

## ORANGE COUNTY BOARD OF COMMISSIONERS

### AGENDA

BOCC Regular Work Session  
February 10, 2015  
Meeting – 7:00 p.m.  
Southern Human Services Center  
2501 Homestead Road  
Chapel Hill, NC

- |                |    |   |
|----------------|----|---|
| (7:00 – 8:00)  | 1. | Discussion Regarding Potential Requirement that Contractors Doing Business with Orange County Pay Employees a Living Wage |
| (8:00 – 8:25)  | 2. | Discussion of Process for the Public to Place an Item on a Regular Board Meeting Agenda                                   |
| (8:25 – 9:25)  | 3. | Discussion on Boards and Commissions Processes  |
| (9:25 – 10:00) | 4. | Discussion on Board Rules of Procedures   |

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**ORANGE COUNTY  
BOARD OF COMMISSIONERS**

**ACTION AGENDA ITEM ABSTRACT**

**Meeting Date:** February 10, 2015

**Action Agenda  
Item No. 1**

**SUBJECT:** Discussion Regarding Potential Requirement that Contractors Doing Business with Orange County Pay Employees a Living Wage

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**DEPARTMENT:** County Attorney

**PUBLIC HEARING: (Y/N)**

No

**ATTACHMENT(S):**

Public Bid Requirements  
City of Asheville Staff Reports

**INFORMATION CONTACT:**

John Roberts, 245-2318

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**PURPOSE:** To discuss requiring certain contractors to pay employees a living wage.

**BACKGROUND:** At the December 9, 2014 meeting the Board adopted a motion to direct the attorney to “come back with an explicit policy for when and under what circumstances the board of commissioners can, might, and cannot require vendors or contractors to pay a living wage.”

In 2013 the North Carolina General Assembly limited the authority of counties and cities by amending §153A-449, which authorizes contracting with private contractors, to include a new sentence, “A county may not require a private contractor under this section to abide by any restriction that the county could not impose on all employers in the county, such as paying minimum wage or providing paid sick leave to its employees, as a condition of bidding on a contract.”

This language limits the County’s authority to contractually require a living wage to those contracts for which the County does not solicit bids. A contractual living wage requirement could therefore only apply to construction contracts below \$30,000, purchases of supplies and apparatus below \$30,000, and service contracts in any amount so long as the County did not choose to solicit bids.

Proposed policy: It is the policy of Orange County that vendors who enter contracts with Orange County must pay their employees a living wage. This policy shall not apply to contracts in the formal and informal bidding ranges or to any other contract on which the county solicits bids.

This policy may be adopted as a standalone policy, as part of the budget ordinance, or as part of the general ordinances.

### Issues for Consideration

- 1) What is the living wage? Is it what it costs to live in the county or the state? With or without benefits?
- 2) Do we require the equivalent of an Orange County living wage when both the vendor and the vendor's employees live outside the county? Outside the state?
- 3) Do we require the vendor pay all of its employees a living wage or just those assigned to the contract project?
- 4) Vendors can avoid this requirement by designating workers as subcontractors. Do we require vendors to pay their subcontractors a living wage? Require vendors to require subcontractors to pay their employees a living wage?
- 5) How do we verify and enforce the requirement(s)? Audits? Such a policy must be enforced because it likely creates third party beneficiaries who could have grounds to sue Orange County for its failure to enforce the provisions.
- 6) Is this policy to apply to contracts within a designated range of amounts to all vendors or just those with more than a designated number of employees?
- 7) Some sole source vendors are likely to refuse to sign such a contract. Examples include Time Warner, MuniCode, and Apple. How should this be addressed?

**FINANCIAL IMPACT:** There is no cost to consider this item. Should the Board adopt this as a policy going forward such policy will cause increases in the costs associated with contracting for certain goods and/or services.

**RECOMMENDATION(S):** The Attorney recommends the Board discuss this item and provide direction.

# Dollar Thresholds in North Carolina Public Contracting Statutes

Dollar limits and statutory authority current as of September 1, 2013

Requirement	Threshold	Statute
<b>Formal bidding</b>		
	<i>(estimated cost of contract)</i>	
Construction or repair contracts	\$500,000 <i>and above</i>	G.S. 143-129
Purchase of apparatus, supplies, materials, and equipment	\$90,000 <i>and above</i>	G.S. 143-129
<b>Informal bidding</b>		
	<i>(actual cost of contract)</i>	
Construction or repair contracts	\$30,000 to formal limit	G.S. 143-131
Purchase of apparatus, supplies, materials, and equipment	\$30,000 to formal limit	G.S. 143-131
<b>Construction methods authorized for building projects</b>		
	<i>Over \$300,000</i>	G.S. 143-128(a1)
Separate Prime	<i>(estimated cost of project)</i>	
Single Prime		
Dual Bidding		
Construction Management at Risk (G.S. 143-128.1)		
Design-Build and Design-Build Bridging (G.S. 143-128.1A; G.S. 143-128.1B)		
Public Private Partnership (P3) (G.S. 143-128.1C)		
<b>Historically Underutilized Business (HUB) requirements</b>		
Building construction or repair projects		
– Projects with state funding ( <i>verifiable 10% goal required</i> )	\$100,000 <i>or more</i>	G.S. 143-128.2(a)
– Locally funded projects ( <i>formal HUB requirements</i> )	\$300,000 <i>or more</i>	G.S. 143-128.2(j)
– Projects in informal bidding range ( <i>informal HUB requirements</i> )	\$30,000 to \$500,000*	G.S. 143-131(b)
<i>*Note: Formal HUB requirements should be used for informally bid projects costing between \$300,000 and \$500,000</i>		
<b>Limit on use of own forces (force account work)</b>		
	<i>(not to exceed)</i>	G.S. 143-135
Construction or repair projects	\$125,000 ( <i>total project cost</i> ) <u>or</u> \$50,000 ( <i>labor only cost</i> )	
<b>Bid bond or deposit</b>		
Construction or repair contracts ( <i>at least 5% of bid amount</i> )	Formal bids ( <i>\$500,000 and above</i> )	G.S.143-129(b)
Purchase contracts	Not required	
<b>Performance/Payment bonds</b>		
Construction or repair contracts ( <i>100% of contract amount</i> )	Each contract <i>over \$50,000</i> of project costing <i>over \$300,000</i>	G.S. 143-129(c); G.S. 44A-26
Purchase contracts	Not required	
<b>General contractor's license required</b>		
	\$30,000 <i>and above</i>	G.S. 87-1
Exemption	Force account work ( <i>see above</i> )	
Owner-builder affidavit required	Force account work ( <i>see above</i> )	G.S. 87-14(a)(1)
<b>Use of licensed architect or engineer required</b>		
Nonstructural work	\$300,000 <i>and above</i>	G.S. 133-1.1(a)
Structural repair, additions, or new construction	\$135,000 <i>and above</i>	
Repair work affecting life safety systems	\$100,000 <i>and above</i>	
<b>Selection of architect, engineer, surveyor, construction manager at risk, or design-build contractor</b>		
"Qualification-Based Selection" procedure (QBS)	All contracts unless exempted	G.S. 143-64.31
Exemption authorized	Only projects where estimated fee is <i>less than \$50,000</i>	G.S. 143-64.32

## MEMORANDUM

January 24, 2012

To: City Council Finance Committee

From: Lauren Bradley, Finance & Management Services Director

Subject: Contract thresholds for Living Wage requirements

At the November 22, 2011 City Council meeting, staff brought forward consideration of a three-year contract for security services in the City's parking garages. The annual cost of the contract is \$125,000.

During that meeting, Councilman Smith moved to have the Finance Committee review the contract at its next meeting to determine if the City should proceed with contracting for the service or to bring the service in-house. The minutes read:

"Councilman Smith said that Copeland pays their employees \$8.00/hour, but the City could provide the service for \$137,000 a year. He felt the \$12,000 difference is worth further investigation for this service to be performed in-house as it would align with the City's mission of providing living wages."

On March 22, 2011, City Council adopted a purchasing and contracting policy that includes a living wage requirement for General Service contracts \$30,000-\$90,000. On April 26, 2011, City Council passed a resolution setting the living wage at \$11.35/hour without employer provided health insurance and \$9.85/hour with employer provided health insurance. The resolution also said that Council would revisit the Living Wage each year as part of the annual budget process.

The rationale for contracting out these security services includes cost savings as well as other factors like managerial flexibility, service quality, and speedy implementation. Staff estimates the direct and some indirect costs to bring these services in-house to be \$215,000. This assumes the City would need to hire six full-time employees to provide the equivalent level of service. Indirect and overhead costs include expenses associated with uniforms, benefits and other associated costs. In addition, staff estimates that the associated costs for in-house services will increase at a faster rate than contracted services due to expenses associated with long-term benefits (i.e., pension and health care costs, etc.).

Staff estimates that extending a living wage requirement to this type of contract would increase the cost by 30%-35% for an annual total of about \$165,000.

Given the existing living wage policy adopted by City Council for service contracts, staff would recommend proceeding with the security contract as proposed. If City Council would like to extend the living wage requirement to contracts above the \$30,000-\$90,000 threshold, staff would recommend making that change as part of the FY13 budget process.

## STAFF REPORT

TO: City Council Finance Committee Date: April 26, 2011  
FROM: Lauren Bradley, Director of Administrative Services  
Via: Gary W. Jackson, City Manager  
Subject: Living Wage Resolution

Summary: Consideration of a resolution setting a living wage for City of Asheville full- and part-time employees and contract employees working on General Service contracts \$30,000-\$90,000 in value.

Review: In 2007, Asheville City Council approved a living wage for city employees of \$10.86 per hour without health insurance and \$9.50 per hour with health insurance. Since 2007, the Asheville/Buncombe Living Wage increased to \$11.35/hour without employer provided health insurance and \$9.85/hour with employer provided health insurance. The resolution under consideration reflects the current living wage for full- and part-time City employees.

On March 22, 2011, City Council adopted a purchasing and contracting policy that includes a living wage requirement for General Service contracts \$30,000-\$90,000. The resolution under consideration provides for the same living wage described above for these contract employees.

Based on direction given at the March 22 meeting, it is City Council's intent to annually evaluate the living wage as part of the budget process to ensure the wage stays current with inflationary indexes (such as the Consumer Price Index) and/or the most current recommendation from Just Economics. The City Council will also evaluate if the living wage provision should be extended to additional thresholds of General Services contracts.

This action is consistent with the City Council's strategic operating plan and its goal to support a standard of living that is affordable to people of all incomes, life stages and abilities.

Pros and cons are not included with this staff report since City Council has already approved the living wage policy. The adoption of this resolution formalizes City Council's previous action.

Fiscal Impact: The City of Asheville currently meets the current living wage standard for full-time employees, and so no fiscal impact is expected. While the living wage provision in the General Services category may have a fiscal impact for the City, research has shown that cost implications are typically minimal and less than 1%. Staff will regularly monitor and provide quarterly updates on the impacts of the living wage provision to the City Council Finance Committee.

Attachments: Resolution

## STAFF REPORT

To: Mayor and City Council Date: November 22, 2011  
From: Ken Putnam, PE Prepared by: Harry Brown  
Transportation Dept. Director Parking Services Manager  
Via: Gary Jackson, City Manager  
Subject: Security Services in Parking Garages

Summary Statement: The consideration of a resolution authorizing the City Manager to enter into a contract with Copeland Holdings, LLC for security services in the City's parking garages.

Review: The City of Asheville, through the Parking Services Division, currently operates three parking garages; Civic Center, Rankin Avenue, and Wall Street. A fourth garage, Lexington Avenue Parking Garage will open on or about July 1, 2012. The Parking Services Division uses a combination of City employees and contract security officers to provide security and customer assistance in the garages. Generally, City employees work during the business day and early evenings while contract security is on duty during late nights, weekends, and holidays.

Contracts for security are in effect for three years and the current contract expires on November 30, 2011. In September 2011 the Parking Services Division requested quotes for service from interested vendors resulting in 20 vendors responding as shown on the attached vendor bid sheet. Copeland Holdings, LLC provided the lowest price for the service. Copeland Holdings, LLC, is headquartered in Alpharetta, Georgia, and they have a district office in Burnsville, N.C. On a normal week, a total of 205 hours of security services will be needed. In addition, the Parking Services Division will request additional security support during periods of high demand; for example, Bele Chere, Southern Conference Tournament, Moogfest, employee vacations, or large concerts at the Civic Center. The total cost of the three-year security contract will be \$375,000.00 but will not exceed \$125,000.00 per fiscal year.

This action complies with the City Council Strategic Operating Plan in that it provides safe facilities for residents and visitors to park in the most cost effective manner.

Pros:

- Provides safe facilities for residents and visitors to park in.
- Using contract security is the most cost effective manner to augment the Parking Services Division's security requirements.
- Achieves the City of Asheville's assurances to its partners at 51 Biltmore that adequate security will be maintained in the Lexington Avenue Parking Garage.

Con:

- Total cost of \$375,000.

Fiscal Impact: The necessary funds are already budgeted in the Parking Services Fund's Operating Budget for FY 2011-12.

Recommendation: City staff recommends that City Council adopt a resolution authorizing the City Manager to sign a three-year contract with Copeland, Holdings LLC to provide security services in the City's parking garages at a total cost of \$375,000.00; not to exceed \$125,000.00 per fiscal year.

Attachments:

- (1) Resolution
- (2) Vendor Rates Per Hour

VENDOR	RATE PER HOUR W/O VEHICLE CC, WS, RA / LEX	RATE PER HOUR WITH VEHICLE CC, WS, RA/LEX
Copeland Holdings, Inc	10.47/10.47	11.88/11.88
US Security Associates	11.31/11.31	20.04/15.23
Vets Security America	11.49/11.49	12.23/12.23
G4S	11.68/11.68	13.18/12.90
Security Forces Inc	11.98/11.98	12.69/12.69
Safe & Secure WW Protection	12.00/12.73	14.25/15.75
ABM Security	12.54/12.33	12.59/12.38
Delta Protection Agency	12.50/12.50	15.00/15.00
Defender Services	12.69/11.35	13.19/11.85
Securitas	12.89/12.89	13.41/13.41
DSI Security	12.99/12.99	15.49/13.99
Blue Shield Security	13.50/13.50	15.00/15.00
PNG Security	13.75/13.75	14.75/14.75
Pohoja Corporation	14.25	17.85
Federal Security Services	14.50/14.50	15.70/15.70
Alrod Enterprises	15.75	50.75
Maroon Security	16.00/16.00	19.00/19.00
TRV Security	16.00/16.00	20.00/20.00
Southern Protection Agency	16.25/16.25	18.05/18.05
The PDS Agency	25	25

## RESOLUTION NUMBER \_\_\_\_\_

RESOLUTION ADOPTING A LIVING WAGE FOR FULL- AND PART-TIME CITY EMPLOYEES  
AND GENERAL SERVICE CONTRACTS \$30,000-\$90,000

WHEREAS, the Asheville City Council has adopted a strategic plan that includes a goal to make Asheville affordable for people of all incomes, life stages and abilities;

WHEREAS, a living wage is the amount that a worker must earn to afford his or her basic necessities without public or private assistance;

WHEREAS, on May 22, 2007, the Asheville City Council adopted a living wage for full- and part-time City employees;

WHEREAS, since 2007, the living wage in Asheville and Buncombe County has increased to \$11.35/hour without employer provided health insurance and \$9.85/hour with employer provided health insurance; and

WHEREAS, on March 22, 2011, the Asheville City Council adopted a purchasing and contracting policy that includes a living wage provision for employees working on General Services contracts between \$30,000 and \$90,000 in value; and

WHEREAS, Council deems it advisable to revisit the amount of the living wage during the annual budget process to ensure it remains consistent with inflation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The Living Wage for Fiscal Year 2011-2012 be set at \$11.35/hour without employer provided health insurance and \$9.85/hour with employer provided health insurance.

Read, approved and adopted this 26th day of April, 2011.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH  
 COPELAND HOLDINGS, LLC FOR SECURITY SERVICES IN THE CITY PARKING  
 GARAGES

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WHEREAS, the City of Asheville has authority pursuant to Article 3 of Chapter 160A of the North Carolina General Statutes to enter into contracts for services with other entities; and

WHEREAS, security services are needed in the City parking garages; and

WHEREAS, the amount of the contract is \$375,000 for three years and the monies have been budgeted in the Transportation Department's Operating Budget for FY 2011-12; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The City Manager is hereby authorized to enter into a contract on behalf of the City of Asheville with Copeland Holdings, LLC, for \$375,000.00 over three years not to exceed \$125,000.00 per fiscal year for security services in the City parking garages and further authorized to execute any change orders to said contract or documents which might arise during the time period of the contract up to the budgeted amount.

Read, approved and adopted this the 22nd day of November 2011.

\_\_\_\_\_  
 City Clerk

\_\_\_\_\_  
 Mayor

Approved as to form:

\_\_\_\_\_  
 City Attorney

**ORANGE COUNTY  
BOARD OF COMMISSIONERS**

**ACTION AGENDA ITEM ABSTRACT**

**Meeting Date:** February 10, 2015

**Action Agenda  
Item No. 2**

**SUBJECT:** Discussion of Process for the Public to Place an Item on a Regular Board Meeting Agenda

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**DEPARTMENT:** Board of Commissioners

**PUBLIC HEARING: (Y/N)**

No

**ATTACHMENT(S):**

Excerpt from February 8, 2011 Approved  
BOCC Minutes

**INFORMATION CONTACT:**

Clerk's Office, 245-2130

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**PURPOSE:** To discuss the process for how the public places an Item on a Regular Board Meeting Agenda.

**BACKGROUND:** At its February 8, 2011 work session, the Board held a discussion on a process for how the public may place an item on a regular Board meeting agenda and adopted a process on March 15, 2011. *(An excerpt from February 8, 2011 Approved minutes is attached.)*

**Public Comments - Matters Not on the Printed Agenda**  
Petitions/Resolutions/Proclamations and other similar requests submitted by the public will not be acted upon by the Board of Commissioners at the time presented. All such requests will be referred for Chair/Vice Chair/Manager review and for recommendations to the full Board at a later date regarding a) consideration of the request at a future regular Board meeting; or b) receipt of the request as information only. Receipt of information by the Board does not imply approval, endorsement, or consent.

**FINANCIAL IMPACT:** None.

**RECOMMENDATION(S):** The Manager recommends for the Board to discuss the current process for how the public places an Item on a Regular Board Meeting Agenda and provide direction/feedback to the staff.

## **EXCERPT FROM THE APPROVED FEBRUARY 8, 2011 BOCC MINUTES**

### **2. Discussion on the Process for the Public to Place an Item on a Regular Board Meeting Agenda**

Chair Pelissier said that several times individuals have petitioned the Board to put an item on the regular agenda. The Board needs to discuss how to respond to the public about these types of requests.

Commissioner Yuhasz agreed that there needs to be a process. He suggested having a standard policy with a subcommittee of this Board to evaluate these proposals.

Commissioner Hemminger said that this came up on the school board, and there were guidelines that a board member would have to champion the item and there would have to be a majority vote to pursue the item. She thinks that the subcommittee would require a lot of staff time.

Commissioner Jacobs said that he appreciated Commissioner Yuhasz's attempt to organize this. He tends to support all public requests just because they are asking, except for Confederate Memorial Day. He said that he would be willing to have a process to refer it to staff and the Chair and Vice-Chair to discuss at agenda review, and report back whether there is sufficient information to move forward or decline.

Commissioner McKee said he feels like one of the reasons the County Commissioners are here is that the public can bring these items to the Board. He supported Commissioner Hemminger's suggestion to refer to staff by a vote at a meeting. If the Board chose not to refer it to staff, then so be it.

Frank Clifton said that one of the difficulties they find with this issue is that whoever brings the Board of County Commissioners an item has already made up their mind about something, or the information is erroneous and out of context. To verify or do the research does take some time in these cases.

Commissioner Gordon said that currently there is a subcommittee of the Chair, Vice-Chair, and Manager. She suggested that items be voted to refer to this subcommittee to work through the process.

Chair Pelissier said that these citizens need a response back from the Board in some way or another. She would like to include a way to communicate back to the individual.

Commissioner Hemminger said that this is what she likes about taking the vote to refer it to the staff because the public hears a response.

Commissioner Yuhasz agreed with having a clear process. He does not think that there necessarily needs to be a motion and a second to refer to staff. His concern is that some of the motions that the Board has made has included a motion to study the issue and bring it back to the Board at a specific date. He does not necessarily want this. Some responses can be made in a letter. He would rather have a specific process.

Commissioner Jacobs said that he personally agreed with Commissioner McKee about the importance of listening to the citizens. He said that Matters Not on the Printed Agenda is one of the few places that are unstructured and he likes this. He recognizes the need for order. He said that almost always the Chair refers these items to staff with the understanding that it will come back to the Board with a recommendation on how to proceed. He said that there ought to be some opportunity for a County Commissioner to bring the issue back up if they do not agree.

Frank Clifton said that when the Board refers an item to the staff, that generally means that there will be some staff time involved to research. This means it will be on an agenda in the future, either as a report or something with further direction.

Commissioner Foushee said that she thinks that all of the County Commissioners recognize their role as listeners and advocates, but there are limited resources to provide for every petition that comes forward. She asked that staff recommend a process of determining

how the items go through the process. This might save some time. She said that there would have to be a set of standards that would determine how this item moves forward or not.

Chair Pelissier agreed and said that the County Commissioners need to balance out the requests against how much staff time it would take and the resources available. She said that rather than voting on items that come forward, they could just refer it to the Chair, Vice-Chair, and Manager because if there is a vote, then some people tend to think that something will be an agenda item for sure.

Commissioner Foushee said that it would be easier to put this in writing and then review it as a Board.

The Board agreed to have something in writing about this process and then the Board would review and approve the process.

Frank Clifton said that he could do a quick survey about how other local governments deal with this.

Commissioner Hemminger said that all petitions should be presented at a public meeting and not just mailed in, etc. It needs to be part of the public process.

Chair Pelissier agreed with this.

**ORANGE COUNTY  
BOARD OF COMMISSIONERS**

**ACTION AGENDA ITEM ABSTRACT**

**Meeting Date:** February 10, 2015

**Action Agenda**

**Item No.** 3

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**SUBJECT:** Discussion on Boards and Commissions Processes

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**DEPARTMENT:** County Commissioners

**PUBLIC HEARING: (Y/N)**

No

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**ATTACHMENT(S):**

Attachment A - Listing of Decision Points

**INFORMATION CONTACT:**

Clerk's Office, 245- 2130

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**PURPOSE:** To discuss various BOCC boards and commissions' processes.

**BACKGROUND:** County Commissioners make appointments to various County and County-related boards and commissions. The County Commissioners have indicated their desire to discuss some of the processes that are currently in place as relates to these boards and commissions. (This discussion was deferred from the BOCC retreat on January 30, 2015).

**FINANCIAL IMPACT:** NONE

**RECOMMENDATION(S):** The Board will consider discussing the various boards and commissions' process and provide direction to staff.

## Attachment A

### ***Decision Points for BOCC***

#### **1. Diverse pool of candidates.**

- ***Decision Point:***

Does the Board want the Clerk's office to use paid advertising (currently we use PSAs)?

#### **2. Filling all positions on a particular board or commission**

Currently there are a minimal number of vacancies on our boards and commissions; however, the larger the board, the more vacancies there may be.

There has been some discussion that may be harder to fill vacancies that are "specifically defined" such as At Large vs Cheeks Township or a particular designation.

- ***Decision Point:***

- Does the Board want leave as is the "special position requirements" or consider alternatives?

#### **3. Do boards and commissions need to vet applications prior to submission to BOCC?**

Currently, with the exception of some boards (Planning, Board of Adjustment, and even the OUTBOARD), most boards vet applicants and present recommendations to the BOCC for consideration.

- ***Decision Point:***

- Does the Board want to adopt a formalized process as relates to this issue?

#### **4. Service on multiple boards--which currently allows service up to two boards and task forces?**

According to the BOCC Adopted Advisory Board Policy (Adopted 2012), it states:

## SECTION III: MEMBERSHIP

### E. Term

5. Advisory board members may not serve concurrently on more than two (2) Orange County advisory boards. This restriction does not impact an individual's service on boards and commissions that are not Orange County advisory boards or short term task forces or work groups.

#### ***Decision Point:***

- Does the Board wish to change this portion of the policy or leave as adopted?

### **5. Process for nominations for applicants (who are not recommended) at Board meetings?**

Currently, most nominations for applicants to boards and commissions come from advisory board recommendations.

#### ***Decision Point:***

- Does the Board want to develop a process for nominating applicants at BOCC meetings who are not recommended by a particular advisory board?

**ORANGE COUNTY  
BOARD OF COMMISSIONERS**

**ACTION AGENDA ITEM ABSTRACT**

**Meeting Date:** February 10, 2015

**Action Agenda  
Item No. 4**

**SUBJECT:** Discussion on Board Rules of Procedures

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**DEPARTMENT:** Board of Commissioners

**PUBLIC HEARING: (Y/N)**

No

**ATTACHMENT(S):**

Board of Commissioners Rules of  
Procedure

**INFORMATION CONTACT:**

Clerk's Office

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**PURPOSE:** To discuss as necessary the Board of Commissioners' Rules of Procedure, and to specifically address potentially rearranging the Order of Business for regular Board meetings to re-locate "Board Comments" to occur earlier in the meeting.

**BACKGROUND:** The Board of Commissioners utilizes adopted Rules of Procedure (<http://orangecountync.gov/occlerks/RulesofProceedureV11.pdf>) to guide its processes and deliberations. The Rules address a multitude of issues including Board meeting scheduling, activities and actions during Board meetings, and approval/voting on motions made during meetings.

Along with general discussion of the Board's current Rules of Procedure, a principal item for Board consideration relates to potentially re-locating "Board Comments" to occur earlier in the Order of Business for a regular Board of Commissioners' meeting. Individual Board members have recently suggested that moving this item to earlier in the agenda may be desirable.

The current Order of Business for regular Board meetings is as follows:

1. Additions or Changes to the Agenda
  - Public Charge*
2. Public Comments (Limited to One Hour)
3. Petitions by Board Members (Three Minute Limit Per Commissioner)
4. Proclamations/Resolutions/Special Presentations
5. Public Hearings
6. Consent Agenda
  - Removal of Items from Consent Agenda
  - Approval of Remaining Consent Agenda
  - Discussion and Approval of the Items Removed from the Consent Agenda
7. Regular Agenda

8. Reports
9. County Manager's Report
10. County Attorney's Report
11. Appointments
12. Board Comments
13. Information Items
14. Closed Session
15. Adjournment

For benefit of Board consideration, it is worth noting that the "Board Comments" item on regular meeting agendas occurred earlier in meetings during the 1990's and early 2000's. In the 1990's and early 2000's, "Board Comments" was included as Item #3 in the Order of Business. Having "Board Comments" earlier in the Order of Business provided, among other things:

- The opportunity early in a regular meeting for individual Board members to share information with the public and other Board members on meetings they had attended
- The opportunity early in a regular meeting for individual Board members to share information with the public and other Board members on upcoming community and County-sponsored events, forums and celebrations
- The opportunity early in a regular meeting for individual Board members to share concerns they had heard from members of the public with other Board members and with the public
- The opportunity early in a regular meeting for the public to hear individual Board members voice policy concerns to staff and other Board members and/or recommend that staff pursue certain actions to address an issue/problem/etc.

In April 2007 the Order of Business was amended to relocate "Board Comments" to occur after the "Reports" item. "Board Comments" was then subsequently relocated to its current placement, after "Appointments", in February 2010.

To the best of staff's general recollection, some of the factors and observations leading to one or both of the 2007 and 2010 actions to re-locate "Board Comments" included:

- Board Comments had grown in length, sometimes continuing up to approximately one hour during the early portion of a regular meeting
- Desire for the Board to address issues and make decisions on written agenda items as early in the meeting as possible when everyone was presumably more attentive rather than making those decisions later in the evening
- Concern that Board Comments occurring earlier in the meeting extended the wait time for the public that attended Board meetings to provide input and witness decisions on items on the written agenda
- Provide the opportunity for members of the public with school-age children to be present for Board decision items. Members of the public would be present for "Board Comments" early on the agenda, but would sometimes subsequently have to leave and miss items for which they had actually attended the meeting due to their children's sleep/homework needs
- The time invested for Board Comments sometimes limited the Board from accomplishing the "Business" items on the written agenda, causing items to be discussed late at night or delayed to future meetings, sometimes prompting frustration for Board members, the public and staff

**FINANCIAL IMPACT:** There is no financial impact associated with discussion of the Board's Rules of Procedure.

**RECOMMENDATION(S):** The Manager recommends that the Board discuss as necessary the Board of Commissioners' Rules of Procedure, and specifically address whether or not the Board wishes to re-locate "Board Comments" to occur earlier in the Order of Business for regular meetings.

# Rules of Procedure for the Board of County Commissioners

Adopted - May 2002  
Amended - November 2013  
Printed - November 2013



Orange County  
North Carolina

**Principles of  
Parliamentary Law**

- *Justice and courtesy for all*
- *Majority rules*
- *Right of the minority to be heard*
- *Protection of the rights of the individual and the absentee*
- *Consideration of one thing at a time*
- *Maintain order*
- *Expedite business*
- *Partiality to no one*

# **Rules of Procedure for the Board of County Commissioners**

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**Orange County, North Carolina**

## ***Preface***

These rules of procedure for use by a North Carolina board of county commissioners were first compiled in 1978 by Bonnie E. Davis, who at that time was a member of the Institute of Government faculty. The second edition was issued in 1990. This revised second edition takes into account several changes in the Open Meetings Law and other statutes that have been made since 1990.

The 1994 and 1999 changes to the Open Meetings Law reduced the grounds for holding closed meetings and required that motions to hold closed sessions be specific as to the reason. Rule 3 has been revised to bring it into compliance with the new law.

A 1993 amendment to G.S. 153-26 requires that the organizational meeting following the general election in even-numbered years must be held on the first Monday in December. This statutory change brought clarity to the confusion that previously existed as to what business could be transacted by the old board at the first meeting in December following an election. The old board should conclude all of its business before the December organizational meeting, even if the board normally holds a regular meeting on the first Monday of each month.

## ***Acknowledgements***

These rules of procedure are based on the following publications of the Institute of Government at the University of North Carolina, Chapel Hill:

*Rules of Procedure for the Board of County Commissioners*, Second Edition, Revised. Joseph S. Ferrell, Institute of Government, the University of North Carolina at Chapel Hill, 1994.

*Suggested Rules of Procedure for Small Local Government Boards*, Second Edition. A Fleming Bell, II, Institute of Government, the University of North Carolina at Chapel Hill, 1998.

The text of these publications was utilized and modified as appropriate to reflect the specific needs of the Board of Commissioners of Orange County.

# Rules of Procedure for the Board of County Commissioners

## *Introduction*

These rules of procedure were designed for use by a North Carolina board of county commissioners. Essentially, the rules are a modified version of *Robert's Rules of Order, Revised*. *Robert's Rules* is intended to guide the deliberations of a large legislative body; consequently, it is not always appropriate for a small governing board, which can afford to proceed with much less formality. Another valuable resource consulted for this revision of the rules was *Mason's Manual of Legislative Procedure*. *Mason's Manual* is intended primarily for state legislatures, but its extensive discussion of the basic principles of parliamentary law and procedure is valuable for local governing boards as well.

These rules apply to all meetings of the Orange County Board of Commissioners at which the Board is empowered to exercise any of the executive, administrative or legislative powers conferred on it by law.

The North Carolina law (G.S. 153A-41) permits a board of county commissioners to adopt its own rules of procedure if these conform to "generally accepted principles of parliamentary procedure" and do not conflict with applicable law. *Mason's Manual* suggests that parliamentary law affecting the work of a board of county commissioners can be summarized in ten basic principles:

1. *The board can take only those actions that it has authority or jurisdiction to take.* A corollary of this principle is that the board's action, to be valid, must not violate any applicable law or constitutional provision. This is simply another manifestation of the familiar legal doctrine that a unit of local government has only those powers conferred on it by law or necessarily implied from some specific grant of power.
2. *The board must meet in order to act.* Under North Carolina law, the powers conferred on the county governing board are exercised by the county board of commissioners as a group, not its individual members. Therefore, the group must meet in order to act.

3. *All board members must receive proper notice of meetings.* Since all members are equally entitled to participate in board meetings, each member must be properly notified of the place, time, and purpose of meetings.
4. *The board may act only with a quorum.*
5. *There must be a question before the board on which it can decide.* Except when electing their own officers or balloting for appointments, legislative bodies proceed by voting *yes* or *no* on specific proposals put forward by one or more members. Each member has a right to know at all times what question is before the board and what effect a *yes* or *no* vote would have on that question.
6. *There must be opportunity for debate.* The very nature of a deliberative body requires that members share information and opinion about matters before the board.
7. *Questions must be decided by vote.* Legislative bodies do not decide matters by discussing them until a consensus emerges.
8. *Votes are decided by majority.* Usually only a simple majority of votes cast suffices, but the board's rules or an applicable law may sometimes require an extraordinary majority.
9. *There must be no fraud, trickery, or deception in the board's proceedings.*
10. *The board's rules of procedure must be applied consistently.*

Most of the following rules have been modified to suit local needs and customs. The comments following the rules note when rules state procedures required by law (North Carolina General Statutes, hereinafter cited as G.S.).

## **I. Applicability**

**Rule 1. Applicability of Rules.** These rules apply to all meetings of the Board of Commissioners of Orange County at which the board is empowered to exercise any of the executive, quasi-judicial, administrative, or legislative powers conferred on it by law.

Comment: On the whole, rules of procedure of a governing board are intended to govern formal meetings of the board where it will exercise any of its executive and legislative powers. These rules fulfill that purpose and also are designed to ensure board compliance with the Open Meetings Law, G.S. 143-318.9 through 318.18, which applies to any gathering of a majority of

the board to discuss public business. The rules also apply to informal work sessions or committee meetings where public business is discussed but no official action is taken.

## II. Open Meetings

**Rule 2. Meetings to be Open.** (a) It is the public policy of North Carolina and of Orange County that the hearings, deliberations, and actions of this board and its committees be conducted openly.

(b) Except as otherwise provided in these rules and in accordance with applicable law, each official meeting of the Orange County Board of Commissioners shall be open to the public and any person is entitled to attend such meeting.

Comment: See G.S. 143-318.10(a).

(c) For the purposes of the provisions of these rules concerning open meetings, an official meeting of the board is defined as any gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of board members for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting public business within the jurisdiction, real or apparent, of the board.

Comment: See G.S. 143-318.10(d). The Open Meetings Law provides that a social meeting or other informal assembly or gathering together of the members of the board does not constitute an official meeting unless it is "called or held to evade the spirit and purposes" of the laws requiring meetings to be open.

**Rule 3. Closed Sessions.** (a) Notwithstanding the provisions of Rule 2, the board may hold a closed session for the reasons listed below. It is the policy of the state of North Carolina that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a session is required:

1. To prevent the disclosure of information that is privileged or confidential pursuant to the law of this state or of the

United States, or is not considered a public record within the meaning of Chapter 132 of the General Statutes.

2. To prevent the premature disclosure of an honorary degree, scholarship, prize or similar award
3. To consult with the county attorney or another attorney employed or retained by the county in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. G.S. 143-318.11(a)(2) provides that general policy matters may not be discussed in a session closed in order to consult with the county attorney, and the mere fact that the county attorney is participating in a board meeting is not grounds to close the meeting. The statute further provides that the board may consider and give instructions to the attorney concerning handling or settlement of any pending litigation or other matter in controversy, but the terms of any settlement (other than a malpractice claim against a public hospital) must be reported to the board of commissioners and entered in the minutes "as soon as possible within a reasonable time" after the settlement is concluded.
4. To discuss matters relating to the location or expansion of industries or other businesses in the county, including agreement on a tentative list of economic development incentives that may be offered by a public body in negotiations. G.S. 143-318.11(a)(4) requires that the action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures be taken in open session.
5. To establish or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
6. To consider the qualifications, competence, performance, character, fitness, conditions of appointment or conditions of initial employment or appointment of an individual public officer or employee, or prospective public officer or employee; or to hear or investigate a complaint, charge or grievance by or against an individual public officer or employee. General personnel

policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment or removal of a member of the public body or a member of any other public body, and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

7. To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(b) The board may go into closed session only upon a motion made and duly adopted at an open meeting. This motion must cite one or more of the permissible purposes listed in subsection (a) of this rule. In addition, a motion to go into closed session pursuant to Rule 3 (a)(1) must state the name or citation of the law that renders the information to be discussed privileged or confidential, and a motion to go into closed session pursuant to Rule (a)(3) must identify the parties in each existing lawsuit, if any, concerning which the board expects to receive advice during the closed session.

(c) The board shall determine who shall attend the closed session. The county manager, county attorney and clerk to the board shall attend all closed sessions unless otherwise determined by the board. The board shall determine other necessary attendees as the facts and the circumstances dictate. With respect to a closed session to consult with the county attorney or another attorney employed by or retained by the county, in order to preserve the attorney-client privilege between the attorney and the board, the board shall not permit a person to attend the closed session if that person's attendance would defeat the attorney-client privilege.

(d) The board shall conclude a closed session and return to open session upon a motion made and adopted to do so.

### III. Organization of the Board

**Rule 4. Organizational Meeting.** The board shall hold an organizational meeting at its regular meeting place at 7:00 p.m. on the first Monday in December of each year. The former chair shall call the meeting to order and shall preside until a chair is elected. The agenda shall be as follows: (1) special recognition of any outgoing commissioners, (2) taking and subscribing the oath of office by the newly elected members of the board, (3) election of a chair and vice-chair, (4) designation of voting delegate for all NCACC and NACo meetings, (5) seating arrangement and (6) appointment of the manager, clerk and county attorney. The bonds of the Register of Deeds and the Sheriff shall be approved as part of the consent agenda.

Comment: This rule incorporates the requirements of G.S. 153A-26 concerning the times for organizational meetings and the qualifications of new members and the requirements of G.S. 153A-39 concerning the election of the chair and the vice-chair, G.S. 161-4 (for the Register of Deeds), G.S. 162-9 (for the Sheriff), require the board to approve the bonds of these officials.

G.S. 153A-26 provides that the oath of office is that prescribed by Article VI, Section 7, of the North Carolina Constitution (see also G.S. 11-6 and G.S. 11-7) and may be administered by any person authorized by law to administer oaths. The written statement of the oath shall be signed by each new member and filed with the clerk to the board. The statute also provides that a new member who cannot be present at the organizational meeting may take and subscribe the oath later.

**Rule 5. Election of the Chair.** The chair of the board shall be elected annually for a term of one year and shall not be removed from the office of chair unless he or she becomes disqualified to serve as a member of the board.

Comment: G.S. 153A-39 provides for the election of a chair and states that he or she is chosen "for the ensuing year."

## IV. Regular and Special Meetings

### Rule 6. Regular and Special Meetings.

**(a) Regular Meetings.** The board usually holds a regular meeting on the first and third Tuesday of each month in accordance with the “Board Calendar of Meetings” approved by the board. All meetings shall begin at 7:00 p.m. unless otherwise noted on the “Calendar of Meetings.” The board may change the place or time of any meeting listed on the approved “Calendar of Meetings” by a majority vote, and have it posted and noticed no less than seven days before the change takes effect. A notice shall be filed with the clerk to the board and posted, on the principal bulletin board of the county, and at or near the regular meeting place, and copies shall be sent to all persons who have requested notice of special meetings of the board.

Comment: See G.S. 143-318.12(b)(1) and G.S. 153A-40(a). Any permanent change in the schedule of regular meetings must be adopted not later than ten days before the first meeting to which the new schedule applies. Also, G.S. 153A-40 requires the board of county commissioners to meet at least once a month. The notice requirements of the proposed rule are somewhat broader than those required by law.

**(b) Special Meetings.** The chair or a majority of the members of the board may at any time call a special meeting of the board by signing a notice stating the time and place of the meeting and the subjects to be considered. The person or persons who call the meeting shall cause the notice to be posted on the principal bulletin board of the county, located at the Link Government Services Center in Hillsborough, and at or near the meeting place, and delivered to the chair and all other board members or left at the usual dwelling place of each member at least 48 hours before the meeting. In addition, the notice shall be mailed or sent by e-mail to individual persons and news media organizations who have requested such notice as provided in subsection (e), below. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or those who are not present have signed a written waiver.

A special meeting may also be scheduled by vote of the board in

open session during another duly called meeting. The motion calling for a special meeting shall specify its time, place, and purpose. At least 48 hours before the meeting, the notice shall be posted on the principal bulletin board of the county and at the regular meeting place, and delivered to all board members not present at the meeting at which the special meeting was called. Only items of business specified in the motion calling for the special meeting may be transacted at a special meeting called in this matter unless all members are present and the board determines in good faith at the meeting that it is essential to discuss or act on the additional item immediately.

Comment: See G.S. 153A-40(a) and G.S. 143-318.12(b)(2).

**(c) Emergency Meetings.** The chair or a majority of board members may at any time call an emergency meeting of the board by signing a written notice stating the time and place of the meeting and the subjects to be considered. Written or oral notice of the meeting shall be given to each board member and to each news organization that has filed a written emergency meeting notice request with the clerk to the board, and whose request includes that organization's telephone number. Only business connected with the emergency may be considered at an emergency meeting.

**(d) Work Sessions, Committee Meetings or other Informal Meetings.** The chair or a majority of the board members may schedule work sessions, committee meetings or other informal meetings of the board or of a majority of its members at such times and concerning such subjects as may be established by the board. The times and subject matter may be established by resolution or order of the board. A schedule of any such meetings that are held on a regular basis shall be filed in the same place and manner as the schedule of regular meetings. Work sessions and other informal official meetings not held regularly are subject to the same notice requirements as special board meetings.

**(e) Sunshine List.** Any individual person and any newspaper, wire service, radio station, and television station may file with the clerk to the board of commissioners a written request for notice of all special meetings of the board. These are meetings

not listed on the regular “Calendar of Meetings.” Requests by individuals must be renewed on or before the last day of each calendar year and are subject to a \$10.00 nonrefundable annual fee.

Comment: The Open Meetings Law requires that any “official meeting” at which a majority of the board deliberates on public business must be open to the public and notice must be given. The last sentence of the rule embodies that principle. The rule goes beyond the Open Meetings Law in requiring a published schedule of work sessions or committee meetings held on a regular basis.

G.S. 143-318.13(a) provides that if the board holds any regular, special, emergency, or other official meeting by use of conference telephone or other electronic means, the clerk shall provide a location and means whereby members of the public may listen to the meeting and notice of the meeting shall specify that location.

**Rule 7. Location of Meetings.** All meetings shall be held within the boundaries of Orange County except as otherwise provided herein.

1. A joint meeting with the governing board of any other political subdivision of this state or any other state may be held within the boundaries of either subdivision as may be stated in the call of the meeting. At any such joint meeting, the board reserves the right to vote separately on all matters coming before the joint meeting.
2. A special meeting called for the purpose of considering and acting upon any order or resolution requesting members of the General Assembly representing all or any portion of this county to support or oppose any bill pending in the General Assembly or proposed for introduction therein may be held in Raleigh or such other place as may be stated in the call of the meeting.
3. A meeting may be held in connection with a retreat, forum, or similar gathering solely for the purpose of providing members of the board with general information relating to the performance of their public duties.
4. A meeting may be held while in attendance at a convention, association meeting, or similar gathering solely to discuss

or deliberate the board's position concerning convention resolutions, elections of association officers, and similar issues that are not legally binding upon the board or its constituents.

Comment: See G.S. 153A-40(c). That statute also speaks of two other categories of gatherings that may be held outside the boundaries of the county: retreats, and meetings with the legislative delegation representing the county in the General Assembly. The statute expressly forbids the board to take any official action at any such meetings, so they are not mentioned in the proposed rule. However, such meetings are covered by the Open Meetings Law if a majority of the board is present and "deliberates" on public business.

## V. Agenda

**Rule 8. Agenda.** (a) The county manager shall prepare the agenda for each regular, special and emergency meeting subject to review and approval by the chair and vice-chair. A request to have an item of business placed on the agenda must be received by 12:00 noon, Monday of the week prior to the meeting. Any Board member may petition the Board to have an item placed on the agenda.

(b) The agenda packet for regular meetings shall include the agenda document, any proposed ordinances or amendments to ordinances, and supporting documentation and background information relevant to items on the agenda. A copy of the agenda packet shall be delivered to each member of the board at least ninety-six hours before the meeting. Documents in the agenda packet, if not previously available for public inspection, shall become so when packets have been delivered to each board member or left at his or her usual dwelling. Copies shall be available for members of the public in the clerk's office and at the Orange County Main Public Library. Quarterly Public Hearing Agendas shall also be placed at the Chapel Hill Library. The agenda is also published on the county's web site, [orangecountync.gov](http://orangecountync.gov).

For all other meetings (special, work sessions, etc.) a copy of the agenda and attachments shall be available to members of the public on the Orange County website prior to the meeting (usually 48-72 hours before the meeting).

The clerk's office shall post agendas for regular meetings, public hearings and work sessions on the county's website within 24 hours after they are distributed to the board of Commissioners by the county manager's office. Agendas which are distributed on Thursday prior to a Friday holiday or agendas which are distributed on Friday will be posted on the County's web site by noon the following Monday.

(c) The board may, by approval of a majority of its members, i.e. an affirmative vote equal to a quorum, add an item that is not on the agenda.

Comment: Because of the increased volume and complexity of the matters they must consider, nearly all boards use an agenda. Some boards use an agenda only to organize the material they must consider and to give themselves an opportunity to study the issues before they meet. These boards generally allow last-minute additions to the agenda by general consent. This rule takes that approach. Other boards use their agenda to control the length of their meetings. Often a board that uses its agenda for this purpose will hold a work session before the regular meeting to ask questions and thoroughly explore the proposals that must be voted on at the regular meeting. Generally these boards take a stricter approach and do not allow late additions to the agenda unless an emergency exists.

**Rule 9. Public Comments - Items Not on the Printed Agenda.** The county manager shall include on the agenda of each regular meeting a time for comments or questions from members of the public in attendance. The chair will first recognize individuals or groups who have signed up to be heard, and then may recognize others, subject to available time. Speakers will be allowed three minutes each up to an hour total. After the hour set aside for public comments has expired, the chair will recognize further speakers only upon motion duly made and adopted.

*Petitions/Resolutions/Proclamations and other similar requests submitted by the public will not be acted upon by the Board of Commissioners at the time presented. All such requests will be referred for Chair/Vice Chair/Manager review and for recommendations to the full Board at a later date regarding a) consideration of the request at a future regular Board meeting; or b) receipt of the request as information only. Submittal of information to the Board or receipt of information by the Board does not constitute approval, endorsement, or consent.*

Comment: The board may decide as a matter of general policy to set aside part of each meeting for individuals or groups to address the board. The rule allows any individual or group to get on the agenda but lets the board decide whether there is time to hear its comments.

## **Rule 10. Order of Business.**

**(a) Regular Meetings.** For all regular meetings, items shall be placed on the agenda as listed below:

1. Additions or Changes to the Agenda  
*Public Charge*
2. Public Comments (Limited to One Hour)
3. Petitions by Board Members (Three Minute Limit Per Commissioner)
4. Proclamations/Resolutions/Special Presentations
5. Public Hearings
6. Consent Agenda
  - Removal of Items from Consent Agenda
  - Approval of Remaining Consent Agenda
  - Discussion and Approval of the Items Removed from the Consent Agenda
7. Regular Agenda
8. Reports
9. County Manager's Report
10. County Attorney's Report
11. Appointments
12. Board Comments
13. Information Items
14. Closed Session
15. Adjournment

If there is no objection, the chair may call items in any order most convenient for the dispatch of business. The meeting will end at 10:30 unless there is a majority vote of the Board to continue beyond that time.

**(b) Order of Business for Public Hearings**

1. Opening Remarks from the Chair
2. Public Charge
3. Public Hearing Items
4. Adjournment

**(c) Public Charge.** A public charge may be read at each meeting to set the tone for civil decorum. The public charge is placed on the agenda immediately after item 1, “Additions or Changes to the Agenda” and it shall read:

*“The Board of Commissioners pledges to the residents of Orange County its respect. The Board asks its residents to conduct themselves in a respectful, courteous manner, both with the board and with fellow citizens. At any time should any member of the Board or any resident fail to observe this public charge, the Chair will ask the offending person to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the Chair will recess the meeting until such time that a genuine commitment to this public charge is observed. All electronic devices such as cell phones, pagers, and computers should please be turned off or set to silent/vibrate.”*

**VI. Conduct of Debate**

**Rule 11. Powers of the Chair.** The chair shall preside at all meetings of the board if he or she is present. If the chair is absent, the vice-chair shall preside. If both the chair and vice-chair are absent, another member designated by vote of the present board members shall preside. A member must be recognized by the presiding officer in order to address the board. The chair shall have the following powers:

1. To rule on points of parliamentary procedure, including the right to rule out of order any motion patently offered for obstructive or dilatory purposes;

2. To determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;
3. To entertain and answer questions of parliamentary law or procedure;
4. To call a brief recess at any time;
5. To adjourn in an emergency.

A decision by the presiding officer under any of the first three powers listed above may be appealed to the board upon motion of any member. Such a motion is in order immediately after a decision under those powers is announced and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion, if timely made, may not be ruled out of order.

Comment: The chair normally presides at board meetings. In his or her absence, the vice-chair, if there is one, presides. If there is no vice-chair, or if both the chair and vice-chair are absent, the board typically selects a temporary presiding officer.

The board may choose whether the chair always votes or votes only to break a tie. Someone who is temporarily presiding in the chair's place is still a full member of the board and thus entitled to make motions and to vote.

The chair or anyone presiding in the chair's place has substantial procedural powers, but those powers are not absolute. Under this rule and Rule 15, any board member is entitled to make a motion to appeal to the other members concerning the presiding officer's decisions on motions, decorum in debate and most other procedural matters.

There are two exceptions to this right of appeal. A chair or other presiding officer may adjourn without the board's vote or appeal in an emergency, and he or she may also call a brief recess without a vote at any time, when necessary to "clear the air" and thus reduce friction among the members.

### **Rule 12. Presiding Officer when the Chair is in Active Debate.**

If the chair wishes to become actively engaged in debate on a particular proposal, he or she shall designate another board member to preside. The chair shall resume the duty to preside as soon as action on the matter is concluded.

Comment: Good leadership depends, to a certain extent, on not taking sides during a debate. On a small board this may not always be feasible or desirable; yet an unfair advantage accrues to the side whose advocate controls access to the floor. This rule is designed to ensure evenhanded treatment to both sides during a heated debate. Ordinarily the chair should call on the vice-chair to preside if he or she finds it necessary to step aside.

**Rule 13. Action by the Board.** The board shall proceed by motion. Any member, including the chair, may make a motion. If two or more Commissioners speak at the same time to make a motion (or second), the chair shall determine, for purposes of recording action for the minutes, which name the clerk shall use.

Comment: The chair may make motions, or the chair may invite another member to make a motion by saying “The chair will entertain a motion that...”

**Rule 14. Second Required.** A motion shall require a second, followed by discussion and/or comments and a vote.

Comment: The philosophy underlying the requirement of a second is that if a proposal is not supported by at least two members, it is not worth the time it would take to consider the matter. A second does not necessarily mean that a member agrees with the motion, but that the member wishes the matter open to discussion. A second allows the matter to be discussed further.

**Rule 15. One Motion at a Time.** A member may make only one motion at a time.

**Rule 16. Substantive Motion.** A substantive motion is out of order while another substantive motion is pending.

Comment: This rule sets forth the basic principle of parliamentary procedure: distinct issues are considered and dealt with one at a time, so a new proposal may not be put forth until action on the preceding one has been concluded.

*Robert's Rules of Order* does not refer to substantive motions as such; instead it uses such adjectives as “main” or “principal.” Here, a substantive motion is any motion other than the procedural motions listed in Rule 19. The possible subject matter of a substantive motion coexists with the board’s legal powers, duties, and responsibilities. Indeed, since Rule 13 provides that the board shall proceed by motion, the substantive motion is the board’s exclusive mode of action. The procedural

motions detailed in the following rules set forth the board's various options in disposing of substantive motions.

**Rule 17. Adoption by Majority Vote.** A motion shall be adopted if approved by a majority of the votes cast, a quorum being present, unless an extraordinary majority is required by these rules or the laws of North Carolina. A majority is more than half. A quorum is a majority of the actual membership of the board, including any vacant seats. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

**Rule 18. Debate.** The chair shall state the motion and then open the floor to debate, presiding over the debate according to these general principles:

1. The member making the motion or introducing the ordinance, resolution, or order is entitled to speak first.
2. A member who has not spoken on the issue shall be recognized before someone who has already spoken.
3. To the extent possible, the debate shall alternate between opponents and proponents of the measure.

**Rule 19. Procedural Motions.** (a) In addition to substantive proposals, the procedural motions listed in subsection (b) of this rule, and no others, shall be in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority vote for adoption.

Comment: This rule substantially departs from *Robert's Rules of Order*. Each procedural motion in *Robert's Rules of Order* was reviewed to determine whether it was appropriate for use by a small board; substantial modifications and deletions were the result. The following enumeration of procedural motions is exhaustive; if a procedural option is not on the list, it is not available.

(b) In order of priority (if applicable), the procedural motions are:

Comment: While a substantive motion is out of order if another substantive motion is pending, several procedural motions can be entertained in succession without necessarily disposing of the immediately pending one. The order of the list below establishes which procedural motion yields to which-for

example, a move to defer consideration (6) may be made while a move to refer to committee (9) is pending because (6) ranks higher on the list.

1. *To Appeal a Procedural Ruling of the Presiding Officer.* A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the board as specified in Rule 11. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

Comment: Rule 11 allows the ruling of the presiding officer on certain procedural matters to be appealed to the board. This appeal must be made as soon as the presiding officer's decision is announced, so this motion is accorded the highest priority. See Rule 11 and its comment for further discussion of this motion.

2. *To Adjourn.* The motion may be made at the conclusion of action on a pending matter; it may not interrupt deliberation of a pending matter.

Comment: This motion differs from the *Robert's Rules of Order* motion in several respects. In *Robert's Rules of Order*, it is not debatable or amendable and can be made at any time, even interrupting substantive deliberations. In view of the small number of members and the available procedures to limit debate, this rule allows debate and amendment of the motion to adjourn but allows the motion to adjourn only when action on a pending matter is over. The motion to defer consideration or to postpone to a certain time or day may be used if the board wants to adjourn before completing action on a matter.

3. *To Take a Recess.*

Comment: *Robert's Rules of Order* does not allow debate on this motion, but since the number of members is small and procedures to limit debate are available, this rule allows debate on the motion. As in *Robert's Rules of Order*, the motion is in order at any time. Note that under Rule 11, the chair also has the power to call a brief recess.

4. *To Call to Follow the Agenda.* The motion must be made at the first reasonable opportunity or it is waived.

Comment: This motion differs from the call for the orders of the day in *Robert's Rules of Order*: it may be debated and must be made when an item of business that deviates from the agenda is proposed or the right to insist on following the agenda is waived for that item.

5. *To Suspend the Rules.* The motion requires a vote equal to a quorum.

Comment: This motion differs from *Robert's Rules of Order* in that it is debatable and amendable and the number of necessary votes is a quorum rather than two-thirds. Thus if a board has seven members, four members (a quorum) must vote for the motion; if only four members are present at a particular meeting, all four must vote for the motion in order to adopt it. This motion is in order when the board wishes to do something that it may legally do but cannot without violating its own rules. The procedure will pose some problems for a three-member board, as it can be used to prevent one member from participating in the board's deliberations. Frequent use of the motion to prevent one member from presenting proposals to the board or from speaking on an issue before the board is of doubtful legality. A three-member board may decide to require a unanimous vote to suspend the rules.

6. *To Divide a Complex Motion and Consider it by Paragraph.* This motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

Comment: This motion is the same as the division of a question and consideration by paragraph in *Robert's Rules of Order* except that it is debatable.

7. *To Defer Consideration.* The board may defer a substantive motion for later consideration at an unspecified time. A substantive motion that has been deferred expires 100 days thereafter, unless a motion to revive consideration is adopted.

Comment: This motion, which replaces the motion to lay on the table in *Robert's Rules of Order*, was renamed to avoid confusion. It allows the board temporarily to defer consideration of a proposal. It differs from *Robert's Rules of Order* in that it may be debated and amended, and in that a motion that has been deferred dies if it is not taken up by the board

(via a motion to revive consideration) within one hundred days of the vote to defer consideration. (In *Robert's Rules of Order* a motion laid on the table dies at the end of the particular session of the assembly.) One hundred days is the suggested period of time for deferring consideration because it is also the time within which a proposed ordinance must be enacted (see Rule 27).

8. *To Call the Previous Question.* The motion is not in order until there has been a debate and every member has had one opportunity to speak.

Comment: This motion differs from the motion in *Robert's Rules of Order*. The *Robert's Rules of Order* motion is always in order, is not debatable or amendable, and requires a two-thirds vote for adoption. Thus, it may be used to compel an immediate vote on a proposal without any debate on the issue. Such a device may be necessary to preserve efficiency in a large assembly, but with a small board, a minimum period of debate on every proposal that comes before the board strikes a better balance between efficiency and effective representation by all board members. Since every member will have an opportunity to speak, the debate may be ended by a majority vote.

9. *To Postpone to a Certain Time or Day.*

Comment: This motion allows the board to defer consideration to a specified time or day and is appropriate when more information is needed or the deliberations are likely to be lengthy.

10. *To Refer a Motion to a Committee.* The board may vote to refer a substantive motion to a committee for its study and recommendations. Sixty days or more after a substantive motion has been referred to a committee, the introducer of the substantive motion may compel consideration of the measure by the entire board, whether or not the committee has reported the matter to the board.

Comment: This motion is identical with the motion of the same name in *Robert's Rules of Order* except that the introducer's right to compel consideration by the full board after a specified period of time prevents using the motion to defeat a proposal by referring it to a committee that intends to take no action on it. If the board does not use committees, this rule is unnecessary.

11. *To Amend.* An amendment to a motion must be pertinent to the subject of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment shall be treated as a motion to amend. There may be an amendment to the motion and an amendment to an amendment, but no further amendments. Any amendment to a proposed ordinance shall be reduced to writing. A vote on a motion to amend a motion may be regarded as a vote on the motion as amended if that is determined to be the intent of the board.

Comment: This motion is identical to the motion of the same name in *Robert's Rules of Order* except for the requirement for written amendments to proposed ordinances.

12. *To Revive Consideration.* The motion is in order at any time within one hundred days of a vote deferring consideration of it. A substantive motion on which consideration has been deferred expires one hundred days after the deferral, unless a motion to revive consideration is adopted.

Comment: This motion replaces the motion to take up from the table in *Robert's Rules of Order* and was renamed in order to avoid confusion. This motion may be debated and amended; the motion in Robert's Rules of Order may not. If the motion to revive consideration is not successful within 100 days of the original deferral date, the substantive motion expires. The subject matter of the motion may be brought forward again by a new motion.

13. *To Reconsider.* The board may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side (the majority, except in the case of a tie; in that case the "nos" prevail) and only at the meeting during which the original vote was taken, including any continuation of that meeting through recess to a time and place certain. The motion cannot interrupt deliberation on a pending matter but is in order at any time before final adjournment of the meeting. If a member wishes to reverse an action taken at a previous meeting, he or she generally may make a new motion having the opposite effect of the prior action.

Any new motion having the opposite effect of the prior action that is related to the board issuing or not issuing a permit may be considered only where new evidence is presented to the board concerning the permit and all pertinent ordinance requirements, substantive and procedural, including those related to public hearings, have been met. Any new motion having the opposite effect of the prior action that relates to an ordinance may only be considered consistent with pertinent ordinance requirements, substantive and procedural, including those related to public hearings.

*Comment:* According to *Robert's Rules of Order*, the motion may be at the same meeting or on the next legal day and may interrupt deliberation on another matter. The rule does not allow reconsideration of a vote once the meeting adjourns. A member wishing to reverse an action taken at a previous meeting may make a motion or introduce a new ordinance having the opposite effect, consistent with public hearing requirements of North Carolina Law.

14. *To Prevent Reconsideration for Six Months.* The motion shall be in order immediately following the defeat of a substantive motion, and at no other time. The motion requires a vote equal to a quorum and is valid for six months or until the next regular election of county commissioners, whichever occurs first.

*Comment:* This clincher motion prevents the same motion from being continually introduced when the subject has been thoroughly considered. Because this motion curtails a member's right to bring a matter before the board, a vote equal to a quorum is required. As with every other motion, a clincher may be dissolved by a motion to suspend the rules. Six months is merely a suggested time; the board may shorten or lengthen the time as it sees fit. In order to give a new board a clean slate, the motion is not effective beyond the next regular election.

**Rule 20. Renewal of Motion.** A defeated motion may not be renewed at the same meeting.

**Rule 21. Withdrawal of Motion.** A motion may be withdrawn by the introducer at any time before it is amended or before the chair puts the motion to a vote, whichever occurs first.

Comment: *Robert's Rules of Order* provides that once a motion has been stated by the chair for debate, it cannot be withdrawn without the assembly's consent. Such a procedure is unnecessary for a small board.

## VII Quorum and Other Rules

**Rule 22. Duty to Vote.** It is the duty of each member to vote unless excused by a majority vote according to law. The board shall excuse members from voting on matters involving their own financial interest or official conduct as provided by law. A member who wishes to be excused from voting shall so inform the chair, who shall take a vote of the remaining members. No member shall be excused from voting except in cases involving conflicts of interest, as defined by the board or by law, or the member's official conduct, as defined by the board. In all other cases, a failure to vote by a member who is physically present in the meeting, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

Comment: G.S. 153A-44 provides that board members have a duty to vote, but does not state the remedy for failure to do so. Many boards record all members as voting yes on any matter put to vote unless members audibly vote no. A few boards reverse the presumption and record members as voting no unless they audibly vote yes.

**Rule 23. Prohibition of Secret Voting.** No vote may be taken by secret ballot. If the board decides to vote by written ballot, each member shall sign his or her ballot and the minutes shall record the vote of each member. These ballots shall be retained and made available for public inspection until the minutes of that meeting have been approved, at which time they may be destroyed.

Comment: See G.S. 143-318.13(b)

**Rule 24. Action by Reference.** The board shall not deliberate, vote, or otherwise act on any matter by reference to an agenda or document number unless copies of the agenda or documents being referenced are available for public inspection at the meeting and are so worded that people at the meeting can understand what is being discussed or acted on.

Comment: See G.S. 143-318.13(c).

**Rule 25. Introduction of Ordinances, Resolutions, and Orders.**

A proposed ordinance shall be deemed introduced at the first meeting at which it is on the agenda and actually considered by the board and its introduction shall be recorded in the minutes.

Comment: G.S. 153A-45 provides that an ordinance may not be finally adopted at the meeting at which it is introduced except by unanimous vote. The definition of introduction therefore is important because it makes a difference in the number of votes required to adopt an ordinance. The rule assumes that a measure is introduced only when the board begins to consider the matter.

**Rule 26. Adoption, Amendment, or Repeal of Ordinances.**

To be adopted at the meeting where first introduced, an ordinance or any action with the effect of an ordinance, or any ordinance amending or repealing an existing ordinance (except the budget ordinance, a bond order, or other ordinance requiring a public hearing before adoption), must be approved by all members of the board of commissioners. If the proposed measure is approved by a majority of those voting but not by all members of the board, or if the measure is not voted on at the meeting where introduced, it shall be considered at the next regular meeting of the board. If the proposal receives a majority of the votes cast at the next meeting or at a meeting within 100 days of being introduced, it is adopted.

*Adoption of Ordinances, Resolutions, Proclamations and Orders.*

A motion shall be adopted by a majority of the votes cast for any and all resolutions, proclamations and orders. The vote shall express the sense of the board on a question or issue brought before it and shall serve as an official declaration of a particular state of fact or circumstance.

Comment: See G.S. 153A-45. See also G.S. 153A-46 for requirements for granting franchises.

**Rule 27. Quorum.** A majority of the board membership shall constitute a quorum. The number required for a quorum is not affected by vacancies. If a member has withdrawn from a

meeting without being excused by majority vote of the remaining members present, he or she shall be counted as present for the purposes of determining whether a quorum is present. The board may compel the attendance of an absent member by ordering the sheriff to take the member into custody.

Comment: See G.S. 153A-43. Compelling the attendance of a member by ordering the sheriff to take the person into custody is an extraordinary remedy intended for use when a member obstinately refuses to attend meetings for the purpose of preventing action on a proposal. If the board contemplates using this power, it should give the absent members notice that their attendance is required by the majority and may be compelled in this manner.

**Rule 28. Public Hearings.** Public hearings required by law or deemed advisable by the board shall be advertised per legal requirements and staff shall set forth the subject, date, place, and time of the hearing as well as any rules regarding the length of time allotted to each speaker and designating representatives to speak for large groups. At the appointed time, the chair shall call the hearing to order and preside over it. When the allotted time expires, or earlier, if no one wishes to speak who has not done so, the presiding officer shall entertain or make a motion to end the hearing or adjourn the public hearing to another board meeting, or vote on the item. The board shall thereafter resume the regular order of business.

Anyone wishing to speak during a public hearing must first provide his or her name and address to the clerk.

Comment: G.S. 153A-52 provides that public hearings may be held anywhere within the county and gives the board authority to adopt rules governing the hearings.

**Rule 29. Quorum at Public Hearings.** A quorum of the board shall be required at all public hearings required by law.

Comment: G.S. 153A-52 implies that a quorum of governing board members is necessary for a public hearing by providing that a hearing shall be deferred to the next regular meeting if a quorum is not present at the originally scheduled time. However, if the board decided to hold a public hearing not required by law to gather a consensus of public opinion on an issue, the hearing could be held at several different sites, with a few members at each site.

**Rule 30. Minutes.** Minutes shall be kept of all board meetings. Minutes will be presented to the board on the regular meeting agenda. Substantive changes, including changes in content, will be made in open session. Other changes may be provided to the clerk. The exact wording of each motion and the results of each vote shall be recorded in the minutes. On the request of any board member the board shall be polled by name on any vote.

Minutes of closed sessions will be presented to the board during a closed session held under G.S. 143-318.11(a)(1). Motion to go into closed session should state that one purpose of the session is “to prevent the disclosure of information that is made privileged or confidential by G.S. 143-318.10(e).”

Minutes and general accounts of closed sessions shall be considered sealed automatically. Closed session records shall be unsealed by board action if and when the closed session’s purpose would no longer be frustrated by making these records public.

Comment: See G.S. 143-318.10(d) and the discussion of minutes in Bonnie E. Davis, *Handbook for North Carolina County Commissioners, second edition, revised*, by Joseph S. Ferrell (Chapel Hill, N.C.: Institute of Government, 1985). G.S. 143-318.11(d) provides that minutes and other records made of a closed session may be withheld from public inspection as long as such inspection would frustrate the purpose of the closed session.

**Rule 31. Appointments.** The board shall use the procedure as stated in the resolution for “Appointment and Orientation Process for Boards and Commissions” approved on April 6, 1992 and amended on March 15, 1994, August 8, 1994, November 3, 1999, November 22, 1999, December 7, 1999, February 14, 2000, June 6, 2000, March 6, 2001, April 20, 2004, and April 12, 2005 when making appointments to fill vacancies in the regular and short-term boards and commissions on which they make appointments. Appointments will be presented by the clerk to the board.

**Rule 32. Amendment of the Rules.** These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment of the rules as one of

the stated purposes of the meeting. Adoption of these rules or an amendment thereof shall require an affirmative vote equal to a quorum.

Comment: Local boards may generally amend their rules of procedure whenever they choose, unless a statute or rule of the body that created the particular board provides otherwise. To ensure that any amendments adopted reflect the will of the board majority, a vote equal to a quorum is required to approve the amendment.

**Rule 33. Reference to Robert's Rules of Order.** To the extent not provided for in, and not conflicting with the spirit of, these rules, the chair shall refer to *Robert's Rules of Order* to resolve procedural questions.

Comment: *Robert's Rules of Order* was designed to govern a large legislative assembly, and many of its provisions may be inappropriate for small boards. Nevertheless, it is the best source of Parliamentary procedure; care should simply be taken to adjust *Robert's Rules of Order* to meet the needs of small governing boards.

**Rule 34. The Clerk to the Board shall be the Sole County Officer Responsible for Presenting Documents to the Chair for Signature.** The clerk shall review all such documents with the county manager and county attorney before they are presented to the chair for execution.