

# A Parliamentary Procedure Primer for Local Governments

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It's the first Monday of the month, and many North Carolina local governments are holding board<sup>1</sup> meetings. Who controls the agenda at these meetings? What are the various motions that come into play, and what is their proper order? How can a board undo a vote or reconsider an issue? Parliamentary procedure governs these topics. This bulletin provides an overview of parliamentary procedure and its application in the local government context.

## I. Introduction to Parliamentary Procedure

Parliamentary procedure is a set of rules and customs that help deliberative assemblies make decisions and take actions. In local governments, governing boards, appointed boards, commissions, committees, and subcommittees can use these rules to simplify deliberation, voting, and debates at meetings. For these bodies, rules of procedure serve the same purpose as rules of the game in sports. In football, for example, there is a system for keeping score, calling penalties, and deciding if something is out of bounds. These rules give the game structure and meaning and ensure that teams can compete equally. The same is true for rules of parliamentary procedure in board meetings. Parliamentary procedures give all board members the same “playbook” so that board members can work together to make decisions. Procedural rules govern motions, speaking during meetings, debate, agendas, and many other topics relevant to conducting a meeting.

Modern parliamentary procedure originates from rules and customs applied in English Parliament in colonial times.<sup>2</sup> These rules and customs crossed the Atlantic with British colonists and evolved in the American context with the growth of state legislatures.<sup>3</sup> Henry Robert eventually codified this Americanized parliamentary procedure in *Robert's Rules of Order* (“*Robert's Rules*”), first published in 1876.<sup>4</sup> The policy underlying *Robert's Rules* is that having an agreed-upon set of rules for debate and decision allows a deliberative body to accomplish its business efficiently despite internal tensions. According to Robert,

[t]he great lesson for democracies to learn is for the majority to give to the minority a full, free opportunity to present their side of the case, and then for the minority, having failed to win a majority to their views, gracefully to submit and to recognize the action as that of the entire organization, and cheerfully to assist in carrying it out, until they can secure its repeal.<sup>5</sup>

While parliamentary procedure is a set of rules, it is not a set of laws. In North Carolina, laws are enacted by the General Assembly or local governments and are binding across the state or within the local government jurisdiction. Violating laws typically carries a penalty such as a fine or criminal charge. In contrast, rules of procedure are binding on only the body that enacts them and violating them typically has no legal ramifications. In fact, a board's failure to follow proper

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1. “Boards” for purposes of this bulletin includes all local government boards including governing boards, local appointed boards, committees, commissions, subcommittees, and subcommissions.

2. *Robert's Rules of Order Newly Revised* (12th ed.) (hereinafter *RONR*), xxix.

3. *RONR* (12th ed.), xxxix.

4. *RONR* (12th ed.), xliii.

5. *RONR* (12th ed.), xlvii n.12.

procedure may not even invalidate the action taken.<sup>6</sup> Consequently, for procedural rules to be effective, board members must have a strong sense of personal accountability and investment in the idea that these rules promote fairness, equity, and efficiency.

## II. Sources of Rules of Parliamentary Procedure

There are several different sources of parliamentary procedure. *Robert's Rules* is one of the oldest and most widely used manuals of parliamentary procedure.<sup>7</sup> Robert was an engineering officer in the U.S. Army in the late 1800s who was unexpectedly charged with managing meetings, particularly those of new state legislatures.<sup>8</sup> In that context, he noticed that each state's representatives applied their own understanding of parliamentary procedure, complicating how meetings were conducted.<sup>9</sup> Robert wanted to create a manual standardizing parliamentary procedure for the American context and making it more consistent with what was actually happening in state legislatures and the U.S. Congress.<sup>10</sup> While *Robert's Rules* has the authority of history and tradition, Robert designed it with very large governing bodies in mind.

The School of Government has also published its own suggested procedural rules for city councils, boards of county commissioners, and local appointed boards (collectively, "SOG Rules").<sup>11</sup> The authors of these guides specifically tailored these rules to local governing and appointed boards. While the SOG Rules eliminate much of the complexity of *Robert's Rules*, they are not as comprehensive. Other sources of procedural rules include *Mason's Manual of Legislative Procedure* and the *American Institute of Parliamentarians Standard Code of Parliamentary Procedure*.<sup>12</sup> Despite some differences, these manuals articulate the same general underlying principles. Part III examines these founding ideas in detail.

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6. *RONR* (12th ed.), pp. 236–37, 23:5–6; p. 238, 23:9.

7. *RONR* (12th ed.), xlii–xliii.

8. *RONR* (12th ed.), xxxix.

9. *RONR* (12th ed.), xli.

10. *Id.*

11. TREY ALLEN, SUGGESTED RULES OF PROCEDURE FOR THE BOARD OF COUNTY COMMISSIONERS (UNC School of Government, 4th ed. 2017) (hereinafter ALLEN, COUNTY COMMISSIONERS); TREY ALLEN, SUGGESTED RULES OF PROCEDURE FOR A CITY COUNCIL (UNC School of Government, 4th ed. 2017) (hereinafter ALLEN, CITY COUNCIL); TREY ALLEN & A. FLEMING BELL, II, SUGGESTED PROCEDURAL RULES FOR LOCAL APPOINTED BOARDS (UNC School of Government, 2020) (hereinafter ALLEN & BELL). There is also a set of suggested rules for small local government boards, but those rules are somewhat specialized and consequently are omitted from this bulletin. See A. FLEMING BELL, II, SUGGESTED RULES OF PROCEDURE FOR SMALL LOCAL GOVERNMENT BOARDS (UNC School of Government, 2nd ed. 2012).

12. This bulletin will not focus on these manuals, as *Robert's Rules* and the SOG Rules are more commonly used in the North Carolina local government context.

### III. Principles of Parliamentary Procedure

Parliamentary procedures, regardless of their source, share several common foundational principles.<sup>13</sup> Any procedural rules local governments adopt must comply with these values.

- **Procedural rules should promote the orderly conduct of business and encourage fairness and decorum.** Procedural rules should create a common framework for approaching decision-making and resolving issues. Rules of parliamentary procedure should not complicate meetings. If procedural rules impair business, boards should re-evaluate their rules to ensure that their rules fit their needs and that they truly understand their rules' requirements. Parliamentary procedures uphold the ideal that board members must adhere to a certain standard of conduct. Unprofessionalism impedes a board's functioning and effectiveness. Members should engage courteously with one another, focusing not on personal tensions but on serving the public they represent.
- **The will of the majority directs board action.** A bedrock principle of parliamentary procedure is that the will of the majority controls. While the minority view must be protected, the majority directs a body's decisions and actions.
- **Boards must act collectively.** Individual board members have no inherent power. Instead, their power derives from their ability to vote as part of the board. In the local government context, this parliamentary procedure principle protects the representative nature of local governing boards by not allowing one board member to have disproportionate influence. Instead, the collective will of the board controls, strengthening the goal of equal representation.
- **Quorum is required.** A quorum is the minimum number of people that must be present for a board to conduct business; a board cannot conduct any official business without it. Requiring quorum limits the power of individuals or small groups, preserving the collective will as the driving force behind board action. Generally, a quorum is a simple majority, or more than half of a board's members. However, statutes or local rules may provide for a different quorum, as will be discussed in Part IV.
- **There must be an opportunity for debate.** Debate is one of the cornerstones of a representative government. Well-reasoned, intelligent debate can change minds. Recall that procedural rules aim to ascertain the will of the majority. How can we know what the majority thinks without discussion and debate? How can bodies protect the rights of the minority if the minority has no opportunity to present its case? Many motions are debatable in order to preserve these interests. See Appendix B for a list and description of procedural motions.
- **The board must address one substantive issue at a time.** Limiting consideration of substantive issues in this manner ensures that boards give adequate attention to items of business that may ultimately bind and impact the public. Considering only one substantive item at a time also helps boards comply with different voting requirements.

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13. The principles in these sections are adapted from *Robert's Rules* and the SOG Rules. See *RONR* (12th ed.), xxxiii; pp. 3–4, 1:6; p. 13, 2:14; pp. 18–19, 3:3; p. 26, 3:30. See ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 2, 40; ALLEN, CITY COUNCIL, *supra* note 11, at 2, 40; ALLEN & BELL, *supra* note 11, at 2–4, 45.

- **Each member should have an equal opportunity to participate.** Ascertaining the majority will and protecting the views of the minority require that each member have the same opportunity to speak, deliberate, vote, and otherwise participate. For this reason, parliamentary procedure affords only one vote to each board member and usually requires the presiding officer to recognize members before they speak. This structure prevents board members from interrupting and talking over each other and allows equal shares of the floor.

These are some of the bedrock principles that guide parliamentary procedures. Part IV addresses how these principles play out in the local government context.

#### IV. Parliamentary Procedure Rules for Local Government

Adopting rules of parliamentary procedure can make local governments more efficient and effective. Statutes empower local governing boards and several different local appointed boards to adopt their own rules of procedure, provided that these rules do not conflict with local charter, state law, constitutional principles, or generally accepted principles of parliamentary procedure such as those discussed in Part III.<sup>14</sup> In adopting rules for themselves, governing boards can also adopt rules on behalf of their local appointed boards or empower those boards to adopt their own rules.<sup>15</sup> Even without governing board involvement, local appointed boards likely still have inherent power to adopt their own rules of procedure by policy, resolution, or simple motion and vote.<sup>16</sup> Regardless of the form of the procedures, boards should approve procedural rules by majority vote in an open and properly noticed meeting.

While boards are permitted to adopt rules of procedure, they are not required to do so. As noted in Part I, procedural rules help create a common playbook for conducting meetings, but they are not legally required. The advantage of having rules is that they decrease disagreements about the process of running a meeting, allowing the board to focus on substance. They streamline meetings and encourage professionalism so that boards can work together despite tensions and differences of opinion. This part examines several key parliamentary procedure topics and explains how they apply in local governments.

##### A. Quorum

Quorum refers to the minimum number of board members that must be present for the board to conduct business.<sup>17</sup> Quorum is typically more than half of a board's total membership, unless otherwise specified.<sup>18</sup> Notably, this default rule for quorum does not provide any guidance regarding how to treat vacancies. Local appointed boards should specifically address whether to

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14. Section 160A-71(c) of the North Carolina General Statutes (hereinafter G.S.) (cities); G.S. 153A-41 (counties); ALLEN & BELL, *supra* note 11, at 9 n.3.

15. See G.S. 153A-76 (counties) and 160A-146 (cities), which give city and county governing boards the authority to organize city and county government, including by creating committees, boards, commissions, and so forth; G.S. 160A-71(c) (cities); 153A-41 (counties); ALLEN & BELL, *supra* note 11, at 9 n.3.

16. ALLEN & BELL, *supra* note 11, at 9.

17. *RONR* (12th ed.), p. 328, 40:1; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 6–7; ALLEN, CITY COUNCIL, *supra* note 11, at 6–7; ALLEN & BELL, *supra* note 11, at 10.

18. *RONR* (12th ed.), pp. 329–30, 40:5; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 6–7; ALLEN, CITY COUNCIL, *supra* note 11, at 6–7; ALLEN & BELL, *supra* note 11, at 10–11.

include vacancies in their procedural rules to avoid confusion.<sup>19</sup> In contrast, specific statutory quorum rules dictate how to treat vacancies on city and county governing boards. Under statute, one calculates quorum for city councils by adding the total number of seats plus the mayor (even if nonvoting) and subtracting any vacancies.<sup>20</sup> Quorum is more than half of the resulting number.<sup>21</sup> Quorum for boards of county commissioners is more than half of the total seats, including vacancies.<sup>22</sup>

Quorum pertains to presence, not participation.<sup>23</sup> A member's voting power or lack thereof does not impact quorum. If a member is excused from voting but present in the room, that member still counts toward quorum.<sup>24</sup> Since quorum is about presence, what happens when a board member leaves in the middle of a meeting? Under both the city and county quorum statutes, if a member withdraws from a meeting without being excused, that member continues to count toward quorum.<sup>25</sup> Practically speaking, at least two justifications underlie these provisions. First, city and county board meetings are often long. If quorum were broken any time someone had to leave the room to take a phone call or a stretch break, meetings would last even longer. Second, if an unexcused departure could destroy quorum, members could potentially delay or block votes on matters they disfavored by simply leaving the room.

These statutory provisions do not extend to excused withdrawals. If a board excuses a member who then withdraws, that member's absence *does* impact quorum. Why? First, the statutes only reference unexcused withdrawals. Second, the board has taken formal action to excuse a member and allow them to leave. The board then cannot maintain that the person is physically present.

Generally, local appointed boards do not have any statutory rules addressing unexcused withdrawals. As a result, local appointed boards should adopt procedural rules to deal with this issue. For local appointed boards, the SOG Rules recommend that quorum remain intact despite unexcused departures, and *Robert's Rules* states that once quorum is established, it is deemed to remain unless someone calls a point of order.<sup>26</sup>

### **Remote Participants**

Under Section 166A-19.24 of the North Carolina General Statutes (hereinafter G.S.), local governments may count remote participants toward quorum during states of emergency. It is unclear whether this ability extends outside of a state of emergency. G.S. 143-318.13 implies that remote participants may count toward quorum since the section provides for electronic official meetings, but it does not discuss quorum explicitly.<sup>27</sup> The city council quorum statute, G.S. 160A-74, uses the word "present" rather than the phrase "physically present" when

19. ALLEN & BELL, *supra* note 11, at 10–11.

20. G.S. 160A-74(a).

21. *Id.*

22. G.S. 153A-43(a).

23. G.S. 160A-74(a); 153A-43(a); ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 6–7; ALLEN, CITY COUNCIL, *supra* note 11, at 6–7; ALLEN & BELL, *supra* note 11, at 10–11; *RONR* (12th ed.), pp. 328–29, 40:1–3.

24. G.S. 160A-74(a); 153A-43(a); ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 6–7; ALLEN, CITY COUNCIL, *supra* note 11, at 6–7; ALLEN & BELL, *supra* note 11, at 10–11; *RONR* (12th ed.), pp. 328–29, 40:1–40:3.

25. G.S. 160A-74(a) (cities); 153A-43(a) (counties).

26. ALLEN & BELL, *supra* note 11, at 10–11; *RONR* (12th ed.), pp. 331–32, 40:12–13.

27. G.S. 143-318.13(a).

describing quorum. On one hand, the use of the word “present” could be interpreted to include remote as well as physical presence. On the other, G.S. 160A-75, an adjacent section regarding voting, *does* reference physical presence. Given that the statutes deal with related subject matter and were enacted about the same time, “present” in G.S. 160A-74 likely means “physically present” as explicitly stated in G.S. 160A-75. If so, city councils are not authorized to count remote participants toward quorum.

County governing board quorum and voting statutes do not reference physical presence, so there may be more of an argument that the county quorum statute can extend to remote participants.<sup>28</sup> However, that statute was originally enacted long before modern videoconferencing technology, making it difficult to imagine that the legislature was contemplating remote presence.<sup>29</sup> If the county quorum statute requires physical presence, then county governing boards also lack the authority to count remote participants toward quorum.

Local appointed boards likely have the most freedom to count remote participants toward quorum since there are statutes governing quorum for only a few of these boards. In the absence of conflicting quorum statutes, these boards have the authority to adopt procedural rules providing for remote quorum and remote meetings in general. From a parliamentary procedure perspective, *Robert’s Rules* implies that boards can adopt procedures providing for electronic meetings and counting remote participants toward quorum.<sup>30</sup> This is still an unsettled area of law, and how a court would rule is uncertain. In the absence of clear authority, a safe-harbor approach is to count only in-person participants toward quorum.

### ***Absent Members***

If a governing board member is absent without formal excuse by the board, does that member count toward quorum? Under G.S. 153A-43 (county governing boards) and G.S. 160A-74(a) (city governing boards), only members who “withdraw” from a meeting without formal board excusal continue to count toward quorum. *Black’s Law Dictionary* provides that withdraw can mean “to leave or retire” in the context of withdrawing from a community or society.<sup>31</sup> Similarly, *Webster’s Dictionary* includes “to remove” in the definition of *withdraw*.<sup>32</sup> Leaving, retiring, and removing all require being present first. To leave or retire from a community or society, one must have been initially present with or part of the community or society. As a result, members who are entirely absent from a meeting, with or without an excuse, do not count toward quorum. If entirely absent individuals counted toward quorum, quorum theoretically could be established with just one individual present. That outcome contradicts the whole objective of quorum. For that reason, the withdrawal portion of the quorum statutes only applies to members who are initially present for a meeting but then leave without the board formally excusing them.

Since many local appointed boards lack statutory guidance regarding quorum, they can decide how to deal with unexcused absences as they adopt their procedural rules.<sup>33</sup>

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28. G.S. 153A-43.

29. *Id.* Before 2020, the last time Section 153A-43 was revised was in 1973. The 2020 revision incorporated COVID-19 provisions in G.S. 166A-19.24, the emergency remote meetings statute.

30. *RONR* (12th ed.), pp. 88–91, 9:30–36.

31. *Withdraw*, BLACK’S LAW DICTIONARY (11th ed. 2019).

32. MERRIAM-WEBSTER DICTIONARY, [www.merriam-webster.com/dictionary/withdraw](http://www.merriam-webster.com/dictionary/withdraw) (last visited Dec. 14, 2023).

33. ALLEN & BELL, *supra* note 11, at 10–11 n.10.

## B. Presiding Officers

Both general parliamentary procedure and statute guide the conduct of presiding officers in local government meetings. Generally, boards select a presiding officer from among their membership by majority vote.<sup>34</sup> Presiding officers are responsible for ensuring compliance with parliamentary procedure.<sup>35</sup> According to *Robert's Rules* and the SOG Rules, presiders' duties include:

- opening meetings and calling them to order after concluding that a quorum is present;
- announcing agenda items;
- recognizing members to speak;
- stating legitimate questions and putting them to vote;
- protecting against obviously dilatory motions;
- enforcing rules regarding debate, order, and decorum;
- expediting business;
- ruling on points of order;
- responding to requests and inquiries;
- validating the procedures of the assembly; and
- adjourning meetings upon appropriate motion.<sup>36</sup>

The SOG Rules encourage—and *Robert's Rules* requires—the presiding officer to remain impartial in debate and discussion.<sup>37</sup> In addition to that default parliamentary principle, statutes provide procedures and duties relevant to presiding officers of local governing boards.

### City Councils

Under statute, the mayor is the presiding officer for city council meetings.<sup>38</sup> G.S. 160A-69 provides that mayors vote only to break ties, unless the council elects the mayor directly from its membership.<sup>39</sup> In that case the mayor votes on all questions.<sup>40</sup> While nonvoting mayors are the statutory default, city charters can provide for a voting mayor. Voting mayors have the right to vote on all questions and have one vote just like any other council member.<sup>41</sup> Notably, the statute does not require that mayors remain impartial in discussion and debate as provided in *Robert's Rules* and the SOG Rules.

In the role of presider, the mayor is statutorily responsible for ensuring compliance with parliamentary procedures, including adjudicating points of order and appeals and maintaining order and decorum.<sup>42</sup> A common assumption is that mayors have final say over agendas. However, procedurally, the role of presider does not automatically include agenda-setting

34. *RONR* (12th ed.), p. 425, 47:2–3.

35. *RONR* (12th ed.), pp. 426–28, 47:6–7; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 32; ALLEN, CITY COUNCIL, *supra* note 11, at 32; ALLEN & BELL, *supra* note 11, at 40–41.

36. *RONR* (12th ed.), pp. 427–28, 47:7–8; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 32–33; ALLEN, CITY COUNCIL, *supra* note 11, at 32; ALLEN & BELL, *supra* note 11, at 40–41.

37. *RONR* (12th ed.), pp. 426–28, 47:5–7; pp. 430–31, 47:12; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 34; ALLEN, CITY COUNCIL, *supra* note 11, at 34; ALLEN & BELL, *supra* note 11, at 40–41.

38. G.S. 160A-69.

39. *Id.*

40. *Id.*

41. *Id.*

42. ALLEN, CITY COUNCIL, *supra* note 11, at 32.



authority.<sup>43</sup> A board can delegate this power to the mayor in its local rules of procedure, but it does not exist by default as a matter of procedure or statute.

In the mayor's absence, the mayor pro tempore presides.<sup>44</sup> At their organizational meetings, city councils elect a mayor pro tempore from among their members.<sup>45</sup> Mayors pro tempore are treated like any other councilmember; they have the right to vote on all questions, even while filling the shoes of a nonvoting mayor.<sup>46</sup> The council may confer any of the powers and duties of the mayor onto the mayor pro tempore.<sup>47</sup> If both the mayor and mayor pro tempore are absent, the council can elect a temporary chairman from among its members to preside over the meeting.<sup>48</sup>

### ***Boards of County Commissioners***

The presider at board of county commissioner meetings is the chair.<sup>49</sup> At the organizational meeting, county governing boards select a chair from among their membership by majority vote, unless the chair is elected or law provides otherwise.<sup>50</sup> Much like a voting mayor, a chair can vote on all questions and cannot break ties in which they participate.<sup>51</sup> In other words, chairs have only one vote as all other commissioners do. At their organizational meeting, boards of county commissioners also appoint a vice-chair.<sup>52</sup> The vice-chair serves as chair in the chair's absence or disability.<sup>53</sup> If both the chair and vice-chair are absent, the board can choose a temporary chair from among the present members.<sup>54</sup>

Unlike for mayors, no specific, separate statute addresses chair responsibilities, so locally adopted rules and default principles of parliamentary procedure govern. Procedurally speaking, chairs of boards of county commissioners should run the meeting efficiently, rule on points of order and appeals, and ensure order and decorum as provided in *Robert's Rules* and the SOG Rules.<sup>55</sup> Local procedural rules may also impose other duties and responsibilities on chairs.

### ***Absence of Both Presiding Officers***

If both the chair and vice-chair are absent, the board can select a temporary chair to preside for that meeting.<sup>56</sup> But how does the board open the meeting to select a temporary chair? This is a purely procedural question; no statutes require that meetings be formally opened in any particular fashion. *Robert's Rules* allows the clerk to call a meeting to order so that the assembly can select a temporary chair.<sup>57</sup> Another option may be for any board member to make a motion

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43. *RONR* (12th ed.), pp. 353–54, 41:61–63.

44. G.S. 160A-70.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. G.S. 153A-39.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *RONR* (12th ed.), pp. 427–28, 47:7–8; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 32–33; ALLEN, CITY COUNCIL, *supra* note 11, at 32.

56. *RONR* (12th ed.), pp. 429–30, 47:11.

57. *RONR* (12th ed.), pp. 437–38, 47:33.

to suspend the rules.<sup>58</sup> If the motion is approved, the board could appoint someone as the temporary chair without formally opening the meeting. The elected temporary chair could then formally open the meeting.

### **Impartiality**

There is no statutory requirement for mayors or chairs of boards of county commissioners to be impartial either in debate or in ruling on procedural points and appeals. However, to preserve impartiality, default parliamentary procedure principles discourage a chair from taking an active role in debate.<sup>59</sup> Instead, chairs can step out of their role for purposes of debate and allow the vice-chair to step in.<sup>60</sup> That way, the chair can participate actively in debate without compromising impartiality. The statute does not require either the chair or mayor to take these steps, but it may be advisable for both public perception and the smooth functioning of the board.

### **C. Meeting Conduct**

One of the bedrock principles of parliamentary procedure is that meetings should be characterized by order and decorum.<sup>61</sup> Procedural rules encourage professionalism through certain formal practices. For example, members must obtain the floor before they may speak.<sup>62</sup> Seeking recognition from the presiding officer before speaking ensures that each member gets an equal opportunity to contribute. *Robert's Rules* also suggests that members only address the chair, rather than one another, to keep discussion professional and impersonal.<sup>63</sup> Boards can impose penalties by majority vote for members that repeatedly violate procedural rules or engage in disrespectful rhetoric.<sup>64</sup> Some suggested penalties are requiring an apology, censure, and expelling the offending member from the room for the remainder of the meeting.<sup>65</sup> Censure is a formal reprimand, normally by way of resolution in the local government context, that allows a board to express its disagreement with the conduct of one of its members.<sup>66</sup> A censure has no legal consequence but does allow a board to distance itself from an unruly member.

Procedural guidelines governing debate can be especially useful to maintain order and decorum. Both *Robert's Rules* and the SOG Rules suggest rules for debate. First, the person making the motion should have the first opportunity to speak in debate.<sup>67</sup> Debate should then alternate between proponents and opponents to the extent practicable, and the presider should

58. *RONR* (12th ed.), pp. 246–48, 25:2–5; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 44; ALLEN, CITY COUNCIL, *supra* note 11, at 44; ALLEN & BELL, *supra* note 11, at 50.

59. *RONR* (12th ed.), p. 436, 43:29; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 34; ALLEN, CITY COUNCIL, *supra* note 11, at 34; ALLEN & BELL, *supra* note 11, at 43.

60. *RONR* (12th ed.), p. 374, 43:29; ALLEN, CITY COUNCIL, *supra* note 11, at 33–34; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 34; ALLEN & BELL, *supra* note 11, at 43.

61. *RONR* (12th ed.), xxxiii.

62. *RONR* (12th ed.), p. 26, 3:30.

63. *RONR* (12th ed.), p. 372, 43:22.

64. *RONR* (12th ed.), pp. 610–14, 61:10–22.

65. *RONR* (12th ed.), pp. 611–12, 61:15–16. Expelling a member from the room is not recommended when the expulsion would bar that member from voting on a substantive issue.

66. Frayda Bluestein, *I Second That Amotion*, COATES' CANONS NC LOCAL GOVERNMENT LAW blog (Oct. 28, 2009), [canons.sog.unc.edu/2009/10/i-second-that-amotion](https://canons.sog.unc.edu/2009/10/i-second-that-amotion).

67. *RONR* (12th ed.), pp. 27–28, 3:33(3); ALLEN, CITY COUNCIL, *supra* note 11, at 36; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 36; ALLEN & BELL, *supra* note 11, at 58.

prioritize members who have not had a chance to speak.<sup>68</sup> The SOG Rules also suggest time limits for debate.<sup>69</sup> Boards may set time limits for debate as part of their local procedural rules and may institute different time limits for different types of motions. For example, the SOG Rules suggest a longer debate time for substantive motions versus procedural motions.<sup>70</sup> Time limits ensure that members do not unnecessarily prolong debate and may diffuse tensions if debate becomes unprofessional or unproductive.

#### D. Agendas

Perhaps surprisingly, there are no statutes governing agendas. In fact, using an agenda is not even legally required. Consequently, the rules surrounding agendas come from default parliamentary procedure principles and locally adopted procedural rules.

##### *Preparation*

According to default parliamentary procedural principles, the agenda belongs to the board as a whole.<sup>71</sup> As a result, any board member may request that an item be added to the draft agenda. Ideally, board members should submit requested agenda items to the individual responsible for preparing the draft agenda at least two business days before the meeting at issue.<sup>72</sup> While the SOG Rules suggest the clerk be responsible for preparing the draft agenda, the board can delegate this responsibility to any of its members, a manager, or another government employee.<sup>73</sup> Since the agenda belongs to the board, generally the board should approve the draft agenda by majority vote to make it the official meeting agenda.<sup>74</sup>

##### *Changes*

While generally the board may add or remove items from the agenda by majority vote at any time, there are some statutory restrictions. The first restriction pertains to governing boards' special meetings. Under statute, city councils and boards of county commissioners may only transact items of business that are in the special meeting notice.<sup>75</sup> In other words, what is discussed, deliberated, and otherwise addressed at the special meeting must mimic the subject matter and purposes listed in the special meeting notice. Consequently, city councils and boards of county commissioners may not add agenda items that were not included in the original meeting notice, nor may they materially change items that were, even with a majority vote. The special meetings restriction only applies to governing boards since it originates from statutes specifically for those bodies.

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68. ALLEN, CITY COUNCIL, *supra* note 11, at 36; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 36; ALLEN & BELL, *supra* note 11, at 58; RONR (12th ed.), p. 360, 42:9.

69. ALLEN, CITY COUNCIL, *supra* note 11, at 36; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 36; ALLEN & BELL, *supra* note 11, at 59.

70. ALLEN, CITY COUNCIL, *supra* note 11, at 36; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 36; ALLEN & BELL, *supra* note 11, at 59.

71. RONR (12th ed.), p. 353, 41:60–62.

72. ALLEN, CITY COUNCIL, *supra* note 11, at 25; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 26; ALLEN & BELL, *supra* note 11, at 34.

73. ALLEN, CITY COUNCIL, *supra* note 11, at 25; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 26; ALLEN & BELL, *supra* note 11, at 34.

74. RONR (12th ed.), p. 353, 41:60–62; ALLEN, CITY COUNCIL, *supra* note 11, at 27; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 28; ALLEN & BELL, *supra* note 11, at 36.

75. G.S. 160A-71(b)(1), 153A-40(b).

The second restriction pertains to emergency meetings, which are for emergency business only.<sup>76</sup> That means no agenda items can be added that do not pertain to the emergency at issue, even with a majority vote. Because this restriction originates from the open meetings law, it applies to all government boards, nongoverning and appointed alike.

### **Content and Order**

While board members' requests largely dictate the content of agendas, there are also a few legal requirements. One such requirement relates to public comment periods for governing board meetings. Under statute, city councils must have at least one public comment period per month at a regular meeting.<sup>77</sup> Cities are not statutorily required to hold a regular meeting every month; if there is no regular meeting scheduled, they do not need to schedule one just to have the public comment period.<sup>78</sup> If a city has only one regular meeting per month, that meeting's agenda must include a public comment period.<sup>79</sup> If city councils have more than one regular meeting per month, only one of those regular meetings must include a public comment period.

Conversely, boards of county commissioners must have at least one regular meeting and public comment period per month.<sup>80</sup> That means if counties have only one regular meeting per month, that regular meeting must include a public comment period on the agenda. If they have more than one regular meeting per month, only one of those regular meetings must include a public comment period. Public hearings should also appear on agendas when required by law or by majority vote of the board. Otherwise, the content and order of an agenda are largely within the discretion of the board.

The SOG Rules suggest beginning a meeting with the adoption of the draft agenda and the consent agenda.<sup>81</sup> After that, boards can approve minutes, conduct public hearings and public comment periods, receive administrative and committee reports, address unfinished business, and address new business.<sup>82</sup> Placing public hearings and comments toward the beginning of the meeting assures that the public can address the board without staying for the whole meeting and that they can comment on new and unfinished business before the board addresses those items.<sup>83</sup> This order is only a suggested guideline, not a legal requirement.

### **Consent Agendas**

Consent agendas—or consent calendars, as *Robert's Rules* calls them—are useful for disposing of routine and noncontroversial items of business.<sup>84</sup> A consent agenda allows the board to approve several items simultaneously using only one vote. In other words, a majority vote to approve the consent agenda approves every item on the consent agenda.

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76. G.S. 143-318.12(b)(3).

77. G.S. 160A-81.1.

78. *Id.*

79. *Id.*

80. G.S. 153A-40(a), -52.1.

81. ALLEN, CITY COUNCIL, *supra* note 11, at 30; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 31; ALLEN & BELL, *supra* note 11, at 39.

82. ALLEN, CITY COUNCIL, *supra* note 11, at 30; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 31; ALLEN & BELL, *supra* note 11, at 39.

83. ALLEN, CITY COUNCIL, *supra* note 11, at 30–31; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 31–32; ALLEN & BELL, *supra* note 11, at 40.

84. *RONR* (12th ed.), p. 343, 41:32.

There are a couple of considerations to keep in mind when using consent agendas. First, for the sake of transparency and clarity, the meeting minutes should list each of the items on the consent agenda separately.<sup>85</sup> If the minutes state only “consent agenda passed,” it will be difficult to ascertain what individual items passed as part of the consent agenda. Second, the board should ensure that all the items on the consent agenda require only a simple majority vote to pass. Some items of business have different voting requirements. For example, passing a date-of-introduction ordinance requires a two-thirds majority for cities and a unanimous vote for counties.<sup>86</sup> A date-of-introduction ordinance therefore could not pass as part of a consent agenda since adopting the consent agenda requires only a simple majority. Finally, boards must ensure that all procedural requirements for each item on the consent agenda are met before attempting to approve the consent agenda. An issue that requires a public hearing should not be placed on the consent agenda until after the hearing and only then if the subject matter is not particularly divisive or controversial. If there are notice requirements that must be satisfied before an item can be approved, those must be complete before the consent agenda can be passed. Boards should honor any board member’s request to remove an item from a consent agenda. A board member’s desire to remove a matter from a consent agenda indicates the item is no longer routine or noncontroversial.

### E. Motions

A motion is a procedural mechanism that brings a proposed action before boards for decision, deliberation, discussion, or vote. In other words, motions are a prerequisite for any board action. Adoption of an ordinance, for example, must be preceded by a motion to adopt the ordinance. Adjournment must be preceded by a motion to adjourn.

#### *Procedure*

To bring a motion, a member ordinarily must obtain the floor by seeking the presiding officer’s recognition.<sup>87</sup> If recognized, the member makes the motion by saying some variation of “I move that. . .,” “I move for the adoption of . . .,” or “Motion to. . .”<sup>88</sup> What happens next depends on whether the motion requires a second. Under the SOG Rules, no motions require a second, while *Robert’s Rules* requires seconds for several different types of motions.<sup>89</sup> When drafting their own local rules of procedure, boards may also choose to require seconds for all motions. A member seconds a motion by stating, “I second” or “seconded.”<sup>90</sup> Seconding a motion does not mean the member supports the motion or must vote to approve it.<sup>91</sup> Instead, a second indicates only that the member supports discussing the motion.<sup>92</sup> If no member believes a motion is worth discussing or considering, no member will second it.

If a second is required, the board will wait a moment after a member makes a motion. If no one seconds it, the motion dies and the board can proceed to the next item on the agenda. If the

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85. ALLEN, CITY COUNCIL, *supra* note 11, at 28–29; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 28–29; ALLEN & BELL, *supra* note 11, at 37–38.

86. G.S. 160A-75, 153A-45.

87. *RONR* (12th ed.), p. 29, 4:4.

88. *Id.*

89. See Appendix B.

90. *RONR* (12th ed.), p. 31, 4:9.

91. *RONR* (12th ed.), p. 32, 4:11.

92. *Id.*

motion receives a second, then the presiding officer states the question to the board.<sup>93</sup> Stating the question involves describing the exact motion at issue and opening discussion and debate.<sup>94</sup> If no second is required, the presiding officer should still state the question, and discussion can proceed.<sup>95</sup>

### **Categories**

Motions fall into different categories that impact the order in which a board addresses them. Under the SOG Rules, there are two categories of motions: substantive and procedural.<sup>96</sup> Substantive motions bring an item of business before the board for decision.<sup>97</sup> They often result in a concrete output that impacts the public in some way. Substantive motions are independent<sup>98</sup> and do not depend on the existence of another motion to have meaning. They answer the question of *what* the board is trying to accomplish. Examples of substantive motions include a motion to adopt an ordinance and a motion to adopt a resolution. The result of these motions are concrete products—an ordinance and a resolution. A motion to adopt an ordinance is complete and self-contained; it exists to facilitate the adoption of the ordinance.

The second category is procedural motions.<sup>99</sup> If substantive motions deal with the “what,” procedural motions deal with the “how.” Procedural motions cannot stand alone; they exist to help accomplish substantive items.<sup>100</sup> They do not create products in and of themselves but assist in creating outputs that might bind or otherwise impact the public.<sup>101</sup> Examples of procedural motions are motions to refer to committee or motions to table. A motion to refer to a committee is based on the item being referred, and a motion to table is based on what is being tabled; neither motion has any effect or meaning by itself.

Whether a motion is substantive or procedural impacts when boards may consider it. Substantive motions must be considered last, after disposing of any pending procedural motions.<sup>102</sup> To ensure proper consideration of each substantive item of business, boards may consider only one substantive motion at a time.<sup>103</sup> This provision also helps boards apply the proper voting requirements. In contrast, many procedural motions can be pending at a time, as

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93. *RONR* (12th ed.), pp. 33–35, 4:15.

94. *Id.*

95. ALLEN, CITY COUNCIL, *supra* note 11, at 36; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 36; ALLEN & BELL, *supra* note 11, at 58.

96. ALLEN, CITY COUNCIL, *supra* note 11, at 40–41; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 40–41; ALLEN & BELL, *supra* note 11, at 45–46.

97. ALLEN, CITY COUNCIL, *supra* note 11, at 40; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 40; ALLEN & BELL, *supra* note 11, at 45–46.

98. ALLEN, CITY COUNCIL, *supra* note 11, at 40; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 40; ALLEN & BELL, *supra* note 11, at 45–46.

99. ALLEN, CITY COUNCIL, *supra* note 11, at 41; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 41; ALLEN & BELL, *supra* note 11, at 46–47.

100. ALLEN, CITY COUNCIL, *supra* note 11, at 41; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 41; ALLEN & BELL, *supra* note 11, at 46–47.

101. ALLEN, CITY COUNCIL, *supra* note 11, at 41–42; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 41–42; ALLEN & BELL, *supra* note 11, at 46–47.

102. ALLEN, CITY COUNCIL, *supra* note 11, at 40–41; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 40–41; ALLEN & BELL, *supra* note 11, at 45–46.

103. ALLEN, CITY COUNCIL, *supra* note 11, at 41; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 41; ALLEN & BELL, *supra* note 11, at 46.

they exist to aid in accomplishing substantive items.<sup>104</sup> The SOG Rules provide an order in which to decide procedural motions. These motions are listed in Appendix B in order of priority.

In contrast to the SOG Rules, *Robert's Rules* has several different categories of motions, including main, subsidiary, incidental, and privileged.<sup>105</sup> There is also a category for motions that bring a question back before the assembly.<sup>106</sup> Similar to substantive rules in the SOG Rules, main motions bring standalone items of business before the assembly.<sup>107</sup> Motions to adopt ordinances, resolutions, or policies are main motions under *Robert's Rules*. Subsidiary motions, like procedural motions under the SOG Rules, assist the body in disposing of a main motion.<sup>108</sup> They are always applied to another pending motion, and they change the status of that pending motion in some way.<sup>109</sup> Similar to procedural motions in the SOG Rules, multiple subsidiary motions may be pending at a time. Their order of priority is as follows:

1. Lay on the table
2. Call the previous question
3. Limit or extend limits of debate
4. Postpone to a certain time (or definitely)
5. Commit or refer
6. Amend
7. Postpone indefinitely<sup>110</sup>

The third motions category in *Robert's Rules* is privileged motions. Privileged motions do not pertain to pending business but rather to unrelated matters of special importance.<sup>111</sup> They have priority over every other class of motion.<sup>112</sup> Multiple privileged motions may be pending at a time, and they fall into the following order of priority:<sup>113</sup>

1. Fix time to adjourn
  - Sets a time for another meeting while business is pending
2. Adjourn
3. Recess
4. Question of privilege
  - Interrupt pending business for an urgent request
  - May pertain to meeting room conditions such as noise or inadequate ventilation
5. Call for orders of the day

Next is incidental motions. These are questions of procedure related to another pending motion or item of business.<sup>114</sup> The chair must decide on incidental motions when they are raised,

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104. ALLEN, CITY COUNCIL, *supra* note 11, at 41–42; ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 41–42; ALLEN & BELL, *supra* note 11, at 46–47.

105. *RONR* (12th ed.), pp. 56–72, 6:1–7:2.

106. *RONR* (12th ed.), p. 67, 6:25.

107. *RONR* (12th ed.), p. 56, 6:1.

108. *RONR* (12th ed.), p. 56, 6:3.

109. *RONR* (12th ed.), p. 58, 6:6.

110. *RONR* (12th ed.), pp. 116–206.

111. *RONR* (12th ed.), p. 60, 6:11.

112. *Id.*

113. *RONR* (12th ed.), pp. 207–32.

114. *RONR* (12th ed.), p. 62, 6:15–16.

and they are typically undebatable.<sup>115</sup> Multiple incidental motions may be pending at a time, and the order in which boards decide them is as follows:

1. Point of order
  - Identifies a procedural issue and requests that the chair make a ruling
  - Is similar to a lawyer yelling, “Objection!” in the courtroom
2. Appeal
  - Questions the chair’s ruling and requires chair to submit the matter to the assembly
3. Suspend the rules
4. Objection to consideration of the question
5. Division of the question
6. Consideration by paragraph or seriatim
  - Is used when the most effective way to handle business is to vote on or consider one paragraph at a time
7. Division of the assembly
  - Calls for a standing vote when a member doubts the chair’s report of voice votes or if there are doubts that everyone voted
8. Motions relating to methods of voting and the polls
  - Concern voting by ballot, standing vote, or roll call or closing or re-opening the polls
9. Motions relating to nominations
  - Establish the nomination process if the process is not otherwise provided in the rules
10. Request to be excused from duty
  - Member requests to be relieved of an obligation imposed in bylaws or by virtue of the position
11. Requests and inquiries
  - Request additional details about a matter before a vote can be taken, such as a point of information<sup>116</sup>

The final category of motions under *Robert’s Rules* includes motions that bring a question again before the assembly,<sup>117</sup> allowing boards to revisit or revoke previous actions.<sup>118</sup> These motions have the same low priority as main motions and include motions to take from the table, motions to rescind/amend something previously adopted, motions to discharge a committee, and motions to reconsider.<sup>119</sup> Motions to discharge a committee remove matters from a committee and return consideration to the board, even if the committee has not finished its work.<sup>120</sup> These motions, like motions to take from the table and motions to rescind/amend, have no priority and can only be made when no other motion is pending.<sup>121</sup> Motions to reconsider, on the other hand, have precedence over any other pending motions. They can be *made* at any time, but the

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115. *Id.*

116. *RONR* (12th ed.), pp. 233–82.

117. *RONR* (12th ed.), pp. 283–319.

118. *RONR* (12th ed.), p. 67, 6:25.

119. *RONR* (12th ed.), p. 68, 6:26; pp. 283–319.

120. *RONR* (12th ed.), pp. 293–94, 36:1–3.

121. *RONR* (12th ed.), pp. 283–98. Motions to take from the table can take precedence over a main motion under certain conditions. *See RONR* (12th ed.), p. 283, 34:2.



board can *act* on them only according to the priority of the underlying motion.<sup>122</sup> For example, if the board wants to reconsider a main motion, the motion to reconsider would be addressed last, since it would have the same low priority as a main motion. If the motion to reconsider was for a motion to fix the time at which to adjourn, the board may address the motion for reconsideration sooner, since the underlying motion can be treated as a privileged motion with higher priority.<sup>123</sup>

*Robert's Rules* includes more motions and motion categories than the SOG Rules because it primarily serves larger bodies. This bulletin will not explore each of these motions in depth due to space constraints. Other motions are explained in more detail in Appendix B.

## F. Voting

Boards accomplish their business by voting on motions. Each board member, including chairs and voting mayors, gets only one vote.<sup>124</sup> Votes can occur by voice vote (saying yes or no, or aye or nay), show of hands, standing vote (each member stands and declares their vote), or written ballot.<sup>125</sup> There are statutory requirements for ballot voting. The ballots must be signed, the votes of each member must be entered into the minutes, and the ballots must be available for inspection immediately following the meeting at which the vote occurred.<sup>126</sup>

Generally, a simple majority of votes will pass a motion, but some procedural rules require a supermajority or unanimous vote for certain motions (see Appendix B). Certain statutory rules also alter voting requirements. For example, a majority vote of all members of a city council, minus any members excused from voting, is required to adopt ordinances or approve contracts.<sup>127</sup> To adopt an ordinance on the date of introduction, city councils need a two-thirds majority minus any vacancies.<sup>128</sup> Ordinances requiring a hearing under G.S. 160D-601 are exempt from this two-thirds majority requirement.<sup>129</sup> A unanimous vote is required for boards of county commissioners to adopt an ordinance on the date of its introduction, except for bond ordinances, the annual budget ordinance, and any other ordinance requiring a public hearing.<sup>130</sup> If an ordinance fails to garner unanimous approval, it must be considered at the next regular meeting of the board.<sup>131</sup> If it wins a majority of votes then or at any time within one hundred days of its date of introduction, the ordinance passes.<sup>132</sup>

G.S. 160A-175(b) and 153A-123(b) include important exceptions to these date-of-introduction ordinance voting rules for governing boards. For example, no ordinances carrying criminal penalties may be enacted on the date of introduction. In other words, even if an ordinance carrying a criminal penalty receives the required two-thirds majority or unanimous vote, that ordinance cannot pass on the date of its introduction.

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122. *RONR* (12th ed.), p. 300, 37:9.

123. *RONR* (12th ed.), p. 229, 22:6.

124. G.S. 160A-69, 153A-39(2). In case of a tie, voting mayors and chairs cannot vote again to break it.

125. *RONR* (12th ed.), pp. 387–88, 45:11–13; p. 390, 45:18.

126. G.S. 143-318.13(b).

127. G.S. 160A-75(c).

128. *Id.*

129. *Id.*

130. G.S. 153A-45.

131. *Id.*

132. *Id.*

### ***Duty to Vote***

United States Supreme Court justices are allowed to recuse themselves from voting for even the appearance of impropriety.<sup>133</sup> Unfortunately, that is not the case for local governing board members. City councilmembers and county commissioners must vote unless they have a legally recognized conflict of interest.<sup>134</sup> In fact, a city councilmember's unexcused failure to vote counts as a "yes" vote under certain circumstances. If a councilmember is present but does not vote, that unexcused abstention is a "yes" vote under statute.<sup>135</sup> If a councilmember leaves without being formally excused and a vote occurs in the councilmember's absence, that nonvote also counts as a yes vote.<sup>136</sup> This statute does not apply to county governing boards or local appointed boards, so they must look to procedure to determine how to treat unexcused nonvotes. County governing boards who have adopted the SOG Rules may still employ the default yes rule since the SOG Rules recommend this procedure.<sup>137</sup> Local appointed boards may choose between the default yes rule or allowing abstentions under the SOG Rules.<sup>138</sup> In contrast, *Robert's Rules* allows for abstentions, so county governing boards and local appointed boards that have adopted *Robert's Rules* may document unexcused nonvotes as abstentions rather than affirmative or negative votes.<sup>139</sup>

City councilmembers and county commissioners may be, and in some cases must be, excused from voting if a legally recognized conflict of interest exists. The county statute directs boards of county commissioners to formally excuse conflicted commissioners.<sup>140</sup> County commissioners with a presumed conflict should declare it to the board and have the board or county attorney determine whether the conflict is legally recognizable. If it is, a majority vote of the board excuses the member, overcoming the member's duty to vote. The city council statute does not specify any process for dealing with a conflicted city councilmember.<sup>141</sup> The best practice likely is for city councils to follow the same process as boards of county commissioners.

In contrast to governing board members, local appointed board members generally do not have a statutory duty to vote.<sup>142</sup> Thus, these boards can allow or prohibit abstentions and can develop their own procedures for excusing members from voting.<sup>143</sup> These boards should decide whether they want to allow abstentions and clearly establish abstention and excusal guidelines in their rules of procedure.

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133. *Code of Conduct for United States Judges*, UNITED STATES COURTS, [www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#c](http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#c) (last visited Dec. 18, 2023).

134. G.S. 160A-75(a), 153A-44.

135. G.S. 160A-75(a). The "default yes" rule does not apply to legislative votes under G.S. Chapter 160D.

136. *Id.*

137. ALLEN, COUNTY COMMISSIONERS, *supra* note 11, at 39.

138. ALLEN & BELL, *supra* note 11, at 61.

139. *RONR* (12th ed.), p. 385, 45:3.

140. G.S. 153A-44.

141. G.S. 160A-75.

142. ALLEN & BELL, *supra* note 11, at 61–62.

143. *Id.*

### **Remote Votes**

Can remote participants vote? Many of the issues regarding quorum described in Section A above are relevant to voting as well. If remote participants cannot count toward quorum, they likely cannot vote, either. Still, this is an unsettled area of law, and it is possible a court would uphold rules of procedure that provide for remote voting.

### **Proxy Voting**

North Carolina law likely does not permit proxy voting. The General Statutes neither explicitly forbid nor specifically authorize it.<sup>144</sup> Default parliamentary procedure seems to disfavor proxy voting. *Robert's Rules* does not allow proxy voting unless an organization specifically provides for proxy voting in its bylaws with detailed procedures and policies.<sup>145</sup> Additionally, the North Carolina General Assembly's procedural rules do not allow for proxy votes unless the Speaker invokes the emergency rules.<sup>146</sup> Consequently, local governments likely should not provide for proxy voting in their local rules of procedure.

### **Text or Email Voting**

No statute specifically prohibits board members from voting over text or email, but doing so could violate the open meetings law. The open meetings law requires notice of and public access to official meetings of public bodies.<sup>147</sup> An official meeting occurs when more than half of the members of a public body gather simultaneously (in person or electronically) to deliberate, discuss, vote, or otherwise transact public business.<sup>148</sup> No North Carolina court has ruled on whether email or text message chains constitute official meetings, but arguably they can. Imagine a scenario where board members are on a group email or text and are rapidly exchanging messages about public business back and forth in near real time. A court could reasonably find that the board is conducting a simultaneous electronic gathering if the messages and emails are exchanged only seconds apart. The "simultaneous" element is less likely to be met by sending an email or text to a group or individuals and then having responses trickle in over several hours. Overall, the best practice is for a majority of the board to avoid near real-time communications about public business over text and email.

All governing board actions, including approvals of a contract, adoptions of ordinances, and actions involving certain personnel matters in a mayor-council or board-council form of government, must be taken by the entire board as a whole at a properly convened meeting.<sup>149</sup> Voting on these types of matters by text or email would therefore be illegal. Text and email polling for more administrative matters such as scheduling likely is safer if the scheduling

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144. David M. Lawrence, *Proxy Voting*, COATES' CANONS NC LOCAL GOVERNMENT LAW blog (Dec. 4, 2009), [canons.sog.unc.edu/2009/12/proxy-voting](https://canons.sog.unc.edu/2009/12/proxy-voting).

145. *RONR* (12th ed.), pp. 401–02, 45:56–58.

146. Lawrence, *supra* note 144; [ncleg.gov/Sessions/2023/Bills/House/PDF/H102v2.pdf](https://ncleg.gov/Sessions/2023/Bills/House/PDF/H102v2.pdf) (see Rule 58.1) (House of Representatives Rules); [ncleg.gov/Sessions/2023/Bills/Senate/PDF/S1v2.pdf](https://ncleg.gov/Sessions/2023/Bills/Senate/PDF/S1v2.pdf) (see Rule 58.1) (Senate Rules).

147. G.S. 143-318.10(a).

148. G.S. 143-318.10(d).

149. Frayda Bluestein, *Polling the Board*, COATES' CANONS NC LOCAL GOVERNMENT LAW blog (Dec. 3, 2014), [canons.sog.unc.edu/2014/12/polling-the-board](https://canons.sog.unc.edu/2014/12/polling-the-board); Frayda Bluestein, *Does the Board Have to Approve This?*, COATES' CANONS NC LOCAL GOVERNMENT LAW blog (Aug. 18, 2011), [canons.sog.unc.edu/2011/08/does-the-board-have-to-approve-this](https://canons.sog.unc.edu/2011/08/does-the-board-have-to-approve-this).

conversation does not morph into a discussion of substantive business or policy.<sup>150</sup> However, the best practice would be to cast votes in a properly convened and noticed official meeting.

## V. Considerations for Local Rules

While both *Robert's Rules* and the SOG Rules are comprehensive procedural resources, neither claims to address every potential situation. Below are a few areas that preexisting rules may not fully address.

### A. Remote Meetings

The legal landscape regarding remote meetings remains unclear. Outside of a state of emergency, there seems to be no explicit statutory authority to conduct remote meetings. G.S. 143-318.13, part of the open meetings law, provides notice requirements for “electronic meetings,” implying that an official meeting can lawfully occur by electronic means. Still, this section does not clearly authorize the kinds of remote meetings local governments typically conduct today, especially given that the statute was originally enacted prior to videoconferencing technology. Moreover, the section is silent on counting remote participants toward quorum. If local governments choose to rely on G.S. 143-318.13 as authority for remote meetings, they must comply with the notice and procedural requirements in that section.

Since state law does not explicitly prohibit remote meetings, local governments potentially have the authority to adopt remote meetings procedures as part of their local rules of procedure. However, it is unclear that local governments have the authority to count remote participants toward quorum as discussed in Section A of Part IV.

Any locally adopted remote meeting procedures must address this quorum issue. Even jurisdictions relying on G.S. 143-318.13 as remote meeting authority must adopt local rules about remote participants and quorum since the open meetings law does not address quorum. Locally adopted rules about remote meetings should also address voting procedures and notice.

### B. Unexcused Nonvotes

The General Statutes address the treatment of unexcused nonvotes only for city councils. Boards of county commissioners and local appointed boards therefore must rely on their locally adopted rules of procedure.<sup>151</sup> County governing boards can allow for abstentions under *Robert's Rules* but should adopt either a “default yes” or “default no” rule if following the SOG Rules. Local appointed boards have the freedom to allow abstentions under either *Robert's Rules* or the SOG Rules. Regardless of what rules are adopted, boards should ensure that unexcused nonvotes are somehow addressed since statutory guidance may be lacking.

### C. Appointed Boards

Under statute, city and county governing boards may adopt procedural rules both for themselves and for the boards, committees, and commissions they create.<sup>152</sup> Governing boards should clarify

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150. Bluestein, *Polling the Board*, *supra* note 149.

151. State statutes discuss the treatment of unexcused nonvotes for some local appointed boards. These boards should always first check the statutes before relying on procedural rules.

152. G.S. 160A-146, 153A-76.

whether their adopted rules apply to their created boards, committees, or commissions. If not, governing boards likely should empower those entities to adopt their own rules of procedure so that they too can address procedural issues.

Notably, some appointed boards are authorized under statute to adopt their own procedural rules in the absence of any action by the governing body. For example, planning boards, boards of adjustment, historic preservation commissions, appearance commissions, and housing appeals boards may all adopt their own rules of procedure consistent with state law.<sup>153</sup>

## Conclusion

Adopting local rules of parliamentary procedure will aid local governments in accomplishing official business in an efficient and professional manner. Whether a jurisdiction opts to wholesale adopt preexisting rules or draft its own rules, clear guidelines regarding how to manage meetings will help all members focus on the substance of business rather than the decision-making process. Understanding parliamentary procedure can be difficult, but many resources are available to assist local government boards. Some are listed in Appendix A below.

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153. G.S. 160D-308.

# Appendix A. Resources

## Books

TREY ALLEN, [SUGGESTED RULES OF PROCEDURE FOR A CITY COUNCIL](#) (UNC School of Government, 4th ed. 2017)

TREY ALLEN, [SUGGESTED RULES OF PROCEDURE FOR THE BOARD OF COUNTY COMMISSIONERS](#) (UNC School of Government, 4th ed. 2017)

TREY ALLEN & A. FLEMING BELL, II, [SUGGESTED PROCEDURAL RULES FOR LOCAL APPOINTED BOARDS](#) (UNC School of Government, 2020)

A. FLEMING BELL, II, [SUGGESTED RULES OF PROCEDURE FOR SMALL LOCAL GOVERNMENT BOARDS](#) (UNC School of Government, 2nd ed. 2012)

## Internet

Trey Allen, [Counting the Mayor in Quorum Calculations](#), COATES' CANONS NC LOCAL GOVERNMENT LAW blog (July 22, 2016)

Trey Allen, [Quorum Calculations: The Impact of Vacancies and Members Who Don't Vote](#), COATES' CANONS NC LOCAL GOVERNMENT LAW blog (May 2, 2014)

Trey Allen, [When May a Board Member Change a Vote?](#), COATES' CANONS NC LOCAL GOVERNMENT LAW blog (June 15, 2015)

Kristina Wilson, [A Parliamentary Procedure Primer: Part 1—The Overview](#), COATES' CANONS NC LOCAL GOVERNMENT LAW blog (Dec. 13, 2022)

Kristina Wilson, [A Parliamentary Procedure Primer: Part 2—Motions](#), COATES' CANONS NC LOCAL GOVERNMENT LAW blog (Dec. 20, 2022)

Kristina Wilson, [A Parliamentary Procedure Primer: Part 3—Quorum Misconceptions](#), COATES' CANONS NC LOCAL GOVERNMENT LAW blog (Jan. 13, 2023)

Kristina Wilson, [Can Appointed Boards Continue to Meet Remotely?](#), COATES' CANONS NC LOCAL GOVERNMENT LAW blog (Aug. 2, 2022)

[Q&A Forum](#), ROBERT'S RULES OF ORDER (last visited Dec. 19, 2023)

## Appendix B. A Comparison of Procedural Motions in the SOG Rules and *Robert’s Rules*

This table provides a general overview of the procedural motions in the SOG Rules (in order of priority) compared to their counterparts in *Robert’s Rules*.<sup>a</sup>

PRIORITY	SECOND REQUIRED	DEBATABLE	VOTE REQUIREMENTS	AMENDABLE	CAN BE RECONSIDERED
<b>Appeal a Ruling of the Presiding Officer</b>					
Questions the presiding officer’s decision on a procedural issue Must be made immediately after the disputed ruling					
<i>Robert’s (incidental motion)</i>					
<ul style="list-style-type: none"> <li>• Takes precedence over any pending question</li> <li>• Yields to all in-order privileged motions</li> <li>• If debatable, yields to Limit or Extend Limits of Debate, Call for the Previous Question, Commit, Postpone Definitely, and Lay on the Table</li> <li>• If undebatable and related to pending question, yields to Lay on the Table</li> <li>• If undebatable and not related to pending question, does not yield to any subsidiary motion</li> </ul>	Yes	Yes, unless the appeal is <ul style="list-style-type: none"> <li>• about indecorum or violation of speaking rules</li> <li>• about the priority of business or</li> <li>• raised when an undebatable question is immediately pending or involved in the appeal</li> </ul>	Majority <sup>b</sup> in negative to reverse president’s decision	No	Yes
<b>SOG</b>					
Top priority for procedural motions	No	Yes	Majority	Yes	Yes
<b>Adjourn</b>					
Ends a meeting					
<i>Robert’s (privileged motion)</i>					
<ul style="list-style-type: none"> <li>• Yields to Fix the Time at Which to Adjourn</li> <li>• Yields to incidental motions that must be addressed before adjournment</li> </ul>	Yes	No	Majority	No	No
<b>SOG</b>					
Second highest priority for procedural motions	No	Yes	Majority	Yes	Yes

a. *Robert’s Rules of Order Newly Revised* (12th ed.), chs. 10–22, 25, 34–39; TREY ALLEN, SUGGESTED RULES OF PROCEDURE FOR THE BOARD OF COUNTY COMMISSIONERS (UNC School of Government, 4th ed. 2017), 40–51; TREY ALLEN, SUGGESTED RULES OF PROCEDURE FOR A CITY COUNCIL (UNC School of Government, 4th ed. 2017), 40–52; TREY ALLEN & A. FLEMING BELL, II, SUGGESTED PROCEDURAL RULES FOR LOCAL APPOINTED BOARDS (UNC School of Government, 2020), 45–58.

b. As used throughout this table, *majority* means a simple majority of votes cast, a quorum being present.

PRIORITY	SECOND REQUIRED	DEBATABLE	VOTE REQUIREMENTS	AMENDABLE	CAN BE RECONSIDERED
<b>Recess to a Time and Place Certain</b>					
Continues an ongoing meeting at a different time or place Analogous to Fix the Time for an Adjourned Meeting in <i>Robert's</i>					
<i>Robert's</i> (Motion to Fix the Time for an Adjourned Meeting)					
<p><i>When business is pending (privileged motion):</i></p> <ul style="list-style-type: none"> <li>• Yields to Amend and Call for the Question when applied to it</li> </ul> <p><i>When no business is pending (incidental motion):</i></p> <ul style="list-style-type: none"> <li>• Treated as a main motion and yields to any pending procedural motions</li> </ul>	Yes	<p><i>When business is pending: No</i></p> <p><i>When no business is pending: Yes</i></p>	Majority	Yes as to the date, hour, or place of adjourned meeting	Yes
<b>SOG</b>					
Third highest priority for procedural motions	No	Yes	Majority	Yes	Yes
<b>Take a Brief Recess</b>					
Pauses an ongoing meeting for a short break					
<i>Robert's</i> (privileged motion)					
<p><i>When business is pending:</i></p> <ul style="list-style-type: none"> <li>• Yields to Adjourn, Fix the Time at Which to Adjourn, Amend, and Call for the Previous Question when applied to it</li> </ul> <p><i>When no business is pending:</i></p> <ul style="list-style-type: none"> <li>• Treated as a main motion and yields to any pending procedural motions</li> </ul>	Yes	<p><i>When business is pending: No</i></p> <p><i>When no business is pending: Yes</i></p>	Majority	Yes as to the length of the recess	No
<b>SOG</b>					
Fourth highest priority for procedural motions	No	Yes	Majority	Yes	Yes
<b>Follow the Agenda</b>					
Directs the board to adhere to the order of business listed in the agenda May be made only when an item of business is proposed that deviates from the agenda's order of business Analogous to Call for Orders of the Day in <i>Robert's</i>					
<i>Robert's</i> (Call for Orders of the Day) (privileged motion)					
Yields to privileged motions, Suspend the Rules, Reconsider, or the calling up of a previously made Motion to Reconsider	No	No	Must be adopted upon motion of one member unless set aside by two-thirds vote	No	No
<b>SOG</b>					
Fifth highest priority for procedural motions	No	Yes	Majority	Yes	Yes



PRIORITY	SECOND REQUIRED	DEBATABLE	VOTE REQUIREMENTS	AMENDABLE	CAN BE RECONSIDERED
<b>Suspend the Rules</b>					
Allows board to take an action in its legal authority that procedural rules might otherwise prevent					
<i>Robert's (incidental motion)</i>					
Yields to Lay on the Table, privileged motions (except for Call for Orders of the Day), and incidental motions arising from itself when business is pending	Yes	No	Two-thirds	No	No
<b>SOG</b>					
Sixth highest priority for procedural motions	No	Yes	For city councils, two-thirds, excluding vacancies and nonvoting mayor; for boards of county commissioners, majority equal to at least a quorum	Yes	Yes
<b>Divide a Complex Motion</b>					
Separates votes on different parts of a complex motion or issue Particularly useful when there is a multipart proposal and agreement may not be uniform on each of the different parts Can be made any time a substantive/main motion is pending or an amendment to that motion is pending Analogous to Division of a Question in <i>Robert's</i>					
<i>Robert's (Motion for Division of a Question) (incidental motion)</i>					
Yields to privileged motions, all applicable incidental motions, and all subsidiary motions except Postpone Indefinitely, Amend, and Limit or Extend Debates	Yes	No	Majority	Yes	No
<b>SOG</b>					
Seventh highest priority for procedural motions	No	Yes	Majority	Yes	Yes
<b>Defer Consideration</b>					
Under the SOG Rules, continues a substantive motion and any amendments for an unspecified length of time Expires unless revived within 100 days of deferral A combination of Postpone Indefinitely and Lay on the Table in <i>Robert's</i>					
<i>Robert's</i>					
See Postpone Indefinitely and Lay on the Table	See Postpone Indefinitely and Lay on the Table				
<b>SOG</b>					
Eighth highest priority for procedural motions	No	Yes	Majority	Yes	Yes

PRIORITY	SECOND REQUIRED	DEBATABLE	VOTE REQUIREMENTS	AMENDABLE	CAN BE RECONSIDERED
<b>Postpone Indefinitely (Robert's)</b>					
Allows a board to abstain from taking a position on a certain question Must be made while the substantive motion to which it is applied is pending					
<i>Robert's (subsidiary motion)</i>					
Lowest ranking subsidiary motion and yields to all privileged and incidental motions	Yes	Yes	Majority	No	Only an affirmative vote can be reconsidered
<b>SOG</b>					
See Defer Consideration	See Defer Consideration				
<b>Lay on the Table (Robert's)</b>					
Sets aside a current question when something urgent has arisen or something needs to be addressed before the current question can be decided No set time for taking up the pending question again and can be resumed at any time at the will of the majority Takes precedence over new questions					
<i>Robert's (subsidiary motion)</i>					
<ul style="list-style-type: none"> <li>Precedence over the main motion, all subsidiary motions, and all incidental motions</li> <li>Yields to privileged motions</li> </ul>	Yes	No	Majority	No	Only a negative vote may be reconsidered under certain circumstances
<b>SOG</b>					
See Defer Consideration	See Defer Consideration				
<b>End Debate (Call the Previous Question)</b>					
Terminates debate and forces an immediate vote					
<i>Robert's (subsidiary motion)</i>					
<ul style="list-style-type: none"> <li>Precedence over Limit or Extend Debate</li> <li>Yields to Lay on the Table, all privileged motions, and any applicable incidental motions</li> </ul>	Yes	No	Two-thirds	No	Yes, but only before any vote has been taken on the question called
<b>SOG</b>					
<ul style="list-style-type: none"> <li>Ninth priority for procedural motions</li> <li>Not in order unless every member who wants one has had an opportunity to speak</li> </ul>	No	Yes	Majority	Yes	Yes, but only before any vote has been taken on the question called

PRIORITY	SECOND REQUIRED	DEBATABLE	VOTE REQUIREMENTS	AMENDABLE	CAN BE RECONSIDERED
<b>Postpone to a Certain Time</b>					
Delays consideration of a question until a certain day, time, or meeting					
<i>Robert's (subsidiary motion)</i>					
<ul style="list-style-type: none"> <li>Priority over Postpone Indefinitely, Amend, Commit, Divide a Question, and Consider by Paragraph or Seriatim</li> <li>Yields to Limit or Extend Limits of Debate, Call the Previous Question, Amend, all privileged motions, all applicable incidental motions, and the main motion</li> </ul>	Yes	Yes	Two-thirds; majority when applied to a pending question	Yes	Yes
<b>SOG</b>					
Tenth priority for procedural motions	No	Yes	Majority	Yes	Yes
<b>Refer Motion to a Committee</b>					
<i>Robert's:</i> Has two variations on this motion—one for pending matters and one for matters not pending					
<i>SOG:</i> Sends a substantive motion to a committee for further study and recommendations					
If the committee fails to report back within sixty days, the body must vote on the motion if the introducing member requests					
<i>Robert's (subsidiary motion)</i>					
<p><i>When referring a pending question:</i></p> <ul style="list-style-type: none"> <li>Priority over Postpone Indefinitely, Amend, Divide the Question, and Consider by Paragraph or Seriatim</li> <li>Yields to Postpone Definitely, Limit or Extend Limits of Debate, Call the Previous Question, Lay on the Table, all privileged motions, all incidental motions, and the main motion</li> </ul> <p><i>When referring a question that is not pending:</i></p> <ul style="list-style-type: none"> <li>Treated as a main motion and yields to privileged, incidental, and subsidiary motions</li> </ul>	Yes	Yes	Majority	Yes	Yes, if committee has not begun consideration of the question or work on the matter
<b>SOG</b>					
Eleventh priority for procedural motions	No	Yes	Majority	Yes	Yes

PRIORITY	SECOND REQUIRED	DEBATABLE	VOTE REQUIREMENTS	AMENDABLE	CAN BE RECONSIDERED
<b>Amend</b>					
Changes some aspect of a substantive motion					
<i>Robert's (subsidiary motion)</i>					
<p><i>When applied to main motion:</i></p> <ul style="list-style-type: none"> <li>• Precedence over main motion and Postpone Indefinitely</li> <li>• Yields to all privileged motions and incidental motions</li> </ul> <p><i>When applied to anything other than main motion:</i></p> <ul style="list-style-type: none"> <li>• Precedence over motion it intends to amend</li> <li>• Yields to any privileged or subsidiary motions</li> <li>• Yields to all incidental motions to which the motion it proposes to amend would yield</li> <li>• Yields to Limit or Extend Limits of Debate, Call the Previous Question, and all related incidental motions</li> </ul>	Yes	Yes, if the motion it proposes to amend is debatable	Majority	Yes	Yes
<b>SOG</b>					
<ul style="list-style-type: none"> <li>• Twelfth in priority for procedural motions</li> <li>• Must concern the same subject matter as the motion it intends to amend</li> </ul>	No	Yes	Majority	Yes	Yes
<b>Revive Consideration</b>					
Brings back any deferred substantive motions within 100 days of vote to defer consideration Replaces Take from the Table in <i>Robert's</i>					
<i>Robert's (motion to bring a question again before the assembly)</i>					
See Take from the Table	See Take from the Table				
<b>SOG</b>					
Thirteenth in priority for procedural motions	No	Yes	Majority	Yes	Yes
<b>Take from the Table (<i>Robert's</i>)</b>					
Revives motions under delayed consideration and brings them back before the board					
<i>Robert's (motion to bring a question again before the assembly)</i>					
<ul style="list-style-type: none"> <li>• Cannot be made if another motion is pending</li> <li>• Yields to privileged and incidental motions but not subsidiary motions</li> </ul>	Yes	No	Majority	No	No
<b>SOG</b>					
See Revive Consideration	See Revive Consideration				

PRIORITY	SECOND REQUIRED	DEBATABLE	VOTE REQUIREMENTS	AMENDABLE	CAN BE RECONSIDERED
<b>Reconsider</b>					
Allows a re-vote on something previously decided Must be made at same meeting as action to be reconsidered Must be made by a member of the prevailing party					
<i>Robert's (motion to bring a question again before the assembly)</i>					
<ul style="list-style-type: none"> <li>Motion can be made at any time</li> <li>Takes the same priority as the motion to be reconsidered</li> </ul>	Yes	Only if motion to be reconsidered is debatable	Majority	No	No
<b>SOG</b>					
<ul style="list-style-type: none"> <li>Fourteenth in priority for procedural motions</li> <li>Allowed only when a pending matter concludes</li> </ul>	No	Yes	Majority	Yes	Yes
<b>Rescind</b>					
Reverses an action					
<i>Robert's (motion to bring a question again before the assembly)</i>					
Has no priority over any other motion	Yes	Yes	With notice, majority. Without notice, two-thirds or majority of entire membership	Yes	Negative vote only
<b>SOG</b>					
<ul style="list-style-type: none"> <li>Fifteenth in priority for procedural motions</li> <li>Can be made at any time after the meeting where the action to be reversed was taken</li> </ul>	No	Yes	Majority	Yes	Yes
<b>Prevent Reintroduction for Six Months (or another time period)</b>					
Prevents reintroduction of a failed substantive motion for a time set by the board Must be made immediately following the defeat of the substantive motion at issue					
<i>Robert's</i>					
See Object to Consideration of a Question	See Object to Consideration of a Question				
<b>SOG</b>					
Last place priority for procedural motions	No	Yes	For city councils, two-thirds of actual membership minus vacancies and excluding nonvoting mayors; for boards of county commissioners, majority equal to at least a quorum	Yes	Yes

PRIORITY	SECOND REQUIRED	DEBATABLE	VOTE REQUIREMENTS	AMENDABLE	CAN BE RECONSIDERED
<b>Object to Consideration of a Question (<i>Robert's</i>)</b>					
Avoids consideration of a main motion when the board believes it should not discuss the motion					
<i>Robert's</i> (incidental motion)					
Priority over original main motions and unstated subsidiary motions, except for Lay on the Table	No	No	Two-thirds against consideration sustains objection	No	Negative vote only
<b>SOG</b>					
See Prevent Reintroduction for Six Months	See Prevent Reintroduction for Six Months				