
**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
ANGELA M. LUTZ AMANN
KORINE L. LAND
DONALD L. HOEFT
BRIDGET McCAULEY NASON
PETER G. MIKHAIL
SCOTT M. LUCAS
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CASSANDRA J. BAUTISTA
AMANDA J. JOHNSON

MEMO

TO: Chair VanMoorlehem and Members of the Charter Commission
FROM: Kori Land, City Attorney
DATE: January 4, 2021
RE: Council voting/Conflict of Interest

At the Charter Commission meeting on October 19, 2020, the Charter Commission discussed City Council voting requirements (how many votes it takes to pass motions) and conflicts of interest which excuse a Council Member from voting on a motion. These two issues have intersected on occasion, causing the necessity for interpretations of state law, caselaw and City Council rules. The Charter Commission directed my office to prepare language and/or clarity surrounding these issues for consideration by the Charter Commission at its next meeting.

BACKGROUND

It is important to identify the relevant State and Local laws surrounding quorums and certain voting requirements.

First, there is state law governing the number of Councilmembers needed to conduct business (a quorum) and how many votes are needed to pass an ordinance. For purposes of determining a quorum, State law says this:

Minn. Stat. §412.191, Subd. 1. Composition.

... A majority of all the members shall constitute a quorum although a smaller number may adjourn from time to time.

For West St. Paul, that means the City Council always needs 4 members present to conduct business.

For purposes of passing an ordinance, State law says this:

Minn. Stat. §412.191, Subd. 4. Ordinances.

Every ordinance shall be enacted by a majority vote of **all the members of the council** except where a larger number is required by law.

Even though the Mayor does not vote in West St. Paul, except in specific situations,¹ for purposes of counting “all members of the Council,” he is considered one of the total sum on the Council, as stated in the Charter:

City Charter Section 2.03. Elective Officers. The Council shall be composed of a Mayor and six (6) Councilpersons.

For West St. Paul pursuant to state law, the City Council always needs 4 votes to pass an ordinance, regardless of how many Councilmembers are present.

Second, there is the City Charter which has extraordinary voting requirements that go beyond the State law voting requirements:

City Charter §3.04

Subdivision 1. An affirmative vote of a majority of all the members of the Council shall be required for the passage of **all ordinances, resolutions and motions** except as otherwise provided in state law or this Charter. (emphasis added)

For West St. Paul, this means that the City Council always needs 4 votes to pass all motions, not just ordinances, regardless of how many Councilmembers are present. Prior to 2012, this Charter provision only applied to Ordinances and Resolutions, leaving a question about motions that had no accompanying resolutions. Subsequently, the Charter Commission and Council agreed that all actions by the Council should require four votes and by Charter amendment, the language was modified to reflect the provision above.

Below are some examples as to how these provisions work together:

¹ City Charter §2.06. Subdivision 1. The Mayor shall not have a vote as a member of the Council except in the following circumstances:

- a. The case of a tie vote,
- b. The hiring or removal of the City Manager,
- c. The appointment of a person to fill a Council vacancy,
- d. The sale of a public utility,
- e. An amendment to the Charter, or
- f. Otherwise as required by state law.

Example 1:

There are 4 Council members present at a meeting (including the Mayor), therefore:

- a. There is a quorum to conduct business.
- b. They could not pass any ordinary motions, because there are only 3 *voting* members.
- c. They could pass a motion on one of the exceptions when the Mayor votes, as long as the vote is unanimous by all those present.

Example 2:

There are 5 Council members present at a meeting (including the Mayor), therefore:

- a. There is a quorum to conduct business.
- b. For ordinary motions, the 4 voting members (not including the Mayor) have to vote unanimously for the motions to pass.
- c. For a motion on a matter when the Mayor votes, they could pass it with 4 votes, even with one of the Councilmembers dissenting.

Unless there is a desire to modify the language in section 3.04 to remove “resolutions and motions,” so that the 4-vote rule only applies to ordinances, *at least* four votes are needed to pass any action in West St. Paul.²

CONFLICTS OF INTEREST AND VOTING REQUIREMENTS

That background brings us to the issue regarding conflicts of interest and how that can impact the vote. It was suggested that the City Attorney’s Office offer language to be considered by the Charter Commission to require Councilmembers to articulate a conflict of interest on the record. Interestingly, the City Council imposes its own requirement on this very issue in its Permanent Rules of the Council, which it adopts at its organization meeting in January every year. These Permanent Rules are attached to this memo for your reference.

Generally speaking, the City Charter addresses voting on matters this way:

City Charter Section 3.04. Ordinances, Resolutions, and Motions. Except as in this Charter otherwise provided, all legislation shall be by ordinance. **The Council shall keep a journal of its proceedings and the ayes and nays when taken on any question shall be entered on such journal. Any member of the Council who, being present when his or her name is called, fails to vote up any pending motion, in a tone plainly understood by the presiding officer, shall be counted as having voted in the negative.**

The Permanent Rules also address voting requirements, which are consistent with the City Charter in regard to how to treat the vote when a Councilmember refuses to vote on an issue as it also treats it as a negative vote.

² City Charter §3.04 subd. 2 requires 5 votes for the annual levy and budget and state law requires a supermajority vote for other exceptions as well, such as ordering an assessment project or rezoning property from residential to commercial or industrial.

RECORD OF VOTING

The Council shall keep a journal of its proceedings and yeas and nays, when taken on any questions, shall be entered on such journal. When a ballot vote method is being utilized for the appointment of members to task forces and commissions, the Clerk shall announce the candidates of each Councilmember and record the result of the ballot in the Council journal. **When voting on any matter by motion, any member who, being present when his name is called, fails to vote upon any pending proposition in a tone plainly understood by the presiding officer, shall be counted as having voted in the negative on said pending proposition.**

The Permanent Rules take it a step further than the Charter and do not let silence be the last word (so to speak). The Permanent Rules *require* every Councilmember to vote unless they have a conflict of interest. The Record of Voting section goes on to state this:

Every member present shall vote unless the member is excused for a conflict of interest. **When a member declines to vote on the call of his/her name, the member shall be required to state the reasons for so declining.** After the vote is taken, but before the presiding officer has announced the vote, the presiding officer may and, if requested by a member, shall submit to the Council the question, “Shall the member for the reason stated, be excused from voting?” which shall be decided without debate. That member then shall vote or be excused based on the Council’s vote on the questions.

While the Charter Commission requested specific language to require Councilmembers to articulate a conflict of interest, the Permanent Rules already do so and also allow the Council to question the adequacy of the conflict. Such a Charter Amendment would solve the issue of requiring Councilmembers to affirmatively state the conflict of interest and would allow the Council to question its adequacy, however, there are still occasions when this requirement will not be sufficient to avoid other pitfalls. Here are some examples of voting situations that could occur, resulting in differing outcomes.

Example 1 (normal tie vote):

Councilmembers A, B, C = vote yes
Councilmembers D, E, F = vote no
Mayor breaks the tie and votes yes
Result = Motion passes 4-3

Example 2 (failed vote due to absence):

Councilmembers A, B, C = would vote yes
Councilmembers D, E, F = would vote no
Mayor would vote yes
Councilmember F is absent
Result = Motion fails 3-2 because Charter requires 4 votes to pass

Example 3 (recusal due to conflict of interest)

Councilmembers A, B, C = would vote yes

Councilmembers D, E, F = would vote no

Councilmembers E, F recuse themselves due to a conflict of interest

Mayor would vote yes but does not vote

Result = Motion passes 3-1

How? A conflict of interest removes that council member from the equation and is treated as a vacancy. The Council is then reduced from 7 to 5 members for this vote. If there are only 5 members, the majority of votes needed is reduced to 3 votes.³

While it is clear that the Charter Commission can compel Councilmembers to declare a conflict of interest (in addition to the Permanent Rules), which would then temporarily modify the number of seats of the Council and allow for a vote to be taken, it may not eliminate a failed vote which could occur due to a manipulated absence.

RECOMMENDATION:

Consider recommending that the City Council amend the City Charter to require the declaration of a conflict of interest, similar or identical to language that it already imposes in its Permanent Rules.

Proposed Charter Section 3.04 subd. 3:

Every member present shall vote unless the member is excused due to a conflict of interest. When a member declines to vote on the call of his/her name, the member shall be required to state the reasons for so declining. After the vote is taken, but before the presiding officer has announced the vote, the presiding officer may and, if requested by a member, shall ask the Council the question, “Shall the member for the reason stated, be excused from voting?” which shall be decided without debate. That member then shall vote or be excused based on the Council’s vote on the question.

³ This situation was researched by the City Attorney’s Office and an excerpt from the research memo provides the following explanation: *1989 St. Imp. Program v. Denmark Twp., Washington Cnty., Minn.*, 483 N.W.2d 508 (1992), involved a statute requiring that municipal resolutions for proposed improvements be adopted by a vote of four-fifths of **all** the members of the council. However, in that case two members of the council had recused themselves from the vote due to a conflict of interest. The Court affirmed their ability to presume that literal interpretations of statute which create a result that is “absurd, impossible of execution, or unreasonable” to be unintended. *Id.* at 510. The Court went on to cite an Attorney General opinion which concluded that public policy demands that for the purposes of a quorum, the majority should be computed based upon the membership as it exists after a vacancy, not the total number elected. *Id.* **The Court held that if you are disqualified from a vote due to a conflict of interest, for the purposes of quorum and a voting majority, it is the same as if the position is vacant. *Id.* 510-11.** (emphasis added)

Council Adopted 1/2/97
Amended 11/24/97
Amended 1/2/15
Amended 1/3/17

PERMANENT RULES OF THE CITY COUNCIL
OF WEST SAINT PAUL, MINNESOTA

MEETING TIME AND DATES

Unless otherwise resolved, the regular meetings of the West St. Paul City Council shall convene at 6:30 p.m. on the second and fourth Monday of each month. The Mayor or any three members of the Council may call special meetings upon at least 3 days' notice to each member or an emergency meeting upon at least 24 hours' notice.

PRESIDING OFFICER

The Mayor, or in his absence, the President Pro Tem, shall at the time the meeting convenes, call the meeting to order and chair the meeting. In the absence of both the Mayor and President Pro Tem, the members may appoint a member to chair the meeting, but such appointment shall not extend beyond the arrival of the Mayor, the President Pro Tem, or the adjournment for the day, whichever occurs first. A majority vote of all the members of the Council shall be required to overrule the presiding officer.

QUORUM

A roll of the members shall be called and the names of members present and the members absent shall be entered in the Council minutes. A majority of all members of the Council shall constitute a quorum to do business.

ORGANIZATIONAL MEETING OF COUNCIL

At the organizational meeting of the Council in January in odd numbered years, no conduct of the city's business shall be considered except those matters pertaining to the organization of the City Council or the method or manner of the conduct of its business.

**Permanent Rules of the City Council
of the City of West St. Paul**

ORDER OF BUSINESS

After the taking of the roll call, the order of business shall be the agenda for the meeting and the chair may take matters out of their order on the agenda for the convenience of the public, unless overruled by the members. Matters outside of the agenda may be considered by a majority vote of all members of the Council. Any matter of non-controversial nature may be placed on the consent agenda, which shall immediately precede other matters on the agenda for that meeting. The matters on the consent agenda may be acted upon by a single motion by the Council without debate. A member of the Council may remove any matter from the consent agenda by requesting removal prior to the voting thereon.

RECORD OF VOTING

The Council shall keep a journal of its proceedings and yeas and nays, when taken on any questions, shall be entered on such journal. For roll call votes, the maker of the motion shall be called upon first to record his/her vote. The member who seconded the motion shall be called upon second to record his/her vote. When a ballot vote method is being utilized for the appointment of members to task forces and commissions, the Clerk shall announce the candidates of each Councilmember and record the result of the ballot in the Council journal. When voting on any matter by motion, any member who, being present when his name is called, fails to vote upon any pending proposition in a tone plainly understood by the presiding officer, shall be counted as having voted in the negative on said pending proposition. Every member present shall vote unless the member is excused for a conflict of interest. When a member declines to vote on the call of his/her name, the member shall be required to state the reasons for so declining. After the vote is taken, but before the presiding officer has announced the vote, the presiding officer may and, if requested by a member, shall submit to the Council the question, "Shall the member for the reason stated, be excused from voting?" which shall be decided without debate. That member then shall vote or be excused based on the Council's vote on the questions.

At the request of any member, a roll call shall be held up temporarily to permit any member in the building to vote on that matter.

MOTION AND RESOLUTION

No motion or resolution shall be debated or voted on unless it has been seconded by a member of the Council. After a motion has been made, it is in the possession of the Council and, unless withdrawn before it is voted upon, or before adjournment that day, it shall be entered in the minutes, together with the name of the member offering it. No member may make two motions at the same time.

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of the City of West St. Paul**

ORDER AND DIVISION OF A QUESTION

A division of any question, which contains several points, may be made. Except in the case of a privileged question or as otherwise provided by these rules, questions shall be put in the order in which they are moved. .

THE PREVIOUS QUESTION

A motion calling for the previous question must be seconded. If a motion for the previous question is ordered by the vote of the council, it shall have the effect of cutting off all debate and bringing the Council to a vote on the question. When the previous question is decided in the negative, the main question remains under debate until disposed of by the vote or in some other manner.

MOTION TO BE GERMAINE

No motion or proposition on a subject, different from that under consideration, shall be admitted under the guise of its being an amendment.

MOTION FOR RECONSIDERATION

When a question has been decided, either in the affirmative or the negative, it shall be in order for any member who voted with the prevailing side to move its reconsideration, provided that such motion is made either on the same day or on or before the next regular scheduled Council meeting. A member who did not vote on a question may also move reconsideration within the same time limitation.

PRECEDENCE OF MOTIONS

When a question is under debate, no motion shall be received except the following; the first three shall be decided without debate:

- (1) To adjourn
- (2) To table or postpone indefinitely
- (3) For the previous question
- (4) To commit or refer
- (5) To continue or postpone to a day certain

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of the City of West St. Paul**

- (6) To amend

The motions shall have precedence in the order listed.

MOTION TO ADJOURN

A motion to adjourn shall always be in order except during roll call. When a motion to adjourn is made, it shall be in order for the presiding officer before putting the question to permit any member to state reasons which would seem to render adjournment improper at that time. But debate thereon shall not be had.

DEBATE AND DECORUM

Every member before speaking shall be recognized by the presiding officer. When two or more members wish to speak at the same time, the presiding officer shall designate the member to speak first. No member shall speak more than once until every other member wishing to speak on the pending question has had an opportunity to do so. No member shall walk out of the meeting while a roll call is being taken.

COMMITTEES

Standing committees of the Council shall be:

- (1) Public Safety
- (2) Public Works

Committee Membership: Except as otherwise provided by Statute, Ordinance, or Charter, the Mayor shall appoint members to all Council committees, and shall designate the chairman thereof.

Referral to committee shall be made by the Council by a motion to refer to committee or by the Mayor's request to refer to committee.

Committee meetings shall be open to the public and shall be scheduled from time to time by the committee chairman with due consideration for the convenience of committee members.

A majority of the members of any committee shall constitute a quorum.

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A committee may reconsider any action so long as the matter remains in the possession of the committee and the committee report has not been presented to the Council. A committee member need not have voted on the prevailing side in order to move reconsideration.

Matters referred to a Standing Committee shall remain in the Committee's possession until action is taken by the Committee reporting the matter back to the City Council. The City Council may, by majority vote, recall any matter from a Standing Committee thirty days after its referral to Committee.

OPEN WORK SESSION

The Council may on such occasions as it deems appropriate, upon proper notice of the meeting, meet in an open work session for purposes of general discussion of matters which are not appropriate for referral to a standing committee or advisory committee. For all matters except voting for appointments to task forces and commissions, discussion at work sessions will not result in formal vote or resolution, though members will be free to express their intent and position. Voting for appointments to task forces and commissions, either by ballot vote pursuant to Resolution 97-64 or motion vote, may result in a formal vote or resolution at an open work session.

Work sessions will be held in available conference space in the Municipal Center or in the Council Chambers as the Council may from time to time determine appropriate. All such meetings shall be open to the public unless they are closed in compliance with Minnesota Statutes.

ADVISORY COMMITTEES, BOARDS AND COMMISSION

The names, addresses, and background information of all persons to be considered for appointment to various City Advisory Committees, Boards, or Commissions shall be submitted in writing on a form provided by the City Clerk. Before Council action, the applications may be considered in an Open Work Session.

SUSPENSION OR AMENDMENT OF THE RULES

The concurrence of two-thirds of the whole Council is required to amend or suspend or alter any of the Permanent Rules of the Council.

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of the City of West St. Paul**

CODE OF ETHICS FOR PUBLIC OFFICIALS
OF THE CITY OF WEST ST. PAUL

1. Declaration of Purpose:

The purpose of a Code of Ethics policy is to establish ethical standards of conduct for public officials. The proper operation of democratic government requires that public officials be independent, impartial and responsible to the citizens of West St. Paul. The public should have confidence in the integrity of its city government and know that public office will not be used for personal gain. The provisions of this Code of Ethics shall apply to all public officials, elected and appointed.

II. Responsibilities of Public Office:

Public officials, elected and appointed, of the City of West St. Paul hold office for the benefit of the public. They are bound to uphold the Constitution of the United States as well as the Constitution of the State of Minnesota as well as the Charter of the City of West St. Paul. They should maintain the highest personal ethics so as to maintain the confidence of the public who elected them. They are bound to discharge faithfully the duties of their office regardless of personal consideration, recognizing the public interest must be their primary concern.

III. Fair and Equal Treatment:

- A. Public officials, elected and appointed, shall not request or permit the use of City owned vehicles, equipment, materials or property for personal convenience or profit, except when such services are available to the public in general or are provided as municipal policy for the use of such elected officials in the conduct of official business.
- B. Public officials, elected and appointed, shall not grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.

IV. Conflict of Interest:

- A. Public officials, elected and appointed, shall not knowingly engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of official duties in the public interest or would tend to impair independence of judgement or action in the performance of official duties.
- B. Specific conflicts of interest are as follows:

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1. Holding a position of employment which is incompatible with the elected position or interferes with the proper discharge of public duty.
2. Use of confidential information, obtained as a result of public position for personal gain.
3. Soliciting of personal gifts and favors by an elected official, or accepting unsolicited gifts or favors.
4. Use of official position for personal gain.
5. Holding investments which interfere or tend to interfere with proper discharge of public duty.
6. Representation by elected officials of private interests before city governmental agencies and participation in the profits from such representation.
7. Personal interest in legislation to the extent that private interest takes precedence over public interest and public duty.

V. Application of Code:

When a public official has doubt as to the applicability of this code, he/she should apply to the City Attorney for an advisory opinion and be guided by that opinion.

VI. Sanctions:

A violation of the provisions of the Code of Ethics shall be grounds for censure of the offender by the Council and disqualification from public office when authorized.

ETHICS LAW

As a general rule no elected official, member of any advisory board, or public employee should accept any gift unless the City Attorney is of the opinion that the gift is one of the rare exceptions to the rule.