

Minutes of the Work Session meeting of the Syracuse City Council held on November 15, 2011, at 6:00 p.m., in the Council Work Session Room, 1979 West 1900 South, Syracuse City, Davis County, Utah.

Present: Councilmembers: Alan Clark
D. Matthew Kimmel
Matthew Ocaña
Douglas Peterson
Larry D. Shingleton

Mayor Jamie Nagle
City Administrator Robert Rice
City Recorder Cassie Z. Brown

City Employees Present:
Finance Director Steve Marshall
City Attorney Todd Godfrey

The purpose of the Work Session was for the Governing Body to review agenda for Special Council Meeting to begin at 7:00 p.m., continue to review the proposed City Council Bylaws and Rules of Order and Procedure to Govern Public Meetings of the Legislative Body, review proposed job descriptions and wage scales for Attorney, Engineer, Bailiff, and Marketing and Communications Specialist, review draft rewrite of Title Four of the Syracuse City Code, and discuss Council Business.

Continued review of proposed City Council Bylaws and Rules of Order and Procedure

Mayor Nagle explained that the Council discussed this issue at their October 25 meeting and they decided to table to item for further review and discussion. She explained that Councilmember Shingleton had provided the Council with some documents from the Utah League of Cities and Towns (ULCT) for them to compare to the document provided by staff. She added that City Recorder Brown sent an email to Councilmember Shingleton last week asking him if he had any additional comments or recommended changes to the document and she asked Councilmember Shingleton if he had responded to Ms. Brown. Councilmember Shingleton stated that he was out of town on Thursday last week and then Friday was a holiday so he did not respond to Ms. Brown.

Mayor Nagle then explained that the entire Governing Body received an email today from a resident who was concerned about the proposed rules of order and procedure and he recommended some alterations to the document. She stated that she forwarded that email to Ms. Brown and City Attorney Godfrey so that they could review the resident's recommendations prior to tonight's meeting.

Councilmember Peterson stated he would like to review the rules document by section. Mayor Nagle began reviewing the document section by section. Councilmember Peterson stated he is not sure if the section titled "organization" needs to be included in the document. He stated that he knows that a couple of Councilmembers felt it would be good to include the information in the document if it is going to be provided to newly elected officials to give them information about their positions, but if the only intent is to provide the document to residents at Council meetings it may not need to be so detailed and inclusive. He added that much of this information is also included in Title Two of the City Code. Mayor Nagle asked Mr. Godfrey his opinion about the redundancy of the document. Mr. Godfrey stated that redundancy is fine, but inconsistency is not. He stated that he listened to the debates of the Legislature about the intent behind the section of State Code that requires that legislative bodies adopt rules of order and procedure and it is two-fold; one reason is for the body itself to have rules that they are aware of and can follow and the second reason is for the public to be able to have access to those rules so that they can understand how the body is operating and why. He stated that including the duties of the Mayor and Councilmembers in the document could be helpful to some members of the public attending the meeting. He stated that much of the public is educated and understands the roles of members of local city government, but there may be instances on given nights when those in attendance are not aware of those facts. He stated he does not find the inclusion of the information offensive or troublesome and it is up to the Council whether they want to include it. She stated that is may add some benefit for the public.

Mayor Nagle stated that Councilmember Shingleton had expressed his desire for brevity rather than length. Councilmember Shingleton stated simplicity is a lot easier for some people to understand and that is why he submitted the documents provided by the ULCT. He stated he thought that much of what is included in the document prepared by staff is fairly redundant and items two and three under the "organization" section could be stricken and readers could be referred to Title Two of the City Code. Councilmember Peterson stated that he can understand Councilmember Shingleton's viewpoint,

but he also understands how it could be valuable to provide the information in the document itself. Councilmember Kimmel stated that if the information is taken directly from Title Two of the City Code there is no problem with including it in both places. Councilmember Peterson agrees that the same wording should be included in both documents. Mr. Godfrey stated that he does not believe that the exact same wording needs to be included in both documents because there is no reason to increase the length of the rules document by including all language from Title Two. He stated that he does not see any inconsistency in the document when comparing it to Title Two.

Mayor Nagle asked Council how they wanted to proceed. Councilmember Shingleton stated that sections two and three under "organization" could be stricken. Councilmember Shingleton stated that 2b is redundant, but he does not think that the items under section three are redundant. Councilmember Kimmel disagreed and stated they are redundant. Mr. Godfrey stated that the information may be redundant, but State statute indicates that one of the things that should be present in the rules document are rules regarding ethical behavior of the Council. Mayor Nagle stated that information is included in the City's personnel manual, but oftentimes people do not believe that the rules in that manual are applicable to the Council so she feels it is appropriate to include the rules in this document as well. City Recorder Brown stated that she has explained in past discussions regarding this topic that most of the information found in this rules document can also be found in another document maintained by the City, whether it is the City Code or the personnel manual. City Manager Rice added that during the last couple of meetings the Council has asked for a short guide outlining duties and responsibilities and that is the intent of this document. He stated it is essentially a short guide for Councilmembers and it explains the duties of each member of the Governing Body. Mr. Godfrey stated that for the purpose of informing the public the sections dealing with disclosures and the ethics act are significant and should be left in the document. He stated that oftentimes a Councilmember will have a conflict of interest and people who are not familiar with the operations of the City will view that conflict as a bad thing. He stated that conflicts occur all the time and the fact that a conflict exists should not reflect on their character; how they handle the conflict is significant. He stated he thinks the statute is designed to require the City to provide information to the public regarding how those types of circumstances are dealt with. He stated he understands the concern about including duties that are already defined in Title Two of the City Code, but the information regarding ethics goes more to the State statute and he would recommend that the Council not remove it from the rules document.

Mayor Nagle summarized the discussion to this point and asked if the Council wanted to remove all of the duties from the document and only leave the information regarding ethics. Councilmember Peterson stated that was how he felt initially, but he now feels that there is value in leaving the document as it currently reads. Councilmember Ocana agreed and stated he did not understand why the Council is trying to 'reinvent the wheel'. He stated the document is fine as it currently reads and he asked what the Council is trying to accomplish. He asked if the Council is concerned with the length and trying to save paper and he commented that the document is currently only six pages long. He stated the Council should be more concerned about whether the content in the document is correct and in his opinion it is. Councilmember Peterson agreed.

Councilmember Kimmel stated that he thinks there are sections of the document that give good information to the public about how the meetings of the Council are conducted and what is expected of everyone participating in that meeting. He stated, however, that he does see a lot of redundancy in the document and he wondered why the document could not simply cite the sections of City Code or State Code that include additional pertinent information. He stated there are some things in the document that he really likes, such as some of the duties of the Mayor and how the Mayor should conduct themselves in the meeting. He added the information about what types of meetings the Council can hold as well as the information about the purpose of public hearings is very good. He stated if a citizen had that information it would help them to know what to expect. He stated that in consideration of caution he is hesitant to include roles and duties in this document when that information is already available in Title Two. He stated that he would hate for someone to compare the two and see any contradictions and feel that one document or the other has invalid information as a result. Councilmember Ocana asked if the information in the document was pulled directly from Title Two. Mr. Godfrey stated he did not see any inconsistency, but that does not mean that there may not be something different or additional in this document. He added that it is an established point of law that the City's ordinances will always rule over or control a document such as this one. He stated he can see how the public may not clearly understand that and feel that the documents could be in conflict with one another. He stated he did not directly compare the document with Title Two word for word. Ms. Brown added that the information in document regarding duties only includes the duties of the Governing Body pertaining to meetings. She stated that Title Two of the City Code includes a much longer list of duties for the Mayor and City Council, but it only makes sense to include the duties pertaining to meetings since this rules document is the document that will govern how City Council meetings are to be conducted. Councilmember Ocana reiterated that he is comfortable with the document as it is currently written and he added that he likes the addition of the information pertaining to electronic meetings of the Council.

Mayor Nagle stated that she is hearing two different opinions from the Council. She stated she would like to get a consensus from the Council during this meeting on how to proceed so that there is no need for this much discussion during

the Council business meeting. Councilmember Peterson stated he is comfortable leaving section two in the document. Councilmember Ocana agreed. Mayor Nagle asked Councilmember Kimmel if he would like something in particular stricken or if there is additional information he would like to have included. Councilmember Kimmel stated he likes the simplistic form of the document, but he feels that a possible area of concern is that the information in this document is not taken verbatim from the City Code. He stated he would like to cut and paste the information from the City Code. Mayor Nagle stated that this document expands on City Code and articulates how meetings of the Council are to be conducted. Councilmember Kimmel stated he understands that. Councilmember Ocana asked if it would suffice if Ms. Brown added a reference to Title Two of the City Code to refer those reading the document to the rest of the duties of the Mayor and Council. Councilmember Kimmel asked who came up with the definitions and explanations included in the sub-items under 2b. Ms. Brown explained that information was pulled from rules documents used by other cities. She stated she does not want to debate the issue with the Council, but she explained that this document is an extension of City Code and the other cities that have these types of documents have not included verbatim language from their city code. She stated that this document should be seen as the Council's set of rules that they have developed to govern how they will conduct meetings.

Councilmember Clark stated that the document is clearly defined as rules of order and procedure to govern public meetings of the legislative body. He stated that means that these are the rules relating to governance of the meetings, but he asked if it would make Councilmember Kimmel more comfortable if the section dealing with duties of the Mayor were changed to be called "duties of the Mayor pertaining to meetings" so that there is no confusion. Ms. Brown stated that she could easily make that change.

Councilmember Shingleton stated that during the last meeting there was a discussion about removing the word "bylaws" from the title of the document. Ms. Brown stated that there was a discussion about that, but no decision was made. Mayor Nagle stated that removing the word "bylaws" does not change the intent of the document and she stated that change should be made.

Mayor Nagle stated that all Councilmembers know that she works in the human resources profession. She stated that every company has a policy manual that their employees follow, but they also usually have a code of conduct or code of ethics document that provides more detail about what is expected of each individual working for the company and that is how she views this document. She stated that the City has its City Code, but this document explains how Council meetings should be conducted in more detail.

Councilmember Peterson stated that if the concern is that this document may conflict with other documents in the City he would remove section A under the heading "Organization" from the document because it does not need to be included to explain to the public how Council meetings will be conducted. Councilmember Clark suggested that the section titled "Organization" could be changed to "Duties" and sub-item A could be removed. Mayor Nagle added that the section includes information about the position of Mayor Pro-Tem. Mr. Godfrey stated the information about Mayor Pro-Tem is valuable to have because the public does not typically understand what happens during a meeting when the Mayor is absent. Councilmember Peterson stated the information about selecting a Mayor Pro-Tem is also provided in section C of the document.

Mayor Nagle stated that she would like to understand what specific concerns members of the Council have about any section of the document so that those concerns can be addressed and the discussion can move forward. Councilmember Shingleton stated that the section titled "Decorum" reads:

"Governing Body members should avoid engaging in private discourse or committing any other act which may tend to distract the attention of the Council or the audience from business before the Council. . ."

He stated he would like to include language that prohibits any member of the Governing Body from sending or receiving text messages on their cell phones. Mayor Nagle stated that she just received a text message from Mr. Rice explaining that the Council has exceeded the time limit allotted for this item. She stated that type of communication prevents staff from needing to approach her and whisper to her about those types of things. Councilmember Shingleton stated that announcement could have been made over the microphone so that the public could hear. He stated that he has a problem with text messaging; it is rude because the Council is supposed to be listening to the public or fellow Councilmembers. He added that no one knows what the text message is about and for the Council to be transparent its members should not participate in text messaging. Mayor Nagle stated that the public would not know what she was whispering in someone's ear if that were happening. Councilmember Kimmel stated Councilmember Shingleton asked for those types of discussions to take place over the microphone so that people can hear them. He added that he agrees that the Council should not be text messaging during a meeting. He stated that if someone is whispering with someone else the public can at least see who they are talking to, but they can not see who a Councilmember is receiving a text message from or sending one to.

Councilmember Peterson asked if a decision had been made about section two of the document. Councilmember Clark asked if there is value in adding a clarification that the duties included in the document are only the duties of the

Governing Body members pertaining to the conduction of meetings. He stated that would help to eliminate any confusion. He stated that it may be redundant because the title of the document clarifies that the set of rules only pertains to the conduction of meetings. Councilmember Ocana stated that he is comfortable with the way the document is written and he would feel comfortable moving forward and continuing to discuss the point raised by Councilmember Shingleton regarding text messaging.

Councilmember Peterson stated that he has one other question about a section of the document that precedes the section titled "Decorum". He stated that during the fore years that he has been a Councilmember there has always been some confusion about how the Council should or should not obtain information. He stated there have been several conversations about whether the Council should direct their questions to the City Manager or if they are allowed to contact individual Department Heads or employees. He asked if that should be clarified in this document. Councilmember Shingleton stated that does not pertain to the conducting of meetings. Councilmember Ocana agreed. Mayor Nagle added that has already been clarified in Title Two of the City Code. She stated that City Councilmembers are directed to contact the City Manager to get any information they are seeking.

Councilmember Kimmel asked if the definitions included in section three of the document came from rules documents used by other cities, to which Ms. Brown answered yes. Councilmember Peterson stated that most, if not all, of the lettered sub-items should apply to the Mayor as well and he asked if all references to Council should be changed to Governing Body or vice versa. Ms. Brown stated she can make that change. Mr. Godfrey stated that the Municipal Code Act defines different forms of government and under the City's form of government the Mayor is considered a member of the City Council and the term of Governing Body is therefore somewhat antiquated. He stated that he felt it would be appropriate to change references of Governing Body to Council.

Councilmember Shingleton stated that Councilmember Clark provided him a copy of the document that was discussed during the last work session meeting and it includes language that prohibits text messaging. Councilmember Clark stated that the language was initially included in the document, but it has since been removed. He read the language for the benefit of the audience and Council as follows:

"Councilmembers should avoid engaging in private discourse or committing any other act, such as text messaging, which may tend to distract the attention of the Council or the audience from business before the Council, or which might interfere with any person's right to be heard after recognition by the Mayor."

He then stated that he understands the argument from both sides of this issue. He stated that there have been times that he has had to send a text message to his wife to let her know that the meeting was running late. He asked if there could be some language added to allow those types of instances. Councilmember Ocana stated that he feels that the language that Councilmember Clark read does not completely prohibit text messaging, but it encourages Councilmembers to try to avoid doing it. Councilmember Kimmel asked the Council to think about the issue from the perspective of a resident in the audience. He stated they may see the Council looking at their phone or typing into it. He stated it does not look right and he would be annoyed by it as a citizen especially if it were taking place during a discussion that personally impacted him especially because the resident does not get to see who is sending the message to the Councilmember. He stated that the Council works hard to be open and transparent and avoiding doing it is the only right thing to do. Councilmember Clark stated he agrees, but he does not know if it is necessary to call out text messaging because it should fall under the generality of the term "any other act". He stated if one thing that the Council should not be doing it listed, it would be appropriate to list everything that the Council should not be doing. Councilmember Shingleton stated text messaging is simply being used as an example. Councilmember Peterson stated he agrees, but he regularly looks down at his iPad during meetings and members of the audience may not understand that he is actually following the Council packet. Councilmember Ocana stated that Mr. Godfrey talked about these types of things during a training that he provided to the Council earlier this year. He asked Mr. Godfrey what types of communications can be obtained by the public via a Government Records and Management Act (GRAMA) request. Mr. Godfrey stated the definition of a public record could be extended to include text messages, whether the information included in the text pertains to a public item. He stated that if that is going on during controversial land use items and the City were to end up in litigation he felt the phones and cell phone bills of each member of the Council would not be exempt from a discovery request or a GRAMA request. Mayor Nagle asked the Council if they want the language of the paragraph to read exactly as Councilmember Clark presented, to which all Councilmember answered yes. Councilmember Kimmel asked why the language was omitted. Ms. Brown stated that the document that she initially presented did not have the language about text messaging included, but the version later provided by Mr. Godfrey included the language. Mr. Godfrey stated he does not recall adding the language. Councilmember Kimmel stated that from his personal experience. . .when he first started working as a Councilmember he would sometimes receive or send text messages during Council meetings and he later thought that it is not right for him to be doing it because the public may believe that he is having secret communications with people. He stated he has stopped doing it and he turns his phone off when he enters the

building so he is not tempted to look at his phone. He stated that from a transparency and good faith perspective he feels it is appropriate to refrain from sending or receiving texts during meetings.

Mayor Nagle then continued to review the document. Councilmember Clark asked if it would be appropriate to add language to section 4H dealing with public hearings to dictate that once a public hearing is closed it will not be reopened. Councilmember Kimmel stated the Council had a discussion about that during the last meeting. Mayor Nagle stated there is a Robert's Rules of Order expert present tonight and he may be able to provide his input about that topic. She added that during the last work session meeting she found a copy of Robert's Rules of Order and her understanding is that the Council can leave a public hearing open only for the purpose of obtaining documentation. Mr. Godfrey stated that is what he recalls and he added that most cities in this area do not strictly follow Robert's Rules of Order and they only use it as a guide. He stated he felt that the addition of language that specified that once a public hearing is closed no additional public comment will be accepted. He stated that will provide a clear guideline to the public. He stated he would hate for the Council to restrict themselves by saying that once a public hearing is closed it can not be reopened because there may be circumstances where it make sense to reopen a public hearing. David Gerber then approached the Council and stated that he lives in Kaysville and he is a member of the National Association of Parliamentarians and he is here this evening to observe. He stated he is not prepared to speak to the Council about their rules document at this time. Mayor Nagle thanked him for his input. Mayor Nagle asked Mr. Godfrey if the section should be left as it currently reads or if clarifying language should be added. Mr. Godfrey stated that he feels that not allowing for the reopening of a public hearing is too restrictive and potentially destructive. He stated that to his knowledge there are some other cities that include a provision for a public hearing to be reopened after a motion, a second, and a vote of the Council and that should be the exception and not the rule. He stated that the Council operates on a schedule and rely on information that comes to them on a timeline. He stated that process and schedule do not always work correctly and he feels it is smart to provide some flexibility to allow the Council to make appropriate decisions with all information available. Councilmember Shingleton asked if language should be added that would allow for the reopening of a public hearing upon a two-thirds vote of the Council. Mr. Godfrey stated that he would be comfortable with that, but he advised that a two-thirds vote is not three Councilmembers out of five voting affirmative, it is four out of five. Councilmember Kimmel asked if the reason for many municipalities to only use Robert's Rules of Order as a guide is because it is so restrictive and does not allow for much flexibility. Mr. Godfrey answered yes and added that he it does not make the best sense for smaller City Council's to be forced to become familiar enough with the full application of Robert's Rules of Order and follow it to the letter. He stated that he thinks that using it as a guide is appropriate. Councilmember Shingleton stated that he would like to see the addition of language that allows for a public hearing to be reopened because sometimes people may have something important to say or present and to disallow them from speaking or presenting that information is not good. Mayor Nagle stated in the previous review of Robert's Rules of Order she found that the Council could hold the public hearing open to allow the Council to receive additional documentation. Councilmember Clark stated that in order to do that the Council would need to know in advance that such documentation existed. Councilmember Shingleton stated sometimes it is not possible for the Council to have that knowledge in advance. He stated the Council needs to be careful and transparent and listen to the citizens if they are seeking to help the Council in their decision. Mr. Godfrey stated it is important to distinguish between reopening a public hearing and what happens when a public hearing has already been closed. He stated that there are instances where someone may stand and want to offer the same information that the Council has already received from others and they decided to close the public hearing, but there needs to be decision made about why and when a public hearing would be reopened. He stated it is important to find a healthy balance and allow the Council to reopen a public hearing when good cause is presented. Mayor Nagle asked if it is appropriate to add the language suggested by Councilmember Shingleton to require a two-thirds vote of the Council. Mr. Godfrey stated he does feel that language is appropriate and he would also add a statement to the affect that exceptional circumstances and just cause has been shown to allow the reopening of a public hearing.

Mayor Nagle continued reviewing the document and she asked the Council if they had additional changes or concerns. Councilmember Shingleton stated that section 4I states that the Mayor may place a time limit on a person or group addressing the Council and he feels that the time limit should be determined by the Council rather than the Mayor. Mayor Nagle asked Mr. Godfrey to weigh in on that issue. Mr. Godfrey stated that in his years as working as a City Attorney he has seen three City Councils try to control that and he has not seen that be effective. He stated that the issue devolves to debate on a regular basis. He stated he sees the theory behind Councilmember Shingleton's request, but based on his personal experience he feels the Mayor should determine the time limit that should be allowed when citizens or groups are addressing the Council. Councilmember Shingleton stated that he feels the decision about how long people will be allowed to speak should be made by the Council as a whole rather than just one person. He stated the decision, if only made by the Mayor, could seem arbitrary. Mayor Nagle stated that State Code Section 76-9-103 requires the Mayor to control the meeting and provides a means to do that. Councilmember Shingleton stated it may be a stretch to interpret that statute to mean that the

Mayor should be allowed to dictate the number of minutes allotted to each person wishing to address the Council. Councilmember Clark asked if the Council has the authority or ability to say how long someone is allowed to talk. He stated that could be interpreted as taking away the Mayor's ability to control the meeting. Councilmember Shingleton stated there is a conflict in the rules document because it calls out that groups will be given five minutes to speak, but it does not provide the amount of time that an individual will be allowed to speak. Councilmember Kimmel suggested adding language specifying that individuals shall have a minimum of three minutes to speak so that the Mayor – any Mayor – can not say that individuals only have 30 seconds. He stated that Mr. Godfrey has a good point and that it would be detrimental for the Council to argue over how long individuals will be given to speak based on whether they like or do not like the person requesting time to speak. Mr. Godfrey asked Councilmember Shingleton if he is talking about a unique circumstance where there may be a controversial issue on an agenda and the Council is aware that there are a number of people that want to speak to that issue so the time they are allotted to speak may be reduced from the normal time limit given during public comments. Councilmember Shingleton answered yes. Mr. Godfrey stated he has seen that handled a couple of different ways; he has seen motions to suspend rules for the evening whereby a Councilmember would motion that the rules be suspended to allow as many as people as possible to address the Council by shortening the amount of time that will be allotted to each person. He stated that there is nothing in the rules that the Council is considering that would prohibit the Council from doing that. Mayor Nagle stated that she likes Councilmember Kimmel's suggestion of providing a minimum of three minutes per person during public comments. She stated that the rules could be suspended based on extraordinary circumstances and the time limit given to each person could be reduced.

Councilmember Shingleton stated that he likes the language suggested by Mr. Godfrey for amending a motion. Ms. Brown stated that she would include the language provided by Mr. Godfrey in the final document.

Councilmember Peterson stated that section 6C states that someone who declares a conflict will be required to leave the room, but he would like for that to be changed so that someone is simply required to sit in the audience and not participate in the discussion. Councilmember Clark stated he has attended trainings with the Utah League of Cities and Towns (ULCT) where elected officials have been told that if they have a conflict they should leave the room, but he is comfortable with the change that Councilmember Peterson recommended. Mr. Godfrey and the remaining Councilmembers concurred.

The meeting adjourned at 7:03 p.m.

Jamie Nagle
Mayor

Cassie Z. Brown, CMC
City Recorder

Date approved: November 15, 2011