

SOUTH CAROLINA  
ASSOCIATION OF COUNTIES  
Local Leaders. Statewide Strength.®

## Legal & Ethical Considerations

Conducting Meetings of Local Governments

PART 1

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### Objectives for Part I

- Discuss the importance of rules of procedure for meetings
- Discuss the statutory requirements for conducting meetings of public bodies
- Discuss procedures relevant to different types of public meetings
- Discuss potential ethical issues that arise during meetings

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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
- 1876 created Roberts Rule of Order after presiding over a disastrous church meeting!
- Now in its 11<sup>th</sup> edition

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**PURPOSE OF RULES OF PROCEDURE**

- To set expectations for the conduct of all public meetings of a governmental body
- To ensure for the fair exchange of information and the proper resolution to issues before the body
- To govern the conduct of members and the public during meetings

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**Governing Documents**



Constitution  
Statutes  
Ordinance  
Court rulings  
Parliamentary Authority

Statutes:  
Freedom of Information Act (FOIA)  
Ethics Act

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**Parliamentary Basics**

Local public bodies are statutorily required to adopt their own rules of business – SC Code 4-9-110 or other authorizing statutes

- o 1. NOTICE (to the members & public)
  - o Agenda & meeting materials
- o 2. QUORUM
- o 3. MOTIONS
- o 4. DEBATE/DISCUSSION
- o 5. VOTING
- o 6. RECORDS OF ACTIONS TAKEN (minutes)

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**Notice**

- Statutorily required
  - SC Code 30-4-80(A)
- Annual notice of regularly scheduled meeting calendar
- 24 hour minimum notice of individual meetings to public & media
- Post of notice:
  - at the location of meeting,
  - media outlets requesting notice and
  - County maintained Website if site is regularly maintained (Act 70 of 2015)

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**Agenda & Amendments**

- Agendas are now required at all public meetings
- Agendas can be amended to add items only in the following cases!
  - **Before the meeting**
    - items may be added so long as a new 24 hour notice is provided
  - **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.
    - AG opinion: has to be a circumstance beyond the body's control

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**Quorum**

- No official action can be taken without a quorum present
- Majority of meeting require a simple majority of members – 50% plus 1
  - Governing document may set quorum
- Absent a quorum?
  - Adjourn
  - Recess and try to get a quorum
  - Fix the time to adjourn

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**Motions**

- Substantive motions (main/principal)
  - Puts a question before the council
  - Only one motion at a time
- Subsidiary motions
  - Acts upon a substantive motion
  - Multiple motions at the same time
  - Order of precedence
  - Most common is the motion to amend

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**Other less common motions**

- *Incidental motions*: motions which generally relate to the conduct of business or rules of order, and need to be considered immediately
- *Privileged motions*: motions which are not related to the current business, but relate to special matters

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**Debate**

- The Chair is responsible for controlling the flow of debate – ensure all members have the opportunity to speak
  - Member who raised the issue should speak first
  - First-in-line v. alternate viewpoint
  - Maintain decorum/courtesy
- Should the Chair participate in debate?
  - If the Chair participates - Another member should preside temporarily
- Ending debate
  - by motion of a member
    - Can't interrupt a speaker
    - 2/3 vote to cutoff debate
  - by the chair when debate exhausted

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### Postponing & Reviving Matters

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

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### Voting

- Generally by voice/show of hands
- Passage – commonly by simple majority
  - Majority: (simple-majority) 50% + 1
  - 2/3 Majority: (super-majority)
    - S.C. Code requirements: amend agenda, over-ride county supervisor actions
    - Actions affecting rights of members: amending agenda; call the question; postpone to time certain
- Tie vote – considered to have failed, retains the status quo
- Does the Chair vote?

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### Misc. Rules of Procedure Issues

- Provisions for alternate attendance
  - A.G. opinion: *Town of Tega Cay*
    - Ability to hear and be heard
    - Questionable use in quasi-judicial hearings
- Removal from a meeting for Disruption
  - Removal of members of the public
  - SCAG: discipline is a legislative action granted to the body

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### Ethical Issues

- SC Code 8-13-700: Member can't use their office to obtain an economic benefit for the member, family, or business/associates
  - Must file a conflict letter with the chair – published in the minutes
  - Can't take any part in debate or vote
    - avoid even the perception of participation
    - Note on leaving the room
- Difference between **Conflict** and **Bias**
  - Abstention vs. recusal

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### Quasi-Judicial Hearing

- Individual application/appeal
- Members sit in a judicial capacity
- Constitutional due process and equal protection issues
  - **Impartiality is essential!**
  - Decisions are to be based on presented evidence only – avoid ex parte issues
    - Potential for appealable error
- Applicant has the burden of proof

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### Public Hearings

- Statutorily required for certain actions
- Publically announce rules for public input
  - Time limits; for/against; number of speakers
- Follow the agenda
- Maintain decorum and public safety
  - Don't allow speakers to attack other speakers or members
- Goal is for members to receive information
  - Members should refrain from personal comments or remarks to speakers

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### Executive Sessions

- Limited to 6 specific reasons provided for in SC Code 30-4-70(a)
- Body must publically announced sufficient information for reasons for calling the session and vote in open session
- No votes or polling may occur during the session

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### Records/Minutes

- Statutorily required for all public meetings
  - SC Code 30-4-90
- Must record official actions: dates/times, quorum, motions, votes & conflict recusals
- Must be maintained permanently & microfilmed for security
  - SC County Records Retention schedule maintained by SC Dept. of Archives & History

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### ??Questions??



Email: [jdeloache@scac.sc](mailto:jdeloache@scac.sc)

Part II: Tuesday January 15, 2019 – Advanced topics in Parliamentary Procedure.

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