

---

## Coates' Canons Blog: Voting Rules for Adopting Ordinances

By Frayda Bluestein

Article: <https://canons.sog.unc.edu/voting-rules-for-adopting-ordinances/>

This entry was posted on January 21, 2015 and is filed under **Board Structure & Procedures, Motions, Minutes, & Hearings, Open Government, Ordinances & Police Powers, Public Hearings, Quorum & Voting Requirements, Zoning**

---

A property owner petitioned for a rezoning in a North Carolina city. The city council voted to send the matter to the planning board for a recommendation, and voted to set the public hearing. Now, following the public hearing, the board is ready to vote on the rezoning. Does it take a two-thirds vote for the rezoning ordinance to pass, or just a simple majority?

Under the voting rules in G.S. 160A-75, if the date on which the board votes on the rezoning is regarded as the “date of introduction,” an affirmative vote of two-thirds of the actual membership of the council will be required to adopt the measure. If an earlier date is deemed to be the date of introduction, a majority of the members of the council will be sufficient. Which standard applies? If the two-thirds vote requirement applies and is not achieved, is the rezoning rejected, or may the council vote on the matter a second time at a subsequent meeting at which a majority vote will be sufficient? If this scenario involved a county rather than a city, would the answers to these questions be different?

Because the language in the city voting statute is unclear, it’s not clear which voting standard applies or whether the initial vote is final, and there are no cases to suggest which interpretation reflects the legislative intent. The county statute, G.S. 153A-45, is a bit more clear, although some aspects of that statute are also difficult to interpret. Indeed, the differences between the two statutes contribute to the difficulty in interpreting them.

This is one of several examples of how variations between city and county statutes can be problematic. Did the legislature intend to create a different rule, or is it simply a type of “elegant variation” that occurs as statutes are separately enacted and amended over time? In addition, each of these statutes leaves some important questions unanswered. Failure to meet the voting requirements for passing a local ordinance puts local governments at risk of a legal challenge. Boards must do their best, relying on advice of counsel, to get it right, knowing that it may take a lawsuit and judge’s interpretation of legislative intent to know the final answer. This blog proposes language that the General Assembly could enact to provide clarity, consistent with the presumed purpose of these voting requirements.

### Overview of Voting Rules

Currently, state law does not establish a general voting rule for the entire range of possible local governing board actions (which can include motions, resolutions, ordinances, franchises, contracts, and any other matters that come before the board for action). In the absence of a specific voting requirement, it is generally assumed that actions of a board are approved by a majority vote of those present and voting. As described in my blog post here, some local governments have adopted local voting rules for some kinds of actions.

Several state statutes create specific voting requirements for certain matters. For example, G.S. 160A-385 requires a vote of three-fourths of the board members to rezone property when a valid protest petition has been submitted. Another example is G.S. 159-17, which specifies that a budget ordinance (including budget amendments) may be adopted by a majority of those present and voting.

### The Ordinance Voting Statutes

Two important examples of special voting statutes are G.S. 153A-45 and G.S. 160A-75, which describe the voting requirements for ordinances adopted by city and county governing boards. (For cities, the statute also applies to votes on contracts and commitments of funds.) The statutes are set out in pertinent part, here:

*Counties:*

**153A-45. Adoption of ordinances.** To be adopted at the meeting at which it is first introduced, an ordinance or any

---

action having the effect of an ordinance (except the budget ordinance, any bond order, or any other ordinance on which a public hearing must be held before the ordinance may be adopted) must receive the approval of all the members of the board of commissioners. If the ordinance is approved by a majority of those voting but not by all the members of the board, or if the ordinance is not voted on at that meeting, it shall be considered at the next regular meeting of the board. If it then or at any time thereafter within 100 days of its introduction receives a majority of the votes cast, a quorum being present, the ordinance is adopted.

*Cities:*

**160A-75. Voting.** An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council.

The county statute is clear on these points:

1. It takes a unanimous vote of all the members of the board to adopt an ordinance at the meeting at which it is first introduced. This requirement applies to an ordinance, or any action that has the effect of an ordinance. So even if it is called a resolution or just a motion, if it has the effect of an ordinance the unanimous vote requirement applies.
2. The requirement *does not* apply if a public hearing is *required* prior to adoption of the ordinance.
3. If the ordinance is not approved unanimously, or is not voted on at all at the meeting at which it is first introduced, it must be considered at the next regular meeting of the board. At that time it can be adopted by a majority of those present and voting.
4. If it is not adopted at the next regular meeting, it can be adopted at a meeting any time after that meeting but within 100 days of its introduction, by a majority of those present and voting.
5. The ordinance is *not* considered finally rejected if the supermajority vote is not obtained on first introduction. The statute clearly allows a second vote with a majority requirement within the specified time period.

Some important aspects of the county statute are not clear:

1. Does this voting requirement apply when a hearing was held, even though no hearing was required by law? The language suggests that only hearings that are required by law are considered, but might a judge conclude that an optional hearing could suffice to eliminate the supermajority requirement?
2. What does it mean for the ordinance to have been "first introduced." The city statute specifies that the day of introduction is the "date the subject matter is first voted on the by the council." Since this language is not included in the county statute, should or may a board of county commissioners adopt the city definition as its standard? Or may the county commissioners establish a different definition of their choice?
3. Should vacancies and members excused from voting be excluded when applying the unanimous vote requirement? If not, it would be impossible to adopt an ordinance on first reading any time a member is excused or there is a vacancy. The city statute specifically addresses vacant seats and members who are excused. Since no reference is included in the county statute, should or may a board of county commissioners adopt a local interpretation? Or does the omission suggest a legislative intent that they are to be included?

The city statute is clear on these points:

1. It takes a majority of all the members of the council not excused from voting to adopt an ordinance.
2. It takes a vote of two-thirds of all the members of the council, excluding vacant seats and the mayor (unless it's a voting mayor), to adopt an ordinance on the date on which it is introduced.
3. This requirement applies to an ordinance, or any action that has the effect of an ordinance.

Some important things about the city statute are not clear:

1. What constitutes the date of introduction? As noted above, the statute includes a definition, but it has not, in practice, provided much clarity. One interpretation is that any vote on the general topic meets the standard. Under this view, a vote to refer the matter to a committee or to set a public hearing would be a "vote on the subject matter." Rather than risk a legal challenge, some attorneys take a more conservative approach, advising their clients that the first introduction of the ordinance itself cannot occur until after the hearing occurs (in cases where a hearing is required).
2. If an ordinance fails to receive a two-thirds vote on the date of introduction, does the matter fail, or does the board have an opportunity to vote at subsequent meeting at which a majority would be sufficient? The statute is silent. It simply says that the ordinance can't pass by a simple majority vote on first reading. On the other hand, the county statute specifically allows a second vote, as noted above.
3. How should a city consider vacant seats and members excused from voting when applying the voting rules? Under the general rule requiring a majority of all of the members of the council, the city statute excludes those who are excused, but doesn't mention vacant seats. The two-thirds provision excludes vacant seats, but not those who are excused.

### **Assumptions About Legislative Intent**

The suggested statutory rewording set out below is based on three assumptions about legislative intent.

First, it is assumed that the purpose of the supermajority voting requirement is to prevent hasty enactment of new laws, and to ensure that there is time for the board and the citizens to become aware of and properly consider the proposal before it is enacted. It allows boards to move forward quickly when a supermajority supports it, but slows the process down if the proposal starts with only a majority ready to adopt it. With this purpose in mind, it makes sense to define "first introduction" to include any consideration of the general topic of the proposed law, including a discussion (even if no vote is taken), as well any public hearing (even if not required by law).

It follows also from this assumed purpose that the failure to obtain a supermajority vote ordinance on first reading should not doom the proposed ordinance. The purpose of the higher voting requirement is to slow the process, not to end it abruptly. With the passage of time, and if the board wishes to take the matter up again, a second vote with the usual majority vote requirement should be allowed. There should be no need for a motion to reconsider, which, depending upon the rules in place, may come with limitations as to when it can be made and by whom. The statute should clearly set out a two-step process under which the matter may be taken up for a vote according to the regular majority vote requirement. Under this approach, the supermajority vote is properly viewed as a timing-related exception to the usual majority vote rule, rather than a fatal penalty for bringing the matter to a vote too soon.

Second, it makes sense to exclude vacancies and members excused from the voting calculation, since the standard should apply only to those who are actually able to vote. Note that it *does not* necessarily follow that members who are absent should be excluded, since there is a value to having a full complement of members present (not just the minimum required for a quorum) when enacting new laws. The existing exception in the budget statute, which allows a vote of those present and voting, reflects a policy choice to ensure that the board can expeditiously make budgetary decisions when necessary.

Finally, the proposed revision codifies the presumed voting rule for all matters other than ordinances: majority of those present and voting. It then sets out a general voting rule for ordinances: majority of all members, excluding vacancies and members excused from voting. The proposed revision does not include the current city statute provisions that apply the rules for ordinances to the approval of contracts and commitment of funds. This is consistent with the value of fiscal expediency reflected in the budget statute mentioned earlier. Contracting approval procedures vary significantly among local government entities and the proposed revision provides flexibility to adopt local rules regarding these types of actions.

### **A Proposal for A Revised Statute**

#### Voting Rules and Adoption of Ordinances

1. a) General Rule for Voting. Except as otherwise provided by law, an affirmative vote of a majority of those present and voting is required to approve any matter decided by a vote of the [city council/board of county commissioners]. The [city council/board of county commissioners] may by local ordinance establish voting rules that modify the general rule,

---

provided that no locally adopted voting rule may modify a voting requirement for any specific matter for which a state law establishes a voting requirement.

b) Rules for Adoption of Ordinances. An affirmative vote equal to a majority of all the members of the [city council, including the mayor's vote in case of an equal division/board of commissioners], shall be required to adopt an ordinance. To be adopted at the meeting at which it is first introduced, an ordinance or any action having the effect of an ordinance, must be approved by [two thirds/cities; all/counties] of the members of the [council/commission]. When calculating the total number of members under this subsection, vacant seats and members excused from voting shall not be included. Members who are absent shall be included. If the votes necessary for adoption upon first introduction are not obtained, the [council/commissioners] may adopt the ordinance by a vote equal to a majority of all the members at any meeting held no sooner than 10 days and no more than 100 days from the date of first introduction.

c) Date of Introduction. The purpose of the supermajority vote requirement is to allow sufficient time for consideration of new laws by the [council/commissioners] and by members of the public. For purposes of this statute, an ordinance is considered to be first introduced at the meeting at which the subject matter of the ordinance is first presented, discussed, referred to a committee, set for public hearing, or otherwise in any way acted or voted upon.

## Links

- [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)
- [en.wikipedia.org/wiki/Elegant\\_variation](http://en.wikipedia.org/wiki/Elegant_variation)
- [canons.sog.unc.edu/?p=7754](http://canons.sog.unc.edu/?p=7754)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-385](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-385)
- [www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter\\_159/ga\\_159-17.html](http://www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_159/ga_159-17.html)