

WILLOWBROOK HOMEOWNERS ASSOCIATION

POLICY RESOLUTION NO. 2021- 2

RECORDING OF MEETINGS

WHEREAS, the Willowbrook Homeowners Association (“Association”) exists and operates pursuant to the Virginia Property Owners’ Association Act, Va. Code Section 55.1-1800, *et seq.* (“POA Act”);

WHEREAS, The Board of Directors (“Directors”) of the Association is the entity responsible for administering, managing, and operating the Association;

WHEREAS, pursuant to Article IV, Section (e) of the Association’s Articles of Incorporation provide that the Association has the power to exercise “any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of Virginia by law now or hereafter have or exercise”;

WHEREAS, Section 55.1-1819 of the POA Act provides that the Board may establish, adopt and enforce rules and regulations pertaining to areas of Association responsibility;

WHEREAS, Section 55.1-1828 of the POA Act provides that each Owner is subject to, and must comply with the Association’s Declaration, as amended from time to time;

WHEREAS, Section 55.1-1816 of the POA Act provides that Owners may record any portion of board meetings or committee meetings that are required to be open by the POA Act, subject, however, to rules adopted by the Board regarding providing notice of recordation and regarding the placement and use of recording equipment;

WHEREAS, effective July 1, 2021, Section 55.1-1832 of the POA Act allows any meeting of the Association, Board of Directors or Committees to be held entirely or partially by electronic means provided that the Board has authorized and adopted guidelines for the use of electronic means for meeting in accordance with the POA Act;

WHEREAS, the Board has authorized and adopted guidelines for the use of electronic means for meeting in accordance with the POA Act; and

WHEREAS, the Board has determined that it is in the best interests of the Board to adopt rules applicable to the recordation of meetings in order to promote the orderly conduct of meetings.

NOW, THEREFORE, IT IS RESOLVED THAT the Board of Directors hereby adopts the following policies and procedures as part of the Association’s Rules and Regulations:

Definitions. Unless otherwise defined in this Policy, the words, terms or phrases used in this Policy shall have the same meanings as defined in the Association’s governing documents, or by the POA Act, if no definition is provided in the governing documents.

I. **General Prohibition.** The recording of any Association, Board or Committee meeting in any form or format is strictly prohibited except: (i) as specified below in these rules, or (ii) as approved in writing in advance by the Board.

II. **Recording of Board and Committee Meetings.** Only Owners as defined in the Association's governing documents may make a recording of any portion of a Board or Committee meeting that is required to be open under Section 55.1-1816 of the POA Act. Any such recording is subject, however, to the following requirements:

A. Set Up and Notice.

1. Owners are prohibited from secretly recording meetings.
2. An Owner is allowed to use only one recording device during a meeting. Use of artificial lighting is prohibited (other than the meeting room's regular lighting).
3. An Owner desiring to record any part of the open portion of a Board or Committee meeting shall arrive at the designated meeting place at least five minutes prior to the scheduled start time of the meeting to set up and test their recording device.
4. No Owner is allowed to record any portion of a meeting unless, immediately prior to or after the meeting is called to order, that Owner identifies him or herself by name and address and states their intent to record the meeting.

B. Placement. All recording devices used by the Owner must remain in open view and must remain stationary throughout the meeting. Unless otherwise specified by the presiding officer or, with such officer's concurrence, by the Association's management agent ("Managing Agent"), a recording device must:

1. Be placed on a tripod (or other appropriate mounting equipment) and located in a specified, unobtrusive place so as not to disrupt the meeting or proceedings; or
2. Be held stationary by the Owner recording the meeting at their seat and in open view. The Owner recording the meeting must remain in their seat while operating the device and may not move about the room, or "pan" around the room, during recording.

C. Announcement & Activation of Recording Device.

1. *Immediately prior to or after calling the meeting to order*, any Owner intending to record the meeting must ask to be recognized from the floor and then must identify him or herself by name and address and state that their intention to record the meeting.
 - a. If the Owner fails or refuses to identify him or herself, that Owner shall not be allowed to record the Meeting. That Owner shall not activate (turn on) the recording device, but shall keep it in the same location during the meeting per

Section B above, unless or until the Owner leaves the meeting. The presiding officer, or someone designated by the presiding officer, shall have the right to independently verify that the recording device is not recording and to turn it off if the Owner fails to do so.

2. *After an Owner has announced their intent to record per the above*, that Owner may then activate their recording device at that time (*i.e.*, begin recording).

D. Interference with Meeting Prohibited. An Owner's placement or use of a recording device shall not interfere with the conduct of the meeting.

1. All recording devices used by Owners must be of such nature, size, and type as to not interfere with the course of a meeting, hinder other authorized recordings of the meeting, or interfere with another attendee's ability to see or hear the proceedings.
2. Once placed in a location per Section B above, the recording device shall *remain stationary* in that location while recording. Although the Owner may check their recording device as may be necessary to ensure that it is functioning properly, he or she may not move the equipment about during the recording and may not "pan" the recording device throughout the room.
3. The recording device shall *not emit a noise during recording that disrupts or interferes* with the meeting or the ability of an attendee to hear what is being said.
 - a. For instance, if a person in attendance states that the noise is making it difficult for them to hear something that is being said during the meeting, and the presiding officer concurs in the reasonableness of that statement, it shall be sufficient cause for the presiding officer to require the recording device to be turned off the rest of the meeting if the noise cannot be immediately stopped from re-occurring.
4. If an Owner must attend to his or her recording device during the meeting (to ensure that it is functioning properly), the Owner must do so in a manner that does not interfere with the meeting. For instance, the Owner shall not request that the meeting be recessed, delayed or otherwise interrupted so that he or she can change a tape, battery or other equipment or make other adjustments to his or her recording device.

E. Use of Recordings. The Association is a private entity, and meetings of the Association, Board and Committees are held to carry out the business of the Association. These meetings are not public meetings, and Owners within the Association have the right to attend them, rather than members of the general public. As such, Owners who make recordings of meetings are prohibited from disseminating, distributing or otherwise making them available in any form to the public or to otherwise use these recordings for purposes other than those related directly to Association business or the Owner's membership in the Association. The approved minutes of said meetings remain the official Association record of the proceedings. [This restriction on the use of recordings does not prevent recordings authorized under these rules from being disclosed to a court or investigating governmental

entity, or when compelled to produce them in accordance with applicable law.]

F. Executive Session.

1. The Owner shall not in any manner attempt to record any portion of an executive session.
2. The Owner using a recording device shall stop the device from recording immediately upon the Board or Committee making and approving a motion to convene into executive (*i.e.*, closed) session, and shall remove the recording device from the meeting room prior to the start of an executive session and shall keep it out of the room for the duration of the executive session. If the Owner intends to start recording again after the end of the executive session, then the Owner may leave any necessary power cord and non-recording accessory equipment in the room in order to facilitate the Owner's quick set-up of the recording device after the executive session concludes.

G. Loss, Damage or Mechanical Errors. Neither the Association, Managing Agent, directors, officers Committee members nor Owners have any responsibility for safeguarding a recording device, accessories or the actual recording from any loss, theft or damage. The Owner using the recording device shall also be solely responsible for any errors that occur in the recording process. No portion of any meeting shall be repeated, nor shall a meeting be stopped, delayed or otherwise interrupted, based upon the failure of an Owner's recording device, whether the result of human error or mechanical error.

H. Violations.

1. If the Board or Committee determines that an Owner is interfering with a meeting based on his or her use of a recording device or is otherwise violating these rules, then the Board or committee (or the presiding officer or chairperson) shall have the authority to prohibit that Owner from recording (or continuing to record) that meeting. If the Owner refuses to stop recording, or refuses to allow the Board, Committee, Managing Agent or other designated representative to confirm that the Owner's device is not recording, then that Owner shall immediately leave the meeting room or premises without disruption (taking his/her recording devices and accessory equipment with them as the Owner departs) upon instruction to do so by the Board's presiding officer, the committee chairperson, the Managing Agent or other designated representative. Failure to immediately leave may result in requesting assistance from local law enforcement or an appointed sergeant-at-arms (if any) to compel removal from the premises.
2. If an Owner records a meeting in violation of these rules, the contents of the recording shall not be copied or disseminated in any fashion and shall be immediately destroyed by the Owner who made the recording or, if that Owner fails or refuses to do so, then destroyed by a representative of the Association (*e.g.*, by overwriting the recording or other means). *If there is a known dispute over whether the recording was made in violation of these rules, the recording (e.g., memory chip or recording device) shall be*

turned over to and held by the Managing Agent (or other person designated by the presiding officer) until directed otherwise by the Board upon resolution of the dispute.

3. In addition to the above-referenced remedies, the Board reserves the right to take other enforcement action including, but not limited to, legal action and assessing a violation charge against the responsible Owner after providing written notice and an opportunity for a hearing in accordance with applicable Board-adopted enforcement procedures.

III. Recording of Association Meetings. Only Owners may record all or part of an Association meeting (such as the annual meeting). Any such recording is subject, however, to the requirements and remedies specified in the above Sections, except that for purposes of Association meetings: (i) a non-compliant Owner can be required to leave the meeting room upon proper motion made and approved from the floor, and (ii) a non-compliant non-Owner can be required to leave the room upon the presiding officer's instruction to do so.

IV. Applicability.

- A. The terms of this Resolution apply to in-person meetings of the Association, Board and Committees as well as Electronic and Hybrid meetings of the Association, Board and Committees.
- B. Other than the prohibition against emitting a noise that disrupts or interferes with the meeting or the ability of anyone to hear what is being said, the above-referenced rules do not apply to recordings being made by a Board or Committee-authorized individual (such as a recording secretary), if any, for purposes of facilitating the drafting of meeting minutes.

V. Meetings Recorded by Board or Committee. If the Board or Committee is recording the meeting, unless otherwise determined by the Board in its sole discretion, said recording will be overwritten or destroyed once the applicable meeting minutes are approved.

VI. Adopted Committee Rules, Guidelines or Charters. In the event of any conflict between the terms of any previously-adopted rules, policies or charters and the terms of these rules related to the recording of meetings, the terms of these rules shall control.

EFFECTIVE DATE:

This Policy shall be effective upon the date it is adopted.