

MINUTES OF THE RULES COMMITTEE
Monday, December 3, 2018
6:00 p.m.
Lorraine H. Morton Civic Center
Jay C. Lytle City Council Chambers

Present: Ald. Peter Braithwaite, Ald. Judy Fiske, Ald. Cicely Fleming, Mayor Stephen Hagerty, Ald. Ann Rainey, Ald. Eleanor Revelle, Ald. Thomas Suffredin, Ald. Donald Wilson, and Ald. Melissa Wynne

Absent: Ald. Robin Rue Simmons

Presiding: Ald. Judy Fiske

Staff Present: Wally Bobkiewicz, City Manager and Michelle Masoncup, Corporation Counsel

CALL TO ORDER/DECLARATION OF QUORUM:

Ald. Fiske declared a quorum and called the meeting to order at 6:08pm

CITIZEN COMMENT:

Junad Rizki spoke on issues getting resolve at meetings and if they can't get them resolved they have the option to go outside the community to get issues resolved.

James Genden spoke on the resistance of a FOIA request to reveal amounts paid by contributors on the demolition of Harley Clark.

Trisha Connolly, Allie Harned, Jen Shadur, Nancy Sreenan, Mary Rosinski, Chris Kruger, Clare Kelly, John Moore, Lorie Keenan and Nick Agnew spoke on the allegations of an ethics violation against 8th Ward Alderman.

Peter Keenan read parts of a letter sent by Parikh Law group representing Laurie Keenan and Claire Kelly regarding allegations of an ethics violation against 8th Ward Alderman.

Carl Klein spoke on the appeal to Preservation Commission to deny demolishing to Harley Clark and encouraged the committee to send to the Planning and Development Committee before sending to full Council.

Jeremy Pardoe read a portion of a letter from Adam Kingsley from the Merit Law Group regarding the allegation of an ethics violation against 8th Ward Alderman.

APPROVAL OF MINUTES OF THE REGULAR MEETINGS OF OCTOBER 16, 2017, DECEMBER 11, 2017 AND OCTOBER 1, 2018:

Mayor Hagerty moved approval of the October 16, 2017 minutes. Ald. Braithwaite seconded. Minutes approved.

Ald. Revelle moved approval of the December 11, 2017 minutes. Ald. Braithwaite seconded. Minutes approved.

Ald. Revelle moved approval of the October 1, 2018 minutes. Ald. Fleming seconded. Minutes approved.

REVIEW OF ADVISORY OPINION FROM BOARD OF ETHICS REGARDING ALDERMAN RAINEY:

City Manager Bobkiewicz read the memorandum regarding Board of Ethics (BOE) Advisory Opinions.

“On November 20, 2018, the BOE issued two separate advisory opinions stemming from Complaint No. 18 BOE 0002 and 18 BOE 0003. Following a hearing, the Board found that Ald. Rainey violated the Code of Ethics. Attached for your reference are the advisory opinions issued per City Code Section 1-10-8(l). The Rules Committee is the appropriate City authority to review the advisory opinions to determine if action will be taken. Section 10.4 of the Rules and Organization of the City Council provide: “Any Alderman who does not comply with the Evanston Code of Ethics may be censured by majority vote of members present at a Council meeting.”

City Manager Bobkiewicz pointed out that the Code of Ethics covers many official employees of the city not just members of the City Council. To his knowledge, only the City Council and its rules have addressed any violation of the Code of Ethics in any issues arising from that. The City Council has chosen, through its rules, to identify only one measure and that is censure. If the Council were to choose to do something different they would first have to address the issue of their rules before any other matter could take place. Continuing with the memo “The City Code, Council Rules, and Robert’s Rules do not contain a definition of “censure. Webster’s Third New International Dictionary includes among its definitions of “censure”, a “resolution by a legislative body expressing disapproval of a government official.” It is intended to be a public admonishment, either by resolution or motion, for the described conduct. As quoted above, censure is the only option provided for in the Council Rules. The Board of Ethics issued an advisory opinion, which has no legal effect and cannot be enforced by the City Council. Meaning, the directives provided in the opinion, including recusal from voting on Harley Clarke, are advisory to the respondent.”

Michelle Masoncup added under the city code 1-10-9 subsection D, many of the speakers have addressed that it does say may be subject to censure, suspension, removal from office or employment or any other disciplinary action as determined appropriate by the city authority. She wanted to give some context with this city code section in relation to City Council rules. Suspension speaks to employees. Her understanding is that City Council certainly can’t suspend an elected official. The city personnel rules for employees have elevated levels of discipline. She didn’t seek to explain further removal from office because that opinion doesn’t come close to that. So addressed more specifically censure because it applies to elected officials. Generally speaking this opinion and all of the past opinions the Board of Ethics states it is an advisory opinion. It is repeatedly stated that this is advice contained within the opinion that’s issued. These are recommendations to put forth to the Rules Committee. That was very clear that these were recommendations. Regarding whether or not it’s enforceable for the 8th Ward Alderman to recuse herself that she is not certain about. The City Council rules under conflict of interest, 11.1 indicates that an Alderman is expected to vote yea or nay on all matters when present, except on any matter which involves a direct personal pecuniary interest or conflict of interest. This is the remedy that’s available for 10.4.

Art Newman former 1st Ward Alderman spoke in support of Ald. Rainey. He stated there is a difference between an elected official and a city employee. Be very clear the BOE did not find any conflict of interest. Ald. Rainey isn’t accused of having any personal interest in Harley Clark. Some may say she should not have acted that way. That does not make a violation of ethics and does not empower a group of people to have her not vote on a certain subject. She is doing what she has always done. She has a position she believes in strongly. Things got very hot and she was subject to a lot of criticism and there were things that went on. Maybe a mistake was made which she apologized for. But that doesn’t give this Council the authority to disenfranchise 8,500 people on the issue of Harley Clark. He suggested having an ordinance for elected official and a separate one for employees. Ald. Rainey has spent thousands of hours on behalf of this city doing what she feels is best on behalf of this city. Whatever you do this evening vote for the best interest of the people of Evanston not for what one group comes to say at a specific time.

Peter Keenan read the letter he started reading earlier from Anish Parikh, attorney representing Ms. Lori Keenan and Ms. Clare Kelly for the ethics complaint against Ald. Rainey. "Recently the Evanston BOE addressed the complaints of my clients and ultimately found ethical violations by Ald. Rainey based on City Code subsection 1-10-4 c3b2 and subsection 1-10-4 C1. In its findings in order the BOE recommended that Ald. Rainey be prohibited from participating in voting on matter related to the Harley Clark mansion. I understand that the matter shall next be considered by your committee this evening and I'm writing today to express concerns with the advice that is being provided to you the City...." The letter, in its entirety will be on file as part of the minutes.

After a lengthy discussion Ald. Braithwaite moved to possibly table this or add it to the January Rules Committee agenda to take a look at the codes and flush it out a little bit more.

Ald. Fiske suggested they receive and file the report. She added, last year in conversation with Ald. Fleming, she had expressed concerns about the interpretation of the Code of Ethics at that time. She has talked to her colleagues long before any of this happened, about how she felt the Code of Ethics was confusing. Her hope is that the tentative agenda for the Rules Committee in January is looking at the code. It may make more sense to have a code for employees and a code for elected officials. She moved to accept the report of the BOE and place it on file. And then move to the January meeting to consider what they are going to do with the Code of Ethics. Ald. Braithwaite seconded.

Ald. Fiske asked if that language was acceptable. Ms. Masoncup stated under Council rule 10.4 it says the City Council may censure. Basically, if the City Council was opting to censure you may censure, but can choose to take no action. Her preference would be they take a vote on what they want to do. If it's accepted and placed on file, that's not provided for within the rules. It says a written report of any action taken, so the report would read, no action was taken, they accepted and placed on file. Ald. Wynne clarified that by receiving and placing it on file they are determining that to vote yes on receiving and putting this on file is the equivalent of voting no on censure. Ms. Masoncup replied it says a report can be issued. The report would essentially be the minutes of the Rules Committee in which you chose not to take censure. Therefore, she would suggest they take a motion and a vote on censure or not censure. Ald. Wynne said it should be made clearer that by receiving and putting on file the Council is voting no on censure. If you vote yes on that you're voting no on censure. That's very confusing to leave the motion like that. She suggested the maker of the motion modify the motion to be very clear in terms of what the outcome is.

Ald. Fiske asked what is the result of censure. Ms. Masoncup explained censure is a public admonishment. It is a statement of the public body of certain conduct. It was not acceptable to the City Council, that is censure. Ald. Braithwaite called the question. Motion passed 7-1 (Ald. Fleming voted no in favor of calling the question.)

Ald. Fiske asked Ms. Masoncup to repeat the motion. Ms. Masoncup said her understanding is that Ald. Fiske's motion was to accept and place on file the advisory opinions. Motion passed 5 to 4 (Mayor Hagerty, Ald. Suffredin and Fleming voted no).

Ms. Masoncup explained that the motion is that the Rules Committee accepted the advisory opinions and that the recommendations contained therein and accepted and placed them on file. The Rules Committee did not vote to make a censure.

Mayor Hagerty asked if there's an ethics complaint of any of them there is nothing in the rules that prohibits them from voting on a complaint that's filed against them. Ms. Masoncup said yes, but the

Council rules do not speak to this, it is silent. Mayor Hagerty said if they are going to look at the ethics rules they ought to look at that one too. Ald. Wynne said she would like added to the January agenda a discussion of the use of profanity by any member of the City Council towards another member of the City Council, toward the City staff and towards any member of the public while they are acting as an Alderman. Ald. Braithwaite added they've all experienced bad language in many different places. If they are going to focus on the public setting of their meetings they also need to focus on what happens if a resident uses that same type of language and threats toward them. He would like to explore that civility on behalf of the residents. He directed Corporation Counsel to research that to see if there's any municipalities that have that civility rule within their public setting.

PRESERVATION COMMISSION APPEALS TO THE CITY COUNCIL:

Ald. Wilson moved to accept and file the interpretation. Ald. Fiske seconded.

Ald. Wynne stated she would have preferred this came to Planning and Development (P&D) first. In the past appeals from the Preservation Commission, the P&D Committee has looked in really great details at the issues of preservation with respect to the applicant. The Preservation Commission had denied the family on Edgemere Court the type of addition they wanted because it would have destroyed the aspects of the house that were a landmark. They spent a lot of time in P&D discussing this back and forth and ultimately supported the Preservation Commission, which had made a very thoughtful suggestion to the owners on how they could add to their house and not lose their landmark status. P&D reviews what the Preservation Commission does in a lot of detail, which is what a committee is supposed to do. Mayor Hagerty stated his understanding was that in the past when there have been appeals of the Preservation Commission they have come to the full City Council.

Ms. Masoncup reported that the Community Development Director and her staff did some research. In the past, appeals for at least the last ten years, they have all gone to the full City Council. Staff went back to the mid-90s and found that was still the case. In 2006 ordinance 1-17-06 Ald. Wollin noted that one of the concerns of the Preservation Commission is that the City Council could change from presently being all 9 Aldermen to a decreasing number in the future. Alderman motioned to amend the ordinance to state that all 9 Aldermen be present on the Planning & Development Committee. Ald. Wynne actually seconded that motion to amend. It passed 9 to 0 to address the concern that all nine Aldermen be present. Ald. Fiske noted that means they should consider it as a full Council.

City Manager Bobkiewicz said the request of the appeal will be brought back to Council on December 10th. If that request is granted the actual appeal would come before the Council in January. Ald. Fiske asked if a vote was needed. City Manager Bobkiewicz said no.

DIRECTION TO BOARD OF ETHICS ON APPEALS/MOTION FOR RECONSIDERATIONS REGARDING REHEARING ISSUES:

City Manager Bobkiewicz reported the BOE asks that the Rules Committee make a determination on how one appeals a decision of the BOE. And if the matter should be addressed by the Rules Committee or referred to the City Council who can appoint a hearing officer and hold a hearing on this matter. This is the request from the BOE to the Rules Committee for some guidance regarding a respect to a motion for reconsideration. The states "The BOE issued an advisory opinion in Complaint No. 18 BOE0001 filed by Misty Witenberg against Ald. Rue Simmons, attached is a copy of the opinion. The Complainant filed a Motion for Reconsideration of the decision. In the opinion, the Board requests, in part, that the Rules Committee provide direction on the motion and if any action can be taken with respect to the Motion of Reconsideration. The Rules Committee can also opt to recommend no action given that no appeals process is provided in the Code....."

Shawn Jones, representing Ald. Robin Rue Simmons stated his client first received a BOE complaint in 2017. The BOE found no impropriety. Again, BOE complaints were filed on February 11, 2018. It was heard on March 20th, June 19th, August 21st, September 25th, October 24th and November 20th. Her mother was accosted in the hallway by people talking about this BOE complaint. Even after all of these hearings there's a request from the complainants for another rehearing. Hopefully the committee will revisit the code of ethics. Part of that has to be streamlining this process so that a client, whether it be an employee or an elected official, doesn't have to go through seven or eight hearings on a single BOE complaint. He agrees, as a community they need to do better. They need to treat elected officials better and need to be more civil as a whole. He hopes they will do the right thing and say that there is no appeal and accept and place this on file and move on. There has to be a better way to conduct BOE hearings and to deal with these matters.

Meg Welch read comments from Ms. Witenberg regarding complainant 18 BOE 0001. The advisory opinion being read tonight is not representative of Ms. Wittenberg's complaint. Both the consideration, the arguments provided, and the findings were drafted by the respondents primary legal, as listed on the city's website, and provided to the Board in memos dated March 20th and May 22nd. Ms. Wittenberg is seeking consideration by an impartial body or hearing officer and would prefer to keep this case within the city, if the City Council allows her that opportunity.

Ald. Wynne suggested when they bring back their ethics ordinance they need to have a provision in it that provides for the equivalent of a rule 11 in which prohibits constant filing of frivolous complaints. In the Code of Civil Procedure, anyone is prohibited from continually filing a complaint on penalty of sanction from a judge. In this instance she'd like to find out what other BOE have done. This is unfair and they need to have some ability to stop someone from weaponizing a BOE complaint and causing the type of repeated hearings that Ald. Rue Simmons has had to go through. A decision has been reached. They need to reach conclusion and have something in their rules, just as in Federal Rules of Civil Procedures that prohibits someone from making a slight modification and filing again. It's a waste of other people's time and the public's tax dollars. They need to make sure they have that in a new ethics ordinance. With respect to this complaint the BOE decision should be considered final. Ald. Braithwaite moved to receive and accept this report and put it on file and deny the appeal.

Ms. Masoncup said the memo indicates that the board is seeking guidance to confirm that the code doesn't provide for an appeal. So the Rules Committee needs to state that. Ald. Braithwaite repeated the motion stating to receive and file the appeal. Ald. Fiske seconded.

Ald. Revelle commented that she agrees they can't let the code of ethics be used as a tool to harass elected officials. One suggestion to maybe look at would be whether some of the complaints, when you look at the details, could be handled administratively because some of them very clearly weren't issues that fell under the jurisdiction of the BOE. Then it could have streamlined with what the BOE would have to deal with.

Ald. Fleming said not sure if it is beneficial to the city or the complainant to pay for outside Counsel in a case like this where there is the continuation of what seems to be the same case. They do need to look at their ethics code and there does need to be some kind of ability for people to appeal or re-appeal their case. In this case it does seem like it has gone through as much as it can with the information the current Ethics board has. If Ms. Witenberg has a new case to bring forward, obviously that's available for her. But she sees no benefit of having the same people with the same rules look at what seems to be the same facts and assume they're going to come up with another decision. She will not be supporting the continuation of this case. Also wants to publicly encourage staff to make sure that people are notified when their topic is going to be on an agenda.

Motion passed 9-0

UPDATE OF FINANCIAL DISCLOSURE STATEMENT AND REVIEW/AMENDMENT OF REQUIREMENT FOR NOTARIZATION OF FINANCIAL DISCLOSURE STATEMENTS:

This item moved to next meeting.

BOARD OF ETHICS ANNUAL REPORT:

This item moved to the January meeting.

DISCONTINUATION OF ADMINISTRATION & PUBLIC WORKS COMMITTEE AND SETTING OF START TIME FOR CITY COUNCIL MEETINGS:

This item moved to the January meeting.

AMEND CITY COUNCIL RULES TO SET TIME TO END COUNCIL MEETINGS:

This item moved to the January meeting.

ALDERMEN COMMITTEE CHAIR ROTATION:

Ald. Fiske moved this item to the January meeting because the schedule was not completed. Ald. Fleming asked that the committee accept the Transportation/Parking Committee schedule that was provided because that rotation is set to start in January. Ald. Wilson moved to approve the Transportation/Parking Committee rotation. Ald. Rainey seconded. Motion passed.

City Manager Bobkiewicz said staff will come back in January with a full report on the balance.

REVIEW OF PROPOSED 2019 CITY COUNCIL MEETING SCHEDULE:

Ald. Rainey moved to remove the March 25, 2019 date due to Spring break. Ald. Braithwaite seconded. Motioned passed.

Ald. Wynne moved approval of the City Council meetings for 2019. Ald. Suffredin noted they had talked about doing an intermediate City Manager's evaluation in the spring and that is not reflected on this schedule. City Manager Bobkiewicz noted he and the Mayor have been talking about when to have that meeting. They are going to try to have a goal setting meeting for the City Manager in January. Once that is done schedule the next one.

Motion passed. 2019 City Council scheduled approved.

SETTING OF A SPECIAL RULES COMMITTEE MEETING IN JANUARY TO DISCUSS CODE OF ETHICS:

City Manager Bobkiewicz stated Mayor Hagerty asked that a time be set for the City Manager's goal objective setting. Then have a Rules Committee meeting. The 22nd of January they could have Rules to discuss code of ethics and potentially the City Manager discussion both on the same evening.

Ms. Masoncup said that would be a good opportunity to hear more from the Council about exactly what they want the structure to look like. They will certainly come forth with models from other communities.

Ald. Fiske agreed and added they will look at other communities Best Practices, talk amongst themselves about changes they think need to be made, and hear from the public. This will be the beginning of the discussion. City Manager Bobkiewicz said they will go ahead and do that on the 22nd. All agreed.

OLD BUSINESS: LOBBYING ORDINANCE:

Ms. Kelly pointed out that she feels it's very important for Evanston to adopt a lobby ordinance. A lobby ordinance would promote and enhance public confidence overall in our city government. Create greater openness and trust in government decision making by ensuring minimal secrecy. Shed light on transparency on who is influencing government decisions and would advance principles of good government. She included an article that was recommended to her by the executive director of the BOE of Chicago who worked very closely with her. He's also very much in favor of seeing Evanston adopt a lobby ordinance and is prepared to work pro bono to help draft and create an appropriate ordinance. Lobbying is communicating in writing or orally speaking with the intent to influence decision of a government person or a city staff. It's a legal activity, an exercise of the First Amendment right to petition the government. But ultimately it is about communicating with government officials or government employees to influence their decisions. It's also about primarily influencing city officials on behalf of another individual or entity. Lobbying also does a lot of good in society and has had positive impact to children, elderly and others. On a calling card a lobbyist could be like the director of economic development for an institution. Frequently they are lawyer lobbyists. A lobbyist is always determined by his or her activity. A lobbyist lobbies on behalf of another person and usually for some sort of compensation but not always. So you don't always have to get paid to be a lobbyist. She also included some links from the City of Chicago. There are thousands of lobby ordinances out there. She hopes the committee will consider this given the state of affairs between the residents and the city right now and the lack of trust. People who represent themselves as homeowners, citizens or taxpayers are exempt from registering as lobbyists. The press is also exempt. So if a newspaper writes an editorial in favor of something that's not considered lobbying. People who testify at public comment are not considered lobbyists. But it is important that they identify themselves and disclose any material interest if they're acting on behalf of someone else at public comment they should disclose it. But because it's out in the open that's why they are not considered lobbyists. The point of a lobby ordinance is secrecy. Minimize secrecy so that the residents have a right to know how you all are being influenced. What meetings you're having with what lobbyists, etc, etc. So residents have a better sense as to understanding why you're making the decisions you are.

How does a lobby ordinance work? People register annually, usually through the BOE, an independent Lobby commission or Clerk's office. Registered lobbyists provide periodic disclosures quarterly or every six months (or other determined interval) about who they're lobbying for. If they've been paid to lobby and if so how much, which government officials or departments they've lobbied. On which matters, a complete list of any gifts, means, etc they paid for as part of their lobbying efforts and the recipient of those and the amount and the date as well as your political contributions.

She took a screen shot from Chicago's data portal on lobbying to give an idea and see the accessibility and how important this would be for residents. For example, there seems to be a lot of discussion regarding Airbnb and maybe changing zoning or something. If she wanted to see if someone is in town lobbying she can put in their portal Airbnb. She then is given the name of the lobbyist. I can then take that name and put it into search lobbyists and get that person's lobbyists activities for Airbnb. Also if someone fails to register as a lobbyist they could be fined. In terms of fees this doesn't cost the city anything. You would set appropriate registration fees that would cover appropriate administrative cost as well as cost to create a web data portal. She provided a couple of ordinances, one being Chicago's which is a fabulous resource. Revenue is generated through fees, fines and savings through fewer lawsuits and fewer FOIA requests and ethics hearings. Who enforces the lobby ordinance? Most municipalities administer their lobby provisions or ordinances. Some through BOE, separate and independent Lobby Commission or the Clerk's office. In talking with Steve Berlin, Executive Director, City of Chicago BOE maybe something for Evanston would be an independent commission that would work in conjunction with our legal department. She asked that the committee

direct the legal department, with the assistance from experts such as Mr. Berlin to draft a lobby ordinance or lobby provision for consideration at a future Council meeting.

Mayor Hagerty thanked Ms. Kelly for her report and stated as with any ordinance they need to understand what problem is trying to be solved. He asked for concrete examples of problems that exist here. Ms. Kelly said the point is about secrecy. There have been many decisions taken here that have been very unpopular. People wonder why City Council is making this decision when so many people have poured out saying no. People stop wondering when you have a lobby ordinance. It would help to sooth those tensions.

After a lengthy discussion Ald. Braithwaite thanked Ms. Kelly very much for the presentation and the thought that went into it. He moved to file this report. Ms. Kelly asked what does file mean and can it be brought up again. Ald. Braithwaite said it is making knowledge that you submit your report and they have received it and will make it part of the record. Ms. Kelly asked can a resident bring it up again. Ald. Fleming said yes, work with an elected official and see if it could be brought back up.

ADJOURMENT:

Meeting adjourned 8:35p.m.

Respectfully submitted,
Darlene Francellno

A video of this meeting is available at www.cityofevanston.org/government/agendas-minutes/agendas-minutes--rules-committee.