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Crafting Rules of Procedure for Your Public Body

New Hampshire Town and City, March/April 2019

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This article is presented to address some of the most frequently asked questions on the essential content of rules of procedure for a public body in New Hampshire. Even though not all public bodies in New Hampshire municipalities are required to have rules of procedure, it is generally recommended that written rules governing public meetings should be established and followed by all public bodies.

Establishing rules of procedure for public meetings has several benefits. First, it allows for meetings to be run in an efficient and consistent manner. Second, it allows for the members of the public body and residents to debate matters of public concern in a courteous and respectful manner that lessens the likelihood of discontent and friction. Third, rules provide guidance to public body members on how they are to interact and engage with municipal employees and members of the public. Fourth, rules of procedure ensure continuity and stability during transition years when new members of the public body are elected or appointed to office. (paraphrased from *Model Rules of Procedure for Council Meetings*, published by the League of Oregon Cities, March 2017).

When are rules of procedure required by law?

All land use boards are required to have rules of procedure that concern the method of conducting its business. RSA 676:1. This would include the planning board, historic district commission, inspector of buildings, building code board of appeals, zoning board of adjustment, heritage commission, historic district commission, agricultural commission and housing commission. A recreation or park commission established under RSA Chapter 35-B is vested with the authority to

adopt rules of procedure, as can the moderator at town meeting. RSA 40:4. Rules of Procedure for a Zoning Board of Adjustment must prescribe the time period for appealing an administrative zoning decision. RSA 675:5, I.

Must our rules of procedure follow Robert's Rules of Order?

While *Robert's Rules of Order*, 11th Edition, is considered the authoritative reference on parliamentary procedure, it is much too unwieldy to exclusively guide the public meeting business of municipal boards and commissions that have often have 12 or fewer members. If referred to at all in local rules of procedure, *Robert's Rules* would only provide guidance, and not be binding on the presiding officer. *Robert's Rules* itself recognizes that in small bodies of less than a dozen members "some of the formality necessary in a large assembly would hinder business." *Robert's Rules* does provide abbreviated procedures for small boards. *Robert Rules*, §49, pp. 487 – 488.

Should our rules of procedure provide for election of certain officers, such as chair, vice-chair and secretary?

Local land use boards are required to have a chairperson elected from the appointed or elected members, and they may create other offices, such as vice-chair and secretary, as deemed necessary. RSA 673:8. Land use board officers have a term of one year and may be re-elected at the end of their term. In the case of planning boards, an ex-officio member (governing body member, etc.) cannot serve as chairperson. RSA 673:9. Otherwise, it is essential that all other municipal boards, bodies and commissions have a presiding officer or chairperson and a vice-chair in case of the absence of the chair.

What duties should be given/vested in the chair/presiding officer?

The chairperson should be delegated the responsibility to prepare the agenda for each meeting in consultation with the municipal staff and other board members. The Chair could also be delegated the responsibility to sign official correspondence for the public body and represent the public body before other boards, commissions and state agencies. The Chair would open each meeting, announce the sequence of items to be heard on the agenda, and state any changes in the order of matters to be heard. The Chair would also recognize applicants and presenters to speak, state questions/motions to be put to a vote and decide all questions of order and decorum. Other responsibilities that could be delegated to the Chair would be the ability to schedule emergency and special meetings.

Should our rules of procedure describe the types of meeting our public body might have?

It is a good idea to describe in the rules of procedure the types of meetings your public body may have, such as the following:

- Regular Meetings: State in your rules the date, time and place of the regular meetings of your public body.
- Special Meetings: Provide for the possibility of a special meeting called at the discretion of the Chair to address urgent matters that cannot wait until the next regular meeting.
- Emergency Meetings: As permitted by RSA 91-A:2, II, an emergency meeting can be held with less than 24 hours' notice when the chair determines that immediate, undelayed action is imperative. Notice of an emergency meeting shall be provided as soon as practicable and employ other means that are reasonably available to inform the public that a meeting is to be held. The minutes of the emergency meeting shall clearly spell out the need for the emergency meeting.

Should our rules address remote participation when a member cannot attend in person?

The Right-to-Know law permits, but does not require, that public bodies allow a member to participate remotely. If your public body will permit remote participation, the following would be appropriate content for your rules of procedure:

- The member's attendance must be "not reasonably practical," and that reason must be stated in the minutes of the meeting.
- Except in an emergency, at least a quorum of the public body must be physically present at the location of the meeting. The determination that an emergency exists is to be made by the chair, and the facts upon which that determination is based must be included in the minutes.
- All votes taken during such a meeting must be by roll call vote.
- Each part of a meeting that is required to be open to the public must be audible "or otherwise discernable" to the public at the physical location of the meeting.
- Any member participating remotely must identify anyone present at the remote location.

What type of notice of a public meeting should be provided for in our rules of procedure?

The Right-to-Know Law requires a minimum of 24 hours' notice to the public prior to a public meeting. The notice must:

- Be given at least 24 hours in advance, not including Sundays or holidays
- Include the date, time and place of the meeting
- Be published in a newspaper or posted in two "prominent" public places in the municipality, one of which may be the public body's official website.

Other statutes also may require more notice, particularly when a hearing is required. For example, planning board hearings require 10 days' notice under RSA 676:4, I(d); ZBA hearings require five days' notice under RSA 676:7; select board's hearings on highway petitions require 14 days' notice under RSA 43:2 and RSA 43:3; and budget hearings require 7 days' notice under RSA 32:5.

Should our rules of procedure provide that the public notice include an agenda stating the matters to be addressed at our meetings?

The only required contents of the public meeting notice are the date, time and place of the meeting. The law does not require that the purpose of the meeting or a meeting agenda be included in the notice. However, many public bodies do include such information, which certainly can benefit the public. If your own local rules of procedure require you to post an agenda, then local rules giving more access take precedence, RSA 91-A:2, II.

What rules should we have governing public comment versus public hearings?

The Right-to-Know Law does not give the public the right to speak at a public meeting. Of course, when a statute requires a public body to hold a public *hearing*—such as a budget hearing—the public must be given the opportunity to speak and weigh in because that's the purpose of a public hearing. Other statutes also provide that specific individuals have a right to speak at a public hearing, such as a hearing on an application for a variance where the applicant, abutters, or other parties whose rights are being affected have the right to be heard.

On the other hand, a public body may permit, but is not required, to allow the public to comment at regular meetings that are not public hearings. Whether your public body wants to permit public comment or not, here are some suggested guidelines that could be included in your rules to address how to handle public hearings, or, an optional public comment period:

Public Hearings:

- Persons wishing to speak shall sign the “hearing roster” with the person’s name and address prior to the commencement of the public hearing at which the person wishes to speak
- Each person shall, prior to giving testimony, provide his or her name, shall indicate whether they are a resident, state their address, and address their remarks to the public body.
- Speakers at hearings on legislative or administrative matters will be subject to a limited time period. Speakers at a hearing on a quasi-judicial matter could be afforded longer time periods as may be warranted based on the status of the speaker:

a. Applicant or affected party. Quasi-judicial hearing only.

b. Appellant, if other than applicant. Quasi-judicial hearing only

c. Other interested persons.

d. Rebuttal by applicant or party. The scope of rebuttal is limited to matters which were introduced during the hearing.

Public Comment (not at public hearings):

- Public comment will take place after the business portion of the meeting is completed.
- One person speaks at a time (no interrupting).
- No one speaks until recognized by the chair.
- Speaker must sign-in to indicate an intent to speak during public comment.
- The speaker must identify him or herself when beginning to speak.
- Public comment is a time for members of the public to speak; it is not a “question and answer session” with the public body.
- Each speaker will be limited to limited time period.

Are there suggested procedures for handling voting on motions and motions for reconsideration?

The Right-to-Know Law requires that minutes of public meetings, indicate the names of public body members whom made or seconded each motion. A motion that receives a tie vote fails. A motion to reconsider may only be made by a member who voted on the prevailing side. No voting at public meeting can take place using a secret ballot.

What are the suggested procedures for nonpublic sessions?

A public body is never *required* to enter nonpublic session. A public body may use a nonpublic session only for very limited purposes, all of which are listed in RSA 91-A:3, II. If none of these purposes applies, the discussion may not be held in nonpublic session. The requirements for entering nonpublic session are set out in RSA 91-A:3, I, and are very clear:

- A public body may enter nonpublic session only “pursuant to a motion properly made and seconded.”
- The motion must state on its face the specific exemption in RSA 91-A:3, II, that is relied upon as the purpose for the nonpublic session, and all discussions and decisions made during the session must be confined to the matters set out in the motion.
- The vote on the motion must be by roll call. A simple majority is all that is required.

Minutes of the nonpublic session must be kept, which must contain: the names of members present, the names of persons appearing before the public body, and a brief description of the subject matter discussed and final decision(s) made. The minutes also must “record all actions in such a manner that the vote of each member is ascertained and recorded.” Upon returning to public session, the board should determine if one of the following conditions exist to justify keeping the nonpublic meeting minutes nonpublic, or sealed:

- Disclosure would adversely affect the reputation of a person other than a member of the board;
- Disclosure would render the proposed action ineffective; or
- The discussion in the minutes pertains to terrorism.

The vote to seal the nonpublic meeting minutes is only made when the public body returns to public session.

What is the best practice for handling public meeting minutes?

The Right-to-Know Law provides that minutes of public meetings shall contain the following minimum contents: (1) names of members present; (2) other people participating (although it is not necessary to list everyone *present*); (3) a brief summary of subject matter discussed; and (4) any final decisions reached or action taken; (5) indicate the names of public body members who made or seconded each motion.

A public body must have compiled its draft (i.e., “unapproved”) minutes by the fifth business day after the meeting. Those minutes, although not yet reviewed and approved by the body, must be made available to anyone who requests to see or copy them. It does not matter that they have not yet been approved—they are still the minutes, and they cannot be withheld.

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