

General Committee
Meeting Minutes for Monday, September 11, 20017

Committee members present: Alderwomen Mattis and Ryan and Alderman Tommola

Others Present: Aldermen Ed Larson, Chris Ettori, Tim Cook, Alderwoman Humphrey, City Attorney Matt Bloomer

The meeting came to order at 5:32.

The first agenda item was the issue of texting during executive session, which was referred to committee by Alderman Larson. Alderman Larson briefed those present on his email conversations with Jenny Prosser, General Counsel and Director of Municipal Assistance for the Vermont Secretary of State.

In short, Alderman Larson's concerns lie with the possibility of the City lacking no formal policy dealing with electronic communications that occur during both executive and open sessions and the possibility that a Board member's electronic device and possibly private communications could be requested under Vermont Right to Know Laws, which are roughly the State equivalent of the Federal Freedom of Information Act.

Highlights from Attorney Prosser's response to Alderman Larson's inquiry are as follows:

- Texting isn't explicitly addressed by Vermont's open meeting law or public records act
- The general recommendation given is "that members of a public body refrain from texting with other members during a meeting," and that ""shadow communications" can create an appearance of impropriety, and in some situations might serve to keep info and discussions that inform officials' decision-making from those members of the public who are attending the meeting. (The same can be said for low-tech versions of texting, such as passing notes.)"
- Although not explicitly prohibited in the law, "Texting while inside executive session is also potentially problematic....Under 1 VSA Section 313, attendance in executive session is limited to board members and (in the board's discretion) staff, clerical assistants,

counsel and persons who are the subjects of discussion or whose information is needed."

- "Text messages are treated like other public records or documents under Vermont's public records act. So if a text is produced or acquired in the course of the board's business, it is a public record at must be disclosed unless a specific statutory exemption applies."
- "In the end, I think that members of public bodies should be prepared to disclose to the public any correspondence they send or receive that concerns the body's business, regardless of medium/device"
- Atty Prosser feels "it's a good idea to adopt a formal policy regarding how cell phones and other electronic devices may be used during meetings."

City Attorney Bloomer then briefed the members present on the general differences between FOIA and the Vermont Public Records Act and the process by which records requests of the City are collected, reviewed for relativeness, redacted if needed, and then distributed to the requestor. He also informed us of a case currently before the Vermont Supreme Court whose ruling may shape how or if we proceed with a policy pertaining to this issue. The City Attorney also advised that "phone culture" will only become more prevalent.

Several members, including Alderwomen Ryan, Mattis and Humphrey voiced opinions that the development of any such policy should apply to both regular meetings of the Board, as well as executive sessions.

Alderman Larson feels such a policy is needed to minimize the City's exposure, liability and financial impact of potential lawsuits. In response to Alderwoman Humphrey's statement that someone may not be texting, but rather reading pertinent documentation in electronic format, Alderman Larson felt that a policy wouldn't necessarily say you cant use a device but rather how you use it. Alderwoman Ryan questioned how such actions would be differentiated. Alderman Etori echoed Alderwoman Humphrey's concern, and suggested that drafting a new policy would only add to the City Attorney's pile of work and that perhaps creating an amendment to the document, "Rules and Order of Business of the Board of Aldermen" would be a better option.

Alderwoman Mattis moved the following: "That the Board of Aldermen request the City Attorney to create an amendment to the Rules and Order of Business of the Board of Aldermen to prohibit all shadow communications as defined by the State of Vermont in 1 VSA Section 313, including electronic communications, during all sessions of the Board."

The motion passed 2-1 to bring Alderwoman Mattis' motion to the Board for it's full consideration.

After the vote, the General Committee lost its quorum, but those present forged ahead with our second agenda item, a discussion about whether the City should amend its policy regarding the dates for permitting Coin Drops.

Alderman Mattis stated that she researched Coin Drop permits over the last four years and the only organization to ever request one into October was the Humane Society and suggested the City propose changing the rule and amending the application to allow for Coin Drops up to October 14 of each year.

Alderman Larson stated he felt it was necessary to make this amendment so the City's actions would be in sync with policy for liability purposes.

Because there was no quorum, no action was taken, but should the Board chose, someone could move to suspend the rules and take the matter up tonight. If not, the above regarding the second agenda item is for informational purposes only.

The meeting ended at 6:15pm.