



CITY OF WASHINGTON, ILLINOIS

City Council Agenda Communication

Meeting Date: December 5, 2022

Prepared By: Jim Snider, City Administrator

Agenda Item: First Reading Ordinances – City Code Chapter 31.58 Amendment and Rules of Procedure Section 6.7 Amendment

Explanation: Following discussion at the October Committee of the Whole meeting, the City Council asked staff and the City Attorney for clarification on what constitutes an “abstention” and if Robert’s Rule of Order addresses a “pass” vote. Further discussion at the November Committee of the Whole meeting was held to gather consensus on moving forward with two amendment ordinances. As a refresher, this was the City Attorney’s analysis:

Abstention

Section 31.58 of the City Code and the City Council Rules of Procedure (“ROP”) provide the following standard for the passage of ordinances, resolutions and motions:

1. **Ordinance:** Five affirmative votes from the City Council (Section 6.7 of the ROP);
2. **Resolution or Motion to Create Any Liability Against the City or for the Expenditure or Appropriation of its Money:** Majority of all alderpersons present at a duly convened meeting of the City Council where a quorum was established (Section 31.58); and
3. **All other Resolutions or Motions:** A majority voting on the issue (6.7 of the ROP).

The City Council directed City Staff and the City Attorney to revise Section 31.58 of the City Code and the ROP to provide that the passage of all ordinances, resolutions, or motions shall require the concurrence of a majority of the City Council present at a duly convened meeting of the City Council where a quorum was established unless a more rigorous voting standard is required by the City Code or Illinois law.

Robert’s Rules of Order (“Robert’s Rules”) (codified in Section 31.07 of the City Code) provides that abstentions are not counted as votes (page 45 of Robert’s Rules) unless the voting standard is based on a majority of members present (page 403 of Robert’s Rules). When voting standards are based on a majority of members present page 403 of Robert’s Rule observes that an abstention “has the same effect as a negative vote, [and] . . . members [are denied] the right to maintain a neutral position by abstaining.” For this reason, Robert’s Rules concludes that voting standards based on a majority of members present are “generally undesirable” (page 403 of Robert’s Rules).

If the City Council adopts a voting standard based on a majority of members present, the City Attorney recommends the City Council adopt a different approach than Robert’s Rules for abstention based on conflict or potential conflicts of interest. As proposed in the draft Section 31.58 considered by the City Council at the October 10, 2022, Committee of the Whole Meeting (attached), a member who abstains due to a conflict of interest is not considered present when determining whether a majority of the City Council supports the passage of an ordinance, resolution or motions. Under this proposal, an abstaining member of the City Council will have no impact on whether an ordinance, resolution or motion is approved. As proposed, if six members of the City Council are present and three members abstain due to a conflict or potential conflict of interest, the ordinance, resolution or motion can pass. Applying Robert’s Rules to this example, the ordinance, resolution or motion will fail and potentially creates deadlock where a significant number of members of the City Council have a conflict or a potential conflict of interest.

The City Attorney shares Robert Rule's concern of a voting procedure that allows an abstention to have the same legal effect as a no vote. For this reason, the City Attorney recommends the abstaining member of the City Council provide the basis for their abstention on the record. If the abstaining member does not want to state for the record the basis for the abstention, the abstaining member should vote no on the matter.

If the City Council adopts the abstention rules described above, the City Attorney further recommends the City Code provides a mechanism for determining whether a stated basis supporting an abstention is for a conflict or potential conflict interest. The revised Section 31.58 proposes the Presiding Officer (generally the Mayor) be the person who has final authority as to whether a reason rises to the level of a conflict or potential conflict of interest. Alternatively, the City Council can replace the Presiding Officer with the final authority as to whether an abstention is due to a conflict or potential conflict of interest.

Pass

Effective September 8, 2020, the City Council revised Section 6.5 of the ROP to add "For a roll call vote, the Clerk shall call the vote rotating alphabetically per ordinance, resolution and motion." City Staff and the City Attorney believe that this change reflected the City Council's desire to avoid having the same member be the first to vote on any ordinance, resolution or motion.

Section 6.7 of the ROP permits a Council member to vote "pass" in response to any roll call vote. Page 421 of Robert's Rules provides that a member may "pass" if the member is not ready to vote but wishes to be called on again after the roll has been completely called. City Staff and the City Attorney believe the ROP continuing to allow a member of the City Council to "pass" and vote later contradicts the policy direction set forth in Section 6.5 of the ROP and thus should be removed from Section 6.7 of the ROP.

Fiscal Impact: N/A

Action Requested: The direction offered at the November Committee of the Whole meeting was to proceed with the adoption of the attached amendment ordinances. A first reading is scheduled for the December 5 City Council meeting with a second reading to be scheduled for the December 19 meeting.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE VOTING APPROVAL STANDARD IN THE
MUNICIPAL CODE OF THE CITY OF WASHINGTON**

WHEREAS, Section 31.58 of the Municipal Code of the City of Washington (the “Code”) provides, in part, as follows: “The passage of all ordinances for whatever purpose, and of any resolution or motion to create any liability against a city or for the expenditure or appropriation of its money, shall require the concurrence of a majority of all Aldermen present at a duly convened meeting of the City Council where quorum was established, unless otherwise expressly provided by this code or any other act governing the passage of any ordinance, resolution, or motion.” (Section 31.58 in its entirety is hereinafter referred to as the “Voting Approval Standard”); and

WHEREAS, the City Council of the City of Washington has determined that it is in the best interests of the City to amend the Voting Approval Standard.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Washington, Illinois as follows:

Section 1: The recitals; as set forth above, are incorporated herein as though fully set forth and shall be considered the express findings of the City Council.

Section 2: That Chapter 31 of the City Code of the City of Washington, Tazewell County, Illinois, be, and the same hereby is amended by revising Section 31.58 to provide as follows:

“§ 31.58 VOTE REQUIRED; YEAS AND NAYS

Except as otherwise required in this City Code or by the laws of the State of Illinois, the passage of all ordinances, resolutions, or motions shall require the concurrence of a majority of the City Council present at a duly convened meeting of the City Council where a quorum was established. The yeas and nays shall be taken upon the question of the passage of the designated ordinances, resolutions, or motions and recorded in the journal of the City Council. A member of the City Council may abstain from voting on an ordinance, resolution, or motion only if such member states on the record the basis for such abstention. If the basis supporting the abstention is a conflict or potential conflict of interest, such abstaining member(s) shall not be deemed present for purposes of determining the result of the vote . If the basis supporting the abstention is for a reason other than a conflict or a potential conflict of interest, such abstaining member shall be deemed present for purposes of determining the result of the vote. The Presiding Officer shall determine whether the abstention is for a conflict of interest, potential conflict of interest, or otherwise. This Section 31.58

represents an intentional difference from the procedure outlined in Robert's Rules of Order otherwise codified in Section 31.07.”

Section 3: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed insofar as they are in conflict with this ordinance.

Section 4: If any provision of this ordinance is adjudged invalid, such adjudication shall not affect the validity of the ordinance as a whole or of any portion not adjudged invalid.

Section 5: This ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

PASSED AND APPROVED this _____ day of _____ 2022.

AYES: _____

NAYS: _____

ATTEST:

MAYOR

CITY CLERK

~~The-Except as otherwise required in this City Code or by the laws of the State of Illinois, the passage of all ordinances for whatever purpose, and of any resolution or motion to create any liability against a city or for the expenditure or appropriation of its money, resolutions, or motions shall require the concurrence of a majority of all Aldermen the City Council present at a duly convened meeting of the City Council where a quorum was established, unless otherwise expressly provided by this code or any other act governing the passage of any ordinance, resolution, or motion. Notwithstanding the previous sentence, the passage of an ordinance, resolution, or motion to designate city property as surplus and to establish the process for the disposition of such surplus city property shall require the concurrence of three-fourths (¾) of all Aldermen then holding office. The process established in such ordinance, resolution or motion for the disposition of surplus city property may or may not require further City Council action. If further City Council action is required, the subsequent vote required by the City Council shall be set forth in the ordinance, resolution or motion declaring such city owned property as surplus and may be less than three-fourths (¾) of all Aldermen then holding office. The yeas and nays shall be taken upon the question of the passage of the designated ordinances, resolutions, or motions and recorded in the journal of the City Council. A member of the City Council may abstain from voting on an ordinance, resolution, or motion only if such member states on the record the basis for such abstention. If the basis supporting the abstention is a conflict or potential conflict of interest, such abstaining member(s) shall not be deemed present for purposes of determining the result of the vote. If the basis supporting the abstention is for a reason other than a conflict or a potential conflict of interest, such abstaining member shall be deemed present for purposes of determining the result of the vote. The Presiding Officer shall determine whether the abstention is for a conflict of interest, potential conflict of interest, or otherwise. This Section 31.58 represents an intentional difference from the procedure outlined in Robert's Rules of Order otherwise codified in Section 31.07."~~

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