

FOIA & PARLIAMENTARY  
PROCEDURE MUNICIPAL  
ATTORNEYS

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BLACK  
LETTER  
RULES  
FOR  
COUNCIL

- IF THE ANSWER TO YOUR QUESTION IS PROVIDED BY FOIA, **NEVER** LOOK AT ROBERT
- HAVE A RULES ORDINANCE SO THAT YOU HAVE A STRUCTURE THAT WORKS FOR YOUR COUNCIL BASED ON THE PERSONNEL & TRAINING YOU HAVE
- THE RULES ORDINANCE MUST PROVIDE FOR BEING SUSPENDED WHEN THAT IS NECESSARY AND **SHOULD NOT REQUIRE A 2/3 VOTE, JUST MAJORITY**
- ROBERT HAS NOTHING TO GUIDE YOU REGARDING THE TWO READING REQUIREMENT SO SET A RULE REGARDING AMENDING, ON WHICH READING

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NEXT PORTION IS RECENT  
QUESTIONS I HAVE BEEN  
ASKED



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**ADD MATERIAL TO MINUTES**  
How, When, What

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**COLUMBIA:** Any member of the council desiring to express a position on a matter voted upon by the council in the minutes may do so by presenting the position in writing to the council not later than the next regular meeting.

**FLORENCE:** A member of council may place a written expression of position on a matter in the minutes by delivering it to the city manager not later than the next regular meeting.

**EDISTO BEACH:** A member of the council may place a written expression of position on a matter in the minutes not later than the next regular meeting.

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**ELECTRONIC MEETINGS: only**  
with a rule, then the issue of quorum

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- COLUMBIA:** provides for attendance by members BUT the presiding officer must be physically present & the remote members are not counted in quorum. 2.61
- FLORENCE:** no rules shown on muni code website
- EDISTO BEACH:** Council members may attend any regular, special, or emergency meeting of council by video, virtual computer program, telephonic, or other electronic means and shall be considered present for all purposes, including establishing a quorum, if all council members and members of the public can hear the public proceedings and be heard by all. Any number of council members, including all, may attend video, virtual computer program, telephonically, or by other electronic means. Council members in attendance by video, virtual computer program, telephonic, or other electronic means shall have all right

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**HOW TO GET AN ITEM ON**  
**THE AGENDA FOR COUNCIL**

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- COLUMBIA:** An agenda shall be prepared for all council meetings by the city clerk, under the direction of the city manager. All requests or matters for official action of the city council shall be submitted to the city clerk no later than 10 business days preceding the council meeting.... The mayor or any member of council may request the city manager to place an item on a future agenda by making such a request at a council meeting. Unless a council member or the city manager objects, the requested item shall be included. If a council member or the city manager has an objection, the item in question shall not be included on a future agenda, unless a majority of the council votes in favor of including the item

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**HOW TO GET AN ITEM ON  
THE AGENDA FOR COUNCIL**

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- FLORENCE: (b) Agenda. Matters to be considered by council at a regular or special meeting shall be placed on a written agenda prepared by the city manager, distributed to the media, and publicly posted by the municipal clerk at least twenty-four (24) hours prior to the meeting. The deadline for agenda item requests for a regularly scheduled Monday meeting is 5:00 p.m. on the Wednesday twelve (12) days prior to the regularly scheduled meeting. If a scheduled meeting is not on Monday, then the deadline for agenda item requests is 1:00 p.m. on the day that is three (3) business days prior to the meeting. Matters not on the agenda may be considered upon request of a member unless two (2) members object.

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**HOW TO GET AN ITEM ON  
THE AGENDA FOR COUNCIL**

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- EDISTO BEACH: Matters to be considered by the council at a regular or special meeting shall be placed on a written agenda publicly posted by the administrator at least 24 hours prior to the meeting. Matters not on the agenda may be considered upon request of a member unless two members object.

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**HOW TO GET AN ITEM ON  
THE AGENDA FOR COUNCIL**

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- So, after the FOIA amendments regarding adding items to an agenda: what do we suppose that Florence and Edisto Beach are doing? The Columbia ordinance deals with future agenda placement so is within the current FOIA.

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**CAN I RESCIND PRIOR ACTION?**

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- The better answer is NO. Repeal is a better answer. Equal dignity rule: if it took two readings to do it, it takes two readings to undo it. If it took a public hearing to do it, it takes a public hearing to undo it. If it took notice on an agenda to do it, it takes notice on an agenda to undo it.

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**WHAT IS THE EFFECT OF A TIE VOTE?**

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- THERE MUST BE AN ANALYSIS OF WHAT IS THE STATUS QUO ANTE TO DETERMINE THE EFFECT OF A TIE.
- If the tie is on a vote for the adoption of an ordinance, it fails. You can reconsider that vote but absent an affirmative vote on reconsider followed by an affirmative vote on the ordinance, it fails.
- If the tie vote is on the repeal of an ordinance, it fails and the ordinance considered for repeal remains in place.
- If the tie vote was on the motion to remove a person from a committee, then they remain on the committee.
- If the tie vote was on the motion to place someone on a committee, they are not appointed.

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**CAN YOU BALLOT VOTE?**

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- The only correct answer is NO SECRET BALLOT.
- If you choose to use a ballot for a vote, the ballots must be signed and must be available for inspection and should be recorded in the minutes as if a roll call.
- EDISTO BEACH: At the first meeting of council following a general election for town council, after the administration of the oath of office to new council members, there shall be elected by ballot from the town council, a mayor pro tempore, who shall serve for a term of two years or until his/her successor is elected. The mayor pro tempore shall act as mayor when the mayor is unable to do so through sickness, temporary absence, or other reasons, and when a vacancy exists in the office of mayor until such time as a new mayor is elected.

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### ELECTION OF CHAIR

- There is a county council of eleven which requires a majority vote to be elected chair but defines that majority for this vote only as six, not a majority of those present & voting.
- This is to protect the absent members on that first meeting in January when many are still away on vacation. If there are six votes for member "X" the absentees don't matter, they lose even if present.

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### MOTION TO RECONSIDER

- There is a county council of eleven which requires the motion to reconsider to be made prior to the adoption of the minutes for the meeting at which the motion was adopted or failed.
- This is not from Robert which requires that the motion to reconsider be made either on the same day or on the next succeeding day within the same session. You need a definition of when this motion can be made as this definition in Robert fits very poorly into the structure of councils.

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### Quorum under FOIA

- No official action can be taken without a quorum present
- Majority of meeting require a simple majority of members – 1 more than half
- Absent a quorum?
  - Adjourn
  - Recess and try to get a quorum
  - Fix the time to adjourn

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**Agenda & Amendments**

- Agendas are now required at all public meetings
- Act 70 now restricts the ability to add items to the agenda once it is posted!
  - **Before the meeting**
    - items may be added so long as a new 24 hour notice is provided
    - If less than 24 hours – delay the meeting or wait until meeting begins
  - **Once the Meeting has begun**
    - an item for which action can be taken may be added with a 2/3 vote.
    - Final action item added must have 2/3 vote and a finding by the chair that an emergency or exigent circumstance exists.

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**Consent Agenda, need a rule for this**

- Using a consent agenda frequently saves time.
- Items on the consent agenda are those as to which there is no dissent and no need to amend
  - **HOW ITEM IS PLACED ON CONSENT AGENDA**
  - **HOW REMOVED FROM CONSENT AGENDA**
  - The Council would need a rule on this: how an item is placed on the consent agenda, how it is removed, how the consent agenda is handled: single vote or each item separately.

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**RECORDS UNDER FOIA**

- The organization must maintain
  - Records of meetings - MINUTES
  - Records of financial transactions - AUDIT & BUDGET
  - Records of elections & appointments
  - Procurement records & audit
- Permanent vs. time limited retention & microfilming
- Retention schedules for FLSA, GAAP
- Retention Schedule for governmental units

\*<http://rm.sc.gov/generalschedules/Documents/cotxtpdf>




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### Records under other applicable laws

- GAAP—Generally accepted accounting principles for public bodies
- FLSA—Fair Labor Standards Act, generally 7 years on personnel records
- Procurement statutes

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### Minutes under FOIA

- Section 30-4-90 requires that minutes be made for all meetings of any public body. The minimum content of these is
  - 1) the date time and place of the meeting
  - 2) recording of the members present and absent
  - 3) the substance of all matters proposed, discussed or decided
  - 4) a record of votes taken
  - 5) any other information requested to be included by a member
- Electronic retention of official recordings
- The Act permits any person to record the meeting with video or audio

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### Executive Sessions in FOIA

Our law specifically provides for executive session (Sec. 30-4-70) BUT ONLY to consider ONE OR MORE OF THE FOLLOWING, WHICH SHOULD BE STATED IN THE MOTION TO GO INTO EXECUTIVE SESSION:

1. Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a person to a public body; however, in an adversary hearing involving the employee or client, such employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing.
2. Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against said agency of a claim.
3. Discussion regarding the development of security personnel or devices.
4. Investigative proceedings regarding allegations of criminal misconduct.
5. Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.<sup>22</sup>

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**Further breakdown from Adam Whitsett**

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There are five subsections that break down as follows:

1. Personnel Matters
2. Contractual Negotiations
3. Sale or Purchase of Property
4. Attorney-Client Privilege
5. Investigative Matters
6. Location of Expansion of Services/Economic Development Matters
7. Security Personnel or Devices

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**JUST BECAUSE YOU CAN,  
DOESN'T MEAN YOU SHOULD**

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There are five subsections that break down as follows:

1. Personnel Matters
2. Contractual Negotiations
3. Sale or Purchase of Property
4. Attorney-Client Privilege\*
5. Investigative Matters
6. Location of Expansion of Services/Economic Development Matters
7. Security Personnel or Devices\*

THERE IS A NEED FOR SOME LEVEL OF SPECIFICITY IN THESE.  
\* These are the easiest to justify and to limit the description.

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Motions

- Substantive motions (main/principal)
  - Puts a question before the body
  - Only one motion at a time
- Subsidiary motions
  - Acts upon a substantive motion
  - Multiple motions at the same time
  - Order of precedence
- Incidental & Procedural motions

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Postponing/Reviving Matters

- Postpone/carry-over:
  - time certain (2/3 vote)
  - no-limit (majority vote)
  - debatable, amendable, can be reconsidered
- Table/lay on the table – postpones until a later time – dies if not taken from the table by the end of the meeting
  - can't be reconsidered
- Reconsider – reconsider an action made at the same or immediately preceding meeting.
  - *Motion must be made by member voting on the prevailing side of issue*

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SPECIFICS ON RECONSIDER

- Under Robert, only a member on the prevailing side can make the motion to reconsider.
- The motion must be made at the same meeting or, in a session of more than one day, before the close of the next meeting.

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Creating Rules of Procedure



- Brig. Gen. Henry M. Robert
- Born in Robertville, SC
- U.S. Army 1857-1901
  - Chief of Engineers
  - Buried at Arlington National Cemetery
- Created Roberts Rule of Order to bring order to previously unorganized meetings!

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??Questions??



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