



## Email Communication

From: Elisha D. Hodge, MTAS Legal Consultant

Re: Determining Quorum Number Required to Pass Motions

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### Question from City:

A question arose at the town meeting last night about the number of aldermen required to vote and pass items on the agenda not related to our present aldermen vacancy. It is the opinion of the town attorney that three (3) members must vote yes to constitute a quorum for any motion or other business on the agenda to pass.

The town charter states at 6-2-102. Ordinance procedure. An ordinance shall be considered and adopted on two (2) separate days; any other form of board action shall be considered and adopted on one (1) day. **Any form of board action shall be passed by a majority of the members present, if there is a quorum. A quorum is a majority of the members to which the board is entitled.** All ayes and nays on all votes on all forms of board action shall be recorded. [Acts 1991, ch. 154, § 1; Acts 1998, ch. 621, § 1.]

The town municipal code states in 1-103. General rules of order. The rules of order and parliamentary procedure contained in Robert's Rules of Order, Newly Revised, shall govern the transaction of business by and before the board of mayor and aldermen at its meetings in all cases to which they are applicable and in which they are not inconsistent with provisions of the charter or this code. (1983 Code, § 1-103)

In addition, *Robert's Rules of Order Newly Revised* states a quorum is an assembly whose membership can be determined is a majority of the entire membership. [2] *Robert, Henry M.; et al. (2011). Robert's Rules of Order Newly Revised (11th ed.). Philadelphia, PA: Da Capo Press. p. 21.*

In order to pass items on the agenda since we currently have a mayor and three (3) aldermen, as a result of the death of one alderman, it is my opinion that there must be three (3) affirmative votes which would be a majority not only of all the members to which the board is entitled but also a majority of the current four (4) member board to constitute a quorum of the membership of our board.

Are you aware of any other case law, statutory law or other rules or procedures that would take precedence to establish that when only three (3) members are present at the board meeting an affirmative vote of two (2) of those members is sufficient for a motion to pass?

### Response from Elisha Hodge:

The relevant language in the town's charter reads:

6-2-102. Consideration and passage. An ordinance shall be considered and adopted on two (2) separate days; any other form of board action shall be considered and adopted in one (1) day. **Any form of board action shall be passed by a majority of the members present, if there is a quorum. A quorum is a majority of the members to which the board is entitled.** All ayes and nays on all votes on all forms of board action shall be recorded. [Acts 1991, ch. 154, § 1; Acts 1998, ch. 621, § 1.] 6-2-103.

The board is entitled to 4 aldermen and the mayor. There is currently a vacancy. So, for the purposes of quorum, a majority of the number the board is entitled to is 3. If the mayor and 2 aldermen are present at a meeting, there is a quorum, and a majority of those present is 2.

While I could not find any caselaw that specifically addresses the issue that you have raised, I did review



Robert’s Rules and found the information contained therein informative. Chapter XIII, Section 44 of Robert’s Rules of Order, Newly Revised, 11th edition includes the following related to the issue of what constitutes a “majority of members present”:

**Modifications of Usual Bases for Decision**

By modifying the concepts of a majority vote and a two-thirds vote, other bases for determining a voting result can be defined and are sometimes prescribed by rule. Two elements enter into the definition of such bases for decision: (1) the proportion that must concur—as a majority, two thirds, three fourths, etc.; and (2) the set of members to which the proportion applies—which (a) when not stated, is always the number of members present and voting, but (b) can be specified by rule as the number of members present, the total membership, or some other grouping.

Assume, for example, that at a meeting of a society with a total membership of 150 and a quorum of 10, there are 30 members present, of whom 25 participate in a given counted vote (taken by rising, by show of hands, by roll call, or by ballot). Then, with respect to that vote:

A majority is	13
A majority of the members present is	16
A majority of the entire membership is	76
A two-thirds vote is	17
A vote of two thirds of the members present is	20
A vote of two thirds of the entire membership is	100

Regarding these bases for determining a voting result, the following points should be noted:

- Voting requirements based on the number of members present—a majority of those present, two thirds of those present, etc.—while possible, are generally undesirable. Since an abstention in such cases has the same effect as a negative vote, these bases deny members the right to maintain a neutral position by abstaining. For the same reason, members present who fail to vote through indifference rather than through deliberate neutrality may affect the result negatively. When such a vote is required, however, the chair must count those present immediately after the affirmative vote is taken, before any change can take place in attendance. (See p. 45, ll. 4-18.)
- A majority of the entire membership\* is a majority of the total number of those who are members of the voting body at the time of the vote. (Thus, in a society that has both a general membership and an executive board, a “majority of the entire membership” at a board meeting refers to a majority of the membership of the board, not of the society.) In a convention of delegates a majority of the entire membership means a majority of the total number of convention members entitled to vote as set forth in the official roll of voting members of the convention (pp. 7, 617). The vote of a majority of the entire membership is frequently an alternative to a requirement of previous notice, and is required in order to rescind and expunge from the minutes (see p. 310). Otherwise, prescribing such a requirement is generally unsatisfactory in an assembly of an ordinary society, since it is likely to be impossible to get a majority of the entire membership even to attend a given meeting, although in certain instances it may be appropriate in conventions or in permanent boards where the members are obligated to attend the meetings.

Please let me know if you have other questions.