

# ***Rules of Procedures for Public Bodies***



## ***Town of Seven Devils North Carolina***

*Adopted September 13, 2004*

*Amended: November 8, 2004, October 8, 2012, March 11, 2014*

# Introduction

These Rules of Procedures pertain to all public bodies of the Town of Seven Devils, NC. As used in this document, the term “public body” applies to all councils, boards, commissions, committees, etc., whether elected or appointed, that serve in the public interest. The terms “chair” and “vice-chair” refer to the head and deputy head of each respective public body.

In those instances where more specific guidelines under North Carolina law may apply, the specific committee and/or individual will be noted. (For example, Town Council, Board of Adjustment, Planning Board; or Mayor, Mayor Pro Tem, Council Members, Town Clerk, Town Manager, etc).

These Rules of Procedure incorporate general principles of parliamentary procedure and applicable North Carolina laws. Essentially the rules are a modified version of *Robert’s Rules of Order Newly Revised* (hereinafter referred to as *RONR*). *RONR* itself recognizes that more informality is desirable with small governing bodies. These procedures modify *RONR* with the following principles in mind:

1. The public body must act as a body.
2. The public body should proceed in the most efficient manner possible.
3. The public body must act by at least a majority.
4. Every member must have an equal opportunity to participate in decision-making.
5. The public body’s rules of procedure must be followed consistently.
6. The public body’s actions should be the result of a decision on the merits and not a manipulation of the procedural rules.

# Rules of Procedure

## **Rule 1. Regular Meetings**

All meetings of public bodies shall be held at the Seven Devils Town Hall. The fixed times for regular monthly meetings are as follows:

- |                             |                                |            |
|-----------------------------|--------------------------------|------------|
| (a) Town Council            | - Second Tuesday               | - 5:30 PM  |
| (b) Planning Board          | - Third Tuesday                | - 5:30 PM  |
| (c) Board of Adjustment     | - Fourth Tuesday (if required) | - 5:30 PM  |
| (d) Public Works Committee  | - Third Tuesday                | - 10:00 AM |
| (e) Public Safety Committee | - First Tuesday                | - 5:30 PM  |
| (f) Recreation Commission   | - Tuesday After Town Council   | - 9:00 AM  |
| (g) Others                  | - As required                  |            |

If a regular meeting day is a legal holiday, the meeting shall be held on the next business day at the same time. A copy of the public body's meeting schedule shall be filed with the Town Clerk. If the schedule is revised, the new schedule must be on file for at least seven days before the first meeting held pursuant to it.

**Comment:** G.S. 160A-71 and G.S. 143-318.13(a)

## **Rule 2. Special, Emergency, and Recessed Meetings**

**(a) Special Meetings.** The chair, vice-chair, or any two members of the public body may at any time call a special meeting of the public body by signing a written notice stating the time and place of the meeting and the subjects to be considered. At least forty-eight hours before a special meeting called in this manner, written notice of the meeting stating its time and place and the subjects to be considered shall be (1) delivered to each public body member or left at his or her usual dwelling place; (2) posted on the door of Town Hall; and (3) mailed or delivered to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the Town Clerk. Only those items of business specified in the notice may be transacted at a special meeting called in this manner, unless all members are present or have signed a written waiver of notice. Even in such a case, the public body shall only discuss or transact items of business not specified in the notice if it determines in good faith at the meeting that it is essential to discuss or act on the item immediately.

A special meeting may also be called or scheduled by vote of the public body in open session during another duly called meeting. The motion calling the special meeting shall specify its time, place, and purpose. At least forty-eight hours before a special meeting called in this manner, notice of the time, place, and purpose of the meeting shall be (1) posted on the door of Town Hall; and (2) mailed or delivered to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the Town Clerk. Such notice shall also be mailed or delivered at least forty-eight hours before the meeting to each member not present at the meeting at which the special meeting was called. Only those items of business specified in the notice may be discussed or transacted at a special meeting called in this manner, unless (1) all members are present or (2) those not present have signed a written waiver of notice, and the public body determines in good faith at the meeting that it is essential to discuss or act on the item immediately.

**Comment:** The first paragraph of Rule 2(a) combines the special meeting notice requirements of the open meetings law found in G.S. 143-318.12(b) with the idea that all members must be notified of any special meetings that some of the members may call. While G.S. 160A-71(b)(1) only requires that the mayor and council members receive six hours' notice of special meetings called by the mayor, the mayor pro tempore, or two council members, this rule increases

the advance notice requirement for public body members to forty-eight hours. This change recognizes that the public body will want to be notified of special meetings called by a few of their number at least as far ahead of time as members of the news media and other persons on the public body's "sunshine list" are notified (forty-eight hours) [G.S. 143-318.12(b)(2)].

While written notice to the public body members themselves is not specifically required in the statutes, such notice helps to avoid questions about whether all members knew of the meeting and had an opportunity to attend. A public body's actions may be subject to challenge if one or more of the members deliberately calls a special meeting in a manner that precludes participation.

This rule establishes an additional requirement that no items may be added to the agenda for a special meeting unless all of the members are present and that, in good faith, the item to be added must be discussed or acted on immediately. This provision is based on the following reasoning.

The open meetings law requires that the purpose of a special meeting be stated in the meeting notice. While the law contains no explicit restrictions that would prevent the public body from taking up unannounced subjects at a special meeting, this rule recognizes that there is probably some implicit "good faith" limit on adding unannounced subjects to the agenda. Recognizing such a limit avoids surprise to absent public body members and to others who might have attended the meeting, had they known that the additional item would be placed on the agenda. It is especially appropriate *not* to consider the extra item if it could be dealt with at another special meeting scheduled with the proper forty-eight hours' notice.

The second paragraph of Rule 2(a) deals with special meetings called or scheduled by vote of the public body in open session during another duly called meeting under G.S. 160A-71(b)(2). Under the open meetings law, forty-eight hours advance notice of the time, place, and purpose of special meetings called in this manner must be mailed to the news media and other persons on the "sunshine list," as required with any other special meeting. G.S. 160A-71(b)(2) generally requires no special notice to the public body members of a special meeting called during another meeting, since presumably all members were present or had the opportunity to be present at the meeting where the special meeting was called or scheduled.

**(b) Emergency Meetings.** Emergency meetings of the public body may be called only because of generally unexpected circumstances that require immediate consideration by the public body. Only business connected with the emergency may be considered at an emergency meeting. One of the following two procedures must be followed to call an emergency meeting of the public body:

(1) The chair, vice chair, or any two members of the public body may at any time call an emergency public body meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. The notice shall be delivered to the each public body member or left at his or her usual dwelling place at least six hours before the meeting.

(2) An emergency meeting may be held at any time when the public body members are present and consent thereto, or when those not present have signed a written waiver of notice, but only in either case if the public body complies with the notice provisions of the next paragraph.

Notice of an emergency meeting under (1) or (2) shall be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written emergency meeting notice request, which includes the newspaper's, wire service's, or station's telephone number, with the Town Clerk. This notice shall be given either by telephone or by the same method used to notify the public body members and shall be given at the expense of the party notified.

**Comment:** Rule 2(b) states the requirements of the open meetings law concerning emergency meetings [G.S. 143-318.12(b)(3)]. It adds to these requirements the two possible ways that emergency meetings might be called under G.S. 160A-71(b). Because emergency meetings are by their nature unexpected, it is assumed that they will not be called during the course of another meeting, but will be scheduled when needed using one of the other two methods.

**(c) Recessed Meetings.** A properly called regular, special, or emergency meeting may be recessed to a time and place certain by a procedural motion made and adopted as provided in Rule 18, Motion 2 of this document, in open session during the regular, special, or emergency meeting. The motion shall state the time and place when the meeting will reconvene. No further notice need be given of a recessed session of a properly called regular, special, or emergency meeting.

**Comment:** In Rule 2(c), note that a motion to recess a meeting to a time and place certain must comply with the requirements of Rule 18 of this document concerning procedural motions. See both the rule's general

requirements and the particular requirements of Rule 18, Motion 2 of this document. It must be made in open session, since under the open meetings law the making of such a motion is not listed as an action that is permitted during a closed session. (See Rule 26 of this document concerning closed sessions.) The open meetings law specifies that if proper notice was given of the original meeting, and if the time and place at which the meeting is to be continued is announced in open session, no further notice is required for the adjourned or recessed session. As explained in the *Comment* to Rule 18, Motion 2 of this document, the terms "recess to a time and place certain" and "adjourn to a time and place certain" are both forms of the motion to adjourn, and are used interchangeably in these rules and in North Carolina law and practice. G.S. 160A-71(b1) states the terms recess and adjourn as alternatives.

### **Rule 3. Organizational Meeting**

**(a) Town Council.** On the date and at the time of the first regular meeting in December following a general election in which council members are elected, or at an earlier date, if any, set by the incumbent council, the newly elected members shall take and subscribe the oath of office as the first order of business. As the second order of business, the council shall elect a mayor and a mayor pro tempore. The Town Clerk shall be the recorder and administer the oath of office. This organizational meeting shall not be held before the municipal election results are officially determined, certified, and published in accordance with Subchapter IX of Chapter 163 of the North Carolina General Statutes.

**Comment:** This Rule states the requirements of G.S. 160A-68(a) and (b). An organizational meeting is held whenever new members are elected so that they can properly qualify for office by taking and signing the required oath. At the same meeting a mayor pro tempore (and a mayor if that person is not separately elected by the voters) is chosen. G.S. 160A-68(b) provides that the organizational meeting shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, provided a quorum is present.

**(b) Board of Adjustment and Planning Board.** On the date and at the time of the first regular meeting, the newly appointed members shall take and subscribe the oath of office as the first order of business. The next order of business is selection of chair and vice-chair. The Town Clerk shall be the recorder and administer the oath of office.

**(c) Other Boards, Committees, and Commissions.** Members/alternates-at-large shall take and subscribe the oath of office as the first order of business at their first meeting. The next order of business is selection of chair, vice-chair, and recorder. The Town Clerk shall administer the oath of office.

**Comment:** Rule 3(b) and (c) states that all public officers must take the oath of office set forth in Article VI, Section 7, of the North Carolina Constitution, unless a person is serving on a particular board as part of his duties on another body. [For example, a county commissioner may be appointed by the board of commissioners to the board of health or social services (see generally G.S. 128-1.2).] In such a case a separate oath should not be taken. On the other hand, many boards require their members to take the additional oaths set out in G.S. 11-7 and -11.

**(d) Presiding Officer.** At the public body organizational meeting, the Town Manager will preside until the new members are sworn in and the chair determined.

### **Rule 4. Agenda**

**(a) Proposed Agenda.** The Town Manager shall prepare a proposed agenda for each meeting. A request to have an item of business placed on the agenda must be received at least two working days before the meeting. Any member may, by a timely request, have an item placed on the proposed agenda. An agenda package shall be prepared that includes, for each item of business placed on the proposed agenda, as much background information on the subject as is available and feasible to reproduce. Each public body member shall receive a copy of the proposed agenda and the agenda package and they shall be available for public inspection and distribution or copying when they are distributed to the public body members.

**(b) Adoption of the Agenda.** As its first order of business at each meeting, the public body shall, as specified in Rule 6 of this document, discuss and revise the proposed agenda and adopt an agenda for the meeting. If items are proposed to be added to the agenda of a meeting, the public body may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all public body members.

The public body may by majority vote add items to or subtract items from the proposed agenda, except that (a) the public body may not subtract items from the proposed agenda stated in the notice of a special meeting, unless those calling the meeting consent to the deletion, (b) the public body may not add items to the proposed agenda stated in the notice of a special meeting unless all members are present, or those who are absent sign a written waiver of notice, and (c) only business connected with the emergency may be considered at an emergency meeting. The public body may add items to the proposed agenda of a special meeting only if it determines in good faith at the meeting that it is essential to discuss or act on the item immediately.

The public body may designate certain agenda items “for discussion and possible action.” Such designation means that the council intends to discuss the general subject area of that agenda item before making any motion concerning that item.

**(c) Consent Agenda.** The public body may designate a part of the agenda as the “consent agenda.” Items shall be placed on the consent agenda by those preparing the proposed agenda if they are judged to be noncontroversial and routine. Any member may remove an item from the consent agenda and place it on the regular agenda while the agenda is being discussed and revised prior to its adoption at the beginning of the meeting. All items on the consent agenda shall be voted on and adopted by a single motion, with the minutes reflecting the motion and vote on each item.

**Comment to (c):** The consent agenda is a device to handle routine business more quickly. As a general rule, ordinances, controversial items, matters in which citizens may be interested, and matters of great substance should probably not be included on the consent agenda.

The public body reviews the “consent agenda” as part of its review of the proposed agenda at the beginning of the meeting. Each member is free to remove items from the consent agenda to the regular agenda. A member may wish to do so if, for example, he or she would like to debate the proposal or vote against the item.

Those items remaining on the consent agenda are all handled with a single motion and vote, which is legally a motion and vote on each one of them. In keeping with this understanding, the minutes should reflect separate motions and votes on each of the consent items.

**(d) Open Meetings Requirements.** The public body shall not deliberate, vote, or otherwise take action on any matter by reference to a letter, number, or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the public to understand what is being deliberated, voted, or acted on. The public body may, however, deliberate, vote, or otherwise take action by reference to an agenda, if copies of the agenda—sufficiently worded to enable the public to understand what is being deliberated, voted, or acted on—are available for public inspection at the meeting.

## **Rule 5. Public Address to the Board**

Any individual or group who wishes to address the public body shall make a request to be on the agenda to the Town Manager. However, the public body shall determine at the meeting whether it will hear the individual or group.

**Comment:** As a matter of general policy, the public body will set aside part of each meeting for individuals or groups to address the board, although it is not legally required to do so. This rule allows any individual or group to be placed on the proposed agenda, but reserves to the public body the right to decide whether there is time to hear its comments. If the public body chooses to open the meeting for public comments on a particular issue, it must be careful not to censor individuals or groups based on their point of view on that issue, in order to avoid violating the speakers’ constitutional right to freedom of speech.

## Rule 6. Order of Business

Items shall be placed on the agenda according to the order of business. The order of business for each regular meeting shall be as follows:

- Discussion and revision of the proposed agenda, including consent agenda; adoption of an agenda
- Approval of the minutes
- Public hearings
- Public comment
- Administrative reports
- Old business
- New business
- Committee reports
- Informal discussion

By general consent of the board, items may be considered out of order.

Because the Board of Adjustment (BOA) is a quasi-judicial body, Rule 25 of this document applies when the BOA hears a case.

## Rule 7. Presiding Officer

The chair of the public body shall preside at public body meetings and shall vote in all cases. In order to address the public body, a member must be recognized by the chair.

The presiding officer shall have the following powers:

- (a) To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- (b) To determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;
- (c) To entertain and answer questions of parliamentary law or procedure;
- (d) To call a brief recess at any time;
- (e) To adjourn in an emergency.

A decision by the presiding officer under (a), (b), or (c) may be appealed to the public body upon motion of any member, pursuant to Rule 18(b), Motion 1 of this document. Such a motion is in order immediately after a decision under (a), (b), or (c) is announced and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion if timely made may not be ruled out of order.

**Comment:** The presiding officer is given substantial procedural powers by this rule. Nevertheless, those powers are not absolute. Under this rule and Rule 18, Motion 1, any public body member is entitled to make a motion to appeal to the other members concerning the presiding officer's decisions regarding motions, decorum in debate, and most other procedural matters. Such a motion replaces *RONR's* "question of order and appeal."

There are two exceptions to this right of appeal. A presiding officer may adjourn without the public body's vote or appeal in an emergency, and he or she may also call a brief recess without a vote at any time. (The latter might be necessary to "clear the air" and thus reduce friction among the members.) *RONR*, in contrast, allows a recess to be taken only with the approval of the members.

## **Rule 8. Office of Mayor Pro Tempore**

At the organizational meeting, the Town Council shall elect from among its members a mayor pro tempore to serve at the council's pleasure. A council member who serves as mayor pro tempore shall be entitled to vote on all matters and shall be considered a council member for all purposes, including the determination of whether a quorum is present. In the mayor's absence, the council may confer on the mayor pro tempore any of the mayor's powers and duties. If the mayor should become physically or mentally unable to perform the duties of his or her office, the council may by unanimous vote declare that the mayor is incapacitated and confer any of the mayor's powers and duties on the mayor pro tempore. When a mayor declares that he or she is no longer incapacitated, and a majority of the council concurs, the mayor shall resume the exercise of his or her powers and duties. If both the mayor and mayor pro tempore are absent from a meeting, the council may elect from among its members a temporary chairman to preside at the meeting.

**Comment:** This rule is G.S. 160A-70, paraphrased.

## **Rule 9. When the Presiding Officer Is in Active Debate**

If the chair becomes actively engaged in debate on a particular proposal, he or she shall designate another council member to preside over the debate. The chair shall resume presiding as soon as action on the matter is concluded.

**Comment:** Good leadership depends, to a certain extent, on not taking sides during a debate. On a small board this may not always be feasible or desirable; yet an unfair advantage accrues to the side whose advocate controls access to the floor. This rule is designed to insure even-handed treatment to both sides during a heated debate. Ordinarily if the chair is leading the meeting, he or she should ask the vice chair to preside in this situation, but if that person is also engaged in the debate, the chair should feel free to call on some other public body member in order to achieve the purpose of this rule.

## **Rule 10. Action by the Public Body**

The public body shall proceed by motion, except as otherwise provided for in Rule 4 and in Rule 31 of this document. Any member, including the chair, may make a motion.

**Comment:** Under standard parliamentary practice, a motion must be on the floor before a board may proceed with discussion or action. Rule 10 allows two variations, one based on Rule 4 and the other on Rule 31.

Rule 4 allows items to be placed on the agenda "for discussion and possible action." General discussion of the agenda item may precede the making of a motion. See Rule 4 and the accompanying *Comment*.

Rule 31 specifies that the public body is to make appointments using an election method, rather than by motion, in order to allow all public body members to express their preferences. This method applies both to internal public body appointments and to appointments to other bodies. The procedures to be followed are explained in Rule 31 and the accompanying *Comment*.

## **Rule 11. Second Required**

A motion shall require a second.

## **Rule 12. One Motion at a Time**

A member may make only one motion at a time.



## Rule 13. Substantive Motions

A substantive motion is out of order while another substantive motion is pending.

**Comment:** This rule sets forth the basic principle of parliamentary procedure that distinct issues will be considered and dealt with one at a time, and a new proposal may not be put forth until action on the preceding one has been concluded.

*RONR* does not refer to *substantive* motions as such; instead it refers to *main* or *principal* motions. The words *substantive motion* are used here to underscore the distinction between this type of motion and the various procedural motions listed in Rule 18. Basically, a substantive motion is any motion other than the procedural motions listed in Rule 18. A substantive motion may deal with any subject within the public body's legal powers, duties, and responsibilities. Indeed, since Rule 10 provides that the public body shall proceed by motion, the substantive motion is the only way the public body can act, unless it has adopted a special rule to deal with a particular situation. (See, for example, the provisions of Rule 31 on appointments.) The procedural motions detailed in Rule 18 set forth the various options the public body has in disposing of substantive motions.

## Rule 14. Adoption by Majority Vote

A motion shall be adopted by a majority of the votes cast, a quorum as defined in Rule 27 of this document being present, unless otherwise required by these rules or the laws of North Carolina. A majority is more than half.

**Comment:** In a few instances, these rules require a vote equal to a majority or two-thirds of the entire membership of the public body for adoption of a particular motion. Extraordinary voting requirements imposed by particular statutes are not specified in these rules. The Town Attorney should be consulted as questions arise. For the Town Council, see Rule 23 concerning the number of votes necessary to adopt an ordinance, adopt a change in a zoning ordinance when a protest petition has been received, or approve a contract.

## Rule 15. Voting by Written Ballot

The public body may choose by majority vote to use written ballots in voting on a motion. Such ballots shall be signed, and the minutes of the public body shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the Town Clerk immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

**Comment:** The open meetings law allows public bodies such as small local government boards to use written ballots so long as they follow the procedures set out in G.S. 143-318.13(b) and paraphrased in this rule.

## Rule 16. Debate

The chair shall state the motion and then open the floor to debate. The chair shall preside over the debate according to the following general principles:

- (a) The maker of the motion is entitled to speak first;
- (b) A member who has not spoken on the issue shall be recognized before someone who has already spoken;
- (c) To the extent possible, the debate shall alternate between proponents and opponents of the measure.

## Rule 17. Ratification of Actions

To the extent permitted by law, the public body may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

**Comment:** Ratification of actions taken on the public body's behalf but without its prior approval is permitted under these rules, to the extent that such after-the-fact approval of actions is legally allowed. The principle behind the motion to ratify is that an assembly may subsequently approve that which it could have authorized. This rule treats the motion to ratify as a *substantive* proposal rather than as a *procedural* motion, since a ratification is in effect an after-the-fact substantive action by the public body concerning something that was done without the public body's approval when advance authorization should have been obtained.

## Rule 18. Procedural Motions

**(a) Certain Motions Allowed.** In addition to substantive proposals, only the following procedural motions, and no others, are in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted.

**Comment:** Rule 18 reflects substantial departure from the rule in *RONR*. Each procedural motion in *RONR* was reviewed to determine whether it was appropriate for use by a small board; substantial modifications and deletions were the result. The following enumeration of procedural motions is exhaustive; if a procedural option is not on the list, then it is not available.

Procedural motions are frequently used to "act upon" a substantive motion by amending it, delaying consideration of it, and so forth. They are in order while substantive motions are pending as well as at other times.

In addition, as in *RONR*, several procedural motions can be entertained in succession without necessarily disposing of the previous procedural motion. The order of priority establishes which procedural motion yields to which—that is, what procedural motion may be made and considered while another one is pending.

The procedural motions are summarized in table form in the appendix. Note that the appended table is intended only to provide a quick reference guide to the motions; this rule and its comments should be consulted for a discussion of how each procedural motion is used.

**(b) Order of Priority of Motions.** In order of priority (if applicable), the procedural motions are

**Motion 1. To Appeal a Procedural Ruling of the Presiding Officer.** A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the public body, as specified in Rule 7. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

**Comment:** Rule 7 allows the ruling of the presiding officer on certain procedural matters to be appealed to the board. This appeal must be made as soon as the presiding officer's decision is announced, so this motion is accorded the highest priority. See Rule 7 and its *Comment* for further discussion of this motion.

**Motion 2. To Adjourn.** This motion may be made only at the conclusion of the public body's consideration of a pending substantive matter; it may not interrupt deliberation of a pending matter. A motion to recess to a time and place certain shall also comply with the requirements of Rule 2(c) of this document.

**Comment:** This motion differs from the *RONR* motion to adjourn in several respects. The *RONR* motion to adjourn is not debatable or amendable and can be made at any time, thus interrupting substantive deliberations. Here, however, since the number of members is small and procedures are available to limit debate, Motion 2 allows both debate and amendment, but specifies that the motion is in order only when action on a pending matter has concluded.

If the public body wants to adjourn before completing final action on a matter, it must, prior to adjourning, first temporarily conclude its consideration of that matter. This is done with one of three motions: to defer consideration of the matter, to postpone the matter to a certain time or day, or to refer the matter to a committee. Only as a last resort should the public body use a motion to suspend the rules, in order to allow the motion to adjourn to interrupt deliberation on the matter.

Another adjournment option is to recess the meeting to reconvene at a specified time and place, in accord with Rule 2(c). The motion to recess or adjourn to a time and place certain is a form of the motion to adjourn. As explained in the *Comment* to Rule 2(c), various North Carolina General Statutes and North Carolina practice refer both to the terminology “recess to a time and place certain” and the phrase “adjourn to a time and place certain,” [see, for example, G.S. 160A-71(b1) and 143-318.12(b)(1)]. Thus both “recess” and “adjourn” are provided here as options. The motion has the same meaning regardless of the option chosen.

### **Motion 3. To Take a Brief Recess.**

**Comment:** This motion, which allows the council to pause briefly in its proceedings, is similar to the motion to recess under *RONR*. To avoid confusing this motion with the motion “to recess to a time and place certain,” which is a form of the motion to adjourn under these rules and in North Carolina practice [see Rule 18(b), Motion 2 above], Motion 3 is a “motion to take a brief recess” rather than a “motion to recess.” Since the number of the public body members is small, and procedures are available to limit debate, debate is allowed on this motion. A motion to take a brief recess is in order at any time except when a motion to appeal a procedural ruling of the presiding officer or a motion to adjourn is pending. Under these rules, the chair also has the power to call a brief recess at any time [see Rule 7(d)].

**Motion 4. Call to Follow the Agenda.** The motion must be made at the first reasonable opportunity, or the right to make it is waived for the out-of-order item in question.

**Comment:** This motion is patterned on the call for the orders of the day in *RONR*. It differs in that it may be debated; also, unless the motion is made when the item of business that deviates from the agenda is proposed, the right to insist on following the agenda is waived for that item.

**Motion 5. To Suspend the Rules.** The public body may not suspend provisions of the rules that state requirements imposed by law on the public body. For adoption, the motion requires an affirmative vote equal to two-thirds of the entire membership of the public body.

**Comment:** This motion is generally the same as the *RONR* motion to suspend the rules, except that it is debatable and amendable. It is in order when the public body wishes to do something that it may legally do but cannot accomplish without violating its own rules. The motion permits the public body to exercise greater flexibility and perhaps informality than adhering strictly to the rules might allow. For example, the public body might use this motion to allow it to consider an agenda item out of order, without formally amending the agenda that it had adopted.

A motion to suspend the rules requires approval by two-thirds of the actual membership of the public body to pass. The two-thirds requirement is imposed since some public body actions by statute require a two-thirds vote to pass. These actions could not be undone through a suspension of the rules unless two-thirds of the public body wished to undo them.

**Motion 6. To Go into Closed Session.** The public body may go into closed session only for one or more of the permissible purposes listed in G.S. 143-318.11(a). The motion to go into closed session shall cite one or more of these purposes and shall be adopted at an open meeting. A motion based on G.S. 143-318.11(a)(1) shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on G.S. 143-318(a)(3) shall identify the parties in each existing lawsuit concerning which the board expects to receive advice during the closed session, if in fact such advice is to be received.

**Comment:** The requirements for this motion are found in G.S. 143-318.11(c). They include extra requirements for motions based on G.S. 143-318.11(a)(1), and for those motions based on G.S. 143-318.11(a)(3) that concern a closed session where the public body expects to receive advice about an existing lawsuit or lawsuits. G.S. 143-318.11(a)(1), cited in the rule, allows closed sessions “[t]o prevent the disclosure of information that is privileged or confidential pursuant to the law of North Carolina or the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.” Part of G.S. 143-318.11(a)(3), also cited, allows the public body in closed session to “consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure.”

### **Motion 7. To Leave Closed Session.**

**Comment:** This motion provides a procedural mechanism for returning from closed session to an open meeting. Under the open meetings law, public bodies must return to open session once they have concluded their closed session business, even if they have no other business to transact except adjourning the meeting.

**Motion 8. To Divide a Complex Motion and Consider It by Paragraph.** The motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

**Comment:** This motion is the same as the two motions—division of a question and consideration by paragraph—in *RONR*, except that it is debatable.

**Motion 9. To Defer Consideration.** The public body may defer a substantive motion for later consideration at an unspecified time. A substantive motion the consideration of which has been deferred expires 100 days thereafter unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred motion remains pending. A member who wishes to revisit the matter during that time must take action to revive consideration of the original motion (Rule 18(b), Motion 14), or else move to suspend the rules (Rule 18(b), Motion 5).

**Comment:** This motion allows the public body temporarily to defer consideration of a proposal. It may be debated and amended. A motion that has been deferred dies if it is not taken up by the public body (via a motion to revive consideration, Rule 18(b), Motion 14) within a specified number of days of the vote to defer consideration. One hundred days is merely a suggested period of time. Note the restriction on making a new motion with the same effect while a motion remains deferred.

This motion should be distinguished from the motion to postpone to a certain time or day (Rule 18(b), Motion 11). A matter that has been postponed to a certain time or day is brought up again automatically when that time arrives. Public body action (approval of a motion to revive consideration) is required, however, before the public body may again consider a substantive motion of which consideration has been deferred under this motion.

**Motion 10. Motion for the Previous Question.** The motion is not in order until there have been at least 20 minutes of debate and every member has had an opportunity to speak once.

**Comment:** This motion differs from the motion of a similar name in *RONR*. The *RONR* motion is always in order, is not debatable or amendable, and requires a two-thirds vote for adoption. Thus it may be used to compel an immediate vote on a proposal without any debate on the issue. Such a device may be necessary to preserve efficiency in a large assembly. With a small public body, however, a minimum period of debate on every proposal that comes before it strikes a better balance between efficiency and effective representation by all public body members. Since every member will have an opportunity to speak, the debate may be ended by a majority vote.

Note that this rule avoids the practice followed by some boards of allowing any member to end debate by simply saying “call the question,” without the board actually taking a vote on that procedural issue. Such a practice is contrary to regular parliamentary procedures. In addition, it allows individual members to impose their will unilaterally on the group, in defiance of the principle of majority rule on which these rules are based.

**Motion 11. To Postpone to a Certain Time or Day.** If consideration of a motion has been postponed, a new motion with the same effect cannot be introduced while the postponed motion remains pending. A person who wishes to revisit the matter must either wait until the specified time or move to suspend the rules [Rule 18(b), Motion 5].

**Comment:** This motion allows the board to postpone consideration to a specified time or day and is appropriate when more information is needed or the deliberations are likely to be lengthy. It should be distinguished from the motion to defer consideration (see *Comment* to Rule 18(b), Motion 9). Note the restriction on making a new motion with the same effect while a postponed motion remains pending.

**Motion 12. To Refer a Motion to a Committee.** The public body may vote to refer a substantive motion to a committee for its study and recommendations. Sixty days or more after a substantive motion has been referred to a committee, the introducer of the substantive motion may compel consideration of the measure by the entire board, whether or not the committee has reported the matter to the public body.

**Comment:** This motion is the same as the motion of the same name in *RONR* except that the right of the introducer to compel consideration by the full board after a specified period of time prevents using the motion as a mechanism to defeat a proposal by referring it to a committee that is willing to “sit” on it.

### **Motion 13. To Amend.**

- (a) An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment shall be treated as a motion to amend.
- (b) A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote.
- (c) Any amendment to a proposed order, policy, regulation, or resolution shall be reduced to writing before the vote on the amendment.

**Comment:** The restriction on amendments stated in part 13(a), second sentence, of the provisions concerning this motion should be read narrowly; it is intended only to prevent an amendment that merely negates the provisions of the original motion. The intent of such an amendment can be achieved in a simpler and more straightforward manner by the defeat of the original proposal. Pertinent amendments that make major substantive changes in the original motion are quite proper. All proposals for changes in a motion or in an amendment are treated as motions to amend, no matter how major their potential effect.

Part 13(b) of the rules governing this motion limits the number of proposed amendments that may be pending at one time to two, in order to reduce confusion. Amendments are voted on in reverse order; that is, the last-offered amendment, which would amend the first amendment, is voted on first. Once the last-offered of the two pending amendments is disposed of, an additional amendment may be offered.

Part 13(c) of the rules for this motion imposes an additional writing requirement for amendments to ordinances and other, sometimes lengthy, documents such as orders, policies, or resolutions. The rule assumes that amendments to proposed ordinances, like the ordinances themselves, should be in written form before they are voted on, both because of the importance of ordinances and to make it easier to maintain the required ordinance book (see G.S. 160A-78) and the minutes of the council accurately [see G.S. 160A-72 and 143-318.10(e)]. Similarly, amendments to orders, policies, and resolutions should be in written form before they are voted on, because of their significance and to make it easier to record them in the minutes.

Once a motion has been offered to the public body, it is up to the public body to decide whether or not it should be changed by amendment. If the person making the motion does not favor a proposed amendment, he or she is free to vote against it. And so long as the original motion has not been voted on and no amendment to it has passed, the introducer is free under these rules to withdraw it (see Rule 20). If a motion has been withdrawn, the public body members are generally free to make their own separate motions on the same subject.

**Motion 14. To Revive Consideration.** The public body may vote to revive consideration of any substantive motion earlier deferred by adoption of Motion 9 of Rule 18(b). The motion is in order at any time within 100 days after the day of a vote to defer consideration. A substantive motion on which consideration has been deferred expires 100 days after the deferral unless a motion to revive consideration is adopted.

**Comment:** This motion replaces the motion "to take up from the table" in *RONR* and was renamed in order to avoid confusion. This motion may be debated and amended, whereas the motion in *RONR* may not. If the motion to revive consideration is not successful within the specified number of days of the date on which consideration was deferred, the substantive motion expires. Its subject matter may be brought forward again only by a new motion. One hundred days is merely a suggested period of time; the number of days specified here should be the same as in Rule 18(b), Motion 9.

**Motion 15. To Reconsider.** The public body may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side (the majority, except in the case of a tie; in that case the "nos" prevail) and only at the meeting during which the original vote was taken, including any continuation of that meeting through recess to a time and place certain. The motion cannot interrupt deliberation on a pending matter but is in order at any time before final adjournment of the meeting.

**Comment:** According to *RONR*, this motion may be made at the same meeting as the vote being reconsidered or on the next legal day and may interrupt deliberation on another matter. To avoid placing a measure in limbo, these rules restrict the availability of the motion to the same meeting as the original vote, including any continuation of that meeting if it is recessed or adjourned to a time and place certain pursuant to Rule 2(c) and Rule 18(b), Motion 2. If a member wishes to reverse an action taken at a previous meeting, he or she generally may make a new motion having the opposite effect of the prior action. Note that in some cases reversal may not be possible; for example, where

rights have vested because of the original vote, or where a binding contract has already been signed in reliance on that decision. The motion to reconsider is permitted under these rules only when action on a pending matter concludes.

**Motion 16. To Rescind or Repeal.** The public body may vote to rescind actions it has previously taken or to repeal items that it has previously adopted. The motion is not in order if rescission or repeal of an action is forbidden by law.

**Comment:** Each meeting of a public body is in many respects a separate legal event. Unless prohibited by law, a public body may at a subsequent meeting “undo” action taken at a previous meeting. The motion to rescind is in order only for those measures adopted by the public body that can legally be repealed or rescinded. It is not intended to suggest that the public body may unilaterally rescind a binding contract, or may repeal an action where a person’s rights have already vested.

It should be noted for the sake of technical correctness that while *RONR* and these rules treat the motion to rescind as a procedural motion because it acts upon a substantive motion, it is probably more correct in many ways to regard the rescission motion as a new substantive motion in its own right. The motion that it changes is a substantive motion that was adopted at a previous meeting. The substantive action has been completed, and the motion is no longer really “alive” to be modified procedurally as it was at the meeting at which it was adopted.

**Motion 17. To Prevent Reintroduction for Six Months.** The motion shall be in order immediately following the defeat of a substantive motion and at no other time. The motion requires for adoption a vote equal to two-thirds of the entire membership of the public body. If adopted, the restriction imposed by the motion remains in effect for six months or until the next organizational meeting of the board, whichever occurs first.

**Comment:** This is a “clincher” motion to prevent the same motion from being continually introduced when the subject has been thoroughly considered. There is no comparable motion in *RONR*, although the objection to consideration of a question accomplishes much the same purpose.

Because this motion curtails a member’s right to bring a matter before the public body, the required vote is two-thirds of the actual membership of the public body. This supermajority requirement is imposed because such a two-thirds vote is needed for the public body to adopt certain items. The same number of votes should be required if the public body is to forbid dealing further with such an issue.

As with every other motion, a clincher motion may, in effect, be dissolved by a motion to suspend the rules (see Rule 18(b), Motion 5). Six months is merely a suggested time; the board may shorten or lengthen the time as it sees fit. In order to give a new board a clean slate, the motion is not effective beyond the next organizational meeting of the board.

## Rule 19. Renewal of Motion

A motion that is defeated may be renewed at any later meeting unless a motion to prevent reconsideration has been adopted.

**Comment:** As noted in the *Comment* to Rule 18(b), Motion 16, in North Carolina each meeting of a public body is in many respects a separate, new event. Thus, while matters of old business may be carried over from one meeting to another, it is also the case that matters that are disposed of at one meeting may be brought up again at a subsequent meeting through a new motion, unless a motion to prevent reintroduction was previously adopted (Rule 18(b), Motion 17).

## Rule 20. Withdrawal of Motion

A motion may be withdrawn by the introducer at any time before it is amended or before the chair puts the motion to a vote, whichever occurs first.

**Comment:** *RONR* provides that once a motion has been stated by the chair for debate, it cannot be withdrawn without the assembly’s consent. Such a procedure is unnecessary for a small board. However, this rule does prohibit withdrawing motions after they have been amended. Once a motion has been amended, it is no longer the same motion as was made by the introducer, so it is no longer his or hers to withdraw.

## Rule 21. Duty to Vote

Every member must vote unless excused by the remaining members according to law. A member who wishes to be excused from voting shall so inform the presiding officer, who shall take a vote of the remaining members. No member shall be excused from voting except upon matters involving the consideration of his or her own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

**Comment:** This rule states most of the requirements of the first paragraph of G.S. 160A-75

## Rule 22. Introduction of Ordinances

A proposed ordinance shall be deemed to be introduced on the date the subject matter is first voted on by the council.

**Comment:** G.S. 160A-75 provides that an ordinance may not be finally adopted at the meeting at which it is introduced except by a two-thirds vote of all the actual membership of the council, excluding vacant seats and not including the mayor unless he or she has the right to vote on all questions before the council. The statute also specifies that an ordinance is deemed to be introduced "on the date the subject matter is first voted on by the council." A "vote on the subject matter" is not defined; some authorities think that a vote on the ordinance itself is required, while others think that any vote pertaining to the ordinance's subject matter (for example, a vote to refer the subject of an ordinance to a committee for further study) is sufficient to satisfy the definition. The city attorney should be consulted for guidance on this matter.

## Rule 23. Adoption of Ordinances and Approval of Contracts

(a) **Generally.** An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue shall be required to adopt an ordinance, to take any action that has the effect of an ordinance, or to make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance or action that has the effect of an ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two-thirds of all the actual membership of the council, excluding vacant seats. No ordinance shall be adopted unless it has been reduced to writing before a vote on adoption is taken.

**Comment:** This rule paraphrases the special voting requirements in the second paragraph of G.S. 160A-75 for adoption of ordinances and approval of contracts. (Special voting rules for authorizing or committing the expenditure of public funds are also found in this paragraph. In most cases, however, these latter requirements are superseded by the more specific provisions of G.S. 159-17 detailed in Rule 24.)

See Rule 22 and the accompanying *Comment* for the definition of "introduction" of an ordinance. Although it may seem obvious that ordinances should be in writing before they are voted on (see, for example, the requirements of Rule 4(a) concerning copies of proposed ordinances), this requirement is stated explicitly so that there can be no doubt on the matter. See also Procedural Motion 13 in Rule 18(b) concerning amendment of ordinances, and G.S. 160A-76(a) for requirements for franchises, including the requirement of adoption of franchise ordinances at two regular meetings.

b) **Zoning Protest Petitions.** An affirmative vote equal to three-fourths of all the members of the city council shall be required for an ordinance making a change in a zoning regulation, restriction, or boundary to become effective, if a valid protest petition is received in accordance with the requirements set out in G.S. 160A-385(a) and G.S. 160A-386. This rule shall not apply in those cases excepted by G.S. 160A-385(a).

**Comment:** This paragraph states the three-fourths vote requirement of G.S. 160A-385(a), which applies when neighboring property owners, as defined in the statute, protest a proposed rezoning and file a proper petition with the city clerk in a timely manner under G.S. 160A-386. Some zoning changes such as initial zonings of property added to the ordinance's coverage, and certain amendments to adopted special or conditional use districts, are not covered by

the three-fourths vote requirement. These exceptions are specified in G.S. 160A-385(a). The three-fourths rule applies to zoning ordinances *only*.

## **Rule 24. Adoption of the Budget Ordinance**

Notwithstanding the provisions of any city charter, general law, or local act:

- (1) Any action with respect to the adoption or amendment of the budget ordinance may be taken at any regular or special meeting of the council by a simple majority of those present and voting, a quorum being present;
- (2) No action taken with respect to the adoption or amendment of the budget ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolutions by the council; and
- (3) The adoption and amendment of the budget ordinance and the levy of taxes in the budget ordinance are not subject to the provisions of any city charter or local act concerning initiative or referendum.

During the period beginning with the submission of the budget to the council and ending with the adoption of the budget ordinance, the council may hold any special meetings that may be necessary to complete its work on the budget ordinance. Except for the notice requirements of the open meetings law, which continue to apply, no provision of law concerning the call of special meetings applies during that period so long as (a) each member of the board has actual notice of each special meeting called for the purpose of considering the budget, and (b) no business other than consideration of the budget is taken up. This rule does not allow, and may not be construed to allow, the holding of closed meetings or executive sessions by the council if it is otherwise prohibited by law from holding such a meeting or session.

**Comment:** This rule is G.S. 159-17 with minor modifications. G.S. 159-17 also provides that no general law, city charter, or local act that is enacted or takes effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this law unless it expressly so provides by specific reference to it. Since the notice requirements of the Open Meeting Law continue to apply to meetings held to work on the budget ordinance, the only practical effect of the second paragraph of this rule is to eliminate the need for any special notification of council members concerning such meetings. Many councils find it useful procedurally when working on the budget simply to recess or adjourn a single meeting several times until they have finished their work [see Rule 2(c)].

## **Rule 25. Special Rules of Procedure**

**(a) Board of Adjustment - General.** When the Board of Adjustment (BOA) hears a case:

- (1) The Chair or anyone acting as Chair, and the Town Clerk are authorized to administer the Oath to those offering testimony.
- (2) All witnesses before the BOA shall be placed under oath and subject to cross-examination.
- (3) The chair shall arrange for the Town Attorney to be present at all BOA meetings where cases are being heard. The Town Attorney, after considering the nature of the case, will determine if he or she has a conflict of interest.
- (4) A minimum of four (4) voting members shall be required to take any action. A vote of 4/5 of the membership of the BOA (4 of the 5 members) shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

**(b) Board of Adjustment – Agenda for Hearing of Cases.**

- (1) Roll Call
- (2) Approval of minutes of previous meeting
- (3) Hearing of case
  - ◆ Chair gives preliminary statement of case and summary of BOA process



- ◆ Zoning Administrator presents findings
  - ◆ Applicant presents the argument in support of application
  - ◆ Persons opposed to application present argument against the application
  - ◆ Applicant rebuttal
  - ◆ Persons opposed rebuttal
  - ◆ Chair summarizes evidence
- (4) Decision on case
- ◆ Unless advised to postpone to a later meeting by the Town Attorney, the Chair shall call for a vote, noting the separate issues requiring votes for Special Use Permits and for Variances.

**Comment:** Some boards may wish to provide special rules for certain situations (for example, requiring a vote equal to a majority or two-thirds of the entire membership of the board for approval of certain motions, or specifying a particular procedure for selecting the board's chair), either because of statutory requirements or other concerns.

## Rule 26. Closed Sessions

The public body may hold closed sessions as provided by law. The public body shall only commence a closed session after a motion to go into closed session has been made and adopted during an open meeting. The motion shall state the purpose of the closed session. If the motion is based on G.S. 143-318.11(a)(1) (closed session to prevent the disclosure of privileged or confidential information or information that is not considered a public record), it must also state the name or citation of the law that renders the information to be discussed privileged or confidential. If the motion is based on G.S. 143-318.11(a)(3) (consultation with attorney; handling or settlement of claims, judicial actions, or administrative procedures), it must identify the parties in any existing lawsuits concerning which the public body expects to receive advice during the closed session. The motion to go into closed session must be approved by the vote of a majority of those present and voting. The public body shall terminate the closed session by a majority vote.

Only those actions authorized by statute may be taken in closed session. A motion to adjourn or recess shall not be in order during a closed session.

**Comment:** This rule states some of the requirements of G.S. 143-318.11(c) for calling closed sessions. In particular, note the special requirements for motions to call closed sessions that are based on G.S. 143-318.11(a)(1) or, in some cases, on G.S. 143-318.11(a)(3). No attempt is made here to set forth all of the provisions of the open meetings law concerning the purposes for which closed sessions may be held and the actions that may be taken in closed session; specific information can be found in G.S. 143-318.11(a). Note, however, that adjournment is not an action authorized by statute to be taken during a closed session. Minutes and general accounts of closed sessions are discussed in Rule 30.

## Rule 27. Quorum

A majority of the actual membership of the council plus the mayor, excluding vacant seats, shall constitute a quorum. A majority is more than half. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

**Comment:** This is G.S. 160A-74, with the addition of the usual definition of "majority." The last sentence of this rule prevents a member from defeating a quorum by simply leaving the meeting.

## Rule 28. Public Hearings

Public hearings required by law or deemed advisable by the public body shall be organized by a special order (adopted by a majority vote) that sets forth the subject, date, place, and time of the hearing as well as any rules regarding the length of time allotted for each speaker, and other pertinent matters. Its specifications may include, but are not limited to, (a) rules fixing the maximum time allotted to each speaker; (b) providing for the designation of spokespersons for groups of persons supporting or opposing the same positions; (c) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall (so long as arrangements are made, in the case of hearings subject to the open meetings law, for those excluded from the hall to listen to the hearing); and (d) providing for the maintenance of order and decorum in the conduct of the hearing.

All notice and other requirements of the open meetings law applicable to public body meetings shall also apply to public hearings at which a majority of the public body is present; such a hearing is considered to be part of a regular or special meeting of the public body. These requirements also apply to hearings conducted by appointed or elected committees of public body members, if a majority of the committee is present. A public hearing for which any required notices have been given may be continued to a time and place certain without further advertisement. The requirements of Rule 2(c) shall be followed in continuing a hearing at which a majority of the board, or of a board committee, as applicable, is present.

At the time appointed for the hearing, the chair or his or her designee shall call the hearing to order and then preside over it. When the allotted time expires, or earlier, if no one wishes to speak who has not done so, the presiding officer shall entertain or make a motion to end the hearing.

**Comment:** Public bodies may be required or may desire to hold public hearings from time to time concerning particular matters. G.S. 160A-81 provides that public hearings may be held at any place within the town or within the county where the town is located. It also gives the public body the authority to adopt reasonable rules governing the conduct of the hearing (specifically including the type of rules listed here) and to continue public hearings without further advertisement.

Public hearings, like other public body meetings, are also subject to the notice, continuation, and other requirements of the open meetings law, if a majority of the public body is present at the hearing, since legally such a hearing is part of a meeting of the public body. Appointed or elected committees of the public body are also covered by this law. Those requirements are reflected in this rule. In keeping with the spirit of the open meetings law, the rule requires that all persons desiring to be present at a hearing covered by that law be given the opportunity to listen to the proceedings—outside the meeting room, if necessary—if the room is too small to accommodate all of them.

Some boards vote to open and close public hearings, while others simply allow the chair to declare the hearing open and closed. Either practice is acceptable, and the board may choose either option as its rule.

## Rule 29. Quorum at Public Hearings

A quorum of the public body shall be required at all public hearings required by state law. If a quorum is not present at such a hearing, the hearing shall be continued until the next regular public body meeting without further advertisement.

**Comment:** G.S. 160A-81 implies that a quorum of public body members is necessary for a public hearing by providing that a hearing shall be deferred to the next regular meeting if a quorum is not present at the originally scheduled time. If, however, the public body decided to hold a public hearing that was not required by state law to gather a consensus of public opinion on an issue, it could hold the hearing at several sites, with a few members in attendance at each place. Such a hearing would not be subject to the quorum requirement of G.S. 160A-81. Note also that if a majority of the public body was not present at such a hearing, it would not be subject to the notice, continuation, and other requirements of the open meetings law, unless the public body members conducting the hearing were a majority of an appointed or elected public body committee (see Rule 32).

## **Rule 30. Minutes**

Full and accurate minutes of the public body proceedings, including closed sessions, shall be kept. The public body shall also keep a general account of any closed session so that a person not in attendance would have a reasonable understanding of what transpired. These minutes and general accounts shall be open to inspection of the public, except as otherwise provided in this rule. The exact wording of each motion and the results of each vote shall be recorded in the minutes, and on the request of any member of the public body, the entire public body shall be polled by name on any vote. Members' and other persons' comments may be included in the minutes if the board approves.

Minutes and general accounts of closed sessions may be sealed by action of the board. Such sealed minutes and general accounts may be withheld from public inspection so long as public inspection would frustrate the purpose of the closed session.

**Comment:** G.S. 160A-72 requires that full and accurate council minutes be maintained, and G.S. 143-318.10(e) requires that full and accurate minutes be kept of all official meetings of all public bodies, including closed sessions [G.S. 143-318.11(a)]. The minutes are the official legal record of council actions and are a matter of public record. To be "full and accurate," they must include all actions taken by the public body and must note the existence of conditions needed to take action, such as the existence of a quorum. However, the minutes need not record the public body's discussion. Particular comments by members or other persons may be included in the minutes if the public body so desires. Since the public body usually takes action by motion (Rule 10), all motions that are made must be included in the minutes, along with a record of the motions' disposition. G.S. 160A-72 also allows any member to request that the minutes include a record of how each member voted (the "yeas and nays"). Under the open meetings law, the public body must also keep a "general account" of what transpires in closed sessions. This wording probably requires that a somewhat more detailed account of these sessions be kept than would typically be found in the minutes, especially if the minutes record only actions and conditions needed to take action. The public body should consult with the Town Attorney concerning what general accounts of closed sessions should include.

Finally, the rule includes the permission granted in G.S. 143-318.11(e) to withhold minutes and general accounts of closed sessions from public inspection for as long as necessary to avoid frustrating the purpose of the closed session. Note that the statute permits, but does not require, closed session minutes and general accounts to be sealed. The public body should vote to seal these records if it wishes to do so or is advised to do so by its attorney. It must also provide for their unsealing, either by public body action or by action of an public body of the board, such as its attorney, if and when the closed session's purpose would no longer be frustrated by making these records public.

## **Rule 31. Appointments**

The public body may consider and make appointments to other bodies, including its own committees, if any, only in open session. The public body may not consider or fill a vacancy among its own membership except in open session. The public body shall use the following procedure to make appointments to various other boards and committees: The chair shall open the floor for nominations, whereupon the public body members and the Town Manager may put the names of possible appointees forward. The names submitted shall be debated. When the debate ends, the chair shall call the roll of the members, and each member shall cast his or her vote. The voting shall continue until one nominee receives a majority of the votes cast, whereupon he or she shall be appointed. If more than one appointee is to be selected, then each member shall have as many votes in each balloting as there are slots to be filled, and votes from a majority of the members voting shall be required for appointment. During each balloting, a member may cast all of his or her votes or fewer than all of them, but he or she shall not cast more than one vote for a single candidate.

## **Rule 32. Committees and Boards**

**(a) Establishment and Appointment.** The public body may establish and appoint members for such temporary and standing committees and boards as are required by law or needed to help carry on the public body's work. Any specific provisions of law relating to particular committees and boards shall be followed.

**(b) Open Meetings Law.** The requirements of the open meetings law shall apply to all elected or appointed authorities, boards, commissions, councils, or other bodies of the Town unit that are composed of two or more members and that exercise or are authorized to exercise legislative, policy-making, quasi-judicial, administrative, or advisory functions. However, the law's requirements shall not apply to a meeting solely among a unit's professional staff.

**Comment:** The Town Council is authorized by G.S. 160A-146 to "create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the city government . . ." subject to certain limitations. Other specific statutes govern some of these committees and boards; G.S. 160A-388(a), for example, regulates establishment of and appointments to boards of adjustment. The general requirements of Rule 31 for appointments by the council should also be kept in mind.

Rule 32(b) states requirements of G.S. 143-318.10(b) and (c) (parts of the open meetings law). In determining if the open meetings law covers a group, whether the group is called a commission, authority, or committee is generally not important, nor does it matter who within the town government established the group.

Some ambiguities exist concerning the open meetings law's coverage with respect to towns. For example, the law does not apply to "a meeting solely among the professional staff of a public body." The scope and meaning of this statutory phrase is unclear.

### **Rule 33. Amendment of the Rules**

These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment of the rules as one of the stated purposes of the meeting, so long as the amendment is consistent with the town charter, general law, and generally accepted principles of parliamentary procedure. Adoption of an amendment shall require an affirmative vote equal to or greater than two-thirds of all the actual membership of the council, excluding vacant seats.

**Comment:** City councils may generally amend their rules of procedure whenever they choose, so long as the amendment, like the rules being amended, is consistent with the town charter, general law, and generally accepted principles of parliamentary procedure. G.S. 160A-71(c). Because certain board actions require a two-thirds vote (see, for example, some of the requirements in Rule 23(a), which implements G.S. 160A-75), that standard must also be met to approve an amendment to these rules, which are the guidelines under which such actions are taken.

### **Rule 34. Reference to *Robert's Rules of Order Newly Revised***

To the extent not provided for in these rules, and to the extent it does not conflict with North Carolina law or with the spirit of these rules, the public body shall refer to *Robert's Rules of Order Newly Revised*, to answer unresolved procedural questions.

**Comment:** *RONR* was designed to govern a large legislative assembly, and many of its provisions may be inappropriate for small boards. Nevertheless, it is a good source of parliamentary procedure; care should simply be taken to adjust *RONR* to meet the needs of small governing boards such as city councils.

# Appendix

## Permitted Procedural Motions in Order of Precedence<sup>1</sup>

Motion	Vote Required <sup>2</sup>	Special Requirements
1. To Appeal a Procedural Ruling of the Presiding Officer	Majority	Is in order immediately after the presiding officer announces a procedural ruling, as specified in Rule 7, an at no other time. The member making the motion need not be recognized by the presiding officer, and the motion, if timely made, may not be ruled out of order.
2. To Adjourn	Majority	May not interrupt deliberation of pending substantive matter. Motion to recess to a time and place certain must also comply with Tule 2(c).
3. To Take a Brief Recess	Majority	None
4. Call to Follow the Agenda	Majority	Must be made at first reasonable opportunity, or the right to make it is waived for the out-of-order item in question.
5. To Suspend the Rules	Two-Thirds	The public may not suspend provisions of the rules that state requirements imposed by law on the public body.
6. To Go into Closed Session	Majority	Motion must cite one or more of the permissible purposes for closed sessions listed in G.S. 143-318.11(a) and must be adopted at an open meeting. A motion based on G.S. 143-318.11(a)(1) must also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on G.S. 143-318.11(a)(3) must identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session, if in fact such advice is to be received.
7. To Leave Closed Session	Majority	None
8. To Divide a Complex Motion	Majority	None
9. To Defer Consideration	Majority	A substantive motion the consideration of which has been deferred expires 100 days thereafter unless a motion to revive consideration (Motion 14) is adopted. While a deferred motion remains pending, a new motion with the same effect cannot be introduced. <b>CAUTION: DO</b> not confuse with Motion 11.
10. Motion for the Previous Question	Majority	Not in order until there have been at least 20 minutes of debate, and every member has had an opportunity to speak once.

11. To Postpone to a Certain Time or Day	Majority	None. While a postponed motion remains pending, a new motion with the same effect cannot be introduced. <b>CAUTION:</b> Do not confuse with Motion 9.
12. To Refer a Motion to a Committee	Majority	60 days or more after a motion is referred to a committee, the introducer may compel consideration of the measure by the public body, regardless of whether the committee has reported the matter to the public body.
13. To Amend	Majority	(a) Amendments must be pertinent to the subject matter of the motion being amended. An amendment is improper if adoption of the motion with that amendment added has the same effect as rejection of the original motion. A proposal to substitute a different motion shall be treated as a motion to amend. (b) A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote. (c) Any amendment to a proposed ordinance must be reduced to writing before the vote on the amendment.
14. To Revive Consideration	Majority	In order at any time within 100 days after the day of a vote to defer consideration (Motion 9). Failure to adopt Motion 14 within the 100 day period results in expiration of the deferred substantive motion.
15. To Reconsider	Majority	Must be made by a member who voted with the prevailing side (the majority side except in the case of a tie; in that case the “nos” prevail). May only be made at the meeting at which the original vote was taken, including any continuation of that meeting through recess to a time and place certain. Cannot interrupt deliberation on a pending matter, but is in order at any time before final adjournment of the meeting.
16. To Rescind or Repeal	Majority	Not in order if rescission or repeal of an action is forbidden by law.
17. To Prevent Reintroduction for Six Months	Two-Thirds	In order immediately following defeat of a substantive motion and at no other time. If Adopted, the restriction imposed by the motion remains in effect for six months or until the next organizational meeting of the public body, whichever occurs first.

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1. Under these rules all procedural motions are debatable and none requires a second. All may be amended, subject to the stated limitations on motions to amend (Motion 13). Except where indicated otherwise, procedural motions may interrupt deliberations on a pending substantive matter.

2. The required vote for adoption of a procedural motion is generally a majority of the votes cast, a quorum being present. In a few cases, the required vote is a vote equal to two-thirds of the actual membership of the council, excluding vacant seats.