

I served on the city council for two terms from 2005 to 2009. During that time, I served on several committees including one with then mayor Arkwright and council member Peg Roth to establish council procedures. We did extensive research on the law and accepted procedures for government meetings. Our results were submitted to the council in 2008 and a resolution adopting them was approved. Unfortunately, like many resolutions, they have not all been followed, changed by other resolutions, or simply changed with no easy way to trace how and why it happened. I have attached what was presented to and accepted by the council at that time. You are welcome to look up the meeting minutes if you desire as I no longer have them.

The fact that resolutions have yet to be organized and available in accordance with charter section 6.9 is an issue I have raised numerous times. This continues to be ignored as it has been since the charter was adopted, but that is an issue for another time.

I no longer live in the Village of Clarkston and have no ownership and direct involvement with any Village of Clarkston entity, so you can do what you will with the information provided.

In regard to the matter of what has been presented for tonight's meeting, I offer the following:

Opening statement:

The Charter does not say that the *"City Council shall **adopt** rules that govern meeting procedures"* as has been presented for this meeting. Charter Section 4.2 states, **"The Council shall determine all matters of policy of the City and adopt ordinances and necessary rules and regulations to make the same effective."** Charter Section 4.15 states, **"The Council shall determine its own rules and order of Business..."**

It is unclear who prepared and determined the rules and procedures submitted for this meeting and there is a difference between adopting and determining. There is no evidence provided to establish that what has been submitted was determined by the council or that the council had any direct involvement until now.

1.1 LAW ABIDING

Unfortunately, the charter has never been amended to address all conflicts with state law along with ambiguities within the charter itself, such as duties of the mayor. Because of this, there can be confusion as to what is the correct and accepted procedure. It would be worthwhile to have the council periodically review the charter to make sure everyone knows and understands the requirements, and to assure that it complies with Michigan law.

1.2 OPEN MEETINGS

Michigan Open Meetings Act should be referenced and provided to the council as Rule 2.12 is not the governing criteria for this purpose.

2.1 REGULAR MEETINGS

This references MCL15.265(2) and Charter Section 4.10. Charter Section 4.10 only states that **"Regular meetings of the Council shall be held at least twice in each calendar month...."** The charter does not specify what day or time. The council has routinely ignored this charter provision in the month of December and acted in violation of the charter. The submitted document and past council discussions ignores this charter requirement.

2.2 SPECIAL MEETINGS

Is the only way for the public to know about special meetings is to read a notice at the city hall? Shouldn't it also be required to be posted on the city website or other means of communication? Not everyone can, or will, stop by the city hall every day to find out if there is a special meeting.

2.5 CHANGES IN MEETING SCHEDULE

I suggest adding "and the adopted policies of the city council" to the end of this as those rules and that of the Open Meetings Act are not mutually exclusive.

2.6 PUBLIC NOTICE OF MEETINGS

Shouldn't there also be a requirement that meetings be posted on the city website and social media as they are more likely to be seen than a notice at the City Hall? Does anyone verify that any of this is done and available to the public?

2.7 PRESIDING OFFICER

There is an added provision in this for the senior member of the council to preside in the absence of the Mayor or Mayor Pro-Tem. This is not in the charter and the provision, as worded, is mandatory versus that person having some say as to whether they preside or not.

2.8 QUORUM FOR CONDUCT OF BUSINESS

It is not clear whether the vote of four members must all be YES or NO, or if only four members, a quorum, need to be voting. Traditionally, but not always, four YES or NO votes have been required. If a quorum is not present at the starting time of a meeting, how long does everyone wait until the meeting is cancelled? If a member arrives 30 minutes or an hour late, can the meeting continue?

2.9 RULES OF ORDER

2.9a

As I recall, this was originally adopted to say that if a procedure is in question, Roberts Rules of Order would be followed. As noted previously, finding resolutions for past city actions is difficult so many do not know what was decided in the past or why. I was against this particular provision as to the best of my knowledge, no one on the council is trained, experienced, or adept at Robert's Rules of Order. It can be confusing and easily abused if all are not familiar with them and the council rarely follows them. The City Attorney often cites procedural rules without reference and standing which are then followed without knowing whether they are valid or not. It should be noted that the City Attorney does NOT establish any procedures and rules for the council, he only advises and should provide some reference for his advice, or simply state it is only his opinion. In any case, who determines if Robert's Rules of Order are being followed and what happens if they are not, as is the more normal situation? There are other more simplified procedural rules, many are readily available on the internet, and training is available if the council truly wants to have established procedural rules to follow.

2.9b

This is mostly quoted from the city charter and as noted in the initial comment. Who determines what is in the journal of proceedings? Are they signed by the Mayor and Clerk? How does anyone know if they were? Is this different than item 2.13?

2.9e

A Yes or No vote is a charter requirement of section 4.15. However, votes are often taken and recorded with something other than YES or NO. See the draft minutes for the previous council meeting.

2.10 VOTING DUTY

This has been discussed numerous times in the past and should be linked to the city's Conflict of Interest policy. Since voting is mandatory, unless excused, a vote of at least four other council members should be required to excuse any other member from voting, and that should be recorded in the public record including the reason why. The council and public should know of any conflict of interest whether they be personal, business, or public.

2.11 PUBLIC PARTICIPATION AT MEETINGS

How and when was this provision established? Was it by council resolution? At one time, there was no limit on the time length of public comments. A five minute rule was originally established when a resident made comments that offended the then mayor. The five minutes was then changed to three minutes. The rules as stated on meeting agenda have changed with no documented action by the council to do so.

All of this could be considered to conflict with item 1.3 of the presented Meeting Rules of Procedure. Given that recent meetings have been less than an hour long, some less than a half hour, it is obvious that public comments are not causing overly long meetings or hindering the council from doing regular business, so it is unclear why this limitation on public involvement is in place and how it is in keeping with the intent of Michigan's Open Meetings Act and Freedom of Information Act. I do not understand why people elected to represent and serve the public continually accept rules that limit public participation in the democratic process.

The agenda rule for participation was changed between 2021 and 2022 with no council action that I can find. The current rule, as stated on the agenda, is that you can "address the City Council on **any agenda item...**" Previously it was "on subjects not on the Agenda.." There was also a provision for emailing comments that has been removed. Who is setting the rules and policies for council meetings if not the city council? In recent meetings, both of these provisions have been ignored which raises the question of what the rules are, who is making them, and is anyone following them?

I am pretty sure that telling someone what they can or cannot comment on during an open public comment session would be a violation of the constitutional provisions for freedom of speech.

The rules for public participation at Planning Commission and Historic District Commission meetings are different than stated in this document and different than each other. It has also been stated by several members of the public attending these meetings that procedural rules are created or ignored in an arbitrary manner, not part of the meeting minutes or documented policy, and that the minutes often state things that were not part of the meeting. Who enforces and follows up on any of this if not the city council who are, by charter, the ones that establish policy? See item 5.

2.12 CLOSED SESSIONS

There has been much discussion of the procedures for closed meetings in the past few years with the council found in violation of state law. Since the council represents the public, versus the city administration and attorney, the default should always be to not have a closed meeting if not required by law. The council is under no obligation to have a closed meeting other than when required to by law, versus allowed by law. You also have the right to waive attorney/client privilege at any time as you are the client.

2.14 ADMINISTRATION

This item should reference the charter sections that is taken from where relevant and what are up to council discretion. Charter provisions require a vote of the public to change while council rules and provisions can be changed by the council.

2.14c

A past resolution of the council had the attorney attend only every other meeting unless requested. Most municipalities only have the attorney attend when requested for a legal matter. When and how was this provision established as every meeting since I am not aware of any council action to do so? Why incur the expense if there is no legal issue on the agenda and wouldn't it be better to have the item on the agenda so all parties can be better prepared?

2.13 (item number repeated) PUBLICATION OF COUNCIL PROCEEDINGS

While charter section 4.16 states that the minutes be published within 20 days, Michigan's Open Meetings Act requires they be available within 8 business days of a meeting and 5 business days from approval. This is often not met based on when they show up on the city website and several FOIA requests.

How does anyone know if a meeting synopsis has been approved by the Mayor?

See item 2.9b for journal requirements and 2.10 VOTING DUTY for providing a "reason for abstention" as this is not a provision of the charter or MCL 15.269 but should be done. Is this only a council rule and if not the council, where is this provision from?

2.14 (item number repeated) VIDEO RECORDING OF THE MEETING

What happens if this is not possible or just not done?

Is there a contractual agreement with Independence Television for this service?

A past resolution of the council, created prior to the recording by Independence Television, required recording of meetings. Are meetings recorded regardless of what Independence Television does?

Why is this only done for city council meetings and not others? (see item 5 of this document)

2.15 CONNECTING VIRTUALLY TO THE MEETING

What happens if not possible or not done? A previous meeting was not available because the city manager was not present. Another meeting was not available even though promoted as being online and, based on the meeting recording, without the knowledge of the council and administration.

Is a stated obligation and promise to the public discretionary based solely on the presence or actions of a city administration employee? Does the council have no responsibility to the public for this?

Will this finally apply to other meetings as implied by item 5?

3. MEETING AGENDAS

3.1 PREPARATION

Past resolutions of the council, as far back as 2008, have required meeting information by Thursday, not Friday. Presently, the office is closed on Friday, so it makes little sense to require something be sent out on a day when no one is working. The original intent of this timing was to allow for review and approval prior to the weekend and avoid changes on Monday, the day of the meeting. This still seems to happen quite often and will not be aided in any way if no one has the information until the end of the day on the Friday prior to a meeting.

Posting of agenda should also include the supporting information. This is done for council meetings but not for any other (Planning Commission, Historic District Commission, Zoning Board of Appeals, etc.) which makes it difficult for the public to be informed and fully participate in the process.

3.5 AGENDA FORMAT

As noted previously in item 2.11, the current agenda states that items **on the agenda** can be addressed. Previously, at the end of 2021, it was items **not on the agenda**. See item 2.11.

Per a previous council resolution, the agenda was also to include a provision for committee reports. That is no longer done, and it is unknown if committees even exist other than being listed on the city website with information that is many years old. Why do they exist if they are not doing anything?

3.6 PUBLIC HEARINGS

The purpose of the hearing, presentation of the issue and pertinent information should be presented prior to or as part of the public hearing prior to opening the meeting for public comment. The council and public may not fully understand the issue and therefore not have pertinent questions to ask. This may also answer many questions and avoid them being asked.

The reference given to charter section 7.5 is for the required budget hearing. Is this provision to be applied to all public hearings by all governmental bodies?

3.7 CONSENT AGENDA

This was first created by the council resolution adopted in 2008 but is currently not executed correctly. Removal of an item from the consent agenda is automatic when requested, otherwise the consent agenda is accepted without discussion and the removed items are then dealt with in the conventional manner. To have a motion and second for the consent agenda, followed by discussion, ignores the purpose of the consent agenda.

3.8 ACTION ITEMS

The format as presented, to the best of my knowledge, is not in keeping with Robert's Rules of Order or any other proper procedure for a public meeting and decision making. If you are going to follow Robert's Rules of Order, there is a difference between tabling an issue, as stated in the document, and postponing. They cause different actions in the future, assuming there are understood procedures that you want to follow.

The council tradition of having a motion and second prior to discussion is also irrelevant as you have already approved the agenda as submitted so discussion or a vote has already been approved and does not require another motion. Likewise, a motion does not have to be to approve as submitted. It can be to discuss only, amend, table, postpone, or whatever else may be needed, and can be amended.

As for the order, this is what I suggest and used by many others:

1. Announce the agenda item
2. Presentation of the issue, resolution, or ordinance
3. Discussion and questions by the council and presenter
4. Public comments
5. The matter returns to the council for action, amendment, postponement, or tabling.
6. Motion to amend, second, and vote on the amendment.
7. Motion to approve or reject as submitted or amended
8. Second
9. Presiding officer reads the motion into the record
10. Vote is made and recorded
11. Presiding officer announces as passed or failed

Generally, public comments are not taken once the issue is returned to the council for final discussion but that is the council's prerogative.

There are many sources for information on parliamentary procedure that can be referred to. See item 2.9a for additional comments.

3.10 MEETING CANCELLATIONS

How long does everyone wait to find out if a quorum will be present and a meeting cancelled?

4.1 PROCEDURE FOR AMENDING RULES

Will the approved and proposed amendments be posted for the public?

5.1 CITY BOARDS AND COMMISSION

What constitutes "To the extent possible.." and who makes that decision? Per city charter section 4.2, commissions and boards operate under policies, procedures and rules determined by the city council.

5.1c

Is the Secretary of a commission or board "publishing" or merely providing for publication by the Clerk? Note the requirements of Michigan's Open Meetings Act for availability within 8 business days of a meeting for draft minutes and 5 business day for the approved minutes. This is often missed.

5.1d

This should be clarified to state that a quorum of 3 members is based on a total of 5 members.

5.1e

This states information is required on Thursday. See item 3.1. Again, the office is not open on Friday or the weekend and in theory, no one is working. Per past resolutions and in keeping with a consistent policy, the agenda and all supporting information should be posted and available on the Thursday prior to a Monday meeting and most likely for a Tuesday meeting to allow adequate time for members and the public to review, amend, or comment as required to be adequately informed and prepared for a meeting.

Respectfully submitted for your consideration,
Cory Johnston