

**CITY OF NEWARK
DELAWARE
CITY COUNCIL ORGANIZATIONAL MINUTES**

April 21, 2016

Those present at 6:00 pm:

Mayor Sierer presiding
Council Members Chapman, Hadden, Markham, Morehead, Ruckle and Wallace
City Secretary Renee Bensley
City Solicitor Bruce Herron

1. CERTIFICATION BY ELECTION BOARD OF COUNCIL MEMBERS

The following letter, dated April 14, 2016 was submitted by the Election Board:

“Honorable Mayor and Members of City Council:

We, the Election Board of the City of Newark, hereby certify that on April 12, 2016, the following was elected Council Member in Election Districts Three and Five for two-year terms. There being only one candidate for the offices of Mayor and Council Member in Election District Six, we declare the following candidates elected for three-year and two-year terms respectively; said candidates are entitled to assume office without formal election pursuant to Section 10-19 of the Code of the City of Newark and 15 Del. C. Section 7555(j):

Polly Sierer	Mayor
Jennifer Wallace	Council Member, District Three
Luke Chapman	Council Member, District Five
A. Stuart Markham, Jr.	Council Member, District Six

Respectfully submitted,

Newark Election Board”

MOTION BY MS. HADDEN, SECONDED BY MR RUCKLE: THAT THE CERTIFICATION BY THE ELECTION BOARD BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

2. OATH OF OFFICE GIVEN TO COUNCIL MEMBERS
(Charter – Section 1102)

City Secretary Renee Bensley administered the Oath of Office to Mayor Sierer and Council Members Wallace, Chapman and Markham.

3. ELECTION OF DEPUTY MAYOR

Mr. Markham was unanimously elected Deputy Mayor upon nomination by Ms. Sierer.

4. ELECTION OF OFFICERS – CITY TREASURER

Ms. Bensley was unanimously appointed treasurer for a one-year term upon nomination by Mr. Markham.

5. RULES OF PROCEDURE

Ms. Sierer opened the discussion on the Rules of Procedure, noting that there would be approximately 40 minutes on the Rules of Procedure and the remainder of the time for the Rules of Decorum. She noted that each bullet item in the memo provided would be discussed and voted on separately.

Mr. Markham had three items he wanted to address. The first item was addressing the start time in council meetings that reflect executive sessions that start before 7:00 p.m. He noted that was done fairly often, so he thought it should be advertised that this was a possibility. He asked Ms. Bensley for a recommendation for the amendment. Ms. Bensley suggested in the, "Now therefore be it resolved" paragraph, the second paragraph after the start of the resolution, inserting "the public session of the meeting shall commence at 7:00 p.m. recognizing that the meeting may start earlier in executive session."

Mr. Chapman noted that in the past and on occasion currently, Council had executive sessions after the regular meeting. He expressed concern about having something that could be misleading in the other direction, or put Council in a position where it could not easily have an executive session afterwards. It could create more confusion.

Ms. Hadden agreed with Mr. Chapman, thought the flexibility was there on both ends of the regularly scheduled council meetings and was reluctant to make it any more specific.

Mr. Chapman thought any comments about executive sessions should be quite general. Executive sessions could start prior to the meeting or after the meeting and times should not be specific since the start times often changed.

Mr. Markham suggested something along the lines of executive sessions may or may not take place before and after the meeting, thus starting the meeting early or extending the meeting past the published council agenda.

Mr. Morehead expressed concern with the comment about possibly starting the meeting early. He thought the public had a right to know what time they should be there. He agreed with Ms. Hadden that, unless otherwise specified, covered most situations. He noted that she mentioned "regularly scheduled" and he would consider adding those words, which would allow the flexibility to do things that were not necessarily normal.

Ms. Sierer asked Ms. Bensley if she had further comments. Ms. Bensley noted that in designating the types of meetings, regularly scheduled was fine but advised staying away from just regular meeting, because under FOIA any meeting seven days in advance was a regular meeting, not just the meetings on the second and fourth Monday.

Ms. Wallace stated she would be in favor of adding language about executive sessions. She had heard from constituents that they were confused. Being open and transparent, she would like to see Council mention that there could be executive sessions so, she was in favor. Ms. Sierer asked if Ms. Wallace had any recommendations on the wording, to which Ms. Wallace responded that she liked Mr. Markham's suggestion.

Ms. Sierer asked if Mr. Herron had any legal concerns, which he stated he did not.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: TO INSERT THE PHRASE "EXECUTIVE SESSIONS MAY TAKE PLACE BEFORE REGULARLY SCHEDULED COUNCIL MEETINGS OR EXTEND MEETINGS PAST THE REGULAR PUBLISHED AGENDA" AFTER THE WORD "(TUESDAY)".

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.

Nay – 0.

Mr. Markham stated that he thought Council should clarify that the agenda could be changed should an applicant request an item be removed from the agenda. He noted this happened recently with the country club in terms of discussing the survey, and thought for most people it was probably a surprise when they saw an item on the agenda and then it got pulled.

Ms. Sierer asked Ms. Bensley where she recommended this be added, to which Ms. Bensley stated that she thought it would be appropriate to add it on page two, after the line "Agenda items 5-11 as included in the order of business above shall be open for public comment", and insert it as a new paragraph before letter "A".

Mr. Chapman indicated that he wanted to ensure Council was capturing items such as the discussion item submitted by the Newark Country Club, as they were not an applicant. Ms. Sierer asked Ms. Bensley for suggestions, to which Ms. Bensley suggested "Any agenda item can be requested to be removed by the person or entity that submitted it, pursuant to a vote of council." Discussion ensued regarding whether the suggestion was too broad, if there would be debate over who submitted items and whether the request should be in writing.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: ADD A PARAGRAPH AFTER ITEM 12 ON THE AGENDA THAT STATES "ITEMS MAY BE REMOVED FROM THE AGENDA PURSUANT TO A VOTE BY COUNCIL, IF REQUESTED IN WRITING BY THE PERSON OR ENTITY WHO SUBMITTED THE AGENDA ITEM."

Ms. Wallace questioned whether requiring the request to be in writing would complicate things. Ms. Bensley stated that when requests were received, they were usually by email and that if they called, she could ask them to send an email for confirmation.

Question on the motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.
Nay – 0.

Mr. Markham stated that his final suggestion was a Code change to determine the ability to cancel a meeting if the mayor and deputy mayor were unavailable as right now, the next member as determined by seniority would only have the ability to run the Council meeting. Mr. Herron agreed that it would be a Code change or Code clarification. Mr. Markham stated that was an item for the future and he would not submit it as a Rules of Procedure change.

Mr. Ruckle noted that in the last couple of years there were a lot of council people making minor grammatical corrections, and he felt it was taking up a large amount of time and thought it made the city look bad. He wanted Council members to make an agreement that if they found those, since they all read items well in advance, that they submit those to the correct person and have them make the changes in advance, so Council did not waste time at the meeting.

Mr. Markham asked for clarification. Mr. Ruckle reiterated that he was looking at punctuation, capitalization, etc. Ms. Sierer thought that the concern from Mr. Ruckle was that, if Council members had noticeable easy spelling errors in documents received, that they should be courteous and reach out to city staff, prior to the meeting to make them aware of those things, rather than do it at the table taking up time. She thought members could certainly state that they had noticed errors and had requested some of those changes of staff. Mr. Ruckle concurred.

Ms. Wallace noted she had often heard council members speak about the length of the meetings and trying to make the meetings shorter so she came up with the suggestion that Council limit the time for the University of Delaware portions on the agenda. Currently there was no time limit, and most of the time the University did not take a long time but, there had been

times where they had taken up quite a bit of time. She suggested limiting both the administration and the student comments to five minutes each, with the understanding that any council member could make the suggestion to extend the time if Council wanted to do that.

Ms. Hadden indicated she did not have a problem with that as long as it was stated next to the agenda items in parentheses that there would be five minutes for each and that any council member could request that the time limit be extended.

Ms. Sierer noted that the five minutes would be for their initial speech and any questions from Council would not count toward those five minutes. Ms. Wallace agreed.

Mr. Ruckle noted that Council did not really limit any other government body like any of the state reps. He felt it was putting limits on one, but not the other and did not know if Council wanted to do that or not. Mr. Chapman and Ms. Sierer indicated that a time limit on elected officials could also be considered. Mr. Markham noted that was not the item being discussed.

Mr. Markham stated that he would like to make it five minutes per undergrad and five minutes per graduate student because at times there were two students speaking for the body.

Ms. Hadden added that when the university spoke depending on what was going on of course they may need more time, but they were not elected officials. They were here providing information to the public so she thought that was a big difference and five minutes was a lot of time to fill up.

Mr. Morehead noted that Mr. Markham's concern could be addressed by adding "(s)" after "student body representative" in (C)(2) as in there might be plural representatives. It would be a simple change that would acknowledge that there might be multiples.

MOTION BY MS. WALLACE, SECONDED BY MR. MARKHAM: ADD "5 MINUTES PER SPEAKER" UNDER 3-C-1 "UNIVERSITY ADMINISTRATION" AND ADD "(S) 5 MINUTES PER SPEAKER" UNDER 3-C-2 "UNIVERSITY STUDENT BODY REPRESENTATIVE".

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.
Nay – 0.

Ms. Wallace noted that in the same thought of trying to keep meetings shorter, she thought it made sense to limit presentations to 10 minutes with the expectation that any council member could ask for more time to be given. She thought it was a good idea to have a time limit to give people an idea of the time they should use.

Ms. Sierer was okay with limiting the presentations, but thought it needed to be longer than 10 minutes.

Ms. Hadden stated that in her experience, she would change 10 minutes to 20 minutes. After 20 minutes she felt presenters tended to lose people's attention. 10 minutes was a short period of time for larger budget presentations, so she was more comfortable if it was 20 minutes.

Mr. Chapman liked the idea. His first reaction was it may not be enough time, but felt that could be stated up front by presenters who could request more time. Council could then decide whether to extend the time. He liked setting a guideline for staff and others to aim for.

Mr. Morehead suggested splitting the difference at 15 minutes, which he thought was a very workable amount of time with plenty of time for people to say what they need to say and provided a guideline.

MOTION BY MS. WALLACE, SECONDED BY MR. MOREHEAD: TO ADD A TIME LIMIT TO NUMBER 2, PUBLIC PRESENTATIONS, OF 15 MINUTES PER PRESENTATION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.

Nay – 0.

Mr. Morehead stated that his suggestion of allowing public comment on public presentations was in the interest of allowing the public an opportunity to ask questions of the presenters directly and to be involved in their government, so he thought item 2 should be included in the public comment. Ms. Sierer asked if he was suggesting a time limit on the public comment. Mr. Morehead stated he would limit them to three minutes at the maximum if they were just asking questions. Ms. Sierer agreed with that.

Mr. Chapman expressed concern that public presentations would turn into seminar sessions before Council was able to get to City business and noted there had been presentations over the last year where follow up questions had occurred that were very personal interest questions not necessarily related to anything that was imminent to the city or imminent to what the council would be deciding on.

Mr. Morehead noted that the chair always has the discretion to comment if statements are off topic and he thought Council had seen that successfully done. He wanted to note somehow that the opportunity for comment was available, even if it was at the request of Council members or if someone indicated they would like to have public comment. It did not necessarily have to be a given right every single time, but he would like it to be available.

Ms. Hadden liked Mr. Morehead's train of thought with that and recalled several occasions where the public requested to speak after a presentation and had consistently been given the opportunity to speak. She also agreed that it did not necessarily have to be in writing because the philosophy was already in place and it was already happening.

Mr. Morehead asked why Council did not just open it up to a vote. If one member wanted to open it to the public, they could make the motion and Council could open it to the public.

Ms. Sierer noted that she generally asked for consensus. If someone requested it, she asked for consensus and generally Council worked together and allowed for the public comment. She did not see that it had been an issue and, if it had, she wanted to be made aware of that. She stated she would continue to do that as chair and thought Mr. Markham would do the same.

Ms. Wallace stated she would tend to agree with Mr. Morehead. She liked it being on the agenda so people knew they had the opportunity. When it was not there, they did not know and she thought the chair had a lot of latitude in making sure that the meeting stayed on track and on City business. If commenters were getting in the weeds, she thought that Council could bring it back and make a suggestion to follow up with the presenter afterwards for more information.

Discussion ensued regarding specific phrasing of the amendment to the Rules of Procedure. Mr. Chapman noted that he preferred making the section open to public comment with a time limit of one minute per speaker. Mses. Sierer and Hadden and Mr. Morehead expressed agreement with Mr. Chapman.

Mr. Markham commented that it was his understanding that the chair could keep people on topic but if Council, but that once public comment was opened, everyone who wished to speak gets to speak, and Council would not be able to stop that early. Discussion ensued regarding the parameters for signing up for public comment for the Public Presentations agenda item. Mr. Chapman expressed concern regarding people signing up for public comment on presentations without know what the presentation was about as presentations were often placed on the dais at the time of the Council meeting. Ms. Sierer pointed out that the general topic of the presentation was on the agenda and often the presentations were posted in advance on the website, so if a member of the public had any interest in that particular presentation at all they were going to have some idea of what it was about. She asked how this agenda item was different

from any other agenda item. Mr. Chapman noted that every other agenda item has been posted hopefully for at least a week and available for public consumption. Mr. Morehead indicated that had been a long term request. Mr. Chapman noted it had been improving.

Ms. Hadden noted that the question was if Council was going to open this up to public comment, how long and should Council include "at the chair's discretion". Mr. Chapman stated that Mr. Morehead was just reiterating that the chair always had discretion to make sure the speaker was on topic as a reminder for everybody.

Mr. Ruckle indicated that he liked the suggestion that all of Council, not just the Chair, would make the decision whether to open a presentation to public comment. Additional discussion ensued regarding whether public comment should be open for presentations or if it should be opened by request to the chair.

MOTION BY MR. MOREHEAD, SECONDED BY MS. WALLACE: TO ADD "; PUBLIC COMMENT, 1 MINUTE PER SPEAKER" AFTER "15 MINUTES PER PRESENTATION".

MOTION PASSED. VOTE: 6 TO 1.

Aye – Chapman, Hadden, Markham, Morehead, Sierer, Wallace.
Nay – Ruckle.

Mr. Morehead noted that he had a request from a resident to consider removing approval of the Council minutes from the Consent Agenda. The thinking was that since approved minutes were difficult to correct, by putting them in their own agenda item the approval of the minutes would add about 20 seconds to the meeting. It was thought that the chair would say, "Are there any questions to the minutes", council people would speak and barring none Council would vote.

Mr. Markham asked if the item would be open to public comment. He wanted to ensure the item was restricted to corrections and not re-discussion of the meeting in the minutes.

Ms. Sierer stated she was not in favor of this. She thought the minutes were part of the public body. They were not part of the public. She thought that if there were corrections to the minutes that member of the public should contact their council member and/or her regarding corrections and then Council would discuss it with the City Secretary or whoever else had done the minutes. She firmly believed that.

Mr. Morehead could see the benefit of this item, but was not strongly in favor, so he elected not to make a motion on the item.

Mr. Morehead indicated that he would like Council to consider adding the words "regularly scheduled" in the second paragraph so it read: "That the regularly scheduled meetings of council be held..." He noted that both he and Ms. Hadden were in favor of that so he would like it to be considered. Ms. Hadden felt it was really important that Council made that distinction so she was strongly in favor of that.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: TO ADD THE WORDS "REGULARLY SCHEDULED" TO THE SENTENCE "NOW, THEREFORE, BE IT RESOLVED THAT THE REGULARLY SCHEDULED MEETINGS OF COUNCIL..."

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.
Nay – 0.

Mr. Morehead noted that in the same paragraph, talking about "additional meetings or workshops to be held on alternate Mondays," Council limited themselves there to only Mondays. He was not sure Council wanted to do that. He remembered sometimes Council had met on other

days and maybe "Mondays if possible" or "preferably" or some sort of a qualifier there to allow Council the opportunity to meet on other days. Ms. Hadden pointed out that she thought the structure of the sentence was bad and that it should probably say, "With additional meetings and workshops to be held on alternate Mondays, if possible, with start and end times to be set at the discretion of the mayor." Mr. Morehead indicated he would be happy with that.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: TO MOVE "IF POSSIBLE" AFTER "ALTERNATE MONDAYS".

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.
Nay – 0.

Mr. Chapman wanted to address the sentence regarding when meetings could be moved to Tuesdays. Ms. Sierer noted that the swearing in of Council members occurs seven days after the Election Board has certified the results and asked Ms. Bensley for suggestions on how to reword the sentence. Ms. Bensley stated that the reference that was in the paragraph was specific to if a holiday, for example Memorial Day, fell on a council Monday. The second portion of the sentence that included "falling after an election but before the swearing in," was not applicable anymore so Council could strike the portion of that sentence, "or if a regularly scheduled meeting night falls after an election, but before the mayor and/or council member".

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: TO STRIKE "OR IF A REGULARLY SCHEDULED MEETING NIGHT FALLS AFTER AN ELECTION, BUT BEFORE THE MAYOR AND/OR COUNCIL MEMBER".

Mr. Chapman asked for clarification on the motion, which was provided.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.
Nay – 0.

Mr. Morehead asked for clarification regarding what was open for public comment at this point. Ms. Sierer noted that everything except silent meditation and Pledge of Allegiance, approval of consent agenda and items not finished at previous meetings.

Mr. Morehead noted that he would like to discuss "items not finished at previous meetings" being opened for public comment the second time. He was happy to time limit it, but felt if Council had revisited and there was new information, the public deserved the right to voice considerations before Council voted on the new information. Mr. Markham thought that should be left to the chair by request of Council. Ms. Sierer was concerned about opening it up as she did not want to have to go through similar discussions if somebody missed the first meeting. Mr. Chapman stated that was exactly what happened often times when somebody from the public asked Council to open that up for public comment. It was by someone who was not here the first time it was discussed to ask similar questions if not the exact same questions. He recognized there were unique situations where new information was presented, resulting in new comments.

Ms. Bensley noted that if the item was something that was required to have a public hearing and decision on the item was postponed, the public hearing was held at the first meeting. She asked Mr. Herron if by opening the agenda item up for public comment permanently, did Council need to re-advertise the item as a second public hearing. Mr. Herron stated he did not know the answer and would have to look into that. Ms. Bensley stated that any amendment to Chapters 27 or 32 would require 15 days' notice, which would mean Council would need to delay discussion at least two meetings to be able to re-advertise. Similarly, with the budget Council was required to advertise a public hearing no less than two weeks prior to such hearing. If that were to be delayed, it would be at least three weeks before Council could meet on that again.

Ms. Hadden added that she felt the chair had been very generous in allowing public comment when requested by the public. Because of that, she was okay with this item as it was.

Ms. Sierer thought the proposal could have unintended consequences. Mr. Morehead said that was fair enough.

Mr. Morehead noted that the request had been made, where proposal resolutions or ordinances had been extensively revised on the floor by Council, to possibly have public comment to assist Council in wording. He thought this may be another one like Council just talked about where the chair had the opportunity, but if Council would all be cognizant of the fact that sometimes members struggle with wording given the time of night. He noted other people in the room had good ideas that they would like to be able to offer to help.

Ms. Sierer agreed with Mr. Morehead and recognized Ms. Wallace had done some of that for Council when she was on the other side. She asked that if Council members knew somebody could be helpful and she was not seeing a hand go up to bring it to her attention. Mr. Morehead noted that this type of input would have been helpful during the noise ordinance discussion.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO APPROVE THE RULES OF PROCEDURE AS AMENDED FOR THE 2016-2017 COUNCIL YEAR

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.
Nay – 0.

6. RULES OF DECORUM

Ms. Sierer requested that Council add the Rules of Decorum to the published agenda. She noted there was a separate brochure with a paragraph in it that most people did not pick up. She thought it would be more appropriate to have it on the Council agenda towards the end. Mr. Morehead and Ms. Hadden liked it on the agenda itself. Mr. Chapman suggested it be prior to the listing of the agenda near the public comment paragraph as the last thing people read is what was last. Mr. Ruckle and Ms. Sierer agreed with Mr. Chapman. Ms. Sierer asked Ms. Bensley about placement on the agenda. Ms. Bensley expressed concern that the published agenda items were then being pushed onto another page and making them harder to find and pointed out there were pros and cons to both sides.

Ms. Wallace asked if this would be an addition to the previously approved Rules of Procedure. Ms. Bensley stated there were notes at the bottom of the agenda that were not specifically laid out in the Rules of Procedure such as Freedom of Information Act citations and the wording of what was open for public comment was different on the published agenda than what was in the Rules of Procedure. Ms. Bensley did not see it being a problem to add a policy Council adopted to the bottom.

Mr. Chapman noted that he was fine with it being toward the back. His concern with it being on the agenda at all, especially if it was in the front, was that the published agenda did not start until somewhere around the fourth page because of all the items Council put in it. However, he was fine with it being in the back.

MOTION BY MS. SIERER, SECONDED BY MR. CHAPMAN: TO ADD THE RULES OF DECORUM TO THE END OF THE AGENDA.

MOTION PASSED. VOTE: 6 TO 1.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – Wallace.

Ms. Wallace expressed concern that the Rules of Decorum were not welcoming. She also thought they may be a duplication of effort and unnecessary. She asked for clarification from Mr. Herron, particularly in regard to Robert's Rules of Order, Section 43, titled "Refraining from Disturbing the Assembly" and the State of Delaware open meeting law. She thought that the body and the chair already had the right to address disruptions, which was what Council was trying to do with the Rules of Decorum. She did not think the Rules of Decorum were needed and was worried that it set an unwelcoming tone to the public.

Mr. Herron noted that he did look at Robert's Rules. Section 43, as he read it, was titled "Decorum in Debate." It pertained only to members of the body. He did not think it preempted the field or was duplicative of the Rules of Decorum. Regarding Ms. Wallace's second point, there was a general power to prevent disruption. That was true under FOIA. It was up to council as to Rules of Decorum. One might find Rules of Decorum to be helpful as a guide. He thought that was generally how council had viewed it.

Ms. Sierer felt it was a guide for the public, particularly folks who were not regularly coming to meetings. She also thought that Mr. Herron had made some suggestions where Council add to its Rules of Decorum. Her thought was that it was important that Council share this with the public when they to come to a meeting.

Ms. Hadden believed that Council did have to post Rules of Decorum. She looked at them as a guide for what was acceptable and what was expected. This was a respected room. This was a place where business was done. She felt respect should be on both sides of the dais. To post what Council felt should be appropriate behavior, to her, was not offensive nor restrictive in any way. She was just being told not to use curse words, do not threaten anybody, and be as nice as she could be when she was angry.

Mr. Ruckle used the analogy that in football, there was a rule book. Each side had to play by those rules. If one side was not given the rule book, things could get broken. Then the chair had to throw the flag. So he agreed with Ms. Hadden. Council did need any one coming in to play the game and be here to know what the rules were.

Mr. Markham stated that based on what he had read on federal law and federal decisions, it was important for this to be spelled out for the chair to have the ability to basically control the meeting. There were certainly more restrictions on what a chair could do in a public meeting. He thought it was important for it to be spelled out. He had people on the other side complain about what happened out in the audience. They would not be back because of the behavior in the audience. Having had to sit into the chair and never really wanting to use this, he still thought it was important to have it spelled out.

Ms. Wallace expressed concern to Mr. Herron that, as this was worded, if Council had members of the public removed for violating the Rules of Decorum, that that could open Council up to FOIA challenges. She thought the wording was very subjective. She had concerns that if Council removed people based on some of the wording that they could get into hot water and put legislation that they passed at potential risk. Ms. Sierer asked if Mr. Herron's additions addressed that. Mr. Herron stated that he did not think the Rules of Decorum put Council at any greater risk of a FOIA complaint than they would be without Rules of Decorum. There were standards that the state applied. He thought it was helpful to have Rules of Decorum to point to if there was a challenge.

Mr. Morehead stated that he understood Ms. Wallace's concern. His issue with the Rules of Decorum was that they did not exist anywhere. They were very hard to find. If Council was going to have them at all, he liked them on the agenda so that everybody had them in front of them to know this was how Council was going to do this. He thought they were over broad, but did not know how to address that as he had no legal background. It was subjective and was something that "you know it when you see it", but everybody had a different limit. He said it was as if Council said "don't speed" and then did not set any numbers. It was over broad and he

understood and agreed with the concern. However, rather than having them be somewhere difficult to find, he liked them on the agenda, if Council was going to have them at all.

Ms. Sierer noted that from a chair standpoint, it was far better to have it defined and to know that members of the audience had the ability to see what the rules were when they picked up an agenda. It could be hard to understand until someone sat in the chair seat and was faced with the potential definition of what that might be. She thought it was important to have it in writing and on the agenda.

Ms. Wallace noted she had no other comments and appreciated the discussion.

Mr. Chapman asked what was meant by the word "defiant", which was suggested to be added. He thought what Council might mean by that was when somebody was not following the direction of the chair and becoming increasingly hostile in opposition to the chair. He asked if that was what Council was trying to capture with the word "defiant". Mr. Morehead expected that was correct. Mr. Chapman stated that if he was the chair, that was where he would be applying that word. His concern was that without having at least that discussion publicly and it being in the record, it may not be widely known or be able to be addressed or responded to openly or blindly. Mr. Morehead noted that Mr. Chapman was approaching the fact that "defiance is the highest form of patriotism". Mr. Chapman stated he was not one who often quoted former presidents, such as Mr. Morehead. He thought that defiance was something that in itself was not breaking rules. He just wanted to make sure Council was providing the confines or the parameters that the chair would need in order to enforce the Council Rules of Decorum, and give Council an environment where they can conduct a business meeting that would address some of the concerns that were raised or that might be raised by members of the public that were not there tonight. Messrs. Morehead and Chapman began discussing the wording. Ms. Sierer asked that Mr. Herron present his recommended changes.

Mr. Herron noted that "defiant" was his suggested addition. That word "defiant" stuck out in one of the cases that he reviewed that talked about the circumstances under which a public body was justified in removing individuals from a meeting. That was why he suggested it. The other suggestion he had was that if it was Council's intention to prohibit members of the public from approaching Council members at the dais and passing notes during the meeting, that it be clearly and unambiguously stated in the rules. That was a full sentence that he recommended be added. The other changes were adding the words "vulgar" and "uncivil" to the last sentence.

Ms. Wallace noted that she was concerned that passing notes, posting on Facebook, live tweeting and emailing by council members on the dais could violate FOIA. Mr. Herron stated it would depend on what the notes would be. If it was just one Council member to another about an innocuous matter it may not. If it was Council members talking to each other up here, he noted Ms. Wallace had a point. Ms. Wallace asked what about posting to Facebook when Council members were on the dais, live tweeting, or communicating by text or email to constituents. To her those all were the same. They were notes of a different form. Ms. Sierer asked if that was a FOIA concern. Mr. Herron thought maybe the way to approach it was to just say, "members of the public shall not approach the dais," because he thought that was a concern. Members of the public coming up, physically handing notes, was distracting other members of the Council. He thought that may be the way to deal with it.

Ms. Sierer stated that Council could remove "or pass written notes to individual council members" from Mr. Herron's suggested amendment. She thought it should read, "Members of the public shall not approach the dais without first seeking and obtaining the permission of the mayor or presiding officer."

Mr. Markham suggested that instead of "defiant", say "disobeying directive from the chair" or something like that. He knew Council had clear steps to warn people, but if they continued to disobey the direction from the chair he thought that would be what Council was trying to say. Mr. Herron thought "defiant" would cover that. Ms. Hadden stated she did not have a problem with the word "defiant," because she thought it was clear what the intent was. Mr.

Morehead said he would be more comfortable if Council said "defiant to directions by the chair" or "defiant to instructions by the chair" to make it crystal clear what Council was talking about. Ms. Hadden noted that what it specifically said was "defiance, which impedes the orderly conduct of a city council meeting." She thought it was very clear what the meaning of the word was. It was defiant that was impeding the orderly conduct of the meeting. Mr. Chapman stated that after Council's discussion, he was comfortable with the word. Mr. Ruckle also said he was comfortable with the word.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT COUNCIL INCLUDE THE RECOMMENDATIONS OF BRUCE HERRON AS THE RULES OF DECORUM WITH THE CHANGE OF REMOVING THE WORDS "OR PASS WRITTEN NOTES TO INDIVIDUAL COUNCIL MEMBERS".

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer, Wallace.
Nay – 0.

Ms. Sierer noted that the meeting needed to adjourn. Mr. Markham indicated that the remaining changes he had suggested were not substantive enough that he was concerned about bringing them back at a later meeting.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO APPROVE THE RULES OF DECORUM AS AMENDED.

MOTION PASSED. VOTE: 6 TO 1.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – Wallace.

7. Meeting adjourned at 7:22 p.m.

Renee Bensley
Director of Legislative Services
City Secretary