

MINUTES OF THE RULES COMMITTEE
Monday, May 5, 2014
6:00 p.m.
Lorraine H. Morton Civic Center
Council Chambers

Present: Mayor Elizabeth Tisdahl, Ald. Coleen Burrus, Peter Braithwaite, Judy Fiske, Jane Grover, Delores Holmes, Ann Rainey, Mark Tendam, Donald Wilson and Melissa Wynne

Presiding: Ald. Ann Rainey

Staff Present: Wally Bobkiewicz, City Manager and Grant Farrar, Corporation Counsel

Guest: Sue Calder, League of Women Voters, Rodney Greene, City Clerk, Lynne Greene and Bill Smith, Evanston Now

CALL TO ORDER/DECLARATION OF QUORUM:

Ald. Rainey declared a quorum and called the meeting to order at 6:10 p.m.

CITIZEN COMMENT:

Rodney Greene, 2016 Brown and City Clerk of Evanston spoke to the comments regarding at-will employees do not have responsibilities or protection. What he found on line concerning at-will employee says "An at-will employee refers to an employee whom an employer can terminate at will for any reason, or for no reason at all. But the bottom line is that an employer can not fire an employee in any way that constitutes discrimination, a violation of state public policy or contradictions, any actual or implied promises regarding the criteria or procedures for employee termination. That still leaves a wide latitude to fire employees for economic or performance reasons. For violating the law or internal company polices or even for no reason at all in some cases. Just be sure that you know the law, apply your own policies consistently and document everything when terminating an employee." For point of reference he asked why this issue came up in the first place about at-will employees.

Ald. Rainey said perhaps because of the letting go of the former Deputy City Clerk. City Manager Bobkiewicz added that it was a reference to the Rules Committee. City Clerk Greene said if that is the reason for the possibility of changing the policy of employees of elected officials why is it coming up now when it has never come up before. Ald. Rainey suggested if they wanted to continue on this course they should take it to the Executive Session meeting schedule for this evening and personnel matters is on the agenda. City Clerk Greene asked if a person is not doing their job properly why can't that person be terminated?

City Manager Bobkiewicz said he thinks the suggestion of continuing the discussion in Executive Session is appropriate. There is some direction to do some additional research which he and Mr. Farrar are happy to do and will bring back at the June meeting. City Clerk Greene said it has also been brought up that there are more at-will employees of the City. If they are going to do a proper thing across the board are they going to include all of the at-will employees of the City?

City Manager Bobkiewicz said one option the Council could consider for a potential amendment to the code would be to indicate that at-will employees are still subject to the personnel rules. Mr. Farrar and his staff have worked with the personnel rules to craft language to provide procedures for termination for all employees. So that one option would be to indicate that those at-will employees are subject to personnel rules. Again, probably the history to the personnel rules section in Evanston is that it is very

typical that the staff working for the chief executive usually is not subject to that. That would be a reasonable option for the Council that they may wish to consider that at-will employees are still subject to personnel rules. The other twist is the language that the Council amended in the City code that dealt with Civil Service was generally pretty broad language and mostly spoke to police officers and firefighters, but not exclusively to police officers and firefighters. When that language was altered to specifically refer to police officers and firefighters a little bit was lost in translation but in talking with Mr. Farrar they both felt comfortable that the personnel rules covered the rest. It may be prudent if the Council so directs, to look at language that broadens how all other employees, other than police officers and firefighters, are hired. Ald. Rainey added her interest is only in dealing with employees of elected officials, however many or whoever they might be.

Ald. Burrus asked Mr. Farrar to add to his research who the political appointees directly report to, if evaluations are done for those employees and who does their evaluations. That also is one protection that is important for personnel issues.

Mrs. Greene, 2016 Brown said she is very disappointed in this committee. She doesn't know how long this has been going on but when an individual is incompetent. Ald. Rainey said she would not allow her to subject them all to a lawsuit. There is a public policy issue here and it is not a personality issue. Stick to the concept or don't speak. Mrs. Greene asked if the policies that this Council makes up apply across the board to everybody? Ald. Rainey said they do not. Certain policies apply to public works, police, citizen comments, and so on it is all over the place.

APPROVAL OF MINUTES OF THE REGULAR MEETING OF APRIL 7, 2014:

Ald. Burrus moved for approval of the April 7, 2014 minutes. Ald. Holmes seconded. Minutes approved.

REPORT ON CITY MANAGER'S EVALUATION:

Ald. Holmes said the committee met and took a look at the ICMA format and Ald. Grover was their scribe. A draft copy of the form was email to the Council. They would like each of them to look at it and if necessary make any additions or deletion and provide those tonight or at least in the next couple of days. The sooner the better so they can make the final copy and send it out so the process can begin. Ald. Grover added that the rough draft was sent to Council on May 1st. It included both the ICMA materials, a draft that incorporates the old evaluation form into the ICMA proposed form and additional materials to review.

DISCUSSION ON EMPLOYEES OF ELECTED OFFICIALS:

City Manager Bobkiewicz noted that the memorandum from Corporation Counsel Grant Farrar outlines what is currently in the municipal code regarding the hiring of staff. Under the evaluation section it talks about their reliance on the personnel rules that have indicated over time that employees of the Law department, City Manager's department as well as employees of elected officials are not subject to the personnel rules and the civil service code. The practice has been that that translates into the assistant to the Mayor and City Council as well as the staff of the City Clerk's office but there is nothing in the municipal code that specifically addresses that. So they have relied on that as a past practice for a number of years. He knows that anecdotally upon his arrival in 2009 there was a staffing issue in the City Clerk's office where he and Mr. Greene worked on together and relied on that past practice for the hiring of an employee. And it was made clear in that hiring, for example, that that individual was not subject to their personal rules and served as an at-will employee. So in their investigation of this they have discovered that they have largely relied on that section of the personnel rules and past practice versus anything that is specifically in the municipal code. If the Council would like to make changes to any of this it would be useful to incorporate it into the Evanston City Code either what has been the

practice or to make it clear that a new practice would be then codified within the code. He has discussed this with Clerk Greene and thinks he has represented what at least has been passed up to this point.

Ald. Rainey said the point she wished he would make is that it does not comport with the personnel issues in the city code. It is not to say that all laws should not be followed and that fairness should not be exhibited and the constitution has to be upheld. City Manager Bobkiewicz replied that is correct and as the Council is aware, over the last few years staff has done a lot of clean up in the city code. The personnel sections of the city code are not extensive. As you know the code was amended substantially to focus on the Civil Service Commission and was re-crafted as a Public Safety Civil Service Commission. So a lot of the language that appears in the city code deals with police and fire hiring, otherwise a pretty broad language authorizing the City Manager to create that personnel system which is then articulated through the personnel rules.

Ald. Burrus suggested that if they are comparing themselves to other municipalities and the best practices in this regard it seems they are not within the best practice of what the majority of municipalities do with political appointees. She asked that they be provided with that information. Mr. Farrar said one point to keep in mind is that a lot of the issues that deal with hiring with village or city clerk are also informed by the form of government. In his past experience as village attorney for other municipalities in a cook county area, they have had elected village clerks or they've run as part of a ticket with the Mayor or Village President of that particular jurisdiction. So a lot of the hiring practices that exist in other jurisdictions may not be apples to apples with the city of Evanston's form of government. Within the scope of the memorandum and the look that they took did not get to that second level of analysis. The charge that he understood from the city manager and other members of the committee was to look at the code and past practice. There may be another piece that could inform the discussion further but they have not gone that extra step yet.

City Manager Bobkiewicz shared that largely under a Council/Manager form of government the role of the City Clerk is either appointed or if it is elected the City Clerk, by practice in many of those communities, is often not a full-time City Clerk. You have sort of a hybrid here where you have the Council/Manager form of government, which generally speaking, would have all the staff responsible to the City Manager, but a part-time City Clerk, perhaps even an elected part-time clerk. Here you have an elected full-time clerk so staff would be happy to gather more data. So Evanston is a little bit of a hybrid with an elected full-time clerk. You either look toward the strong mayor or strong village president model that Mr. Farrar was just referring to. In the Council/Manager world there are fewer full-time elected clerks. It really becomes as many things that Council deals with the standard in Evanston that makes the most sense.

Ald. Burrus said she wants to make it really clear that this is not about the individuals in the position, it is about the position itself. Having people on staff that are not really part of the personnel rules in the same way as that of the political appointees and currently it works okay and maybe previously it worked okay. But if they are talking about going forward and making sure that everyone is on the same playing field and has the same protection that most of the employees have. And that the City Manager also has some control or guidance over the employees within the building. Having political appointees can sometimes not be the best case if they are trying to run a professional organization.

Ald. Holmes said she was a little confused because this started out not talking about the Clerk. They all understand that the Clerk is elected just as the Aldermen are elected. The discussion was about the employees that are assigned to the Alderman or the City Clerk and they not having any rights and she does not think that is fair. It was the position of those employees that would not have protection

that they were talking about. So she is not sure why the discussion is about the Clerk. Ald. Burrus apologized and stated she was not talking about the Clerk she was talking about the former Deputy City Clerk. Ald. Holmes said ok it was the appointees you were referring to. So say things have gone along fine and you have someone who has been working here for 10 years doing a great job. Somebody else gets elected and they want to bring in their own people, those folks have no rights at all and that was the premise on which this item was brought to the Council and to the Rules Committee.

Ald. Wilson said it is not totally correct to say that people have no rights. Someone referenced constitutional rights and you can't be discriminated against, all of those things are still in place. So those employees have all the ordinary legal rights that all employees have. It is just a question of if you are at-will. He is just not troubled by this and doesn't think the issue really applies to Evanston. Ald. Holmes said but it could apply. Ald. Wilson said it could but in a different context. If you have somebody who is working for an elected official, and there is a contested election, and this person has been working for that elected official for 10 years. Say that person loses, that might not be a comfortable relationship for the person who ends up getting elected in that position. Those kinds of things have to be considered in the context for these positions and there are a tiny handful of those employees. So in that context he is not as troubled by it.

Ald. Holmes stated if that happened, taking the scenario just mentioned, if the employee was an employee of the City then that newly elected official would have the right to talk to the City Manager about getting another person within the pool or what have you. She is not suggesting they have to be stuck with the same person, she is thinking about the protection of the employees that have worked and should have some kind of additional protection. She understands all of the constitutional things. They weren't talking about that, they were looking at what was happening right here in Evanston with their own rules.

Ald. Wilson stated it is his understanding that throughout the city there are hundreds of at-will employees correct? City Manager Bobkiewicz said correct. Ald. Wilson continued saying he was not sure where they would draw the line. Also if they were to take those hundreds of employees that aren't at-will employees you are bringing a very substantial cost as far as benefits and things like that are concerned, with those other employees. That is something that has to be taken care of. Ald. Holmes said she thought they had resolved that at the last meeting and that is why they were really just concentrating on the employees that were assigned to the elected officials.

Mayor Tisdahl said she believes that they were discussing the two positions and it certainly is her position that they should have the same rights that the majority of their employees have.

City Manager Bobkiewicz clarified that at-will employees are subject to the personnel rules. The phrase they have been relying on in these discussions is that employees of the law department and city manager's office and those employees of elected officials are not. The remainder of the at-will employees who are not in the City Manager's office, the law department and not an employee of an elected official still have rights to the personnel rules in addition to all the other fair employment laws above and beyond the City of Evanston. Staff has tried, in the area of dismissal of at-will employees, to provide as much of a due process as possible which they afford to those at-will employees and have tried to extend it where practical to those other employees as well. The issue before Council is if they feel that all employees should be subject to those personnel rules if they are at-will or not at-will. Staff can come back with language to amend the code to say that. If Council would like to codify in the code the current practice they could come back with language to do that. He thinks there is a little bit of ambiguity that needs to be cleared up on either side and he would encourage Council to think about providing some clarity there.

Ald. Rainey noted that there are communities that are very similar to Evanston and she would like a few examples of how their City Clerk, Mayor and Aldermen handle employees who are assigned directly to them. She suggested at least three cities not villages that are in Illinois and are similar in size and have a full-time City Clerk. City Manager Bobkiewicz said they will look within the State of Illinois for cities of approximately the same size and complexity. Certainly Oak Park, Champaign, and DeKalb are probably on that list.

Ald. Rainey asked where does it say that the City Clerk is a full-time employee. Mr. Farrar said it is within the code but it also ties back to the Illinois Municipal code which indicated that the City Council prescribes the duties of the Clerk. The city code tracks the Illinois municipal code in that respect.

RESOLUTION 16-R-14 SUPPORTING ADEQUATE AND FAIR FUNDING RESOLUTION FOR ILLINOIS 9-1-1 SYSTEMS:

Ald. Tendam moved for approval. Ald. Rainey seconded.
Motion passed 9-1 for recommendation to the Council.

RESOLUTION 34-R-14 SUPPORTING CONTINUATION OF ILLINOIS INCOME TAX INCREASE TO SUPPORT CRITICAL GOVERNMENT SERVICES:

Mayor Tisdahl moved for approval. Ald. Wynne seconded.
Motion passed 6-4

NEW BUSINESS:

Ald. Braithwaite said for the next Rules Committee agenda he would like to revisit the city's banner policy. With emphasis on looking at what is done for neighborhood groups that would like to have banners as well as businesses. City Manager Bobkiewicz suggest the item go to the Administration and Public Works Committee. Ald. Braithwaite said ok.

Ald. Burrus asked who does the person in the Assessor's office report to and who helps manage their daily work flow. There has been some confusion about how she is to answer the phone and comments that maybe she needs some direction. City Manager Bobkiewicz said the position is part-time and is part of the Administrative Services department where Marty Lyons is the director. The position reports to Hitesh Desai in the finance division. The phone would be answered City of Evanston. They do not have a permanent person in that position and are in the process of recruiting. The office, phone numbers and services all remain the same as they are today.

ADJOURMENT:

Meeting adjourned 6:50 p.m.

Respectfully submitted,

Darlene Francellno

A video of this meeting is available at www.cityofevanston.org/government/agendas-minutes/agendas-minutes--rules-committee.