



The City of Lowell

Rules of Procedure

for the

Lowell City Council

REVISED Adoption March 9, 2021

*City of Lowell*

101 W. First Street • Lowell, North Carolina 28098 • Phone: 704-824-3518

## Rules of Procedure

Note: These rules of procedure were drafted with significant reliance on Suggested Rules of Procedure for Small Local Government Boards, Second Edition, by A. Fleming Bell, II.

### Rule 1. Regular Meetings

The council shall hold a regular meeting on the second Tuesday 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 Lowell City Hall, 101 West First Street and shall begin at 6:00 pm. A copy of the council's current meeting schedule shall be filed with the city clerk.

**Comment:** G.S. 160A-71 allows the city council to fix a time and place for regular meetings. If the council does not do so, it is required to meet at least once a month at 10 a.m. on the first Monday. Although the general law permits a council to fix a regular meeting time that is less frequent than once a month, many city charters require the council to meet at least monthly. G.S. 143-318.12(a) (part of the open meetings law) requires the council's schedule of regular meetings to be kept on file with the city 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.

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

(a) **Special Meetings.** The mayor, the mayor pro tempore, or any two members of the council may at any time call a special council meeting 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 stated its time and place and the subjects to be considered shall be (1) delivered to the mayor and each council member or left at his or her usual dwelling place; (2) posted on the council's principal bulletin board, or if none, at the door of the council'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 city 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 council 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 council 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 council's principal bulletin board, or if none, at the door of the council'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 city clerk. Such notice shall also be mailed or delivered at least forty-eight hours before the meeting to each council member, and to the mayor if he or she was not present at that meeting. Only those items of business specified in the notice may be discussed or transacted at the special meeting called in this manner, unless all members are present or those not present have signed a written waiver of notice, and the council

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 notice requirements for special meetings called by the mayor, the mayor pro tempore, or any two council members under G.S. 160A-71(b)(1). 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 the mayor and council members to forty-eight hours. This change recognizes that the council 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 are inclusion on the "sunshine list" can be found in G.S. 143-318.12(b)(2).

In accordance with the requirements of G.S. 160A-71(b)(1), 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. An optional provision of this rule establishes an additional requirement: no items may be added to the agenda for a special meeting called in this manner unless the council determines in good faith that 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 board from taking up unannounced subjects at a special meeting if the requirements of G.S. 160A-71(b)(1) are met, 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 council 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 council 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 council's "sunshine list", as required with any other special meeting. G.S. 160A-71(b)(2) generally requires no special notice to council 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 council to go a bit beyond what the law specifies by providing notice to members who were absent from the meeting where the special meeting was scheduled.

(b) **Emergency Meetings.** Emergency meetings of the city council may be called only because of generally unexpected circumstances that require immediate consideration by the council. 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 council.

(1) The mayor, the mayor pro tempore, or any two members of the council may at any time call an emergency council 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 mayor and each council 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 mayor and all members of the council are present and consent thereto, or when those not present have signed a written waiver of notice, but only in either case if the council 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 files a written emergency meeting notice request, which includes the newspaper's, wire service's, or station's telephone number, with the city clerk. This notice shall be given either by telephone or by the same method used to notify the mayor and the council 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). The city council procedural states do not mention emergency meetings, so they must be considered a type of special meeting. The first method, described in G.S. 160A-71(b)(1), requires six hours' minimum notice to council members and the mayor. The second method, specified in G.S. 160A-71(b)(2), allows a meeting to be held whenever the entire council can be assembled or written waivers can be obtained from those not present, as long as the emergency meeting notice requirements are satisfied. The third method for calling special council meetings, see G.S. 160A-71(b)(3), is not allowed for emergency meetings. 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 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 18, 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 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 18 concerning procedural motions. See both the rule's general requirements and the particular requirements of Motion 2. 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 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. No notice requirements are imposed by the city council procedure statutes for adjourned or recessed sessions. As explained in the Comment to Rule 18, 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 law and practice. G.S. 160A-71(b1) states the terms recess and adjourn as alternatives.

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

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 pro tempore. 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.

All public officers must take the oath of office set forth in Article VI, Section 7, of the North Carolina Constitution. Council members may also include in the oath to be taken, those provisions of the oaths set out in G.S. 11-7 and -11 that are different from the constitutional oath. 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); James Long and C.E. Hinsdale, *Oaths of Office for the Use of City, County, and State Officials in North Carolina* (Chapel Hill: Institute of Government, 1975); and Joseph S. Ferrell, "Questions I am Frequently Asked: What Forms of Oath Should a Public Officer Take?" *Popular Government* 62 (Fall 1996): 43.

Who presides at the organizational meeting until the new mayor is sworn in is a question best resolved by local custom. In some cities the city clerk, manager, or attorney presides, and in others the retiring mayor presides until the new mayor is sworn in.

The incumbent council may fix the date and time of the organizational meeting. If it does not do so, the meeting is held on the date and at the time of the first regular meeting in December after the municipal election results have been certified under the state election laws. If the council uses the "default" time and place, G.S. 160A-68(a) may require that the organization of the council be the first thing that occurs "on the date and at the time" of the first regular meeting in December. While this rule permits the qualification of newly elected members and the election of a mayor pro tempore and (if necessary) of a mayor to be preceded by the completion of pending items of unfinished business by the incumbent council if this is the local custom, an incumbent council wishing to proceed in this manner should so specify in fixing the time and place for the organizational meeting. In this case, the swearing-in and election are the first items of "new business" on the agenda.

#### **Rule 4. Agenda**

- (a) **Proposed Agenda.** The City Manager shall prepare a proposed agenda for each meeting. Any council member may, by a timely written request, have an item placed on the proposed agenda. A request to have an item of business placed on the agenda must be received at least four working days before the meeting. In submitting a request to add an item to the agenda, Council members shall include a full and complete explanation of the item and reasonable supporting material for inclusion in the agenda packet.

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 reasonable and available. Each council member shall receive a copy of the proposed agenda and agenda package and they shall be available for public inspection and distribution or copying when they are distributed to the council members.

(b) **Adoption of the Agenda.** As its first order of business at each meeting, the council shall, as specified in Rule 6, 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 council may, by majority vote, require that written copies of particular documents connected with the items be made available at the regular meeting to all council members.

The council may by majority vote add items to or subtract items from the proposed agenda, except that (a) the council may not subtract items from the proposed agenda stated in the notice of a special meeting called by the mayor, mayor pro tempore, or two council members, unless those calling the meeting consent to the deletion, (b) the council may not add items to the proposed agenda stated in the notice of a special meeting called by the mayor, mayor pro tempore, or two council members, 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 council 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 council 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 items before making any motion concerning that item.

**Comment to (a) and (b):** Because of the volume and complexity of the matters they must consider, most councils use an agenda for their meetings. This rule describes the typical agenda preparation procedure for regular and some special council meetings. Councils should adapt it to accommodate the special circumstances that accompany emergency and many special meetings.

Two uses of agendas are common. Some councils use an agenda only to organize the materials they must consider and to give themselves an opportunity to study the issues before they meet. These councils generally allow last-minute additions to the agenda by general consent. This rule takes that approach. Note, however that G.S. 160A-71(b)(1) requires that all council members be present or consent in writing before additions can be made to the subjects listed on the notice of a special meeting called by the mayor, mayor pro tempore, or two council members. Also, since the agenda of such a special meeting is set by those calling it, this rule requires those persons’ consent before items may be deleted from that agenda. Note also that G.S. 143-318.12(b)(3) limits the agenda of emergency meetings to business connected with the emergency.

Other councils use their agenda to control the length of their meetings. In that case the council 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 council for purposes of G.S. 160A-71 and the open meetings law and is subject to the regular or special meeting requirements in these rules. Generally, these councils take a stricter approach and do not allow late additions to regular meeting agendas unless an unexpected and pressing matter arises.

As noted above, at special meetings called by the mayor, mayor pro tempore, or two council members, additions may only be made to the agendas of special meetings if all members are present or those not present sign a waiver of notice. These rules also impose an additional requirement for the agendas of all special meetings, regardless of how they are called, because of open meetings law concerns. Under this approach, an item 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 council members will have a clear idea of the issues with which they will be dealing. The council may choose what sorts of proposed orders, policies, regulations, resolutions, or other items it wishes to make subject to this requirement. The council may also require that copies of relevant documents be provided to all council members when additions to the agenda are proposed at the meeting.

Some councils also use an agenda package to provide background information about proposed agenda items to the council members. The use of such a package is optional under these rules.

City councils 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 as a council. Such discussion may be especially important if the council 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 council generally takes action. This rule authorizes the practice of “discussing before moving” by permitting the council 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 city clerk 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 council may wish to charge those receive the full agenda package for the cost of reproduction. At the very least, the council should make provision for the public to inspect and copy the agenda package in the city offices, since the agenda package is generally a matter of public record open to public inspection.

- (c) **Consent Agenda.** The council 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):* Many councils use a consent agenda as a device to handle routine business more quickly. The persons preparing the proposed agenda group together on the agenda those items that they think will be noncontroversial, routine, and unopposed. 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 council 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. For more information on consent agendas, see the publication “Consent Agenda,” available from the International Institute of Municipal Clerks, 1206 North San Dimas Canyon Road, San Dimas, CA 91773, (909) 592-4462, or on loan from the Institute of Government’s library.

(d) **Open Meetings Requirements.** The council 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 council to understand what is being deliberated, voted, or acted on. The council 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.

**Comment to (d):** 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. Scheduled Public Comments**

Any individual or group who wishes to address the council shall make a written request to be on the agenda to the City Clerk or City Manager. The request must state, in reasonable specificity, the purpose for addressing the Council. In adopting the agenda the council shall determine whether it will hear the individual or group. Individuals or groups addressing the council under Scheduled Public Comments or Unscheduled Public Comments shall be provided five minutes in which to speak unless the Council votes to extend the five minute period for a specific individual or group.

**Comment:** The council may decide as a matter of general policy to set aside part of each meeting for individuals or groups to address the council, 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 council the right to decide whether to hear its comments. If the council 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:

- Adoption of agenda (includes confirmation or setting of the consent agenda)
- Approval of minutes
- Scheduled Public Comments
- Public Hearings
- Administrative Reports/Presentations
- Unfinished Business
- New Business
- City Attorney Report
- City Manager Report
- Council Reports
- Closed Session
- Adjourn

By general consent of the council, 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. The council may also decide to place general public comment earlier on the agenda, if it reserves part of each meeting for this purpose (see Rule 5). Unfinished business under these rules consists of matters that are carried over from a previous meeting that was adjourned before the council completed its order of business and matters that were specifically postponed to the present meeting [see Rule 18(b), Motion 11].

## **Rule 7. Office of Mayor**

The mayor shall preside at all meetings of the council but shall have the right to vote only when there is a tie. In order to address the council, a member must be recognized by the mayor.

The mayor or other 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 council upon motion of any member, pursuant to Rule 18(b), Motion 1. 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:** G.S. 160A-69 provides that the mayor shall have the right to vote only in cases where there are an equal number of votes in the affirmative and in the negative, unless the mayor is elected by the council from among its membership and the city charter is silent on the matter. In that case, the mayor has the right to vote on all matters. Many cities have charter provisions dealing with the mayor's voting rights; a special charter rule on mayoral voting takes precedence over the general rule in G.S. 160A-69.

If the mayor is elected by the council, he or she may serve either for a fixed period of time, such as one year, or at the council's pleasure. The city charter normally has a provision on this point as well.

The mayor or anyone presiding in the mayor's place is given substantial procedural powers by this rule. Nevertheless, those powers are not absolute. Under this rule and Rule 18, Motion 1, any council 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 mayor 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. (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 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 be 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 is G.S. 160A-70, paraphrased.

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

If the mayor or other presiding officer becomes actively engaged in debate on a particular proposal, he or she shall designate another council member to preside over the debate. The mayor or other presiding officer 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 mayor is leading the meeting, he or she should ask the mayor pro tempore to preside in this situation, but if that person also engaged in the debate, the mayor should feel free to call on some other council member in order to achieve the purpose of this rule.

## **Rule 10. Action by the Council**

The council shall proceed by motion, except as otherwise provided for in Rule 4 and in Rule 31. Any member 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 council is to make appointments using an election method, rather than by motion, in order to allow all council members to express their preferences. This method applies both to internal council appointments and to appointments to other bodies. The procedures to be followed are explained in Rule 31 and the accompanying *Comment*.

In those municipalities where the mayor may vote only to break a tie, he or she should probably not make motions. The reason for this rule is that legally the mayor is not part of the decision-making body unless a

tie vote occurs. Traditionally, if a nonvoting mayor wishes to have a motion made, instead of making it personally, he or she states, “The Chair will entertain a motion that ....”

### **Rule 11. Second Not Required**

A motion shall 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 council, on the other hand, a proposal supported by one member already has the backing of 20 percent of the council membership. If a council is small, efficient use of the council’s time is not impaired by allowing consideration of a proposal that initially has the support of only one member. If a council 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* Sec. 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* Sec 4, p. 36).

### **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 term substantive motion is 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 council’s legal powers, duties, and responsibilities. Indeed, since Rule 10 provides that the council shall proceed by motion, the substantive motion is the only way the council 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 council 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 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 two-thirds of the entire membership of the council for adoption of a particular motion. Also 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. Other extraordinary voting requirements imposed by particular statutes are not specified in these rules. The city attorney should be consulted as questions arise.

### **Rule 15. Voting by Written Ballot**

The council may choose by majority vote to use written ballots in voting on a motion. Such ballots shall be signed, and the minutes of the council shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the city 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 city councils 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 mayor shall state the motion and then open the floor to debate on it. The mayor 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.

Comment: None.

### **Rule 17. Ratification of Actions**

To the extent permitted by law, the council 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 council'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 council concerning something that was done without council 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, which 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.

(a) **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 or her remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the council, 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 council. 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 council consideration of a pending substantive matter; it may not interrupt deliberation of a pending matter. A motion to recess [or 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 consideration of a pending matter has concluded.

If the council 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 council 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 (or adjourn) 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 council 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 mayor 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 council may not suspend provisions of the rules that state requirements imposed by law on the council. For adoption, the motion requires a vote equal to two-thirds of the actual membership of the council, excluding the mayor, unless he or she may vote in all cases, and vacant seats.

**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 council wishes to do something that it may legally do but cannot accomplish without violating its own rules. The motion permits the council to exercise greater flexibility and perhaps informality than adhering strictly to the rules might allow. For example, the council 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 council to pass. Note that the mayor is counted for purposes of determining two-thirds of the council only if he or she has the right to vote on all questions, and that vacant seats are excluded in making the two-thirds determination.

The two-thirds requirement is imposed since some council 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 council wished to undo them.

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

**Motion 6. To Go into Closed Session.** The council 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 council expects to receive advice during the closed session, if in fact such advice is to be received.

**Comment:** The requirements for this notion are found in G.S. 143-318.11©. They include extra requirements for motions based on G.S. 143-318.11(a)(1), and for those motions based on G.S. 143-318.22(a)(3) that concern a closed session where the council expects to receive advice about an existing lawsuit or lawsuits. G.S. 143-318.11(a)(1), cited in the rule, allows closed sessions “to 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 council 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 council 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 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 council 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 council (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. Not 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, Motion 11). A matter that has been postponed to a certain time or day is brought up again automatically when that time arrives. Council action (approval of a motion to revive consideration) is required, however, before the council may again consider a substantive motion of which the 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 15 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 council members. Since every member will have an opportunity to speak, the debate may be ended by a majority vote. Twenty minutes is merely a suggested period of time.

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 council 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 member 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 council 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 council 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 council, whether or not the committee has reported the matter to the council.

**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 council 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 council 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 ordinance or policy 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 ordinances or resolutions, discussed below.

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 councils 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 ordinances and other, sometimes lengthy, documents such as orders, policies, or resolutions. While the council may choose the types of items to which it wishes the writing requirement to apply, 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(3)]. 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.

Some councils may 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 council, it is up to the council 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 council 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 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 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 council 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 side except in the case of a tie; in that case the “nos” prevail) and at the meeting during which the original vote was taken, including any continuation of that meeting through recess [or 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*, the 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 may generally 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 council 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 city council is in many respects a separate legal event. Unless prohibited by law, a council may at a subsequent meeting “undo” action taken at a previous meeting.

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.

The motion to rescind is in order only for those measures adopted by the council that can legally be repealed or rescinded. It is not intended to suggest that the council may unilaterally rescind a binding contract or may repeal an action where a person’s rights have already vested.

**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 actual membership of the council excluding the mayor, unless he or she may vote in all cases, and vacant seats. If adopted, the restriction imposed by the motion remains in effect for six months or until the next organizational meeting of the council, 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 council, the required vote is two-thirds of the actual membership of the council, excluding the mayor, unless he or she is entitled to vote on all matters, and excluding vacant seats. This supermajority requirement is imposed because such a two-thirds vote is needed for the council to adopt certain items. The same number of votes should be required if the council is to forbid dealing further with such an issue. Thus, if a council has seven members, a nonvoting mayor, or no vacant seats, five members (enough to equal two-thirds or more of seven) must vote for the motion. If the same council has one vacant seat, four members (two-thirds of six) must vote for it.

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 council may shorten or lengthen the time as it sees fit. In order to give a new council a clean slate, the motion is not effective beyond the next organizational meeting of the council.

## **Rule 19. Renewal of Motion**

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

**Comment:** As noted in the Comment to Rule 18(b), Motion 16, in North Carolina each meeting of a city council 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 presiding officer puts the motion to a vote, which occurs first.

**Comment:** *RONR* provides that once a motion has been stated by the presiding officer 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 (including the mayor's vote in case of an equal division) 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, and not including the mayor unless he

or she has the right to vote on all questions before the council. 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 of 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 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**

*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, either because of statutory requirements or other concerns.

## **Rule 26. Closed Sessions**

The council may hold closed sessions as provided by law. The council 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 of 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 council 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 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”. Note that the mayor is counted for quorum purposes regardless of whether he or she has the right to vote on all questions.

## **Rule 28. Public Hearings**

Public hearings required by law or deemed advisable the council 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. The rules may include, but are not limited to, rules (a) fixing the maximum time allowed 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 council meetings shall also apply to public hearings at which a majority of the council is present; such a hearing is considered to be part of a regular or special meeting of the council. These requirements also apply to hearings conducted by appointed or elected committees of the council, if a majority of the committee is present. A public hearing for which any notices required by the open meetings law or other provisions of law 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 council is present.

The council may vote to delegate to city staff members, as appropriate, the authority to schedule, call, and give notice of public hearings required by law or the council. The council shall provide adequate guidelines to assist staff members in fulfilling this responsibility, and it shall not delegate the responsibility in cases where the council itself is required by law to call, schedule, or give notice of the hearing.

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

**Comment:** City councils 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 city or within the county where the city is located. It also gives the council 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 council meetings, are also subject to the notice, continuation, and other requirements of the open meetings law, if a majority of the council is present at the hearing, since legally such a hearing is part of a meeting of the board. Appointed or elected committees of the council are also covered by this law.

These 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. Informational hearings that involve less than a majority of the council and that do not involve a council committee are discussed in the *Comment* to Rule 29.

Some councils allow staff members to schedule, call, and give notice of public hearings on the council's behalf. This rule allows for that practice, except where otherwise limited by law, but it also requires an explicit delegation of authority by the council and clear guidelines for the exercise of the delegated authority. Courts are often very particular about the procedural requirements for public hearings. It is important that the council insure that staff members are not acting "on their own" but with properly delegated authorization from the council, when they schedule, call, and give notice of public hearings.

Some councils vote to open and close public hearings, while others simply allow the mayor or other presiding officer to declare the hearing open and closed. Either practice is acceptable, and the council may choose either option as its rule.

### **Rule 29. Quorum at Public Hearings**

A quorum of the council 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 council meeting without further advertisement.

**Comment:** G.S. 160A-81 implies that a quorum of council 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 council 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 council 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 council members conducting the hearing were a majority of an appointed or elected council committee (see Rule 32).

### **Rule 30. Minutes**

Full and accurate minutes of the council 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 council, the "ayes" and "nos" upon any question shall be taken. Members' and other persons' comments may be included in the minutes if the council approves.

Minutes and general accounts of closed sessions may be sealed by action of the council. 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 council 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 council's discussion.

Particular comments by members or other persons may be included in the minutes if the council so desires. Since the council 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 "ayes and noes").

Under the open meetings law, the council must also keep a "general account" of what transpires in closed sessions, so that a person not in attendance would have a reasonable understanding of what transpired. 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 council should consult the city attorney and the bulletins mentioned in the next paragraph 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. The council 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 council action or by action of an agent of the council such as the city attorney, if and when the closed session's purpose would no longer be frustrated by making these records public. For a discussion of the legal requirements for minutes and general accounts of closed sessions, see the following publications by David M. Lawrence: "1997 Changes to the Open Meetings and Public Records Law," *Local Government Law Bulletin 80* (August 1997) and "The Court of Appeals Addresses Closed Sessions for Attorney-Client Discussions," *Local Government Law Bulletin 93* (March 2000).

### **Rule 31. Appointments**

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

The mayor shall not have a right to vote on appointments that come before the council.

Rather than proceeding by motion, the council shall use the following procedure to make appointments to various other boards and offices: The mayor shall open the floor for nominations, whereupon the names of possible appointees may be put forward by the council members. The names submitted by individual council members shall be debated. When the debate ends, the mayor 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.

**Comment:** The first paragraph of this rule states some of the requirements of the open meetings law concerning appointments by the council. If the council wishes to vote by written ballot, it should consult Rule 15, which states the requirements of the open meetings law for use of written ballots by public bodies.

As noted in the Comment to Rule 7, unless G.S. 160A-69, mayors generally have the right to vote only when there are equal numbers of votes in the affirmative and the negative. In an election where appointees are being chosen, no “yes” and “no” votes are cast, and a mayor who votes only to break ties cannot vote. On the other hand, a mayor who is allowed by law to vote on all questions can vote for appointments, just as he or she can vote for anything else.

The procedure outlined uses nominations, rather than a motion and vote for each individual candidate. A nomination procedure allows all council members an opportunity both to propose and to vote for their preferred candidates, and it avoids situations such as the following.

Suppose that the Colorful City Council uses motions to appoint persons to various positions. After being recognized by the mayor, council member Smith moves to appoint candidate Green. This causes a quandary for council member Jones. She likes candidate Green, but her first preference is candidate Black. However, she is afraid that if candidate Green is defeated, another council member may be recognized to nominate candidate White, whom she dislikes intensely, before she is recognized to nominate candidate Black. Should she vote for candidate Green, improving his chances of winning, or hold out for the chance to do battle with White’s nominator in catching the mayor’s eye?

By contrast, if the Colorful Council were to follow the nomination and election procedure, it could avoid such fights and give everyone a chance to vote for the candidate of their choosing.

Several councils use an appointment committee. The committee receives nominations from the council members, reviews the nominees’ qualifications, and reports its recommendations to the full council. This procedure is provided for by the optional language in the second paragraph of the rule. Many councils also use public advertisements to solicit applications for appointment from citizens.

If an appointment committee is used, at least one other voting option besides those listed in the rule is available for multiple appointments to a single board. The council may require the appointment committee to submit a slate containing as many nominees as there are vacancies to be filled on a particular board. Each council member then votes for or against the slate as presented.

See Rule 32 concerning the applicability of the open meetings law to all council committees, including the appointment committee.

## **Rule 32. 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 city 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, and not including the mayor unless he or she has the right to vote on all questions before the council.

**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 city 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 33. Reference to Robert's Rule 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 council 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.

Adopted this the 9<sup>th</sup> day of December, 2013 by motion of Councilmember Bush, seconded by Councilmember Burris, and carried by a vote of 4 for and 0 against.