

**CITY OF EXCELSIOR
Hennepin County, Minnesota**

MINUTES

City Council Work Session

Monday, March 5, 2012

1. Call to Order/Roll Call

Mayor Ruehl called the meeting to order at 6:07 p.m.

Councilmembers present: Caron, Fulkerson, Olson, and Mayor Ruehl

Councilmembers absent: Miller

Also Present: City Manager Luger, City Attorney Staunton,
and City Clerk Johnson

2. Agenda Approval

Olson moved, Fulkerson seconded, to approve the agenda as presented.
Motion carried 4/0.

3. Code of Conduct and Quasi-Judicial Decision Making

Staunton said he put together draft language for amending the City's Code of Ethics and two provisions for the Council's consideration. The first relates to issues we have discussed regarding ensuring applications for permits or other city approvals are given a fair and impartial review. As we have discussed, recent Minnesota court cases have highlighted the need for quasi-judicial decision makers to keep an open mind when considering such applications. The language he has proposed requires Council members and members of boards or commissions considering such applications to refrain from making final decisions on requests until the record is closed and the member has had an opportunity to review the record and hear any arguments regarding the request. The language permits expression of concern about the request while it is pending so long as a final decision is not made until the record is complete. The language also provides that persons violating the prohibition shall be disqualified from participating in the decision making on the matter. The Council will need to discuss how such disqualification would work procedurally.

Staunton said the second issue relates to public statements by members of boards or commissions. Some Council members have expressed concern about members of boards or commissions making public statements, especially letters to the editor in the local newspaper using their membership on the board or commission along with their name. The proposed language merely requires that members not use their membership title unless authorized to speak on behalf of the board or commission.

3. Code of Conduct and Quasi-Judicial Decision Making – (Continued)

Staunton said that the City wants to ensure impartiality and fairness, but it also wants to make sure that it is not silencing someone from giving their comments. The City also does not want people to get the impression that a person is speaking on behalf of the council/advisory commission, etc. He noted that when the court looks at cases it does not take comments; the court looks through the records to see if the City complied with ordinances and were not predisposed.

Mayor Ruehl asked how the policy would get enforced. Staunton said it is helpful to have a board who determines if someone has violated the policy. It is more difficult with regard to a Council member because they are elected.

Mayor Ruehl asked if the City Manager would handle any issues. Staunton said that if it is a Council member, he would probably handle it. If it is board member or advisory commissioner, the Council would handle it.

Caron said she has an issue with the paragraph dealing with the City Council, because she doesn't report to the Council or the City Manager. She was elected by the people. She would be alright if the City Attorney was to inform her that she was in violation. The violation would need to be extreme for the Council to have that authority.

Mayor Ruehl asked what would happen if a board or advisory commissioner does not recuse themselves from voting if there is a concern of what could be conceived as a conflict of interest. Staunton said then it would probably divert back to the by-laws.

Mayor Ruehl said that he would question whether a person who is in violation could be objective in their decision making. If someone doesn't recuse themselves, what is the chain of command for handling the issue? Caron said that is one question, but there is also the question of what would trigger that process if there was a process in place. She thinks people need to feel like they can voice their opinions. At what point would that line be crossed?

Staunton said this is a delicate line. If a board, advisory commissioner, or Council member were to voice that they are not going to vote for something without first receiving the information; that is predisposition. If someone says I need to be satisfied about "X" to vote for this, this would not be an issue.

Caron said there may be a case where someone says one thing but means something else. When the Council or commissioner receives the agenda packet, they are reviewing it and making notes, and you can't help but have some thoughts about the application. Then they get to the meeting and get more information and hear other people's thoughts, and in many instances,

3. Code of Conduct and Quasi-Judicial Decision Making – (Continued)

may have totally changed their mind. Staunton said there is no easy answer. In the Minneapolis case, there was a Council member actively soliciting people to come out in opposition to the project.

Caron said people volunteer with the best intentions and believes the language is too strong. How do you know someone has violated the policy and how do you avoid the appearance of inappropriate use of power?

Mayor Ruehl said there have been enough instances that have come up during his tenure as Mayor that he cannot accept leaving things status quo. He understands it's a difficult topic, but he wants to see something put in place.

Caron said she would like to find a way where advisory commission members don't feel they can't ask questions of the applicants or communicate with other advisory commissioners during the meeting.

Olson said it seems to him that the City needs a process that is fair for analyzing the facts. If someone is clearly biased and the City Attorney presented the case to the Council; couldn't that be the process.

Staunton said maybe there need to be a process outlined in the document for dealing with violations. He said that the Council already has the authority to remove an advisory commissioner at any time.

Luger said maybe the Council should be removed from the policy document and it should just be for advisory commissioners.

Caron said everyone has a different way of expressing themselves. She does not want to come down on someone just because of their personality or the way they express themselves. There should also be some language outlined in the policy to provide direction on when someone should recuse themselves.

Staunton would like to get feedback from other attorney's to see what other cities are doing and have some other attorney's review this document.

Fulkerson said she thinks the policy should also apply to the Council. She thinks the Council has been too lenient on some people. She also agrees that training would be beneficial.

Council discussed whether a board or commission member should use their membership in a letter to editor, etc.

3. Code of Conduct and Quasi-Judicial Decision Making – (Continued)

Mayor Ruehl said when he's agreed to let someone use his name he is extraordinary careful to tell them that they cannot use his title of Mayor.

Caron said people usually use their title because they think it will be meaningful.

Luger said she is uncomfortable when someone uses their membership.

Olson said there needs to be clarity and a process. Training is good, but there stills needs to be a good due process.

The Council requested that the City Attorney revise the policy and bring it back to another work session for further review.

4. Other

None

5. Adjournment

Fulkerson moved, Olson seconded, to adjourn the Work Session at 6:57 p.m.
Motion carried 4/0.

Respectfully submitted,

Cheri Johnson
City Clerk