

## **Errata Sheet for *Suggested Rules of Procedure for Small Local Government Boards***

### **Public Comment Periods Required at Meetings of City Councils, Boards of County Commissioners, and School Boards**

The 2005 General Assembly enacted S.L. 2005-170 (H 635), effective July 11, 2005, which mandates that city councils, boards of county commissioners, and boards of education provide at least one period for public comment per month at a regular meeting of the board. The history of the act, as well as case law on citizen comment periods as "limited public forums" under the First Amendment, both suggest that the board probably must allow comment on *any subject* that is within the jurisdiction of the local government. A board need not provide a public comment period if no regular meeting is held during the month.

The act allows boards to adopt reasonable regulations governing the conduct of the public comment period, including but not limited to rules setting time limits for speakers, and providing for (1) the designation of spokesmen for groups supporting or opposing the same position, (2) the selection of delegates from groups with the same position when the meeting hall's capacity is exceeded, and (3) the maintenance of order and decorum in the conduct of the hearing. This authorization of regulations is taken almost verbatim from the statutes governing the conduct of public hearings by counties and municipalities, respectively (G.S. 153A-52 and G.S. 160A-81).

Fleming Bell  
October 2005

# Preface

Bonnie E. Davis's highly useful, out-of-print work, *Suggested Rules of Procedure for Small Governing Boards*, has been revised and expanded in this new edition, entitled *Suggested Rules of Procedure for Small Local Government Boards*. As the revised title suggests, this handbook is intended for use by a wide variety of boards in local government, from boards of health and library boards to water and sewer authorities. Many of these boards are listed in Appendix B along with references to specific procedural statutes applicable to each of them. *Suggested Rules for Small Boards* is a companion to two other Institute of Government publications, *Rules of Procedure for the Board of County Commissioners*, 2d ed., revised, 1995, by Joseph S. Ferrell, and *Suggested Rules of Procedure for a City Council*, 3d ed., forthcoming, by this author.

The modifications in this edition are intended to update and enlarge Davis's treatment of several subjects and to reflect the requirements of North Carolina's open meetings law. The rules governing agendas, the powers of the chair, citizen participation in meetings, closed sessions, minutes, appointments, and some procedural motions, for example, have been rewritten or modified. New rules dealing with voting by written ballot, ratification of actions, and committees and boards have been added, along with an appendix summarizing the requirements for the procedural motions permitted under the rules.

The handbook does not include procedures to be followed by local boards when they must act in a quasi-judicial manner. Examples of rules for such situations may be found on pages 42 through 71 of *The Zoning Board of Adjustment in North Carolina*, revised ed., 1984, by Michael B. Brough and Philip P. Green, Jr., also published by the Institute of Government.

I thank my colleagues Joseph S. Ferrell and David M. Lawrence, who reviewed a version of the revised text, as well as other colleagues who provided information about the procedural statutes applicable to particular boards. I am also very grateful to James H. Slaughter, attorney, Certified Professional Parliamentarian, and Professional Registered Parliamentarian, from Greensboro, North Carolina, who reviewed the text and provided many useful suggestions. My editors Marjorie Hudson and Lucille Fidler also suggested many helpful changes. I hope that this new edition of *Suggested Rules of Procedure for Small Local Government Boards* will prove to be a valuable tool for the local boards that seek to conduct the business of North Carolina local government in an open, fair, careful, and expeditious manner.

A. Fleming Bell, II

Chapel Hill  
Summer 1998

# Introduction

THESE RULES OF PROCEDURE were designed for use by small local government boards. “Small” is a relative term; boards with as many as twenty-five members may find the rules useful. Appendix A lists some of the kinds of boards for which these rules were designed. The rules incorporate general principles of parliamentary procedure and applicable North Carolina laws. Essentially the rules are a modified version of those found in *Robert’s Rules of Order Newly Revised* (hereinafter referred to as *RONR*). However, *RONR* is intended primarily to guide the deliberations of large legislative bodies; its detailed rules are not always appropriate for small governing boards. A small board can afford to do some things that are not appropriate for a large body, and in some cases the procedure prescribed by *RONR* for larger assemblies is unnecessarily cumbersome. *RONR* itself recognizes that more informality is desirable with small boards (*RONR* § 48, pp. 477–78). These rules detail the more informal procedures that might be expected with a small board. This book modifies *RONR* with the following principles in mind:

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

The North Carolina laws that establish or authorize the many small boards used in local government usually provide little or no guidance as to the procedures to be followed by such boards. The laws governing city councils and boards of county commissioners do give more specific guidelines for those boards; rules of procedure for them are covered in two separate Institute of Government publications. [See Joseph S. Ferrell, *Rules of Procedure for the Board of County Commissioners*, 2d ed. (Chapel Hill: Institute of Government, 1994) and A. Fleming Bell, II, *Suggested Rules of Procedure for a City Council* (Chapel Hill: Institute of Government, 1986, new edition forthcoming).] Any procedural rules adopted by a small board must of course follow the requirements specifically prescribed for that board by the state legislature or other authorizing body. Particular procedural statutes for some of the more common kinds of small local boards authorized by state law are listed in Appendix A. The rules presented in this book are drafted somewhat generally so that each kind of local board can easily adapt them to comply with statutory requirements particular to it.

Many of the rules suggested here, do, however, reflect the provisions of the North Carolina open meetings law, Chapter 143, Article 33C, of the North Carolina General Statutes (hereinafter G.S.) (G.S. 143-318.9 to 143-318.18). The open meetings law applies to practically all of the small local government boards that would have occasion to use this book: it covers all elected or appointed authorities, boards, commissions, councils, or other bodies of one or more counties, cities, school administrative units, or other political subdivisions or public corporations in the state that (1) have two or more members and (2) exercise or are authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. It also applies to most public hospital governing boards, including the boards of nonprofit hospital corporations. The law does not apply, however, to certain staff meetings. See G.S. 143-318.10(b) and (c).

When the rules in this book state procedures that are required by sections of the open meetings law, that fact is noted in the *Comments*. Local boards must follow procedures required by the open meetings law whether or not they adopt some version of the rules in this book. And, of course, there may be other procedural statutes that apply to the board as well (see Appendix A).

A local board has a relatively free hand in designing its own rules of procedure, as long as the requirements of the open meetings law and any other applicable statutes are followed, any rules imposed on the board by its creator are obeyed, and the board adheres to the general principles listed earlier. Most of the rules in this book are merely suggested procedures, and each board should feel free to change them to suit local needs and customs. For example,

Rule 9 eliminates the requirement of a second to a motion. The board may choose to adopt that rule or not. Alternative wordings and optional language for some of the rules are shown enclosed in brackets.

## Suggested Rules of Procedure

### Rule 1. Regular Meetings

The board shall hold a regular meeting on the [\_\_\_\_\_] of each month, except that if a regular meeting day is a legal holiday, the meeting shall be held on the next business day. The meeting shall be held at [\_\_\_\_\_] and shall begin at [\_\_\_\_\_]. A copy of the board's current meeting schedule shall be filed with [the clerk to the board of county commissioners] [the city clerk] [the board's clerk or secretary].

**Comment:** Most local government boards are required by law to meet at regular intervals. G.S. 143-318.12(a), part of the open meetings law, requires the schedule of regular meetings for public bodies covered by that law to be kept on file as follows: (a) each public body that is part of a county government keeps the schedule on file with the clerk to the board of commissioners; (b) each public body that is part of a city government keeps it on file with the city clerk; and (c) other public bodies file the schedule with the body's clerk or secretary. If a public body in the third category does not have a clerk or secretary, the schedule must be kept on file with the clerk to the board of county commissioners of the county in which the board regularly meets.

### Rule 2. Special, Emergency, and Recessed [or Adjourned] Meetings

**(a) Special Meetings.** The chair [or a majority of the members] may at any time call a special meeting of the board. 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) given to each board member; (2) posted on the board's principal bulletin board or, if none, at the door of the board's usual meeting room; 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 board's clerk] [the board's secretary] [a person designated by the board].

A special meeting may also be called or scheduled by vote of the board in open session during another duly called meeting. The motion or resolution calling or scheduling 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 board's principal bulletin board or, if none, at the door of the board's usual meeting room 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 board's clerk] [the board's secretary] [a person designated by the board]. [Such notice shall also be mailed or delivered at least forty-eight hours before the meeting to each board member not present at the meeting at which the special meeting was called or scheduled.]

Only those items of business specified in the notice may be discussed or transacted at a special meeting, unless (1) all members are present and (2) the board determines in good faith at the meeting that it is essential to discuss or act on the item immediately.

**Comment:** 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 board members must be notified of any special meetings that some of the members may call. Different boards will have different rules concerning who may call special meetings, depending on either their governing statutes or rules or on the board's preferences.

The board 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 board's "sunshine list" are notified

(forty-eight hours) [see G.S. 143-318.12(b)(2)]. A discussion of procedures and possible fees for inclusion on the “sunshine list” can be found in G.S. 143-318.12(b)(2).

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

The second paragraph of Rule 2(a) deals with special meetings called during another duly called meeting. 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 or delivered to the news media and other persons on the board’s “sunshine list,” as required with any other special meeting. The law generally requires no special notice to board 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. An optional provision of this rule allows the board to go a bit beyond what the law specifies by providing notice to members who were absent from the meeting where the scheduling took place.

Under these rules, no items may be added to the agenda for a special meeting unless all of the members are present and they determine in good faith that the item to be added must be discussed or acted on immediately. 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 board 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 board 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.

**(b) Emergency Meetings.** The chair [or a majority of the members] may at any time call an emergency meeting of the board by signing a written notice stating the time and place of the meeting and the subjects to be considered. Written or oral notice of the meeting shall be given to each board member and to each local newspaper, local wire service, local radio station, and local television station that has filed a written emergency meeting notice request with [the board’s clerk] [the board’s secretary] [some other person designated by the board], and whose request includes the newspaper’s, wire service’s, or station’s telephone number. Notice to the news media shall be given at the expense of the party notified.

Emergency meetings may be called only because of generally unexpected circumstances that require immediate consideration by the board. Only business connected with the emergency may be considered at an emergency meeting.

**Comment:** Rule 2(b) states the requirements of the open meetings law concerning emergency meetings [G.S. 143-318.12(b)(3)]. 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 called when needed by whoever is authorized to call them (for example, the chair or a majority of the members of the board).

**(c) Recessed [or Adjourned] Meetings.** A properly called regular, special, or emergency meeting may be recessed [or adjourned] to a time and place certain by a procedural motion made and adopted as provided in Rule 16(b), Motion 2, 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 such a recessed [or adjourned] session of a properly called regular, special, or emergency meeting.

**Comment:** In Rule 2(c), note that a motion to recess (or adjourn) a meeting to a time and place certain must

comply with the requirements of Rule 16 concerning procedural motions. See both that rule's general requirements and the particular requirements of Motion 2 of Rule 16. It must be made in open session, because 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 21 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 recessed session. As explained in the *Comment* to Rule 16, Motion 2, 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 practice. The open meetings law uses "recess to a time and place certain," while other statutes sometimes use "adjourn to a time or place certain" [see, for example, G.S. 153A-40(a)] or state the terms *recess* and *adjourn* as alternatives [see, for example, G.S. 160A-71(b1)].

### Rule 3. Organizational Meeting

On the date and at the time of [the first regular meeting] in [July], the newly [appointed] [elected] members shall take and subscribe the oath of office as the first order of [new] business. As the second order of [new] business, the board shall elect a chair, if he or she is not otherwise selected, using one of the nomination and voting procedures set out in Rule 25.

**Comment:** Members of local boards are typically appointed or elected at the same time every year or every other year. An organizational meeting should be held whenever new members are selected so that they can properly qualify for office by taking and signing the required oath. The organizational meeting is often a part of another properly scheduled meeting, although it could be scheduled as a separate regular or special meeting.

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.

Board members with questions about oaths should consult the board's attorney or the following Institute of Government publications: A. Fleming Bell, II, *Ethics, Conflicts, and Offices: A Guide for Local Officials* (Chapel Hill: Institute of Government, 1997) and Joseph S. Ferrell, "Questions I Am Frequently Asked: What Forms of Oath Should a Public Officer Take?" *Popular Government* 62 (Fall 1996): 43.

The board's chair is also typically elected at the organizational meeting. If new members join the board only every other year, and the chair serves a one-year term, a new chair must be elected in the appropriate month in the off years.

The question of who presides at the organizational meeting until the election of a new chair is best resolved by local custom. Some boards call on their clerk or secretary, chief administrator, or attorney to preside; others call on the outgoing chair to preside until the new chair is selected.

A nomination and voting procedure, rather than a motion, should generally be used to select the chair, in order to allow all board members to express their preference. See guidelines for this procedure in Rule 25.

Rule 3 permits the qualification of newly elected members and the election of a new chair to be preceded by the completion of pending items of unfinished business by the incumbent board, if this is the local custom. If such is the custom, the swearing-in and selection of a chair are the first items of new business on the agenda.

## Rule 4. Agenda

**(a) Proposed Agenda.** The board's [clerk] [secretary] [chief administrative officer] 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 board member may, by a timely request, have an item placed on the proposed agenda. A copy of all proposed [orders] [policies] [regulations] [resolutions] shall be attached to 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 board member shall receive a copy of the proposed agenda [and the agenda package] and [it] [they] shall be available for public inspection and/or distribution when [it is] [they are] distributed to the board members.

**(b) Adoption of the Agenda.** As its first order of business at each meeting, the board shall, as specified in Rule 6, discuss and revise the proposed agenda and adopt an agenda for the meeting. The board may by majority vote add items to or subtract items from the proposed agenda, except that the board may not add items to the agenda of a special meeting unless (a) all members are present and (b) the board determines in good faith at the meeting that it is essential to discuss or act on the item immediately. If items are proposed to be added to the agenda, the board may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all board members.

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

**(c) Open Meetings Requirements.** The board 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 board to understand what is being deliberated, voted, or acted on. However, the board may 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.

**Comment to (a) and (b):** Because of the volume and complexity of the matters they must consider, most boards use agendas for their meetings. Some small government boards use agendas only to organize the materials they must consider and to give themselves an opportunity to study the issues before they meet. These boards generally allow last-minute additions to the agendas of regular meetings by general consent. This rule takes that approach.

Other small boards use their agendas to control the length of their meetings. In that case the board will often hold an agenda meeting or a work session before the regular meeting to ask questions and thoroughly explore the proposals that must be voted on at the regular meeting. Note that such an agenda meeting or work session is considered a meeting of the board for purposes of the open meetings law and is subject to the regular or special meeting requirements in these rules. Generally, these boards take a stricter approach and do not allow late additions to regular meeting agendas unless an emergency exists.

These rules require a stricter approach for agendas of special meetings, because of open meetings law concerns. Under this approach, items may be added to the agenda of a special meeting only if all members are present and the board determines in good faith that it is essential to discuss or act on the item immediately. This restriction avoids surprise and is consistent with the spirit of the open meetings law, although neither requirement is actually part of the law. See the statement of public policy underlying the law in G.S. 143-318.9. For further discussion of adding items to special meeting agendas, see the *Comment* to Rule 2(a).

Rule 4(a) requires that longer or more complex proposals be in writing and attached to the agenda, so that board members will have a clear idea of the issues with which they will be dealing. The board may choose what sorts of proposed orders, policies, regulations, resolutions, or other items it wishes to make subject to this requirement. The board may also require that copies of relevant documents be provided to all board members when additions to the agenda are proposed at the meeting.

Some boards also use an agenda package to provide background information about proposed agenda items to the board members. The use of such a package is optional.

Small boards frequently desire to discuss an issue informally, attempting to reach a group consensus, before a formal motion is proposed. While standard parliamentary practice requires that a motion be made before any discussion can occur, conducting discussion first can be very useful to a small board. Such discussion may be especially important if the board does not hold agenda meetings or work sessions at which the members can discuss issues among themselves, before the more formal meetings at which the board generally takes action. This rule authorizes the practice of “discussing before moving” by permitting the board to designate particular agenda items “for discussion and possible action.” If a motion is later made, discussion on the motion is then in order.

The board’s clerk, secretary, or chief administrative officer may find it convenient to maintain a mailing list of interested parties who wish to receive a copy of the proposed agenda and/or agenda package regularly. Since the background materials included with the proposed agenda in the agenda package may be quite voluminous, the board may wish to charge those receiving the full agenda package for the cost of reproduction. At the very least, the board should make provision for the public to inspect and copy the agenda package in the offices of whoever provides administrative services for the board, since the agenda package is a matter of public record open to public inspection.

**Comment to (c):** The last paragraph of this rule paraphrases the open meetings law’s restrictions on acting by reference to agendas or other items [see G.S. 143-318.13(c)].

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

Any individual or group who wishes to address the board shall make a request to be on the agenda to the board’s [clerk] [secretary] [chief administrative officer]. However, the board shall determine at the meeting whether it will hear the individual or group.

**Comment:** The board may decide as a matter of general policy to 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 board the right to decide whether there is time to hear its comments. If the board 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. For further information on public comment during board meetings, see A. Fleming Bell, II, John Stephens, and Christopher M. Bass, “Public Comment at Meetings of Local Government Boards,” Parts One and Two, *Popular Government* 62 (Summer 1997): 3–14 and (Fall 1997): 27–37, respectively.

## **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; adoption of an agenda
- Approval of the minutes
- Public hearings
- Administrative reports
- Committee reports
- Unfinished business
- New business



Informal discussion and public comment

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

**Comment:** Note that the suggested order of business places public hearings and administrative reports early in the meeting. These are the main items that involve citizens and administrative officials who may not need or wish to be present for the entire meeting. Unfinished business under these rules consists of matters that are carried over from a previous meeting that was adjourned before the board completed its order of business and matters that were specifically postponed to the present meeting [see Rule 16(b), Motion 11].

## Rule 7. Presiding Officer

The chair of the board shall preside at board meetings if he or she is present, unless he or she becomes actively engaged in debate on a particular matter. The chair [shall have the right to vote only when there is a tie] [may vote in all cases]. In order to address the board, a member must be recognized by the chair.

If the chair is absent, the [vice-chair] [another member designated by vote of the board] shall preside. [If both the chair and vice-chair are absent, another member designated by vote of the board shall preside.] The vice-chair or another member who is temporarily presiding retains all of his or her rights as a member, including the right to make motions and the right to vote.

If the chair becomes actively involved in debate on a particular matter, he or she [may] [shall] designate another board member to preside over the debate. The chair shall resume presiding as soon as action on the matter is concluded.

The presiding officer shall have the following powers:

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

A decision by the presiding officer under any of the first three powers listed may be appealed to the board upon motion of any member, pursuant to Rule 16, Motion 1. Such a motion is in order immediately after a decision under those powers 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 chair ordinarily presides at board meetings. In his or her absence, the vice-chair, if there is one, presides. If there is no vice-chair or if both the chair and vice-chair are absent, the board typically selects a temporary presiding officer.

Boards may choose whether the chair always votes or votes only to break a tie. Someone who is temporarily presiding in the chair's place is still a full member of the board and thus is entitled to make motions and to vote.

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 ensure even-handed treatment to both sides during a heated debate. Ordinarily the chair should ask the vice-chair, if there is one, to preside in such a situation, but if he or she is also engaged in the debate, the chair should feel free to call on some other board member

in order to achieve the purpose of this rule.

The chair or anyone presiding in the chair's place has substantial procedural powers, but those powers are not absolute. Under this rule and Rule 16, Motion 1, any board member is entitled to make a motion to appeal to the other members concerning the presiding officer's decisions on 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 chair or other presiding officer may adjourn without the board's vote or appeal in an emergency, and he or she may also call a brief recess without a vote at any time, when 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. Action by the Board**

The board shall proceed by motion, except as otherwise provided for in Rules 3, 4, and 25. 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 8 allows two variations, one based on Rule 4 and the other on Rules 3 and 25.

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*.

Rules 3 and 25 specify that the board is to make appointments using an election method, rather than by motion, in order to allow all board members to express their preferences. This method applies both to internal board appointments and to appointments to other bodies. The procedures to be followed are explained in Rule 25 and the accompanying *Comment*.

Traditionally, if the chair wishes to have a motion made, instead of making it personally, he or she states, "The Chair will entertain a motion that. . . ." This custom is sound if the chair may vote only in the case of a tie; if the chair may vote in all cases, he or she may make a motion as any other member would.

## **Rule 9. Second Not Required**

A motion does not require a second.

**Comment:** The philosophy underlying the requirement of a second is that if a proposal does not have at least some minimum level of support, it is not worth the time necessary to consider it. In a group of 100 persons, for example, requiring a second ensures that at least 2 percent of the group wishes to consider the proposal. On a five-member board, on the other hand, a proposal supported by one member already has the backing of 20 percent of the board membership. Since the board is small, efficient use of the board's time is not impaired by allowing consideration of a proposal that initially has the support of only one member. If a board wishes to retain the requirement of a second, however, it is free to do so.

This rule is consistent with the *RONR* concept that motions need not be seconded in meetings of smaller groups (*RONR* § 48, p. 477). Moreover, even if a board uses seconds, *RONR* notes that "after a debate has begun or, if there is no debate, after any member has voted, the lack of a second has become immaterial and it is too late to make a point of order that the motion has not been seconded" (*RONR* § 4, p. 36).

## **Rule 10. One Motion at a Time**

A member may make only one motion at a time.

**Comment:** None.

## **Rule 11. 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 16. Basically, a substantive motion is any motion other than the procedural motions listed in Rule 16. A substantive motion may deal with any subject within the board's legal powers, duties, and responsibilities. Indeed, since Rule 8 provides that the board shall proceed by motion, the substantive motion is the only way the board can act, unless it has adopted a special rule to deal with a particular situation. (See, for example, the provisions of Rule 25 on appointments.) The procedural motions detailed in Rule 16 set forth the various options the board has in disposing of substantive motions.

## **Rule 12. Adoption by Majority Vote**

A motion shall be adopted by a majority of the votes cast, a quorum as defined in Rule 22 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 board for adoption of a particular motion. Extraordinary voting requirements imposed by particular statutes are not specified in these rules. The board's attorney should be consulted as questions arise.

## **Rule 13. Voting by Written Ballot**

The board may choose by majority vote to use written ballots in voting on a motion. Such ballots shall be signed, and the minutes of the board shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the board's [clerk] [secretary] 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 14. 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:

The maker of the motion is entitled to speak first;

A member who has not spoken on the issue shall be recognized before someone who has already spoken;

To the extent possible, the debate shall alternate between proponents and opponents of the measure.

**Comment:** None.

## Rule 15. Ratification of Actions

To the extent permitted by law, the board 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 board'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 board concerning something that was done without board approval when advance authorization should have been obtained.

## Rule 16. 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 2(a) 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 Appendix B.

**(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 board, 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 action on a pending substantive matter; it may not interrupt deliberation of a pending matter. A motion to [recess] [adjourn] to a time and place certain shall also comply with the requirements of Rule 2(c).

**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 board wants to adjourn before completing final action on a matter, it may use a motion to defer consideration, to postpone to a certain time or day, to refer a motion to a committee, or to suspend the rules. Or, in accord with Rule 2(c), it may recess (or adjourn) the meeting to reconvene at a specified time and place. 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. 143-318.12(b)(1), 153A-40(a), and 160A-71(b1)]. 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 board 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 16(b), Motion 2, above], Motion 3 is a “motion to take a brief recess” rather than a “motion to recess.” Since the number of 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 presiding officer also has the power to call a brief recess at any time (see Rule 7).

**Motion 4. Call to Follow the Agenda.** The motion must be made at the first reasonable opportunity or it is waived.

**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 board may not suspend provisions of the rules that state requirements imposed by law on the board. For adoption, the motion requires an affirmative vote equal to [a majority] [two-thirds] of the entire membership of the board. [A majority is more than half.]

**Comment:** This motion is generally the same as the *RONR* motion to suspend the rules, except that it is debatable and amendable, and the number of affirmative votes required is either a majority or two-thirds of the entire membership of the board. Thus if a board has five members, three members must vote for the motion if the majority option is chosen and four members (the smallest number that is at least two-thirds) if the two-thirds option is selected. If only three or four members, respectively, are present at a particular meeting, all must vote for the motion in order to adopt it. This motion is in order when the board wishes to do something that it may legally do but cannot accomplish without violating its own rules. It permits the

board to exercise greater flexibility and perhaps informality than adhering strictly to the rules might allow. For example, the board might use this motion to allow it to consider an agenda item out of order, without formally amending the agenda that it had adopted.

The procedure described will pose some problems on a three-member board, because the rule can be manipulated so as to prevent one member from participating in the board's deliberations. Frequent use of the motion to prevent one member from presenting his or her proposals to the board or from speaking on an issue before the board is of doubtful legality. A three-member board may decide to require a unanimous vote for this motion to pass.

**Motion 6. To Go into Closed Session.** The board 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 board 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 a board 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 probably 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 board 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 (has not expired). A person who wishes to revisit the matter during that time must take action to revive consideration of the original motion [Rule 16(b), Motion 14], or else move to suspend the rules [Rule 16(b), Motion 5].

**Comment:** This motion allows the board 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 board [via a motion to revive consideration, Rule 16(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 16(b), Motion 11]. A matter that has been postponed to a certain time or day is brought up again automatically when that time arrives. Board action (approval of a motion to revive consideration) is required, however, before the board may again consider a substantive motion the consideration of which 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 board, however, a minimum period of debate on every proposal that comes before it strikes a better balance between efficiency and effective representation by all board 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 16(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 16(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 board 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 board.

**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. If the board does not use committees, this motion is unnecessary.

**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] [resolution] shall be reduced to writing before the vote on the amendment.

**Comment:** This motion is similar to the motion to amend in *RONR* except for the additional requirement to write down amendments to longer, typically more complex items such as resolutions or regulations.

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.

Some boards allow a “substitute motion” when major changes in a motion are proposed. Such a motion is in effect a type of amendment. To avoid confusion, “substitute motions” are not allowed under these rules. 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 other, sometimes lengthy, documents such as orders, policies, regulations, or resolutions. The board is free to choose the sorts of items for which this requirement will apply. Amendments to such documents, like the items themselves, should be in written form before they are voted on, both because of their importance and so that board members will be clear about the meaning of the amendments on which they are voting. Written amendments also make it easier to maintain the required minutes of the body accurately [see G.S. 143-318.10(e)].

Some boards have a practice of requiring the person making the original motion to approve of any proposed amendments to that motion. Such a practice is not recommended. Once a motion has been offered to the board, it is up to the board 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 18). If a motion has been withdrawn, the board members are generally free to make their own separate motions on the same subject.

**Motion 14. To Revive Consideration.** The board may vote to revive consideration of any substantive motion earlier deferred by adoption of Motion 9 of Rule 16(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 16(b), Motion 9.

**Motion 15. To Reconsider.** The board 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] [adjournment] 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 16(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. The motion to reconsider is permitted under these rules only when action on a pending matter concludes.

**Motion 16. To Rescind or Repeal.** The board 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 most small boards is in many respects a separate legal event. Unless prohibited by law, a board may at a subsequent meeting “undo” action taken at a previous meeting. This motion is in order only for those measures adopted by the board that may legally be repealed or rescinded. For example, it is not intended to suggest that the board may unilaterally rescind a binding contract.

**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 [a majority] [two-thirds] of the entire membership of the board. 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 board, a vote equal to either a majority or two-thirds, at the board’s option, of the entire membership is required. See the *Comment* to Rule 16(b), Motion 5, for an illustration of how this requirement works.

As with every other motion, a clincher motion may, in effect, be dissolved by a motion to suspend the rules [see Rule 16(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 17. 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 16(b), Motion 16, in North Carolina each meeting of a small local government board 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 16(b), Motion 17].

## Rule 18. 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 19. Duty to Vote

[Each member shall be permitted to abstain from voting, by so indicating when the vote is taken.] [Every member must vote unless excused by the remaining members of the board. A member who wishes to be excused from voting shall so inform the chair, who shall take a vote of the remaining members. No member shall be excused from voting except in cases involving conflicts of interest, as defined by the board or by law, or the member's official conduct, as defined by the board. In all other cases, a failure to vote by a member who is physically present in the board chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as [an affirmative vote] [a vote with the prevailing side]].

**Comment:** Some local boards allow abstentions, others do not. A board may choose either version of this rule. Those boards that do not allow members to abstain may instead choose to allow members to be excused from voting in particular cases, typically when a personal interest of the member, as defined by the board or by law, is implicated by the decision being made.

The first consequence set out under the second option for refusing to vote when one has not been excused is the same as that provided in G.S. 160A-75 for city councils in North Carolina. To govern such cases, a board may adopt this "failure to vote counts as a 'yes' vote" rule or some other policy such as the second consequence (failure to vote counts as a vote with the prevailing side).

## Rule 20. Special Rules of Procedure

*The board may adopt its own special rules of procedure, to be specified here.*

**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 21. Closed Sessions

The board may hold closed sessions as provided by law. The board shall commence a closed session only 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, mediations, arbitrations, 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 board shall terminate the closed session by a majority vote, using Motion 7 of Rule 16(b).

Only those actions authorized by statute may be taken in closed session. A motion to [adjourn] [recess] shall not be in order during a closed session [Rule 16(b), Motion 2].

**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 or recessing pursuant to Rule 16(b), Motion 2, 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 24.

## **Rule 22. Quorum**

A majority of the actual membership of the board [excluding vacant seats] shall constitute a quorum. A majority is more than half. The chair [shall] [shall not] be considered a member of the board in determining the number on which a majority is based and in counting the number of members actually present. 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:** A majority of the membership is generally considered a quorum for most deliberative bodies. Under this rule the board must decide whether it wishes to include or exclude vacant seats in determining the number of board members on which a quorum will be based. Either option is acceptable unless a specific statute or other rule governing the board specifies how a quorum is to be determined. For example, city councils in North Carolina must exclude vacant seats from the count (G.S. 160A-74), while boards of county commissioners must include them (G.S. 153A-43). The rule allows the board to choose whether to count the chair as a board member for quorum purposes; the board may choose not to count the chair if that person has a vote only in the case of a tie. The last sentence of this rule prevents a member from defeating a quorum by simply leaving the meeting.

## **Rule 23. Public Hearings**

Public hearings required by law or deemed advisable by the board shall be organized by a special order 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. The special order is adopted by a majority vote. Its specifications may include, but are not limited to, rules fixing the maximum time allotted to each speaker; providing for the designation of spokespersons for groups of persons supporting or opposing the same positions; 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 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 board meetings shall also apply to public hearings at which a majority of the board is present; such a hearing is considered to be part of a regular or special meeting of the board. These requirements also apply to hearings conducted by appointed or elected committees of board 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 board shall vote to open the hearing and] 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 declare the hearing ended] [shall entertain or make a motion to end the hearing].

**Comment:** Local boards may be required or may desire to hold public hearings from time to time concerning particular matters. The power to do so can probably be implied from the fact that the board was created to deal with matters of public concern, unless a specific statute provides otherwise. The board should consult its enabling statutes and its attorney if it has any questions about its authority to conduct public hearings.

This rule provides a procedure for calling public hearings. It also provides for the board to adopt rules governing the conduct of hearings and to continue hearings without further advertisement. These provisions are very similar to the authorizations in the public hearing statutes for city and county governing boards (G.S. 160A-81 and 153A-52, respectively) and can be followed by most small local government boards that are authorized to hold public hearings.

Public hearings, like other board meetings, are also subject to the notice, continuation, and other requirements of the open meetings law, if a majority of the board is present at the hearing, since legally such a hearing is part of a meeting of the board. Appointed or elected committees of the board are probably also covered by this law, although this point is not completely free from doubt. Those requirements are reflected in this rule. As part of a board or committee meeting, a hearing may be continued to another day if the procedure for recessing meetings to a time and place certain is followed. 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 24. Minutes

Full and accurate minutes of the board proceedings, including closed sessions, shall be kept. The board 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 board, the entire board 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:** The open meetings law requires that full and accurate minutes be maintained 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 board actions and are a matter of public record. To be "full and accurate," they must include all actions taken by the board 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 board's discussion. Particular comments by members or other persons may be included in the minutes if the board so desires. Since the board usually takes action by motion (Rule 8), all motions that are made must be included in the minutes, along with a record of the motions' disposition. The rule also allows any member to request that the minutes

include a record of how each member voted.

Under the open meetings law, the board 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 board should consult with its 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 board 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 board action or by action of an agent 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. For a discussion of minutes and general accounts of closed sessions, see David M. Lawrence, “1997 Changes to the Open Meetings and Public Records Laws,” *Local Government Law Bulletin* No. 80 (August 1997).

## **Rule 25. Appointments**

The board may consider and make appointments to other bodies, including its own committees, if any, only in open session. The board may not consider or fill a vacancy among its own membership except in open session.

The board shall use the following procedure to make appointments to various other boards and committees: [The appointment committee of the board shall report on nominations received and reviewed and make its appointment recommendations, if any.] The chair shall [then] open the floor for nominations, whereupon the names of [other] possible appointees may be put forward by the board members. The names submitted [by the committee and by individual board members] 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 nominee(s) receiving the highest number of votes shall be appointed. If more than one appointee is to be selected, then each member shall have as many votes as there are slots to be filled. A member must cast all of his or her votes and cast them for different nominees.]

[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.]

**Comment:** The first paragraph of this rule states some of the requirements of the open meetings law concerning appointments by public bodies. The options presented in the following paragraphs detail some of the possible methods that may be used to make appointments. If the board wishes to vote by written ballot, it should consult Rule 13, which states the requirements of the open meetings law for use of written ballots by public bodies.

Some boards use an appointment committee. The committee receives nominations from the board members and perhaps from other persons, reviews the nominees’ qualifications, and reports its recommendations to the full board. This procedure is provided for by the optional language in the second paragraph of the rule. Many boards also use public advertisements to solicit applications for appointment from citizens. See Rule 26 concerning the applicability of the open meetings law to all board committees, including the appointment committee.

## Rule 26. Committees and Boards

**(a) Establishment and Appointment.** The board 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 board'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 a local governmental 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:** Rule 26(a) recognizes that it is common for many boards to appoint committees or other groups to aid the board in its work. Such groups may be composed of board members only, of other persons only, or of a combination of board members and other persons. Specific statutes may govern some of these committees and boards.

Rule 26(b) states requirements of G.S. 143-318.10(b) and (c) (parts of the open meetings law). In determining if a group is covered by the open meetings law, whether the group is called a commission, authority, or committee is generally not important, nor does it matter who within the local government established the group.

At least two ambiguities exist concerning the open meetings law's coverage with respect to local governments. First, 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. Second, it is sometimes difficult to determine the circumstances in which nonprofit entities are subject to the law. For more information on these points, see David M. Lawrence, *Open Meetings and Local Governments in North Carolina: Some Questions and Answers*, 5th ed. (Chapel Hill: Institute of Government, 1998): 2-5.

## Rule 27. 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, unless a statute or a rule of the body that created the board provides otherwise. Adoption of an amendment shall require an affirmative vote equal to a quorum.

**Comment:** Local boards may generally amend their rules of procedure whenever they choose, unless a statute or a rule of the body that created the particular board provides otherwise. To ensure that any amendments adopted reflect the will of the board majority, a vote equal to a quorum is required to approve an amendment.

## Rule 28. Reference to *Robert's Rules of Order*

Boards shall refer to the current edition of *Robert's Rules of Order Newly Revised*, to answer procedural questions not resolved in these rules, so long as *RONR* does not conflict with North Carolina law or with the spirit of these rules.

**Comment:** *RONR* was designed to govern large legislative assemblies, 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 local government boards.

# **Appendix A**

## **Some of the Procedural Statutes Governing Some Small Local Government Boards in North Carolina**

*Note:* The North Carolina General Statutes are referred to as G.S.

### **Alcoholic Beverage Control Board**

G.S. 18B-700

### **Appearance Commission**

G.S. 160A-451

### **Area Mental Health, Developmental Disabilities, and Substance Abuse Authority**

G.S. 122C-116, -118 to -119.1

### **Board of Adjustment**

**City:** G.S. 160A-388

**County:** G.S. 153A-345

### **Board of Education**

G.S. 115C-35, -37 to -37.1, -39, -41, -45

### **Board of Elections**

G.S. 163-30 to -31, -33.1

### **Board of Equalization and Review**

G.S. 105-322

### **Board of Health**

G.S. 130A-35, -37

### **Board of Social Services**

G.S. 108A-1 to -7

### **Community-Based Alternatives Youth Services Advisory Committee**

G.S. 7A-289.13

### **Community Child Protection Team and Child Fatality Prevention Team**

G.S. 143-576.1 to -576.6, 143-578

### **Dangerous Dog Board and Appellate Board**

G.S. 67-4.1(c)

### **Economic Development Commission**

G.S. 158-8 to -9

### **Fire Protection District Commission**

G.S. 69-25.7

**Historic Preservation Commission**

G.S. 160A-400.7

**Hospital Authority Board of Commissioners**

G.S. 131E-17 to -19, -21 to -22

**Housing Authority**

G.S. 157-5 to -8, -34, -36

**Library Board of Trustees**

G.S. 153A-265 to -266

**Metropolitan Sewerage District Board**

G.S. 162A-67

**Metropolitan Water District Board**

G.S. 162A-34

**Municipal Hospital Governing Authority**

G.S. 131E-7(c), -9

**Parks and Recreation Commission**

G.S. 160A-354

**Planning Agency**

**City:** G.S. 160A-361

**County:** G.S. 153A-321

**Public Transportation Authority**

G.S. 160A-577

**Regional Council of Governments**

G.S. 160A-473

**Regional Planning Commission**

G.S. 153A-392, -394

**Regional Solid Waste Management Authority**

G.S. 153A-424 to -425

**Regional Sports Authority**

G.S. 160A-479.4 to -479.5

**Sanitary District Board**

G.S. 130A-50, -54, -56

**Soil and Water Conservation District Board of Supervisors**

G.S. 139-6 to -7



**Water and Sewer Authority**

G.S. 162A-5

**Watershed Improvement Commission**

G.S. 139-41

# Appendix B

## Some of the Procedural Statutes Governing Some Small Local

THE PROCEDURAL MOTIONS permitted under these rules are set out in full in Rule 16(b). Under that rule all procedural motions are debatable and none require a second. All may be amended, subject to the stated limitations on motions to amend [Rule 16(b), Motion 13]. Except where indicated otherwise, procedural motions may interrupt deliberations on a pending substantive matter.

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 number of votes is the same number as is required for a quorum. Thus, for example, if a quorum of a board is four, the number of votes required to adopt the motion is four.

Motion	Vote Required	Special Requirements
1. To Appeal a Procedural Ruling of the Presiding Officer [page 16]	Majority	Is in order immediately after the presiding officer announces a procedural ruling, as specified in Rule 7, 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.
2. To Adjourn [page 17]	Majority	May not interrupt deliberation of pending substantive matter. Motion to [recess] [adjourn] to a time and place certain must also comply with Rule 2(c).
3. To Take a Brief Recess [page 17]	Majority	None.
4. Call to Follow the Agenda [page 18]	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 [page 18]	[Majority] [Two-thirds] of entire membership	The board may not suspend provisions of the rules that state requirements imposed by law on the board.
6. To Go into Closed Session [page 18]	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.

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| 7. To Leave Closed Session [page 19]                                 | Majority | None.   |
| 8. To Divide a Complex Motion and Consider It by Paragraph [page 19] | Majority | None.   |
| 9. To Defer Consideration [page 19]                                  | Majority | <p>A substantive motion the consideration of which has been deferred expires [<u>100</u>] days thereafter unless a motion to revive consideration is adopted. (See Motion 14.) While a deferred motion remains pending, a new motion with the same effect cannot be introduced.</p> <p><b>Caution:</b> Do not confuse with Motion 11.</p>   |
| 10. Motion for the Previous Question [page 20]                       | Majority | <p>Not in order until there have been at least [<u>20</u>] minutes of debate and every member has had an opportunity to speak once.</p>   |
| 11. To Postpone to a Certain Time or Day [page 20]                   | Majority | <p>While a postponed motion remains pending, a new motion with the same effect cannot be introduced.</p> <p><b>Caution:</b> Do not confuse with Motion 9.</p>   |
| 12. To Refer a Motion to a Committee [page 21]                       | Majority | <p>[<u>60</u>] days or more after a substantive motion has been referred to a committee, the introducer may compel consideration of the measure by the entire board, whether or not the committee has reported the matter to the board.</p>   |
| 13. To Amend [page 21]   | Majority | <p>(a) Amendments must be pertinent to the subject matter of the motion being amended. An amendment is improper if adoption of the amendment would have 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 [order] [policy] [regulation] [resolution] shall be reduced to writing before the vote on the amendment.</p> |

14. To Revive Consideration [page 22]	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 [page 23]	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 during which the original vote was taken, including any continuation of that meeting through [recess] [adjournment] 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 [page 23]	Majority	Not in order if rescission or repeal of an action is forbidden by law.
17. To Prevent Reintroduction for [Six] Months [page 23]	[Majority] [Two-thirds] of entire membership	In order immediately following the 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 board, whichever occurs first.