



Agenda

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ETHICS & CAMPAIGN REVIEW BOARD

Thursday, August 23, 2012

3:00 p.m.

City Council Chambers
1st Floor, City Hall
200 Lincoln Avenue

1. PROCEDURES

- a) Roll Call
- b) Approval of Agenda
- c) Approval of Minutes – May 1, 2012

2. NEW BUSINESS

- a. Consideration of Approval of Amendments to the Ethics and Campaign Review Board Rules of Organization and Practice.

3. PUBLIC HEARING

- a. Pursuant to SFCC §6-16.2 (H), Review and Recommendations Regarding Proposed Amendments to the *Governing Body Procedural Rules*. (Substitute Resolution)

4. BOARD MATTERS

5. PUBLIC COMMENT

6. ADJOURNMENT

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CITY OF SANTA FÉ
ETHICS AND CAMPAIGN REVIEW BOARD
August 23, 2012**

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| c. Approval of Minutes - May 1, 2012 | Approved as presented | 1 |
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| 6. ADJOURNMENT | Adjourned at 5:05 | 14-15 |

**MINUTES OF THE MEETING
OF THE CITY OF SANTA FÉ
ETHICS AND CAMPAIGN REVIEW BOARD
August. 23. 2012**

A regular meeting of the City of Santa Fé Ethics & Campaign Review Board was called to order by Justin Miller, Chair on this date at approximately 3:05 pm in the City Councilors Conference Room, City Hall, 200 Lincoln Avenue, Santa Fé, New Mexico.

1. PROCEDURES

a. Roll Call

Roll call indicated the presence of a quorum as follows:

Members Present:

Justin Miller, Chair
Tyler John Atkins
Paul L. Biderman
Ruth Kovnat
Kristina Martínez

Members Absent:

Roderick Thompson, Vice Chair [excused]
Tara Luján [excused]

Staff Present:

Yolanda Vigil, City Clerk
Jamison Barkley, Assistant City Attorney

Others Present:

Carl Boaz, Stenographer

b. Approval of Agenda

Ms. Kovnat moved to approve the agenda as presented. Ms. Martinez seconded the motion and it passed by unanimous voice vote.

c. Approval of Minutes – May 1, 2012

Mr. Biderman moved to approve the minutes of May 1, 2012, subject to typographical corrections. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

2. NEW BUSINESS

a. Consideration of Approval of Amendments to the Ethics and Campaign Review Board Rules of Organization and Practice.

Chair Miller noted this matter had come before the Board before and a subcommittee had prepared a draft. The Board deferred action until the subcommittee members had the opportunity to present their amendments to the Board. He invited the subcommittee members to present their work.

Mr. Atkins explained that the subcommittee was trying to streamline the process and make it more transparent for those bringing complaints. Most changes were in subsections B through F. They made their changes based on looking at how other cities handled such complaints and to provide as much guidance as possible. They were trying to make the investigation more independent. Under the new procedures, the Board could hire an independent investigator to gather facts and present findings to the Board and public. So the Board becomes an arbiter rather than investigator.

Chair Miller believed the Board could make the changes and adopt the rules with those amendments at this meeting and review the final policy at the next meeting. He invited other comments from other members of the Board and then would open it for public comment.

Mr. Biderman had some minor comments. The first was on page 3, Section D-1-a. The section discussed how one filed and but it didn't say who could file them. This wasn't changed by the committee. Going back to the ordinance creating the Board it said anybody could file but didn't say that here. He suggested saying, "Sworn complaints may be filed pursuant to Section 6-16.3" and that would take care of it. There was even a potential implication in b where it talked about the city attorney filing.

Mr. Biderman moved that Section D-1-a on page 3 be amended to state that sworn complaints maybe filed pursuant to Section 6-16.3 SFCC 1978 on a form provided by the Clerk...

Mr. Atkins suggested just to avoid confusion that the subheadings should get updated. Section E would revert to D.

Ms. Martinez seconded the motion with the addition of "by any person" so the section would read, "Sworn complaints may be filed by any person pursuant to Section 6-16.3 SFCC 1987 on a form provided by the Clerk." The motion passed by unanimous voice vote.

Mr. Biderman referred to the second paragraph E- 7 that said, "After closing arguments, the Board shall deliberate and may do so either on the record or off the record in an executive session." He was concerned that it was a little too open on getting into executive session thought that would contradict the ordinance at Section 6-16.4c and d that implied the Board could not go into executive session for that purpose.

6-16.4c talked about promoting public participation. It said the final decision would be made in a public meeting. Then d talked about the Board conducting a public hearing.

Ms. Kovnat thought it seemed the analogy was a judicial proceeding and in a court the deliberation would be behind closed doors. So she would have no trouble keeping that.

Chair Miller said it might need to be preserved to take advice from the City Attorney.

Mr. Biderman said it should be clear that the Board was complying with the Open Meetings Act which requires a roll call vote. This was a little too loose for his taste.

Mr. Biderman moved to add “in accordance with the requirements of the Open Meetings Act” at the end of the old E-7. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

Mr. Biderman was concerned with wording in new H-4, “board members should lean toward recusal in close or doubtful cases.” The spirit was good but his concern was that it implied a little much bias in favor or recusing and could undermine ability to maintain a quorum. He suggested words should be sensitive to recusal.

Mr. Biderman moved to change the wording to “board members should be sensitive to the need for recusal in close or doubtful cases.” Ms. Martínez seconded the motion but suggested instead of “sensitive to” it should say “mindful of.”

Ms. Martínez moved a substitute motion to change the wording to “board members should be mindful of the need for recusal in close or doubtful cases.” Mr. Biderman seconded the motion and it passed by unanimous voice vote.

Ms. Kovnat said members got information from Mr. Harrington on C-1. His view was that the language conflicted with 16-6.2c on advisory opinions with respect to his or her future conduct. Ms. Kovnat agreed with that conflict and thought it was not broad enough. She would support mirroring the language in Section 6-16.2C.

Mr. Biderman asked if that meant that anybody could ask for an opinion from the Board.

Chair Miller said the ordinance allowed any person to ask an opinion from the Board about their own conduct so it limits it to employees or candidates or those holding office. This rule did not obligate the Board to render an opinion but they would be permitted to ask for an opinion.

Mr. Biderman accepted that.

Ms. Kovnat moved to amend C1 on advisory opinions to read in line with Section 16-6.2c SFCC 1987 and that the Board may give advisory opinions to any person requesting an opinion as to whether his or her own future conduct would violate the code of ethics, the campaign code or the public campaign finance code. Ms. Martínez seconded the motion and it passed by unanimous voice vote.

Mr. Biderman recalled Chair Miller had raised several issues last time.

Chair Miller thought at least one had been covered. The first was recognition that the ordinance now includes the public finance code and the Board should identify that in its rules in every instance where the

rules referred to the code of ethics and/or the campaign code.

Ms. Kovnat moved that where the rules referred to code of ethics and/or campaign code that it include the public campaign finance code also. Mr. Biderman seconded the motion and it passed by unanimous voice vote.

Chair Miller said the other item he brought up was on subcommittees. This Board formerly had 9 members and subcommittees had three each plus the chair as ex officio and that would now run into OMA quorum issues. In section B-4 they could change the wording to either two with chair as ex officio or three members without the chair.

Mr. Biderman suggested it could say "not more than 3 members."

Ms. Martínez agreed. There might be subcommittees the chair could not serve on and then just strike the end of paragraph 4.

Ms. Martínez moved in B-4 to strike "at least" and insert "no more than" and strike the last sentence. Mr. Biderman seconded the motion.

Mr. Atkins reasoned that with no more than three they could have a one member subcommittee but that might not be a problem.

Chair Miller thought there would be times where two would be fine but wasn't sure about having just one.

The motion passed by unanimous voice vote.

Ms. Martínez moved to correct any typographical errors in the document. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

Mr. Biderman said there was one more from the Chair last time.

Chair Miller said his question was whether the Board would wanted to or could compel a respondent to testify. He was comfortable leaving it as it was or entertain another desire of the Board.

Ms. Martínez noted on page 7 that F-4 would become H-4. She thought the Board should leave it as is. These proceedings were civil in nature and the rules would allow invoking fifth amendment rights. She would like to give the complainant the power to ask questions.

Mr. Biderman added that this reflected the situation if a person called an adverse witness.

Chair Miller sensed the Board was satisfied with it. He asked for any further amendments from the Board.

There were no others and Chair Miller opened it up for the public.

Ms. Vigil suggested the Board approve it and she would email it.

Mr. Jim Harrington (Common Cause) said the prior discussion was obviated to his comments. It was a job well done. He had a problem with C-1 in restricting who could ask for advisory opinions and the change the Board made today straightened out those problems.

There were no other speakers from the public.

Mr. Atkins moved to approve the rules as amended at this meeting. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

3. PUBLIC HEARING

a. Pursuant to SFCC §6-16.2 (H). Review and Recommendations Regarding Proposed Amendments to the *Governing Body Procedural Rules*. (Substitute Resolution)

Chair Miller asked Councilor Ives to present the explanation of the substitute resolution and how it would change things. He limited public comments to three minutes each. Discussion might last longer. And then they would hear proposals from the Board and then could draft them into the form so they could approve them when they reconvened.

Councilor Peter Ives addressed his proposed amendments. The purposes for the changes were to promote and foster informed decision making on matters before the council, to debate them and to inform the Council and not have staff for hours in Council chambers so that they could get business done and not have to depart after they were exhausted.

His experience since March 11 was that some councilors hadn't read their packet and that caused delay or having the wrong staff members present for questions requiring staff to track lots of requests for information that get lost; having staff present for many hours; having public present who leave before the end when meetings go too long.

These proposed amendments do not encourage the use of executive sessions; wouldn't change the existing rules for executive session and could only be decided in public; and not for ulterior purposes.

He thanked the Board for holding this public hearing.

Councilor Ives reviewed each amendment to the rules.

In 1-B 4 he was making a clear distinction between emergency and non-emergency matters.

In 2a - public decorum - the Council sets the example for conduct of its meeting with rules for civility.

On Page 6 - Meeting Agenda - subsection 3 was put in to facilitate anyone's review of fiscal impact of agenda items - usually fiscal impact reports were to be made public to the public.

In Subsection B the change referred to consent agenda matters. The practice became those that had come before one of the major committees, if not a routine matter without fiscal impact, then had to come through the committee process and then could be placed on consent because it had been reviewed by each of the councilors already.

Subsection D listed the types of items that were appropriate for the consent agenda.

Subsection E on page 8 identified items that shouldn't be on the consent calendar. He put the arbitrary amount of \$100,000 in and expected more feedback on the dollar level.

Item 8 defined the process for removing items from the consent calendar. Councilors were to do that by 10:00 on Monday and that wouldn't give enough time for the public to ask councilors to remove items from consent so he changed it to 4 p.m. on Monday. A companion resolution would require agendas to be on the City website in the week before the meeting date so citizens could go to the web to find out what would be considered in the following week. It was to ensure transparency well enough in advance to comment and participate in some way.

The City would have a full packet in a binder in the Clerk's office on Monday before the 4 pm deadline. That whole process was spelled out in Subsection F on pages 8-9.

On page 10 - Afternoon Session under the bullet Approval of consent calendar, would remove the polling of Councilors to find out what items they wanted to discuss. But in emergency situations, the majority of the Council could still remove an item for discussion.

On page 12 under Matters from City Attorney, Subsection E - waiver of privilege should be accomplished by a majority vote and he added a clarification.

On page 13 at the bottom was a general statement regarding executive session. The amendment was to forestall wrongful use of OMA executive session provisions. Even though his experience was that the executive sessions had been called for purposes allowed in the OMA, he wanted the specific reasons to be clear when the Council went into executive session.

On page 15 - F, G, and H - time frames for petitions from the floor - three minutes was the consistent time frame traditionally and members could speak only thrice and for not more than ten minutes under his amendment. This would allow as much as 4.5 hours for an item.

On page 18 - Sections 5 and 6 on clarifications of the matter by questions of the Council to public speakers - his amendment was to rein in those who would like to drift off into tangents in discussions.

Those were the changes being put forth.

There were no questions from the Board regarding the amendments.

Mr. Harrington had a number of problems with the proposal and addressed two of them. One purpose of Common Cause was to promote transparency.

On page 8, the amendment would make it more difficult to remove items from the consent agenda. Sometimes that was the only opportunity for public input. Council should expand the opportunity for public comment instead of restricting it. It should be as easy as possible to remove an item for public comment. Current rules allow that at any time.

The other problem was the proposed gag order on Councilors revealing an executive session matter. This provision raised a first amendment flag in his mind. There were gag orders in criminal trials but the Council should ask the city attorney if this was constitutional. Also the coverage of this provision was extremely vague. Vagueness of coverage of this provision "executive session matters" gives no guidance to councilors about what they can and can't talk about. Does this term include, e.g., discussion of whether a particular matter should have been the subject of an executive session in the first place? - or entirely extraneous issues that happen to be mentioned by some other councilor at the executive session? It didn't give a warning to the Councilors as to what they were prohibited from doing or not prohibited from doing.

His third objection was about enforcement of time limits. Enforcement of this provision would be ineffective at best and at worst could aggravate the very kind of political grandstanding that it is apparently trying to prevent. ECRB would have no enforcement jurisdiction absent an amendment to Art. 6-16. So the only mode of enforcement would be by a motion for censure in the council. If I were a councilor censured for denouncing backroom deals and protecting the public's right to know, I'd wear that censure as a badge of honor and highlight it in my campaign literature.

This Board could not perform enforcement of Council rules so the only choice was censure of the Council and would just aggravate the kind of political grandstanding that this provision was apparently intended to prevent. A claim about backroom dealings would be worn as a badge of honor and promote the very thing it was trying to prevent.

His last comment was that the resolution leads to less transparency.

Ms. Marilyn Bane on behalf of the Santa Fé Neighborhood Network Board said the Board of the Santa Fe Neighborhood Network would like to voice our concern on the overall direction of this proposed Resolution altering the Rules & Regulations of the City Council. We believe the changes, while intended to add to the efficiency of Council meetings, create more problems regarding open government and public representation than any problems they are attempting to solve. read their decision that the changes were honorably intended but would create more problems than they would solve.

Regarding the Consent Calendar, the cut-off for a Councilor pulling items from the agenda should be directly linked to public notice of the agenda in the newspapers, allowing the public a full day to read the notice and contact their Councilors to request an item be pulled for discussion. Further, if a Councilor requests an item to be taken off the agenda, for whatever reason or reasons, that request should **not** have to be approved by a majority of the governing body. We elected our district representatives, and they should be able to speak on our behalf, regardless of whether or not other district representatives agree. To

do otherwise encourages factions on the Council and would result in restricting public representation.

From the standpoint of the community, the more public participation the better. As it currently stands, although designated as "public meetings", it is at the discretion of the Chairs of Finance and Public Works Committees whether or not the public can comment on these issues. Recent practice has been to allow a concerned public to hear Committee comments, but not be able to speak. This puts a disproportionate burden on the City Council, when issues that could be raised and possibly resolved earlier, are forwarded on to Council for public comments, which contributes to lengthening Council meetings. It is our position that the opportunity for public comments should be a standard agenda item on these two Committees; we would like to ensure that any item approved by Committee review receives public input. The problem is that things suddenly appear on the consent agenda that haven't gone before the committees of Public Works or Finance and is up to the Chair whether the public can comment or not. In addition, it would be appropriate for both of these Committees to be televised on the City's Channel 28 station as are the City Council meetings. The city should encourage, not discourage, public awareness and involvement. The cutoff for pulling consent items should be linked to notice in the newspaper. When a Councilor wanted to pull off an item for discussion, it should not require a majority vote. It restricted public representation. The more public participation, the better. Public input was up to the committee chairs. The problem was that some things appeared on the consent agenda without going through any committee and it was up to the chair on what could receive public comment. It also would be appropriate for committee meetings to be televised.

Regarding time restraints, we do not want our Councilors limited either by time limits or numbers of times they can speak on a given issue. Again, they were elected to speak on our behalf. It is not either sufficient or wise to rely on the discretion of the Chair how often and for how long a Councilor can speak. It is our experience that issues often become clearer after staff questioning, or often the issue itself changes based on additional information. A recent example is the issue of reducing fluoride in the drinking water, when the issue changed from reducing fluoride to eliminating it. In short, we want the focus of any issue to be on the impact on the community, not the time allotted for governing.

Explanation of votes - We want to know why Councilors vote the way they do, either before or after. It is not acceptable for the explanation to be only by permission of the presiding officer.

Mr. Fred Rowe, former chair of this Board, speaking on behalf of himself, commended Councilor Ives and Councilor Wurzbarger for being receptive to suggestions and making improvements which were significant. He suggested having a memorandum or matrix to summarize the significant changes in the ordinance so people could understand their significance and how they could improve on current practice. Everyone would benefit from such a written document for people to understand it.

Quite positive is the proposal's now stated commitment to open government, transparency, and maximum public participation, along with the deletion of the 15 minute limits for adjudicative hearings. Likewise positive is the caution that all OMA privileges justifying Executive Sessions must be strictly construed.

He had three objections. The first was the draconian penalties for leaking information out of executive sessions. He concurred with Mr. Harrington that at the very least, the city attorney should be required to

submit a legal advisory opinion first of all as to the meaning of the very ambiguous phraseology as well as any constitutional concern. He asked what kind of disclosure it might be With no showing of need due to any past infractions, and despite many legal ambiguities, the draft would penalize a Councilor's "disclosure" (what kind - public media disclosure or pillow talk?) What if executive sessions were not authorized in the first place? He asked who would file a complaint against a sitting councilor and who would represent the councilor presumable before the Board. What kind of proceeding would this Board hold and what other disciplinary legal aspects there might be.

With regard to Councilor's autonomy, we respectfully submit that limiting councilors to speak three times and ten minutes maximum was a "one shoe size fits all" and might not be appropriate. He wondered how they would start counting the minutes three times for up to ten minutes. Sometimes there was a need to explain and clarify for more than ten minutes. As shown by the Council's endless recent "wellness" debate, one Councilor's request for clarification of bad staff submittals can set off a chain of questions about clarifying the clarifications, with multiple staff explanations and apologies. A more efficient cure is better packet documentation with more informative staff materials rather than constraints on Councilors' talk time.

He submitted proposed amendments for the Board's consideration as well as the two sponsoring councilors which were:

1. At p. 7, line 3: insert to read: SUFFICIENT COMMITTEES WITH PUBLIC INPUT
2. At p.8, line14: Insert to read: \$100,000.00 BY ANY INDIVIDUAL OR RELATED ENTITIES
3. At p.8, lines 24-25: Substitute text to read: NO LATER THAN 10 AM ON THE DAY FOLLOWING AGENDA PUBLICATION BY PUBLIC MEDIA
4. At p.12, lines 17-19:Delete text from ANY to LAW
5. At p.15, line 15: Delete text of Par. VI(G).

Mr. Rick Martinez, President of Neighborhood Network said their board looked at the amendment carefully. The Councilors were elected by the citizens and had to earn their money by listening to the citizens. They were lucky to have this public hearing and wanted it to stay the way it is now. Citizens need to talk with Councilors and some times want to hear more. Some people cannot access the city website. Councilors should be able to pull consent items at any time.

Councilors get input all the time from constituents. Lots of the time there was not enough public input. The more we could get our input in, the better.

Mr. John Gordnier on behalf of Santa Fé Citizens for Good Government provided some suggested amendments that he would not go over. The proposal was short on definition and full of subjectivity which was not what you want on rules. He made some definitions to be considered. His proposed amendments and definitions are below:

1. I.A.5: The terms "interest of fairness", "courtesy" and "emergency" should be defined.
2. I.B.3: The term "emergency matter" should be defined. In the same paragraph there either should be a reference to or detailing of the provisions for "procedures for considering same are followed" language.

3. II.A: The words “disorderly,” “rude,” “disruptive,” “personal,” “impertinent,” “slanderous,” and “improperly” must all be defined.

Disorderly: “involving a breakdown of peaceful and law abiding behavior.” (Oxford Compact English Dictionary, second edition revised 2003, page 313, second preferred meaning.)

Rude: “offensively impolite or ill mannered.” (Oxford Compact English Dictionary, page 999, first preferred meaning.)

Disruptive: “interrupt or disturb an activity or process.” (Oxford Compact English Dictionary, page 314, first preferred meaning.)

Personal: “concerning a person’s private rather than professional life.” (Oxford Compact English Dictionary, page 843, third preferred meaning.)

Impertinent: “not pertinent, irrelevant” (Oxford Compact English Dictionary, page 559, second preferred meaning.)

Slanderous: “action or crime of making a false spoken statement damaging to a person’s reputation” (Oxford Compact English Dictionary, page 679, first preferred meaning.)

Improperly: “unseemly or indecent” (Oxford Compact English Dictionary, page 561, second preferred meaning.)

4. IV.A.2: Add after the word “committee” the following language: “or has gone through the committee review process as a consent item at each stage of review.”
5. IV.A.4: Need to define “extraordinary circumstances,” “necessity,” and “emergency purposes”.
6. IV.B: Strike everything after the word “impact” and substitute “and those items with a fiscal impact of \$50,000.00 or less which have been placed on the agenda in compliance with section IV.A.2 of these procedures.”
7. IV.D.1: Add after the word “increases” the following: “of \$50,000.00 or less.”
8. IV.D.2: Strike this provision in its entirety.
9. IV.D.7: Add after the word “agreements” the following: “unless pension or other post-retirement benefits are involved.”
10. IV.E.8: Strike “\$100,000.00” and substitute “\$50,000.00”.
11. V.A. subsection c. under Matter from the City Attorney: Add after the word “session”: “and the City Attorney shall be responsible for ensuring that no matters not related to the items which are the stated basis for the executive session are discussed in the executive session.”

12. V.A. subsections under Matters from the City Attorney: Add a new subsection "j" to read as follows:
"The Governing Body as part of its efforts to promote transparency and provide for greater inclusion of the public on matters involving the expenditure of public funds will hold public hearings on all agenda items which involve an expenditure of \$50,000.00 or more. To accomplish this goal there will be no vote on any evening agenda item which involves an expenditure of \$50,000.00 or more until after the procedures for public hearings set forth in item VII have been completed."
13. Present item VII should become VIII and present item VIII should become item VII.

SFCGG reviewed 4,000 documents on the contractual work with Advantage Asphalt. The consent calendar should never be used for items over \$50,000 and they should all be subject to public discussion. The procedure of having public comment after the vote was taken would not lead to good debate nor was it conducive to transparency.

Second, the \$50,000 was not arbitrary but consistent with the procurement policy of the City. All procurements under \$50,000 were approved by the City Manager and all the rest was subject to discussion and public input. So they asked for public input on all of them that were over \$50,000. The Council was spending the public's money and the public should have full input on all of it.

Ms. Jodie Larsen on behalf of League of Women Voters of Santa Fé County, said the League was pleased that the latest versions relaxed speech restrictions and eliminated speech restrictions on adjudicatory and quasi-judicatory matters; commits more opportunity for Councilors to remove consent items for consideration than originally proposed; considered items on the consent calendar with more than \$100,000 fiscally as inappropriate and requires a councilor with a conflict of interest to recuse himself or herself from voting.

The League is keenly interested in the democratic process and transparency in local government. While the League recognizes the autonomy of the Council to set and abide by its own governing rules we appreciate the opportunity to offer advice and raise concerns with rules that can inhibit a free exchange of ideas and information so that a well-informed decision can be made by our elected leaders. So the League would continue to monitor this resolution as it moves through the process and to offer our input as needed.

Ms. Karen Heldmeyer, 325 E Berger, shared thoughts over 15 years of participating and sometimes chairing. She said limiting councilors' speech might not be the answer. It's not clear what that was trying to solve. She wondered if it was because some felt the meetings were going on too long. It was not clear where the problem lay unless it was aimed at dissenting views and that was what people feared. The concern was that dissenters would be shut down.

Current rules and Roberts Rules of Order allow the chair to caution people against personal attacks, repetition, etc. She questioned why they would use this artificial and cumbersome process to keep track of times people speak. It seems to be not really needed. If people were abusing the privilege it all happened in public and the Council should let the public decide. It was important that councilors be able to speak.

Regarding the consent agenda, it was the first thing heard when setting the agenda so people were not

sitting around figuring out how long they have to stay. Why restrict what a councilor could pull things off? Sometimes it was because they would recuse themselves or they wanted to vote against or thirdly they wanted more information or explanation. They might pull off all of them way ahead just to have the chance if needed. Having a good reason was not in the rules. That leads to the impression of stifling of dissent. If something comes up they should be able to do it.

She agreed with Mr. Rowe on executive sessions. For councilors to report on things happening not subject to OMA, it had happened.

She agreed with Rick Martínez that people wanted to know why councilors voted on things. She didn't see anything wrong with it. This was something that had not been abused but if passed would give the impression it was to shut people up.

There were no other speakers from the public.

Chair Miller suggested the Board figure out how to move forward on this. There was a lot to cover with a lot of good ideas related to the proposal. He asked if Board members wanted to work through them now or have a subcommittee draft some proposals to discuss at the next meeting.

Ms. Kovnat thought they should clarify what the work to accomplish was and talk about it now. They should come back to an open meeting later with proposals.

Chair Miller didn't think they needed to do a line by line edit.

Ms. Kovnat said they should identify concerns or issues as the first step. Her major concern was the default position that items be on the consent calendar. That was very troubling to her and the discretion of chairs to preclude public input.

Mr. Biderman said an issue that surprised him was that the committees sometimes don't take public comment. Committee meetings were an appropriate place to take public comment. That was one way of alleviating the time burden of Council. He sympathized with the concern that without any control it could get out of hand. It discouraged people from staying for the whole meeting and caused long meetings and might cause good people to not seek public positions.

Mr. Biderman moved to form a subcommittee to make suggestions to the Governing Body. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

Chair Miller suggested an ad hoc committee and asked for volunteers.

Mr. Biderman and Ms. Kovnat agreed to be the two-person subcommittee.

Mr. Biderman said what they come back with might be conceptual rather than red line.

Chair Miller agreed. He suggested that Board members could highlight areas where they needed to make a recommendation and some sense of what that might be.

Ms. Martínez said they should address what was of most concern to the public - consent calendar , limiting how many times councilors could speak and the privilege issue for executive sessions. Her own concern was the \$100,000 level of impact. \$50,000 seemed to make more sense.

Ms. Kovnat had a concern about lack of jurisdiction.

Mr. Atkins said waiving of privilege by individual councilors was a concern.

Ms. Martínez asked the subcommittee to deal with limiting the number of times councilors could speak. She didn't know why there would be any limit. Their ability to speak on behalf of constituents should not be limited. She felt she was not well informed enough for the consent issue.

On the privilege issue her impression was that she liked what had been added here. Disclosure shouldn't be made unless approved.

Mr. Atkins thought the issue of transparency should be uppermost.

Mr. Biderman asked if they should invite written comments from others.

Chair Miller supported that.

Chair Miller wanted the subcommittee to look at section A about removing someone from the meeting for improper conduct whether that could be tightened up so it wouldn't be solely at the whim of the presiding officer. He sympathized with a comment made by the public about procedures for removing items from the consent calendar. The way it was drafted was too subjective and who would make the decision to remove it. The criteria should be clear if this was retained.

Mr. Gordnier said in his haste to beat the buzzer, he forgot to mention that the page from the Pinecone referred to item 9 on limiting consent calendars related to pension or post retirement benefits and thought the article was self-explanatory.

Mr. Biderman felt they had a good deal of discussion at the last meeting and had that comment last time and did hear from the public on it.

Mr. Zamora addressed a couple of issues for the subcommittee to consider as they looked through this. Regarding amounts to be included for contracts on the consent agenda, pursuant to code the City Manager had authority to sign contracts less than \$50,000 and the lion's share of contracts to come to Council were \$50,000 or above.

It was purchasing practice when a contract was greater than \$50,000, for the Mayor to sign it instead of the City Manager and he didn't sign it without consideration and approval of Council.

Regarding the timing for pulling items from the consent agenda, in the afternoon session it was usually packed with staff awaiting their items to be considered. Staff were distributed throughout the city limits. And

for some staff it did take time to be present and time to travel here. Some staff were even outside city limits.

He had looked into the issue of executive sessions and it was a statutory exemption privilege. The OMA did limit use of executive privilege and most often were attorney-client privilege, personnel issues, litigation or real estate acquisition so it preserved the rights of individuals and allowed council members to have a frank discussion.

Member of the public were correct that there might need to be ethics ordinance revisions for waiver of privilege so he reminded them of the paragraph in the ethics ordinance on disclosure of confidential information by councilors or staff that would violate the ethics ordinance. He suggested the subcommittee might want to see if that was sufficient.

Mr. Biderman asked what the limits of propriety were for the subcommittee in talking with people from the public in the course of their deliberations.

Ms. Barkley said there were no limitations on it.

Mr. Biderman clarified that they would need to get more information.

Ms. Vigil asked if they would want a time frame and if the subcommittee would like to use her office for comments.

Chair Miller was not aware of operating under time constraints so he thought they could meet in about three weeks to hear from the subcommittee.

Councilor Ives felt that was fine.

Chair Miller asked people to give their comments to the City Clerk.

4. BOARD MATTERS

There were no matters from the Board.

5. PUBLIC COMMENT

There were no further public comments.

6. ADJOURNMENT

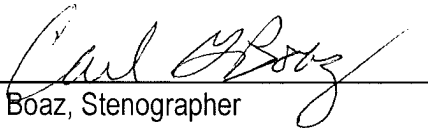
Ms. Martínez moved to adjourn the meeting. Mr. Atkins seconded the motion and it passed by unanimous voice vote.

The meeting was adjourned at 5:05 p.m.

Approved by:

Justin Miller, Chair

Submitted by:



Carl Boaz, Stenographer