



**CITY COUNCIL WORKSHOP
AGENDA
CITY COUNCIL CHAMBERS
05/09/2011
5:00 p.m.**

**CITY COUNCIL WORKSHOP
COUNCIL RULES**

- A. CALL TO ORDER:**
- B. INTRODUCTION:**
- C. PRESENTATION:**
 - 1. Council Rules Workshop
- D. ADJOURNMENT:**

Any individual with a disability requesting a reasonable accommodation in order to participate in a public meeting should contact the Accessibility Coordinator at least 48 hours in advance of the scheduled meeting. The Accessibility Coordinator can be reached in person at 400 S. Eagle Street, Naperville, IL., via telephone at 630-420-6725 or 630-305-5205 (TDD) or via e-mail at manningm@naperville.il.us. Every effort will be made to allow for meeting participation.

**CITY OF NAPERVILLE
MEMORANDUM**

DATE: April 29, 2011

TO: Mayor and City Council
Douglas A. Krieger, City Manager

FROM: Margo Ely, City Attorney

SUBJECT: Council Rules Workshop May 9, 2011

PURPOSE:

The purpose of this memorandum is to outline issues for discussion at the Council Rules Workshop on May 9, 2011.

BACKGROUND:

Over the years, the Council Rules Workshop has provided a forum for lively discussions related to Council conduct, City Manager form of government and better business practices. In FY 08, Strategic Initiative #1 directed “Review City Council procedures in an attempt to improve the City Council meeting process and clarify the City Council’s role in the Council-Manager form of government.” The last Council Rules workshop was in November, 2008. Over the past year, staff has retained a list of issues for discussion at the Council Rules Workshop, which are incorporated into this memorandum for discussion at the 2011 Workshop. In addition, staff invites Councilmembers to provide additional issues for discussion at the workshop by next Friday, at which time supplemental materials can be distributed to Council.

OVERVIEW:

Parliamentary rules are a time tested method of conducting business in an orderly fashion. According to Wikipedia, “Parliamentary procedure is based on the principles of allowing the majority to make decisions effectively and efficiently, while ensuring fairness towards the minority and giving each member the right to voice an opinion.” A parliamentarian website states, “We must learn to run a meeting without victimizing the audience; but more importantly, without being victimized by individuals who are armed with parliamentary procedure and a personal agenda.”

The Motions:

The Council’s procedural rules can be found at Section 1-5-4-6 of the Naperville Municipal Code. (attached for reference). The Council Rules provide that the Mayor presides and decides all questions of order. The precedence of motions is outlined in the Rules; most importantly, a motion to adjourn takes precedence over all other motions. A few frequently used motions include the Motion to Invoke Council Rules, the Motion to Close Debate and Call the Question, the Motion to Substitute and the Motion to Reconsider.

Motion to Invoke Council Rules: Any Councilmember can make this motion, which does not require a second. If there is not an objection to the motion, then the matter is tabled until the next

regular meeting. If there is an objection, a motion to overrule is in order, which must be seconded and requires 6 positive votes to succeed.

Motion to Close Debate and Call the Question: This is commonly referred to as “call the question,” which stops debate and a vote is immediately taken on the matter at hand. This motion does not require a second and requires only a majority to pass.

Motion to Substitute: Takes the place of the main motion.

Motion to Reconsider: A motion to reconsider can be made at the same meeting or at the next regular meeting after the vote being reconsidered. It cannot be made thereafter. A motion to reconsider must be made by a member that voted with the prevailing side and can be seconded by anybody. The motion to reconsider requires 6 positive votes.

The Conduct: Section 7 outlines the “Conduct of Members” and identifies proper conduct including demonstrating respect and performing duties with integrity and impartiality.

Debate: Section 8 sets forth rules for debate, including that Councilmembers are limited to speaking two (2) times on the same subject at a meeting, except by consent of a majority of the Council which is presumed where no objection is made. The first time a Councilmember speaks on a matter is limited to three (3) minutes and the second time is limited to two (2) minutes.

Participation by Telephone: A majority of Council must be physically present at meetings. Two (2) Councilmembers may participate by phone if 1) personal illness or disability; 2) employment purposes of other public business; or 3) a family or other emergency.

DISCUSSION:

During the past year, a few issues have been raised related to Council Rules, which are outlined below.

Minutes: There have been discussions about Council minutes and whether the statements of individual Councilmembers should be included in the minutes and if so, when.

The Open Meeting Act requires the City to maintain minutes of public meetings and states “Minutes shall include, but need not be limited to the date, time and place of the meeting; the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference and a summary of discussion on all matters proposed deliberated, or decided, and a record of any votes taken.” 5 ILCS 120/2.06. This is mirrored in the Council Rules at 1-5-4-9.

Staff recommends that Council concur with the law and require only summaries of discussions and not require transcripts of individual Councilmembers’ statements at meetings. Staff makes this recommendation because of the wide availability of the videos of entire meetings through the city website.

Abstentions and Conflicts: The legal obligation to abstain from voting on a manner is required by law, which requires abstention when a member has a financial interest in the matter (legal abstentions). Sometimes, Councilmembers abstain for personal reasons, which are not based on the law and in circumstances where abstention is not legally required (personal abstentions). Section 1-13-1 of the Naperville Municipal Code governs Conflicts of Interest. (attached). The growing practice of personal abstentions among Councilmembers is not explicitly provided in the Code. Rather, the Code, and the law, identifies circumstances in which abstentions are mandatory because of a financial interest. In addition, the City's ethics provisions go beyond what the state law requires for abstentions and conflicts. The state law requires abstentions only when a member has certain levels of financial interests in the matter to be voted upon. The City's regulations go beyond the state law by requiring abstentions when the member has an employment or family interest that meets certain levels of financial interests in the matter to be voted upon. The City's regulations also go beyond state law by requiring Councilmembers to complete disclosure forms. Finally, the state law does not require members who abstain to leave the room, but the Naperville Municipal Code does.

Staff recommends that the Code be amended to mirror state law for legal abstentions by limiting legal abstentions to financial interests. Staff recommends that Councilmembers continue to be required to complete a disclosure form for legal abstentions, but not be required to leave the room when they abstain. Finally, staff recommends that the Code be amended to acknowledge that Councilmembers can abstain for personal, non-legal, reasons.

Reducing Agenda Clutter: The City Manager's Office strives to make the City Council agenda process as streamlined and efficient as possible. To that end, staff recommends that Council direct staff to create an inventory of agenda items that are routine, reoccurring, and unanimously approved (i.e. Naper Settlement black powder use, Boy Scout BB gun program, graduation fireworks displays). Staff would bring this list back to City Council with recommendations on how to provide a mechanism (Municipal Code amendment or otherwise) for administrative approval for such requests.

Term Limits and Districts: Based on the referendum results from last November, Council Rules will be amended to codify term limits and districts in the near future. Staff will draft an ordinance codifying term limits with any ordinance directed from the Workshop discussion. In addition, staff will present the Council with an agenda item this summer regarding Districts, which will propose a process and guidelines for establishing Districts.

RECOMMENDATION:

Consider the information contained herein and direct staff accordingly.

1-5-4-6: - COUNCIL RULES OF ORDER:

"Robert's Rules Of Order" shall govern the proceedings of the City Council where applicable and when not in conflict with statutes and ordinances. The following rules are hereby adopted:

1.

Mayor To Preside: The Mayor shall preside at all regular, special, and emergency meetings of the City Council provided that in the absence of the Mayor, the Mayor Pro Tem shall preside. The Mayor shall preserve order and decorum, and shall decide on all questions of order. The rulings of the Mayor shall be appealable to the City Council and shall be decided by a majority vote of those present, including the Mayor, without debate.

2.

Precedence Of Motions:

2.1.

Motion to adjourn to a date certain.

2.2.

Motion to adjourn.

2.3.

Motion to invoke Council rules. At the request of any one Councilmen, any matter may be held over for consideration until the next regular meeting of the council. This motion does not require a second. Any matter so held over may not be held over a second time by this procedure. If a request to hold a matter over is contested by a motion to overrule the request, duly made and seconded, the motion to overrule will be sustained if at least two-thirds (2/3) of the corporate authorities then holding office. A motion to overrule is debatable.

2.4.

Motion to recess the meeting to time certain.

(Ord. 04-173, 10-5-2004)

2.5.

Motion to close debate and call the question. When a motion is made to "close debate and call the question", a vote on the main motion shall be taken without further debate unless either a motion to invoke Council rules, a motion to adjourn is made, or unless the motion is objected to. If the motion to close debate and call the question is contested by an objection to the motion, the Mayor will ask for a roll call on the motion to close debate and call the question, which shall pass if approved by a majority of the council. A motion to close debate and call the question does not require a second.

(Ord. 07-204, 9-4-2007)

2.6.

Motion to clean the slate. ("Do over" eliminates all motions made on an item to that point. Requires a simple majority vote of council.)

2.7.

Motion to limit debate.

2.8.

Motion to substitute (takes the place of the main motion and only one vote is required).

2.9.

Motion to amend.

(Ord. 04-173, 10-5-2004)

2.10.

Motion to table to a date certain or indefinitely. An item that has been tabled indefinitely may be removed from the table by a two-thirds (2/3) vote of the members holding office, under new business or as an agenda item pursuant to Subsection 1-5-4-2.6 of this Chapter.

(Ord. 07-204, 9-4-2007)

2.11.

Main motion (including, but not limited to, motions to: approve, deny, pass, adopt, award, direct staff, accept report, reject, authorize, ratify, and rescind).

2.12.

Motion to go into closed session (roll call vote required).

2.13.

Motion to reconsider at the same meeting. A motion to reconsider a decision made at the same meeting the original vote was taken may be made by any member of the council, if that member voted with the prevailing side. If the motion is made before another item has been discussed, and if the motion is seconded and passed by a two-thirds (2/3) vote of the council, the item may be reconsidered at that meeting. If the motion is made after any other item has been voted on, and if it is seconded and passed by a two-thirds (2/3) vote of the council, then that item will be placed on the agenda for consideration at the next City Council meeting.

2.14.

Motion to reconsider at the next regularly scheduled City Council meeting. A motion to reconsider a decision made at the previous City Council meeting may be made by any member of the Council at the next regularly scheduled City Council meeting, if that member voted with the prevailing side. If the motion is seconded and passed by two-thirds (2/3) vote of the council, then that item will be placed on the agenda for consideration at the next City Council meeting.

2.15.

Motion to change a vote. A member has a right to change his vote up to the time the result is announced; after that, he can make the change only by the unanimous consent of the assembly granted without debate.

(Ord. 04-173, 10-5-2004)

2.16.

Motion to suspend rules. City Council procedural rules may be temporarily suspended for only the matter under consideration at any time by an extraordinary vote. However, rules relating to issues governed by State statute shall not be so suspended.

(Ord. 05-136, 7-19-2005)

2.17.

Motion to remove an item from the agenda. This motion is appropriate when the City Council chooses to take no action on an item, i.e., the petitioner has withdrawn the request.

(Ord. 07-204, 9-4-2007)

3.

Rules Applicable To Motions:

3.1.

Second Required: With the exception of a motion to invoke Council rules and a motion to close debate and call the question, a motion is not before the Council until it has been seconded. When a Councilmen seconds a motion, he should State his last name.

(Ord. 05-136, 7-19-2005)

3.2.

Debatable: All motions are debatable with the exception of the motion to adjourn, the motion to close debate and call the question, and the motion to invoke Council rules.

3.3.

Limitation On Amendments: No more than two (2) amendments to a main motion shall be allowed. The Mayor shall first call for a separate vote on each amendment. If the amendments are successful, they are then part of the amended main motion.

3.4.

Reduced To Writing: A motion shall be reduced to writing if requested by the Mayor, a Councilmen or the City Clerk.

(Ord. 04-173, 10-5-2004)

3.5.

Vote Required: Unless specifically provided herein or as otherwise required by State law, motions shall require a majority vote of those present for approval. An extraordinary vote of the City Council shall mean a two-thirds (2/3) vote of the current members of the City Council then

holding office, except for those motions specified below that require a different extraordinary vote. If there are no vacancies in the membership of the City Council, six (6) votes shall constitute an extraordinary vote.

(Ord. 05-136, 7-19-2005)

3.5.1.

Motion to approve an ordinance approving an annexation agreement or an amendment to an annexation agreement requires a vote of two-thirds (2/3) of the corporate authorities then holding office.

3.5.2.

Motion to overrule a motion to invoke Council rules requires a vote of two-thirds (2/3) of the corporate authorities then holding office.

3.5.3.

Motion to waive first reading requires a vote of two-thirds (2/3) of the corporate authorities then holding office.

(Ord. 04-173, 10-5-2004)

3.5.4.

A motion to vote on several questions as an omnibus vote or a consent agenda requires unanimous consent.

3.5.5.

A motion to convey real estate when it is no longer necessary or in the best interest of the City to keep it requires a vote of three-fourths (¾) of the corporate authorities.

3.5.6.

A motion to lease property for a term between two (2) years and ninety-nine (99) years requires a vote of three-fourths (¾) of the corporate authorities.

3.5.7.

A motion to accept the highest or best bid to sell property requires a vote of three-fourths (¾) of the corporate authorities, but rejection of same requires a simple majority.

3.5.8.

A motion to accept a contract proposal for sale of surplus real estate at a price not less than eighty percent (80%) of an approved MAI appraisal amount requires a vote of two-thirds (2/3) of the corporate authorities.

3.5.9.

A motion to approve an intergovernmental transfer of property requires a vote of two-thirds (2/3) of the corporate authorities.

3.5.10.

A motion to approve an intergovernmental lease of property for a term not to exceed fifty (50) years requires a vote of two-thirds (2/3) of the corporate authorities.

3.5.11.

A motion to approve an ordinance vacating a street or alley requires a vote of three-fourths (¾) of the corporate authorities.

3.5.12.

A motion to approve an ordinance amending setback regulations for setback lines along streets, drives, trafficway, parkway or storm or flood water runoff channel requires a vote of two-thirds (2/3) of the corporate authorities then holding office.

(Ord. 04-173, 10-5-2004; amd. Ord. 07-204, 9-4-2007)

4.

Final Determination: In the absence of a motion to reconsider brought at the same or the next regularly scheduled meeting of the City Council as set forth in Subsections 1-5-4-6.2.13 and 1-5-4-6.2.14 of this Section, a determination made by the City Council may not be reconsidered or considered again except by way of new petition, new business, amendment, rescission, repeal or similar action, which action may not be considered within sixty-two (62) days of the City Council's decision unless permitted by an extraordinary vote of the City Council.

5.

Point Of Order: A point of order is a claim by a Councilmen that a Council rule of order has been violated. It must be raised immediately or it is waived. The Mayor shall rule upon such claim.

6.

Roll Call Vote: All ordinances and any resolution or motion to expend or disburse monies or create liability shall be passed only by a roll call vote duly recorded. In addition, upon request by any Councilmen, the vote upon any motion shall be by roll call and shall be recorded. A roll call may also be used to clarify a voice vote.

7.

Conduct Of Members:

7.1.

No member of the Council shall speak until recognized by the Mayor. To secure recognition, a Councilmen shall say: "madame/mister Mayor". Councilmen need not stand while speaking.

7.2.

When two (2) or more Councilmen seek recognition at the same time, the Mayor shall name the Councilmen who shall speak first.

7.3.

Councilmen should always demonstrate respect for the opinions of each other, members of the staff, and members of the audience.

7.4.

While business of the Council is being transacted, no Councilmen shall leave the Council meeting without first informing the Mayor.

7.5.

A Councilmen called to order by the Mayor shall stop speaking.

7.6.

Any Councilmen who acts in a disorderly manner at a Council meeting or workshop session, or who does not obey the order of the Mayor, may be censured by majority vote of the Councilmen present, or expelled for the remainder of the meeting by an extraordinary vote of the Councilmen present.

(Ord. 04-173, 10-5-2004)

7.7.

City Council shall comply with the provisions and requirements of Chapter 13, "Conflict Of Interest", of this Title including Section 1-13-9, "Compliance With The State Officials And Employees Ethics Act", of this Title.

7.8.

At all times during performance of their official duties, members of the City Council shall comply with the City's workplace safety policies, harassment prevention, and respectful workplace policies as set forth in the employee policy manual. All members of the City Council shall perform their duties for the benefit of the citizens with integrity and impartiality, without allowing prejudice, favoritism or the opportunity for personal gain to influence their decisions or actions or to interfere with serving the public interest or to interfere with the professional operation of the City.

7.9.

If a Council Member violates these rules, a majority of the Council may officially censure the Member by adoption of a resolution imposing a censure or through a verbal motion at a meeting.

(Ord. 07-204, 9-4-2007)

8.

Debate:

8.1.

No Councilmen shall speak more than two (2) times on the same subject at a meeting, except by consent of a majority of the Council present. Council consent shall be assumed in the absence of objections by any Councilmen or the Mayor. The first time a Councilmen speaks on the subject shall be limited to three (3) minutes. The second time a Councilmen speaks on the same subject shall be limited to two (2) minutes.

8.2.

The speaker shall confine himself to the questions under consideration, avoiding personalities and refraining from impugning the motives of any other Councilmen's argument or vote.

8.3.

There is to be no discussion among Councilmen while another Councilmen is speaking.

9.

Electronic Attendance:

9.1.

A majority of the City Council must be physically present at the City Council meeting in order to achieve a quorum, except for emergency meetings.

(Ord. 04-173, 10-5-2004)

9.2.

A Councilmen wishing to attend a regular or special meeting of the City Council by telephonic or video means must notify the Mayor, City Manager, or the City Clerk, not less than twenty-four (24) hours before the meeting. Such notice for an emergency meeting shall be given as early as possible. Attendance by telephonic or video means is only permitted in cases of: 1) personal illness or disability; 2) employment purposes or other public business; or 3) a family or other emergency. After a roll call establishing that a quorum is physically present, any member physically present may make a motion to permit another member to participate by telephonic or video means. Such motion shall include the reason for the absence. All members physically present are permitted to vote on whether such participation will be allowed and the motion must be approved by a vote of a majority of those members physically present.

(Ord. 06-273, 11-21-2006; amd. Ord. 07-204, 9-4-2007)

9.3.

The Mayor will announce the name of any Councilmen attending by telephonic or video means at the beginning of the meeting.

9.4.

No more than two (2) Councilmen may attend a regular or special meeting by telephonic or video means.

9.5.

Councilmen participating by telephonic or video means shall preface their comments and their votes by first stating their last name.

(Ord. 04-173, 10-5-2004)

1-5-4-7: - CITIZEN PARTICIPATION:

1.

Compliance: It shall be unlawful for any person to address or attempt to address any meeting of the City Council except in compliance with limitations and restrictions imposed as provided herein. Citizen participation shall be permitted as follows:

1.1.

Public forum.

1.2.

Agenda participation.

1.3.

Public hearing.

1.4.

Invited speakers.

2.

Limitations: The Mayor may impose reasonable limitations on the citizen participation at City Council meetings such as barring repetitious, irrelevant, immaterial, or inappropriate comments or testimony. He reserves the right to halt or suspend the public forum/hearing to a later date if the rules are not being followed.

(Ord. 04-173, 10-5-2004)

3.

Persons Wishing To Speak: Persons wishing to speak during any portion of a City Council meeting shall sign in before the start of the meeting stating name, address and topic to be discussed. All speakers shall comply with these rules, which shall be posted at the speaker sign in desk, and rulings of the presiding officer. Speakers shall be called by name to approach the podium by a member of staff designated by the City Manager.

(Ord. 07-204, 9-4-2007)

4.

Speakers: Speakers will identify themselves and provide their current address at the podium before beginning their comments. Speakers will state their position on the issue, and provide supporting documentation and/or evidence. The speaker shall refrain from engaging in debates, directing threats or personal attacks at council, staff, other speakers or members of the audience.

(Ord. 04-173, 10-5-2004)

5.

Timer: A timer shall be used to notify the speaker when the time allotted has expired. The speaker will then be informed that his/her time has expired, and shall stop speaking and step down from the podium, unless a majority of the City Council grants additional time. If necessary, the Mayor shall take action to enforce this rule.

(Ord. 07-204, 9-4-2007)

6.

Audience: Members of the audience shall refrain from applauding, cheering, or booing during or at the conclusion of remarks made by any speaker, staff member or Councilman.

7.

Representative Speakers: Groups of residents should, whenever possible, consolidate their comments and avoid repetition through the use of representative speakers.

8.

Public Forum: The purpose of the public forum is to allow residents an opportunity to address the City Council on issues of concern to them, which are not part of the agenda.

8.1.

The public forum shall be limited to thirty (30) minutes in total, unless extended for a time certain by a majority vote of the City Council.

8.2.

All speakers during the public forum will comply with all rules in Subsections 1-5-4-7.1 through 1-5-4-7.5 of this Section.

8.3.

All speakers will limit their comments to no more than three (3) minutes.

(Ord. 04-173, 10-5-2004)

9.

Agenda Participation (Nonpublic Hearing): Citizen participation on agenda items will be as follows:

9.1.

The petitioner of an agenda item is a person or entity with a financial or ownership interest in a zoning matter or other City Council decision. The petitioner may proceed with a brief presentation of the petition for no more than ten (10) minutes.

9.2.

Speakers may comment on the agenda item or may present questions to Council provided they comply with all rules in Subsections 1-5-4-7.1 through 1-5-4-7.5 of this Section.

9.3.

The citizen participation portion of the agenda item shall be subject to a 30-minute limitation, unless extended for a time certain by a majority vote of the City Council. If an item is tabled after citizen participation has occurred and the item contains no significant changes on the subsequent meeting date, there will not be a citizen participation portion for the agenda item.

9.4.

The petitioner shall have no more than five (5) minutes to reply to the comments or questions asked. Public participation after the petitioner's reply shall be prohibited unless the City Council directs otherwise.

9.5.

Councilmen may, but need not, ask questions of the petitioner and speakers at the conclusion of their comments.

9.6.

The City Council may then deliberate upon the petition in accordance with Council rules. No additional comment may be made by citizens or the petitioner except upon the express permission of the council.

(Ord. 07-204, 9-4-2007)

9.7.

All speakers, except the petitioner, will limit their comments to no more than three (3) minutes.

10.

Public Hearing: The rules applicable to public forum shall generally apply to public hearings.

11.

Invited Speakers: Any citizen may address the City Council by invitation of the Mayor or a majority of the Councilmen present. Speakers invited to participate shall be subject to such limitations as the Mayor or majority of the Council shall prescribe. In the absence of other restrictions, such speakers shall be governed by the same rules which govern public forum.

(Ord. 04-173, 10-5-2004)

1-5-4-8: - CLOSED SESSIONS:

1.

At any properly convened meeting, the City Council may determine to hold a closed session for any purpose authorized by the Illinois Open Meetings Act. Such closed session shall be approved during the open meeting by a majority vote of a quorum present, and each vote shall be recorded in the minutes of the open meeting. Only topics specified in the vote to close may be considered during the closed session. No final action may be taken at a closed session.

2.

Minutes and recordings shall be prepared and maintained as provided herein for all closed sessions.

3.

Except as required under the Illinois Open Meetings Act, matters discussed in closed session are deemed to be confidential and are not to be disclosed to anyone.

(Ord. 04-173, 10-5-2004)

1-5-4-9: - MINUTES AND RECORDINGS:

1.

The City Clerk shall keep minutes of open and closed sessions of the City Council. Closed session minutes shall remain confidential until the Council determines otherwise, according to law. Minutes shall include, but need not be limited to:

1.1.

The date, time and place of meeting;

1.2.

The members of the public body recorded as either present or absent; and

1.3.

A summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

A copy of the minutes of the immediately preceding meeting(s) shall be delivered to each Councilman prior to the convening of the next regular meeting.

2.

Except for workshops, each open meeting of the City Council shall be recorded on magnetic and video tape, and the tapes shall be kept for a minimum of five (5) years after the date of the recording.

3.

In all cases where a motion is entered in the minutes of the council, the name of the Councilmen moving the same and the name of the seconder shall be recorded, except for a motion to adjourn at the completion of all business on the agenda. A motion made, but not seconded, a withdrawn motion, and motions deleted by a motion to clean the slate shall not be recorded in the minutes of the meeting.

4.

In addition to written minutes, a verbatim record of all closed sessions shall be prepared and maintained in the form of an audio or video recording in conformance with the Illinois Open Meetings Act. The City Council may direct the destruction of any such recording in conformance with the act not less than eighteen (18) months after the completion of the meeting recorded.

5.

The City Council shall semiannually meet to review minutes and recordings of all closed sessions. At such meetings, a determination shall be made, and reported in an open session that:

5.1.

The need for confidentiality still exists as to all or part of those minutes and recordings; or

5.2.

The minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection; or

5.3.

In the case of recordings more than eighteen (18) months old, that any particular recording be destroyed.

(Ord. 04-173, 10-5-2004)

1-5-4-10: - CONFLICT OF INTEREST AND ABSTENTIONS:

1.

A Councilmen is expected to vote aye or no on all matters when he is present to do so except on any matter in which he has a prohibited interest, as defined by Chapter 13 of this Title, as amended. If a Councilmen does have such a prohibited interest, he shall disclose such interest, leave City Council chambers and abstain from voting on the matter, all in accordance with Chapter 13 of this Title.

2.

A vote of abstention shall not be counted in the number of votes cast, and shall not be counted with the majority or minority vote of the council. A Councilmen who abstains shall announce his reason for abstention.

(Ord. 04-173, 10-5-2004)

1-5-4-11: - ORDINANCES:

1.

No Councilmen may direct the preparation of an ordinance unless done in accordance with Section 1-5-4-2.6 of this Chapter.

2.

No ordinance amending the text of this Code or annexing territory to the City of Naperville shall be adopted by the Council at the same meeting at which it is introduced, except after an extraordinary vote of the Council (known as "waiving first reading"). During the period between introduction and consideration, any citizen may inspect such proposed ordinance at the office of the City Clerk.

3.

A majority vote of the Council is required to pass an ordinance unless otherwise specified by State statute or this Code. If State statute conflicts with this Code, this Code shall control unless preempted by State statute.

CHAPTER 13 - CONFLICT OF INTEREST ^[22]

SECTION:

1-13-1: - DEFINITIONS:

1-13-2: - PROHIBITED INTERESTS:

1-13-3: - EXCEPTIONS TO PROHIBITED INTERESTS:

1-13-4: - DISCLOSURE AND ABSTENTION:

1-13-5: - VOIDANCE OF PROHIBITED CONTRACTS:

1-13-6: - BOARDS AND COMMISSIONS:

1-13-7: - CITY EMPLOYEES:

1-13-8: - NO DISCLOSURE REQUIRED:

1-13-9: - COMPLIANCE WITH THE STATE OFFICIALS AND EMPLOYEES ETHICS ACT:

1-13-1: - DEFINITIONS:

The following definitions shall apply to this Chapter:

BUSINESS OR TRANSACTION:	Licenses, permits, approvals, and benefits granted, given, or entered into by the City.
	Business or transaction restrictions shall not apply to those applicants exempted under Section 1-12-5 of this Title, unless specifically hereinafter provided.
CONTRACT:	Any agreement between the City of Naperville and any person, firm, corporation, or entity for the purchase of materials, goods, or services or real estate from the entity. Contract shall also mean any agreement whereby real estate, materials, goods, or services are sold by the City to the entity. Contract shall also mean a deposit of monies, loans, or other financial services provided to the City by banks and other thrift institutions. Contract shall include employment by the City.
EMPLOYMENT INTEREST:	An employment interest exists where a person is an employee or agent of the entity contracting or having any business or transaction with the City, and:
	1. The person is compensated in a manner so that he would receive a commission, bonus, or profit sharing distribution based in whole, or in part, on the contract, business, or transaction with the City, or
	2. The total of all contracts, business, or transactions between the City and the entity, in any calendar year, amount to more than twenty-five thousand dollars (\$25,000.00).
	An employment interest shall not include employment by another unit of government.
FAMILY INTEREST:	A family interest exists where a person has a wife, husband, son, daughter, father, mother, brother, or sister who has an ownership or employment interest in a contract, business, or transaction with the City.
OWNERSHIP INTEREST:	An ownership interest exists where a person is the sole proprietor, owner, partner, stockholder, or joint venturer of the entity contracting, or having any business or transaction with the City. (Ord. 87-70, 6-2-1987)

1-13-2: - PROHIBITED INTERESTS:

No member of the City Council or the City Manager shall have an ownership interest, an employment interest, or a family interest in any of the following matters:

1.

Any contract, business, or transaction of the City or in the sale of any article to the City where the expense, price, or consideration is paid either from the City's treasury or by an assessment levied by the City;

2.

Any purchase of goods, articles, or property belonging to the City;

3.

Any purchase of property sold for delinquent taxes or assessments of the City or sold by virtue of legal process at the suit of the City.

The foregoing regulations shall not be applicable if a specific exception is provided for in Section 1-13-3 of this Chapter.

(Ord. 87-70, 6-2-1987)

1-13-3: - EXCEPTIONS TO PROHIBITED INTERESTS:

Members of the City Council may have an ownership, employment, or family interest in any contract, business, or transaction if such interest meets one of the following conditions:

1.

The ownership, employment, or family interest is less than a seven and one-half percent (7½%) share of the ownership of the entity and any contract is awarded by competitive bidding, or

2.

The ownership, employment, or family interest is five percent (5%) or less of the shares of a publicly held corporation traded on a stock exchange, or

3.

The contract awarded by the City is less than ten thousand dollars (\$10,000.00) and is in accord with the procedures of Section 1-9B-7 of this Title, or

4.

The ownership, employment, or family interest is less than a seven and one-half percent (7½%) share of any public utility company providing utility services to the City and the utility's rates are approved by the Illinois Commerce Commission or the Federal Energy Regulatory Commission, or

5.

The ownership, employment, or family interest is less than a seven and one-half percent (7½%) share of a bank or savings and loan institution which has a contract of deposit of monies, loans, or financial services with the City.

(Ord. 87-70, 6-2-1987)

1-13-4: - DISCLOSURE AND ABSTENTION:

When any member of the City Council has an ownership, employment, or family interest, in a proposed contract, business, or transaction with the City, which interest is allowed by Section 1-13-3 of this Chapter, such Council Member shall file with the City Manager a written disclosure of such interest, a description of such interest, the provision of Section 1-13-3 of this Chapter relied upon, and a description of the applicability of such exception on a form as follows:

**DISCLOSURE OF INTEREST
IN CONTRACT, BUSINESS, OR TRANSACTION**

Name:

Position with City:

Name of entity contracting with City:

Proposed contract, business, or transaction:

I have an Ownership

Employment

Family

interest in the proposed contract, business, or transaction as follows:

.....

I am entitled to have such an interest under the provisions of Section 1-13-3__ because of the following facts:

.....

Dated: _____ / _____ / _____

Signature

1.

Such written disclosure shall be filed with the City Manager not later than the call to order of the City Council meeting at which the proposed contract, business, or transaction is to be considered. The City Manager shall bring the written notification to the attention of the City Council in public when the item is called on the agenda for consideration.

2.

A member of the City Council having an interest for which a disclosure is required shall leave the chamber where deliberations take place during the discussion and vote on the interested matter and shall not vote on said matter.

(Ord. 87-70, 6-2-1987)

1-13-5: - VOIDANCE OF PROHIBITED CONTRACTS:

No contract which would cause a violation of Section 1-13-2 of this Chapter shall be approved by the City Council and any contract which is approved is void ab initio.

(Ord. 87-70, 6-2-1987)

1-13-6: - BOARDS AND COMMISSIONS:

It shall be lawful for members of the various boards and commissions of the City, established from time to time by the ordinances of the City and the statutes of the state, to have an ownership, employment, or family interest in any contract, business, or transaction with the City, provided that said member shall file with the City Manager and with the chairman or vice chairman of the member's board or commission, the following disclosure:

DISCLOSURE OF INTEREST IN CONTRACT, BUSINESS, OR TRANSACTION

Name:

Position with City:

Name of entity contracting with City:

Proposed contract, business, or transaction:

I have an Ownership

Employment

Family

interest in the proposed contract, business, or transaction as follows:

.....

Dated: _____ / _____ / _____

Signature

1.

Said disclosure shall be filed before any board or commission (including the member's own) or the City Council considers approval of the proposed contract, business, or transaction.

2.

In the event the member's own board or commission is to review or recommend upon such contract, business, or transaction, the member shall leave the chamber where deliberations take place during the discussion and vote on the interested matter and such member shall have no vote upon the matter.

3.

The disclosure form filed by said member shall be attached to and made a part of the minutes of the meeting of said board or commission and shall be attached to and made a part of the report or recommendation made by said board or commission to the City Council, the City Manager, or any other board or commission of the City to whom such report or recommendation is rendered. Such disclosure shall be included with the agenda when the matter is proposed for approval by the City Council.

4.

Any member of a board or commission who knowingly fails to file a disclosure required by this Section shall be subject to immediate removal from such board or commission by the City Council.

(Ord. 87-70, 6-2-1987)

1-13-7: - CITY EMPLOYEES:

City employees may have an ownership, employment, or family interest in any contract, business, or transaction with the City, provided that the City employee shall file with the City Manager the disclosure required in Section 1-13-6 of this Chapter, prior to approval of said contract, business, or transaction by the City Manager or the City Council. Said disclosure shall be included in the agenda of the meeting at which any such interested matter is to be considered.

1.

The City Manager shall reject any proposed contract, business, or transaction which directly affects the department where the employee works or where the employee is in a position to recommend, as part of his official duties, any such contract, business, or transaction.

2.

The City Manager may, by administrative directive, establish additional standards for employees who may have an interest in any contract, business, or transaction with the City.

3.

Any employee who knowingly fails to file a disclosure required by this Section shall be subject to immediate dismissal from employment with the City.

(Ord. 87-70, 6-2-1987)

1-13-8: - NO DISCLOSURE REQUIRED:

Notwithstanding any other provision of this Chapter, no disclosure is required under Sections 1-13-6 and 1-13-7 of this Chapter where the only interest is five percent (5%) or less ownership of shares of a publicly held corporation traded on a stock exchange.

(Ord. 87-70, 6-2-1987)

1-13-9: - COMPLIANCE WITH THE STATE OFFICIALS AND EMPLOYEES ETHICS ACT:

1.

The regulations of Sections 5-15⁽²³⁾ and Article 10† of the State Officials and Employees Ethics Act, 5 Illinois Compiled Statutes 430/1-1 et seq., ("Act") are hereby adopted by reference and made applicable to the officers and employees of the City of Naperville to the extent required by 5 Illinois Compiled Statutes 430/70-5.

2.

The solicitation or acceptance of gifts prohibited to be solicited or accepted under the Act by any officer or any employee of the City is hereby prohibited.

3.

The offering or making of gifts prohibited to be offered or made to an officer or employee of the City under the Act is hereby prohibited.

4.

The participation in political activities prohibited under the Act by any officer or employee of the City is hereby prohibited.

5.

For purposes of this Section, the terms "officer" and "employee" shall be defined as set forth in 5 Illinois Compiled Statutes 430/70-5(c).

6.

The penalties for violations of this Section shall be the same as those penalties set forth in 5 Illinois Compiled Statutes 430/50-5 for similar violations of the Act to the extent allowed by law.

7.

This Section does not repeal or otherwise amend or modify any existing ordinances or policies which regulate the conduct of City officers and employees. To the extent that any such existing ordinances or policies are less restrictive than this Section, however, the provisions of this Section shall prevail in accordance with the provisions of 5 Illinois Compiled Statutes 430/70-5(a).

8.

Any amendment to the Act that becomes effective after the effective date of this Section shall be incorporated into this Section by reference and shall be applicable to the solicitation, acceptance, offering and making of gifts and to prohibited political activities except that any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Section by reference without formal action by the Naperville City Council.

9.

In the event that the Illinois Supreme Court declares the Act unconstitutional in its entirety, then this Section shall be repealed as of the date that the Illinois Supreme Court's decision becomes final and not subject to any further appeals or rehearings at which time this Section shall be deemed repealed without further action by the Naperville City Council.

10.

In the event that the Illinois supreme court declares part of the Act unconstitutional but upholds the constitutionality of the remainder of the Act, or does not address the remainder of the Act, then the remainder of the Act as adopted by this Section shall remain in full force and effect; however, that part of this Section relating to the part of the Act found unconstitutional shall be deemed repealed without further action by the Naperville City Council.

11.

The City Attorney shall be designated the Naperville Ethics Officer. It shall be the responsibility of the Ethics Officer to provide guidance to the officers and employees of the City of Naperville concerning the interpretation of and compliance with the provisions of this Section and State ethics laws.

(Ord. 04-079, 5-4-2004)

**CITY OF NAPERVILLE
MEMORANDUM**

DATE: May 6, 2011

TO: Mayor and City Council
Douglas A. Krieger, City Manager

FROM: Margo Ely, City Attorney

SUBJECT: Council Rules Workshop May 9, 2011 – Additional Materials

PURPOSE:

The purpose of this memorandum is to report feedback from Council members since last week's agenda memo for the Council Rules Workshop.

BACKGROUND/DISCUSSION:

In the Council Rules Workshop memo, Council members were invited to identify additional issues for discussion.

Councilman Wehrli has identified the following issues for further Council discussion:

Section 1-5-4-1 of the Naperville Municipal Code prohibits disruption at Council meetings and allows the Council to "fine" members who are disruptive. Councilman Wehrli would like to specify a minimum and maximum fine amount.

Staff Response: Agreed.

The Council Rules provide for a mayor pro tem when the mayor is unavailable. Council can consider amending the section to address appropriate actions if the Mayor dies.

Staff Response: Agreed. Further information on the state law will be provided at the Workshop.

Section 1-5-4-5 of the Rules states that Workshops generally start at 7:00 p.m., but they are currently scheduled for 5:00 p.m. and in the past few years, they have been scheduled to start at 3:30 p.m. Council should discuss whether to revise the Workshop time in the Rules.

Staff Response: Agreed.

Council should discuss whether to amend the rules to require that all motions be made in the affirmative.

Staff Response: Most of the time, it is appropriate for motions to be made in the affirmative. However, when a zoning matter is going to be denied, staff prefers to preserve the option to draft an ordinance in the negative, denying the request and making a record of the basis for the denial.

Council should discuss whether to amend the rules to require staff to submit agenda items in a timely manner.

Staff Response: Staff recommends no change to the rules. Items that are submitted in an untimely manner are usually the result of circumstances beyond staff's control. If staff is negligent, the City Manager can address the issue as a management consideration.

Councilman Miller made the following suggestions:

Please define the need of Council Work Request (CWR) and when a CWR would be needed or used. Some of us just ask questions of staff and don't see the need for a CWR.

Staff Response: Anytime that a request requires more than an answer in the moment, including a written response and frequently research, staff creates a CWR. Multiple council inquiries are not reflected in the CWR.

I'd like a discussion of establishing some guidelines for reasonable or sensible requests for information of staff. Request for 5-10 years of data is unreasonable. Maybe each request could also state the intent of the request or why the request is needed. We should not waste staff's time.

Staff Response: Staff recommends that the City Manager be directed to raise time consuming requests for council discussion under new business at council meetings.

Gifts—Should the Council have guidelines on tickets to events and other valuable gifts? I know there is state law that rules on this, but when a citizen requests or FOIA came out a few months ago, I was surprised the Mayor receives 30 (?) Ribfest tickets? Isn't that excessive? Maybe two tickets for events would suffice from any SECA recipient, contractor or civic/non-profit?

Staff Response: Council has discretion to implement ethics regulations as it sees fit as long as there is compliance with the state law. In other words, the City can have more stringent regulations. Staff can amend the Code to reflect Council's direction.

RECOMMENDATION:

Include these additional issues for discussion at the Council Rules Workshop on Monday.