

MODERATOR'S RULES FOR LONDONDERRY DELIBERATIVE SESSION

Form of Town Meeting. Prior to 2011, Londonderry's election process consisted of balloting for elective offices and bond issues on the second Tuesday in March and then on the following Saturday, a traditional town meeting where the budget and other financial issues were discussed, amended and approved by those in attendance. Beginning in March 2011, the Town Charter was changed and Londonderry's election process now consists of two sessions of town meeting. The first session, also called the deliberative session is held in February while the second session, where the voters vote by secret paper ballot on all warrant articles including those running for elective office (referred to under New Hampshire law as the "Official Ballot") is held in March. While this change has been sometimes referred to as a SB2 form of government under *RSA 40:13*, because Londonderry is governed by a town charter under *RSA 49-D:3,II-a*, it is technically not an SB2 town, though both forms of government have many similarities.

Deliberative Session Purpose. The purpose of the deliberative session, (first session), in addition to discussion and debate of the articles, is to give voters the opportunity to amend any articles before they are moved on to the town ballot voted on at the Tuesday election in March, (the second session). (*RSA 39:2*), (*Town Charter, Article 5, Section 5.4B*).

Generally, the Town Council, (also known as the governing body), prepares the town budget and other spending items as articles for placement on the town warrant. Prior to their placement on the warrant, the Council holds hearings on these questions and solicits input from the public. After inclusion in the warrant, the articles are then discussed, debated and may be amended by the voters (known as the legislative body) at the deliberative session. Once sent to the deliberative session, the Council's ability to amend the articles ends.

Another method for placing articles on the town warrant is for citizens to submit what are called Petitioned Warrant Articles. Like the Council, once these petitioned articles are submitted with the requisite number of voter signatures, they then proceed to the deliberative session for discussion and debate. While there is a perception that petitioned warrant articles may not be amended, that is not the case. Like any article at the deliberative session, petitioned warrant articles may be amended. (*RSA 39:2*), (*Town Charter, Article 5, Section 5.4B*).

Every Council proposed and citizen petitioned article may be discussed, debated and amended unless prescribed by statute, (ie, the legislature has stated that the language of certain articles must conform to a set language). (*RSA 39:2*), (*Town Charter, Article 5, Section 5.4B*).

Rule 1. Moderator's Rules. Under state law, the Moderator presides at the deliberative session, and that includes setting the rules for the deliberative session. We will not follow Robert's Rules of Order or any other complicated rules of parliamentary procedure. Instead, we will use the following rules. (*RSA 40:4 I*), (*Town Charter, Article 2, Section 2.2*).

Rule 3. Voter Id. Please be sure to bring a photo ID with you to the deliberative session. Under the law, ballot clerks must ask persons seeking to vote (including at the deliberative session) for proof of identity. An acceptable photo ID must have an expiration date or a date of issuance. The ID will remain valid 5 years beyond the expiration date unless the voter is 65 or older, in which case an acceptable photo ID may be used without regard to expiration date. The name on the ID

must substantially conform to the name on the checklist. Valid proof of identity includes: (1) a driver's license issued by any state or the federal government; (2) an identification card issued under RSA 260:21, RSA 260:21-a, or RSA 260:21-b or a nondriver's identification card issued by the motor vehicles division, department, agency, or office of any other state; (3) a United States armed services identification card; (4) a United States passport or passcard; (5) a valid student identification card if: (A) the card is issued by: (i) a college, university, or career school in New Hampshire and approved to operate or licensed to operate in New Hampshire; (ii) a public high school in New Hampshire; (iii) a nonpublic high school in New Hampshire accredited by a private school accrediting agency that is recognized by the department of education; (iv) Dartmouth College; (v) a college or university operated by the university system of New Hampshire or the community college system of New Hampshire; (B) the card has either an expiration date or an issuance date that has not been exceeded by a period of more than 5 years; and (6) a photo identification not authorized by subparagraphs (1) through (5) but determined to be legitimate by the supervisors of the checklist, the moderator, or the clerk of a town, ward, or city, provided that if any person authorized to challenge a voter under RSA 659:27 objects to the use of such photo identification, identifies the reason for the objection in writing, and states the specific source of the information or personal knowledge upon which the challenge of the photo identification is based, the voter shall be required to execute a challenged voter affidavit as if no identification was presented.

In addition to the forms of photo identification listed above, the identification requirements may be satisfied by verification of the person's identity by a moderator or supervisor of the checklist or the clerk of a town, ward, or city, provided that if any person authorized to challenge a voter under RSA 659:27 objects to such verification, identifies the reason for the objection in writing, and states the specific source of the information or personal knowledge upon which the challenge of the photo identification is based, the voter shall be required to execute a challenged voter affidavit as if no verification was made.

If a voter does not have an approved photo ID or does not have their identity verified by an election official described above, the voter will still be permitted to attend and vote IF he or she executes a Challenged Voter Affidavit and has his or her photograph taken by the moderator or assistant moderator, which photo will be attached to the Affidavit. If the voter objects to the photograph requirement because of religious beliefs, the voter may execute an Affidavit of Religious Exemption, which shall be attached to the Challenged Voter Affidavit instead of the photo. (RSA 659:13), (*Town Charter, Article 2, Section 2.5,C*).

Rule 4. Deliberative Session Procedure. The Moderator or the Assistant Moderator will read each article in the order it appears on the warrant. After reading each article, the moderator will ask that the article be moved to the floor for debate by the proponent, which in the case of Town Council motions will be by a Town Councilor and in the case of a petitioned article, usually by the petitioner. The motion then must be seconded. After the article is moved and seconded, we will then recognize the article's sponsor (either a member of the Town Council, town employee, or a member of the public, in the case of Petitioned Warrant Articles) who may speak to the Article. (RSA 40:4 I), (*Town Charter, Article 2, Section 2.2*).

Once the sponsor has spoken the voters in attendance are invited to speak on the article. Those wishing to speak to an article, will be asked to come to the microphone, introduce themselves by

name and street address. Moderators will recognize all people who wish to speak to an article before permitting someone to speak twice. You should address all your comments to the Moderator and not to other people here. There will not be a strict time limit for speaking but try to use your common sense. Moderators may use their discretion to limit or end a speaker's time if the speaker is repeating points previously made or in the interest of allowing others in line to speak to the issue. (RSA 40:7,8), (Town Charter, Article 2, Section 2.2).

Voters are also reminded that we are here in the spirit of fair debate. It is expected that everybody shall be civil and courteous to all and avoid bitterness. Personal attacks against people or their motives shall not be permitted. (RSA 40:8), (Town Charter, Article 2, Section 2.2).

When there is no further discussion on an article the Moderator will order that it be placed on the March ballot, either as written or as amended. No vote of the deliberative session is required to move the article to the March ballot. (RSA 40:4 I), (Town Charter, Article 2, Section 2.2).

Rule 5. Amendments:

a. How to make. Any registered voter can move to amend an article. Amendments should be submitted in writing and signed by the moving party, unless they are very simple. Blank motions to amend will be available at the meeting. You may also download one at the Moderator website. Written motions are requested so that there is no question as to the accuracy of the motion. (RSA 39:2), (Town Charter, Article 5, Section 5.4B).

b. Limits on amending Article language under RSA. Some RSA's require certain language be used for some warrant articles. (For example, RSA 31:5, III, prevents amendments to warrant articles which authorize a special town meeting if cost items in a collective bargaining agreement are not approved). The Moderator will advise the meeting prior to the beginning of any debate on an Article if the RSA's proscribe amending the language. (RSA 39:2), (Town Charter, Article 5, Section 5.4B).

Additionally, no amendments to language will be accepted which eliminate all language in a warrant article after the word "To see" or which make the subject matter of the article a nullity. In *Bailey v. Exeter*, Docket No. 218-2011-CV-203 (Rockingham County Superior Court, May 27, 2011) the Superior Court ruled that voters amending the article "To see if the [town] will establish and official budget committee" to read, in part, "To see if the [town] will establish an official budget committee". Whether the voters voted "yes" or "no" at the ballot voting, an official budget committee could not have been created by the vote on the final article, (either because if it received a majority of "yes" votes, no official budget committee would be established or if "no" votes were in the majority, the article would not have passed and no official budget committee would be established). The Court ruled that RSA 40:13, IV(c) "permits the creation of a nullity only when dollars and cents are contained in the warrant article under consideration. All other attempts to render an article void are prohibited." Although *Bailey* dealt with an SB2 town and the provisions of RSA 40:13, IV(c), similar reasoning would seem to prevent a charter town like Londonderry from amending an article to create a nullity.

c. Amendments cannot introduce new subjects. RSA 39:2 states “the subject matter of all business to be acted upon at the town meeting shall be distinctly stated in the warrant, and nothing done at any meeting, . . . shall be valid unless the subject thereof is so stated”. The Supreme Court of New Hampshire has held that “this protects the voters who decided not to attend the first session from new subjects being addressed about which they had no notice and therefore did not have an opportunity to consider when deciding whether they were interested in attending the deliberative session”. (*Grant v. Barrington, 156 N.H. 807, 811 (2008)*). However, amending an article to change its intent or purpose may be permissible. Also, an amendment that would change the dollar amount of an appropriation is not considered eliminating its subject matter. (*See RSA 40:13, IV(c)*).

d. Amendments as to Amounts. Voters at the deliberative session may move to amend any amount in any article either up or down, except as it affects costs items in collective bargaining agreements. (*RSA 39:2, (Town Charter, Article 5, Section 5.4B)*).

Pursuant to RSA 27-A:3 II (b) “[n]o cost item agreed to by the public employer and the employee organization shall be modified by the legislative body [the deliberative session] of such public employer. Voters are limited to accepting or rejecting the collective bargaining agreement at the polls at the Tuesday election.

The power to amend amounts includes specific line items in the budget or in a separate warrant article. If voters amend specific line items in the budget or separate article to zero or delete a purpose in the budget or article or does not approve an appropriation contained in a separate article, “that purpose or article shall be deemed one for which no appropriation is made, and no amount may be transferred to or expended for such purpose by the Town Council”. (*RSA 39:10 I(e)*).

Please note, unless a specific line item in the budget is reduced to zero or the purpose is delete, the Town Council may transfer funds from other line items to the specific line item that was amended. The only limitation is the bottom line total for the budget may not be exceeded.

e. Procedure on Motion to Amend. Once submitted a moderator will read the amendment. The amendment is then before the meeting for debate and discussion. At the conclusion of the debate on the amendment, the amendment will be voted on. No amendments to the amendment will be considered until after a vote on the amendment. If, after discussion, the proponent of the amendment wishes to withdraw the amendment the proponent may do so. (*RSA 40:4 I*),

Rule 6. Voting. If you have not already done so, you need to check in at the clerk’s table, get a colored voting card, and sign it. To vote on a motion or article raise your card. (*RSA 40:4 I*), (*Town Charter, Article 2, Section 2.2*). However, we will vote by secret ballot if, before voting on an article, five voters present here sign a written request for a secret ballot on that article. (*RSA 40:4-a, I(a)*), (*Town Charter, Article 2, Section 2.2*).

The Moderator will only vote if that vote will break or create a tie.

Rule 7. Recounts / Questioning a Vote. A recount will be taken of non-secret ballot votes if seven or more voters, either orally or in writing, make such a request. Such recounts will be conducted by secret ballot. (*RSA 40:4-b*), (*Town Charter, Article 2, Section 2.2*). The recount of a secret ballot will be taken on the request of five voters. (*RSA 40:4-a, I(b)*), (*Town Charter, Article 2, Section 2.2*).

Rule 8. Reconsideration. Any voter can move to reconsider a vote. You do not need to have been in the majority to make such a motion. However, multiple motions to reconsider will not be permitted. (*Jewett v. Alton, 7 N.H. 253 (1834)*), (*Town Charter, Article 2, Section 2.2*).

Rule 9. Restricting Reconsideration. You may also move to restrict reconsideration of an article. Such a motion may be made after the Moderator orders an article to be placed on the ballot. It is not debatable. If the motion carries, this meeting may not reconsider that article later. (*RSA 40:10, I*), (*RSA 40:10, II*), (*Town Charter, Article 2, Section 2.2*).

Rule 10. Calling the Question. Calling the question is the same as moving to end debate. This motion is not debatable. It requires a majority of voters present and voting to pass. Those silent by not voting or abstaining are not counted as either positive or negative. (*Sugar Hill v. Lisbon, 104 N.H.40 (1962)*), (*Laconia Water Co. v. Laconia, 99 N.H. 409 (1959)*).

However, the Moderator will permit the person who is speaking and all those in line to speak on the issue before calling the question for a vote.

Rule 11. Nonvoters Who Wish to Speak. Non-Londonderry registered voters who wish to speak must ask permission of the Moderator, which will usually be granted. Voters may object and if so, will be asked to state their objections. Other voters may speak for or against letting the non-Londonderry registered voter from speaking. After all those who have spoken on the issue the Moderator will call a vote of the session and the will of the majority shall prevail. The Moderator however will allow Town employees to speak relative to issues relating to their departments when asked to speak to the issue by the Town Council. (*RSA 669:5*), (*RSA 40:4*), (*Town Charter, Article 2, Section 2.2*).

Rule 12. Overruling the Moderator. This is your Meeting. Any voter has the right to request that any ruling by the Moderator be overruled. Any motion to overrule the Moderator may be made for any reason and need not be stated. The voter making the motion will be allowed to speak on the motion first and any other voter may also speak on the motion. When all have spoken, the Moderator may speak to the issue. After the Moderator has spoken, a vote will be called on the motion to overrule. A simple majority of the voters present shall decide the motion. (*RSA 40:4, I*), (*Town Charter, Article 2, Section 2.2*).

Tom Freda
Londonderry Town Moderator

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