

Model Rules
of Parliamentary
Procedure
for
South Carolina
Counties, 2nd edition

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Foreword to the 2010 Edition

Since publishing the *Model Rules of Parliamentary Procedure for South Carolina Counties* in 2002, the Association Staff has fielded numerous parliamentary questions from member counties. A pattern developed indicating some issues addressed in the *Model Rules* needed more in-depth explanation. Additionally, the Supreme Court decided two cases, *McSherry v. Spartanburg County* and *Wilson v. Preston*, that touched on parliamentary procedures and the role of individual county council members.

In the *McSherry* case, the S.C. Supreme Court found that a first reading of an ordinance is valid, even if there is no written version of the ordinance when it is introduced. This edition incorporates a new paragraph to Rule 9—Ordinances and Resolutions—that provides parameters for the circumstances under which a county can introduce an ordinance by title only. In *Wilson v. Preston*, the Court examined the right or ability of an individual member of the minority political party to require action by a county administrator and found that, absent the concurrence of a majority of council, she was without authority. A new rule, Rule 3A, describes the limited authority of the individual council member, as opposed to the authority of council acting as a body.

The changes in the 2010 edition of the Model Rules include new features, including a consent agenda to be used for uncontested matters. The consent agenda is explained in Model Rule 5. In Model Rule 6, we added a section that explains the role of county council members in quasi-judicial hearings.

The addition of Rule 8C—Voting to Elect Boards, Committees, and Commissions—arose out of a question from a county regarding the best method for electing members of boards and commissions. S.C. Code Ann. § 4-9-170 requires county

councils to provide by ordinance for the appointment to boards, committees, and commissions. Comment sections throughout the Model Rules were expanded, as necessary, to address comments from member counties. Finally, the tables that were at the end of each of the rules addressing the various motions in the first edition were moved to the end of this publication and expanded to include whether the motion required a second.

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Acknowledgments

The Association Staff would like to acknowledge the many people who took time out to assist in the preparation of these *Model Rules*. Special thanks go to the Parliamentary Rules Study Group: Study Group Chairman and Berkeley County Supervisor, Jim Rozier; Jeff Anderson, Esq., Lexington County Attorney; Barbara Austin, Berkeley County Clerk to Council; Shyrl Brown, Fairfield County Clerk to Council; Alexander (Sandy) Cruickshanks, Esq., Laurens County Attorney; Rose Dobson, Hampton County Administrator; and Donna Owens, Pickens County Clerk to Council.

Also instrumental in providing review and comment on these *Model Rules* were Helen McFadden, Esq., Kurt Taylor, Esq., Chief Deputy County Attorney for Charleston County, and Dennis Lambries of the University of South Carolina's Center for Governmental Services, Institute for Public Service and Policy Research.

Clif Scott, SCAC Senior Staff Attorney, provided the research and editing and the overall coordination for the project.

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Introduction

THE GREAT LESSON FOR DEMOCRACIES TO LEARN IS FOR THE MAJORITY TO GIVE THE MINORITY A FULL, FREE OPPORTUNITY TO PRESENT THEIR SIDE OF THE CASE, AND THEN FOR THE MINORITY, HAVING FAILED TO WIN A MAJORITY TO THEIR VIEWS, GRACIOUSLY SUBMIT TO AND RECOGNIZE THE ACTION AS THAT OF THE ENTIRE ORGANIZATION, AND CHEERFULLY TO ASSIST IN CARRYING IT OUT, UNLESS THEY CAN SECURE ITS REPEAL.¹

The Home Rule Act,² at § 4-9-110, empowers county councils to adopt their own rules of business. The overwhelming majority of South Carolina counties have adopted *Robert's Rules of Order Newly Revised* (RONR, hereafter), currently in its 10th edition. RONR is primarily written for private societies and is not well suited for use by legislative bodies, particularly smaller bodies such as county councils. Neither chamber of the South Carolina Legislature uses RONR: the House of Representatives has adopted its own rules, based on Mason's *Manual of Legislative Procedure*; the Senate's rules are based on Jefferson's *Manual of Parliamentary Practice* (Jefferson's Manual, hereafter).

RONR (10th ed.), p. XLIV, quoting Henry M. Robert, *Parliamentary Law* (1923; reprint, New York: Irvington Publications, 1975).

S.C. Code Ann. § 4-9-10, *et seq.* Law. Co-op (1976).

Some of the differences between legislative bodies and non-legislative societies, which "must be taken into account in the formulation of any system of rules,"³ include:

- Sessions of legislative bodies are made up of a number of meetings, often regularly scheduled, with the session lasting up to a year;⁴

RCMR (10th ed.), p. XXXI.

The South Carolina legislature has two-year sessions. At the close of a session, no pending matters carry over to the next session. County councils, because they have staggered terms, are considered continuing bodies. For this reason, there are no terms of county council and ordinances given one or more readings can be given additional readings, even though new members of council have been elected in the interim. See Op. Atty. Gen. Dated August 1, 1994 (1994 WL 56700). However, one county council cannot bind a subsequent council in contract, particularly when the contract implicates a governmental function and, for the purposes of contract, a subsequent council is formed every time a new member is elected to council. *Riedman v. Pub. Serv. Dist. v. Cowart*, 324 S.C. 299, 478 S.E.2d 886 (1995).

whereas sessions of a non-legislative society are usually limited to a single meeting rarely lasting longer than two to three hours;

- The number of members in a non-legislative society can be quite large and members are not paid, nor can they be compelled to attend meetings; for this reason, quorum requirements must be less stringent in order for a non-legislative society to function;
- The business of legislative bodies is much greater in volume and more complex; consequently, much more of the business of a legislative body must be done by standing committees.

Because *RONR* is set up to handle large, single meeting sessions of non-legislative societies, they are quite formal and quite involved. *RONR* is a large, complex set of rules with over 700 pages, not including 48 pages of charts, tables and lists. *RONR* recognizes that the formality of its rules could hinder the flow of business of a smaller body, particularly where fewer than a dozen members are present; it also recognizes that relaxation of some rules is in order for smaller boards and committees.⁵

The purpose of the *Model Rules of Parliamentary Procedure for South Carolina Counties (Model Rules)* is to

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RONR (10th ed.), § 49, p.
470-71.

provide a simplified and much shorter set of rules, based in part on *RONR*, which can be adopted by county governing bodies, preferably by ordinance. The *Model Rules* were drafted with county council meetings in mind, but individual counties may want to require other county boards to use the *Model Rules*, as well.

The number of authorized parliamentary motions is limited to 20, but the chair should be liberal in interpreting a motion that may not be correctly phrased. Those motions that do not meet the requirements of an approved parliamentary motion may be taken up as a main motion. Several parliamentary motions have alternative titles, any one of which would be a proper statement of the motion; the alternative names of the motions are set off in brackets ([]). See e.g. Model Rule 15, § 1, Motion to Lay on the Table [Motion to Table]. Some procedural motions combine two similar motions, as described in *RONR*. In such cases, the similar motions are separated by a forward slash (/). See e.g., Model Rule 17, § 2, Motion to Recall from the Table/Motion to Recall from Committee, which are actually two separate motions, but are dealt with by the *Model Rules* as if they were a single motion.

Prior to undertaking this project, the staff polled county associations in other states to see if they had recognized the problem and/or provided model rules for their member counties. Approximately 20 associations responded and those that did respond had also recognized the problem. Only three states, all located in the South, responded that they had published model rules for their counties; all drew on *RONR* to some extent. We want to recognize the excellent work done by the University of Arkansas (Division of Agriculture), the University of North Carolina at Chapel Hill's Institute of

Government and the Association County Commissioners of Georgia and to note that the staff of this Association borrowed from the ideas in their model rules, as well as *RONR*, in drafting these *Model Rules*. The Georgia Model Rules are reprinted by the Association County Commissioners of Georgia on its web page and can be found at <http://www.aaccg.org/Library/ParliamentaryProcedureFinal.pdf> [sic].

When situations arise that are not covered in the *Model Rules*, counties should refer first to the Comments section of the *Model Rules* and then to *RONR* for guidance, so long as these sources are consistent with state and federal law and with the *Model Rules*, as adopted by the county. Also, when state law affects county parliamentary rules, the *Model Rules* reflect the requirement when the law is not likely to change,⁶ or references the appropriate code section when future changes in the law are likely.⁷ Citations to the South Carolina Freedom of

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E.g., S.C. Code Ann. § 4-9-130, which sets out requirements for public hearings. was passed as a part of the original Home Rule Act in 1875 and has been amended only once, in 1987.

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E.g., S.C. Code Ann. § 30-4-40 is the section of the Freedom of Information Act (FOIA) dealing with matters exempt from disclosure. Passed as a part of the original FOIA in 1978, this section alone, has been amended in 1980, 1987, 1994, 1995, 1996, 1998 and

Information Act, S.C. Code Ann. §§ 30-4-10 through 30-4-160, are referred to in these *Model Rules* and in the Comments sections as "FOIA," accompanied by the appropriate section number; there are no citations to the federal Freedom of Information Act in these *Model Rules*.

In some cases, individual counties may choose not to enact one or more of the specific *Model Rules*. When a county elects not to adopt a specific *Model Rule*, it is recommended that the *Model Rules* numbering system remain intact and that the omitted rule be labeled "reserved for later use." The SCAC staff will continue to monitor changes in state law, etc., and will modify the *Model Rules*, as necessary, to keep abreast of changes. If a county does not follow the *Model Rules'* numbering system, recommendations for proposed changes may lead to confusion.

An ordinance-ready version of the *Model Rules* (without introduction, Comments, or index), is available from SCAC's website in Adobe Acrobat format and can be incorporated directly into draft ordinances by the counties. Even so, some editing will be necessary. For example, some of the *Model Rules'* provide one or more alternatives and it will be up to county council to select which language to adopt.

Finally, each individual county government, as § 4-5-110 clearly states, may adopt additional rules to meet its own needs. It is suggested that counties reserve Rules 18 and 19 for further development of the *Model Rules* and begin codification at Rule 20, if they choose to adopt additional rules.

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1995.
See e.g. Model Rule 2.

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Model Rules of Parliamentary Procedure for South Carolina Counties, 2nd edition

Model Rule 1. Short Title.

This Ordinance may be cited as the _____ County Rules of Parliamentary Procedure.

Comment: These *Model Rules* were drafted with the anticipation that they would be adopted by ordinance by county governing bodies. For this reason, a Short Title section was included for ease of reference.

Model Rule 2. Applicability; Deviation from Rules.

These Rules shall apply to all meetings of county council, including committee meetings, and to all boards and commissions for which the county council appoints a majority of the members. As used in these Rules, the term “Meeting” means the convening of a quorum of the membership of county council, or such other board or commission, to discuss or act upon a matter over which county council or such other board or commission has supervision, control, jurisdiction or advisory power; the term “Quorum” means a simple majority of the membership of the county council, or committee of county council, or such other board or commission. Where applicable, the term “county council” means not only the county council, but also any other board or commission in the county governed by these Rules.

These Rules were adopted as guidelines to assist county council and county boards and commissions in conducting orderly and productive meetings. Any deviation from or waiver of these Rules shall not affect or void any action taken by county council, or a county board or commission. Furthermore, such deviation or

waiver does not convey any right or cause of action to third parties not otherwise imposed by law.

Comment: Model Rule 2 states that the Rules are to be followed in all meetings of county council and of county boards and commissions. The definitions for “Meeting” and “Quorum,” which have remained unchanged since 1985, are taken, essentially verbatim, from FOIA at § 30-4-20. Omitted from the definition of “Meeting,” as defined in FOIA, is the provision for electronic meetings, as it is doubtful that such meetings would be a legal forum for a body that can spend government funds, impose fees and taxes and create new laws that would impose criminal penalties. Since the Rules apply to all meetings, they should be followed regardless of whether the council or committee of council is acting in a legislative, administrative or quasi-judicial capacity.

These *Model Rules* were formulated as a tool to be used by county council and other boards and commissions and not as a weapon to be used against them in the courts. The Rules will be used to conduct meetings and hearings often in discussions of emotionally charged subjects. Council chairs will be required to make quick decisions and may reach conclusions in which reasonable minds may differ. The second paragraph makes clear that the Rules were adopted as guidelines to assist council and should not be interpreted by the courts as a basis for striking down actions taken by county council or for conveying rights to third parties.

The basic Model Rule 2 contemplates that the Rules will apply not only in county council meetings but also in meetings of various boards and commissions to which county council appoints a majority of the board members; two alternatives to Model Rule 2 are set out below. The First Alternative Rule would have the *Model Rules* apply only to meetings of county council and its committees; the Second Alternative Rule allows county council to specify which county boards or commissions must follow the *Model Rules*.

ALTERNATIVE LANGUAGE.

First Alternative, Model Rule Two (Rules to Apply to County Council only).

These Rules shall apply to all meetings of county council, including committee meetings. As used in these Rules, the term “Meeting” means the convening of a quorum of the membership of county council to discuss or act upon a matter over which county council has supervision, control, jurisdiction or advisory power; the term “Quorum” means a simple majority of the membership of county council, or committee of county council.

These Rules were adopted as guidelines to assist county council, in conducting orderly and productive meetings. Any deviation from or waiver of these Rules shall not affect or void any action taken by county council. Furthermore, such deviation or waiver does not convey any right or cause of action to third parties, not otherwise imposed by law.

Second Alternative, Model Rule Two (Rules to Apply to County Council and Specifically Named Boards and Commissions).

These Rules shall apply to all meetings of county council, including committee meetings, and to the following boards and commissions of the county:_____. As used in these Rules, the term “Meeting” means the convening of a quorum of the membership of county council, or such other board or commission, to discuss or act upon a matter over which county council or such other board or commission has supervision, control, jurisdiction or advisory power; the term “Quorum” means a simple majority of the membership of the county council, or committee of county council; the term “county council” includes all boards and commissions in the county governed by these *Model Rules*.

These Rules were adopted as guidelines to assist county council (and county boards and commissions) in conducting orderly and productive meetings. Any deviation from or waiver of these Rules shall not affect or void any action taken by the county council, board or commission. Furthermore, such deviation or waiver does not convey any right or cause of action to third parties, not otherwise imposed by law.

Model Rule 3. *Model Rules of Parliamentary Procedure for South Carolina Counties and Robert’s Rules of Order Newly Revised (10th ed.) to Govern Other Cases.*

County council will refer to the *Model Rules*, and the **Comment** sections contained therein, as the primary resource in determining the intent and meaning of these Rules. In all cases not covered by these Rules, county council shall be governed by such rules as are set out in the current edition of *Robert’s Rules of Order Newly Revised*. Provided, however, that state and federal law shall take precedence over these Rules in all cases. Whenever

possible, these Rules should be interpreted to conform to state and federal law; if an irreconcilable difference occurs, only the portion of the Rule or Rules directly in conflict with state or federal law is to be overruled, the remaining portions surviving.

Comment: When compiling these *Model Rules*, it was contemplated that counties would adopt the rules by ordinance but would not adopt or codify the **Comment** sections. *RONR* differs significantly from the *Model Rules* in some instances and the former should be consulted as an ultimate authority only after first consulting the **Comment** section of the *Model Rules* to determine if the Model Rule intends to differ from *RONR* and, if so, in what manner.

Model Rule 3.1. Role of the Individual Council Member.

County council is a policy-making, legislative body. It provides a vision for the county and provides guidelines to county administration regarding how the county is to be run. County council members have authority only when acting together, speaking with one voice, and have no individual authority over county operations.

Comment: In the recent case of *Wilson v. Preston*, 378 S.C. 348, 662 S.E.2d 580 (2008), the Supreme Court held that the majority of county council could restrict the access to certain information that a single council member was attempting to obtain and that the county administrator could not be compelled to provide it. The single member of council brought a declaratory judgment action against the county administrator to obtain certain, more complete

information regarding the county's legal bills. The council member was convinced that the bills would reveal waste and improper practices and intended to release the information to the public. The remainder of council was concerned that the disclosure would breach county council's attorney-client privilege and directed the administrator to limit the access of the single council member.

The Supreme Court held in a 4 to 1 opinion that the administrator could not be compelled to disclose the information. There were a number of issues at work in *Wilson*, not the least of which was the council member's disclosure that she intended to reveal information believed to be covered by the attorney-client privilege. Chief Justice Toal wrote a concurring opinion, concurred in by Justice Pleicones, which would have held that this was a purely political issue and one that the courts should have left alone. The importance of *Wilson* is that it confirms that county council can only act as a body, not as individuals.

Model Rule 4. Meetings, Notice.

County council shall meet at least once monthly, but may meet more frequently provided that public notice, as described herein, is provided. Written public notice shall be given for all regularly scheduled meetings at the beginning of each calendar year. Notice must include the dates, times and places of the meetings.

Public notice of each called, special or rescheduled

meeting must be posted on a bulletin board at the meeting place for county council, or other suitable place, as early as practicable, but not less than twenty-four hours prior to each meeting. The notice must include the agenda and the date, time and place of the meeting. The twenty-four hour requirement for posting notice does not apply for emergency meetings.

All persons, organizations, and news media requesting notification of county council meetings shall be notified of the times and places, and given copies of the agenda for all meetings, whether scheduled, rescheduled or called. Efforts made to comply with this notice requirement shall be noted in the minutes.

Special meetings may be called by the chair or by the majority of county council, provided that the notice requirements are met. Meetings, whether scheduled, rescheduled or called, may be canceled or rescheduled by the chair or by a majority of county council, provided that the requirement for at least one meeting per month is met. Meeting notice requirements apply to committee meetings as well as meetings of the full council.

Comment: All but the last paragraph were taken either from S.C. Code Ann. § 4-9-100 or § 4-9-110, or from FOIA, § 30-4-80. One specific provision of FOIA, at § 30-4-80, requires that the, “Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings.” The final paragraph was inserted to clarify the issue of who has the authority to cancel or reschedule meetings, as neither the S.C. Code nor *RONR* specifies.

Model Rule 5. Agenda.

Every meeting shall have an agenda. The agenda will be compiled at the direction of the council chair by the clerk to council or such other person as may be designated. The agenda shall be posted, pursuant to Rule 4 and as required by the Freedom of Information Act, at least twenty-four hours prior to meetings. Additionally, a copy of the agenda shall be provided as part of the notice given to any person, organization, or news media requesting notification of county council meetings.

The agenda will designate the time and location of the meeting and the type of meeting to be held: council session, committee meeting, public hearing, public comment, workshop or emergency session.

Comment: S.C. Code Ann. § 30-4-80(a) does not require an agenda, but does require that, if one is to be used, it must be posted on a bulletin board at the county council office or meeting place. Subsection (e) of the same section requires that agendas be provided to “persons, organizations, local news media, or such other news media,” that request them.

Although not required by statute, an agenda is highly recommended and is required by these *Model Rules*. The following items are recommended, in no specific order, for inclusion in an agenda and are substantially the same as has been taught for many years by the *Institute of Government for County Officials*, sponsored by

the South Carolina Association of Counties.¹

1. Call to Order
2. Approval of Minutes
3. Consent Agenda
4. 3rd Reading Ordinances
5. 2nd Reading Ordinances
6. 1st Reading Issues
7. Committee Reports
8. Resolutions
9. Appointments
10. Matters Requiring a Vote after Executive Session
11. New Business
12. Old Business
13. Public Comment

Members of county council may amend the agenda during the course of the meeting. To take up a matter out of order requires a two-thirds majority vote. *See* Motion to Suspend the Rules as set out in Model Rule 16.

The Council Chair may present a consent agenda at the beginning of Council meetings. A consent agenda (called a consent calendar in RONR) allows the Council to approve more than one item at the same time, and without debate, amendment, or individual motions. Consent agendas are used to more quickly dispose of routine business. Only routine or noncontroversial items are listed under a consent agenda. If a council member requests discussion about a particular item, that item must be removed from the consent agenda and placed on the regular agenda to be discussed later in the meeting. A consent agenda should be presented at the beginning of the meeting to allow any removed

¹ Courses in parliamentary procedure and in conduct of meetings have been conducted for many years by Helen T. McFadden, Esq., of Williamsburg County.

items to be placed on the regular agenda.

A Council member who has a question about a consent agenda item should request the information before the meeting. An item should not be removed from the consent agenda just to answer a question. Clarification should be sent to all council members to ensure each one has the same information before the meeting.

Model Rule 6. Hearings.

A. Public Hearings

Public hearings are the method required by the Home Rule Act for county council to gain input from the public at large. Members of council should refrain from making comments during the public hearing and should neither enter into debate with the public nor with other council members during the public hearing. Public hearings are required before final action is taken to:

1. Adopt annual operational and capital budgets;
2. Make appropriations, including supplemental appropriations;
3. Adopt building, housing, electrical, plumbing, gas and all other regulatory codes;
4. Adopt zoning and subdivision regulations;
5. Levy taxes;
6. Sell, lease or contract to sell or lease real property owned by the county;
7. Impose ad valorem property taxes upon a fire service area; or
8. Provide for the distribution of assets following the abolishment of a special purpose district.

Final action for any of the first six matters must be in the form of an ordinance. A minimum of 15 days notice of the time and place of the hearing must be published in at least one newspaper of general circulation in the county, prior to conducting a public hearing for any of the above categories of ordinances.

Notice for item 7 must be provided once a week for three successive weeks in a paper of general circulation in the county, and the hearing must not occur fewer than 16 days following the first notice. Item 8 requires at least two public hearings with ten days prior notice published in a newspaper of general circulation prior to each meeting.

Following the abolishment of a special purpose district located within the county, two public hearings are required prior to distributing assets and/or refunding taxes.

Comment: The Home Rule Act is codified at S.C. Code Ann. § 4-9-10, *et seq.* S.C. Code Ann. § 4-9-130 sets out the hearing requirements for the first six enumerated categories of ordinances. As a general rule, public hearings are not part of the council meeting, but they can be, if council chooses to do so. The better practice is to hold the public hearing immediately prior to or after the council meeting. Council may wish to impose time limits on individual speakers during the public hearing and, in the case of a large group, may require that a spokesman be chosen for any group of people with a common interest.

Ordinances not dealing with one of the eight enumerated subjects do not require a public hearing. For example, an ordinance to adopt these

Rules would require neither public hearing nor the notice requirements of S.C. Code Ann. § 4-9-130.

Items 7 and 8 are addressed by S.C. Code §§ 4-19-20 and 4-9-85.

B. Quasi-Judicial Hearings.

When conducting a quasi-judicial hearing, county council takes on the role of an impartial trier of fact in a dispute involving the legal rights of one or more parties. In a quasi-judicial hearing, council members must be careful to provide basic rights due under state and federal constitutions and statutes. Among these basic rights, which council must protect, are the right to an attorney, the right to cross examine witnesses and the right to due process. Further, council members must base their decisions on the evidence presented at the hearing and must not discuss the case beforehand or be influenced by the opinions of others who are not a part of the proceedings.

Comment: The Latin word root “quasi” means, “as if.” From time to time, county council may be called on to conduct hearings that will determine the legal rights of the persons appearing before it; these hearings should be treated “as if” they are judicial hearings. Occasions that may give rise to a quasi-judicial hearing include grievance hearings under § 4-9-30(7), as well as appeals from zoning boards or boards of architectural review. *See* 1997 Op. S.C. Atty. Gen., 1997 WL 568829.

Quasi-judicial hearings are important because fundamental constitutional rights are involved. The 5th and 14th amendments of the federal

Constitution prohibit the taking of property without the due process of law. Due process has been described by the courts as notice and an opportunity to be heard. Other rights at play include the right to be represented by counsel (at the petitioner's expense), and the right to cross examine witnesses. Because federal rights are involved, failure by county council to afford these rights can lead to individual liability for anyone violating these rights.

Quasi-judicial hearings may also pose problems for the county attorney, if the county has an interest adverse to the petitioner. It would be a conflict for the attorney to attempt to both advise the council as the "court" and to represent the county as its advocate.

Quasi-judicial hearings are not considered part of the unified court system and strict rules, including the Rules of Evidence and the Administrative Procedures Act, need not be followed. Hearsay evidence can be admitted and considered, if corroborated (*Hamilton v. Bob Bennett Ford*, 339 S.C. 68, 70, 528 S.E.2d. 667, 668 (2000)), but a decision based solely on hearsay cannot stand (*Richards v. City of Columbia*, 227 S.C. 538, 88 S.E.2d 683 (1955)).

Model Rule 7. Minutes; Ordinances to Be Codified.

All proceedings of county council shall be recorded and all ordinances shall be indexed, codified, and published by title. The clerk to council shall make a permanent record of all ordinances adopted, shall make them available to the public and

shall furnish a copy of the record to the clerk of court for filing at that office.

Written minutes shall be kept of all meetings; provided however, that minutes of executive sessions are not required but may be kept at the discretion of council. Copies of the minutes of council shall be kept in perpetuity; whereas copies of any audio or video tapes may be destroyed by the clerk to council after twenty-four calendar months. Minutes shall include, as a minimum:

1. Date, time and place of the meeting;
2. Members of county council recorded as either present or absent;
3. Substance of all matters proposed, discussed or decided and, if requested by a member, a record by member of any votes taken;
4. If any member of council has a conflict of interest on a matter before council, that member shall recuse himself or herself and provide a written statement describing the matter and the potential conflict as required by S.C. Code Ann. § 8-13-700 and by Rule 11.
5. Any other information that a member of council requests to be included or reflected in the minutes.

Minutes are public records and shall be made available within a reasonable time after the meeting, except any information not subject to disclosure under the Freedom of Information Act. Minutes are not subject to disclosure until approved as written by the county council.

Comment: This Model Rule combines the requirements set out in S.C. Code Ann. § 4-9-120, in § 8-13-700 and in FOIA at § 30-4-90. The

latter section was amended in 2001 to provide that any person in attendance is allowed to record any portion of a meeting of a public body not closed to the public using voice or video recording means, so long as it does not interfere with the conduct of the meeting. Public bodies are not required to furnish recording facilities or equipment.

Requirements for retention of county records are set out in the State Department of Archives and History's *General Records Retention Schedules for County Records* (1999), p. 12, which can be found at the Department's website at www.state.sc.us/scdah. The requirement for retaining minutes and tapes can be found in the *Retention Schedules*, in §§ 12-503.2 and 12-503.1, respectively.

Courts may not inquire into the motive of county council in passing legislation. Testimony from legislators cannot later be used as evidence of the intent of the legislative body at the time the law was passed. *SC Education Assn. v. Campbell*, 883 F.2d 1251, 1260 (1989).

Model Rule 8. Voting.

The preferred method of voting by county council is by voice vote, although the chair may call for a show of hands or a roll call vote at any time. Any council member may demand a show of hands or a roll call vote. The demand is in order before or immediately after the voice vote has been taken, even though the chair may have announced the results of the voice vote. A council member may not explain his or her vote while voting, but

may change his or her vote at anytime prior to the chair's announcing the result.

Comment: *RONR* § 29 (Division of the Assembly) refers to the procedure for demanding a division vote (show of hands) or roll call vote. The rule against explaining one's vote can be found at *RONR* § 45, p. 395, l. 4; the rule allowing change of vote follows on the same page at l. 9. Any member may require that the vote of each member (if taken by show of hands or by roll call), be recorded in the minutes. Model Rule 7 (§ 5), and S.C. Code Ann. § 30-4-90 refer.

A. Passage by Majority Vote.

The term "majority" or "simple majority" means more than half of those present and voting. When a two-thirds majority is required, the term "two-thirds majority" means at least two-thirds of those present and voting. The term "positive majority" means a majority of the members of council, regardless of whether they are present or not.

Except as otherwise provided for in these Rules, or by pertinent state or federal statute, any ordinance, resolution or motion passes if it receives a majority of the votes cast. State and federal statutes and, in some cases, these Rules may require passage by more than a simple majority. The following actions are included in those requiring a super-majority:

Two-thirds Majority:

1. Adoption of an emergency ordinance (§ 4-9-130);
2. Removal of an employee appointed by a county supervisor (§ 4-9-430);
3. Sale or transfer of the county library assets for a non-library purpose (§ 4-9-39);

4. Defeat of a Motion to Follow the Agenda (Rule 14, ¶ 5);
5. Passage of Motion to Suspend the Rules (Rule 16, ¶ 3); and
6. Passage of a Motion to Call for the Question [Vote Immediately] (Rule 15, ¶ 2).

Positive Majority:

1. Impose or increase a business license tax (§ 6-1-315);
2. Override the millage rate increase limitation on property taxes (§ 6-1-320(C));
3. Impose a service or user fee (§ 6-1-330);
4. Impose a local accommodations tax (§ 6-1-520);
5. Impose a local hospitality tax (§ 6-1-720); and
6. Impose a developmental impact fee (§ 6-1-930).

Comment: The term “majority vote” is defined in *RONR* § 45. *See also*, 1990 Op. S.C. Atty. Gen., 1990 WL 599263. (Examples: 5, not 4, is a majority of 8; 6 is a two-thirds majority of 9.) The term “positive majority” is defined in S.C. Code Ann. §§ 6-1-300, 6-1-510 and 6-1-710.

S.C. Code § 4-9-420 provides that, for those counties that have adopted the Council-Supervisor form of government, the county supervisor serves as the presiding officer of county council and votes in the case of council ties.

For those counties that have adopted the Council-Administrator or Council-Manager form of government, the chair can vote on any issue. A council chair can vote to break or to cause a tie.

Note: Due to changing requirements in

the law, the lists provided may not be complete.

B. Voting on Motions.

In the case of debatable motions, the vote can be proposed in one of two ways:

(1) If debate has been completed and no other council member wishes to speak, the chair can call for the vote. If there are no objections, the chair can proceed with the vote;

(2) If the chair calls for the vote and there is an objection, a council member may make a Motion to Call for the Question [Vote Immediately]. If this motion is approved by a two-thirds vote, debate will stop. The chair will then read the proposed motion to county council and ask for the votes of the council members.

In the case of non-debatable motions, the vote shall occur immediately after the motion is recognized by the chair. The chair shall read the proposed motion to county council and then call for the vote.

Comment: See Model Rule 15, ¶ 2, for Motion to Call for the Question [Vote Immediately].

C. Voting to Elect Boards, Committees and Commissions.

When council is voting to elect one or more persons to open positions on a board, committee or commission, ballot elections should be used if the number of candidates exceeds the number of positions available. As an alternative to the ballot

method, a majority of council may decide to vote on each nominee individually, taking them up in the order nominated. If the number of vacant positions equals or exceeds the number of candidates available, the council may dispense with the process under this Rule and appoint by acclamation or similar method.

Once the election process begins, motions are limited to Rule 14 privileged motions (adjourn, recede, raise a question of privilege, convene an executive session, or follow the agenda); to the following Rule 15 subsidiary motions: motion to postpone and motion to commit; and to the Rule 16 incidental motion of the point of order. All other motions are out of order until the election process is completed.

With a ballot election, each council member shall vote—on one ballot—for up to as many positions as are open. Each member shall sign or otherwise mark his or her ballot and the minutes will reflect each member’s vote. Members may vote by ballot for someone who was not nominated.

Each ballot is considered one vote cast, and a candidate must receive a majority of votes to be elected. If no candidate receives a majority vote, balloting continues as needed until all positions are filled. If fewer than the proper number of candidates receive a majority vote, those candidates receiving a majority are elected, and balloting continues with all other candidates remaining on the ballot. If more candidates receive a majority vote than there are positions open, those receiving the largest number of votes will be elected and those receiving a majority, but tied for last of those receiving a majority, will remain on the ballot for repeat balloting, as needed. If all positions are not filled after the first vote, no candidates shall be involuntarily eliminated.

Comment: S.C. Code Ann. §4-9-170

requires county councils to provide by ordinance for the appointment of members to boards, committees and commissions. Model Rule 8C was added in the second edition of the Rules to meet this requirement.

As a general rule, an election is a two phase process. In the first, or nominating phase, the universe of potential candidates is reduced to a short list. In the second, or election phase, the successful candidate(s) is/are selected from the short list. RONR § 46 (pp. 416 -30) discusses the nominating and election processes, including potential problems that should be avoided. Nominations from the floor (by council members, including the chair), or by a nominating committee with additional nominations from the floor, seem to be the preferred methods. Generally, the nominating process should be inclusive, as opposed to restrictive, to encourage more interest and participation by the public. Nominations should not be closed if council members still have additional nominations they wish to make. *See, e.g.*, RONR § 46, p. 428 at l. 35 through p. 429 l. 2.

For a discussion of election procedures for unopposed appointments see RONR § 46, p. 428 at l. 32-35.

If the number of candidates exceeds the number of available positions, the choice of election methods boils down to dealing with the nominees one by one or all at one time. Dealing with the candidates one by one may be done by

voice vote, show of hands or similar method. As each nominee is taken up in the order nominated, this method presents fairness problems to those who were not nominated first:

It will be seen that, under the procedure just described, it is necessary for members wishing to vote for a later nominee to vote against an earlier one. This fact gives an undue advantage to earlier nominees and, accordingly, a voice vote is not a generally suitable method for electing the officers of organized societies.

RONR § 46, p. 428 l. 26 through l. 32.

For the reasons discussed above, the ballot election method is preferred when there are more candidates than positions available. The ballot election method is set out in Model Rule 8C, above, and is discussed in RONR § 46, p. 424, beginning at l. 32.

Although no candidates shall be involuntarily eliminated, candidates receiving fewer votes may choose to withdraw their candidacy. RONR discourages runoff elections, as runoffs usually occur between two competing factions. Repeated balloting allows a third or fourth candidate receiving fewer votes, initially, to emerge as a compromise candidate.

Model Rule 9. Ordinances and Resolutions.

County council shall take action by passing ordinances and resolutions. An ordinance is local legislation passed by the governing body of the county, duly enacted pursuant to proper authority, describing general, uniform and permanent rules of conduct relating to the corporate affairs of the county. A resolution is an expression of opinion or policy concerning some particular item of business coming within the county council's official cognizance and often deals with matters of special or temporary character.

Proposed ordinances and resolutions are introduced for discussion by any member of council offering the ordinance or resolution as a main motion. Resolutions are passed after a single period of debate (or reading) and vote; ordinances require a reading at three public meetings on separate days, with at least seven days between the second and third reading.

County Council may introduce an ordinance and give first reading "by title only." When giving first reading by title only, the minutes of the meeting should show that Council believed there was a valid reason for expediting the ordinance and that there was a general understanding by the Council of what the first draft of the ordinance would have said, had it been in writing.

Emergency ordinances, valid for only sixty days, may be passed after a single reading if a public emergency exists affecting the life, health, safety or property of people. An emergency ordinance is effective immediately upon enactment, without regard to reading, public hearing, publication requirements or public notice requirements. Every emergency ordinance shall be designated as such and shall contain a declaration of the emergency and describe it. Emergency ordinances require a two-thirds majority for passage.

Legislation affecting the following issues can only be enacted by ordinance and require a public hearing, as set out in Rule 6, prior to passage:

1. adopting annual operational and capital budgets;
2. making appropriations, including supplemental appropriations;
3. adopting building, housing, electrical, plumbing, gas and all other regulatory codes;
4. adopting zoning and subdivision regulations;
5. levying taxes;
6. selling, leasing or contracting to sell or lease real property owned by the county.

Comment: S.C. Code Ann. §§ 4-9-120 and 4-9-130 refer. The terms “ordinance” and “resolution” are used extensively in, but are not defined by, the S.C. Code of Laws. The definitions used in this *Model Rule* are taken generally from 5 McQuillin Mun. Corp. §§ 15.1-15.2 (Rev. 3rd ed. 2009). The requirement that legislation affecting the six specified categories must be passed as ordinances is set out in § 4-9-130.

In *McSherry v. Spartanburg County Council*, 371 S.C. 586, 641 S.E.2d 431 (2007), the Supreme Court upheld the authority of County Council to give first reading of an ordinance “by title only,” if the county’s rules of procedure so provide. Council has the authority to adopt its “own rules and order of business.” S.C. Code Ann. § 4-9-110.

Note: The 2010 edition of these Model

Rules added a new third paragraph and a second paragraph to the **Comment** section relating to first readings “by title only.”

Model Rule 10. Debate.

Debate is the discussion on the merits of a pending question to determine if the issue should be adopted or not. Debate shall be managed by the chair in an impartial manner. Council members can participate in the debate only when they are recognized by the chair. Debate can be interrupted (*i.e.* a member may interrupt another member who has the floor), only to make a Motion to Adjourn, a Motion to Raise a Point of Privilege, a Motion to Raise a Point of Order, or a Motion to Convene an Executive Session. The council member making a motion is entitled to speak first; members who have not spoken on the issue shall be recognized ahead of those who have previously spoken.

Comment: *RONR* § 43 refers to the rules governing debate. The definition of the word “debate” is taken from *RONR* at p. 373, l. 12-13. These *Model Rules* have not adopted several of the rules on debate set out in *RONR*. Specifically, the rule against mentioning other members by name, the rule against the chair’s participation in debate and a general time limit on debate by members were not adopted.

Model Rule 11. Conflicts of Interest.

No member of county council, or of a county board or commission, may knowingly use his or her official office to obtain an economic interest for himself or herself, an immediate family member, or an individual or business with whom he or she is associated. Any member who, in order to discharge his or her

official responsibilities, is required to take an action that affects the economic interest of any such person or business shall prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest. A copy of the statement shall be furnished to the chair of county council, or other board or commission, as appropriate. The chair shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter in which the potential conflict of interest exists. The chair will ensure that the disqualification and the reasons for it are noted in the minutes.

It is the responsibility of the individual member to notify the chair of the potential conflict and, once notification is made, to refrain from participating in the discussion, deliberation, and voting on the issue. It is generally expected that the member with the conflict will leave the council chambers while the issue is being discussed, deliberated, or voted upon, but the member may remain in the chamber if a quorum would be lost in his or her absence. If the council member remains in the chamber, the minutes should reflect this fact and should indicate a reason.

Enforcement of this Rule is left to the individual member. The chair will not require the member to leave the chamber, nor will the chair prohibit the member from participating in the debate or in voting.

Comment: Conflicts of interest are not unusual, and for members of county council and other county boards and commissions who are in the business of providing the type of goods and services used by governmental entities, conflicts are almost unavoidable at some point in the member's public career. The important thing is to recognize the conflict and to take the appropriate action. It is not enough to refrain from

participation when there is a conflict. Members of public bodies should also avoid the impression that they could personally benefit depending on the outcome.

The controlling statute is S.C. Code Ann. § 8-13-700; the requirement to file a conflict disclosure statement can be found in subsection (B)(4) of the above section. *See also*, S.C. Code Ann. § 4-9-180. Further, the Ethics Commission has taken the position that the conflicted member should not only abstain from debating and voting on the matter, but also should not attend that portion of the meeting in which the conflict will arise. *See Ethics Advisory Opinion 93-081.*

The Ethics Commission has unofficially softened its position recently, if the absence of the member would destroy a quorum. The informal position of the Commission is that if the member remains in the hearing, he or she should remain completely silent and should avoid the appearance of non-verbal communications.

The burden of compliance is clearly on the shoulders of the member, not on the governmental body nor the chair. Interpreting a prior code section with provisions similar to § 8-13-700, the Attorney General has opined that a mayor could not prohibit a member of a city council from voting, even in a conflict situation. *See* 1991 Op. S.C. Atty. Gen. No. 91-37, 1991 WL 474767. The Attorney General has also noted that violations of conflict of interest laws are a crime of moral turpitude (use of official position to obtain financial gain), and if convicted, a member must

be removed from office by the governor. *See* 1980 Op. S.C. Atty. Gen. Nos. 80-13 (1980 WL 81897) and 80-27 (1980 WL 81911).

Model Rule 12. Main Motions.

In order for county council to take official action on any subject, a council member must first propose a main motion. A proposed main motion will not be recognized by the chair until another council member seconds the motion. A second does not require the council member seconding the motion to support the motion. A council member may withdraw a main motion that he or she has made at any time before the council has voted on that motion.

Comment: The term “Main Motion” is consistent with the term as used in *RONR*. The main motion is the vehicle used to present issues before county council for consideration.

Under *RONR*, a motion does not require a second in a small body such as council; however, the committee that originally drafted these Model Rules decided that a second is appropriate.

Model Rule 13. Procedural Motions.

During the course of debate, council members may introduce procedural motions, which are limited to those specific motions described in Rules 14 through 17. Procedural motions are used to facilitate the orderly discussion of business before county council. They limit but allow for interruptions and allow county council to focus on one issue at a time. Procedural motions are divided into privileged, subsidiary, incidental and recall motions and are further described in Rules 14 through 17, respectively. Privileged motions and Points of Order do not require a second; all

other incidental motions and all subsidiary and recall motions require a second.

Comment: This *Model Rule* provides that privileged motions, and a Point of Order (an incidental motion), do not require a second, a position consistent with *RONR*.

Privileged, subsidiary, and recall motions have a precedence or rank assigned. The incidental motions have no rank among themselves; except as described in Model Rule 16, they rank below the privileged motions and the Motion to Lay on the Table. A main motion has the lowest rank and does not take precedence over any other motion, nor can a new main motion be introduced when another main motion is pending.

Model Rules 14 through 17 describe the characteristics associated with each motion. As a general rule, privileged motions take precedence over subsidiary and recall motions; subsidiary motions take precedence over recall motions, with the Motion to Reconsider (a recall motion) being the single exception to the general rule. *See* Note 1, at the conclusion of this **Comment** section, regarding the special characteristics of the Motion to Reconsider. *See* Table 1 at the end of this publication for a recap of all of the procedural motions. Included in the recap is: whether each type of motion can be amended, debated, or reconsidered, as well as the vote required to pass it, whether the motion can interrupt another person who has the floor and whether a second is required.

The same information is available in the descriptive section of the appropriate motion. Reference can also be made to *RONR* if additional information is required. Keep in mind that these *Model Rules* do not always follow *RONR*.

As a matter of convenience, a list of privileged, subsidiary, and recall motions are set out below in order, according to rank or precedence. Incidental motions are listed as a single item as they have no precedence among themselves. As against other motions, incidental motions rank just below the Motion to Lay on the Table. A motion of higher precedence can interrupt a motion of lower precedence and an incidental motion can interrupt a motion of higher precedence if it pertains to the pending motion. The higher ranking motion must be dealt with procedurally before discussion can turn to a motion of lower rank. A motion in the following list takes precedence over all motions below it on the list:

1. Motion to Reconsider (*See* Note 1, below)
2. Motion to Adjourn
3. Motion to Recede [to Take a Recess]
4. Motion to Raise a Question of Privilege
5. Motion to Convene in Executive Session
6. Motion to Follow the Agenda
7. Motion to Lay on the Table
8. All incidental motions (*See* Note 2, below)
9. Motion to Call for the Question [Motion to Vote Immediately]
10. Motion to Limit/Extend Debate
11. Motion to Postpone to a Time Certain
12. Motion to Refer to Committee [Motion to

- Commit]
13. Motion to Amend
 14. Motion to Postpone Indefinitely
 15. Motion to Recall from the Table/Motion to Recall from Committee

Note 1. The Motion to Reconsider is a special case. It is only in order during the meeting the motion to be reconsidered was acted on or at the next meeting. *See* Model Rule 17, ¶ 2 for exceptions and special restrictions. If the time limit has not expired, the motion can be made at anytime and it takes precedence over all other motions, yielding to nothing. This precedence is necessary because of the time constraints. Once the motion is made, however, the discussion of the motion drops back to the same precedence as the motion it proposes to reconsider.

Note 2. The incidental motions have no rank among themselves; except as described in Model Rule 16, they rank below the privileged motions and the Motion to Lay on the Table. Once an incidental motion is made, it takes on the precedence of the motion it is incidental to.

Model Rule 14. Privileged Motions.

The five privileged motions are the highest ranking group of procedural motions, with the Motion to Adjourn having the highest precedence of the group. Only the Motion to Reconsider has higher precedence. Privileged motions can be made at anytime; the Motion to Adjourn, the Motion to Raise a Point of Privilege and the Motion to Convene an Executive Session can interrupt another member who has the floor. When making one of these three motions, the council member should get the attention

of the chair. The chair, interrupting anyone then speaking, recognizes the council member, who then states the motion.

Privileged motions require no second, cannot be reconsidered and, except for the Motion to Recede [Take a Recess], are not debatable. All privileged motions pass by simple majority. Specific characteristics of each privileged motion, listed in order of precedence, are set out below.

Comment: See Table 1 at the end of this publication for a recap of all of the procedural motions. Included in the recap is: whether each type of motion can be amended, debated, or reconsidered, as well as the vote required to pass it, whether the motion can interrupt another person who has the floor and whether a second is required.

1. Motion to Adjourn.

An unqualified Motion to Adjourn is the highest ranking privileged motion and requires, if approved by a majority vote, that the meeting end immediately and reconvene at the next regularly scheduled or called meeting. As the highest ranking privileged motion, the Motion to Adjourn can be raised at anytime, except when a vote is being taken or being counted. It can be interrupted only by the motion to reconsider; it can interrupt any person having the floor. The Motion to Adjourn cannot be amended, debated or reconsidered; it requires a majority for passage. Like all privileged motions, it does not require a second.

Comment: *RONR* § 21 refers. Any qualification of the Motion to Adjourn (*e.g.*, “I move that we adjourn in 45 minutes.” or “I move that we adjourn and meet again next Thursday.”) changes the status of this motion from a privileged

motion to a main motion.

2. Motion to Recede [Motion to Take a Recess].

A recess is a short intermission, taken immediately upon passage. Following the recess, the meeting takes up at the same point where it was interrupted. The motion cannot be debated or reconsidered, but can be amended as to the duration of the recess; it requires a majority for passage. Also, the Motion to Recede is out of order if anyone has the floor or a vote is being taken or counted. Like the Motion to Adjourn, the Motion to Recede is privileged only if the recess is to be taken immediately; a Motion to Recede at some point in the future is a main motion. Like all privileged motions, it does not require a second.

Comment: *RONR* § 20 refers. The motion may properly be referred to as a “Motion to Recede” or a “Motion to Take a Recess.”

3. Motion to Raise a Question of Privilege.

A Motion to Raise a Question of Privilege is a device to allow county council to take up a matter for immediate consideration because of its urgency; it can interrupt any person having the floor. The motion cannot be amended, debated or reconsidered, but it can be appealed. It is generally ruled on by the chair, but a vote may be taken if the decision of the chair is appealed. If approved, what follows will be a main motion taken out of order. Generally there are two types of questions of privilege—questions relating to the privilege of county council, a board or commission as a body, and questions of personal privilege. If the two come up together, a question of council privilege should take precedence over a question of personal privilege. Like all privileged motions, it does not require a second.

Comment: Questions of privilege of county council usually relate to the comfort of the members of council or the public (*e.g.*, council chambers are too hot, too cold or too noisy), to the conduct of council members or visitors or members of the public, or to the accuracy of published reports. Care should be taken not to confuse this motion with the group to which it belongs (*i.e.*, privileged motions). Many questions of privilege can be resolved by the chair (*e.g.*, by having someone adjust the thermostat or by demanding order in the chamber).

RONR § 19 provides guidance for this particular motion, with one exception. *RONR* would have the Motion to Convene an Executive Session (which follows immediately), first raised as a Motion to Raise a Question of Privilege. These *Model Rules* make the Motion to Convene an Executive Session a separate motion to simplify the procedure. Questions of personal privilege are extremely rare, as noted in *RONR*.

4. Motion to Convene an Executive Session.

Executive sessions must be convened and conducted in accordance with the Freedom of Information Act and may be convened only for one or more of the specific reasons enumerated in the Act. A properly stated motion provides an appropriate reason for convening the executive session. If a valid reason is not stated, the chair may inquire or, if the reason is obvious, provide the reason when restating the motion. The reason for convening the executive session must be recorded in the minutes, in accordance with Rule 7. The motion may be amended and debated with regard to stating the appropriate reason or reasons for convening the session; however, it cannot be reconsidered. A

public vote is required on the motion prior to convening the executive session; a majority vote is required for passage. The Motion to Convene an Executive Session can interrupt any person having the floor. Like all privileged motions, it does not require a second.

Comment: Unlike *RONR*, these *Model Rules* make the Motion to Convene an Executive Session a separate motion from the Motion to Raise a Question of Privilege. Additionally, unlike the latter motion, the Motion to Convene an Executive Session may be debated and amended with regard to the reasons for convening the session. FOIA, § 30-4-70(a), provides the only valid reasons for convening an executive session and should be consulted before putting the motion to a vote. The requirement for a public vote is also a statutory requirement; *see* § 30-4-70(b).

At the time of publication, FOIA provides five reasons for which counties may convene an executive session:

1. personnel matters,
2. legal matters and negotiations,
3. investigations regarding criminal misconduct,
4. matters involving security personnel or devices, and
5. economic development discussions.

5. Motion to Follow the Agenda.

This motion is used to get a meeting back on schedule and is appropriate when the meeting has been allowed to digress or when a specific time scheduled for an item of business has arrived and the chair has failed to take notice.

Once the motion is made, the chair must conform with the agenda or put the motion to a vote. The motion cannot be amended, debated or reconsidered; a two-thirds majority vote is required to overrule this motion. Like all privileged motions, it does not require a second.

Comment: This motion is captioned the motion to “Call for the Orders of the Day,” in *RONR* § 18. A decision not to follow the agenda is, in essence, a decision to suspend the rules. See Model Rule 16, ¶ 3 for the motion to suspend the rules. Because the Motion to Suspend the Rules must be passed by a two-thirds majority, overruling this motion should be governed by the same requirement.

Model Rule 15. Subsidiary Motions.

The six subsidiary motions help deliberative bodies reach a decision on other pending motions, usually a main motion. Subsidiary motions are always applied to another pending motion. Three subsidiary motions – Motion to Amend, Motion to Limit/Extend Debate and Motion to Call for the Question [Motion to Vote Immediately] – can be applied to other subsidiary motions and the Motion to Amend can be applied to the Motion to Recede [Take a Recess], a privileged motion. All subsidiary motions are out of order when another person has the floor.

Comment: *RONR* § 6 refers. All subsidiary motions share the following four characteristics:

1. They are always applied to a motion that is pending at the time and, when adopted, the subsidiary motion changes

- the motion it is applied to without adopting it;
2. They can be applied to any main motion (and some other motions, as well);
 3. They are in order from the moment the motion they are to be applied to is stated by the chair until a vote has begun on that motion; and
 4. They conform to the hierarchy as listed below (no motion in the hierarchy is in order if a motion listed above it in the order is pending).

See Table 1 at the end of this publication for a recap of all of the procedural motions. Included in the recap is: whether each type of motion can be amended, debated, or reconsidered, as well as the vote required to pass it, whether the motion can interrupt another person who has the floor and whether a second is required.

1. Motion to Lay on the Table [Motion to Table].

A Motion to Lay on the Table proposes that the consideration of a motion be postponed until a later time. It is an appropriate motion to take up a more pressing matter, out of order, and to return later to the tabled motion. The main motion can be brought back for consideration if a Motion to Recall is later passed by county council. A motion that has been laid on the table will die if it has not been taken from the table by the close of the meeting following the meeting in which the motion was tabled. Amendments and debate are not allowed on a Motion to Lay on the Table and it cannot be

reconsidered; it requires a majority vote for passage. The Motion to Lay on the Table is out of order if another speaker has the floor.

Comment: *RONR* § 17 refers. The motion may properly be referred to as a “Motion to Lay on the Table,” or “Motion to Table.”

2. Motion to Call for the Question [Motion to Vote Immediately].

If passed, this motion cuts off debate and forces an immediate vote on the pending issue. The Motion to Call for the Question is neither debatable nor amendable, but it can be reconsidered up until a vote is taken on the called question; a two-thirds majority is required for passage. The Motion to Call for the Question can be applied to any motion requiring a vote.

Comment: *RONR* § 16 refers to this motion as a Previous Question motion. The motion may properly be referred to as a “Motion to Call for the Question” or a “Motion to Vote Immediately.” As a general rule, if a Motion to Call for the Question is made while a procedural motion is pending, the procedural motion is disregarded and the main motion is brought up for an immediate vote. If it is clear that the motion was made to call for the question on the procedural motion, an affirmative vote would result in a vote on the procedural motion and debate on the underlying motion would continue.

3. Motion to Limit/Extend Debate.

The Motion to Limit Debate and the Motion to Extend Debate change any time constraints placed on the length of debate. The details of such motions are to be provided by the council member making the motion. Either motion can be applied to any motion that is debatable (not just to main motions). Debate is not allowed on either motion, nor can either be reconsidered; a two-thirds vote is required for passage. The motions can be amended as to the length of the time limitation.

Comment: *RONR* § 15 refers.

4. Motion to Postpone/Motion to Postpone to a Time Certain.

A Motion to Postpone and a Motion to Postpone to a Time Certain are appropriate when a council member believes that the pending main motion should not be considered until some point in the future. These motions are in order even though debate has already occurred on the main motion. The Motion to Postpone to a Time Certain sets a particular time for the main motion to be considered again, which may be later in the same meeting, at a future meeting or upon the occurrence of a specified event or the issuance of a necessary report. The motion is debatable, amendable as to the duration of postponement and can be reconsidered. If the motion sets the matter for a date and time certain, a two-thirds majority is required for passage; if the motion does not set a specific time for consideration, it is referred to as a Motion to Postpone and only a majority vote is required for passage. If the motion is set for a time certain, the chair will bring the motion back to county council for further consideration at the specified time.

Comment: *RONR* § 14 refers. This is

actually two motions in one. The Motion to Postpone sets no specific time for debate, (e.g. a motion to postpone debate until the next meeting). Without a specified time set for debate, this motion requires only a simple majority for passage. The Motion to Postpone to a Time Certain would set not only the date, but also a specific time the debate would occur. When the appointed hour arose, debate on any other matter must stop and the matter set for a time certain must be taken up. The Motion to Postpone to a Time Certain requires a two-thirds majority for passage.

5. Motion to Commit [Motion to Refer to Committee].

The chair may refer any matter to a committee. If the chair does not refer a matter to a committee and a council member believes that further information or study is needed before the county council can act on a matter, he or she may propose that it be referred to a committee or to a particular office in county government for further study. If an appropriate committee does not already exist, a special committee can be formed as a part of the motion. A Motion to Commit may specify the date that the committee or department will report back to the board. If a special committee is formed, the chair will appoint its members and its chair. This motion is debatable and can be amended as to where the motion is to be committed and the date and time that the committee will report back; it can be reconsidered. The motion requires a majority for passage.

Comment: *RONR* § 13 refers. The motion may properly be referred to as a “Motion to Commit” or a “Motion to Refer to

Committee.”

6. Motion to Amend.

A Motion to Amend is used to make a change to a pending motion. Amendments must be closely related to the original motion and must not change the nature of the motion that they amend. A Motion to Amend can itself be amended, but the Motion to Amend an amendment cannot. These rules are to be enforced by the chair.

In addition to main motions, some subsidiary motions and the Motion to Recede [Take a Recess], can also be amended. Debate is allowed on a Motion to Amend only if the original motion is debatable, and is limited to the proposed amendment. The Motion to Amend can be reconsidered. A majority vote is required to adopt an amendment. If the amendment is adopted, county council will then consider the amended version of the motion.

Model Rule 16. Incidental Motions.

Six incidental motions allow council members to appeal rulings by the chair, raise points of order, question precedence of motions and raise objections to consideration of matters that are incidental to the discussions at hand but do not directly relate to the main question under discussion. Incidental motions are in order only if they pertain to the motion then pending or to the business at hand. If the incidental motion is in order, it takes precedence over any other motions that are pending. Points of Order may interrupt another member who has the floor. Incidental motions have no rank among themselves; except as described below, they rank below the privileged motions and the Motion to Lay on the Table.

Comment: See Table 1 at the end of this publication for a recap of all of the procedural motions. Included in the recap is: whether each type of motion can be amended, debated, or reconsidered, as well as the vote required to pass it, whether the motion can interrupt another person who has the floor and whether a second is required.

1. Point of Order [Motion to Raise a Question of Order].

The Point of Order takes precedence over any question from which it arose. It yields to any privileged motion and a motion to lay the underlying question on the table. The Point of Order is not debatable (except that the chair may ask the member raising the point to explain it), is not amendable, and cannot be reconsidered; it does not require a second. The Point of Order is in order when another person has the floor and can interrupt a person speaking if the point genuinely requires attention at the time it is raised. Normally, the point is ruled on by the chair and no vote is taken, unless there is an appeal or the chair is in doubt.

Comment: *RONR* § 23 refers. The motion may properly be referred to as a “Point of Order” or a “Motion to Raise a Question of Order.”

2. Appeal.

The duties of the chair include making rulings on questions of parliamentary procedure. An Appeal is the vehicle available to members of council who believe that the chair’s ruling was erroneous. The Appeal is in order when another has the floor, but must be taken immediately after the

ruling and is out of order if other business has intervened. It is debatable unless the underlying question is not debatable or if the Appeal relates to decorum or priority of business; it is not amendable.

The decision of the chair stands unless reversed by a majority of the members; the chair may vote to create a tie and thus sustain the ruling. An Appeal takes precedence over any pending question at the time the chair makes the ruling. It yields to all privileged motions, incidental motions arising from itself and, if debatable, to the following subsidiary motions: Motion to Limit/Extend Debate, Motion to Call for the Question [Vote Immediately], Motion to Commit, Motion to Postpone/Motion to Postpone to a Time Certain and the Motion to Lay on the Table. If debatable, each member may speak only once. An Appeal can be reconsidered.

Comment: *RONR* § 24 refers. The Appeal only applies to rulings of the chair. If, for example, in response to a parliamentary inquiry, the chair gives an opinion a member disagrees with, an Appeal is not in order. Also, if a member disagrees with the ruling of the chair, he or she should not hesitate to appeal. Appealing a decision is no more delicate than disagreeing with another member in debate. In close questions of parliamentary procedure on an important issue, the chair may welcome an appeal. *RONR* § 24, p. 250, l. 18.

3. Motion to Suspend the Rules.

The Motion to Suspend the Rules allows county council to do something it could not ordinarily do without violating one or more of its regular rules. The motion cannot be used to suspend a rule in violation of state or federal law,

nor can the suspension violate a fundamental rule of procedural law.

A Motion to Suspend the Rules can be made anytime there is no question pending. When a matter is pending, this motion takes precedence over any other motion if it applies to the pending matter of business. No subsidiary motion can be applied to this motion. It is out of order when another council member has the floor; it is not debatable, not amendable and cannot be reconsidered. It requires a two-thirds majority vote for passage.

Comment: *RONR* § 25 refers. For examples of parliamentary rules too fundamental to suspend, *see* *RONR* § 25, p. 255, l. 3-12.

It is not necessary to state the rule to be suspended when making the motion, but the purpose for the suspension should be stated (e.g. “Mr. Chairman, I move to suspend the rules to take up, out of order, the matter of ...”).

The Motion to Suspend the Rules has such potential for abuse that the chair must be aware of and must be quick to preclude not only the abuse itself, but also the appearance of abuse. For example, the majority, by suspending the rules, “cannot deny any particular member the right to attend meetings, make motions, speak in debate and vote.” *RONR* § 25, p. 255, l. 25-27.

4. Motion to Divide the Question.

The Motion to Divide the Question allows members of county council to require a question dealing with a single subject to be divided into parts and to have each part considered and voted on separately, but only if each part is capable of standing alone. This motion is not debatable, cannot be reconsidered and requires a majority vote for passage. It is amendable only with regard to how the question should be divided.

This motion is out of order when another has the floor. It takes precedence over the main motion. If applied to an amendment, it takes precedence over the amendment; but it cannot be made to the underlying matter with an amendment pending. It yields to all privileged motions, to all applicable incidental motions and to all subsidiary motions with the following exceptions: Motion to Amend and Motion to Limit/Extend Debate.

Comment: *RONR* § 27 refers.

5. Motion to Consider by Paragraph/Motion to Consider by Section.

Motions to Consider by Paragraph or to Consider by Section allow county council to break down complex proposals into their component parts and to consider, debate and amend each paragraph or section separately. This procedure can be applied by the chair on his or her own initiative or by the county council following the adoption of a motion by any member.

These motions are not debatable, cannot be reconsidered and require a majority vote for passage. They are amendable only with regard to how the question should be

divided. These motions are out of order when another has the floor. They take precedence over the main motion. If applied to an amendment, they take precedence over the amendment, but cannot be made to the main motion with an amendment pending. They yield to all privileged motions, to all applicable incidental motions and to all subsidiary motions with the following exceptions: Motion to Amend and Motion to Limit/Extend Debate.

Comment: *RONR* § 28 refers.

6. Requests and Inquiries.

From time to time, council members may need additional background information or may wish to provide such information, so that the council can understand better the issue under discussion. Requests and inquiries provide the vehicle for exchanging this information. Parliamentary Inquiries and Points of Information may interrupt another who has the floor, but only if the matter requires immediate attention. Requests and inquiries are not amendable, debatable or subject to reconsideration. No votes are taken on Parliamentary Inquiries or Points of Information; other requests/inquiries require a majority vote for passage, except that reading of papers requires unanimous consent. All share similar characteristics and procedural requirements and can be subdivided into the following categories:

a. Parliamentary Inquiry

Such inquiries are always directed to and answered by the chair and are used to clarify specific parliamentary or organization rules that have bearing on the issue at hand.

b. Point of Information

This inquiry is addressed to the chair or to another member through the chair, for information relevant to the business at hand, but not related to parliamentary procedure.

c. Reading of Papers

No member of council has the right to read or have another person read from any papers or books as part of that member's debate on any matter without unanimous consent of the other members of council. Even so, it is customary to grant leave to members to read short, pertinent printed matter, so long as the privilege is not abused.

d. Any Other Privilege

Examples of other privileges include requesting to address the council on a personal or non-business matter or, if there is no motion pending, requesting to make a presentation.

Comment: *RONR* § 33 refers. *RONR* § 33 differs from this paragraph in that there is no requirement for leave to modify or withdraw a motion, as this prerogative is already granted by Model Rule 12.

Together, these Requests and Inquiries have the following characteristics which are universally shared unless otherwise indicated:

1. They all take precedence over any motion they are connected with and may be made at any time no other business is pending. They yield to all privileged motions and

other incidental motions;

2. No subsidiary motion can be applied to them;
3. Unlike *RONR*, the Parliamentary Inquiry and Point of Information are the only requests or inquiries that can interrupt a member who has the floor;
4. None is debatable or amendable;
5. No vote is taken on Parliamentary Inquiries or Points of Information; majority vote is required to pass the others, except that Reading of Papers requires unanimous consent.

Model Rule 17. Recall Motions.

Two recall motions allow issues that have been previously disposed of or assigned to a committee to be brought back to the county council as a body.

Comment: *RONR* refers to recall motions as “Motions That Bring a Question Again Before the Assembly,” and discusses them in detail in Chapter IX (§§ 34 through 37). Two of the motions discussed in *RONR* (Motion to Reconsider and Motion to Amend Something Previously Adopted) do not lend themselves to the type of deliberation done by legislative bodies and, of these two, only the Motion to Reconsider was adopted by the

Model Rules. Two other motions (Motion to Take from the Table and Motion to Discharge a Committee), are combined in a single Motion to Recall from the Table/Motion to Recall from Committee. These motions are discussed in *RONR* §§ 34 and 36, respectively.

The problem with the Motion to Reconsider and the Motion to Amend Something Previously Adopted is that ordinances and resolutions passed by county council become effective without referral to another chamber or to an executive branch for signature. Neither of these motions can be used to reconsider or amend an ordinance or resolution that has become effective. If it is the will of county council to reconsider or amend an ordinance or resolution previously passed, the proper procedure is to pass another ordinance or resolution. The Motion to Reconsider was retained because it has a narrow window in which it can be raised. The Motion to Reconsider is discussed in *RONR* § 37; the Motion to Amend Something Previously Adopted is discussed in *RONR* § 35.

See Table 1 at the end of this publication for a recap of all of the procedural motions. Included in the recap is: whether each type of motion can be amended, debated, or reconsidered, as well as the vote required to pass it, whether the motion can interrupt another person who has the floor and whether a second is required.

1. Motion to Reconsider.

The motion to reconsider allows county council to debate whether or not to overturn a decision made at the meeting that is in progress or at the immediately preceding meeting; provided, however, that third reading to an ordinance may be reconsidered only at the same meeting in which the third reading was adopted. Furthermore, if the matter to be reconsidered was the adoption of a resolution that has already been published or acted upon, the motion is out of order. The Motion to Reconsider allows county council to consider new information that may affect the decision that has already been made. Any council member who voted on the prevailing side can make a Motion to Reconsider. The motion is debatable if the matter to be reconsidered is debatable, but it cannot be amended. A majority vote is required for the motion to pass. The Motion to Reconsider, itself, cannot be reconsidered. If the Motion to Reconsider is agreed to, the original decision will be voided and the county council will return to debate and vote again on the original motion.

Subject to the time restriction indicated above, the Motion to Reconsider can be made at any time, taking precedence over any other motion and yielding to nothing. The Motion to Reconsider is out of order when another person has the floor. Once the Motion to Reconsider is made, the consideration of the motion takes the priority of the motion to be reconsidered, but has precedence over any new motion of equal rank. A Motion to Reconsider temporarily suspends any action growing out of the motion to be reconsidered. If the Motion to Reconsider is made but not considered immediately, any member can call up the motion by bringing it to the attention of council at any time consideration of the motion would be in order.

Comment: *RONR* § 37 refers. The

unusually high precedence of this motion grows out of the short window of opportunity to raise the issue. Once the motion is made, its consideration reverts to a much lower precedence, with the fate of the underlying issue being held in abeyance until the Motion to Reconsider can be decided.

2. Motion to Recall from the Table/Motion to Recall from Committee.

The Motions to Recall from the Table and to Recall from Committee allow the county council to consider a question that has been laid on the table or that has been assigned but not yet reported out of committee. These motions take precedence over nothing and must be made when no other business is pending. The motions are not debatable or amendable. A tabled motion that is not recalled by the close of the meeting following the meeting in which it was tabled is dead. A majority vote is required for passage of either motion.

Comment: This is actually two motions in one, taking the place of the following motions listed in *RONR*: Take from the Table (*RONR* § 34) and Discharge a Committee (*RONR* § 36). As discussed in Model Rule 15, The Motion to Lay on the Table provides a means of temporarily postponing consideration of a matter, so that something of greater urgency can be discussed. This motion allows county council to recall the matter previously tabled for further consideration. Similarly, the Motion to Recall from Committee can bring a matter previously assigned to a committee back to the full council for discussion or assignment to a

different committee.

This motion is referred to as a “Motion to Recall from the Table” or a “Motion to Recall from Committee,” depending on the circumstances.

Procedural Motions

Rule 14. Privileged Motions. (See notes on next page)

<u>Motion to . . .</u>	<u>Amend</u>	<u>Debate</u>	<u>Reconsider</u>	<u>Vote</u>	<u>Interrupt Speaker</u>	<u>Second Required</u>	<u>Discussed at</u>
Adjourn	No	No	No	Majority	Yes	No	p. 31
Recede [Take a Recess]	Note 1	No	No	Majority	No	No	p. 32
Raise Question of Privilege	No	No	No	Note 2	Yes	No	pp. 32-33
Convene an Exec. Session	Note 3	Note 3	No	Yes, Note 3	Yes	No	pp. 33-34
Follow the Agenda	No	No	No	Note 4	No	No	pp. 34-35

Table 1, Page 1

Notes:

1. May only be amended as to the proposed length of the recess.
2. Ruled on by the chair; no vote unless appealed.
3. The motion can be amended and debated only for the purpose of identifying the appropriate reason or reasons for convening the executive session. A public vote is required by statute. A majority vote is required.
4. Requires $\frac{2}{3}$ majority to overrule.

Rule 15. Subsidiary Motions. (See notes on next page)

<u>Motion to . . .</u>	<u>Amend</u>	<u>Debate</u>	<u>Reconsider</u>	<u>Vote</u>	<u>Interrupt Speaker</u>	<u>Second Required</u>	<u>Discussed at</u>
Lay on the Table	No	No	No	Majority	No	Yes	p. 36
Call for the question	No	No	Yes	$\frac{2}{3}$ Maj	No	Yes	p. 37
Limit/Extended Debate	Yes	No	No	$\frac{2}{3}$ Maj	No	Yes	p. 37
Postpone/to Time Cert.	Yes	Yes	Yes	Note 1	No	Yes	p. 38
Commit	Note 2	Yes	Yes	Majority	No	Yes	p. 39
Amend	Yes	Note 3	Yes	Majority	No	Yes	pp. 39-40

Table 1, Page 3

Rule 15. Notes:

1. Majority vote unless the motion sets a time and date certain, in which case there is a $\frac{2}{3}$ majority requirement.
2. Amendable as to which committee or department the matter is to be assigned; also amendable as to when the committee is to report.
3. Amendments are debatable only if the motion to be amended is debatable.

Rule 16. Incidental Motions. (See notes on next page)

<u>Motion to . . .</u>	<u>Amend</u>	<u>Debate</u>	<u>Reconsider</u>	<u>Vote</u>	<u>Interrupt Speaker</u>	<u>Second Required</u>	<u>Discussed at</u>
Point of Order	No	No	No	Note 1	Yes	No	pp. 40-41
Appeal	No	Yes	Yes	Note 2	No	Yes	pp. 41-42
Suspend the Rules	No	No	No	Majority	No	Yes	pp. 42-43
Divide the Question	Yes	No	No	Majority	No	Yes	p. 43
Consider by ¶ or §	Yes	No	No	Majority	No	Yes	pp. 43-44
Requests & Inquiries	No	No	No	Note 3	No	No	pp. 44-46

Table 1, Page 5

Notes:

1. Generally ruled on by the chair; no vote is taken unless the chair is in doubt or an appeal is taken;
2. Majority or tie vote sustains the chair; chair can vote to create a tie to defeat an appeal;
3. No vote is taken on a Parliamentary Inquiry or a Point of information; other requests require a majority vote, although they are often granted by unanimous consent; Reading of Papers requires unanimous consent.

Rule 17. Recall Motions. (Notes continued on next page)

<u>Motion to . . .</u>	<u>Amend</u>	<u>Debate</u>	<u>Reconsider</u>	<u>Vote</u>	<u>Interrupt Speaker</u>	<u>Second Required</u>	<u>Discussed at</u>
Reconsider	No	Note 1	No	Majority	No	Yes	pp. 48-49
Recall from Table or Committee	Note 2	Note 2	Note 2	Majority	No	Yes	pp. 49-50

Notes:

1. The motion is debatable if the matter to be reconsidered is debatable. If debatable, this motion opens debate on the merits of the matter to be reconsidered.
2. If the motion is to recall a motion or proposed ordinance/resolution from the table, it cannot be amended, debated or reconsidered. If the motion is to recall a (note

continued)

motion or proposed ordinance/resolution from a committee, it can be amended or debated, but only a negative vote can be reconsidered.

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