

**PROPOSED PROCEDURE FOR HEARING ON MOTION TO REMOVE
ABC BOARD MEMBERS**

1. RESTATEMENT OF MOTION
2. OPENING STATEMENT BY PROPONENT OF MOTION OR COUNSEL FOR PROPONENT
3. OPENING STATEMENT BY REPRESENTATIVE OF OR COUNSEL FOR ABC BOARD
4. PRESENTATION OF EVIDENCE IN SUPPORT OF MOTION
5. PRESENTATION OF EVIDENCE IN OPPOSITION TO MOTION
6. PRESENTATION OF REBUTTAL EVIDENCE IN SUPPORT OF MOTION
7. PRESENTATION OF REBUTTAL EVIDENCE IN OPPOSITION OF MOTION
8. CLOSING STATEMENTS OR ARGUMENTS OF PROPONENT AND ABC BOARD (by Proponent or counsel and by representative or counsel for ABC Board)
9. DELIBERATION AND DECISION BY THE BOARD

NOTES:

This is not the usual public hearing, and it is recommended that the public not be allowed to speak on the matter as is done in the usual matters that come before the Board of Aldermen. The only people to speak should be the proponent or attorney for the proponent of the motion, the attorney for the ABC Board, any witnesses called and sworn in by each side, the mayor and board members, counsel for the Board of Aldermen, and the clerk or secretary who may ask for clarification to assure that the minutes of the meeting are accurate.

An opening statement should be made before the hearing begins to explain this process to all in attendance. This statement can be made by the mayor or by the town attorney.

The mayor and aldermen who hear the arguments and evidence may ask questions of the attorney(s) and the witnesses. The proponent or attorney for the proponent and the attorney for the ABC Board may cross examine witnesses.

The motion is to be treated as a claim or complaint and statements by the proponent are to be treated as allegations to be proven during the hearing and not as evidence, unless the proponent also intends to testify as to facts within his/her personal knowledge. Any statements by the attorney for the ABC Board are to be treated as counter allegations or arguments of law, but are not evidence to be considered.

The burden of proof shall be on the proponent of the motion. The decision by the Board of

Aldermen must be supported by the greater weight of the evidence.

All witnesses called to testify shall be given the usual oath.

It is possible that the proponent of the motion will not only want to marshal and elicit evidence in favor of the motion, but to also testify. In that case, the proponent shall also be sworn in.

The mayor shall preside and normally would rule on such matters as procedure or admissibility of evidence, but I suggest that the mayor defer to the town attorney for advice on such rulings. I propose that the rules of evidence as applied in the courts of North Carolina apply, but with latitude being given as to the technical requirements for eliciting testimony, presenting physical evidence or eliciting expert opinions.

Upon completion of the hearing, the aldermen deliberate and vote on the motion. There is no "supermajority" requirement and a majority vote of the aldermen hearing the motion and evidence will determine the outcome, as long as there is a quorum after any aldermen have recused themselves. This is a public hearing of an elected body, and subject to the open meetings law. That means that the aldermen may not retire from the meeting room and deliberate in private. All deliberations will be in the open meeting.

The board members who hear this evidence and make the decision must make up an impartial panel. It is possible that some board members may have recused themselves before this matter is heard.