



Charlotte City Council
**Council-Manager
Relations Committee**
Meeting Summary for May 28, 2013

COMMITTEE AGENDA TOPICS

- I. Subject:** Continued Discussion of Roles, Responsibilities and Ethics of Council Appointed Committees
- Action:** None.
- II. Subject:** Next Meeting Date
- Action:** Monday, July 22, 2013 at 11:45 a.m. in Room 280
[City Manager's Quarterly briefing on June 24 replaces regular scheduled meeting.]

COMMITTEE INFORMATION

Present: Council members Warren Cooksey, David Howard, Patsy Kinsey, and James Mitchell

Absent: Mayor Anthony Foxx

Other: Council member John Autry

Time: 11:45 a.m. to 1:15 p.m.

ATTACHMENTS

1. Agenda Package

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DISCUSSION HIGHLIGHTS

Committee Discussion:

Council member Warren Cooksey called the meeting to order and asked everyone in attendance to introduce themselves.

I. Continued Discussion of Roles, Responsibilities and Ethics of Council Appointed Committees

Bob Hagemann reminded the Committee that in 2010, Mayor Pro Tem Susan Burgess chaired an ad hoc committee that revised the ethics policy for Mayor and City Council based on legislation passed by the State. The effort was needed to address five specific topics from the legislature. The earlier adopted policy was from 1983; the new policy was modeled from a policy distributed by the School of Government with some minor tweaks.

Mr. Hagemann suggested walking through the proposed changes to the resolution [copy attached]. One change throughout is where it says Mayor/Council that has been changed to **Board Member**. The first change is to actually repeal the January 24, 1983 resolution. The black type is the current adopted policy; red type shows the proposed changes, which are significant. This resolution would apply to those appointed to City boards, committees and commissions as well as appointees to non-City bodies.

Council member Howard expressed concern that a blanket policy might take away some of the individual needs of the boards; and wondered if this would make it even harder for people to serve. Mr. Hagemann said that was not the goal. The intent was to make the policy consistent with what has been adopted by Mayor and City Council.

Mr. Hagemann continued that page 2, the **Code of Ethics** section contains a substantive addition, which deals with a serious concern [i.e. the Airport Advisory Committee situation]. People are appointed to boards for the value they bring; however, they need to be mindful that they have 1) been appointed by Mayor/City Council; 2) they are in a trust position; and, 3) if they are asserting policy positions, they should do so only through transparency of official proceedings.

Council member Howard agreed that was important but questioned how that is communicated and certain groups, i.e. the Planning Commission have stronger responsibilities. Do all chairs understand their role? Do they know it is their responsibility to report potential public arguments or policy decisions?

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Mr. Hagemann agreed that it is critical for the chairperson to know that if they speaking publicly they should be mindful in particular circumstances if their policy position is in conflict with or critical of City Council. They should take appropriate steps to communicate that to Council first. Council member Howard added that should be part of their orientation; they have to understand there is a higher level of expectation than just running meetings.

Council member Cooksey said he would like to see material about interacting with Council when they disagree. There is a distinction between an aspirational policy for 11 elected officials versus an advisory board. What would this policy mean related to that former board chair? The focus here is members behaving unethically – not disagreeing. Council member Howard added the Planning Commission routinely disagrees, but it is done with transparency.

Council member Cooksey suggested structurally to bullet a, b, and c and added that adding the language from Council's rules and procedures might be useful. It needs to be understood that in their capacity we don't expect them to say anything different; they are not representing their individual views. You could use the clip from WCNC with the chair of the Airport Advisory Committee identifying himself as a member of that Committee while supporting an airport authority. Council member Kinsey added that the chair should not make a statement before City Council knows the statement.

Mr. Carlee said that point fits in the rules and procedures; they have an obligation as a reporting authority, but that shouldn't be done externally, they are supposed to help you make decisions. It is a problem should a member represent they are an advisory body to anyone other than Council. They can personally advocate as an individual but not as an authority unless authorized by you.

The Committee did acknowledge that some committees, like the Planning Commission, do disagree with staff and Council's position occasionally on zonings and rezonings, while sometimes it is expected, but they do have an established public process.

Council member Cooksey said he thought it was important to draw a line between advising and advocating. Appointees can advise, but advocating is a very different matter. For example, as a member of the State's Republican Party, Council member Cooksey cannot advocate for a candidate that has not been endorsed by the Party. He can do so personally, but has to be cautious about that being viewed as a Party endorsement.

Mr. Hagemann offered the following suggestions as additions to the policy:

- 1) Recognize the unique position of Chair for these boards and encourage them to be more mindful of the position

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- 2) Add language that if the Board is taking a position contrary to Council; they need to quickly notify Mayor and Council
- 3) Look at the provision from your Rules and Procedures regarding acting as if they are speaking for the elected officials
- 4) Reminder their role is to advise Mayor and Council primarily and they should focus in that direction, not other outlets
- 5) Draw a distinction between advising and advocacy

Council member Cooksey noted this should be part of the website for prospective members, even look to modify the application so they know before applying the expectations.

Mr. Hagemann advised the Committee on page 3, quasi-judicial capacity has been added back in.

Council member Cooksey noted that section 3.a. seemed passive. Mr. Hagemann responded that this was so they made a determination as a full Council; not individually. Council member Cooksey followed up asking if that meant in talking about boards, we would not have a repeat of the Airport Authority Chair; would that be considered impropriety? Mr. Hagemann answered this limits who makes the determination. Council member Cooksey asked would that determination be opened up to the board, or kept with Council as a reminder they work for us. Mr. Hagemann answered the new overarching provision is the Council policy, but this reserves the right to make that determination.

Council member Cooksey said it should be set up in the beginning so it begins as a Council action. In 3.a. – impropriety – Council will consider ... that gives clear direction to future Councils. One additional question that raises is what happens during a board spat; if the members feel the Chair has stepped out of line, how do they bring that up? Council member Howard answered that each body has its own rules, so it depends on the rules, but Council should ultimately decide if it is inappropriate.

The Committee discussed Section 5 (page 4) and how "...the public's business" relates to boards and the appropriateness of striking the second paragraph. Mr. Hagemann answered he read that relating more to Council business versus boards. He felt the first paragraph covered what was necessary.

Mr. Hagemann continued that starting on Page 4, Sections 6 and 7 have been struck as they do not apply to boards.

Council member Howard questioned quasi-judicial boards, like the ZBA, the CRVA, etc. and if their bylaws covered these same areas. Council member Cooksey reminded the Committee that the CRVA is a special case; they have their own legal team; but also statutes that cover them.

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Mr. Hagemann noted that Section 7 relates to investigating City Council members for violations, which does not relate to boards. He said that the City Manager's office working with the City Attorney's office would look into situations on a case-by-case basis and depending on what the investigation revealed would bring that back to Council. It gives some flexibility.

Mr. Hagemann concluded that he had enough information to bring back a second draft.

II. Next Meeting Date

Monday, July 22, 2013 at 11:45 a.m. in Room 280

The next regularly scheduled meeting of the Committee was June 24, but that has been replaced with the Quarterly Briefing of the City Manager.

Council member Mitchell asked if this Committee would be looking at the process for selecting an interim Mayor, and if so, noted July 22 would be too late. The Committee discussed how this process would be determined acknowledging the unknowns of timing with the Mayor's appointment and not wanting to get out too far ahead.

The Committee discussed the limited opportunities to discuss any process while wanting to be proactive in filling the vacancy as soon as possible. Council member Mitchell added that he wanted to be in a position to respond. Mr. Hagemann noted that unlike other positions, there is no "interim" distinction for Mayor; the person will be Mayor.

Meeting Adjourned

Council-Manager Relations Committee

Tuesday, May 28, 2013 – 11:45 a.m.

Room 280

Committee Members: Anthony Foxx, Chair
Warren Cooksey, Vice Chair
James Mitchell
David Howard
Patsy Kinsey

AGENDA

I. Continued Discussion of Roles, Responsibilities and Ethics of Council Appointed Committees

Staff Resources: Bob Hagemann and Stephanie Kelly

II. Next Meeting Date

The next Committee meeting will be replaced by the first Quarterly Manager and Mayor/Council Update meeting. The date is Monday, June 24 from 12:00 to 1:30 p.m. at the NASCAR Hall of Fame Crown Ballroom.

Next Regular Scheduled Meeting

Monday, July 22, 2013 at 11:45 a.m. in Room 280

CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY
Memorandum

TO: Council-Manager Relations Committee

FROM: Robert E. Hagemann, City Attorney *REH*

DATE: May 23, 2013

RE: Ethics for City Boards, Committees, and Commissions

At the April 22 meeting, the Committee asked me to adapt the Council's Code of Ethics to City Boards, Committees, and Commissions for the Committee's consideration. Attached are red-line and clean versions of the draft I prepared. I will be prepared to walk you through the draft at your May 28 meeting.

Enclosures

cc: Ron Carlee, City Manager
Stephanie Kelly, City Clerk

**A RESOLUTION OF THE CHARLOTTE CITY COUNCIL REPEALING A 1983
CONFLICT OF INTEREST POLICY STATEMENT AND ESTABLISHING A CODE OF
ETHICS FOR MEMBERS OF BOARDS, COMMITTEES, AND COMMISSIONS OF
THE CITY OF CHARLOTTE**

Section 1. The January 24, 1983 Resolution of the Charlotte City Council Establishing a Conflict of Interest Policy Statement for Members of City Boards, Agencies, Committees, and Commission recorded at Resolution Book 19, Page 18 is hereby repealed.

Section 2. A Code of Ethics for Members of Boards, Committees, and Commissions of the City of Charlotte, North Carolina, is hereby established as follows:

Code of Ethics for ~~the Mayor and City Council~~ Members of Boards, Committees, and Commissions of the City of Charlotte, North Carolina

WHEREAS, the Constitution of North Carolina, Article I, Section 35, reminds us that a “frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty,” and

WHEREAS, a spirit of honesty and forthrightness is reflected in North Carolina’s state motto, *Esse quam videri*, “To be rather than to seem,” and

WHEREAS, Section 160A-86 of the North Carolina General Statutes requires local governing boards to adopt a code of ethics and, pursuant to Section 160A-86, the Charlotte City Council has previously adopted a Code of Ethics for the Mayor and City Council, and

~~WHEREAS, as public officials we are charged with upholding the trust of the citizens of this City, and with obeying the law, and~~

WHEREAS, it is appropriate that members of City boards, committees, and commissions, as well as Mayoral and City Council appointees to non-City bodies (hereinafter “Board Members”), also adhere to a Code of Ethics.

NOW THEREFORE, in recognition of our blessings and obligations as citizens of the State of North Carolina and as public officials representing the citizens of the City of Charlotte, and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we the City Council do hereby adopt the following General Principles and Code of Ethics to guide ~~the Mayor and City Council~~ Boards Members in their lawful decision-making.

GENERAL PRINCIPLES UNDERLYING THE CODE OF ETHICS

- The stability and proper operation of democratic representative government depend upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials.
- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.

- ~~The Mayor and Council Board~~ mMembers must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.
- ~~The Mayor and Council Board~~ mMembers must always remain aware that they may, at various times, ~~they~~ play different roles:
 - ~~As advocates, who strive to advance the legitimate needs of their citizens~~
 - As ~~legislators~~ advisors, who balance the public interest and private rights in considering and recommending, among other things, ordinances, policies, and decisions enacting ordinances, orders, and resolutions
 - As decision-makers, who arrive at fair and impartial determinations.
- ~~The Mayor and Council Board~~ mMembers must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.
- ~~The Mayor and Council Board~~ mMembers must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of ~~their constituents~~ the Mayor and City Council and the citizens of Charlotte. Each ~~official~~ Board Member must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for ~~the Mayor and Council Board~~ mMembers and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for an ~~official's~~ member's best judgment.

Section 1.

~~The Mayor and Council Board~~ mMembers should obey all laws applicable to their official actions. ~~The Mayor and Council Board~~ mMembers should be guided by the spirit as well as the letter of the law in whatever they do.

At the same time, ~~the Mayor and Council Board~~ mMembers should feel free to assert policy positions and opinions without fear of reprisal from fellow Board members or citizens. However in doing so, Board Members shall: (a) be mindful that they were appointed by the Mayor or City Council, or by another appointing authority to a City Board, Committee, or Commission; (b) understand that they hold a position of trust on behalf of the City and its citizens; and (c) assert policy positions and opinions on matters within or related to the jurisdiction and subject matter of the body on which they serve only through the transparency of official proceedings of the body or in a capacity and manner appropriate for a member of such body. To declare that ~~the Mayor or a Council Board~~ a Board mMember is behaving unethically because one disagrees with that

official on a question of policy (and not because of the council member's behavior) is unfair, dishonest, irresponsible, and itself unethical.

Section 2.

~~The Mayor and Council~~ Board members should act with integrity and independence from improper influence as they exercise the duties of their offices. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly to a code of sound values
- Exhibiting trustworthiness
- Using their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, consistent manner
- Remaining incorruptible, self-governing, and unaffected by improper influence while at the same time being able to consider the opinions and ideas of others

For Board Members who act in a quasi-judicial capacity, disclosing contacts and information about issues that they receive outside of public meetings and refraining from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings themselves

- Treating other ~~council~~ Board members and the public with respect and honoring the opinions of others even when the board members disagree with those opinions
- Showing respect for their offices and not behaving in ways that reflect badly on those offices
- Recognizing that they are part of a larger group and acting accordingly
- Recognizing that individual ~~Council~~ Board members are not generally allowed to act on behalf of the ~~Council~~ body but may only do so if the ~~Council~~ body specifically authorizes it, and that the ~~Council~~ body must take official action as a body

Section 3.a.

~~The Mayor and Council~~ Board members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach and they should not use their official position for personal gain. Although opinions may vary about what behavior is inappropriate, ~~this Council will consider~~ impropriety shall be considered in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the ~~Council~~ Board member's action would conclude that the action was inappropriate.

Section 3.b.

If ~~the Mayor or a Council~~ Board ~~m~~Member believes that his or her actions, while legal and ethical, may be misunderstood, the official should seek the advice of the City Attorney and should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).

Section 4.

~~The Mayor and Council~~ Board ~~m~~Members should faithfully perform the duties of their offices. They should act as the especially responsible citizens whom others can trust and respect. They should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

~~The Mayor and Council~~ Board ~~m~~Members should faithfully attend and prepare for meetings. ~~They should demand full accountability from those over whom the board has authority.~~

~~The Mayor and Council~~ Board ~~m~~Members should be willing to bear their fair share of the ~~governing board's~~ body's workload. To the extent appropriate, they should be willing to put the City's interests ahead of their own.

Section 5.

~~The Mayor and Council~~ Board ~~m~~Members should conduct the affairs of the board in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an important way to be worthy of the public's trust. They should remember when they meet that they are conducting the public's business. They should also remember that local government records belong to the public and not to them or City employees.

~~In order to ensure strict compliance with the laws concerning openness, the Mayor and Council members should make clear that an environment of transparency and candor is to be maintained at all times in the governmental unit. They should prohibit unjustified delay in fulfilling public records requests.~~ They should take deliberate steps to make certain that any closed sessions held by the Councilbody are lawfully conducted and that such sessions do not stray from the purposes for which they are called.

Section 6.

~~General disclosure statement.~~

~~(a) The Mayor and Council members shall file with the city clerk, by February 1 of each year, a statement containing the following information:~~

~~(1) The identity, by name and address, of any business entity of which he or she, or any member of his or her immediate household, is an owner, officer or director. Additionally,~~

~~the city official and spouse shall give the names of their employers or, if self-employed, shall state the nature of their work.~~

~~(2) The identity, by location and address, of all real property located in the county owned by the city official or any member of his or her immediate household, including an option to purchase, or lease for ten years or more, other than his or her personal residence.~~

~~(3) The identity, by name and address, of any nonprofit organization which was the subject of some official act or action of the city council within the past year and on which the Mayor or any Council member serves as an officer, director, or board member.~~

~~(b) The statements required by this section shall be filed on a form prescribed by the city clerk and are public records available for inspection and copying by any person during normal business hours.~~

Section 7.

~~(a) The City Council may direct the city attorney to investigate any apparent violation of this policy and to report the findings of his investigation to the City Council.~~

~~(b) Any person who believes that a violation of this article has occurred may file a complaint in writing with the City Council which may thereafter proceed as provided in subsections (a). In addition, any complaint received by the City shall be reported to the Mayor or, if the complaint is regarding the Mayor, to the Mayor Pro Tempore.~~

~~(c) If the City Council, after receipt of an investigation by the city attorney and any additional procedures directed or allowed by the Council, the Council may adopt a resolution of censure which shall be placed as a matter of record in the minutes of an official Council meeting.~~

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