Government received comments regarding concerns that pre-authorizing a closed meeting on a different day than the meeting itself is inconsistent with the D.C. Open Meetings Act. Specifically, that the proposed regulations would weaken D.C. residents' right to know what public bodies are doing. There was concern that the regulations, as previously written, would excuse every executive and legislative public body empowered to adjudicate matters from having to convene in public immediately before excluding the public from its deliberations. The regulations as previously written allowed public bodies with adjudicatory functions to vote to close a meeting at the public meeting that occurs before the date of the planned closed session. The concern was that such a regulation would prevent or hinder District residents from mounting pre-emptive challenges to the closure of meetings and the Open Meetings Act contemplates a real-time vote at the time of the public meeting for this purpose.

After considering these comments, the Office of Open Government modified the proposed rulemaking by narrowing the circumstances under which a public body may take a vote for closure in advance of the actual meeting in which the closure will occur. This action has been limited to situations in which a public body authorized to adjudicate matters or hear contested cases intends to close a meeting for the purpose of meeting with their attorney to receive legal advice to prepare for the hearing or adjudication. The Office of Open Government's intention was to provide a solution to an operational problem because public bodies often require briefings from their own

legal counsel to perform their functions at an adjudicatory or contested hearing where the public body is receiving information from the parties' legal counsel.

The revised rules also address the notice that must be provided in such situations. The Office of Open Government agrees that there is an increased propensity for abuse with the previous version of the rule, and this revision addresses concerns regarding the ability of D.C. residents to preemptively challenge closures and ensures that there is only one narrow circumstance in which a public body may take a vote to close a meeting or portion of a meeting in advance.

Additionally, the newly added section clarifies the meaning of the clause "...and the subjects to be discussed" contained in D.C. Official Code § 2-575(c)(2).

The Open Meetings Act, however, does not define the degree of specificity required to satisfy the requirement to state the "subjects to be discussed." In practice, public bodies have adopted varying approaches. Some have limited their statements to citation of the applicable statutory exemption and recitation of the exemption language, while others have provided a general description of the specific matter to be discussed. This variation has resulted in inconsistent compliance practices and uncertainty regarding the level of detail required. The purpose of this rule is to establish a clear and uniform standard that ensures meaningful public notice of closed session topics while preserving the confidentiality interests protected by the Open Meetings Act.

The rule is grounded in the statutory language requiring that the presiding officer state both the "reason for closure" and "the subjects to be discussed." The inclusion of these distinct phrases indicates that the Council intended to require more than the mere citation of a statutory exemption. The rule gives independent effect to each clause by clarifying that public bodies must both identify the applicable exemption and provide a general description of the specific matter to be discussed. This interpretation is consistent with established principles of statutory construction, including the presumption that each word and phrase in a statute should be given effect and not rendered superfluous. It also reflects the remedial purpose of the Open Meetings Act, which is to promote transparency in government decision-making while permitting limited exceptions for confidential matters.

Absent regulatory clarification, the phrase "subjects to be discussed" is susceptible to differing interpretations. A minimal interpretation in which recitation of the exemption language alone is deemed sufficient may satisfy the requirement to identify the legal basis for closure but does not necessarily inform the public of the actual matter under consideration. This may result in statements that are technically compliant but provide limited meaningful notice. Conversely, requiring overly detailed descriptions could risk disclosure of confidential, privileged, or sensitive information, thereby undermining the very purposes of the statutory exemptions.

This rule resolves that ambiguity by requiring a general, non-confidential description of the specific subject matter. The rule strikes an appropriate balance between transparency and confidentiality by requiring sufficient information to inform the public of the nature of the issue, without requiring disclosure of protected details.

The Director hereby gives notice of her intent to take final rulemaking action to adopt these proposed amended rules as final not less than thirty (30) days after the date of publication of this notice in the *District of Columbia Register*.

Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Chapter 104, OFFICE OF OPEN GOVERNMENT, is amended to read as follows:

10400.6 Complaints may be submitted anonymously. If the Complainant requests anonymity, the Director shall honor Complainant's request to remain anonymous.

10411 **CLOSED MEETINGS**

10411.1 Public bodies, as defined in D.C. Official Code § 2-574(3), may close a meeting or portion of a meeting for the purposes described in section 405(b) of the Open Meetings Act.

10411.2 Before a meeting or portion of a meeting may be closed, the public body shall meet in a public, open session at which a majority of the members of the public body present vote in favor of closure.

10411.3 The public vote in favor of closure shall immediately precede the closed meeting or closed portion of a meeting.

10411.4 Advanced authorization of a closed session of a public meeting is permissible for the limited purpose of receiving legal advice from the public body's legal counsel prior to performing an adjudication or hearing a contested case.

- (a) A public body authorized to adjudicate matters or hear contested cases may take an advance vote at a public meeting to close a portion of a subsequent meeting, where the public body will convene to adjudicate matters or hear contested cases, for the limited purpose of meeting with their attorney to receive legal advice (pursuant to D.C. Official Code § 2-575(b)(4)) to prepare for the adjudication or hearing.
- (b) The advance vote must occur at an open meeting that occurs no greater than thirty days prior to the public meeting where the public body will convene to adjudicate matters or hear contested cases. A standing authorization for multiple closed sessions is strictly prohibited.
- (c) The notice for the public meeting at which the vote for closure is taken must specifically note that the public body intends to take an advance vote to hold a closed session of a public meeting on the date of the next scheduled meeting and the notice must contain all of the information set forth in D.C. Official Code § 2-576(5).
- (d) At the commencement of the pre-authorized closed session that occurs prior to the convening of the public meeting, the public body's presiding officer shall recite the advance vote authorizing the closed session and restate the statutory basis and subject matter as required by D.C. Official Code § 2-575(c).
- (e) A closed session of a public meeting authorized by this section shall be strictly limited to the receipt of legal advice from legal counsel. The public body shall not engage in deliberation toward a decision at a closed session or engage in any other action authorized by D.C. Official Code § 2-575(b).
- (f) Subsequent to the pre-authorized closed session and immediately after the commencement of the public meeting convened to adjudicate matters or hear contested cases, the presiding officer shall make a public statement summarizing the closed session that includes:

- i. A confirmation that the closed meeting was conducted pursuant to D.C. Official Code § 2-575(b)(4) for the purpose of receiving legal advice;
- ii. A brief description of the general subject matter of the legal advice received that does not compromise any legal privilege; and
- iii. A statement that no deliberation, final action, or vote occurred during this preauthorized closed session.

(g) If the public body elects to close another portion of the adjudicatory meeting or contested case hearing pursuant to D.C. Official Code § 2-575(b), the public body must conduct a new vote in the open meeting at the time the public body is convened for the adjudication or to hear contested cases prior to entering into closed session.

10411.5 (a) Prior to entering closed session pursuant to D.C. Official Code § 2-575(b), the presiding officer shall:

- i. Publicly identify the specific statutory exemption authorizing closure; and
- ii. Provide a general description of the specific subject matter to be discussed.

(b) The description required under subsection (a)(2) shall:

- i. Be stated in general terms sufficient to inform the public of the nature of the matter under consideration;
- ii. Avoid disclosure of confidential, privileged, or otherwise protected information; and
- iii. Identify the particular issue, proceeding, or category of matter within the applicable exemption, where feasible.

(c) Merely reciting or tracking the statutory language of the exemption, without additional description of the specific matter to be discussed, shall not, by itself, satisfy the requirement to state the subjects to be discussed.

(d) Nothing in this section shall be construed to require disclosure of information that is privileged, confidential, or exempt from public disclosure under District or federal law.

(e) A copy of the vote to enter into closed session and the statement shall be provided in writing and made available to the public

10411.6 A public body that meets in closed session shall not discuss or consider matters other than those matters listed under D.C. Official Code § 2-575(b) for which the presiding officer gave the public notice of prior to closure.

10411.7 Upon conclusion of the closed session, the public body shall reconvene in open session to put on the record any official action taken during the closed session.

Parties wishing to provide comments on this proposed rulemaking action must submit their comments in writing within thirty (30) days after publication of this notice in the *District of Columbia Register* to Louis L. Neal, Chief Counsel, Office of Open Government, by email at

opengovoffice@dc.gov or by mail or hand delivery to the Board of Ethics and Government Accountability, 1030 15th Street, NW, Suite 700 West, Washington, DC 20005.