



MINUTES OF AN OFFICIAL MEETING:

Regular Meeting of: Legislative & Licensing Committee

Date and Time: Tuesday, October 20, 2020 at 7:15 pm

Location: Courtroom, Public Safety Building, 2100 N. Calhoun Road

Members Present: Alderman Gary Mahkorn (Chair), Alderman Brad Blumer, Alderman Bill Carnell (by phone), Alderman Mark Nelson, Alderman Rick Owen

Members Excused: None

Others Present: City Attorney Jenna Merten, City Clerk Kelly Michaels

1. ROLL CALL

Alderman Mahkorn noted a quorum present and called the Legislative & Licensing Committee to order at 7:15 pm.

2. ANNOUNCEMENTS

The Next Regularly Scheduled meeting will be held on Tuesday, November 17, 2020.

3. MINUTES

Motion by Alderman Nelson, seconded by Alderman Owen, to approve the minutes of the October 6, 2020, Legislative & Licensing Committee meeting. Motion carried 5-0.

4. NEW BUSINESS

a. LEGISLATIVE REFERRAL: Public comment periods at government meetings. (Mayor Steve Ponto)

Attorney Merten noted under Wisconsin Law, public comment is not required. The Mayor wanted to look at this based on some of the more lengthy public comment sessions the council had during this past summer. The way the city has its public comment sessions now is fine but the council can make changes by eliminating it all together or setting up either a longer time period or limiting the time period for public comments. However, there is a provision that the more restrictions placed on the public comment period, the harder it is to maintain the constitutionality of it. The memo indicated what provisions are in the law regarding public comments.

Alderman Mahkorn noted this needs a delicate balance, noting the more restrictions you place on public comment sessions, you walk a fine line with violating the first amendment.

Alderman Owen stated the Mayor made the referral on September 1, 2020, in which he included his response to a letter he received from a local pastor and member of the BEGIN network. The second letter was signed by 16 members of the BEGIN network. The correspondence referenced comments from the public comment session of the July 21, 2020 council meeting. It also referenced comments from a different

speaker at a school board meeting. Clearly, these concerned citizens were upset by the content of some comments that advocated changes to the public comment section of our meetings.

Alderman Owen added as he reviewed the two letters, he quoted the first letter asked 'that the council should not accommodate religiously insensitive or hateful speech or to not let it go for what it is'. The second letter asked specifically to consider and he quoted 'basic strategies like the distribution of ground rules, asking the speaker to cease and turn off the microphone'. Once those options are exhausted, the meeting can adjourn.

Alderman Owen stated he hopes the full council is 'on the same page' as the Mayor is focusing on the ground rules. His opinion, after reading the letters, is that the individuals requesting the council take action are seeking censorship of any comments that they deem hateful. He can support the ground rules set forth for public comment session; however, he does not see any way to modify our protocol towards the specific concerns in the letters to the Mayor. He emphasized that all Mayors, including our current Mayor, have done an exceptional job in letting citizens have a forum to voice concerns or agreement of city policy while guaranteeing freedom of speech while at the same time balancing time constraints and ensuring that actual government business is conducted.

The guidance on public comment supplied by the City Attorney affirms that our Mayor and previous Mayors have generally followed the best practice in conducting the public comment portion of our council meetings or any meetings that involve public comments or public hearings. He added Mayor Ponto should be commended for allowing as many members of the public, as possible, to speak at the meeting in reference, even if some of the comments offended some observers. Nothing in the guidance supplied by staff suggests a method for preventing free speech that some are characterizing as hateful, as precisely that doing so would be unconstitutional. He has no suggestions for modifying the public comment section of the common council meetings or public hearings. He feels the meeting chairpersons, past and present, already follow the best practices outlined in the City Attorney's memo. Any actions the council may take to modify the public comment portion of the council meetings will not address the concerns of the members of the public who seek these changes.

Alderman Blumer feels that no member of the council feels eliminating public comment sessions is necessary or a good idea. The number of times that residents come in to speak at public comment session is very infrequent. He agreed with Alderman Owen stating that the council could not stop someone ahead of time from saying something offensive or hateful. The thing that was more troublesome, at the July meeting, was the excessive repeating of points already made and excessive length of those comments. There were many non-residents and people that do not work in the city. Additionally, many people did not state their name or where they lived. After the open public comment session, there were a lot of outbursts and interactions between the crowd and council members during the meeting. It was very distracting and intimidating as council members were verbally assaulted. If there are ground rules, how will they be enforced? We should explore various options. Most meetings would not require these ground rules.

Alderman Nelson quoted from Supreme Court Chief Justice Rehnquist, who stated, "*the public body may not pre-empt your speech by forbidding you from making 'critical' or 'personal' comments, or place other content-based restrictions on your comments*". Alderman Nelson noted the council cannot be a 'referee', nor should we be a respondent to the comments made in front of us. We have a good process in place now. He added the time limit seems to be important. Currently, the comment period is fifteen minutes with those commenting sharing that time period. If some people get more time, it looks like favoritism. The ground rules should be published on the agenda; and rules must be followed.

Alderman Mahkorn agreed with all members. He stated the July meeting was rough and complimented the Mayor on a good job handling the meeting. That July meeting did provoke this discussion tonight, which is

a good thing. The council should not be a referee though. Many of the comments that night did offend and 'scratch' members of the council. We are all human beings. The first amendment protects offensive language. Where do we, as the council, draw the line? There needs to be a change but we cannot 'stifle' anyone either.

He agreed with Alderman Blumer, regarding the July meeting, stating that after everyone spoke their peace and the council started to deliberate, we were constantly interrupted. That was wrong. It would be fine if we underscore the conduct of the public or limit time for the public comment period.

Alderman Blumer stated there should be a time limit and there should be some sort of language regarding behavior during the public comment session.

Alderman Carnell felt that after listening to public comments for 14 years, he does not see a need for a big change. It is important for the public to address issues that are important to them. The Elmbrook School District had problems when they limited attendance and length of time for speaking during a board meeting concerning a referendum.

Alderman Nelson suggestive giving a directive to the City Attorney to look at what the city uses as a notice as to what the public comment is to be and determine whether or not there needs to be some 'tweaks' to that. He suggested there should be a comment in the notice stating 'do not expect a response from the common council'. We should have various plans on how to handle the public comment session according to how many people show up. We cannot favor one position over another position. It was suggested that we have two public comments sessions, one for each side of the issue. He suggested that the City Attorney take the legal memos and revise as necessary and supplement with what the council already uses.

5. ADJOURNMENT

Motion by Alderman Nelson, second by Alderman Owen to adjourn the meeting. Motion carried 5-0. Meeting adjourned at 7:52 pm.

RESPECTFULLY SUBMITTED: KELLY MICHAELS, MMC, WCPC
CITY CLERK'S OFFICE, CITY CLERK