



TOWN COUNCIL

Work Session

Town Hall

June 23, 2014

5:30 PM

At 5:30 p.m., Vice Mayor Chris Bannon, having established a quorum, called to order the Town Council Work Session. In addition to Vice Mayor Bannon, present were Councilmen Bennett and Godwin and Councilwoman Natali. Councilman Wendell arrived at 5:50 p.m. Mayor Sullivan and Councilman Sullivan were not in attendance. Also present were Mr. Michael Sterling of Vandeventer-Black, Mayor-Elect George Proto, Town Manager Heather Arcos and Town Clerk Libby Hume. There were no members of the public in attendance.

Vice Mayor Bannon announced the business for the evening would be to review parliamentary procedure and other procedural issues.

Mr. Sterling stated that there was very little information in the Constitution of Virginia, Code of Virginia, Town Code or Town Charter regarding running a meeting and added that tonight's session would be to discuss how to run a meeting to make it more productive and fair for everyone.

Mr. Sterling reviewed a PowerPoint presentation entitled "The Conduct of Meetings of the Town of Cape Charles." (Please see attached.)

There was some discussion regarding the difference between a majority vote and a super-majority vote. Most issues required a majority vote of the members in attendance. There were some issues, such as imposing taxes, which required a super-majority vote or two-thirds of the members of the governing body not just those in attendance.

There was much discussion regarding the "Rules of Order" which served as an informal guide used by the Town regarding the conduct of business. Mr. Sterling explained each item as reviewed and answered questions as they arose. Mr. Sterling stated that the "Rules of Order" were mostly used at the more formal regular meetings. The rules could be more relaxed for work sessions.

Councilwoman Natali asked Mr. Sterling to explain the requirements for executive sessions. Mr. Sterling stated that the Freedom of Information Act allowed for a number of exemptions for open meetings. To hold an executive session, the appropriate exemption must be noticed along with the subject of the meeting. In executive sessions, Council could take a straw vote, but the official vote had to be done in an open meeting. The current process used by the Town was proper procedure.

Mr. Sterling concluded by stating that the Town typically dealt with a number of big and complicated issues for such a small town. With the Harbor operations, the railroad in the Town and other factors, the Town's issues were more for a town with a population of 100K+. The Town had good processes in place but there was always an opportunity to increase efficiency.

Motion made by Councilman Bennett, seconded by Vice Mayor Bannon to adjourn the Town Council Work Session. The motion was approved by unanimous consent.

Vice Mayor Bannon

Town Clerk

THE CONDUCT OF MEETINGS OF THE TOWN OF CAPE CHARLES

Presented by Michael L. Sterling
June 23, 2014

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Michael L. Sterling

Mike serves as the Managing Partner of the law firm, and is located in the Firm's Norfolk office. Mike concentrates his practice on complex projects and disputes for international, national and local clients with particular focus on accounting, scheduling, contract terms, protests, insurance, safety, ethics, land use, environmental and other regulatory issues.

Michael L. Sterling
Managing Partner
101 W. Main Street
500 World Trade Center
Norfolk, Virginia 23510

757.446.8626

msterling@vanblk.com

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Constitution of Virginia, Art. VII, §7. Procedures.

No ordinance or resolution appropriating money exceeding the sum of five hundred dollars, imposing taxes, or authorizing the borrowing of money shall be passed except by a recorded affirmative vote of a majority of all members elected to the governing body. In case of the veto of such an ordinance or resolution, where the power of veto exists, it shall require for passage thereafter a recorded affirmative vote of two-thirds of all members elected to the governing body. See also § 15.2-1428

On final vote on any ordinance or resolution, the name of each member voting and how he voted shall be recorded. See also § 15.2-1427

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State Code Provisions Related to the Conduct of Meetings

- **Title 15.2 Counties, Cities and Towns**
 - Chapter 1 of Title 15.2. General Provisions
 - 15.2-107. Advertising & Enactment of Certain Fees & Levies.
 - Adopted by Ordinance after Advertisement
 - 15.2-107.1 Advertisement of legal notices by web sites
 - 15.2-107.2 Alternative method for local government to give notice by mail.
 - Chapter 2 of Title 15.2. Local Government Charters
 - 15.2-204. Uniform Charter Powers.
 - Powers set forth in 15.2-1100 et seq. are incorporated by reference
 - 15.2-1103. If a conflict with the uniform powers the Charter provisions take precedence.

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State Code Provisions Related to the Conduct of Meetings, continued

- Chapter 14 of Title 15.2. Governing Bodies of Localities.
 - §15.2-1400. Governing bodies.
 - 15.2-1400.C. Chairman, mayors & councilmen are subject to the prohibitions set forth in §§15.2-1534 & 15.2-1535.
 - 15.2-1400.D. A governing body may punish or fine a member of the governing body for disorderly behavior.
 - §15.2-1409. Investigations by governing bodies.
 - §15.2-1410. Chairman & mayors may administer oaths.

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State Code Provisions Related to the Conduct of Meetings, continued

- Article 2 of Chapter 14. Meetings of Governing Bodies.
 - §15.2-1415. At what meetings governing bodies may act.
 - **Quorum:** “A majority of the governing body shall constitute a quorum except as may otherwise be provided in the State and Local Government Conflicts of Interest Act (§ 2.2-3100 et seq.)”
 - §15.2-1416. Regular Meetings.
 - **Section 15.2-1416:** Local governing bodies are required to convene in a public place in January for counties and in July for cities and towns to hold its annual or organizational meeting. During this meeting, the local governing body decides the days, times and places of regular meetings to be held during the ensuing months. The governing body shall hold at least 6 meetings a year. In the event the governing body shall change the schedule, it shall adopt a resolution and post it on the door of the courthouse or the initial meeting place and publish it in a newspaper of general circulation at least 7 days before the first changed meeting. Regular meetings may be continued from time to time without further public notice.

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State Code Provisions Related to the Conduct of Meetings, continued

- §15.2-1417 & -1418. Special meetings; how called.
 - **Sections 15.2-1418 & 15.2-1419:** Special meetings may be called by the mayor or chairman or upon the request of two or more of the members of the council or board of supervisors. A request for a special meeting is made to the clerk and must specify the matters to be considered. The clerk shall immediately notify each member of the governing body and the local government attorney of the time, place and purpose of the special meeting. Only such matters specified in the notice may be considered at the meeting unless all members are present.

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State Code Provisions Related to the Conduct of Meetings, continued

- §15.2-1420. How questions determined; tiebreaker.
 - **Majority Vote:** “All questions submitted to the governing body for decision shall be determined by a majority of the members voting on any such questions unless another method of determination is required by the Constitution of Virginia or general law.”
- §15.2-1421. Tiebreakers.
 - Government body may designate a tie breaker. Under Town Charter, the Mayor may cast a tie breaking vote. Charter section 3.5.
- §15.2-1421. Electing a chairman & vice-chairman; mayor & vice- mayor.
 - **Term:** Unless otherwise designated term is presumed to be one year, & officers serve until their successors have been elected.

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State Code Provisions Related to the Conduct of Meetings, continued

- **Section 15.2-1422** – Each governing body shall have a chairman or mayor, either elected by the voters or by the governing body. The chairman or mayor shall preside at the meetings. The governing body also shall elect a vice-chairman or vice-mayor. If neither officer is present to preside at a meeting, the members of the governing body shall choose one of its' members to serve as temporary presiding officer.
- §15.2-1423. Powers of chairman or mayor.
 - “Presiding Officer” is “Head of local government for all official functions & ceremonial purposes” See Charter , Chapter 3.

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State Code Provisions Related to the Conduct of Meetings, continued

- §15.2-1427. Adoption of ordinances and resolutions generally; amending or repealing ordinances.
 - “Unless otherwise specifically provided for by the Constitution or by other general or special law, an ordinance is adopted by a majority vote of those present and voting....”
 - “The name of each member of the governing body voting and how he voted shall be recorded....”
 - “The governing body may adopt an ordinance or resolution by recorded voice vote unless otherwise provided by law or a member calls for a roll call vote.”
 - “In towns, no tax shall be imposed except by a two-thirds vote of the council members.”

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The Role of the Clerk:

- **Section 15.2-1538** - Every locality shall appoint a qualified person to record the official actions of the governing body. Such person shall be called the “clerk.” Such person cannot be a member of the governing body.
- **Section 15.2-1539** - The clerk shall i.) record “in a book” the proceedings of the governing body; ii.) make entries of all ordinances, resolutions, and decisions concerning the raising of funds; iii.) within 5 days after any levy is made deliver a copy to the commissioner of the revenue or his equivalent; iv.) record the vote of the members of the governing body on any question submitted to the board or council; and v.) preserve and file all accounts acted upon by the governing body for a period of 5 years after audit, and thereafter until the governing body shall authorize their destruction in accordance with retention regulations established pursuant to the Virginia Public Records Act.
- **Section 15.2-1418** - The clerk shall immediately notify each member of the governing body and the attorney of special meetings. The notice shall specify the matters to be discussed at the special meeting.

Miscellaneous duties may include keeping local governing body’s calendar, posting notices required by law, producing documents in response to FOIA and record management.

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Standing Rules & Procedures

- **Public bodies, boards & commissions** may adopt standing rules or bylaws.
 - Schedule & time of meetings
 - Rules governing the conduct of meeting
 - Process for the establishment & amendment of agendas
 - Provisions governing “Citizens Time”
 - Rules governing citizen comments may invite criticism under the First Amendment. As a limited public forum, reasonable time, place and manner restrictions are permitted provided that the restrictions are viewpoint neutral. [Steinburg v. Chesterfield County Planning Commission](#), 527 F.3d 377 (4th Cir. 2008). Typical restrictions include time limits, subject matter restrictions, prohibited language and personal attacks.

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Standing Rules & Procedures, continued

- Procedure for approval of minutes
- Provisions governing “Consent Agenda”
- Rules for public hearings
- Procedures for election of officers
- Establishment & membership of board appointed committees
- Procedure for claims against the county (Not applicable to the Town.)
- Press releases

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Standing Rules & Procedures, continued

- **A public body could simply establish & adopt the rules it deems necessary to govern the conduct of its meetings in its Standing Rules.**
- **Public bodies, boards & commissions must operate by motion.**

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Town of Cape Charles Rules of Order

The following rules of order are to serve as a non-binding informal guide to the conduct of business. It is the duty of the Mayor or other presiding officer to conduct meetings in accordance with the Code of Virginia, the Town Charter, applicable Bylaws and in a manner intended to promote open, civil and fair discussion of all issues.

Unanimous Consent

Routine business should generally be conducted by unanimous consent. This is an informal process that allows business to be conducted expeditiously. The procedure is for the presiding officer to ask whether anyone objects to a particular action and then to state, "Hearing no objection the action will be taken by unanimous consent." Note that even when a member is not in favor of a particular action the member may choose not to object in the interest of moving the agenda forward. In other words, unanimous consent does not mean that everyone was actually in favor of the action. If anyone objects then the action must be addressed with a formal motion and vote.

Agenda

The presiding officer should make a reasonable effort to conduct business in accordance with a consent agenda. The agenda should be organized to promote the orderly conduct of business. If the members cannot agree on the agenda it should be presented by motion and subject to a vote. Keep in mind that even after an agenda is approved it can be amended. Often that is done by unanimous consent at the suggestion of the presiding officer to expedite the meeting. The procedure is for the presiding officer to state, "Is there any objection to amending the agenda [explain]. Hearing no objection the agenda is so amended by unanimous consent." In a special meeting no matter not specified in the notice can be considered unless all members are present and a majority agrees by vote to amend the agenda.

Main Motion

This is the motion that brings business before the council or other body. Such motions should be stated in a concise form, and should generally be in writing to avoid misunderstandings. It must be seconded and when voted upon will ordinarily require a simple majority vote. This means a majority of the council not only of those present and voting. There are circumstances where a super majority may be required, such as in the disposition of real estate. Before voting on the motion the presiding officer should call for discussion. The presiding officer should allow for discussion until it terminates by unanimous consent or is formally terminated by a subsidiary motion (discussed below). When the motion is ripe for a vote the presiding officer should call for "all in favor" and then "all opposed." The presiding officer should then clearly state either the "motion passes" or the "motion fails." Generally, in the event of a tie the presiding officer may cast the deciding vote. The Town Charter expressly allows the Mayor to vote in the event of a tie. Any member may request a roll call vote.

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Town of Cape Charles Rules of Order

Subsidiary Motions:

Motion to Postpone Indefinitely: (Sometimes incorrectly called a motion to table.) Normally used to put aside business that is not ripe for consideration, such as when further study is required. It requires a second, is debatable and is not amendable.

Motion to Amend: This is a motion to amend the wording and sometimes the meaning of the main motion. It requires a second and is debatable. It is also amendable *one time*. Note that a vote to adopt the amendment is not a vote on the main motion. Once the motion to amend is adopted the amended main motion must then be voted on as well. Often, simple motions to amend are adopted by unanimous consent. Also, note that whether the member that offered the original motion is willing to accept the proposed amendment or not is irrelevant. It must still be seconded and voted upon or adopted by unanimous consent.

Motion to Refer: This is a motion to refer a matter to a committee or other body for action. In effect, when the motion is to refer the matter to a "workshop" it is a motion to refer the matter to a committee comprised of the entire council or other body (a committee of the whole). It requires a second and is debatable.

Postpone to a Certain Time: Used when a matter is best considered at a different time to allow for the orderly conduct of business. It requires a second and is debatable.

Motion to Limit Debate: Used to put a limit on the time permitted for debate of a motion. It requires a second, is not debatable and traditionally requires a two-thirds vote. Since the Town Charter allows for business to be conducted based on a majority vote, if a motion to limit debate does not pass by a two-thirds vote, then after further debate for a reasonable time the motion shall require only a majority vote.

Motion of the Previous Question: (Often referred to as "a motion to call the question" or "motion to bring the matter to a vote".) Used to end debate and bring the pending motion to a vote. It requires a second, is not debatable, and traditionally requires a two-thirds vote. Since the Town Charter allows for business to be conducted based on a majority vote, if a motion of the previous question does not pass by a two-thirds vote, then after further debate for a reasonable time the motion shall require only a majority vote.

Motion to Lay on the Table: (Often confused with a motion to postpone indefinitely.) Used to temporarily interrupt pending business so that another matter can be considered first. It requires a second and is not debatable. This is often done by unanimous consent to move business forward.

Motion to Recess: This is a motion to take a short break in the proceeding. It requires a second and is not debatable.

Motion to Adjourn: This motion closes the meeting. It requires a second and is not debatable.

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Town of Cape Charles Rules of Order

Other Issues:

Mayor's Veto: The Town Charter provides the Mayor with "the power of veto over the ordinances and resolutions of the council, but such ordinances and resolutions may be passed over such veto by a two-thirds vote of the members of the town council present and voting." This is an exception to the general rule that votes are determined by council as a whole not just those present and voting. With a six member council the override requires a vote of four members if all are present and voting, or a vote of three if only four members are present and voting.

Quorum: The Town Charter provides that "four members of the town council shall constitute a quorum for the transaction of business at any meeting." The bylaws of other bodies establish the number of members required for a quorum. The Code of Virginia provides that if a member is disqualified due to a conflict of interest "the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members." 2.2-3112.C.

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Other Motions and Rules:

Motion to reconsider: Requires a second; debatable (unless the motion to which it applies was undebatable); majority vote; cannot apply to a motion to adjourn or motion to table. May add uncertainty, so should be rarely used.

Motion to suspend the rules: Requires a second; not debatable; requires two-thirds vote unless otherwise specified in bylaws. Adds uncertainty and should be very rarely used.

Withdrawal of motion: Does not require a second; not debatable; majority vote required.

Appeal from ruling of chair: Requires a second; not debatable; majority vote required.

Point of order or parliamentary inquiry: May interrupt a speaker or a vote, if necessary; the point of order or inquiry is answered by the chair, subject to appeal; chair may refer the issue to a vote of the body.

Nominations & elections: No second required; motion to close nominations requires a second and is not debatable; votes by members should be for the nominee of their choice and not "against" other nominees.

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Thank You!

Michael Sterling
Managing Partner

757.446.8626

msterling@vanblk.com

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