



Council Retreat on Public Forum Decorum - Tuesday, September 26, 2023, 6:30 PM, Burlington City Arts, 135 Church Street, 2nd Floor

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1. Agenda

Subject	1.1. Motion to amend/adopt agenda
Meeting	September 26, 2023 - Council Retreat on Public Forum Decorum - Tuesday, September 26, 2023, 6:30 PM, Burlington City Arts, 135 Church Street, 2nd Floor
Category	1. Agenda
Department	Council and Board
Type	Action Procedural
Recommended Action	Motion to amend/adopt agenda

2. Public Forum

Subject	2.1. Verbal Comments
Meeting	September 26, 2023 - Council Retreat on Public Forum Decorum - Tuesday, September 26, 2023, 6:30 PM, Burlington City Arts, 135 Church Street, 2nd Floor
Category	2. Public Forum
Department	Council and Board
Type	Action Procedural

3. Work Session: Public Forum Decorum - Council discussion

Subject	3.1. Work Session: Public Forum Decorum - Council discussion
Meeting	September 26, 2023 - Council Retreat on Public Forum Decorum - Tuesday, September 26, 2023, 6:30 PM, Burlington City Arts, 135 Church Street, 2nd Floor
Category	3. Work Session: Public Forum Decorum - Council discussion
Department	Council and Board
Type	Information

4. Adjournment

Subject	4.1. Motion to adjourn
Meeting	September 26, 2023 - Council Retreat on Public Forum Decorum - Tuesday, September 26, 2023, 6:30 PM, Burlington City Arts, 135 Church Street, 2nd Floor
Category	4. Adjournment
Department	Council and Board
Type	Action Procedural
Recommended Action	Motion to adjourn

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CITY OF BURLINGTON, VERMONT
OFFICE OF
THE CITY ATTORNEY
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CORPORATION COUNSEL

PUBLIC MEMORANDUM

To: City Council President MaxTracy
From: Daniel Richardson, City Attorney
Date: February 5, 2022
Re: An Outline of Options for Keeping Order at City Council Meetings

Introduction

The purpose of this memo is to offer an overview of the various legal options and limitations available to the City Council President and to the Council in general to manage public forums and to keep order during City Council Meetings. This memo will look at four legal sources of authority: Roberts Rules of Order; Burlington Council Rules; Vermont Public Meeting law; and the First Amendment of the U.S Constitution.¹

The conclusion of this memo is that the Council President as chair of the meeting is the primary adjudicator and charged with keeping order at meetings. The right of the public to participate in a City Council Meeting varies. During the public forum, the rights of public participation are at their highest. Once the public forum ends, the rights of the public to participate in the meeting diminish substantially. Nevertheless, the Council President and Council have several options to address disruptive, uncivil, and other behavior that threatens people from speaking out or interferes with the Council's business.

This memo will be divided into three sections: Big Ideas, Legal Rights and Limitation, and Potential Tools. The purpose of these sections will be to lay out the larger concepts at play in the Council's discussion, the relevant framework for any policy changes, and a series of policy

¹ Inclusive in the First Amendment analysis is the relevant freedom of speech analysis under Chapter 1, Article 13 of the Vermont Constitution.

options to prevent public input from chilling other participants or from interfering with the work of the Council.

The Big Ideas

In thinking about how to regulate public input into City Council meeting, the Council is well served to consider several important concepts that are central to the idea of public participation and both the rights and limits of a Board to address such input.

(1) Civil Discourse

The first concept is **civility**. This term is often used to justify limitations on public input and is often cited as the ideal for public discourse. In reality, the terms civility can be misused. At its best, civility represents a set of rules, norms, and standards that enable and empower individuals to make public statements by relying on reason, rhetoric, persuasion, and certain ideas of decorum.

Civil discourse can be challenging and can call out issues for which the speaker has substantial passion. History is replete with examples of individuals who made speeches or statements that would resonate with passion but nevertheless held to the limits of civility. Socrates, for example, never allowed his dialectical conversations to dip into a quarrel, but his line of questioning and reasoning proved sufficiently radical that the governing class of Athens executed him.

Other examples of challenging, but civil discourse, include examples such as:

1. Chief Red Cloud's *Cooper Union Speech to President Grant* delivered at the New York Cooper Union, June 16, 1870;
2. Carrie Chapman Catt's *Address to the Congress on Women's Suffrage* delivered in Washington, DC, November 1917;
3. Eugene Debs' *Statement to the Court* delivered in the Federal Courthouse, Cleveland, Ohio, September 18, 1918;
4. Joseph N. Welch's *Have You Left No Sense of Decency?* Delivered in Washington, D.C. at the Army-McCarthy Hearings, June 9, 1954; and
5. Malcolm X's *The Ballot or the Bullet* delivered at the King Solomon Baptist Church, Detroit, Michigan, April 12, 1964.

Each of these speeches or statements communicated powerful ideas and expressed strong emotions that the speakers held with sincere belief. Yet, each of these speeches conformed to the standards of civil discourse. None of them rely on profanity, threats, drowning other voices out, or interrupting the public process.

At the same time, it is not a fair or reasonable expectation to hold members of the general public to the same level of rhetoric during a City Council public hearing. In setting the expectations and standards too high, the Council could risk turning the concept of civility into an

exclusionary force. As Seamus Carey, President of Transylvania University in Kentucky recently noted:

[C]ivility can conceal. Beneath religious customs and rhetoric, clergy abuse children. Behind protocol and pronouncements, politicians ignore injustice. Between slick handshakes and expensive suits, bigotry stifles fair opportunities for the marginalized. Just as civility facilitates respectful interactions, it can also preserve repressive customs, deceptive words and clever tricks.

Over time, this causes frustration. Across the country, we are watching this frustration harden into tribalism, which overruns civil discourse with the bluster of uninformed, unreflective demagoguery. The terrain toward human virtue is getting rougher.

President Seamus Carey, *A Reflection on Civility*, Third & Broadway Fall/Winter 2018, available at <https://www.transy.edu/1780/2018/11/a-reflection-on-civility/>.

The Philosopher Hannah Arendt offered the following thoughts on a similar period after World War II when many of the values and systems were changing or falling away, leaving a divided society:

Thus the undeniable loss of tradition in the modern world does not at all entail a loss of the past, for tradition and past are not the same, as the believers in tradition on one side and the believers in progress on the other would have us believe—whereby it makes little difference that the former deplore this state of affairs while the latter extend their congratulations. With the loss of tradition, we have lost the thread which safely guided us through the vast realms of the past, but this thread was also the chain fettering each successive generation to a predetermined aspect of the past. It could be that only now will the past open up to us with unexpected freshness and tell us things no one has yet had ears to hear. But it cannot be denied that without a securely anchored tradition . . . the whole dimension of the past has also been endangered. We are in danger of forgetting, and such an oblivion . . . would mean that, humanly speaking, we would deprive ourselves of one dimension, the dimension of depth in human existence.

HANNAH ARENDT, *What Is Authority?*, BETWEEN PAST AND FUTURE 93-94 (1961).

While the Council may aspire and seek to induce civil discourse, it must also allow for a certain level of rawness and self-determination that individuals may pour into their public comment. It must be flexible in its definition and enforcement of civil discourse. The rules, policies, and guidelines developed should enable speakers to be their best selves, but it should not mandate its precise structure of this form.

(2) Growing Public Sentiments of Anger and Frustration

The second concept is **anger and frustration**. Several social commentators have recently recognized that American society as a whole is experiencing a rise in what some are calling bad behavior but may be more properly characterized as anger and frustration. See, e.g., A.Akhtar, *Nurses Say Patients Are Getting More Abusive, and Simple Questions Can Set Them Off*, Business Insider (Oct. 18, 2021), at <https://www.businessinsider.com/frontline-registered-nurses-see-rise-in-physical-and-verbal-abuse-2021-10>; D.Brooks, *America Is Falling Apart at the Seams*, NYTimes (Jan. 13, 2022), at <https://www.nytimes.com/2022/01/13/opinion/america-falling-apart.html>.

Similar articles have been written about airline passengers, students returning to school, parents at school board meetings, and even city council meetings. See, e.g., *National League of Cities, On the Frontlines of Today's Cities: Trauma, Challenges and Solutions* (2021), at <https://www.nlc.org/wp-content/uploads/2021/11/On-the-Frontlines-of-Todays-Cities-1.pdf>.

American culture has coarsened in the last few years, with people increasingly resorting to anger, vitriol and violence rather than dialogue to share their problems and express differences. The deep entrenchment of political ideologies into the core of who we are as a nation has taken us to a place in society where, rather than viewing those with opposing viewpoints as our friends, neighbors and fellow Americans, a growing segment of society views one another as enemies. This is dangerous for democracy, and it creates a powder keg environment where the smallest spark can suddenly explode.

Id. at 6.

The data indicates that this behavior is not isolated to one part of the country or one area of human interaction or even one side of the political spectrum. Some data even suggest that this frustration goes deeper than simply triggering situations. The National Highway Traffic Safety Administration recently issued findings showing that traffic fatalities were up 7.2% in 2020 despite Americans driving 13% less. See NHTSA, *2020 Fatality Data Show Increased Traffic Fatalities During Pandemic* (Jun. 3, 2021), at <https://www.nhtsa.gov/press-releases/2020-fatality-data-show-increased-traffic-fatalities-during-pandemic>. The NHTSA did not have an dispositive explanation for this increase, except that individuals were driving faster, taking more risks, and disregarding basic traffic safety rules like wearing a seatbelt and driving sober.

This background is important for the Council to consider. The current mood of many people seems to be anger and frustration in response to a world whose standards and mores are shifting. It is fair to say that many seem to feel fewer inhibitions on expressing these emotions and viewing with hostility those who disagree. In such a situation the imposition of rules or standards should seek to cool passions and not inflame.

(3) Conducting Public Business in an Orderly and Effective Manner

The third concept is the **need to conduct business in a meaningful manner**. City Council meetings are first and foremost the primary place for Council to hear testimony, review information, deliberate, and vote on critical components of local government. These actions are

solely within the purview of the Council. City Council meetings are for the Council to conduct its business. While Burlington City Council, like other Vermont municipalities, has long included a public forum, the forum can only exist to the extent that it serves the business of the Council.

In other words, the public forum is a good and important part of local government. It is often a window into public opinion, but it is not a substitute for Council process. To the extent that it inhibits or weighs down Council process, the Council should give serious consideration to limiting its place in the Council's meeting schedule.

(4) Freedom of Speech

The final concept is **freedom of speech**. As the next section will detail more precisely, the Council, to the extent that it has a public forum and an open meeting, has to take consideration of the freedom of speech embedded in the Vermont and US Constitutions. This concept is best summarized by a 1971 U.S. Supreme Court decision striking down a Cincinnati ordinance that criminalized "annoying behavior" on public streets:

The First and Fourteenth Amendments do not permit a State to make criminal the exercise of the right of assembly simply because its exercise may be 'annoying' to some people. If this were not the rule, the right of the people to gather in public places for social or political purposes would be continually subject to summary suspension through the good-faith enforcement of a prohibition against annoying conduct.

Coates v. City of Cincinnati, 402 U.S. 611, 615-16 (1971). While the First Amendment does permit some control over speech, its limitations are sharply defined by decades of legal decisions and precedent.

Legal Rights and Limitation

(1) Open Meeting Law 1 V.S.A. § 312

Under 1 V.S.A. § 312, "all meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of [title 1]." By state law, the City Council must conduct its business meetings in a manner that allows the public to be present. This requirement of open meeting should not be confused with public participation or public forum. City Council meetings, like other public board meetings, are primarily for the bodies to conduct their necessary and proper business. The requirement of open meetings is simply that the body must conduct its business in the public eye.

Public participation is covered by subsection (h), which states that every open meeting, "the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting, as long as order is maintained." 1 V.S.A. § 312(h). The statute also allows public comment to be "subject to reasonable rules established by the chairperson." *Id.*

This statutory structure is similar to both Robert’s Rules of Order, which allows public comment at the discretion of the chair/presiding officer and subject to rules (RONR § 9, at 93-94 (10th ed. 2000), and to historical legislative tradition that limited and controlled public participation in the legislative process. See *Soc’y of Prof’l Journalists v. Sec’y of Labor*, 616 F.Supp. 569, 572 (D.Utah 1985) (“There is . . . no common-law right to attend meetings of government bodies. Indeed, the tradition in England was to hold legislative debate in secret and to prohibit publication of legislative proceedings.”), quoted in *Cyr v. Addison Rutland Supervisory Union*, 60 F.Supp.3d 536, 545 (D.Vt. 2014).

The right of public participation as defined under Section 312(h) is generally not discretionary. See *Town of Brattleboro v. Garfield*, 2006 VT 56, ¶ 16 (emphasizing the public right to “a reasonable opportunity to express its opinion”). As the Vermont Supreme Court noted recently in a decision involving the Burlington Conservation Commission:

When reading the Open Meeting Law as a whole, it is clear that the Legislature intended the Law to protect the public’s rights to keep public officials accountable by granting members of the public the right not only to hear, but also to be heard. As Severson points out, the Law not only requires that meetings subject to the Law be open to the public, but requires that members of the public be given a reasonable opportunity to express their views on matters considered by the public body during a public meeting. 1 V.S.A. § 312(a)(1), (h). By ensuring that members of the public can attend meetings of public bodies, the Law also confers upon members of public bodies the right to hear from members of the public, to whom they are accountable.

Severson v. City of Burlington, 2019 VT 41, ¶ 14.

While section 312(h) does establish a right for the public to participate through a public forum, which the Vermont Supreme Court has affirmed is an essential component of public meetings, this right is not absolute. It is conditioned on both order being maintained and subject to reasonable rules established by the chair person. These two conditions recognize that while public input is an important part of the public meeting, it should not interfere with or limit that ability of the public body to conduct its own business in an orderly and meaningful manner. To phrase it slightly differently, the function of a public meeting is to conduct public business, the Vermont legislature has deemed through Section 312(h) that public input is an important component of this process, but it is not the central or controlling purpose. If public input becomes disruptive, the public body has a right to end it or to put reasonable limitations on the nature of the public input.

The Vermont Federal District Court affirmed this right to limit public input in its 2014 decision in *Cyr v. Addison Rutland Supervisory Union*. In that case, the Court analyzed the First Amendment right of access to public participation in a school board meeting. 60 F.Supp.3d at 544-46. The Court found no inherent or constitutional right to public participation and concluded that the conditional nature of public participation was consistent with state and local obligations under the First Amendment. *Id.* To the extent that *Cyr* extends to City Council meetings, it stands for the proposition that the Council is acting consistent with the First

Amendment if it limits public participation in a reasonable and limited manner as a general proposition.

Section 312 and subsection (h) are silent as to what rules are permissible to govern public input or defining when public participation becomes disruptive. The Vermont Supreme Court has not offered further gloss on this issue, either. In the three decisions from the Court most directly addressing Section 312(h), all three have focused on more of the general concepts behind the public participation mandate. See *In re Acorn Energy Solar2, LLC*, 2021 VT 3, ¶94; *Severson*, 2019 VT 41 at ¶ 14; *Town of Brattleboro*, 2006 VT 56 at ¶ 16.

This is in part due to the flexible nature of what is reasonable. If a group of individuals enter a public meeting and begin banging on pots and pans and refuse to stop to allow the meeting to begin, this represents a different type of disruption than if one or two individuals make occasional sarcastic comments from the rear of a public meeting. One is a substantial disruption to the public body's ability to conduct business, the other may be annoying, but may be no worse than Statler and Waldorf were to the Muppet Show.

On the other hand, the same facts could describe very different circumstances. Last fall, the Council held a public hearing involving Palestinian and Israeli policy, which evoked a strong response from the community. While the meeting was noisy and contentious, the Council's patience paid off in that the initial noise gave way to an impassioned public forum. Clearing Contois of the public might have created more substantial issues and left the public angry and unsatisfied. On the other hand, snarky comments whispered or shouted by the public out of turn have been very disruptive and chilling to others in the council chambers. As Councilors have noted, it has been the personal attacks often shouted while the individual does not have the microphone that are the most difficult.

The method to handle any case may vary widely, and depending on the nature of the issue underlying the public comment, it may require stronger or lighter responses from the chairperson. Given that Section 312(h) sets the default expectation for reasonable public input, the rules governing public input should, at a minimum, focus on narrow and responsive limitations. They should be sensible and focused the portion or nature of the public response that is unreasonable or disruptive. To further define this concept, the analysis shifts to both Robert's Rules of Order that provides guidance on specific powers to quell disruptive or unreasonable public input and to the First Amendment, which puts several substantial limitations on what the Council can and cannot do in imposing limitations.

(2) Robert's Rules of Order

Robert's Rules of Order treats disruptive behavior on a case-by-case basis and empowers the chairperson to take a wide range of actions to end actions by a non-member (public) who is disrupting or behaving in an unreasonable manner during a board meeting. Robert's Rules states that a board has a right to protect itself from annoyance by nonmembers and its full authority can be exercised by the chair person. RONR § 61, at 628. The chair can order members of the public to leave the premises. *Id.* Such an order is not appealable by the individual but may be appealed by a member of the Council. *Id.*

Robert's Rules emphasizes, however, that once a decision is made by the chairperson, it needs to be followed and enforced to ensure order continues. "If a person . . . refuses to obey the order of proper authority to leave the hall during a meeting, the chair should take necessary measures to see that order is enforced, but should be guided by a judicious appraisal of the situation." *Id.* at 629. As will be discussed under the First Amendment analysis, this case-by-case and situational approach is more consistent with constitutional protections—in that it is responsive to the specific actions in the moment based on the ability of the Council to continue and does not overreach into a larger ban on the individual's ability to attend public forums. See generally *Huminski v. Corsones*, 396 F.3d 53 (2d Cir. 2005) (finding that the Vermont judiciary had violated the First Amendment rights of an individual who was banned from a Vermont courthouse for an extended period based on prior disruptive behaviors).

Building upon this analysis leads to the question of whether the First Amendment applies to public meetings and whether the protections under the First Amendment apply. As delineated above, the key distinction in City Council meetings lies between the Council's business agenda and the public forum under Section 312(h). Each of these components are likely covered by the First Amendment, but each is treated slightly differently.

(3) First Amendment Considerations²

Courts look to the nature of forum when determining whether the First Amendment applies. As the U.S. Supreme Court noted in *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, the question of First Amendment protection revolves around the type of forum involved. 460 U.S. 37, 44-47 (1983). Courts, particularly the Second Circuit, recognize four types of public forums:

- (1) Nonpublic forum—public property not traditionally open to public expression or intentionally designated by the government as a place for such expression and where restrictions on speech need only be reasonable and viewpoint neutral.”
- (2) Traditional public forum—an area traditionally held open to public expression, assembly, and debate where the government may impose content-neutral time, place, and manner restrictions on speech so long as such restrictions are narrowly tailored to serve a significant government interest and leave open ample alternative channels of communications.
- (3) Designated public forum—a place not traditionally open to assembly and debate which the State has opened for use by the public as a place of expressive activity and where government regulation of speech is subject to the same limitations that govern a traditional public forum.
- (4) Limited public forum—this is often considered a subset of the Designated public forum and it is a non-public forum which the government opens only to certain kinds of speakers or to the discussion of certain subjects and where the government may impose content-neutral time, place, and manner restrictions on speech within the designated category for which the forum has been opened so long as those restrictions are narrowly

² My research indicates that there are no higher or additional requirements put on public meetings through the Vermont Constitution that would vary from the First Amendment analysis that follows.

tailored to serve a significant government interest and leave open ample alternative channels of communications.

Cyr, 60 F.Supp.3d at 546-47 (internal citations and quotations omitted). The distinction between the first two represent the extreme of the free speech continuum. In a non-public forum there is neither the right, nor expectation of free speech. In the traditional public forum, free speech rights are at their highest. In between are the designated and limited public forum. The primary distinction between the two seems to lie in the fact that designated public forums may allow a broader array of opinions and speech to be offered, while the limited public forum may include subject restrictions (such as limiting discussion to items on the agenda). This distinction, however, is rarely determinative of what standards or rules meet constitutional muster.

In *Cyr*, the Vermont Federal District Court determined that a school board meeting constituted the fourth category of forums, Limited Public Forum. The Court made this determination, in large part, because school boards follow the format and process of public meetings under 1 V.S.A. § 312, which strongly suggests that *Cyr*'s reasoning would apply to a City Council meeting governed by the same statutory system. This conclusion is based, in part, on the US Supreme Court's decision in the *Perry Educ. Ass'n* case and the line of cases that have followed. 460 U.S. at 45-46.

The holding of *Cyr* also reflects an emerging consensus at the federal level as to how to classify the rights and expectations that the public enjoys within the open public meeting process and how to recognize the limited public forums provided as a part of this open government meeting. While some jurisdictions call these forums "limited" and others "designate, the resulting content-neutral restrictions remain the same. See *Piscottano v. Town of Somers*, 396 F.Supp.2d 187, 199-202 (D. Conn. 2005) (combining the two categories of designated and limited public forums in; *Zapach v. Dismuke*, 134 F.Supp.2d 682, 687-90 (E.D. Penn. 2001) (noting that the split in has largely fallen between designated and limited public forums but noting that the resulting standards and limitations have largely been the same).

As a limited public forum, First Amendment considerations apply to the Burlington City Council meetings, but the nature of the meeting requires a different level of analysis for each section. Burlington has effectively divided its meeting into two categories. The first is Council business, this would include the portions of the meeting where the Council President calls the meeting to order, where work sessions occur and consent agendas are moved. It also includes the deliberative agenda, council reports, and other "business" sections of the meeting. In these areas, the Council rules do not permit public input or comment. This is the working portion of the Council meeting, and while the public must be allowed to attend and witness the meeting, there is no right to comment or participate in public speech. The second category is public forum, which has allowed members of the public, regardless of where they live, to offer up to two minutes of comment to the Council.

Based on *Cyr* and other relevant First Amendment cases, the restriction on public speech in the limited public forum are as follows:

- 1) Speech may be limited to the subjects of the meeting.

- 2) Restrictions must be content-neutral as to time, place, and manner.
- 3) Any restrictions must be narrowly tailored to serve a significant government interest and leave open ample alternative channels of communications.

There are several important concepts within these three points.

First, the restriction on what may be discussed is content-based, but it goes to the definition and nature of the limited public forum. But such distinctions may be difficult to enforce. For example, if a speaker wants to talk about federal monetary policy at the public forum portion of City Council, that is arguably outside of the agenda and may be restricted. But if the speaker wants to speak about an issue they have with a particular department, then the Council might have to decide whether the particular issue was outside the agenda where the department may be presenting. This distinction is often easier when the public forum is structured in a way that allows public comment on particular deliberative business items, and more difficult when public comment is corralled into a single segment.

Second, content-neutral in time, place, and manner rules prohibit the Council from making particular rules that can go against a particular viewpoint. Under these restrictions, setting a two-minute speaking limit for all speakers is content-neutral—it applies evenly to all speakers—but requiring someone to stop speaking because they were angry with a particular decision by the City is not. At the same time, at least one federal district court has upheld restrictions on “antagonistic speech” as consistent with the content-neutral analysis. *Featherstone v. Boyd*, 2007WL 895061 (SD Ohio 2007).

Third, the rules must be narrowly tailored to serve the significant government interest(s). In this case, the strongest government interests are: (a) ensuring that the Council business can be conducted in an orderly, free, and effective manner; (b) that the public forum is open and welcoming to all members of the public; and (c) that no one (both Councilors and the public) is intimidated from participating.

Fourth, restrictions have to leave open ample alternative channels of communications. This means that the individual has other places where they can speak their issues. This element is often cited as a reason why permanent or extended bans from public meetings do not meet constitutional muster. Even if the individual is difficult or disruptive, Courts are inclined to strike down extended bans as leaving these individuals without a meaningful alternative. See generally *Huminski v. Corsones*, 396 F.3d 53 (2d Cir. 2005) (finding that the Vermont judiciary had violated the First Amendment rights of an individual who was banned from a Vermont courthouse based on prior disruptive behaviors). As described in the next section, the emergence of Zoom and remote meeting protocols may have an impact on this element.

Looking more closely at these elements, Courts have provided some additional guidance in particular cases. The following is a summary of some of the case that to provide the Council with a sense of what, under a First Amendment analysis does and does not pass constitutional muster:

In *Brown v. City of Jacksonville, Fla.*, 2006 WL 385085 (MD Fla. 2006), a federal district court ruled that a permanent ban on a disruptive citizen was unconstitutional. This decision is consistent with *Huminski*, where the Second Circuit ruled that a permanent or extended ban of a difficult and disruptive individual from a courtroom (where he had no cases pending) constituted an improper limitation of the individual's First Amendment rights.

In *Galena v. Leone*, 638 F.3d 186 (3d Cir. 2011), the Third Circuit ruled that removal of an individual from a meeting for interruptions in violation of the Council Code was constitutional under the First Amendment analysis.

In *Kirkland v. Luken*, 536 F.Supp.2d 857(SD Ohio 2008), a federal district court ruled that turning off the microphone of a speaker for violation of Council Rules was constitutional under the First Amendment.

In *Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989), the Eleventh Circuit ruled that a council's actions to confine the speaker to an agenda item and their removal following disruption was constitutional under the First Amendment analysis.

In *Dayton v. Esrati*, 707 NE 2d . 1140 (Ohio app. 1997), an Ohio Appeals Court ruled that the wearing of a ninja mask did not constitute legitimate grounds for removal under the First Amendment.

In *Rove v. City of Cocoa Fla.*, 358 F.3d 800 (11th Cir. 2004), the Eleventh Circuit upheld residency distinctions and restrictions on non-residents of the municipality as a basis for speaking at a council meeting as constitutional.

In *Lowery v. Jefferson County Bd. of Educ.*, 586 F.3d 427, 250 Ed. Law Rep. 542 (6th Cir. 2009), the Sixth Circuit held the following policy and restrictions to be constitutional:

- Requiring citizens to apply and be approved to speak for a limited amount of time at board meetings;
- Requiring a would-be speaker completes a form requesting to be heard;
- Authorizing the director of schools to take appropriate steps to determine that appearances before the board were not frivolous, repetitive, or harassing;
- Authorizing the board chairperson to terminate the remarks of any person who failed to adhere to the policy;
- Affirming the policy's stated justifications included permitting everyone a fair and adequate opportunity to be heard and efficient use of the board's time; and
- Allowing the board to vote at any meeting to permit someone who did not go through the screening process to speak at a meeting.

Given these parameters, the Burlington City Council appears to be currently acting in compliance with state law (1 V.S.A. § 312); Robert's Rules of Order; and the First Amendment of the US Constitution, in its management of public meetings and public forums. Moreover,

there are a variety of options for the Council to consider moving forward to uphold the open nature of the meetings and ensure that order and open process are upheld.

Potential Tools

There are a variety of options for the Council in addressing the issue of disruptive, antagonistic, or intimidating behavior at City Council meetings. As discussed in the last section, the primary goal in any restriction is separating out the type of behavior that can be limited from behavior that is protected by the First Amendment. This is primarily a distinction between antagonistic and annoying. Simply because a behavior is annoying or embarrassing is not a basis for restricting it. Behavior that interrupts the business of a meeting, that antagonizes individuals, or that makes public participation less likely are reasonable bases for regulating and limiting.

The types of tools available to the Council can be divided into three categories: (1) pre-meeting actions and enforcement measures; (2) rules and codes of conduct; and (3) improving civil discourse tools.

(1) Pre-meeting actions and enforcement measures

One of the most important points from Robert's Rules of Order is the concept that Board rules and efforts to limit disruptions require some enforcement mechanism. While Robert's Rules discusses the idea of appointing a group to escort offending parties to the door of the chambers, it also notes that this ad hoc method is fraught with difficulty. It is a limited authority to use force, which comes with liability and complications. The Rules, as well as other sources, recommend that the better course of action is either to appoint a Sergeant-at-arms or to invite police or security to attend. The latter is the normal course of action for many municipalities who request police, sheriffs, or state police to attend public meetings where the likelihood of disruption or violence is feared.

In Burlington's case, there is a tradition of inviting Burlington Police or security officers to attend meetings where there are contentious issues or large crowds, but this process appears to be an informal arrangement and does not provide consistent enforcement or support for spontaneous issues or even smaller infractions where individual may seek to disrupt a meeting by shouting from the back of the room during the deliberative session or where individuals may be intimidating or harassing other speakers. Having a consistent presence of either police, security, or even a sergeant-at-arms, would cure this issue and give the Council a professional responder if unexpected or individual disruptions arose.

As the First Amendment analysis shows, the Council has a right to remove an individual who is being disruptive from a public meeting. But, the analysis shows that this type of disruption is nuanced, and legitimate speech is protected. Any consistent security presence should have de-escalation training and some working familiarity with First Amendment issues to respond in an appropriate manner. They should have training in ensuring that their presence does not frustrate their purpose by becoming potentially intimidating factors for the public. This group should also have a working familiarity with a number of options. How to deal with

different types of disruptive behavior and have strategies to address each in an appropriate manner. This group should also work with the City Council President to develop these strategies and to de-brief with Council following incidents to ensure that the Council feels safe and be open to public concerns to ensure open process is protected.

Recommendation #1 Develop an enforcement strategy and group to ensure Council rules and rulings by the Council President are properly enforced.

The Council can also re-visit the question lay out. Where does the public sit during meetings. Is there sufficient distance and space between groups? Does a security professional have additional recommendations. Courts in Vermont over the last fifteen years have gone from open buildings where individuals could freely enter to having metal detectors, additional security, cameras, and other steps to limit free public access for safety purposes. While such steps may not be necessary for Council, the Council should consider potential protocols and steps to ensure that there is a public safety plan and plan to address potential issues.

Recommendation #2 Revisit and revise layout of Council chambers and develop or review existing safety protocols.

(2) Rules and Codes of Conduct

The City Council has several rules governing public input. Among them are the following:

- Public comment is limited to the public forum section of the City Council meeting
- Public comment is limited to two minutes
- Public comment must be addressed to the Chair and Council as a whole and not any individual.
- Burlington residents are given first priority.
- Speakers are admonished to remain civil and not make attacks against particular individuals.
- Speakers are asked not to use profanity.
- Non-recognized speakers are asked to remain silent.
- No applause or cheering after comments.

These and other rules that the Council wishes to develop governing public input should be codified into a Council Code of conduct. The Council should also consider specific consequences or ranges of consequences for infractions. These can include the ending of public comment, the turning off of a microphone, or removal from the meeting. These rules could offer clarity, predictability, and consistency. At the sametime, the Council should leave a substantial degree of discretion in the Council President to ensure that the response to a particular infraction is appropriate and sensitive to the circumstances.

Recommendation #3 Develop a Council Code of Conduct for public speakers including rules and potential consequences for infractions.

Social media and Zoom behavior is a new area of public engagement. Many of the rules governing public meetings comes from an analog age where public discourse meant in-person presence. With the addition of Zoom and virtual public meetings, the Council has additional tools and issues. For many individuals, it is easier to be less civil on a virtual platform where the speaker is removed from the listeners. It is also easier for the Council to control such speakers by muting them, limiting their ability to participate. In such cases, the simple ability to mute a speaker may be sufficient to remedy a disruptions or violation of the rules. It may also be a good alternative if a person demonstrates a consistent inability to follow the rules of in-person public meetings by repeated disruptions. While this remedy has not been tested in the courts, it would, at least on the surface, appear to answer the First Amendment requirement of meaningful alternative ways to participate to restricting such an individual to virtual attendance where their public participation could be more closely controlled by the available Zoom tools. While this recommendation requires more research by my office, it is a promising way to channel disruptive behavior into a medium where there are more guardrails and ability to enforce rules.

Recommendation#4 Research the use of a virtual meeting technology as an alternative to in-person attendance and whether the requirement of individuals to use such medium would pass constitutional scrutiny.

(3) Improving Civil Discourse Tools.

The final category of recommendations for potential action involve positive enforcement. The Council should consider promoting and educating the public on civil discourse. This means modeling good civil discourse in our statements and discussions, but it could also involve creating programs and educational forums for people to learn and practice skills.

This could extend into social media practices where offensive and incivil discussions often arise and spill into City Council meetings. While the Council cannot control such discussions, modeling and affirmatively promoting these skills send an important message and provide a positive outlet that is not based on rules, limitations, or enforcement actions. Such process might begin as a Council discussion or working session.

Recommendation #5 Develop and engage in civility and civil discourse education and promoting it within the community.

Conclusions

The issue of civil discourse has risen to the forefront in many communities as various factors have led to a deterioration in the process and nature of public interaction. These issues present challenges to the Council, which seeks to ensure that its meetings remain safe places for meaningful public input and to ensure that the business of the Council can proceed in an orderly and effective manner.

The first step in such a process is a discussion of the issues and the complicated balancing between various values of open meetings, free speech, civil discourse, and protecting the integrity of the Council and its ability to function as a deliberative body.

The resources in this memo combined with the recommendations are intended as a road map for the Council in resolving these issues and preserving the civil nature of City Council meetings.

APPENDIX B

RULES AND REGULATIONS OF THE CITY COUNCIL¹

- 1** Purpose and organization of city council meetings.
- 2** Presiding officer.
- 3** Order of succession.
- 4** Chief administrative officer of the council; minutes.
- 5** Committee assignments.
- 6** Place and date of meetings; quorum.
- 7** Duties of presiding officer.
- 8** Member responsibilities.
- 9** Motions and amendments.
- 10** Withdrawal of motion; motion to reconsider.
- 11** Resolutions and reports to be in writing.
- 12** Yeas and nays.
- 13** Absences.
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- 15** Introduction of ordinances.
- 16** Order of business.
- 17** Agenda.
- 18** Business to be conducted in accordance with Robert's Rules of Order.
- 19** Appointments to be by open ballot.
- 20** Request for legal assistance.
- 21** City councilor expense reimbursement.
- 22** Electronic devices.

1 Purpose and organization of city council meetings.

The purpose of city council meetings is to conduct city business efficiently and effectively, while still allowing appropriate public input. The city council meetings should be structured to allow focused attention on agenda items. Meetings should be predictable in both the business addressed and length of meetings.

(Res. of 4-13-98; Res. of 12-21-11; Res. of 2-11-19)

2 Presiding officer.

The presiding officer of the city council shall be styled the president. The president shall be elected, by a majority of the sworn members of the council, at a meeting held on the first Monday in April in each year at 7:00 p.m. The first business transacted shall be the election of a president and such election shall be by a show of hands or, upon request a roll call vote, unless determined by majority vote of the entire council that such election shall be by ballot. The chief administrative officer shall call the meeting to order and shall preside until a president is elected.

(Res. of 6-27-88; Res. of 6-12-89; Res. of 12-21-11; Res. of 2-11-19)

Charter reference—Authority to elect president of council, § [36](#).

3 Order of succession.

In the absence of the president, the chief administrative officer shall, and if the chief administrative officer is not present, any councilor may, call the council to order. A temporary president shall be elected by a majority of those councilors present and voting.

(Res. of 12-21-11; Res. of 2-11-19)

4 Chief administrative officer of the council; minutes.

The chief administrative officer or designee shall be clerk of the city council and shall keep full and accurate minutes of the proceedings of the council. The minutes of each meeting shall be made available in accordance with Vermont Open Meeting Law and will be placed on the city council agenda for approval.

(Res. of 12-21-11; Res. of 2-11-19)

5 Committee assignments and rules.

(a) No later than the second meeting following the election of the president, the president shall appoint standing committees on racial equity, inclusion, and belonging, licenses, ordinances, human resources, charter changes, community development and neighborhood revitalization, public safety, transportation, energy and utilities, parks, art and culture, and tax abatements. The Council President shall serve as an ex-officio member of all committees and may serve as a voting member of a committee in the absence of an appointed committee member or as a result of a vacancy on the Council. The president shall appoint all ad hoc committees unless the council votes by a majority of those present and voting to designate the members. The president shall appoint the chair of a committee unless the motion or resolution authorizing its appointment shall designate the chair. All committees shall consist of at least three (3) persons unless otherwise ordered by vote of the council. Any matter which has been assigned to the jurisdiction of a standing or ad hoc committee of the council shall not be taken up by the council until a report and recommendation is made by the committee unless either of the following procedures occur:

- (1) By a two-thirds (2/3) vote of the council determines to take up a matter notwithstanding its continuing pendency in a committee;
- (2) A majority of the council votes to take the matter up at a council meeting which will occur not sooner than one (1) week after such vote; or
- (3) Notwithstanding either of the above provisions, a matter may be taken up by the full council upon passage of the later of three (3) regular city council meetings after its referral to a council committee or the date when the council requested referral back to the council.

Following the council's organization day, each committee shall hold an organizational meeting to discuss how the committee will function and what work is to be done over the next year. It is the responsibility of the committee chair to verbally report out what they determine appropriate on a regular basis. Additionally, the committee will send their approved minutes to the full City Council to be placed on the consent agenda as a communication. The city council shall designate which department or office of the city is to provide staffing for such standing or ad hoc committees, unless otherwise specified by Burlington City Charter. Committee staffing shall be by a policy level staff

member who is able to participate in the committee's discussions and actively represent proposals. However, the staff shall not attempt to control debate or discussions at committee meetings, but instead assist the committee's work. **Individual councilors and committees shall not require significant assignments be carried out by city departments without first receiving endorsement from the city council.** If any city department believes a request is significant then the department shall inform the individual councilor or committee. City departments may bring items to the committee for consideration without endorsement by the council. All standing and ad hoc committees shall provide a copy of minutes of their meetings to the city council in a timely manner.

(b) Ad hoc committees may also be established by the president or by a motion approved by the city council. Ad hoc committees may be established for a particular purpose and shall exist for a specified duration, which duration may be extended by the city council. At least once every three (3) months while an ad hoc committee is in effect, it will report to the city council with respect to its activities. Ad hoc committees shall present a written report to the city council which shall include the committee's recommendations upon completion of the committee's work.

(Res. of 7-25-88; Res. of 5-8-95; Res. of 4-13-98; Res. of 4-22-02; Res. of 12-21-11; Res. of 2-11-19; Res. of 5-9-22)

6 Place and date of meetings; quorum.

(a) The meetings of the council shall be held in Contois Auditorium or in any other location designated by the council. City Council meetings shall be held on Mondays on dates identified on a schedule proposed by the president and approved by the council, unless the council shall fix another date. A majority of the whole council shall constitute a quorum, but a smaller number may adjourn and may compel the attendance of absent members. Special meetings of the city council may be called at any time by the mayor and shall be called by the chief administrative officer on petition signed by a majority of the city council and filed with the chief administrative officer.

(b) The president in consultation with the chief administrative officer or designee shall prepare an agenda for each city council meeting. The agenda shall include preliminary time allotments for each agenda item and all business to be conducted in open session shall be completed by 10:30 p.m. A period of time shall be reserved for items which may be moved from the consent agenda to the deliberative agenda. Each councilor may speak for up to five (5) minutes, and the president may adjust the length of time based on the time allotted for the agenda item. The president should keep the time for each item as set in the agenda and encourage conclusion of the debate and resolution of the item in a timely manner. When the allotted time for an agenda item has been consumed, the president may immediately call for a vote upon a disposing motion unless the council votes to extend the time for consideration of such item. With respect to the agenda items relating to general city affairs, the mayor shall be allocated up to ten (10) minutes, the city council up to fifteen (15) minutes, the public forum up to ninety (90) minutes unless otherwise extended by the president or the council and up to five (5) minutes shall be allocated for committee chairs, unless a longer time is voted at a particular meeting. Priority in public forum should be given to those wishing to speak about an item on the agenda. Among those speaking, priority will be given to Burlington residents first followed by Burlington property owners and organizations and then other non-Burlington residents. The president will announce at the beginning of public forum how long each speaker shall have, based in part on the number of speakers.

(c) Whenever meetings of the city council and the local control commission are scheduled for the same evening, the local control commission will convene at a time designated by the president.

(Res. of 12-16-91; Res. of 4-13-98; Res. of 12-21-11; Res. of 2-11-19)

Charter reference—Meetings of board, §§ [38](#), [39](#); quorum, § [40](#).

7 Duties of presiding officer.

The president or presiding officer shall preserve order and decorum and shall decide all parliamentary questions subject to appeal. The president shall put no questions to vote except upon motion of some member duly seconded. If any member questions the accuracy of the vote as declared by the president, the president shall request a show of hands or a roll call vote. The president may call any member to the chair for a period not to exceed a single session, and when out of the chair may participate in debate. The primary role of the president shall be to run the city council meetings and not to be a participant in the council's debate. As presiding officer, it is inappropriate to offer an opinion on an item under debate without passing the gavel, but the president may pass the gavel to participate in debate infrequently. Occasional comments by the president for the purpose of clarification and direction of the meeting are permissible. The president shall make sure that all commentary remains on the topic at hand. It shall be the responsibility of the president to limit all repetitious and cumulative discussion and to insist that all questions from the city councilors and the public be directed through the president. The president shall enforce parliamentary procedure and all time limits if so specified on the agenda. The president is responsible for compliance with the rules of the council. Any councilor not in compliance shall be notified by the president. Continued noncompliance will be brought to the attention of the full council.

(Res. of 4-13-98; Res. of 12-21-11; Res. of 2-11-19)

8 Member responsibilities.

Members are expected to be familiar with Robert's Rules.

No member shall make a motion or speak on any question until the member has addressed and has been recognized by the president. The member shall confine discussion to the question before the council and shall refrain from impugning the character or motivations of any other member of the council, city staff, or any presenter, as the subject of debate is the action before the council, not that individual. No city councilor shall speak longer than five (5) minutes in a single round to the same motion. Members should refrain from profanity when speaking at a meeting; the president will inform a speaker who uses profanity that the speaker's time has ended and move on to the next speaker.

Each member present at a meeting shall cast a vote on each and every motion other than an appointment, unless a conflict of interest is present pursuant to Section [133](#) of the City Charter. Except for appointments, all motions should present a yes/no question so that councilors may vote either "yes" or "no" on the question.

For appointments made by the Council and by Council with Mayor presiding, nominations shall be accepted and then each nominated candidate voted on individually. When one (1) candidate for an office receives the vote of a majority of the council present and voting at the meeting, that candidate is declared the winner. If no candidate receives a majority, the nominations fail, and the position is readvertised. Members need not vote for any candidate but may cast only one (1) affirmative vote per round.

Councilors are encouraged to stay at their seat during public forum except in emergencies. City staff and other presenters shall be treated with courtesy and respect by the council; when possible, councilors shall submit questions to staff and presenters in advance of the meeting. Councilors shall abide by these rules and respect rulings by the president, subject to the rights of appeal. Any

member may request that the president enforce, or the president may on the president's own initiative enforce, the decorum of the meeting or the rules of this body.

(Ord. of 9-23-91; Res. of 12-21-11; Res. of 2-11-19)

9 Motions and amendments.

When a question is before the council no motion shall be entertained except as prescribed in Robert's Rules of Order. Generally, a motion addressing council procedures or internal operations, such as a motion to postpone or recess, should be made separately from any motion on the substance of a question, and such a procedural or operational motion should not be considered subject to the mayor's City Charter Article 18 veto authority. A motion to adjourn shall always be in order. Motions to adjourn, to lay on the table and to call the question shall be decided without debate. All amendments proposed must be germane to the subject under consideration. No proposal to amend shall be considered beyond an amendment to an amendment. No motion once seconded may be amended without debate unless the maker of the motion and seconder consent. Amendments to resolutions should be sent to the Council Clerk to be posted on the City Council agenda in advance of the meeting. Every effort should be made to communicate amendments in advance, out of respect for colleagues and the public and in keeping with Rule 1. This does not preclude the possibility of amending on the floor.

(Res. of 12-16-91; Res. of 12-21-11; Res. of 3-27-17(1); Res. of 2-11-19)

10 Withdrawal of motion; motion to reconsider.

The mover of a motion may withdraw the same at any time prior to a decision or an amendment if the member seconding the motion also gives consent. Once a motion is made and seconded, however, amendments to that motion must be made as a motion to amend, and a vote must be held before the motion is amended; "friendly" amendments cannot avoid that process except for technical corrections, at the president's discretion. A motion for the reconsideration of any measure must be made by a member who voted with the prevailing side, and a majority of the full membership of the council shall be necessary to secure reconsideration. A motion to reconsider may only be made at the same or the next succeeding meeting as the original motion and, if the vote on the original motion affirmatively approved some action, only if no action to carry out the original motion has yet been taken.

(Res. of 12-21-11; Res. of 3-27-17(2); Res. of 2-11-19)

11 Resolutions and reports to be in writing.

All resolutions and all final reports of committees shall be presented in writing. All resolutions must be sponsored by a city councilor(s). If the resolution pertains to a matter that has been previously considered and acted upon by a committee of the council or by another city board or commission, its text shall include a recital of the date of such action and the margin of approval if such action was taken by a less than unanimous vote.

(Res. of 12-21-11; Res. of 2-11-19)

12 Yeas and nays.

The yeas and nays (roll call) shall be taken on any question or motion relating to the passage of an ordinance or resolution which appears on the deliberative agenda and which is not adopted by a unanimous voice vote except that the president may choose to request a show of hands and identify for the record the councilors who voted in the minority. The yeas and nays shall also be taken on any question or motion upon the request of a member. Whenever the question before the council shall be upon the passage of an ordinance, resolution or motion, notwithstanding the veto of the mayor, it shall be decided by a yea and nay vote. On all yea and nay votes the clerk shall call the roll of members and no member present shall be excused from voting except by unanimous consent, or unless the member disqualifies himself/herself thereon. So long as a quorum exists, a valid majority for taking city council action shall be a concurrence of a majority of those present and voting except as otherwise provided in these rules, the code of ordinances or the City Charter.

(Res. of 5-22-95; Ord. of 10-25-10(2); Res. of 12-21-11; Res. of 2-11-19)

13 City councilor absences.

Because the council cannot carry on its business without a quorum, and citizens rely on their representatives to be present to act on their behalf, no member shall be absent without leave from any meeting unless the member is ill or otherwise necessarily detained, in which event the member shall notify the clerk or president of the member's inability to be present. A member who will be late or absent from a meeting is expected to notify the president as soon as possible. If a member desires to leave before the close of a session the member shall ask permission of the president. A member may participate in a meeting by electronic means, but must do so consistent with the requirements of Vermont law. The expectation is that members participate in City Council meetings in person with only rare exemptions. Attendance records will be published annually and posted on a consent agenda.

For committees, to assist in reaching full attendance, the committee chair shall accommodate councilor's schedules with proper notice. If an ad hoc or standing committee member misses three consecutive or more meetings within six months without a good reason, the Council President may rescind the appointment and appoint another councilor to fill the vacancy. Additionally, committees may meet electronically without the need for rare exemptions.

(Res. Of 12-21-11; Res. Of 2-11-19)

Charter reference—Attendance may be compelled, § [40](#).

14 Meetings to be public, exception.

All meetings of the council shall be public except that executive sessions may be held upon approval by two-thirds (2/3) majority of those present and voting. While in executive session, a councilor may ask for a vote to determine whether a two-thirds (2/3) majority of the council supports staying in executive session, and if a two-thirds (2/3) majority of the council does not support staying in executive session, the council will go out of executive session. Members of the city council and all persons invited to attend an executive session of the city council shall not discuss in any fashion the discussions occurring in executive session with any person who is not a member of such council and who was not present in the executive session except as such discussion may be compelled by proper legal process. The foregoing sentence shall not be applicable to any subsequent consideration of such discussions in a public session of the council. Any member of the city council

who violates the foregoing standards shall be subject to censure by the city council if it is established that such violation has placed the city at a substantial disadvantage in its official business dealings. The burden of proof in such situations shall be borne by the member who makes the contention that another member should be censured. Any other city official who violates the foregoing standards shall be considered to be guilty of negligence or bad conduct, as the case may be, and subject to official reprimand. If such violation places the city at a substantial disadvantage in its official business dealings, or if the violating official has previously been reprimanded for improperly discussing executive session proceedings, such official shall be subject to disciplinary proceedings pursuant to Section [129](#) of the City Charter.

(Res. Of 12-21-11; Res. Of 2-11-19)

15 Introduction of ordinances.

On introduction to the council, a proposed ordinance or amendment to an existing ordinance shall identify the city department or city councilor sponsoring the proposal. A proposed ordinance shall be read in full at two (2) separate meetings before being adopted. It shall be read the first time upon its presentation and may then be discussed. Upon proper motion, a proposed ordinance may be defeated upon presentation and first reading. If not so defeated, the proposed ordinance shall upon proper motion following discussion, if any, be referred to the ordinance committee. Alternatively, upon a motion to suspend the rules a proposed ordinance may be adopted if approved by two-thirds (2/3) vote of those present and voting. If referred to the ordinance committee, such committee shall consider the proposal, consult with the city attorney and any department concerned, and report to the council no later than sixty (60) days following referral of the proposed ordinance to it. If the proposal remains in the committee beyond a sixty (60) day period, the committee shall report to the city council at least once every thirty (30) days on the status of its continuing review. The city council may adopt the proposed ordinance at any time following its second reading.

(Res. Of 10-29-73; Res. Of 11-13-95; Res. Of 12-21-11; Res. Of 2-11-19)

16 Order of business.

At each regular meeting of the council (except as otherwise provided in the agenda prepared by the president) the order of business shall be as follows:

- (a) Work sessions and/or executive sessions and/or non-deliberative updates and communications should start no earlier than 5:00pm or 6 as the president decides.
- (b) Presentation of awards and memorials.
- (c) Climate emergency updates, information presentations, and commission reports (also can adjourn to local control commission, board of abatement, etc.).
- (d) Public forum for a time certain starting no earlier than 6:00 pm and no later than 7:00 pm for no longer than 90 minutes unless extended by the president or the council. The president will encourage those who do not have an opportunity to speak to submit comments in writing which will be posted on the next council agenda.
- (e) Action on consent agenda.

- (f) Appointments (adjourn to city council with mayor presiding if required).
- (g) Resolutions and ordinances dealing with the business of the city (unfinished business first).
- (h) Reports from committees.
- (i) Councilor and mayor general city affairs.

(Res. of 12-16-91; Res. of 12-21-11; Res. of 2-11-19; Res. of 4-27-20)

17 Agenda.

- (a) An agenda for city council meetings shall be prepared in the city clerk's office and posted on the web, and copies thereof shall be available to members of the city council and to the general public by the close of the second business day (normally Thursday) immediately preceding each regular meeting of the city council.
- (b) All city departments, councilors, city officials and the public in general (except for the city attorney as provided below) are required to have their materials delivered to the city clerk's office not later than 4:00 p.m. of the third business day (normally Wednesday) preceding regular meetings.
- (c) All requests for resolutions, ordinances, motions, and any materials to be prepared or reviewed by the city attorney must be in the city attorney's hands by 12:00 p.m. on the fourth business day (normally Tuesday) preceding a regular meeting.

The city attorney shall deliver to the office of the city clerk all resolutions, ordinances, motions, or other materials to be submitted no later than 12:00 p.m. of the second business day (normally Thursday) preceding a regular or adjourned regular meeting.

The city clerk's office shall assemble all materials for the coming meeting into one (1) packet for each councilor and shall post those materials at the close of the second business day (normally Thursday) preceding a regular meeting.

It is expected that councilors will submit all materials on time, and the council president may refuse to accept any materials outside of these time frames without extenuating circumstances.

(d) (1) The agenda prepared by the president with input from the chief administrative officer or designee shall be divided into two (2) parts; namely, a consent agenda and a deliberative agenda. The consent agenda is made up of items which are deemed not controversial or are for information only. The consent agenda shall also suggest the proposed action with respect to such items. The deliberative agenda items are for those issues which may be controversial or are of such importance that they deserve discussion by the council. It is not appropriate to move an item from the consent to the deliberative agenda to provide general information. Councilors may use the councilor comment period to disseminate that information. All supporting documents for resolutions and other city policies are available to the public on BoardDocs or other board management software.

(2) Any councilor may request that a particular item be removed from the consent agenda and placed upon the deliberative agenda.

(3) A single motion shall be sufficient to act upon the items listed in the consent agenda in the manner suggested by the chief administrative officer. The items on the deliberative agenda shall be dealt with separately in accordance with the procedures otherwise specified by these rules.

(e) No matters of business other than those included in the agenda and provided to councilors in the packets or electronically provided by the city clerk's office shall be introduced and considered at any regular or adjourned regular meeting of the city council without a two-thirds (2/3) affirmative vote of the councilors present and voting.

(f) All meetings of the city council shall adjourn no later than 10:30 p.m. that same day. No vote by the city council may be taken after 10:30 p.m. except as otherwise provided. All executive sessions will commence no later than 10:30 p.m. and be concluded by 11:00 p.m. The president and chief administrative officer shall preview each agenda and endeavor to make sure that all time-sensitive items are placed as close as possible to the beginning of the meeting. Prior to adjournment at 10:30 p.m., the president shall call for a vote upon a disposing motion on the pending item unless a motion is made to suspend the rules to allow continuation of the meeting to complete all or a part of the agenda. If such a motion is made the president shall inquire about timely matters and the motion to suspend the rules to allow continuation of the meeting may include consideration of such matters warranting action. If such a motion fails to receive approval of two-thirds (2/3) of the councilors present and voting, even if after 10:30 p.m., the president may entertain alternative motions to suspend the rules to allow continuation of the meeting.

(Amended 2-7-72; 2-17-76; Res. of 6-12-89; Res. of 2-25-91; Res. of 6-24-96; Res. of 2-18-97; Res. of 12-21-11; Res. of 2-11-19)

18 Business to be conducted in accordance with Robert's Rules of Order.

The business of the council shall be conducted in accordance with the recognized parliamentary rules as set forth in the current issue of Robert's Rules of Order, except as otherwise provided in these rules. No rules of this council shall be suspended except by a two-thirds (2/3) vote of those present and voting. No rule shall be amended or repealed unless notice of such proposal has been given at the last regular meeting preceding, and such change must be adopted by a majority of the entire membership of the council. These rules shall be applicable to the city council with mayor presiding, the board of civil authority, the board of abatement of taxes and the local control commission.

(Res. of 4-27-92; Res. of 12-21-11; Res. of 2-11-19)

19 Appointments to be by open ballot.

When dealing with commission and council appointments, under the City Charter or otherwise, members of the city council or city council with mayor presiding shall not use secret ballot unless two-thirds (2/3) of those present and voting, vote to use secret ballots. A commission or council appointment, under the City Charter or otherwise, must be approved by a majority of the city council or the city council with mayor presiding.

(Ord. of 5-23-83; Res. of 12-16-91; Res. of 12-21-11; Res. of 2-11-19)

20 Request for legal assistance.

All requests for legal assistance, information and advice received by the office of the city attorney from either the mayor or a member of the city council, and all information received by the office of the city attorney in connection with research and drafting such a request, including any preliminary drafts not yet introduced to any committee of the city council, the council, or released to the public, shall be confidential, unless the person requesting or giving the information designates in the request that it is not confidential.

(Res. of 8-15-88; Res. of 12-21-11; Res. of 2-11-19)

21 City councilor expense reimbursement.

The city council shall annually, as part of the budget and upon recommendation of the mayor, set an expense account for each city councilor. The expense account is for expenses including reimbursement necessary for the performance of city council business. Councilors may combine, or pool, expenses with other councilors. Funds not spent by a city councilor at the end of the councilor's term shall not be available to the succeeding councilor. A succeeding councilor who takes office during a fiscal year shall be provided with an expense account equivalent to a pro-rata share (based on the number of months remaining in the fiscal year) of the annual expense account allocated to each councilor for that fiscal year.

(Res. of 4-13-98; Res. of 12-21-11; Res. of 2-11-19; Res of 6-24-19)

22 Electronic devices.

All electronic devices used by councilors, the public and others present shall be silenced (i.e., turned off or put on "vibrate") during council meetings.

(Res. of 12-21-11; Res. of 2-11-19)

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Editor's note—Appendix B contains the rules of the city council as adopted by it and as amended from time to time. Amendments are indicated by parenthetical history notes following the amended sections; absence of such notes indicates that the section is as originally enacted. Catchlines have been added in brackets to facilitate usage and indexing. Other bracketed material in the text has been added for clarity and consistency.

It should be noted that Acts of 1989, No. M-20 effectively changed "board of aldermen," and other like references, to "city council," etc., throughout the Charter. The editor has changed references to "board of aldermen," etc., to "city council," etc., in Appendix B in order to reflect the enactment of Acts of 1989, No. M-20.

Charter reference—City council with mayor presiding and city council, § [36](#) et seq.

Cross reference—Administration, Ch. [2](#); personnel, Ch. [24](#).