

Meeting Administration And The Municipal Clerk

Municipal Clerks And Treasurers Institute - Session 1B
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Meeting Administration And The Municipal Clerk

Session Topics:

- | | |
|-----------------------|-------------------------|
| 1. Meetings | 4. Public Participation |
| 2. Rules of Procedure | 5. Minutes |
| 3. Agendas | 6. Prayer at Meetings |



Meeting Administration And The Municipal Clerk

Meetings



Council Meetings

Meeting: FOIA defines as the convening of a quorum of the public body.
§ 30-4-20(d).

Quorum: A majority of the total membership of the council must be present to transact business. § 5-7-160 and 30-4-20(e).

Positive Majority: A majority of the total number of members of the council (not simply a majority of the members present and voting).

Voting: May be cast by voice, hand or roll call.

Voting: Must be present to vote; no proxies; and no secret ballots.



Abstentions And Conflicts Of Interest

Abstentions: Rules of Procedure often require all member present, including the mayor (presiding officer), to vote unless prohibited by a conflict of interest.

Conflict of Interest – Proper Procedure (§ 8-13-700(B))

- Announce the conflict
- Follow the Ethics Reform Act of 1991
- Put the conflict in writing (recusal form)
- Do not participate in deliberations
- Do not vote

Members of council:

- Should not point out someone else's conflict
- Public announcement could be seen as defamation
- Proper procedure is to notify Ethics Commission



Presiding Officer

❖ In the mayor-council form, the mayor, by statute, presides at meetings.
§ 5-9-30(3).

❖ In the council and the council-manager forms, the mayor, by custom, acts as the presiding officer.

❖ In the mayor's absence, the mayor pro tempore assumes the presiding officer's role. § 5-7-190.

❖ If both are absent and a quorum is present, council must elect a member to preside at the meeting.

❖ Regardless of the form of government, mayors are entitled to motion, second and vote on matters before council unless prohibited by a conflict of interest but should be judicious in exercising this right.



Public Notice Of Meetings

Municipal Clerk: is required to give notice of council meetings to members of council and the public. § 5-7-220.

Media: FOIA requires that cities make an effort to notify local media of the time, date, place and agenda of all public meetings. The meeting minutes must note the efforts made to comply. § 30-4-80(e).

Written Public Notice: At a minimum, must include posting a copy of the notice at least 24 hours prior to the meeting at town hall, or at the place of the meeting, and on the city's website, if there is one. § 30-4-80(a) and (d).

Calendar: Municipalities must give written notice of their regular meetings at the beginning of each calendar year. § 30-4-80(a).



Public Bodies Subject to FOIA

- All public bodies, which includes:
 - City and Town Councils,
 - Public Utility Boards
 - Municipal Planning Commissions
 - Boards of Zoning Appeals
 - Architectural Review Boards
- Must comply with FOIA's public meeting notice and agenda requirements (Section 30-4-80).



What about Committees, etc.?

- All bodies, by "whatever name known," are subject to FOIA:
 - Standing Committees
 - Ad Hoc Committees
 - Subcommittees
 - Other Advisory Groups

The bottom line is that if a committee is appointed by City Council, it is public – just like Council



FOIA can apply to Staff Committees

- *Quality Towing Co. v. City of Myrtle Beach (2001)*
- Case involved staff committee selecting a towing company for City of Myrtle Beach
- S.C. Supreme Court ruled that FOIA applies to staff committees if the committee is making a recommendation in an area that will be acted upon by the council



What About Organizations that the City Funds?

- Yes. FOIA may also apply to organizations and outside parties that:
 - Receive public funds from the city, or
 - Are supported in whole or in part by the city with public funds
 - The source (or type) of revenue matters not



Five Types Of Meetings

1. Regular council meetings
2. Special meetings
3. Emergency meetings
4. Public hearings
5. Executive sessions

- ❖ Meetings are a vehicle for achieving certain goals.
- ❖ It is important that council selects the right type of meeting.
- ❖ Location and environment are important considerations as well.



Work Sessions

- ❖ These meetings are not recognized by FOIA as a separate type of meeting. The term is used by local governments for public meetings at which the council intends to take no action.
- ❖ As is the case with regular and special meetings, work sessions must meet the same requirements for public notice, agenda posting, public accessibility and minute-taking, etc.
- ❖ Failure to provide public notice, prepare an agenda and take minutes for work sessions are common mistakes and are problematic under FOIA.
- ❖ While councils typically, or by policy, do not take action at a work session, FOIA regulates work sessions as if the council may.



Common Problems

- ❖ Failing to give reason for **executive session**
- ❖ Discussing matters in **executive session** that were not publicly stated
- ❖ Failing to give notice of **work session**
- ❖ **Boards and commissions** must comply with FOIA too
- ❖ The “**is it a committee or council meeting**” conundrum



Meetings

Questions?



Meeting Administration And The Municipal Clerk

Rules of Procedure



First Order Of Business: Rules Of Procedure

- ❖ Municipal councils and their appointed bodies are required to adopt rules of procedure to ensure that meetings are conducted in an orderly and proper manner § 5-7-250(b).
- ❖ Adopting local rules is important because they establish the procedure for preparing agendas and conducting meetings.
- ❖ State law allows councils to exercise complete discretion over their rules of order, local rules may be as complex or as simple as council deems necessary.



What are Rules Of Procedure?

Rules of Procedure prescribe:

- The order council receives certain items
- Establishment and jurisdiction of council committees
- Procedure for introducing and enacting ordinances and resolutions
- Adoption of a parliamentary guide (i.e. Robert's Rules of Order)

- ❖ They have the force of law when established by ordinance
- ❖ They cannot be repealed, suspended or waived except by ordinance
- ❖ They serve as a guide and are an indispensable tool for expediting business
- ❖ They provide a fair and open method for council deliberations



Recent Observations

- ❖ No Parliamentarian or Knowledgeable Person Present
- ❖ Motion to Table
- ❖ Removal of Persons from the Meeting

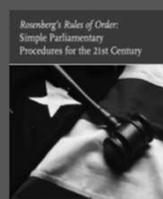
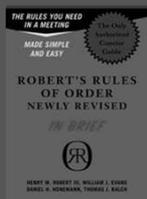


How Do I Get Started?

- ❖ Robert's Rules of Order may be a quick way to satisfy the requirement for rules. However, using only Robert's can be difficult and confusing because they were not specifically designed with municipal councils in mind.
- ❖ The Association has developed sample rules of procedure, which have been formatted for easy modification to meet the specific needs of your council.
- ❖ They allow the council to reference a secondary (or outside) set of rules of procedure, such as Robert's Rules. In the rare instances when the local rules do not provide sufficient guidance on meeting conduct, the secondary rules may be used.
- ❖ Are there alternatives to Robert's? Yes.



Model Rules Of Procedure



First Order Of Business: Rules Of Procedure

Questions?



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Agendas



Meeting Agendas

Agenda: Plural of the Latin word "agendum", which means a list or program of things to be done or considered.

A written agenda is an invaluable tool for the orderly conduct of public meetings.

An agenda:

- Offers a prearranged outline for the meeting,
- Is a basic method for assigning priorities to the various items of business
- Should have a consistent format from meeting to meeting.



What's In An Agenda?

❖ Most of the items fall into two basic groups: routine or procedural items and items that vary from meeting to meeting.

❖ Procedural items may include:

- Pledge of allegiance
- Roll call
- Approval of minutes from previous meeting(s).



What's In An Agenda?

❖ The bulk of an agenda is normally composed of considering other business:

- Resolutions
- Ordinances
- Claims
- Petitions
- Reports
- Hearings
- Communications from committees, boards and commissions
- Public comments.



Setting The Agenda

How to set an Agenda: The Home Rule Act does not specify who has responsibility for making an agenda or what it must contain.

Agenda predicaments: Who decides what items are placed on agendas is a question often debated. Clear rules of procedure can avoid this debate. They should specify who oversees preparation of the agenda, the process for selecting agenda items, and how the agenda is amended.

In smaller municipalities, the clerk customarily holds the major responsibility for compiling the agenda.

§ 5-7-220 states: "The municipal clerk shall give notice of council meetings to its members and the public, keep the minutes of its proceedings and perform such other duties as are assigned by council."



Order Of Business

❖ **Robert's Rules of Order:** If there is no local rule for order of business and Robert's Rules have been adopted, the order for the meeting agenda is:

- Approval of minutes of the previous meeting
- Reports of standing committees
- Reports of select committees
- Unfinished business
- New business

❖ State law requires agendas to provide a clear description of each item to be discussed under the broad headings provided for in Robert's Rules.

❖ Once agreed upon, council should formally prescribe the agenda's form by ordinance or resolution or, preferably, in the council's rules.



Meeting Agendas

❖ **Agenda deadline:** It is customary to set a definite, known deadline for placing items on the agenda.

❖ **Agenda Packet:** The agenda with backup and supporting materials should be distributed to council prior to the meeting.

❖ **Agenda Posting:** FOIA requires that the agenda be posted at least 24 hours before the meeting at the principal office or meeting place § 30-4-80(a)&(d)

❖ Publishing the agenda in a **newspaper** is not required. If requested, the news media must be given notice of the agenda.

❖ **Amending Agenda:** State law now expressly provides a procedure for amending agendas...



Restrictions on Amending Agendas

- Once agenda is posted, no items may be added without a minimum of 24-hours notice in the same manner as the original agenda.
- After the meeting begins, an action item may added to the agenda using one of two procedures that appear similar but have important differences



Restrictions on Amending Agendas

1. If the item is **not** a final action and an opportunity for public comment has been or will be granted at a publicly noticed meeting:
 - 2/3 vote of council (members present and voting)
2. If the item **is** a final action for which there will be no opportunity for public comment at a publically noticed meeting:
 - 2/3 vote of council and a finding exigent circumstance exists (i.e. *urgent or time-sensitive issue*) is required



Procedure to Add Items to a Meeting Agenda



Produced by the Municipal Association of SC and the SC Press Association

Donohue v. City of North Augusta (2015)

- Clarified requirements of FOIA related to Executive Sessions
- S.C. Supreme Court held that describing the purpose of an executive session as a "proposed contractual matter" is not specific enough to comply with FOIA.



Donohue v. City of North Augusta (2015)

- Section 30-4-70 (a) allows a public body to hold a closed meeting for any one of five reasons, provided that its “specific purpose” is announced in open session.
- Section 30-4-7 (b) defines “specific purpose” as: “a description of the matter to be discussed as identified in items (a) (1) through (a) (5).”



Donohue v. City of North Augusta (2015)

Section 30-4-70 (a) breakdown:

- 1) Personnel Matters
- 2) Contractual, Real Estate and Legal
- 3) Security Personnel and Devices
- 4) Investigative Proceedings
- 5) Economic Development



Donohue v. City of North Augusta (2015)

- **Section 30-4-70 (a) (1) – “Personnel Matters”**
- Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body
- *The court concluded that the identity of the individual or entity being discussed is not required to be disclosed*
- *List department or division on agenda instead*



Donohue v. City of North Augusta (2015)

- **Section 30-4-70 (a) (2) – “Contractual, Real Estate and Legal Matters”**
- Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice or other matters covered by attorney-client privilege.
- *The specific purpose must be listed on the agenda and read aloud when entertaining a motion to enter executive session*



Donohue v. City of North Augusta (2015)

- **Section 30-4-70 (a) (3) – “Security Matters”**
- Discussion regarding the development of security personnel or devices.
- *The specific purpose must be listed on the agenda and read aloud when entertaining a motion to enter executive session*



Donohue v. City of North Augusta (2015)

- **Section 30-4-70 (a) (4) – “Investigative Matters”**
- Investigative proceedings regarding allegations of criminal misconduct
- *The specific purpose must be listed on the agenda and read aloud when entertaining a motion to enter executive session*



Donohue v. City of North Augusta (2015)

- **Section 30-4-70 (a) (5) – “Economic Development Matters”**
- Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or businesses in the area served by the public body.
- *The court concluded that the identity of the individual or entity being discussed is not required to be disclosed*
- *Be generic or list project name on agenda instead*



Donohue v. City of North Augusta (2015)

- Due to the fact there are still many questions outstanding after this Court ruling, councils should discuss any questions regarding executive session with their city attorney.
- MASC will continue engaging with local government organizations, the SC Press Association, and attorneys specializing in FOIA related matters to determine whether more specific guidance is needed.



Brock v. Town of Mt. Pleasant (2016)

- S.C. Supreme Court determined that Town Council violated FOIA by taking action on an item discussed in executive session without providing notice on the agenda that it intended to take action on executive session matters following the executive session.
- The court concluded that notice that action may be taken following executive session must be provided
- However, the notice is not required to be specific

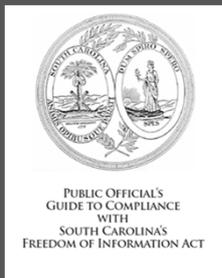


Brock v. Town of Mt. Pleasant (2016)

- A simple indication on the agenda that action may be taken following executive session on matters discussed in executive session is sufficient
- The court made a distinction in their ruling between the requirements for regular and special meetings
- That distinction is valid in **Brock** because the lawsuit pre-dates the 2015 amendments to FOIA
- **However**, going forward cities must include the generic listing on agendas without regard to type of meeting



Resources



S.C. Code of Laws Title 30,
Chapter 4

Municipal Association of SC
www.masc.sc
Keyword: foia

South Carolina Press
Association
www.scpres.org



Meeting Agendas

Questions



Meeting Administration And The Municipal Clerk

Public Participation



Public Participation And Input

❖ Cities and towns have a number of methods available to encourage public participation:

Newspaper announcements	Radio and TV PSAs
Municipal newsletters	Reminders enclosed in utility bills
Posted agendas	Postcards mailed to interested groups
Facebook	Agenda postings on city website

❖ When scheduling a public hearing, consider the time, anticipated attendance, physical accessibility of the meeting facility, amount of space and seating, and availability of parking.



Options For Allowing Public Input

❖ Council can handle scheduling public participation in various ways:

- Allow time on the agenda for general remarks from the public
- Allow the public to speak only on listed agenda items after signing in
- Require that members of the public request to appear before council prior to the agenda deadline and list as a presentation

❖ In each case, the council may wish to limit the amount of time a member of the public has to speak.

❖ If the hearing is anticipated to be lengthy or an overflow crowd is expected, council should consider scheduling the public hearing at a stand-alone time.



Managing Public Input

❖ **Manage Public Input:**

- Ask public to sign-in in order to speak
- Decide when public should speak
- Limit time period for comments
- Consider limiting public comments to agenda items
- Unless appearance is requested prior to agenda deadline

❖ **Media Relations:** Maintaining an effective, working relationship is important. Remember - for many in your community, media coverage of your council meetings may be their only source of information about the policies and operations of your city or town.



Potential Problems

- ❖ Ineffective Presiding Officer
- ❖ Not Enforcing Established Time Limits
- ❖ Enabling and Facilitating Surprises
- ❖ Drive-By Attacks on Council and Staff
- ❖ Misunderstanding What a Council Meeting Is For
- ❖ Residency Requirements



Public Participation And Input

Questions



Meeting Administration And The Municipal Clerk

Meeting Minutes



**Did We Agree To That?
The Importance Of Meeting Minutes**

- ❖ What exactly are Minutes?
 - Webster’s Dictionary defines them as “a brief note” (as of summary or recommendation).
 - The word derives from the Latin *minutas* – meaning “small”.
 - They are a summary of the actions and decisions taking place at a meeting, and generally are NOT verbatim.
 - There is no requirement in the law for a transcript of public meetings.
- ❖ Because the proceedings recorded may ultimately carry the weight of law, the minutes are extremely important.



Why Have Minutes?

- ❖ Because it is required by state law.
 - “The municipal clerk shall give notice of council meetings, keep the minutes of its proceedings and perform such other duties as are assigned by council.” § 5-7-220
 - “The council shall determine its own rules and order of business and shall provide for keeping minutes of its proceedings which shall be public record.” § 5-7-250 (b)
 - “All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include...” § 30-4-90(a)



What Should The Minutes Include?

❖ **Contents:** While state law does not require verbatim transcripts, minutes must contain a summary of the meeting's proceedings and provide sufficient detail of decisions made with information on discussions surrounding those decisions.

❖ **What should be included in the Minutes?**

- Name of the public body and the date, place and time of the meeting § 30-4-90(a)(1);
- The type of meeting – regular, special, emergency or public hearing;
- Statement that the media and the public were notified of the meeting;



What Should The Minutes Include?

- Indication of whether a quorum was present and a listing of the members present and absent § 30-4-90(a)(2);
- Disposition of the minutes from the previous meeting;
- The "substance" of all matters proposed, discussed or decided and a record of any votes taken;
- All main motions, adopted or defeated, the names of those making the motions, and the votes tallied for each item;
- Points of order and appeals, whether sustained or lost;
- Appointments to committees, boards and other bodies;



What Should The Minutes Include?

- Resolutions, ordinances, official communications, technical papers and other items entered in full or appended;
- Number of votes on each side or the names of councilmembers when a count has been ordered or a vote is by ballot or roll call.
- Summarized reports of committees, boards and other bodies, unless written reports are attached;
- Any other information that any member wishes to be reflected;
- Time of the adjournment; and
- Clerk's signature followed by approval date and verifying initials.



What Should Be Left Out?

- ❖ **What to leave out:** Minutes record actions of the council, not the words of individuals. Minutes are a record of what was done, not necessarily what was said.
- ❖ They should not include:
 - Opinion or interpretation of secretary
 - Judgmental or flowery language
 - Motions that are withdrawn
 - Name of person seconding the motion (may include, but not necessary)
 - Language of reports (if possible, use attachments)
 - Transcript-style writing



Preparation Of Minutes

- ❖ **Approval of Minutes:** Minutes are not “official” until they have been approved by council – usually at its next meeting. Once approved, the minutes should not be rewritten.
- ❖ In special cases, council can correct the minutes after they are adopted.
- ❖ The municipal clerk usually takes the minutes and then prepares (may utilize recordings) a draft for council following the meeting.
- ❖ Tapes of council meetings, draft minutes and approved minutes are public records under the Freedom of Information Act and must be released immediately upon request.



Distribution Of Draft Minutes

- ❖ Local rules of procedure should establish how and when the council receives the draft minutes.
- ❖ There are generally three ways in which councilmembers receive the meeting’s minutes:
 - Issued to all members soon after the meeting;
 - Issued to all members with the agenda for the next meeting; or
 - Read aloud at the beginning of the next meeting.



Electronic Recordings And Permanent Book

- ❖ **Electronic recordings:** Electronic recording of meetings is permissible and advisable. Audio/Video recordings are useful for double-checking the actions taken at meetings.
- ❖ Anyone may electronically record or videotape public meetings so long as they do not interfere with the actual proceedings taking place. § 30-4-90(c).
- ❖ **Permanent Book:** All minutes of council proceedings, including regular meetings, special meetings and public hearings, should be kept in a permanent book. Minutes are subject to FOIA. § 30-4-90(b), § 30-4-50(7).



Retention Of Minutes

- ❖ The S.C. Department of Archives and History's **Municipal Records Retention Schedule** requires that minutes be retained as a permanent record and housed in a safe, fireproof location.
- ❖ **Retention Schedule:**
 - Audio/video recordings of meetings: 2 years; then destroy or re-use
 - Minutes: Permanent; Microfilm for security
 - Agenda Packets: Permanent; Microfilm for security
 - Ordinances: Permanent; Microfilm for security
 - Resolutions: Permanent; Microfilm for security

(General Records Retention Schedule for Municipal Records, 2003
- SC Dept. of Archives & History)



Final Hints For Recording Minutes

- ❖ Use past tense. "Council approved ..."
- ❖ Be specific as to who is present
- ❖ Record those who make the motions and the vote of council
- ❖ Be brief, but concise
- ❖ Make sure enough information about each issue is included so that it can easily be discerned by the reader
- ❖ Try not to inject "personal" opinions



**Did We Agree To That?
The Importance Of Meeting Minutes**

Questions



Meeting Administration And The Municipal Clerk

Prayer



Say A little prayer? – Prayer at Council Meetings

- ❖ The issue of prayer at public meetings is an emotional one regardless of which side of the issue you support.
- ❖ For many of us, praying before an important event is more than a habit —it's the right thing to do.
- ❖ But what if that important event is a council meeting?
- ❖ And what if praying beforehand makes someone uncomfortable?
- ❖ This is an area where councils need to proceed cautiously because of the potential for legal challenges. Consultation with your city attorney on the issue of prayer is recommended.



Say a little prayer? – Prayer at Council Meetings

- ❖ In May 2008, the General Assembly enacted the S.C. Public Invocation Act (§ 6-1-160) in response to court ruling(s) limiting prayer at public meetings.
- ❖ This section lays out three methods of conducting prayers at public meetings.
- ❖ Following this method does not guarantee that you will not be sued or potentially loose a law suit. However, if a city follows one of the three methods and is sued, the statute provides that "the Attorney General shall defend any deliberative public body against a facial challenge to the constitutionality of this act".



The S.C. Public Invocation Act

- ❖ The S.C. Public Invocation Act outlines three methods that councils can adopt as a policy to allow an opening prayer at council meetings.
 1. A member of the body elected or appointed by the body.
 2. A Chaplain elected by the body.
 3. An invocation speaker selected on an objective basis from among a wide pool of religious leaders in the local community.



Method Three - S.C. Public Invocation Act

- ❖ For Method Three:
 - Rotation is no longer required and the former notice / invitation process provided by the Act is no longer required but is still referenced in the law.
 - Compile a list of all established religious congregations and assemblies;
 - Send them a written invitation to offer an invocation;
 - Request that they not use the opportunity to proselytize, advance or disparage any faith or belief.
 - Schedule each respondent on a first-come, first-served basis.



Is A Policy On Prayer Required?

- ❖ There is an important distinction here...
- ❖ Enacting a policy locally is not required for offering an invocation before a meeting.
- ❖ However, as mentioned before, if the city adopts a policy following one of the three methods outlined above, the state's attorney general will help the city defend itself against a constitutional challenge (§ 6-1-160).



Important Takeaways

- ❖ A policy on prayer is not required
- ❖ Council may use one of the three methods in the Act or not
- ❖ If 1 of the 3 methods is used, the S.C. AG is required to defend a lawsuit challenging the constitutionality of council's use of an invocation.
- ❖ The invocation is for the benefit of the body not the public.
- ❖ May not proselytize, advance or disparage any faith or belief.
- ❖ Council, nor the one giving the invocation, may coerce participation



Prayer at Council Meetings

Questions