

(Adopted: 8/6/2013)

Meeting Rules and Procedures

Town of Yanceyville

In order to increase the efficiency of operation of the Town Council, and to guarantee full and fair discussion, the Town Council of the Town of Yanceyville hereby adopts these Rules of Procedure to govern all meetings of the Council. These Rules of Procedure replace Robert's Rules of Order for the Town Council.

[Source: A. Fleming Bell, *Suggested Rules of Procedure for Small Local Government Boards* (Chapel Hill: Institute of Government; second edition, 1998). Comments included herein are Mr. Bell's, with minor editing for length and clarity, as well as additional staff points.]

Adopted this 6th day of August, 2013

Rule 1. Regular Meetings

The council shall hold a regular meeting on the first Tuesday of each month, except that if a regular meeting day is on or around a legal holiday, the meeting shall be held on the next Tuesday. The meeting shall be held at the Yanceyville Municipal Services Building located at 158 East Church Street in Yanceyville. A copy of the council's current meeting schedule shall be filed with the Town Clerk.

Comment: Most local government councils 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. For Town governments, each public body keeps it on file with the town clerk.

Rule 2. Special, Emergency, and Recessed Meetings

(a) Special Meetings. The Mayor or a majority of the members of the Town Council may at any time call a special meeting of the council. 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 council member; (2) posted at the door of the council's usual meeting room; and (3) mailed or delivered (if possible) to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the council's clerk. 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 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 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 council's clerk if possible.

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 council determines in good faith at the meeting that it is essential

to discuss or act on the item.

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

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 council's "sunshine list," as required with any other special meeting. The law 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 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 council 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 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.

(b) Emergency Meetings. The Mayor or a majority of the Council Members may at any time call an emergency meeting of the council by signing a written notice stating the time and place of the meeting and the subjects to be considered. The Clerk shall give written or oral notice of the meeting to each council 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 clerk, and whose request includes a 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 council. 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 meeting [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 council).

(c) Recessed Meetings. A properly called regular, special, or emergency meeting may be recessed to a time and place certain by a procedural motion made and adopted as provided in Rule 14(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 session of a properly called regular, special, or emergency meeting.

Comment: In Rule 2(c), note that a motion to recess a meeting to a time and place certain must comply with the requirements of Rule 14 concerning procedural motions. See both that rule's general requirements and the particular requirements of Motion 2 of Rule 14. 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 18 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 14, 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

At the first regular meeting in December following an election for town council members, 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 tem.

Comment: Members of local councils 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 council as part of his duties on another body.

Council members with questions about oaths should consult the council'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.

Rule 4. Agenda

(a) Agenda. The Town Manager shall prepare the agenda for each meeting. Council Members or other citizens may ask to have an item placed on the agenda as long as it is received at least seven working days before the

meeting. The Manager shall prepare an agenda package that includes as much background information on each item as is available and feasible to reproduce. Each council member shall receive a copy of the agenda and the agenda package. The agenda shall be available for public inspection when it is distributed to the council members. Public requests for Agenda and Agenda Packet information will be charged according to the Fee Schedule established by the Town Council.

A Consent Item containing a number of action items believed not to require discussion may be placed on the Agenda. A Council Member may request an item(s) be placed on the Agenda before the Agenda is adopted at the beginning of each meeting. The Mayor will then place the item on the Agenda for individual action.

(b) Changing the Agenda. As its first order of business at each meeting, the council may by majority vote to add items to or subtract items from the agenda, except that the council may not add items to the agenda of a special meeting unless (a) all members are present and (b) the council determines in good faith at the meeting that it is essential to discuss or act on the item. If items are proposed to be added to the agenda, the council may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all council members.

In addition to adding and deleting items, the council 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 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. However, the council 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 councils use agendas for their meetings. Some small government councils use agendas 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 agendas of regular meetings by general consent. This rule takes that approach....

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 council 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)*.....

Small 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 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.....

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 Council

(a) Citizens may address the council during the following portions of the meeting:

- i. at public hearings;
- ii. at times specified in the agenda for public comment;
- iii. at other times when the presiding officer may permit.

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 there is time 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 council 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.

(b) Procedures for addressing council:

- Anyone desiring to address the council must sign up with the Town Clerk between 6:45 pm and 7:00 pm on the night of the Council Meeting. The request should be in writing and on a form provided by the Town. The form shall as a minimum provide the requestors name, physical address, and mailing address.
- The request should not address an item already on the agenda for the meeting.
- The Public Comment portion of the agenda will be placed at the beginning of the agenda.
- Each speaker must be recognized by the Mayor as having the exclusive right to be heard.
- Comments are limited to three minutes per speaker. A speaker may not give their allotted time/minutes to another speaker to increase that persons allotted time.
- Speakers must address the entire Council, not an individual council member. Discussions between speakers and the audience will not be allowed.
- Speakers will be civil in their language and presentation.
- There shall be a maximum of three (3) participants on the same subject. It is recommended that if there are several people who wish to speak on the same subject that they choose one speaker to speak for all.

- The time allotted for Public Comment will be 15 minutes. The Council can choose to extend the Public Comment Period, by a majority vote, an additional 15 minutes for a total of 30 minutes for public comments if there are more than five speakers signed up.
- Individuals who sign up but cannot speak due to time constraints will be carried to the next regular meeting of the Council and placed first on the Public Comment Agenda.
- Any Council Member may ask the speaker questions. The time used by a Council Member to ask a question, or the response to his/her question, will not be counted against the citizens three minute time allotment.
- Public comment is not intended to require the Council to answer any impromptu questions. Action or response to items brought up during the Public Comment Period will be at the discretion of the Town Council.
- Speakers shall not discuss the candidacy of any person seeking public office, including the person addressing the Council.
- The public can address the Council on any issue other than public hearings items and those items that would be covered in closed session, which would include, but not be limited to attorney/client privilege, personnel, land acquisition and contract negotiations.
- Anyone desiring to address the Council on a specific concern requiring more effective and informed action by the Council should contact the Town Manager at least two weeks prior to the first Tuesday of the month for the topic to be reviewed for consideration to be placed on the agenda. Whenever possible, staff will address the concern directly, but if staff cannot address the issue, it will be placed on the agenda as early as practicable. The person making the request should provide sufficient information pertaining to their concerns to allow the Council to review the citizen concerns and/or request
- In emergency situations, the Council will accept packets of information from citizens speaking during Public Comment, if it is determined that the materials could not have been received by the Town Clerk or Town Manager prior to the submittal of the Agenda.

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:

- Changes to the Agenda
- Adoption of the Agenda
- Approval of the minutes
- Public Comment
- Public Hearings
- Unfinished Business
- New Business
- Departmental Reports
- Informal Discussion/Public Comment

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

The second Public Comment order of business located at the end of the meeting with the Informal Discussion period will be limited to only what is discussed during the Informal Discussion, and cannot be used to discuss

any Agenda item that has previously taken place during the meeting. A member of the audience must be recognized by the Mayor before addressing the Council. Each speaker will be given three (3) minutes to address the Council during this time, with a maximum of twenty (20) minutes being spent on Informal Discussions and Public Comment.

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 council completed its order of business and matters that were specifically postponed to the present meeting [see Rule 14(b), Motion 11].

Rule 7. Presiding Officer

The Mayor shall preside at council meetings if he or she is present. The Mayor shall have the right to vote in any matter heard by the council.

If the Mayor is absent, the Mayor pro tem shall preside. If both the Mayor and Mayor pro tem are absent, another member designated by vote of the council shall preside. The Mayor pro tem 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.

The presiding officer shall have the following powers:

- to recognize persons, including Council Members, to speak;
- to rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- to determine whether speakers have gone beyond reasonable standards of courtesy in their 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, except those to call a brief recess or to adjourn in an emergency, may be appealed to the council upon motion of any member, as specified in Rule 14, 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 presiding officer has substantial procedural powers, but those powers are not absolute. Under this rule and Rule 14, Motion 1, any council 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 council'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 Council

The council shall proceed by motion, except as otherwise provided for in Rules 3, 4, and 23. Any member, including the Mayor, may make a motion.

Comment: Under standard parliamentary practice, a motion must be on the floor before a council may proceed with discussion or action. Rule 8 allows two variations, one based on Rule 4 and the other on Rules 3 and 23.

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 23 specify 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 23 and the accompanying *Comment*.

Rule 9. One Motion at a Time

A member may make only one motion at a time.

Rule 10. 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 14. Basically, a substantive motion is any motion other than the procedural motions listed in Rule 14. A substantive motion may deal with any subject within the council’s legal powers, duties, and responsibilities. Indeed, since Rule 8 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 23 on appointments.) The procedural motions detailed in Rule 14 set forth the various options the council has in disposing of substantive motions.

Rule 11. Adoption by Majority Vote

A motion shall be adopted by a majority of the votes cast, a quorum as defined in Rule 19 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 council for adoption of a particular motion. Extraordinary voting requirements imposed

by particular statutes are not specified in these rules. The council's attorney should be consulted as questions arise.

Rule 12. 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 council's clerk immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

Comment: The open meetings law allows public bodies such as small local government 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 13. Debate

The presiding officer shall state the motion and then open the floor to debate. Debate shall follow these 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.

Rule 14. 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 council; 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.

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

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 council 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 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 14(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 council may not suspend provisions of the rules that state requirements imposed by law on the council. For adoption, the motion requires an affirmative vote equal to a majority of the entire membership of the council.

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 ... a majority.... This motion is in order when the council wishes to do something that it may legally do but cannot accomplish without violating its own rules. It 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....

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 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 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 “[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 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 person who wishes to revisit the matter during that time must take action to revive consideration of the original motion [Rule 14(b), Motion 14], or else move to suspend the rules [Rule 14(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 14(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 14(b), 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 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 twenty 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 council, 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.

Note that this rule avoids the practice followed by some councils 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 person who wishes to revisit the matter must either wait until the specified time or move to suspend the rules [Rule 14(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 14(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.

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, order, policy, resolution, or regulation 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 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 other, sometimes lengthy, documents such as orders, policies, regulations, or resolutions. The council 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 council 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 councils 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 14). 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 council may vote to revive consideration of any substantive motion earlier deferred by adoption of Motion 9 of Rule 14(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 14(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, except in the case of a tie; in that case the “nos” prevail) and only at the meeting during which the original vote was taken, including any continuation of that meeting through recess to a time and place certain. The motion cannot interrupt deliberation on a pending matter but is in order at any time before final adjournment of the meeting.

Comment: According to *RONR*, this motion may be made at the same meeting as the vote being reconsidered or on the next legal day and may interrupt deliberation on another matter. To avoid placing a measure in limbo, these rules restrict the availability of the motion to the same meeting as the original vote, including any continuation of that meeting if it is recessed or adjourned to a time and place certain pursuant to Rule 2(c) and Rule 14(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 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 most small councils 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. This motion is in order only for those measures adopted by the council that may legally be repealed or rescinded. For example, it is not intended to suggest that the council 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 a majority vote for adoption. 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, a vote equal to either a majority or two-thirds, at the council's option, of the entire membership is required. See the *Comment* to Rule 14(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 14(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 15. Withdrawal of Motion

The introducer may withdraw a motion 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 the chair has stated a motion for debate, it cannot be withdrawn without the assembly's consent. Such a procedure is unnecessary for a small council. 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 16. Duty to Vote

Every Council Member must vote unless excused by the remaining members of the council. 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 council or by law, or the member's official conduct, as defined by the council. 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: Some local councils allow abstentions, others do not. A council may choose either version of this rule. Those councils 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 council 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 council 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 17. Special Rules of Procedure

[This section is reserved for future additions.]

Comment: Some councils 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 council for approval of certain motions, or specifying a particular procedure for selecting the council's chair), either because of statutory requirements or other concerns.

Rule 18. Closed Sessions

The council may hold closed sessions as provided by law. The council 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 14(b).

Only those actions authorized by statute may be taken in closed session. A motion to recess shall not be in order during a closed session [Rule 14(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 14(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 21.

Rule 19. Quorum

A majority of the actual membership of the council, excluding vacant seats, shall constitute a quorum. A majority is more than half. The Mayor shall be considered a member of the council 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. The last sentence of this rule prevents a member from defeating a quorum by simply leaving the meeting.

Rule 20. Public Hearings

Public hearings required by law or deemed advisable by the council 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 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 council 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 council, or of a council committee, as applicable, is present.

At the time appointed for the hearing, the presiding officer 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.

Comment: Local councils 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 council was created to deal with matters of public concern, unless a specific statute provides otherwise. The council 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 council 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 councils (G.S. 160A-81 and 153A-52, respectively) and can be followed by most small local government councils that are authorized to hold public hearings.

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 council.

Rule 21. Minutes

Full and accurate minutes of the council proceedings shall be kept. The council 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. Members' and other persons' comments may be included in the minutes if the council approves. Each motion will be documented with the exact wording of the motion made. Upon the request of a Council member, the Council may be polled by name for each vote.

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: The open meetings law requires that full and accurate minutes be maintained of all official meetings of all public bodies... [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 or may not be included in the minutes if the council so desires. Since the council 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 council 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 council 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 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 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 22. Conduct and Procedures

- (a) Informal Meetings:** The council shall not meet collectively prior to a meeting, as to create a quorum of the council, to discuss items on the agenda or any other item related to government activity. The council may share information provided by town staff with the public regarding agenda items prior to the meeting, but are not allowed to share information that may be confidential in nature, such as account names, addresses, phone numbers, personnel information, or the like.
- (b) Recording Devices:** All public meetings are allowed to be video or audio recorded by any individual, without prior permission being granted from the council. The recording of any conversation or meeting between public officials or employees is prohibited, unless all parties are aware of the recording, and have unanimously agreed to participate in the recording.

Only the Town Clerk is allowed to make audio or video recordings of Closed Session proceedings, as it is the clerk's responsibility to transcribe, maintain, and produce records of Closed Session meetings.

- (c) Clearing of a Meeting Room:** Upon adjourning a public meeting the Town Clerk, with assistance from law enforcement agents whom may be present, shall see that all visitors are vacated from the meeting room immediately following the adjournment of the meeting. Continued conversation among council members and staff with visitors is to be limited to the discretion of each council member and staff member. Courtesy shall be given to the time and building arrangements, as to not prolong the prompt closing of facilities following a meeting. During the times in which the meeting is not called to order, the Town Clerk will have the authority to vacate persons from the meeting room who are unwilling to acknowledge the procedures outlined in this policy.
- (d) Meeting Security:** The Town will provide law enforcement protection at each of its public meetings.

The law enforcement officer will assist the chair, clerk, and manager with maintaining decorum and enforcement of all policies set forth by the council before, during, and after all public meetings. The law enforcement officer will also protect any closed session proceedings of the council. While the officer may not be present during the closed session meeting, the officer shall ensure that the confidentiality of the closed session proceedings is maintained, including the vacating of individuals in violation.

Any person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting may be charged with a Class 2 misdemeanor. (G.S. 143-318.17).

Comment: The purpose of limiting Council discussion of agenda items prior to a meeting is to reduce the possibility of one member influencing the entire board before the item is discussed in open session. This also eliminates the possibility of any quorum forming without public notice.

Limiting audio and video recording protects a public official or employee from being recorded without their permission, which can be a violation of state and federal law.

Limiting the recording of Closed Session meetings to the Town Clerk allows for all parties to feel as though their comments and suggestions remain private, as well as to protect any economic development information, attorney-client conversations, and personnel information from being leaked to the public. Each council member takes an oath to not publicly discuss closed session proceedings, and unauthorized audio or video of those proceedings can prove troublesome to an individual board member and the Town as a whole.

G.S. 143-318.17 protects public meetings from being disrupted by members of the audience. The Chair is given the authority to remove an individual from a meeting for interruptions or disruptions. Rule 14(b) outlines objections to the removal of a member of the audience.

Rule 23. Appointments

(a) Council Appointments. The Town Council shall appoint members of the following councils, boards, and committees.

- Planning Board

The Town shall use the following procedure in making these appointments:

The Town Manager will advertise and solicit for vacant positions on any Advisory Board that is appointed by the Town Council. All applications for appointment to Advisory Boards will be held by the Town Manager and presented to council during a regularly scheduled public meeting. The Council Members may add additional nominations if they wish, and then shall select board members from the total nominees. The Town Council shall vote by written ballot, with each Council Member having a number of votes equal to the number of vacancies on the board. The Council Members are not required to cast all their votes, and they may not cast more than one vote per nominee. The person receiving the highest number of votes shall be elected. In the case of multiple positions being filled at the same time, the persons receiving the most number of votes shall be elected. In the event of a tie, the Town Council will take a second vote consisting of only the tied candidates. The candidate with the highest number of votes will be

appointed.

The members of each committee, board, or commission shall appoint the chair of each individual board from among the new and continuing members of the board. The nominee receiving the most votes from the board shall be appointed chair.

Rule 24. 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 council provides otherwise. Adoption of an amendment shall require an affirmative vote equal to a quorum.

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

Rule 25. Reference to *Robert's Rules of Order*

Councils 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 councils. 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 councils.