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## Coates' Canons Blog: When May a Board Member Change a Vote?

By Trey Allen

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A five-member city council is debating a motion to adopt the proposed budget for the upcoming fiscal year. Eager for more time to persuade others to support increased funding for some of his priorities, Councilmember Tom Delay moves to postpone a vote on the proposed budget for one week. (The council's rules don't require a second.) Following discussion the mayor calls for a vote on the postponement motion. Delay, distracted by an incoming text message, mistakenly votes against his own motion, which fails two votes to three. The mayor immediately calls for a vote on the motion to approve the budget, at which point Delay realizes his mistake and asks to change his vote on the motion to postpone. May Delay change his vote at this point?

This blog post examines the rules for vote-change requests and applies them to the scenario described above. It also considers a few of the options open to a member whose request to change a vote has been denied.

### ***Changing Votes: What Are the Rules?***

There are no statutory provisions that directly address when a member of a city council, board of county commissioners, or other local government body may change a vote. City councils and boards of county commissioners may adopt rules of procedure for their meetings, however, provided those rules comply with any relevant constitutional and statutory requirements and track generally accepted principles of parliamentary procedure. G.S. 153A-41; 160A-71(c). Many city councils have adopted procedural rules based on my colleague Fleming Bell's *Suggested Rules of Procedure for a City Council*, while many boards of county commissioners have modeled their rules on Professor Joseph Ferrell's *Suggested Rules of Procedure for the Board of County Commissioners*. City councils and boards of county commissioners also have the power to adopt procedural rules for appointed boards and commissions under their jurisdiction. See G.S. 153A-76 (authorizing boards of county commissioners to "create, change, abolish, and consolidate" boards and commissions); 160A-146 (authorizing city councils to do the same). A resource for developing rules for these boards and commissions is Professor Bell's *Suggested Rules of Procedure for Small Local Government Boards*. (Some procedural matters for certain appointed bodies are controlled by statute and, thus, are beyond a local governing board's power. For instance, G.S. 130A-35(f) defines the quorum for a local board of health.)

The *Suggested Rules* don't address how to handle a member's request to change a vote, but they do specify that *Robert's Rules of Order Newly Revised* ("RONR") will be consulted on all unresolved procedural questions. Accordingly, the presiding officer for a public body whose rules are based on any of the *Suggested Rules* may be obligated to refer to RONR if a vote-change issue arises.

What about local government bodies, including city councils and boards of county commissioners, that function without formal rules of procedure? Public bodies in this category routinely turn to RONR for guidance on procedural issues. If that is a body's practice, the presiding officer should probably follow RONR's vote-change rules when a member asks to change a vote. The vote-change rules set forth in RONR sharply limit when a member may alter a vote, even with the unanimous consent of fellow board members.

Under RONR the following rules control when a member may change her vote on a motion:

- A member has the right to change her vote on a motion until the result of the vote has been announced by the presiding officer.
- Once the result of a vote has been announced, a member who wishes to change her vote must request unanimous

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consent to do so.

- A member's request for unanimous consent to change a vote may be granted only if it comes promptly after the result has been announced and before any intervening debate or business.

RONR (11<sup>th</sup> ed.), p. 48, ll. 7-12; p. 408, ll. 28-36; p. 409, ll. 1-10.

When "unanimous consent" is required to grant a request, it doesn't mean that members must actually vote in favor of the request for it to be allowed. Usually, the presiding officer will simply ask whether there's any objection and, hearing none, pronounce the request approved. The absence of an objection doesn't always signify that all members support a request. Members can decide not to block a request for tactical reasons unrelated to its merits. See *generally* RONR (11<sup>th</sup> ed.), p. 54, ll. 11-36; p. 55, ll. 1-36; p. 56, ll. 1-17 (describing the procedure for acting by unanimous consent).

RONR provides several examples of circumstances in which a member's request for unanimous consent to change a vote occurs too late to be granted. For instance, a request is untimely if another member has been recognized and has begun to speak in debate or to give a report. Likewise, the presiding officer's call for a vote on another motion will eliminate the opportunity to change a vote in some situations. If the call is for a motion that was made *after* the one previously voted on, it ends any chance to alter a vote for or against the earlier motion. On the other hand, if the presiding officer calls for a vote on a motion that was *pending* when the one previously voted on was made, a member's request for unanimous consent to change a vote may be granted until the first vote has been cast in response to the call. RONR (11<sup>th</sup> ed.), p. 409, ll. 4-10. It appears obvious that, insofar as RONR is concerned, the adjournment of a meeting will prevent a member from changing a vote cast at that meeting.

City councils and boards of county commissioners may adopt vote-change rules that differ in some respects from those contained in RONR. That being said, they should think carefully before taking a more permissive approach. It's easy to imagine scenarios in which a significant delay in changing a vote could land a local government in legal trouble. Suppose, for example, that a city council's procedural rules permit a vote cast at a prior meeting to be changed by unanimous consent. The council votes to approve a contract, and the contract is then executed by the city, with all necessary steps taken to make it legally binding. At the council's next meeting, the member who cast the deciding vote for the contract seeks unanimous consent to change his vote. If the council grants this request, the other party or parties to the contract may have a valid breach-of-contract claim against the council.

### ***Vote-Change Rules Applied***

So, according to RONR, how should Councilmember Delay's request to change his vote be resolved? Because Delay waited until after the mayor announced the result of the vote on the postponement motion to make the request, his vote can be changed only by unanimous consent. Had he acted before the announcement, RONR would allow him to change his vote without anyone's permission. What about changing his vote with the unanimous consent of his fellow council members? Because the motion to adopt the proposed budget was *pending* when the vote on the postponement motion occurred, and no one had yet voted on the motion to adopt when Delay made his request, Delay's vote on the postponement motion may be changed with the unanimous consent of council members. (Had the motion to adopt been made *after* the postponement motion, the mayor's call for a vote on the motion to adopt would have rendered Delay's vote-change request untimely.)

Of course, if the council grants Delay's request, the motion to postpone will pass and a vote on the proposed budget may not occur for one or more weeks. Members who favor the proposed budget thus have an incentive to object to Delay's request. They might decide not to object, though, if they think that Delay and the members who supported his motion are strongly opposed to the proposed budget. Pro-budget members could view the postponement as affording them more time to convert other members to their position.

### ***Changing Votes and the "No Abstention" Rule***

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City council members have a statutory duty to vote, though a member may be excused from voting for designated reasons. G.S. 160A-75. (My colleague Frayda Bluestein has discussed the grounds for excusal in blog posts available [here](#), [here](#), and [here](#).) The statute provides that, except when a council member has been excused from voting, the member's failure to vote "shall be recorded as an affirmative vote" if the member is physically present in the council chamber or has departed without the consent of a majority of the remaining members present. *Id.*

It could be argued that, if a council member's failure to vote is recorded as an affirmative vote pursuant to the statutory "no abstention" rule, the presiding officer must deny a request to change the vote. After all, state law declares that an affirmative vote must be recorded in such circumstances, and its dictates trump RONR and a council's local rules.

Although, like city council members, county commissioners have a statutory duty to vote, the county statute doesn't specify that a commissioner's unexcused failure to vote must be treated as an affirmative vote. G.S. 153A-44. Many boards of county commissioners have adopted local rules mandating that an affirmative vote be recorded when a member who hasn't been excused fails to vote. (In a few counties, a commissioner's unexcused failure to vote is treated as a vote in the negative.) Depending on its wording, the rule might bar a commissioner from changing her vote, even when doing so would be allowable under RONR, unless the board votes to suspend its rules to allow the vote change.

A city council or board of county commissioners generally has the discretion to impose a duty to vote on its appointed boards and commissions. Indeed, the *Suggested Rules of Procedure for Small Local Government Boards* recommends including such a provision in the rules for appointed bodies. The presence of a "no abstention" rule in an appointed body's procedures could prevent a body from changing the vote of a member who's been recorded as having voted in the affirmative – or negative – pursuant to the rule, unless the body is authorized to suspend its rules and exercises that authority to permit the vote change.

### **Other Options**

What options are available to a member whose vote change request has been denied? The member could try to get the public body to revisit the action that was the subject matter of the vote through one of the following procedural mechanisms:

- The member could move that the body reconsider its prior action. Both RONR and the *Suggested Rules* place significant restrictions on motions to reconsider, however. They limit the ability to make such a motion to the members who voted with the prevailing side, and they impose tight timelines on when a member may move to reconsider. (The *Suggested Rules*, for instance, require a motion to reconsider to be made at the same meeting at which the original vote was taken.) My colleague David Lawrence has discussed motions to reconsider in detail in blog posts available [here](#) and [here](#).
- The member could move that the body rescind or repeal the prior action. Any member may make such a motion, and ordinarily no time limits apply to it.
- The member could make a motion the effect of which would be to undo the prior action. Any member may make such a motion, but the motion is improper if made at the same meeting at which the body took the action that the motion would undo. See RONR (11<sup>th</sup> ed.), p. 343, ll. 24-26 ("Motions are also improper when they present practically the same question as a motion previously decided at the same session.")

Any of the above motions is out of order when a public body would violate the law by adopting it. A motion to reconsider a zoning decision might be out of order, for example, if the decision has resulted in vested property rights. Similarly, a motion to rescind or repeal certain kinds of actions will be out of order if statutory notice and hearing requirements have gone unsatisfied. See, e.g., *Sofran v. City of Greensboro*, 327 N.C. 125, 131 (1990) (invalidating a city council's repeal of a zoning ordinance because the council didn't provide the notice and public hearing mandated by statute). A public body should consult its attorney when its authority to reverse a previous decision is unclear.

## **Links**

- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-41](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-41)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-71](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-71)



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- [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.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-76](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-76)
  - [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-146](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-146)
  - [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.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130a-35](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130a-35)
  - [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-75](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-75)
  - [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-44](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-44)