

MEMORANDUM

TO: Oregon City Commission
FROM: City Attorney's Office
DATE: June 11, 2020
RE: City Commission options to address concerns about the actions of the Mayor

INTRODUCTION

The City Commission has expressed concern regarding recent actions of the Mayor, including his comments and efforts on re-opening the city after the pandemic shutdown which resulted in a letter from the Oregon Department of Justice and his comments on the significance of police brutality against black people. The Commission is also concerned about the Mayor's private direction to the AV Technician prior to the June 3, 2020 City Commission meeting to immediately turn off the audio and video feed when he adjourned the City Commission meeting, contrary to the adopted Commission agenda and depriving the Commission members of the ability to speak on a matter of local, state and national importance. As a result, the Commission asked for an exploration of potential actions the Commission could take to address its concerns. This memorandum is not intended to document or identify any particular transgression, but to provide an explanation of potential actions the Commission could take to address actions of one of its members.

DISCUSSION

The City Commission is the governing body for Oregon City and its members are elected by the citizens of Oregon City pursuant to the City Charter. The Commission has adopted its own rules of procedure (attached), as authorized by the Charter, and those rules of procedure also adopt Robert's Rules¹ to govern any situations that are not specifically addressed in the rules or the City Charter.

Under the City Charter, members of the Commission, including the Mayor,² are elected for certain terms of office. The Charter does not provide any means for the Commission to remove a member of the

¹ The Commission's Rules of Procedure do not adopt or identify any particular version or edition of Robert's Rules. The City Attorney's office uses Robert's Rules of Order Newly Revised, published by Scott, Forsman and Company, 1990 Edition.

² See Section 7 of the Charter, which provides as follows:

“In addition to the Mayor, the commission shall be composed of four commissioners elected from the city at large for terms of four years each.”

Commission from his or her position, but Section 31 sets forth certain circumstances under which a Commissioner is automatically removed from office and the position deemed “vacant”:

“An office shall be deemed vacant upon the incumbent's death; adjudicated incompetence; conviction of a felony, other offense pertaining to his office, or unlawful destruction of public records; resignation; recall from office; or ceasing to possess the qualifications for the office; upon the failure of the person elected or appointed to the office to qualify therefor within ten days after the time for his term of office to commence; or in the case of a mayor or commissioner, upon his absence from the city for 30 days without the consent of the commission or upon his absence from meetings of the commission for 60 days without like consent, and upon a declaration by the commission of the vacancy.”

That section identifies nine specific circumstances that create a vacancy on the Commission, from the death of a Commission member, to absence from the City for a period of time. It does not appear that any of the circumstances in Section 31 have been met and, thus, the Mayor cannot be removed from his elected position by the Commission.³

Although the Mayor cannot be removed from office by the Commission, the Commission does have other options to express its concerns regarding the Mayor's actions. Although not set forth in the Commission's rules of procedure or adopted as part of the City code,⁴ Robert's Rules provides that a deliberative body has inherent authority to enforce rules of good conduct against its members. Robert's Rules, Sec. 60, p 638.

In particular, Robert's Rules note that, “whether the bylaws make mention of it or not,” an organization has the right to take action against a member for conduct “tending to injure the good name of the organization, disturb its well-being or hamper it in its work.” Robert's Rules, Sec. 60, p 644. However,

³ A suggestion has been made that the quick adjournment of the June 3, 2020, Commission meeting and instructions to turn off the recording equipment could qualify as an “unlawful destruction of a public record.” However, the “destruction” requires the existence of that thing to be destroyed and, because of the shut-down of the recording, no such record was made that could have been destroyed.

However, it is at least arguable that the Mayor's actions violated Section II.F of the Commission's Rules of Procedure (Resolution No. 19-11), which states: “Any Commissioner desiring to be heard shall be recognized by the presiding officer, but shall confine his or her remarks to the subject under consideration.” The Rules of Procedure also include the following from Section V – Agenda and Order of Business, subsection C – Order of Business, which states: “9c. Communications - Reports by Commissioners of their activities in the community.”

⁴ For example, Section 2.34.100 of the Roseburg Municipal Code states that the Roseburg City Council may censure or reprimand a councilor “who [does] not follow proper conduct or Council rules and procedures.” Similarly, the Medford City Council Handbook notes that a “Council member may be censured by the other Council members for misconduct, nonperformance of duty or failure to obey the laws of the federal, state, or local government.”

Robert's Rules also provide that a member accused of such a transgression has the right to due process, i.e., to be informed of the charge, be given time to prepare a defense, appear and defend himself, and to be fairly treated. The accused party need not be provided a formal trial, but should be allowed to defend themselves.

As noted above, the Commission does not have the authority to remove the Mayor, but may take lesser action. Robert's Rules mention only the possibility of a reprimand or suspension, but other jurisdictions have taken other actions, such as admonishment or censure. The New Oxford American Dictionary provides a helpful explanation of the differences between various types of actions including “rebuke, admonish, censure, reprimand, reproach and scold:”

“If you want to go easy on someone, you can **admonish** or **reproach**, both of which indicate mild and sometimes kindly disapproval. To admonish is to warn or counsel someone, usually because a duty has been forgotten or might be forgotten in the future (e.g., *admonish her about leaving the key in the lock*), while reproach also suggests mild criticism aimed at correcting a fault or pattern of misbehavior (e.g., *he was reprovved for his lack of attention in class*).

“If you want to express your disapproval formally or in public, use **censure** or **reprimand**. You can censure someone either directly or indirectly (e.g., *the judge censured the lawyer for violating courtroom procedures; a newspaper article that censured “deadbeat dads”*), while reprimand suggests a direct confrontation (e.g., *reprimanded by his parole officer for leaving town without reporting his whereabouts*).

“If you're irritated enough to want to express your disapproval quite harshly and at some length, you can **scold** (e.g., *to scold a child for jaywalking*).

“**Rebuke** is the harshest word of this group, meaning to criticize sharply or sternly, often in the midst of some action (e.g., *rebuke a carpenter for walking across an icy roof*).”

New Oxford American Dictionary, usage note to the definition of “rebuke.”

This provides a fair amount of latitude to the Commission to decide how to proceed. It might decide that some form of acknowledgment or “admonishment” is in order. This might take the form of a letter expressing concern that the Mayor’s recent activities may be injuring the “good name” of the City Commission and urging him to take greater care in any representations that he might make on behalf of the City.

However, given the formal, public nature of the Commission's activities, another option might be to “censure” or “reprimand” the Mayor, should the Commission determine that the Mayor's actions had injured “the good name of the organization,” disturbed “its well-being” or hampered “its work.”

The level of this fact-finding and public review may depend on the nature of the digression at issue or whatever remedy you may determine is appropriate. For example, a letter of warning may require less in the way of fact finding and public review than the formal adoption of a public, written censure, where the Commission may decide to enlist assistance from an independent investigator.

June 11, 2020

CONCLUSION

To the extent the Commission wishes to express its displeasure with certain actions of the Mayor, the Commission has the authority to take action against the Mayor, short of removing him from office. To the extent the Commission wishes to move forward, it should, first, identify the specific charges against the Mayor, second, provide those charges to the Mayor, as well as sufficient time to defend himself from those charges, third, hold a hearing on the charges, in which the Mayor has the opportunity to defend himself, and, finally take the action the Commission deems appropriate.