# Committee Report on a Legislative Matter

**Report Regarding:** **17.232** **An Order for Council Rule Changes**

**From:** Comm. on Legislative Matters

**Date of Meeting** 1 /9 /2017

**Prepared By:** P. Powers

**Recommendation:**

**Positive As Amended**

| | |
|---|---|
| Yes: | 4 |
| No: | 0 |
| Absent: | 0 |
| Abstain: | 0 |

**Factors Considered:**

The Committee reviewed the proposed changes and heard from Councilor O'Donnell about the proposed changes to the Council Rules. The Committee also heard testimony from Mr. Anthony Patillo who raised concerns about the proposed changes. Mr. Patillo's testimony weighed heavily into the committee's decision to amend the order as originally proposed.

**Comments, Discussion & Debate:**

Councilor O'Donnell explained that two Council meetings ago a technical change was made to City Council rules to change the word "referred" to the word "considered" so that orders and ordinances have to be "considered" by Legislative Matters as opposed to have to be first "referred" there. This meant that the committee could add things to their agenda and post in accordance with the open meeting laws and consider items without having been referred by City Council. Councilor O'Donnell thought that there would be more flexibility and perhaps creativity from committees if they had the power to originate ideas. After hearing from the public and other City Councilors, Councilor O'Donnell now understands that people are more comfortable with the process of referral. Councilor O'Donnell is now attempting to switch back to the way things were done in the past. The purpose of this ordinance before the committee today will be to require items to be referred from City Council to the committee.

Councilor Murphy explained that changing back means that items will need to originate in City Council and City Council would then decide where to send the item. When those committees were done, the item would be taken up by Legislative Matters before heading back to the City Council for a vote.

Councilor O'Donnell additionally explained that the City Solicitor would be required to review the ordinance before the City Council voted on the item. This committee is responsible for working with the City Solicitor to verify legal form and character. Councilor O'Donnell notes that if this rule change is adopted, then items could not be just brought up in Legislative Matters and then sent on to City Council. Councilor O'Donnell feels that it is important for people to have confidence in the process and if this is what people want, then he does not object.

Councilor Murphy invited public comment and Mr. Anthony Patillo addressed the committee to voice concern about certain proposed language.

Mr. Patillo noted that previous versions of the Council's rules required that items be reviewed by the City Solicitor for legal form and character. This was explicitly written in the rules. The version that Mr. Patillo is looking at states that in Section 2.6.1.4.1., "Such recommendations, shall be made in consultation with the City Solicitor." Mr. Patillo reminded the committee that when the stormwater utility measure came before the Ordinance Committee, it was not reviewed for legal form and character. There were problems with the ordinance the way it was written and ended up being amended on the Council floor. It was then voted on by Council and citizens only had three minutes in which to speak to the issue. There was no give and take with the Council. Mr. Patillo wants to remain assured that citizen participation is still included as part of the process. Any new ordinance has to be reviewed for legal form and character before it goes onto the floor for a vote by City Council. He does not feel that the proposed language will meet this objective. People are concerned about transparency because of the stormwater utility fee issue. Something like that must be prevented in the future.

Mr. Patillo also raised an issue with the 45 day window in which a report must be given to Council by a multiple member body. He notes that a committee doesn't have to do anything. They could sit and watch the clock run out without considering an item that was sent to them. Councilor Murphy points out that the Legislative Matters committee is the last committee to address an item before it heads back to the full City Council. This is because this committee considers feedback from all committees before it makes a recommendation back to the full City Council.

Mr. Patillo feels strongly that a solicitor review for legal form and character is an important part of the overall process. Even in section 5.3 the wording states that the City Solicitor "'may' examine the matter's form and legal character", rather than "shall".

Councilor O'Donnell points out that the change from "shall" to "may" was recommended by the
Solicitor. Because of separation of powers under the new City Charter, the City Council cannot compel the Executive side to take action. The Council cannot state that the Solicitor shall do X, Y, and Z. Councilor O'Donnell stated, however, that the Mayor may be willing to amend the Administrative Order to require the Solicitor to perform this function Councilor O'Donnell suggested that the section could be reworded to reflect "the City

Solicitor shall be requested to examine the matter's form and legal character." Mr. Patillo would like to avoid having amendments made on the Council floor where the public has no voice.

Councilor O'Donnell moved to add this amendment to the order; Councilor Sciarra seconded the motion. The motion was approved on a voice vote of 4 Yes, 9 No.

Councilor Murphy assured the committee and Mr. Patillo that before every committee meeting, he speaks with the City Solicitor about items on the agenda. They also discuss whether the Solicitor should attend the meeting. Councilor Murphy pointed out that the Solicitor will in fact discuss changes to orders and ordinances, in fact, the next item coming up on the agenda will be looked at to incorporate amendments suggested by the Solicitor.

Councilor Murphy notes that the one thing that can't be done is that the rules can't restrict Councilors from making amendments on the Council floor as long as the change is germane.

Regarding the change to add a forty five day window in which a committee can respond to an ordinance, Councilor O'Donnell asked what if in the future there was a committee with someone who really wanted to hold something up. That person may refuse to have a vote on an item, for example, and therefore the item would never go back to the Council. Perhaps it might be something that the public really wanted. He asked the question, do you want to empower a committee to hold up something forever, or is there a window in which the clock stops? There is probably a balance because you would want a committee to do its job. Councilor Murphy suggested that in that scenario, Council could suspend Council Rules and if a ⅔ vote was achieved, then the Council could send the item forward to Legislative Matters to have them act on the matter.

Councilor O'Donnell suggested that if the committee preferred, a section of the wording could be removed and could simply read, "Should a multiple-member body fail to report within forty-five days of referral to that body, the City Council shall be authorized to proceed with the matter in the absence of such a report". Councilor Murphy suggested leaving the way it is and bring the change to the full Council and ask what the preference was.