



Richland County Council
Rules and Appointments Committee
May 15, 2018 – 4:00 PM
4th Floor Conference Room
2020 Hampton Street, Columbia 29204

COMMITTEE MEMBERS PRESENT: Bill Malinowski, Chair; Yvonne McBride, Norman Jackson and Gwen Kennedy

OTHERS PRESENT: Michelle Onley, Kimberly Williams-Roberts

1. **CALL TO ORDER** – Mr. Malinowski called the meeting to order at approximately 4:00 PM
2. **APPROVAL OF MINUTES**
 - a. May 1, 2018 – Ms. Kennedy moved, seconded by Mr. N. Jackson, to approve the minutes as distributed. The vote in favor was unanimous.
3. **ADOPTION OF AGENDA** – Ms. Kennedy moved, seconded by Mr. N. Jackson, to adopt the agenda as published. The vote in favor was unanimous.
4. **INTERVIEWS**
 - a. Transportation Penny Advisory Committee (TPAC) - 2

Mr. Thomas Lanham and Mr. Cyril B. Busbee, Jr. were interviewed for the Transportation Penny Advisory Committee.
5. **APPOINTMENTS**
 - a. Transportation Penny Advisory Committee (TPAC) -2 – Mr. Malinowski moved, seconded by Mr. N. Jackson, to appoint Mr. Cyril B. Busbee, Jr. and Mr. John P. Epting. The vote in favor was unanimous.
6. **ITEMS FOR DISCUSSION**
 - a. CMRTA Term Limits – Mr. Malinowski stated he spoke briefly with Frannie Heizer and mentioned to her that it was his understanding the term limits were 3 year terms. Council is doing their part to try to fulfill those terms, but other entities seem to not be following the rules and we would like to make sure everybody is following the rules. Ms. Heizer stated she will see what the term limits.

Ms. Roberts stated our rules say, “Each person will serve 3 year terms.”

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Mr. Malinowski stated he thinks since the County has taken the lead on the overall Penny Tax funding of the CMRTA. He thought everyone else was supposed to.

Mr. N. Jackson stated it is supposed to be equally shared with all the members on commission.

Mr. Malinowski requested someone to make sure the other entities involved have the same rules.

Mr. N. Jackson stated it can come from the committee, if the committee agrees. The committee can make a recommendation to Council and the recommendation will go to them.

Mr. Malinowski stated, we should not need to bother Council with it, if we find out that everyone has 3 year terms when the need the Legal Dept., or somebody, to tell Frannie Heizer.

Mr. N. Jackson stated, if the committee is discussing it, at least a report from the committee needs to go to Council on what we are doing.

Mr. Malinowski inquired how we know they are not changing their members.

Mr. N. Jackson stated it was brought to his attention that Lexington has had the same person on from the beginning.

Mr. Malinowski stated to have the Legal Department to confirm the term limits of the various entities on the CMRTA Board and report back to the committee at the next meeting. Also, place this item on the Council agenda for action.

- b. Move that the Rules & Appointments Committee review the current County Council Rules and offer amendments for consideration by Council that would clarify exactly how County Council voting will occur with specific reference to how a non-vote (i.e. not a “yes”, “no” or “abstain” vote) from a member present at the meeting shall be counted or not counted [PEARCE] – Mr. Malinowski stated if people would quit trying to use a loophole down there and wait and see how the vote is and all of a sudden saying, “well my vote will count as a yes, if I don’t vote.” If we follow the initial vote that says vote, we do not wind up in this situation.

Mr. Farrar stated, with the electronic system, if someone does not hit yes, no, or abstain, they are just at the dais and they do not do anything. Under the current rules, the way that goes is the person is considered to have voted with the prevailing side. Now, interestingly last night we had this come up with a 4-4, and so the prevailing side would be, if the motion did not pass, the failing side. If you want to depart from that and change it some way, you could have it not count period.

Mr. Malinowski stated the current rules says, “every Council member must vote.”

Mr. Farrar stated, “Each member shall vote on each question put, except that no member shall be permitted to vote on any question in which that member has a direct personal or pecuniary interest, or personal conflict, which makes participation might create an appearance of impropriety in that members’ estimation.” The first part of the rule is basically the recusal portion. If you feel like you have some conflict of interest, you can recuse yourself. The second sentence is “A Council member must be at his/her seat in order to vote...”

Ms. McBride stated, so if you are not at your seat, you do not vote. And then, it goes back to the prevailing...

Mr. Farrar stated, "If a member does not declare a vote or an abstention, his/her vote shall be recorded with the prevailing side. If voting an abstention, a reason must be stated and recorded in the minutes." That goes back to the first sentence, say I'm abstaining/recusing myself because of a conflict. "After the decision...and absent member may be permitted to record the vote she/he would have given if present, but such vote shall not affect the previous question." Therefore, if the person says, "I would have voted on the prevailing side, please put me down with that and it does not change the outcome of the vote, they can do that.

Mr. Farrar stated, you can alter the sentence, "If a member does not declare a vote or an abstention, his/her vote shall be recorded with the prevailing side" to say it "won't count period."

Mr. Malinowski stated the problem he sees, and it is a matter of, and he has heard from some of his colleagues, they are playing a game. While they do not really want to be recorded as pushing a yes and they know the votes are there to carry that vote. Then they say their vote wound up being there because I didn't vote, it went with the prevailing side. That way they are saying, "But, I really didn't vote for it." The first rule says you must vote. He is saying, #1 must be in effect first, which means you must vote and you cannot turn and play that game. It should be up to the Chair to demand that each person vote, if they do not have a reason for an abstention. Or, just eliminate it and say if you do not vote that is it.

Mr. N. Jackson inquired if a Councilmember says they are not going to do it, what happens?

Mr. Farrar stated the 3rd option you could go with is, you could have a category "Present, Did Not Vote".

Ms. McBride stated she likes the one about it does not count.

Mr. Malinowski stated we add to the rules that you must vote. If you do not vote, it does not count.

Mr. Farrar stated it is effectively an abstention without stating a reason. He suggested the following language, "Each member shall vote on each question put. No member shall be permitted to vote on any question, which the member has a direct conflict." It would basically be taking 5.21 and emphasizing that first one. You also have to think about, if you get rid of the prevailing side, it may impact your reconsideration options.

Mr. Malinowski stated it may impact people pushing the button.

Ms. McBride inquired about how it would impact the reconsideration.

Mr. Farrar stated, to reconsider, you have to be on the prevailing side to make a motion to reconsider.

Ms. McBride stated if you did not vote you are not on either side.

Mr. Farrar stated the way it is counted, if it was a tie, it would go on the side that voted against it.

Ms. McBride stated you almost need it if you want to do the reconsideration. She further stated she did

not know what the prevailing side meant.

Mr. Farrar stated it is kind of counterintuitive because if it is a tie it is not really a prevailing, but since a tie is considered a fail then the non-vote goes on record as a “no” vote. The other thing is if you have a lot of Council members absent or they choose not to vote and you have, for example, a 3-2 vote.

Ms. McBride inquired if everyone knows what the prevailing side is. She stated if we spelled it out it might help.

Mr. Farrar stated where this comes up most is under “Reconsideration: 5.23”. So, what you would say here is, “...prevailing side shall be” and then explain, “If a tie, since the motion did not pass, those that voted against it are considered to be on the prevailing side.” He will work on incorporating the proposed changes, so the committee can take this item up at their June 5th meeting.

6. **ADJOURN** – The meeting adjourned at approximately 4:39 PM