



Richland County Council
Rules and Appointments Committee
October 16, 2018 – 4:00 PM
4th Floor Conference Room
2020 Hampton Street, Columbia 29204

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

OTHERS PRESENT: Michelle Onley, Kimberly Roberts, and Brad Farrar

1. **CALL TO ORDER** – Mr. Malinowski called the meeting to order at approximately 4:16 PM
2. **APPROVAL OF MINUTES**
 - a. October 2, 2018 – Ms. McBride moved, seconded by Mr. N. Jackson, to approve the minutes as distributed. The vote in favor was unanimous.
3. **ADOPTION OF AGENDA** – Ms. McBride moved, seconded by Mr. N. Jackson, to adopt the agenda as published. The vote in favor was unanimous.
4. **NOTIFICATION OF VACANCIES**
 - a. Accommodations Tax – Two (2) Vacancies (One applicant must have a background in the Cultural Industry; One applicant must have a background in the Hospitality Industry)
 - b. Hospitality Tax – Two (2) Vacancies (Applicants must be from the Restaurant Industry)
 - c. Employee Grievance Committee – Six (6) Vacancies (Must be a Richland County employee; 2 seats are alternates)
 - d. Board of Assessment Appeals – One (1) Vacancy
 - e. Board of Zoning Appeals – One (1) Vacancy
 - f. Building Codes Board of Appeals – Eight (8) Vacancies (One applicant must be from the Architectural Industry; One from the Plumbing Industry; One from the Engineering Industry; One from the Gas Industry; One from the Electrical Industry and Two from the Fire Industry as alternates)
 - g. Procurement Review Panel – Two (2) Vacancies (One applicant must be from the public procurement

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arena and One applicant must be from the consumer industry)

- h. Planning Commission – One (1) Vacancy
- i. Midlands Workforce Development Board – One (1) Vacancy (One Private Sector Business seat; must represent private sector business with policy-making or hiring authority)
- j. Lexington Richland Alcohol and Drug Abuse Council – Three (3) Vacancies
- k. Richland Memorial Hospital Board – Four (4) Vacancies
- l. Airport Commission – One (1) Vacancy

Ms. McBride moved, seconded by Mr. N. Jackson, to advertise for the vacancies. The vote in favor was unanimous.

4. INTERVIEWS/APPOINTMENTS

- a. Accommodations Tax - Three (3) Vacancies (One applicant must have a background in the Cultural Industry Two applicants must have a background in the Hospitality Industry) – Mr. Taylor H. Miller was interviewed for the Accommodations Tax vacancy.

Ms. McBride moved, seconded by Mr. N. Jackson to appoint Mr. Taylor H. Miller to the Accommodations Tax Committee. The vote in favor was unanimous.

- b. East Richland Public Service Commission - One (1) Vacancy – Ms. Lisa Kelly Stewart was interviewed for the East Richland Public Service Commission vacancy. The vote in favor was unanimous.

5. ITEMS FOR DISCUSSION

- a. 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 we have been over this several times. He thinks what we need is to go back to the part where it says, “All Councilmembers must vote on all items.” If that was enforced, we would not have this problem.

Mr. Farrar stated the key is the enforcement question, how do you enforce it if somebody does not want to vote. If somebody does not vote, depending on the issue, you are disenfranchising your district if you are not casting a vote because that is why you are there.

Mr. Malinowski stated nobody knows that because that is not published in the final minutes. It does not say “so and so” did not vote. It says the vote in favor was unanimous or the vote was in favor.

Mr. Farrar stated, if somebody does not vote, it is considered casting in favor of side that did vote. There is a difference between abstaining and recusal. Recusal should be if somebody has a conflict of interest.

You are supposed to state that (i.e. I have a business relationship). Abstaining is just not voting for whatever reason. He believes it is more an enforcement piece. But, again, it's like when we talked about disciplining Council members, staff cannot do that, it has to come from Council. He stated we can look at that rule.

Ms. McBride stated, for clarification, you can abstain for whatever personal reasons you may have.

Mr. Malinowski stated that is not the way it was written up before.

Mr. N. Jackson stated you have to have a reason.

Ms. McBride stated she is trying to get a legal opinion.

Mr. Farrar stated the rules state, "...which that member perceives he or she has a direct personal or pecuniary interest, or in which might create an appearance of impropriety in that member's estimation." So, it is a subjective situation. That is more like I am going to recuse myself, and there is a specific reason for it (i.e. conflict of interest, appearance of impropriety). Abstaining is just I am not participating in the vote, but it is not for one of the recusal reasons, or it could be in addition to the recusal. It could be I do not want to vote on this issue. It could be controversial. That is the piece that is of concern. If the person does not vote, but does not state a reason why. Again, he thinks the rule is ample. It says, "Each member shall vote on each question put." Then it talks about direct interest, which is really recusal. "...Must be at his/her seat in order to vote for those at the dais." It does not say seated, so you could be hanging around behind the chair.

Ms. McBride stated this is where the issue may come in even if you are not abstaining. She stated the vote is there, and you are not in your seat, and we have a 5 – 5 vote. That is one of the gray areas. What happens? That is where the confusion comes. She is not her seat, so she did not vote.

Mr. Malinowski stated it does not pass. It fails; therefore, the prevailing side becomes the failure.

Ms. McBride stated the issue is, from what she has learned on Council, the confusion of which is the prevailing side. That has been the question.

Mr. Malinowski stated the prevailing side is the side that either wins or losses.

Ms. McBride inquired how you know which one losses, if it is 5 – 5?

Mr. Malinowski stated if it is 5 – 5, it is a failure. Therefore, the prevailing side would be failing side.

Mr. Farrar stated you could interpret that 1 of 2 ways. The way you could not interpret it would if you were to say it passed because you have to have 50% plus 1, so that would be 6 – 5.

Ms. McBride stated, for clarification, so we voted on something and the vote is 5 – 5, so what happens then. It does not pass?

Mr. Farrar stated it did not pass because you did not have a majority, but somebody wanted to reconsider it, so you say who could reconsider it. It would be the people on the side on the side that

voted against it, if you truly want to parse who is the prevailing side. You could take the other position and say there is not a prevailing because it was tied, but then you would have to tinker with your rule because, at that point, anyone could move for reconsideration.

Ms. McBride stated that is where the issue comes because they are saying there is not a prevailing side because it was tied.

Mr. Farrar stated that might be worth looking into because that situation can come up.

Mr. Malinowski stated, let's say, someone is out back getting a hot dog and the vote came up and it was 5 – 5. Now somebody wants to reconsider, and that person comes back out. Are they still allowed to vote?

Mr. Farrar stated, if you look at this conceptually, if you want to make it easier to reconsider, you can do that. You can say anybody can move for reconsideration. How does that really hurt you, if it is on the losing side? You cannot do that indefinitely. It would just be a delay tactic.

Ms. McBride stated, in this Council, if you reconsider, you are likely going to get the 5 – 5 again.

Mr. Farrar stated if someone is coming in, or they were not there when the vote was taken. There you have a situation where, was the person there during the discussion or the debate to form a meaningful...They can still vote, but that is where you question. If it were a judicial proceeding, and the judge heard 30% of the thing, you really would not want that. It seems like every time we do one of these rules, you can find an exception to it.

Ms. McBride stated let's go back to the 5 – 5 tie. What can we do?

Mr. Farrar stated, if it is a 5 – 5, and you want to say, that in the event of a tie, either side can make a request for reconsideration.

Ms. McBride inquired as to what the other option is to determine the results.

Mr. Farrar stated the result is it did not pass.

Ms. McBride stated, do not say the "prevailing side", just say "5 – 5 fail".

Mr. Malinowski stated what you want to know is that there are 11 members, and only 10 voted. Where did the 11th member's vote go?

Mr. Farrar stated that is where you would probably say, "Let's do the reconsideration because we did not have the other person, who is at their seat."

Mr. N. Jackson stated sometimes they are at the seat, but they do not vote.

Mr. Farrar stated that is an enforcement piece, and he does not know how you enforce it.

Ms. McBride stated the only way, for clarity, with her, is that the prevailing vote means no. You are

saying the 5 – 5, then the prevailing wins?

Mr. Farrar stated the result is a failure, so the result is consistent with the people who voted against it.

Ms. McBride stated she is trying to make it clear, so we do not have to go through these arguments in Council.

Mr. Farrar stated you can put, “In the event of a tie, the ‘prevailing side’ is considered to be the side who voted not to approve the item.”

Ms. McBride stated that clears it up.

Mr. Farrar stated, the other thing is, he does not know if the State House does this, but we could have a category of “voting present”.

Ms. McBride stated to leave it as it is.

Mr. Malinowski inquired if there is anything in the rules when you do minutes, which are a summary of the actions that took place at Council, when you put in there it was unanimous, but can we put in there also that it was unanimous, but Malinowski did not cast a vote. We need to start doing that so the public knows.

Ms. Onley stated, if the Council member does not vote, their name is not listed. If they abstain their name is listed.

Mr. N. Jackson stated his concern is, if you are present at the meeting and you did not vote, the public needs to know that you did not vote.

Mr. Malinowski stated the public needs to know that. They are going to say there were 11 people at that meeting, but only 10 people voted. When they get it from the Planning Commission, it says it was voted “8-2, 9-0, etc.”

Mr. Farrar stated he would say in that situation that it would be Council’s pleasure, and he would issue guidance to the Clerk to say: for, against, and not voting, so it is not on the Clerk for her to make that call.

Mr. Malinowski stated, if we say voting for, you can list the people that voted, and the ones that did not are not listed.

Mr. Farrar stated, if you say, the Clerk shall list voted for, against, and those that did not vote, whether recusal, abstention, or other reason.

Mr. Malinowski inquired if they need to do that as a rule change, or is that something just in the minutes that the Clerk can do.

Mr. Farrar stated he would give that guidance, as a Council, that is what you want. He would instruct them, so there is something they can come back to because some Council member is going to say, “Why

are you listing me as not voting?"

Ms. Onley stated she would prefer that it be listed in the rules, so we have backup.

Mr. Malinowski stated the committee will come up with the guidance for the voting portion. He stated, in the future, "The record will reflect how each member present voted, including no votes, abstentions, and recusals."

- b. We move that the 2nd Citizens' Input (Must Pertain to Richland County Matters Not on the Agenda) to be included with the 1st Citizens' Input section nearer to the beginning of the Richland County Council Regular Session meeting agendas [C. JACKSON, MANNING, and N. JACKSON] – Mr. Malinowski inquired if there is any rule, or is this just a Council policy.

Mr. Farrar stated that is just a policy. We could change the rule and put all of the Citizens' Input up front. He stated that might take a learning curve for those who want to show up later at the meeting and say they want to say something at the end. He stated, if you have a late arrival, then you would be having 3 Citizens' Inputs.

Mr. N. Jackson stated the same thing applies when you have the 1st Citizens' Input up front and someone comes later at the end of the meeting, but they missed the 1st because they could not speak because it was something on the agenda. He stated what he has seen, in the past, is that sometimes we meet late. For someone to sit there from 6:00 to 10:00, it is really not fair for them to speak 2 minutes.

Mr. Farrar stated the rules are Council's, so you could have something that said, here is how we hope you do it, but in exceptional circumstances, by leave of Council, a person can. That way if the person comes in and they have some legitimate... He would also look and see how this works over the next few meetings because if this is getting to be used out of hand. He thinks this is one of those fluid situations.

Mr. Malinowski stated we have the 2 minutes per person, and there is a maximum time for the input section too.

Mr. Farrar stated there have not been too many. It is not like budget time, or we do not let the guy come anymore with the miniseries.

Mr. N. Jackson stated he hates people coming and having to sit through everything just to say something.

Mr. Malinowski inquired if anyone objects to having these 2 items for action at the next Rules meeting.

Mr. N. Jackson inquired if we could not make it action and move it up tonight.

Mr. Malinowski stated Mr. Farrar has to create language for Item 6(a).

Mr. Farrar inquired if they wanted Item 6(a) for tonight.

Mr. Malinowski stated, he did not want the language tonight, because we are going to have people like him down there that are going to say, "I just got this, and I did not get a chance to read it."

Ms. McBride inquired if we can do Item 6(b) tonight.

Mr. Malinowski stated we can do Item 6(b) tonight, but then we have to go back and reconsider our agenda. He stated, it is also not on the Council agenda.

Mr. N. Jackson stated, when you have a report from this committee, he thought you were reporting what we discussed in the meeting.

Mr. Malinowski stated "Items for Action" do not get put down there. It's the same with the other committees, A&F and D&S.

Ms. McBride stated, when we go back to the full Council, they are not on.

Mr. Malinowski responded they are not.

Mr. N. Jackson stated sometimes the committee can make a recommendation regarding what was discussed, and move it forward to the agenda. It is up to Council to accept it or not. There is not a rule that says...

Mr. Malinowski stated he is going to fall back on the agenda making. You got people that maybe have looked at this, and said, "Well, they are appointing 2 people from the Rules Committee, I do not care about that I am not showing up." Yet, all of a sudden you are putting something on about Citizens' Input, and you may have people that want to talk about it. This is just a one reading item because it is a rules change within Council.

Mr. N. Jackson stated it should be on the agenda for "Discussion/Action".

Mr. Malinowski stated it used to just be discussion. It is on the Rules agenda, but it is not on the Council agenda. To him, to put something down there that the public is not aware is coming does not look good. In the future, just leave it as "Items for Discussion" and if someone wants to move it and make a motion for action they can, but that is usually a 3 Reading item.

Mr. N. Jackson stated whatever is listed on this should be listed on the Council agenda.

Ms. McBride stated, help her understand this, when we go to full Council, and Mr. Malinowski gives the report, he is going to give a report about this discussion.

Mr. Malinowski stated he gives his report about the "Notification of Vacancies" and the "Interviews and Recommendations for Appointment." He never adds "Items for Discussion".

Mr. N. Jackson stated #5 is "Interviews" and #6 is "Items for Discussion/Action". In the future, we should have an item listed on the Council agenda, in case we want to move something from the Rules agenda.

Mr. Malinowski stated he does not know where that is in the Council Rules. He stated we never list anything that is listed as an "Item for Discussion".

Ms. McBride stated it has "Items for Discussion/Action".

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Mr. Malinowski stated that is a mistake. It should just be “Items for Discussion”. That is what is always used to be.

Mr. N. Jackson stated, usually, as a rule, it is discussion because there is no backup material. The rule is any motion made at the 1st of the month is supposed to be on the agenda, with backup materials. For the past couple of years, staff has ignored it or forgot. Sometimes we just never get there.

Mr. Malinowski stated the Council Rules say for Standing Committees, which this is one, that you have to have your backup, and other information, in 2 weeks before to the Clerk, before it appears on this agenda. There is also the way of getting it on the Council agenda, and it is not here by changing it now.

Ms. McBride stated she wished we could get issues to the Clerk sooner, so that we could have more time to read, rather than on the weekend.

Mr. Malinowski stated Ms. McBride can put in a motion, but you are going to have to change the whole way Council does business.

Mr. N. Jackson stated, whatever appears before us on the committee agenda, should be on the Council agenda.

Mr. Malinowski stated we need to put that in the Rules because that is not way it has been done.

Mr. N. Jackson stated he knows that is not how it has been done, but if we are giving a report on what we discussed in the committee meeting, at least when you give the report.

Mr. Farrar stated to just give them a heads up that this is next month.

Mr. Malinowski requested Mr. N. Jackson to put that motion in. He stated we need to go over the Council Rules and get them fine-tuned.

Mr. Farrar stated he did not think there was anything wrong, in your report, saying, “This is not for action tonight, but just so Council will be aware, we are looking at these items.”

Mr. Malinowski stated, then we need to make a motion, and make it a part of Council Rules. It is kind of like the Ad Hoc/Standing Committees. We do not have anything about electronic participation. It should extend from the Council Rules to that, as well.

6. **ADJOURN** – The meeting adjourned at approximately 4:54 PM.