



## CITY COUNCIL RULES SELECT COMMITTEE

### Members

*Councilor Rachel Maiore, Chair*

*Al Simon, Citizen, Vice-Chair*

*Ezekiel Baskin, Citizen*

*Councilor William H. Dwight*

*Councilor Marianne LaBarge*

### MEETING MINUTES

Date: July 13, 2021, Time: 5 p.m.

### Virtual Meeting

1. **MEETING CALLED TO ORDER/ROLL CALL:** At 5:09 p.m., Chair Rachel Maiore called the meeting to order. On a roll call, the following members were present: Councilor Rachel Maiore, Chair; Member Al Simon, Vice Chair, Councilor William H. Dwight, Member Ezekiel Baskin (joined at 6:12 p.m.) and Councilor Karen Foster. Also present were Councilor Marianne L. LaBarge, City Solicitor Alan Seewald and Administrative Assistant Laura Krutzler.

2. **PUBLIC COMMENT**

Councilor Maiore opened the floor to public comment.

Mimi Odgers advocated for limiting the amount of public comment. She has dealt with the city council when it was not virtual but rather in person, and the way it worked then was that speakers had to sign up. The sign-up sheet would be collected at the beginning of the meeting, and if people hadn't gotten there by the time the paper was taken up, they were not able to register. "You had to sign up by a certain time in order to speak," she related.

What's happening in these virtual meetings is that public comment just goes on and on, Ms. Odgers said. She'd like to recommend if they're going to continue to meet virtually that there be a time limit after which audience members wouldn't be able to comment. While she knows everyone's opinion is important, as someone who actually wants to see what happens to the city during the city council meetings, she can't stay up until 2 or 3 in the morning to see the big decisions and debates; she can barely stay up past 11. Often councilors are just getting into the heart of their agendas at 11 p.m. Not even as a constituent but, as a member of the council, she can't imagine it's their best thinking or effort. She doesn't think it's inappropriate to say speakers have to sign up by a certain time in order to participate or to end the meeting by a certain time. To watch the council's proceedings, she has to rely on either going back and watching a recording or reading the newspaper. "It's too much to be asking city councilors to be giving that much time."

Ezekiel Baskin joined at 6:12 p.m.

Councilor LaBarge commented that, as a city councilor, they've had some seriously late council meetings - 3:20 a.m., 2:30 a.m., etc. She actually talked to their council president in regard to the many calls she has received from people in the city and Ward 6 to complain. "It is very, very unhealthy," she asserted. It is unhealthy for residents. A lot of them told her they could not stay up because they had to work in the morning. "Nobody can think from 7 o'clock until 2:30 or 3 o'clock in the morning." By the time the council meeting is over; "you're wired."

She thinks they need to look at open public sessions and put a time limit on them. She also thinks they should be setting a time to end council meetings. Being a councilor for quite a long time, the latest a meeting went in times past was 1:15 a.m. "Our responsibility as councilors is our agenda." They have taxpayers/residents who want to hear about zoning changes and they are not able to. She mentioned the hardship to department heads of being expected to make presentations after midnight, pointing to the recent example of Office of Planning and Sustainability (OPS) Assistant Director Carolyn Misch having to field questions about complicated zoning ordinances until 1:10 a.m.

She thinks they need to look at other cities that have open public sessions. Today she was told Deerfield only allows 15 minutes for public comment. She said she is going to do a little research on other cities.

### **3. APPROVAL OF MINUTES OF JUNE 28, 2021**

Councilor Dwight moved to approve the minutes of June 28, 2021. Member Simon seconded.

Member Baskin said he uses they/them pronouns rather than he/him, and Councilor Maiore said Councilor Dwight's name was missing in the first paragraph on the last page. Ms. Krutzler said she would make the changes. The motion passed unanimously 5:0 by roll call vote.

### **4. CONSIDERATION OF MODIFICATION OF THE FOLLOWING COUNCIL RULES:**

#### **❖ Rule 4.8 Public Comment**

Members engaged in an expansive conversation about the pros and cons of public comment. Some of the positive benefits cited were

- ❖ including members of the public by giving them an opportunity to speak as well as listen
- ❖ amplifying voices that historically may not have been heard
- ❖ allowing the public to speak on any topic
- ❖ giving people the ability to 'speak to power' or directly address elected officials
- ❖ providing an opportunity to address all members of an elected body at one time

The near-unanimous objection to extended public comment expressed is that it actually has the unintended consequence of limiting public access to the council's deliberations since, following hours of public comment, decisions on important topics often take place after 11 p.m. or even midnight.

The expanded public participation seen over the past year has been amazing and to her it's very important to continue to include members of the public, Councilor Foster commented. However, it isn't fair to any of them to ask them to make weighty decisions at such a late hour. The challenge is to be as inclusive as possible while still allowing them to get to essential council business, she suggested.

Member Baskin agreed important decisions being made at ridiculously late hours is not feasible or sustainable. They wondered if the time limit on individual comments could be reduced from three minutes

to two, since their experience has been that people often ramble in the final minute. They are also frustrated by the rule that councilors do not respond to comments from the public, they shared.

Councilor Dwight reminded members that unique circumstances [a pandemic precluding convening in person] prompted this conversation. "We have to remember that the gist and the purpose and the intent of these meetings is to legislate," he stressed. Public comment is the opportunity to 'speak truth to power' if people are so inclined.

As far as responding to specific comments, Councilor Dwight shared some thoughts on why it can be problematic. Debate or discussion with the citizenry is not part of the legislative process because that opportunity is available by personal communication with councilors at other times, such as by phone or email or conversation in the community. It's actually part of the job for councilors to basically be available to buttonhole on any issue, he observed.

The biggest challenge is to provide fair and equitable access for the community to speak. A number of communities don't allow public comment, but once it is allowed, members have to be mindful of constitutional protections and the unlawfulness of limiting someone's speech. The challenge is to provide access and transparency while maintaining efficacy in their deliberations and function.

He agreed with Councilor Foster that this access point was previously unrealized and creates a level of engagement that is unprecedented. It affords an opportunity for people who otherwise have not been engaged. He is not sure they will get to other items on the agenda because this one is very complicated and has such an enormous impact, he concluded.

Vice Chair Simon offered several concrete suggestions:

- ❖ Having a one-hour time limit for public comment at every meeting
- ❖ Handling public comment on a priority basis to Northampton residents. All residents should be allowed to speak first before any others speak.
- ❖ Scheduling a special council meeting to accept more public comment on a specific topic when it becomes clear after an hour of comment that input on a particular item has not been exhausted. This would preserve the one-hour limit during regular council meetings while still allowing the ability of members of the public to have their say and allowing the council to accomplish its business.

His suggestion of scheduling a special meeting to accept public comment relates to the rule requiring two votes on a matter, Member Simon noted. While he doesn't think it's necessary for the council to vote twice, he does agree with the practice of announcing a topic for discussion at a prior meeting so the public can have a say before the council's final vote. The step of scheduling a special meeting could be taken when, on the first night a topic is discussed, the volume of public comment exceeds that time limit.

### **Subcommittee Format**

Councilor Dwight agreed those are excellent ideas but said that's exactly what subcommittees are for. Member Simon is absolutely right about two readings; the first 'reading' should be an announcement, not a vote. The rules include mechanisms to delay or postpone a vote or expand communication on a vote if it is recognized that there is significant community concern. The council has the option of referring an issue to a subcommittee if a need for more input and greater flexibility to recognize members of the public is determined.

Using police funding as an example, if the council had only one reading on the budget, they could refer this item to the Finance Committee or another committee for further discussion without other items. Rather than convene a special meeting, a subcommittee could do that.

Member Baskin said they think part of what makes public comment useful is that it allows people to address all of the councilors at once. Someone might not have time for separate conversations with each councilor as it is a lot more work to speak to each person individually. There is something important about being able to address the body as a whole. They would certainly be in favor of restricting comment to items on the agenda and in having comments on a particular item associated with the discussion. In other words, instead of having two hours of comment in the beginning, they proposed allowing people to speak on items as they come up on the agenda so the comments could be integrated into the council's discussion. Part of the frustration now is that none of the comments are specifically addressed.

Councilor Dwight confirmed it is possible to enfold public comments into the body of the meeting but noted that doing so presents its own challenges and complications.

All good points but, again, that's what can be done in subcommittees, Councilor Dwight reiterated. Subcommittee meetings are where you get granular and have those more synthesized discussions with give and take. The structure of meetings is such that regular council meetings are designed for members to deliberate and hear input and testimony. Subcommittees are for research and narrowing the focus. To Member Baskin's point, if the dynamic of what they appreciate is the give and take and engagement, that's more likely to occur in subcommittee meetings. If it took place in council meetings, they would go past 4 a.m. In his opinion, it would not be an appropriate way for a representative government to work.

Councilor Maiore said she loved the idea of the two-minute limit on individual comments. She asked the city solicitor to address why they don't respond to public comment.

There are several reasons, Attorney Seewald stated. As a practical matter, it is the public's chance to speak, not the council's. Because they have an open public comment session with no rules, speakers are going to get off on topics that are not on the agenda. If more than one councilor responds, it becomes a full-fledged debate on something that's not on the agenda. Also, people can talk about public employees without the employee being present. It opens the door to so many problems. It runs the risk of violating the Open Meeting Law (OML) at some point but he thinks it is primarily giving the public the chance to speak.

Member Baskin said they are not in favor of keeping public comment on any topic but think it should be limited to items on the agenda.

They liked the way Councilor Dwight was presenting the format of subcommittees, Members Baskin added. If members of the public should be coming to subcommittees to have granular, detailed conversations, why aren't they? He wondered. What's stopping that from happening?

They voiced the perception that people are not as clear about the workings of the committees. They were really surprised when they went to a subcommittee meeting and were given more space to speak. To an outsider, the assumption may be that it's going to be just like the council meetings. If there's a different structure for subcommittees, that could be clearer. They are curious about the way the Finance Committee is nestled into the council meeting because a lot of the things people might like to speak about are within the Finance Committee meeting. They don't see that committee functioning in the way Councilor Dwight

described. Since that is the only one visible, it presents the appearance that there's going to be even less opportunity for engagement.

He is sort of an absolutist about the idea of public comment, Member Simon volunteered. He thinks any citizen should be able to speak to their elected officials about anything they want. The issue about speaking to something on the agenda really wouldn't have saved any time in the most recent circumstance. It is one way elected officials are able to gather information about a decision to be made or the job they are doing. He thinks there's a way to handle it that allows citizens the right to petition their government and also allows the government to get the job done in a timely manner.

However, to put this in some legal context, it's exactly the opposite, Attorney Seewald interjected. The law expects councilors to have that interaction with their constituents before getting to the meeting. There are seven days in the week to contact your councilor, and the law carves out one period in the life of a council in which no one has the right to speak to a councilor, and that's at the meeting. The Open Meeting Law (OML) specifically says that no one has the right to speak at any public meeting unless recognized by the chair. It's exactly the opposite of what Member Simon just said. "Just understand this is swimming upstream against the OML." A public hearing is when the public has the right to speak; not when legislation is being done.

A public hearing is a convened event at which the public – anyone - has the right to address the decision-making body on the issue being decided. It's not an opportunity to get up and sing a song or recite a poem. A meeting on the other hand is the opportunity for the body to take what they've learned outside in the world and discuss it amongst themselves. When they open the floor to public comment, they can't stop someone from using foul language or defaming someone unless they have rules in place. The way it is right now, there is no way to prevent anybody from saying almost anything once they are recognized. Attorney Seewald confirmed that the slur was allowed in general public comment.

Councilor Foster expressed her understanding that, as of now, they do not have rules limiting speech but they could as a committee recommend rules prohibiting racialized language.

They would not be able to start defining vulgar language, Attorney Seewald clarified. He referred to a case out of Framingham where the School Committee was preventing people from saying certain words. "You've opened the first amendment forum," he advised. Council meetings are not first amendment forums until they've opened them; they're exactly the opposite of first amendment forums. "When you open them, you open the floodgates."

Can you limit it to items on the agenda? Probably. Can you limit it to items within the jurisdiction of the body? Probably. Anything that would smack in any way of regulation based on the content of the speech - what is said - as opposed to the time, place and manner of the speech [is prohibited], he counseled. "You can regulate the time, place and manner but you can never regulate the content."

Member Simon asked the solicitor what the point of that distinction was.

He [Member Simon] wanted not to limit the topics which could be addressed and the OML does just the opposite, Solicitor Seewald responded. The OML envisions that councilors' engagement with constituents happens outside the meeting and that, once at the meeting, councilors conduct the business of the

meeting. The broader the access to councilors at the meeting, the more outside the expectations of the OML public comments becomes, he elaborated.

The charter mandates the city council to have a period of public comment; although it provides that the council may promulgate rules to regulate this period as deemed appropriate, Member Simon reminded.

In response to a question from Councilor Foster, Attorney Seewald confirmed that, theoretically, the council could adopt a rule to limit comments to Northampton residents.

Councilor Dwight said this is why he recommended establishment of this committee. "It's better to have rules in place before you guys convene again," he noted. Defining the edges of public comment is a perfectly reasonable and sensible way to approach this. He's open to any and all suggestions; whether it's specific to agenda items, specific to residents, specific to time, etc.

Subject to technology and Attorney General rulings, she would support remote participation in public comment moving forward, Councilor Foster affirmed. She thinks it has produced opportunities to engage that she would want to hold on to. She knows people who would not be otherwise be able to participate.

Regarding the sign-up requirement, speaking to council is an intimidating process, she observed. She thinks if sign-ups were to end before the meeting, it would inadvertently box out those who are not as familiar with the rules for participation. She thinks they would inadvertently really limit engagement if that were a direction they took.

Interestingly, he is not a fan of remote public comment, Member Simon admitted. "I think people should show up just as the council should get back together again."

If others did want to hang onto some kind of remote access, he would insist that the cameras have to be on. He thinks people should be seen in the context of a public meeting and be required to identify themselves rather than remaining anonymous. Ultimately, councilors have to decide whether they are going to leave [public comment] open-ended or they are going to limit it. "I would hope you would limit it."

Member Baskin agreed with Councilor Foster that remote participation in public comment has led to a significant shift in the number of people with access to participation. Being able to show up in council chambers at 7 o'clock on a Thursday is just not an option for some people.

They also agreed with Member Simon's point about anonymity. This raises the question of how rules are to be enforced since the rules already require people to identify themselves and yet some don't comply.

As a rule, the presiding officer is given fairly wide latitude to enforce compliance, Councilor Dwight related. As the solicitor mentioned, not all of it is truly enforceable.

Members briefly discussed the complexity of moderating meetings conducted by Zoom. Councilor Maiore suggested the possibility of someone needing to help the administrative assistant and presiding officer if the council goes to a hybrid meeting with both in-person and remote participation. "I think it's going to get even more unwieldy if we have two types of comment coming in."

Councilor Dwight said he thinks it's appropriate to have IT Director Antonio Pagan come speak to them to explain logistical and technical considerations. Dan Cannity's day job is also doing hybrid participation, Councilor Maire said.

This very afternoon, the Mayor, Chief of Staff, Council President Sciarra, Antonio, and Central Services Director David Pomerantz met to talk about the logistics and feasibility of hybrid remote/in-person meetings, Attorney Seewald reported. They just started that conversation today, and some things need to be investigated before they get back together.

She had a brief back and forth with Northampton Open Media Director Al Williams, and he was at that meeting, Councilor Foster added. He also offered to come and talk to them.

He is actually of the opinion that not all of these issues have to be resolved by the work of this committee, Member Simon volunteered. They could simply say public comment can either be taken in person or by electronic means. To him, the question is how long they want public comment to go. They could get into details of how it is conducted later on.

The presiding officer is always going to have to deal with curve balls like someone exceeding their allotted time or using profane language. The feasibility [of remote public comment] shouldn't delay the ability of the committee to decide how much public comment to allow and how people can participate, he noted.

At 7:23 p.m., Councilor Maire said she was hoping to wrap up the meeting by 8 p.m.

### Process

The rules committee will vote on recommendations to be considered on by the new council to be seated in January; the committee will not make the actual changes, Councilor Dwight explained.

Members discussed how to proceed. Councilor Dwight recommended not making recommendations yet but instead focusing first on other items identified as important. By the end of their session, they will start to get a sense of what recommendations are the most viable. If they were to vote on a recommendation now they would find toward the end that it didn't make much sense in light of other rules, he suggested.

However, Councilor Foster wondered if they might want to have a draft list of working recommendations so as not to have to keep coming back to topics already covered.

Member Baskin said he thought it would be helpful to keep a running list of recommendations.

There seems to be a common objective; namely, to limit the time of public comment, whether by limiting the time allotted to each speaker, reducing the overall comment period, requiring speakers to sign up or limiting people to topics on the agenda, Councilor Dwight said. He recommended defining a prescribed amount of time to allot to public comment at the beginning of the meeting and also requiring sign-up, since this would limit the number of people eligible to speak based upon a non-subjective standard.

### Time Limit on Public Comment

Members took turns expressing opinions on the appropriate amount of time to allow for public comment.

Councilor Foster said she is between an hour and a half and two hours.

Member Baskin said they are not sure of the amount of time because it depends in part on what else can be done to reduce the length of the meeting. Reducing public comment is part of it but there are also other extraneous things that happen during the meetings, like 2<sup>nd</sup> readings. They do like limiting the time and think an hour and a half to two hours might be right. They do not like the sign up as they do not think how early someone gets there is a particularly equitable measure. . . They proposed an hour and a half to two hours overall time, two minutes per person, no restrictions on residency, and limiting comment to topics on the agenda.

Member Simon suggested coming back strictly to the issue of total time they want to allow for public comment, since this is essential. . . He thinks they should resolve the issue of length of public comment before getting into the rules of public comment.

Councilor Dwight said he agrees with a one-hour limit. Two hours puts them at 9 o'clock. He mentioned the fact that public hearings are all scheduled at 7 p.m., so having two hours of public comment leads to scheduled hearings not starting until 9 or 10, which is problematic.

The council would have the discretion to suspend rules to allow further public comment if necessary, he pointed out. A two-thirds majority has to approve the suspension of any rule.

Member Baskin said they would be in favor of shifting public hearings to occur before public comment since there is no reason people present for a public hearing should have to sit through hours of comment. They would be in favor of putting public hearings up front.

There is precedence for the presiding officer to move an item up on the agenda if there is a demonstrated level of interest, Councilor Dwight noted.

Councilor Maiore said she would also like to have a conversation about the start time of meetings because a half hour earlier would make a big difference.

Member Simon noted that two members are in favor of one and a half to two hours and two in favor of one hour. They are very close to coming up with a recommendation. Councilor Maiore is the tie-breaking vote.

Councilor Foster said she would be willing to shift back to an hour with the understanding that the council could suspend rules to allow more public comment. She said she also agreed with putting public hearings before public comment.

Councilor Maiore said she would support one hour for public comment and two minutes for individual comments.

Attorney Seewald expressed discomfort with the idea of suspending rules to allow public comment to continue since he doesn't want a situation where the statement someone is preparing to make in any way influences the decision of the council to suspend rules. They have to be very careful not to open the door to consideration of the content of someone's comment.

What also holds up the proceedings is the number of roll call votes, Member Baskin said. They don't want to build rules to be suspended so their inclination would be to set a limit of an hour and a half so a vote to extend should be very rare.

Member Simon moved that the committee recommends to the council that public comment be limited to one hour and two minutes per speaker. Councilor Dwight seconded. After additional discussion, Member Simon called the question, and the motion carried 4:1 with Member Baskin opposed.

**5. SCHEDULE NEXT MEETING**

Members decided to meet August 5, 2021 at 6 p.m.

**6. DISCUSS WORK PLAN FOR UPDATING RULES/IDENTIFY PRIORITY TOPICS**

Member Baskin said he would love to talk about the order of the agenda of regular meetings (4.5 Order of Business).

Member Simon said he would send an email with a list of his priority topics. The city solicitor said the best practice would be to send the list to the administrative assistant for distribution rather than circulating it to members directly. Members should never 'Reply all' to such emails, he reminded.

**7. ADJOURN**

Councilor Dwight moved to adjourn. Councilor Foster seconded. The motion passed unanimously 5:0 by roll call vote.

The meeting was adjourned at 8:07 p.m.

Respectfully submitted,  
Laura Krutzler, Administrative Assistant