

In accordance with the requirements of G.S. § 160A-71(b)(1), only those items of business specified in the notice may be transacted at a special meeting called in this manner, unless all members are present or have signed a written waiver of notice. An optional provision of this rule establishes an additional requirement: no items may be added to the agenda for a special meeting called in this manner unless the Council determines in good faith that the item to be added must be discussed or acted on immediately. This provision is based on the following reasoning.

The Open Meetings Law requires that the purpose of a special meeting be stated in the meeting notice. While the law contains no explicit restrictions that would prevent the board from taking up unannounced subjects at a special meeting if the requirements of G.S. § 160A-71(b)(1) are met, this rule recognizes that there is probably some implicit “good faith” limit on adding unannounced subjects to the agenda. Recognizing such a limit avoids surprise to absent Council members and to others who might have attended the meeting, had they known that the additional item would be placed on the agenda.

It is especially appropriate not to consider the extra item if it could be dealt with at another special meeting scheduled with the proper 48 hours’ notice.

Division (A)(2)(a)2. deals with special meetings called or scheduled by vote of the Council in open session during another duly called meeting under G.S. § 160A-71(b)(2). Under the Open Meetings Law, 48 hours’ advance notice of the time, place and purpose of special meetings called in this manner must be mailed to the news media and other persons on the Council’s “sunshine list”, as required with any other special meeting. G.S. § 160A-71(b)(2) generally requires no special notice to Council members of a special meeting called during another meeting, since presumably all members were present or had the opportunity to be present at the meeting where the special meeting was called or scheduled. An optional provision of this rule allows the Council to go a bit beyond what the law specifies by providing notice to members who were absent from the meeting where the special meeting was scheduled.

(b) *Emergency meetings.*

1. Emergency meetings of the Town Council may be called only because of generally unexpected circumstances that require immediate consideration by the Council. Only business connected with the emergency may be considered at an emergency meeting. One of the following two procedures must be followed to call an emergency meeting of the Council.

a. The Mayor, the Mayor pro tempore or any two members of the Council may, at any time, call an emergency Council meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. The notice shall be delivered to the Mayor and each Council member or left at his or her usual dwelling place at least six hours before the meeting.

b. An emergency meeting may be held at any time when the Mayor and all members of the Council are present and consent thereto, or when those not present have signed a written waiver of notice, but only in either case if the Council complies with the notice provisions of division (A)(2)(b)2. below.

2. Notice of an emergency meeting under divisions (A)(2)(b)1.a. or (A)(2)(b)1.b. above shall be given to each local newspaper, local wire service, local radio station and local television station that has filed a written emergency meeting notice request, which includes the newspaper’s, wire service’s or station’s telephone number, with the Town Clerk. This notice shall be given either by telephone or by the same method used to notify the Mayor and the Council members and shall be given at the expense of the party notified.

Comment: Division (A)(2)(b) states the requirements of the Open Meetings Law concerning emergency meetings (G.S. § 143-318.12(b)(3)). It adds to these requirements the two possible ways that emergency meetings might be called under G.S. § 160A-71(b). The Town Council procedural statutes do not mention emergency meetings, so they must be considered a type of special meeting. The first method, described in G.S. § 160A-71(b)(1), requires six hours' minimum notice to Council members and the Mayor. The second method, specified in G.S. § 160A-71(b)(2), allows a meeting to be held whenever the entire Council can be assembled or written waivers can be obtained from those not present, as long as the emergency meeting notice requirements are satisfied.

The third method for calling special Council meetings, see G.S. § 160A-71(b)(3), is not allowed for emergency meetings. Because emergency meetings are, by their nature, unexpected, it is assumed that they will not be called during the course of another meeting, but will be scheduled when needed using one of the other two methods.

(c) *Recessed or adjourned meetings.* A properly called regular, special or emergency meeting may be recessed or adjourned to a time and place certain by a procedural motion made and adopted as provided in Rule 18, Motion 2, in open session during the regular, special or emergency meeting. The motion shall state the time and place when the meeting will reconvene. No further notice need be given of a recessed or adjourned session of a properly called regular, special or emergency meeting.

Comment: In division (B)(2)(c), note that a motion to recess or adjourn a meeting to a time and place certain must comply with the requirements of Rule 18 concerning procedural motions. See both the rule's general requirements and the particular requirements of Motion 2. It must be made in open session, since under the Open Meetings Law the making of such a motion is not listed as an action that is permitted during a closed session. (See Rule 26 concerning closed sessions.) The Open Meetings Law specifies that if proper notice was given of the original meeting and, if the time and place at which the meeting is to be continued is announced in open session, no further notice is required for the adjourned or recessed session. No notice requirements are imposed by the Town Council procedure statutes for adjourned or recessed sessions. As explained in the Comment to Rule 18, Motion 2, the terms "recess to a time and place certain" and "adjourn to a time and place certain" are both forms of the motion to adjourn, and are used interchangeably in these rules and in state law and practice. G.S. § 160A-71(b1) states the terms recess and adjourn as alternatives.

The provisions of Rule 24 that concern notice of meetings to consider the budget should also be considered in conjunction with this rule.

(3) *Rule 3, Organizational Meeting.* On the date and at the time of the first regular meeting in December following a general election in which Council members are elected, or at an earlier date, if any, set by the incumbent Council, the newly elected members shall take and subscribe the oath of office as the first order of new business. As the second order of new business, the Council shall elect a Mayor, if he or she is not elected as such by the voters, and a Mayor pro tempore. This organizational meeting shall not be held before the municipal election results are officially determined, certified and published in accordance with G.S. Ch. 163, Subch. IX.

Comment: This rule states the requirements of G.S. § 160A-68(a) and (b). An organizational meeting is held whenever new members are elected so that they can properly qualify for office by taking and signing the required oath. At the same meeting, a Mayor pro tempore (and a Mayor if that person is not separately elected by the voters) is chosen. G.S. § 160A-68(b) provides that the organizational meeting shall take place notwithstanding the absence, death, refusal to serve, failure to qualify or non-election of one or more members, provided a quorum is present.

All public officers must take the oath of office set forth in Art. VI, § 7, of the North Carolina Constitution. Council members may also include in the oath to be taken, those provisions of the oaths set out in G.S. §§ 11-7 and 11-11 that are different from the constitutional oath. Board members with questions about oaths should consult the Board's attorney or the following Institute of Government publications: A. Fleming Bell, II, *Ethics, Conflicts, and Offices: A Guide for Local Officials* (Chapel Hill: Institute of Government, 1997); James Long and C. E. Hinsdale, *Oaths of Office for the Use of City, County, and State Officials in North Carolina* (Chapel Hill: Institute of Government, 1975); and Joseph S. Ferrell, "Questions I Am Frequently Asked: What Forms of Oath Should a Public Officer Take?" *Popular Government* 62 (Fall 1996): 43.

Who presides at the organizational meeting until the new Mayor is sworn in is a question best resolved by local custom. In some cities the Town Clerk, Manager or Attorney presides, and in others the retiring Mayor presides until the new Mayor is sworn in.

The incumbent Council may fix the date and time of the organizational meeting. If it does not do so, the meeting is held on the date and at the time of the first regular meeting in December after the municipal election results have been certified under the state election laws. If the Council uses the "default" time and place, G.S. § 160A-68(a) may require that the organization of the Council be the first thing that occurs "on the date and at the time" of the first regular meeting in December. While this rule permits the qualification of newly elected members and the election of a Mayor pro tempore and (if necessary) of a Mayor to be preceded by the completion of pending items of unfinished business by the incumbent Council if this is the local custom, an incumbent Council wishing to proceed in this manner should so specify in fixing the time and place for the organizational meeting. In this case, the swearing-in and election are the first items of "new business" on the agenda.

(4) *Rule 4, Agenda.*

(a) *Proposed agenda.* The Town Clerk shall prepare a proposed agenda for each meeting. A request to have an item of business placed on the agenda must be received at least two working days before the meeting. Any Council member may, by a timely request, have an item placed on the proposed agenda. A copy of all proposed ordinances shall be attached to the proposed agenda. (An agenda package shall be prepared that includes, for each item of business placed on the proposed agenda, as much background information on the subject as is available and feasible to reproduce.) Each Council member shall receive a copy of the proposed agenda and the agenda package and they shall be available for public inspection and distribution or copying when they are distributed to the Council members.

(1) *Agenda Setting Committee.* There shall be an Agenda Setting Committee consisting of the Mayor, Town Manager and Town Clerk to determine the items that will be included on the Proposed Agenda for Regular Town Council Meetings. The Agenda Setting Committee shall meet at 10:00 am on the Tuesday prior to the Regular Town Council Meeting (i.e. this would normally be the 1st and 3rd Tuesday of each month) in the Council's Chambers. All requests for agenda items shall be made in writing and submitted to the Town Clerk by 5pm on the Monday prior to the Agenda Setting Committee Meeting that takes place on Tuesday at 10:00 am (i.e. 17 hours prior to the Agenda Setting Committee Meeting) in order to be considered for inclusion on the next Regular Town Council Meeting Agenda. The Agenda Setting Committee's Meetings shall be open the public and held in accordance with the North Carolina Open Meetings Law. The Agenda Setting Committee shall determine what received agenda requests and other matters of Town business will be included on the next Regular Town Council Meeting Agenda. If any received agenda requests are not included on the next Town Council Regular Meeting Agenda then a reason as to why must be stated/given and recorded as part of the minutes of the Agenda Setting Committee Meeting. The requestor whose agenda request was denied should be provided a memo/email from the Mayor, Town Manager or Town Clerk by 5pm that day notifying the requestor that their item(s) (specifically stating the item or items denied) would not be included on the requested agenda and relay the reason that was stated during the Agenda Setting

Committee's Meeting as to why such item(s) would not be included. Also, Town Council shall be provided a carbon copy (cc) of the memo/email that is provided to the requestor noting the denied request and reason such would not be included on the proposed agenda.

(2) *Preparing and Posting the Proposed Agenda and Packet.* The Town Clerk shall prepare the proposed agenda as determined by the Agenda Setting Committee. An agenda packet including a copy of all proposed ordinances, resolutions, contracts, proclamations and all other pertinent information that is helpful to Town Council in their research and deliberations for the items included on the proposed agenda shall be prepared (individual requestors should provided this back-up information by 5pm on Tuesday- the same day of the Agenda Setting Committee Meeting). The Proposed Agenda shall be provided to the Mayor, Town Council Members and the Town's Sunshine List no later than 48 hours prior to the Regular Meeting (not counting weekends). The proposed agenda and agenda packet shall be posted to the Town's Website, made available for public inspection and/or copying no later than 48 hours prior to the Town Council's Regular Meeting.

(b) *Adoption of the agenda.*

1. As its first order of business at each meeting, the Council shall, as specified in Rule 6, discuss and revise the proposed agenda and adopt an agenda for the meeting. If items are proposed to be added to the agenda of a meeting, the Council may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all Council members.

2. a. The Council may, by majority vote, add items to or subtract items from the proposed agenda; except that:

i. The Council may not subtract items from the proposed agenda stated in the notice of a special meeting called by the Mayor, Mayor pro tempore or two Council members, unless those calling the meeting consent to the deletion;

ii. The Council may not add items to the proposed agenda stated in the