

MINUTES OF THE RULES COMMITTEE
Monday, October 7, 2019
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, Ald. Eleanor Revelle, Ald. Ann Rainey, Ald. Thomas Suffredin, Ald. Donald Wilson, and Mayor Stephen Hagerty

Absent: Ald. Robin Rue Simmons and Ald. Melissa Wynne

Presiding: Ald. Eleanor Revelle

Staff Present: Erika Storlie, Interim City Manager, Alexandra Ruggie, Assistant City Attorney, and Jennifer Lin, HR Division Manager

Guest: City Clerk Devon Reid

CALL TO ORDER/DECLARATION OF QUORUM:

Chair Revelle declared a quorum and called the meeting to order at 6:07pm.

PUBLIC COMMENT:

Mike Vasilko stated he is uncomfortable with Sub Committee of Rules Committee for Board of Ethics. Suggested holding item on City Manager search. Asked does the Rules Committee have power over the MWEBE committee who has not met in 4 months.

Trisha Connelly, Claire Kelly, Doreen Price and Lori Keenan spoken on the issue of emails received by the public should include sender when forwarding.

Betty Sue Ester spoke on everything being considerate tonight.

Ray Friedman spoken on the Jewish holiday, no meetings in August and a meeting was held every Monday in September.

APPROVAL OF MINUTES OF THE REGULAR MEETING OF JUNE 3, 2019:

Ald. Fleming moved approval of the June 3, 2019 minutes. Ald. Braithwaite seconded. Minutes approved.

ORDINANCE 20-O-19, AMENDING TITLE 1, CHAPTER 10 "CITY OF EVANSTON CODE OF ETHICS AND BOARD OF ETHICS":

Ald. Wilson moved to recommend the current working draft to the Council. Mayor Hagerty seconded.

Ald. Wilson stated they talked about home addresses on the Financial Disclosure and Affiliation Statement form. Most, if not all, put their home addresses on the form. The way the ordinance was drafted before, allowed you to exclude that. This applies to Council members and people who serve on boards and commissions. Ald. Braithwaite said they have so many residents who serve on their boards and commissions and one of the major rules states that you have to be an Evanston resident. By removing that makes it more difficult for staff to keep track. It is important to not exclude home addresses from the form. Ald. Wilson moved to amend section 1-10-3(A) to provide that the home

address would not be excluded from the Financial Disclosure and Affiliation form. Ald. Fleming seconded. Motion carried.

Jennifer Lin, HR Division Manager added that would be consistent with what is done for the County. Cook County's requirement is that the City of Evanston has to report all addresses for Elected Officials, Senior Staff and Board, Commission and Committee members.

Ald. Wilson said the conversations with regards to the recusal issue in 1-10-4(B) & 1-10-5(C) is the use of the word "reasonable" person. The conversation was the word "reasonable" is too vague. Ald. Rainey asked is it true that would mean a pecuniary interest was involved. How is that being defined? Ald. Wilson stated there is a list of things you can't do. If you are in those categories and there is an appearance of the conflict, you want to disclose that. There might not be an actual conflict, so you might be at a situation where you should tell. Ald. Wilson moved to remove the word "reasonable" from 1-10-04(B) and 1-10-5(C). Ald. Fleming seconded.

Ald. Fiske asked what is the import of the word reasonable. Ms. Ruggie replied, a reasonable standard would be someone sitting in the same situation as you, would believe that there would be a conflict. For an Alderman it would be if another Alderman sitting in the same situation would believe that there is a conflict. Then it would be reasonable. They are just trying to remove the ambiguity by taking that word out and that clarifies the ordinance a little better. Motion carried.

Ald. Wilson said 1-10-4)(E)(4) talks about when somebody might have an interest in something being approved by the Council. The question is can somebody on a board or commission have outside contact or discussions with somebody who is making an application or in the situation. For example, could Board of Ethics members talk to the complainant outside the meeting? Or could the Zoning Board of Appeals talk to somebody who wants a new air conditioner that is too close to the lot line, outside of the meeting. As a general principle for lawyers or judges the judge is not supposed to meet with the other side and talk about it. They want to include that general concept in the draft such that people on deciding boards and commissions are not having those kinds of ex parte conversation if they are the deciding body. Chair Revelle added she believes the Plan Commission rules already prohibit ex parte conversations.

Ald. Fleming stated the Mental Health Board gives out funding, each member is a liaison to whatever agency they've given funding to and usually that agency request funding for the next year. They meet with them a couple of times a year to see how things are going and such. That is part of their roll on the Mental Health Board, so they would have communications with the agency that is going to apply for funding again. At this point they are not set up to recuse themselves from the vote because it's the agency they were assigned to because they rotate throughout the term. Ald. Fiske asked if the relationship as the Liaison is already stated. Ald. Fleming said yes. Ald. Fiske went on to say so everyone is aware that there are going to be those conversations going on and the Liaison is going to be reflecting that at the meeting. Ald. Fleming said yes they report back during the year.

Ald. Wilson noted as a general proposition, what they don't want to accidentally capture is situations where Council members are expected to go out and talk to the community. They don't want to say they can't talk to anybody in the community about anything. So the language, to some extent might do that. He moved to change subsection 4 to ensure that it doesn't capture Council actions or other committee actions where the body is intended to be communicating with the public. But at the same time, if there is a deciding body conducting a hearing, which is something of a different nature, that those ex parte communications are prohibited. He moved to adjust it to include those two ideas and

concepts. Ald. Fleming seconded. Ald. Revelle, for clarity asked if someone approaches her about an idea for a piece of property they own on Central Street, is she allowed to talk to them? Ald. Wilson said yes. As it is right now that might be in question so it needs to be clarified. Ald. Revelle said the direction to staff is to clarify this section as has been discussed. Motion passed.

Ald. Wilson pointed section 1-10-4(H) on page 29. "Appearances. No covered person shall appear on behalf of or against any private person before any City board or commission. This shall not include appearances on behalf of themselves, their spouse or minor child...." This came up as a concern because, for example, if an Alderman wanted to address the Plan Commission or Planning and Development and say they worked with this group, and this is what they've come up with. That would be precluding. He wouldn't want to preclude them from coming back and reporting. In some instances it is appropriate. They are expected to advocate, or if they feel that way, to take a contrary position on something. He wouldn't want to preclude that from happening. He moved to modify subsection H to allow Council members to address boards or commissions as appropriate to do their jobs.

Ald. Rainey explained it is clear with the Zoning Board of Appeals and the Plan Commission where they are the final authority, and then an Alderman does not speak. Otherwise, it's pretty clear that if they have a spouse or themselves, if they are a member and have involvement in a non-for-profit, they identify that when on the Council. It doesn't mean they can't participate in supporting. Ald. Wilson said he would reiterate that motion to adjust subsection 1-10-4(H) to allow for Council members to, in circumstances where it's appropriate, and not prohibited to appear to advocate for or against matters as meeting appropriate. Ms. Ruggie suggested adding elected officials. Ald. Fleming stated it talks about a private person. If she came before you and said Dairy Queen wants to open up in her ward and she thinks that is great. Versus Mary Smith wants to do something and she thinks it is not a good idea. Those are two very different things. A private person seems a little different than an entity. Ald. Wilson stated private person covers a business or non-profit, it is something that is not the public government. But that is a good point. He moved to carve out for elected officials and in the course of doing their jobs to be able to advocate where it is not otherwise prohibited in the code. Ald. Fiske seconded. Motion passed

Ald. Wilson stated section 1-10-15 (1) is about hearsay. The way it is drafted now says it's admitted; only if it is of a type commonly relied upon information that a reasonably prudent person would have in the conduct of their affairs. The example used was you go to the store, so and so tells you the thing cost \$40, you go to the hearing and they say they told you it was \$40. That would be something that is like an ordinary piece of information. If the person said they overheard so and so say they ran a red light. That's not something in an ordinary range. That is potentially a risk of not being permitted pursuant to this language. The idea is if somebody has something to say, get the witnesses present so they can actually come and testify themselves, as opposed to having someone else give a bunch of they heard them say this or they told them that this happened. The fine is \$500.00 and he is okay with that. After some discussion Ald. Wilson moved to amend the fine to \$750.00. Ald. Braithwaite suggested adding a time period of when the fine is due. Ald. Wilson moved to change the fine to a maximum of \$750.00 to be paid within 30 days of the assessment. Mayor Hagerty seconded. Motion passed 7-1.

Ald. Wilson noted the last discussion is the usage of pronouns in their ordinances. He wants to make sure they are attentive as they look at other ordinances going forward that they are attending to the correct pronoun usage. He moved to recommend to Council. Ald. Revelle questioned the proposal for members of the Board of Ethics to serve only annual terms. After some discussion, Ald. Wilson moved to amend the draft to provide for 2 year terms rather than annual terms. Ald. Fleming seconded. Motion passed.

Ald. Revelle pointed out in section 1-10-14-D it says that the hearings are going to be conducted by the Board of Ethics Chair and in section 1-10-15-3 it says they are going to be conducted by the Special Counsel. Ald. Wilson stated it should be the Board of Ethics Chair. He moved to have that corrected. Ald. Braithwaite seconded. Motion passed.

Ald. Revelle said section 1-10-4-A on Impartiality. It addresses all employees and she wonders why not all covered persons. Ald. Wilson noted that employees are expected to be impartial because they are hired to do the business of the City and are not hired to advocate. The Council is elected, in many instances, to advocate for positions. That is why they limited it.

Ald. Rainey noted throughout the comments there are references that the Board of Ethics shall meet every 30 days on the 3rd Tuesday. However, from time to time they can have special meetings. She asked how do they define a special meeting, what is the nature of a special meeting and why would a special meeting be called. Ald. Wilson said his intention in that language was to allow for scheduling for the availability of the parties involved. For example, if a complainant or respondent has to work every Tuesday and can't get off work you would want them to have some flexibility to work around peoples schedules. Ald. Rainey stated when she was before the Board there was a situation where her attorney announced that he had a judicial order to have a 5 day trial on a divorce case. The Board said they were going to have a special meeting and scheduled it 9 days later. The first meeting was held at their regular monthly meeting and she and her attorney had requested that the next meeting be held at the Board's next monthly meeting. The Board refused. She would like to see something in there that provides some protection for the person being accused.

Ald. Wilson pointed out that in section 1-10-15(6) there is a provision on Continuances. It says "All hearing proceedings shall be conducted on the date set." There are a couple of situations where continuances are allowed. If you have "...good cause shown, a postponement may be granted at the discretion of the Board of Ethic's Chair." What was added is "Complainant or Respondent shall be granted one continuance as of right...". So if they set the date and that is a bad date for you, you are entitled to at least one continuance no matter what and they can't say no to that. Between now and when Council comes back with this take a close look at that and see if that addresses the concern. Particularly, if something is getting scheduled without input from a party or if there is a legitimate conflict. Ald. Fiske suggested adding to the end of the first sentence "All hearing proceedings shall be conducted on the date set upon agreement with the affected parties or in consultation with the respected parties. Ald. Wilson said one would hope that would happen. Again, if that doesn't happen that's why they wrapped in there that you get one pass in the event you can't come to terms on it.

Ald. Revelle said another issue that has come up is what is prohibited campaign activity or political activity by elected officials. Looking at section 1-10-4-(F), it doesn't restrict a covered person's own political activity, as long as it is not happening on City property, a Ward meeting, or using city emails. But they are, for example, able to promote a yes or no vote on a referendum on their own time and those kinds of things. Ald. Wilson replied generally yes. Although there might be separate provision under state laws that address referenda advocacy or not advocacy. So that should be looked at independently of this.

Ald. Wilson thanked the committee members, Ald. Fiske, Ald. Braithwaite, Ald. Suffredin, himself and Mark Sheldon, former Chair of the Board of Ethics. Greatly appreciate all the input. Also appreciates the input of quite a few community members on an ongoing basis who have been sharing input as well as time. Certainly, the Board of Ethics who spent a good bit of time providing input in discussing these issues, so grateful for that time spent. He moved to recommend this to the City Council for approval as

amended. Ald. Braithwaite seconded. Motion passed.

CONTINUED DISCUSSION ON NON-PARTISAN ELECTIONS – REFERENDUM:
CITY MANAGER SEARCH FIRM:

Ald. Fiske made a motion to draft a resolution. Ald. Wilson seconded.

Ald. Rainey said she would like to learn more about this. How do they go from a partisan election to a non-partisan election when they've never had a partisan election? Ms. Ruggie stated in order to be non-partisan you have to pass the resolution or a referendum and the City never did that. You are automatically a partisan even if you have not been operating that way. The opinion of the state is that in order to solidify that they are non-partisan they need to pass a referendum. They have had a lot of people look into the history of this and there has not been a referendum passed so they would need to do that to continue to be non-partisan. Ald. Rainey stated what she is asking is how they can have a referendum saying they are going from partisan to non-partisan when they've never had a partisan election. Clerk Reid commented that somewhere down the line folks dropped the partisan labels and instead of classifying themselves as independent they ran as non-partisan. It became the norm and a referendum was never passed. So technically they are going from a partisan form of government to a non-partisan form of government. Ald. Rainey asked what if it fails. Clerk Reid responded by stating if it fails folks can run as independent. Or can do like Skokie and form an Evanston Caucus Party, democrat, republican or whatever else.

Ald. Rainey asked isn't there something else they have to do to determine what kind of election they are running? Clerk Reid said no. They would fall just directly into the partisan schedule for filing and everything else so there would be no further efforts. Mayor Hagerty asked if they do nothing and the next election cycle occurs just like the past ones have. Can someone file a legitimate complaint to take people off the ballot because they didn't declare a party? Clerk Reid explained that the information put out by his office would be as if they were running a partisan election. You don't have to choose democrat or republican but you have to choose some party or be an independent. Ald. Rainey said then it would have to do with what and when you file your petition because you do one thing one time and one thing another time. Clerk Reid said the only thing that will change with petitions is instead of saying you are running non-partisan you just pick a party. Everything else will work the same. Ald. Revelle asked aren't there different deadlines. Clerk Reid said yes, but other than that the filing period and the objection process would work exactly the same.

Ald. Wilson moved that they proceed with having the resolution drafted.

Ald. Fiske asked if they received anything from the General Counsel's office confirming that a referendum is necessary. Ms. Ruggie said she will check with her office and if so she can distribute it. It is my understanding that they did not get an official but based on the Law Department's research this is the recommendation. Ald. Fiske pointed out when she was downtown at the State Board of Election asking how to fill out the forms she was told by the staff there that they were non-partisan. So if they are already on record and it is being communicated to them that they are non-partisan, why they have to do this. She would like more clarification. Ms. Ruggie stated she can definitely have the Law Department look into this with the State Board of Elections.

Ald. Suffredin added as part of this discussion he would like the Law Department and the Clerk's office to work together to find evidence that they in fact adopted the Council/Manager form of government in November 1952. Clerk Reid noted they do have evidence of that and will get that to the Council.

Clerk Reid noted there is another issue that needs to be addressed at the same time. There's a 1991 referenda that provided for a mayoral primary and that is actually what caused the confusion with the mayoral candidates. What they have now is a split system where mayoral candidates file for one filing period and aldermanic candidates file for another filing period. So in 1991 there was a referenda that required if there is more than one mayoral candidate that there will be a mayoral primary. So he thinks they should create a unified system where all of the candidates file at the same time. Using the mayoral schedule would make sense and they would adopt, essentially, a runoff system similar to Chicago's system where everyone files at the same time. If you get 50% plus one in the first election you move on and you hold the seat. If you get less than 50% the top two vote getters move on to the April election. They should do this for all candidates in the City. This way the filing periods are unified and it lessens confusion.

After a lengthy discussion it was decided since this item was not on the agenda to bring it back as an agenda item for a City Council night.

The motion to direct staff to draft a resolution regarding a non-partisan election passed.

CITY MANAGER SEARCH FIRM:

Ald. Revelle reported staff is recommending three firms, Novak Consulting, Slavin Management Consultants, and GovHR USA, to be selected to interview for possible selection for the City Manager executive search. Ald. Wilson moved to proceed with interviewing the three that have been recommended. Ald. Rainey seconded.

Ald. Braithwaite stated he was curious to know what the concern is with HRGov. They are local to Illinois, particularly when looking at the locations of the other firms, and the cost to fly someone in, plus boarding etc. He moved that they move forward and select HRGov as their primary search firm for the City Manager. Ald. Rainey seconded.

Ald. Fleming stated she and Ald. Simmons had some concerns with GovHR. This is for a very important job for a very large position and they should not go with someone because they are close or that they've used them before. It would be good to hear what the other firms have to say.

Ald. Rainey said she was not impressed with the other firm but remembers working with Slavin in the past. If they hold this item until the next Council meeting she will make some calls on Slavin. She feels very confident in GovHR and knows they have a tremendous portfolio of people of very high quality. If they were to hire GovHR they would be in the best hands ever and they would have absolutely nothing but their interest at heart. They have as high respect status in the industry as anybody. They want those people to be able to bring in the right quality of people to help them run this City and GovHR can do that.

Ald. Braithwaite said the last three candidates hired by City Council times the City Manager, Police Chief Cook, black male, went through the full community process of a pre-meeting that they met with GovHR. In his opinion, they chose the best police chief for their community. Also, Lawrence Hemingway, Director, Parks & Recreation to replace Joe McRae, a phenomenal employee, Sharon Johnson, compliance officer for their M/W/EBE and Mark Muenzer. Stellar candidates that came out of GovHR and they did a great job. He said he was willing to call the question.

The motion passed 6-2 to hire GovHR to be the search firm. Ald. Fleming and Suffredin voted no.

Interim City Manager Erika Storlie clarified that because this is a contract award this item will return to

City Council at the next scheduled meeting that they can get it done for. Then move it officially to award the contact via the standard process.

DISCUSSION OF COUNCIL RULE 18.6 – MOTION TO TABLE AN ITEM:

Mayor Hagerty said several items have been tabled sort of indefinitely. His thought is if they are going to table something this body ought to table it to a date certain. The three that come to mind are the library parking lot, the Clerk's censure, and the NU liquor license for Welch Ryan Arena. Right now he believes Council rules allow you to just table and it can be indefinitely placed on the phantom table.

Ald. Wilson stated he appreciates the menu of options provided. His inclination is to go with option B, which is basically adopting past practice but requiring it to be tabled to a date certain. Historically, that's how they usually would do things. He realizes there are no ex-post facto laws so they will have to figure out how to address the items that are out there still. But going forward he would suggest they go with option B and have appropriate language drafted for that. Ald. Fiske noted that items are brought off the table. Ald. Fleming asked if the date certain is to the next meeting or the person who makes the table motion can say until whatever the date they chose. Ald. Rainey shared that in the past the City Manager's office would keep track of items that were tabled. Sometimes items get very moldy and old and on the table forever. After two or three months sometimes the items would be sent to the committee from which they were tabled and asked to please deal with it, remove it from the table or eliminate them completely.

Ald. Braithwaite asked staff to define the difference between something that is tabled versus an item that is held over. A held over only takes two Aldermen and is automatically triggered at the next meeting correct? The response was yes.

Ald. Rainey requested that they be provided with a list of items that have been tabled and what they can do with them. Interim City Manager Storlie stated she would need some time to complete the list and verify the items. Mayor Hagerty suggested the City Manager's office prepare the list of everything that is on the table and at one of the upcoming City Council meeting put it as a Special Order of Business and they will discuss it.

Ald. Wilson suggested amending rule 18.6 such that if a matter is not taken from the table at the same meeting, that it is tabled to a date certain in the further. In other words, you could table something at the meeting. Say you move to table an item to later in the meeting. Then they come back in the meeting and can either address the time at that same meeting or if not it has to go to a date certain. That is just general direction to staff. Mayor Hagerty seconded. Motion passed.

Ms. Ruggie stated she has clear direction on what to bring forward but noted it will be up to Council to vote on it.

CITY POLICY ON FORWARDING EMAILS:

Ald. Wilson pointed out he reviewed the Board of Ethics information. One of the things the Board had said is there is no expectation of privacy when they are getting correspondence. So anything that comes to them is subject to FOIA. Ms. Ruggie noted from the Attorney General, based on FOIA, emails are public so there is nothing prohibiting the forwarding of the emails.

RESPONSE TO REQUEST FOR DATA ON THE DEMOGRAPHICS OF BOARD, COMMITTEE, AND COMMISSION APPLICANTS AND APPOINTEES:

Ald. Wilson noted there are some areas to be worked on as far as improving the demographics. If staff can work toward coming up with additional ways to help the Mayor enhance that applicant base that

would be great. He moved to accept and place on file with that direction. Ald. Braithwaite seconded. Motion passed.

Ald. Revelle added they have talked, in the past, about requesting a list of vacancies on boards and commission so they can help with the recruitment. Just want to reiterate that request. Clerk Reid commented that his office has demographic information for all the boards, committees and commissions. It is a question they ask folks to voluntarily provide when submitting their financial disclosure form. They have a nearly complete demographic analysis of all our boards, committees, and commission. Ald. Wilson asked that he share that.

REVIEW OF CITY CODE AND COUNCIL RULES REGARDING APPOINTMENT AND REMOVAL OF CITY MANAGER:

Ald. Wilson moved to ask staff to make the City Code consistent with the Council rules which is going with the existing rule which requires a supermajority vote. Ald. Braithwaite seconded. Motion passed 6-2. Ald. Fleming and Ald. Suffredin voted no.

UPDATE FROM ETHICS SUBCOMMITTEE:

This was discussed under Item IV. A.

COMMUNICATIONS FROM CITIZENS READ BY ALDERMEN:

Ald. Fleming stated there was discussion at the last meeting about if citizens could not participate they could send in their statement and it could be read by an Alderman. She believes the City Clerk stated the current rules say the Clerk reads the statements not the Alderman. She asked for clarity on what the rules say and what Aldermen can do. Ms. Ruggie said the rule states that if citizens send in comments and request they be read into public comment the Clerk can make mention of the email or writing that came from the citizen and give a general overview of the comment. There is an additional rule that if someone requests an accommodation if they have a disability and can't make it to the meeting, then their comments can be read in full. Clerk Reid added the only other part that speaks to this outside of Council rules is the City Code which says all communications directed to City Council are supposed to be received by the Clerk.

NEW BUSINESS:

None

ADJOURMENT:

Meeting adjourned 8:09p.m.

Respectfully submitted,
Darlene Francellno

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