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## Coates' Canons Blog: Locally Adopted Voting Rules

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Article: <https://canons.sog.unc.edu/locally-adopted-voting-rules/>

This entry was posted on July 09, 2014 and is filed under Board Member Powers & Authority, Board Structure & Procedures, Enforcement, Miscellaneous, Motions, Minutes, & Hearings, Ordinances & Police Powers, Quorum & Voting Requirements

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The Robertsville town council recently adopted three new voting rules:

Rule #1: A motion to add an item to the agenda during a council meeting must be approved by a vote of 4/5 of the members present.

Rule #2: A final decision on a contract to hire a manager must be approved by a vote of 4/5 of all the members of the council.

Rule #3: Final recommendations and decisions of all appointed boards must be approved by a vote of 2/3 of all the members of the appointed board.

At the time of their adoption, everyone agreed that these rules made sense as a way of promoting consensus and efficiency in meetings. It was not long, however, before members became frustrated with rigid adherence to the supermajority requirements. The mayor and board chairs started to find excuses to make exceptions, but some board members are concerned that decisions may be invalid if the rules are not followed. Did the council have authority to adopt these rules? Are they are binding on the council and appointed boards? What is the procedure for suspending, modifying, or repealing them?

North Carolina cities and counties have broad authority to develop local rules of procedure for their meetings. G.S. 160A-71(c) (cities); G.S. 153A-41 (counties). The statutes require such procedures, however, to conform to the general law and the charter (for cities), and to be consistent with generally accepted principles of parliamentary procedure. Robert's Rules of Order [Newly Revised] is typically the "go to" standard for guidance on parliamentary procedure. Some units actually adopt Robert's Rules as their procedural rules. The School of Government offers a trio of publications, which provide suggested rules for city councils, boards of county commissioners, and small local government boards that are not governing boards. These publications incorporate aspects of Robert's Rules tailored to fit the local government setting and to reflect specific requirements of North Carolina law. Many jurisdictions have adopted versions of these rules as the official rules of procedure for their governing board and their appointed boards.

A basic presumption and a principle of parliamentary procedure is that boards must act by vote of a simple majority (more than half) of members present except when a statute or rule varies this requirement in some way. As noted above, local rules must be consistent with state law. Voting statutes for cities and counties specify how a majority must be calculated in some circumstances, and also impose supermajority requirements for certain actions. G.S. 160A-75, for example, requires a majority vote of all members not excused from voting for a city council to approve an ordinance, anything having the effect of an ordinance, a contract, or any action to authorize or commit the expenditure of public funds. The statute also requires a vote of 2/3 of the council's actual membership, excluding vacant seats and not counting the mayor unless she has the right to vote on all questions, to adopt an ordinance on the day of its introduction. (What constitutes the day of introduction is a question for another blog post.) The county voting statute (G.S. 153A-45) requires a unanimous vote for an ordinance to be adopted on the day of introduction. If an ordinance is not approved on the day of introduction, it must be considered at the next regular meeting, and at that time or any time thereafter within 100 days of introduction, it may be approved by a majority of votes cast.

Other statutes create special requirements for local government boards for specific types of actions. Under G.S. 160A-388(e), for example, an affirmative vote of 4/5 of the members of the board of adjustment (or of the planning board or

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governing board carrying out the functions of a board of adjustment) is required to approve a variance request. Special voting rules also apply to the budgeting process. G.S. 159-17 provides that any action regarding the adoption or amendment of the budget or any project ordinance may be taken by a simple majority of those present and voting, a quorum being present. This provision explicitly overrides any voting requirements in any general law, charter provision, or local act.

A locally adopted voting rule must avoid conflicts with these and any other statutory voting requirements. A governing board is free, however, to establish local voting rules for itself or for appointed boards on matters that are not subject to statutory voting requirements. Governing board actions that could be the subject of local rules include procedural motions, resolutions, appointments, and personnel actions not involving contracts.

So are the Robertsville rules legal?

**Rule #1.** A motion to add an item to the agenda during a council meeting must be approved by a vote of 4/5 of the members present.

There are no state statutory requirements governing agendas. As noted in my blog post here, local government boards are free to develop their own procedures and rules for agendas. Since there are no applicable statutory voting rules, the board is free, by local rule, to require a supermajority vote to amend the agenda during a meeting. Rule #1 is perfectly legal.

**Rule #2.** A final decision on a contract to hire a manager must be approved by a vote of 4/5 of all of the members of the council.

This rule conflicts with state law. Consider a scenario in which a majority of the board members vote in favor of hiring a new manager. The mayor declares that the motion fails because it does not meet the locally established 4/5 vote requirement. Under state law, however, a majority vote is legally sufficient to make the contract. Because it sets a higher standard than the one established in the statute, Rule #2 is not legally enforceable.

**Rule #3** Final recommendations of all appointed boards must be approved by a 2/3 vote of all of the members of the appointed board.

Local governments have broad authority to create appointed boards, and to define their powers and procedures. A few appointed boards, however, are covered by specific statutory voting requirements. As previously noted, for example, boards of adjustment and planning boards are subject to a 4/5 vote requirement under G.S. 160A-388(e) to approve a request for a variance. The 2/3 vote requirement in the local policy conflicts with this requirement, and will not be enforceable in cases where the statutory voting requirement applies. So Rule #3 will be perfectly legal for most appointed boards, but it will not apply to any board action that is governed by a conflicting statutory requirement.

Although Rule #1 and Rule #3 are generally lawful, a majority of the Robertsville board is simply fed up with them. The good news for these board members is that it's easy to make a change. There are no statutory voting requirements for the adoption, repeal, suspension or modification of local procedural rules. So a majority of board members present and voting can suspend, modify or even repeal the local procedures for the board itself, and for appointed boards. (Members of the appointed boards may not have the authority to modify their own rules, depending upon the provisions in the ordinance or resolution under which the boards are created.) Note that if the local governing board procedures are adopted as an ordinance, the supermajority requirements discussed earlier will apply to a vote to modify or repeal them on first reading. In addition, any unit of government that has adopted the School of Government's suggested rules will be subject to the rule requiring a 2/3 vote for the suspension of a procedural rule. (This only applies to the suspension of a locally adopted rule – there is no authority to “suspend” rules that are required under state law.) As already noted, though, a majority of the board can repeal or modify a rule, including the rule requiring a 2/3 vote for suspending a rule.

A final, important note about voting rules: Rules about voting should always specify whether the number of votes required is to be calculated based on all of the members of the body, or based on those who are present, and whether the number includes vacant seats or members who are excused from voting. (For more on the impact of vacant seats and members who don't vote, see Trey Allen's blog posts here and here.)



## Links

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-71](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-71)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-41](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-41)
- [www.robertsrules.com/](http://www.robertsrules.com/)
- [www.sog.unc.edu/publications/books/suggested-rules-procedure-city-council-fourth-edition-2017](http://www.sog.unc.edu/publications/books/suggested-rules-procedure-city-council-fourth-edition-2017)
- [www.sog.unc.edu/publications/books/suggested-rules-procedure-board-county-commissioners-0](http://www.sog.unc.edu/publications/books/suggested-rules-procedure-board-county-commissioners-0)
- [www.sog.unc.edu/publications/books/suggested-rules-procedure-small-local-government-boards](http://www.sog.unc.edu/publications/books/suggested-rules-procedure-small-local-government-boards)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-75](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-75)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-45](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-45)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-388](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-388)
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