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FRIDAY, SEPTEMBER 18, 2015

1:00 P.M. – 2:00 P.M.

**99 OF THE MOST IMPORTANT
ISSUES IN DEALING WITH
PARLIAMENTARY PROCEDURES**

PRESENTERS:

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INTRODUCTION

There is a specific provision in state statute that addresses rules of procedure for municipalities:

The city council shall determine its own rules of proceeding and punish its members for disorderly conduct. With the concurrence of two-thirds of the aldermen then holding office, it may expel an alderman from a meeting, but a second time for the same incident. 65 ILCS 5/3.1-40-15

This statute applies to both cities and villages. Many Illinois municipalities have established by motion or ordinance some limited sets of procedural rules based on the authority provided by this statute. Most of these local rules adopt by reference Robert's Rules of Order which is intended to address those questions that are not specifically addressed in the municipality's local rules.

As lawyers who have dealt with government bodies for many years, and attended thousands of meetings of local governmental bodies, it is our view that rules of procedure are desirable and necessary. Those rules, however, should assist rather than frustrate the meeting process and should not be difficult to understand, slow to correctly enforce, or impede rather than move along the effective operation of a governmental body.

During local government meetings, literally hundreds of questions involving parliamentary procedures can come up. Fortunately, the more obscure the question, the less likely you are to face that question at one of your meetings. Instead, most of the questions that come up at government meetings are fairly common and simple to answer. In those governments blessed or cursed with a variety of political factions, however, parliamentary questions involving power and authority, rather than simply efficiency and politeness, arise with some frequency. In those communities, it is important that those charged with enforcing parliamentary procedures understand the answers to these questions, so the rules can be quickly and uniformly applied.

To assist government bodies in addressing both the common and rare situations that come up at a meeting, we have put together a list of 99 questions relating to parliamentary procedures. The answers to these questions can be found on our website: www.ancelglink.com.

Notices and Agendas

1. Has the government established a schedule of annual meetings?

- 1A. All public bodies must give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and must state the regular dates, times and places of these meetings.

2. Must the agenda be posted at the meeting place or main office of the government body continuously for 48 hours?

- 2A. Yes, and any amendment to the agenda must also be posted continuously for 48 hours prior to the meeting.

3. Does the meeting agenda need to be posted on the web?

- 3A. A public body that has a website that the full-time staff of the public body maintains must post on the website the agenda of any regular meeting of the public body.

4. If we forgot to post our agenda on our website, can we still hold the meeting?

- 4A. The failure of a public body to post on its website notice of any meeting or the agenda of any meeting does not invalidate any meeting or any action taken at a meeting.

5. How are the members notified of the meeting?

- 5A. All members of the public body should receive notice of all meetings and agendas under a method designed to ensure that the notice will be received. Personal delivery or requested e-mail notices are acceptable.

6. Does the press have to be notified of the meeting?

- 6A. State law only requires you to notify the press of meetings if the news media has filed an annual request with the public body requesting these notifications.

7. Did the press correctly ask to be sent notice of meetings?

- 7A. Most governments provide notice to the press even if they failed to provide the technical annual request.

8. Was notice of regular and special meetings timely?

- 8A. Notice of regular meetings is provided in the annual meeting scheduled adopted by the public body. Notice of special meetings and agendas must be given at least 48 hours prior to the meeting.

9. What if we failed to post our agenda in a timely manner?

9A. If an agenda was not posted in a timely matter, the meeting cannot go forward unless an emergency meeting is declared in a bona fide situation and an agenda is created and made available.

10. How and when can an agenda be amended?

10A. An agenda can be amended if it is properly changed and posted at least 48 hours before a regular or special meeting.

11. Must it be clearly noted on the notice whether the meeting was a regular, special or emergency meeting?

11A. Public notice should state whether it is a regular, special, or emergency meeting.

12. What is adequate notice of an emergency meeting?

12A. Notice of an emergency meeting must be given as soon as practicable but in any event prior to the holding of such meeting.

13. Was it a true emergency?

13A. The statute requires a “bona fide emergency.” Because of the shortened notice of emergency meetings, the courts are not likely to tolerate any actions taken where the nature of the “emergency” is questionable or manufactured.

14. Who prepares the agenda?

14A. Statutes do not tell us who prepares the agenda. This can create a huge controversy in many communities but the person who prepares the agenda should follow the process established by custom or in the ordinances of the municipality.

15. Who gets to place or add items to the agenda?

15A. The statute does not state who gets to place or add items to the agenda. Effective governments clearly allow members of the legislative body to add items to the agenda or else they will be forced to call special meetings.

16. Has the meeting been called at a time and place convenient for the public?

16A. Courts have invalidated public meetings that were called at a time or place that was inconvenient for the public.

17. Must all meetings be held inside the municipality?

17A. Meetings may be held outside of the corporate boundaries so long as they are properly noticed and attendance is either convenient to the public or there is some special reason for holding the public meeting elsewhere such as to view an existing site of a proposed business.

18. When and how can the agenda be amended?

18A. An agenda can be amended at any time during a meeting but items cannot be added to the agenda of a special or emergency meeting.

19. Must there be a place on the agenda for public comment?

19A. The Public Access Counselor (PAC) has indicated that there must be an opportunity at every meeting for the public to provide comments to the public body. That opinion is a broad interpretation of the statutes that only requires that persons be permitted “an opportunity to address public officials under the rules established and recorded by the public body.” Although the PAC does not require “public comment” to be specifically identified on every agenda, we recommend that agendas include such language to (1) remind the public body of its obligation to provide the public with an opportunity to speak and (2) inform the public that public comment will be provided at a particular time in the meeting.

20. Can new items be added to the agenda and discussed at a regular meeting?

20A. New items can be added to the agenda of regular meetings and discussed but they cannot be voted upon. New items cannot be added to the initially-posted agenda of special or emergency meetings if the time for the posting of the corrected agenda has not expired.

21. Can new items be added to the agenda and discussed at a special meeting?

21A. No.

22. Can new items be added to the agenda of an emergency meeting?

22A. No. But, if other emergency items come up, a new emergency meeting can be quickly called with the new item placed in the agenda.

23. Can items not on the agenda be voted on at a regular or special meeting?

23A. No.

The Record

24. Who is responsible for preparing the minutes?

24A. The statutes don't say. In most communities, it is the clerk who drafts proposed minutes.

25. Who is responsible for the final approved content of the minutes?

25A. The board or council.

26. Must the clerk record the minutes?

26A. Surprisingly state law only requires the clerk to maintain copies of the minutes. In most communities the clerk also records the minutes.

27. What can we do if the clerk refuses to prepare the minutes as directed by the board?

27A. The board can take its own minutes or select a recording secretary.

28. If the clerk is not present, who records the minutes?

28A. The board can take its own minutes or select a recording secretary.

29. How thorough do the minutes of a meeting need to be?

29A. The minutes must include, but not be limited to: the date, time and place of the meeting; the members of the board recorded as present or absent or present electronically; a summary of discussion of all matters proposed, debated or decided and a record of all votes taken.

30. Can a motion to amend the minutes clarify or add to them things which did not really take place at the meeting the minutes address?

30A. No, the minutes must reflect what really took place, not what members wanted to say or do.

31. Must we tape record our open sessions?

31A. No, but many communities do. The public is allowed to make such recordings.

32. Must we tape record our closed sessions?

32A. Yes, and the recordings must be kept until written minutes are approved and the destruction of the tape is approved no less than 18 months after it was recorded.

33. Can a member of the council or board listen to the tapes of the closed sessions?

33A. Yes, whether or not they were in attendance.

34. Are tapes of closed session meetings available under FOIA?

34A. No.

The Public

35. Must we allow public comment at every meeting?

35A. The PAC seems to think so.

36. Can we require members of the public to provide their home or business address before speaking?

36A. No.

37. How long should the public comment period be?

37A. The statutes do not tell us how long the public comment period is to be. A public comment period limited to at least 30 minutes has been upheld by the PAC.

38. How much time should individual speakers be allowed to talk?

38A. Individual speakers should be allowed a minimum of 3 minutes to speak. This should be fairly enforced.

39. Can the public comment period be placed at a particular spot on the agenda?

39A. Yes, some communities place it at the beginning or the end of the meeting.

40. Can more time be given to a spokesperson for a group?

40A. Many governments allow a spokesperson for a group to speak for a longer period of time. This can shorten the meeting since individuals in a group may choose not to add separate remarks

41. Can speakers be limited to residents of the community?

41A. We do not believe that speakers can be limited to residents of the community, although residents can be allowed to speak first.

42. Can the topic be limited to agenda items?

42A. We believe that the topic cannot be limited to agenda items since the public may wish to bring other issues to the attention of the elected officials.

43. Can the topic be limited to items within the power of the community to act upon?

43A. We think that a community can limit the topics to be discussed during the public comments sections to items that are within the power of the community to act upon.

44. Should members of the public be allowed to address the body outside of the established public comment period?

44A. Some communities allow members of the public to address the body outside of the established public comment, although this is not required by law. Rules should be established for this process, for example, such as, permission to be granted by the presiding officer or two members of the legislative body.

45. Can members of the public demand answers from the members of the public body?

45A. The PAC has indicated that public comment is intended to allow the public to speak to the government body, but the government body is not required to respond to questions or engage in debate.

46. Can members of the public place items on the agenda of meetings?

46A. Members of the public are not given the authority to add any items to the agenda of meetings.

47. Can members of the public be removed for disrupting a meeting?

47A. Yes, if they violate ordinances or state statutes, by, for example, committing disorderly conduct.

At the Meeting

48. Who is in charge of a meeting?

48A. The presiding officer, usually the mayor or president.

49. Who calls the meeting to order?

49A. Any member of the public body may call the meeting to order. It is usually done by the presiding officer or the clerk in the absence of the presiding officer.

50. What constitutes a quorum?

50A. A quorum of the corporate authorities of a municipality is a majority of those positions available to be elected to the city council or village board. Vacancies do not reduce the number to create a quorum.

51. Must a quorum be present during the entire meeting?

51A. A quorum remains in existence once established unless a call for a quorum takes place or a vote is necessary and a lack of a quorum is noted.

52. Can members of the body participate electronically?

52A. If the corporate authorities pass an ordinance allowing electronic participation it can take place in accordance with the somewhat strict provisions of the Open Meetings Act.

53. Can electronic participation be denied?

53A. Electronic participation can be denied in the absence of an ordinance creating the practice. Once established it cannot be arbitrarily denied when individual valid requests are made.

54. Must a quorum be physically present to allow electronic participation?

54A. Yes.

55. Can a member participate electronically when on vacation?

55A. At the moment, a member is not allowed to participate electronically when on vacation. The most common valid allowable reasons for an absence are due to work or illness.

56. What are the basic powers of the presiding officer?

56A. The presiding officer is to move the public body through the agenda, answer questions, determine whether motions are or not in order, and whether they have passed.

57. Is the presiding officer allowed to speak without “leaving the chair?”

57A. In almost all Illinois governmental bodies, the presiding officer is allowed to speak without “leaving the Chair.”

58. Must the presiding officer be “independent”?

58A. The presiding officer need not be independent in his or her views, but they must fairly follow established rules of procedure. The presiding officers in Illinois governmental bodies are not expected to abandon their own views on the issues before the body.

59. Can the presiding officer make or second motions?

59A. Under most rules of order, presiding officers are not allowed to make or second motions. That reflects the fact that presiding offices have only limited voting powers.

60. When does the presiding officer vote?

60A. In a few municipalities, such as those that operate under the commission form of government, the presiding officers vote in every instance. In most other governments, the presiding officers only vote in three instances.

61. Must a motion be on the floor and seconded in order for a subject to be discussed?

61A. Many rules require that for a subject to be discussed, a motion must be on the floor and be seconded. As a practical matter, many governments and their presiding officers allow discussion to take place for the purpose of effectively helping to create an appropriate motion.

62. Must members of the body be “recognized” by the presiding officer in order to speak?

62A. Every government should follow the rule of only allowing members to speak when recognized by the presiding officer.

63. How does the presiding officer choose among multiple requests to speak?

63A. The presiding officer should be fair in choosing among multiple requests to speak and he or she may have a sense of which speaker will most pertinently address the issue to which others can respond. People with minority views get to speak too.

64. Can the time and number of opportunities to speak for a particular member be limited?

64A. Yes, either by written parliamentary rules, which is preferred, or by tradition, the time and number of opportunities to speak for particular member can be limited.

65. Does everybody operate with the same type of procedural motions?

65A. Rules of order generally list certain types of commonly used procedural motions. The presiding officer should be prepared to consider any request or question from a member.

66. How does the presiding officer decide whether a motion is in order and pertinent to the discussion?

66A. Some rules of order list particular motions and their precedence, but the presiding officer should establish standards allowing all issues to be raised, but to treat people fairly. The test is whether the motion will play a role in moving the matter forward and whether it will assist in bringing closure to the issue.

67. How fair does the presiding officer need to be in recognizing requests to speak or make motions?

67A. Very fair. Otherwise his or her goal is having a matter decided one way or another may be overturned by a reviewing court or on a motion to override the decision of the chair.

68. What is the effect of a motion to “call the question?”

- 68A. A motion to “call the question,” if seconded, and after all parties have had an opportunity to discuss the issue, will lead to a definitive vote.
- 69. Can a motion to “call the question” be made before every member has been given an opportunity speaking to the issue?**
- 69A. No.
- 70. What is “point of order” and how is it used?**
- 70A. It is generally a statement or a question asked or presented by a member to the question of whether proper procedures are being followed.
- 71. Can we limit debate on a particular item and how do we do that?**
- 71A. Yes, a motion can be made and seconded and adopted to set a specific time for debate on a matter. The time must offer a reasonable opportunity for all views to be expressed.
- 72. Are all motions debatable?**
- 72A. No, not all motions are debatable. Some, like a motion to table a matter or refer a matter to a committee, are made, in part, for the purpose of ending debate at that time and are not themselves debatable.
- 73. When is a motion in order to change or override a motion previously acted upon?**
- 73A. Motions, once debated and decided, should generally not come before the governmental body unless a valid motion to reconsider is made or new facts make it pertinent and desirable to reconsider the issue.
- 74. When are motions to reconsider in order?**
- 74A. Most rules of order provide that motions to reconsider must be made at the same meeting or the following meeting. They generally must be made by a person who previously voted on the prevailing side and has changed his or her mind.
- 75. How often and under what circumstances can a ruling of the presiding officer be questioned?**
- 75A. Most rules of order provide that any ruling of the presiding officer can be questioned and overturned. Repeated motions made with no basis for questioning the decision of the chair can be ruled out of order, but would be subject to appeal.
- 76. Is a motion to overrule the decision of the presiding officer debatable?**

- 76A. Yes, a motion to overrule the decision of the presiding officer is debatable, but, generally the period of time of the debate can be limited to a statement by the maker of the motion which has been seconded and a defense of the action by the presiding officer or one member who agrees with the decision.
- 77. What is the body to do if the presiding officer refuses to allow a discussion or vote on a motion to reconsider a presiding officer's decision?**
- 77A. If the presiding officer refuses to allow an appeal from his or her decision, some other member of the council or board can move the process through to a vote.
- 78. If the clerk refuses to call the roll, can a roll call be made by a member of the body?**
- 78A. Yes, where a mayor and a clerk refuse to participate in a process seeking to override the decision of the chair, any member of the body can call the roll.
- 79. Is a motion to table or refer to a committee debatable?**
- 79A. No, motions to table or to refer to a committee are not debatable because their intent is to bring an end to a discussion on the matter at that particular time.
- 80. Should a motion to table a matter indicate when it would be brought back to the floor?**
- 80A. If a motion is simply tabled, without any time being stated, it will not return to the floor for a discussion until a motion is made to return it to the floor.
- 81. Can a meeting be recessed for a stated time?**
- 81A. Yes, a meeting can be recessed for a period of time. If factions wish to discuss during a recess how to respond to a matter, they need to make sure that they do not violate the Open Meetings Act in so doing.
- 82. Can every action of the governing body be vetoed by the president or mayor?**
- 82A. No. In those communities where the mayor has veto power, the subjects to be vetoed are limited. The principal subjects are the expenditure of funds and all ordinances.
- 83. What is the proper procedure for the president or mayor to veto an action?**
- 83A. The reason for the veto must be provided in writing to the board or council at the next regular meeting that occurs at least five (5) days after the passage of the item.
- 84. Can a meeting continue if the presiding officer declares that the meeting has been adjourned?**

84A. The presiding officer has no right to declare that a meeting has been adjourned without a vote, and the remaining quorum can choose a new presiding officer and continue the meeting.

85. Must the public be given advance copies of documents discussed at meetings?

85A. No, but if there is a vote to approve a document, some elements of its terms need to be openly discussed.

86. Can a meeting be continued to another date and time?

86A. A meeting can be continued to another date and time. No notice needs to be given if the meeting was open to the public and is to be reconvened within 24 hours or if an announcement of the time and place of the reconvened was made at the original meeting and there is no change in the agenda.

87. Can a meeting be moved to a larger venue if an unexpectedly large audience appears?

87A. If a large crowd shows up, a meeting can be recessed and moved to a conveniently located and specifically stated location to accommodate the unexpected audience.

Rules of Procedure

88. Does a government body need a written set of rules of order?

88A. We recommend that governments adopt local rules of order.

89. Can procedural rules contradict state statutes?

89A. State statutes gave municipalities broad discretion in the ability to establish procedural rules, but non-home rule communities cannot adopt rules that are inconsistent with state law.

90. Is greater flexibility granted to home rule units?

90A. Home rule units have greater flexibility in establishing procedural rules, so long as they do not conflict with the Open Meetings Act.

91. How does a government body adopt procedural rules?

91A. A governmental body can adopt procedural rules by motion, resolution, or ordinance.

92. Should the rules be identical for all groups within the government that hold meetings?

92A. Different types of groups may require different procedural rules. That is especially the case regarding advisory bodies.

93. What national rules of order are available?

93A. Robert's Rules of Order are the predominant rules currently in use, although there are three or four other sets of available rules. Diamond's Rules of Order, specifically developed for Illinois local governmental bodies, will be available shortly.

94. Can rules of order require greater than majority votes on certain matters?

94A. Some rules of order require greater than majority votes on certain matters. Generally a legislative body can always permanently or temporarily abandon rules requiring extraordinary votes by simple majority votes, even if the prior rules required larger majorities to make a change.

95. How can these and other rules of order be changed?

95A. The rules of order should be amended in the same manner they were initially adopted (i.e., ordinance, resolution, or motion).

96. Can subcommittees be helpful in evaluating issues regarding the rules of order?

96A. Communities might consider the use of subcommittees or an advisory group to work towards developing or choosing an effective set of rules of order.

97. How involved will the courts get in determining whether rules of order have been followed?

97A. Unless the right of the public or statutory requirements have been dramatically abused, courts will generally not interfere or invalidate actions where a government does not strictly follow its rules of order.

98. Are violations of the rules of order generally considered an abuse of federal due process?

98A. Federal courts rarely get involved in invalidating actions of governmental bodies based upon alleged violations of local rules. A strong exception is, however, where federal constitutional rights have been violated.

99. Can seminars be helpful in working through using rules of order?

99A. Government officials can attend seminars on developing, using and changing rules of order.