



**Office of the City Attorney
City of Yakima**

MEMORANDUM

September 10, 2021

TO: Honorable Mayor and Members of the City Council
Bob Harrison, City Manager

FROM: Sara Watkins, City Attorney

SUBJECT: Proposed Changes to the Council Rules of Procedure

The City Council will be discussing its rules of procedure at the September 14, 2021, study session. As part of the study session packet, there is a redlined version of the current procedural rules submitted by Councilmember Funk. This memo is limited to legal issues associated with some of Councilmember Funk's proposed redlined changes, which will be addressed in the order in which they appear in the rules of procedure.

1. Section (A)(4)(f) (Duties of the Mayor)

In subsection (f) of the redlined version, it proposes to strike the following:

To authenticate by his/her signature when necessary, or when directed by the Council, all the ordinances and resolutions, and all the acts, orders and proceedings of the Council, and entries in the official record of the Council when the same have been approved by it.

Although the Charter states that the mayor shall sign all ordinances and resolutions, there are other documents that the Mayor periodically signs with the approval of the Council. These can include federal grants wherein the federal government requires the Mayor's signature. Allowing this language to remain provides clarity as to the signing authority for acts of the Council outside of the ordinances and resolutions of the City.

2. Section (A)(5) (Duties of Assistant Mayor)

In this section, it proposes to add the following sentence:

The Assistant Mayor has no privilege in authority or information access.

The Assistant Mayor is authorized to perform all the duties and functions of the Mayor in their absence. By including this sentence as written, it encompasses the Assistant Mayor at all times. If the intent is to not allow the Assistant Mayor to have any special rights of authority or information access outside of when they are acting as Mayor during the Mayor's absence, I would propose the following language:

Other than when the Assistant Mayor is acting during the absence of the Mayor or performing the duties and functions of the Mayor, the Assistant Mayor has no privilege in authority or information access.

Alternatively, the proposed sentence could be stricken and the language could remain as it exists in the current version of the rules.

3. Section (B)(6)(d) (Council contacts with staff)

In this section, it proposes to add the following language to a new section (d):

The powers and duties of the City Manager are specified in the City Charter. The City Council has an advise and consent function. "NO CAUSE" removal of a department head with award of severance pay requires Council approval.

The Charter (Article II, Section 9) states as follows:

The powers and duties of the City Manager shall be:
To appoint and remove at any time all department heads, officers and employees of the City . . .

The Charter language is controlling and gives the City Manager the authority, without needing to consult City Council, to hire and fire all department heads. Further, there is no language in the Charter that supports the statement that the City Council is to consent to his choices with regards to department heads.

If the City Council wishes to have such control over the City Manager the proper procedure to change the City Manager's responsibilities is to propose a Charter Amendment to amend Article II, Section 9 of the Charter. The Council's policies and procedures cannot extinguish rights and responsibilities found in the Charter.

4. Section (B)(7) (Council contacts with others)

In this section, there is a note from Councilmember Funk which states:

We also need a section for deliberations between Council members outside of meetings.

Under the Open Public Meetings Act, all deliberations of the Council body are to be done in an Open Public Meeting. RCW 42.30.020 defines “action” of the council as “the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.” RCW 42.30.020(3). A “meeting” is defined as a “meeting at which action is taken.” RCW 42.30.020(4). “All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.” RCW 42.30.030.

Deliberations by a quorum of council members outside of an open public meeting violate the Open Public Meetings Act. Deliberations can be done by telephone or email, by a meeting outside of City Council chambers, or through serial meetings via email or telephone. Such deliberations can also include using shared drives or space to edit policies or other documents. MRSC gives the following example of a scenario which would violate the OPMA as a serial meeting:

One member puts a draft policy on the agency’s SharePoint site and grants permission for all other members to edit the document (SharePoint allows for simultaneous editing of documents and real-time chat). If at least a quorum of the members comment, or propose edits, there has been a serial meeting.¹

As such, language allowing for deliberations outside of an open public meeting should be avoided.

5. Section C(4)(e) (Pre-scheduled executive sessions)

In this section it proposes to add the following language:

Pre-scheduled Executive Sessions should be posted on the public agenda and documentation shall be provided to Council members in a confidential format no less than 24 hours prior to the scheduled session.

I would suggest that the language be changed to the following:

Pre-scheduled Executive Sessions should be posted on the public agenda and documentation, if any, may be provided to Council members in a confidential format no less than 24 hours prior to the scheduled session.

This language allows flexibility and acknowledges that there may be times where there is no documentation, that the documentation may not be available 24 hours in advance, or where it might be advantageous to provide the documentation at the meeting.

¹ <https://mrsc.org/Home/Explore-Topics/Legal/Open-Government/Open-Public-Meetings-Act-FAQs.aspx>