

MINUTES
GOVERNMENT ADMINISTRATION COMMITTEE
MUNCIE COMMON COUNCIL
300 NORTH HIGH STREET
MUNCIE, INDIANA 47305

WEDNESDAY, JUNE 23, 2021

SPECIAL COMMITTEE MEETING: 5:30 P.M., 1ST FLOOR CITY HALL AUDITORIUM.

PLEDGE OF ALLEGIANCE: Led by Councilwoman Selvey

ROLL CALL:	PRESENT	ABSENT
Brad Polk	X	
Ro Selvey	X	
Brandon Garrett	X	

ORDINANCES PREVIOUSLY INTRODUCED:

ORD. 17-21 AN ORDINANCE OF THE CITY OF MUNCIE ESTABLISHING THE POLICY BY WHICH MEMBERS OF THE COMMON COUNCIL MAY PARTICIPATE BY ELECTRONIC MEANS.

Chairman Polk explains this is from the state legislator and will be signed into law on July 1st recommending (or demanding) that all City Council, Commissioners and County Council adopt an ordinance establishing a policy for which electronic means. Last year with COVID, it was made more aware that people will be allowed to participate electronically. They will get into the numbers in a moment but generally, when members can't be at a meeting or be on zoom with regulations of what is considered an excused absence. A member can't miss more than two meetings in a row on Zoom as well as attending more than 50% of meetings (is how the ordinance is written). Tonight, they will be taking public input for as long as they need to followed by discussion of the Government Administration Committee members.

Cameron Grubbs came because this is very important. What he has seen with this is allowing the public to be heard but didn't see anything that established how exactly. He knows the public has to be allowed into the meetings but he does not know of putting the how into it He suggests maybe broadcasting them up on these monitors so that anybody in attendance would be able to see their comments and hear them. Also, he read a story about Bloomington instilling this and one of the issues that was brought up after was that someone was disappointed there is no timer. He looked into that and there is a way to use Zoom with a timer. He does not know if that is something that needs to be put into the wording or anything like that but he just wanted to bring that up. He is glad to see this because he feels like there is currently a disconnect between people who have stayed home and may have something to say and those who are here. He appreciates whatever they are doing to make sure that happens.

Kristopher Bilbrey was glad to hear that some of the members seemed to be less than thrilled with this. This is definitely not something that he likes but he does like to hear the City Council Attorney say that they can be more restrictive with this. The Council functions are, right now, if someone is ill or has some sort of engagement that they can't get out of, it is fine working with one or two people absent. As long as the quorum is there. Obviously, they are elected to sit in these seats and face the people. He knows the scenario sets forth that allows for them to do this and be present via Zoom and still be questioned and interact but it is not the same as sitting here face to face and having to feel the heat. Whatever they do here, understand that they are elected to sit here and represent us. Bilbrey was happy to hear that the Council seems to be on the same page. Just understand that there are a lot of people that are not happy with the way this sounded but are happy that the Council is less favorable of it. Obviously, he thinks it is important if (God forbid) somebody got cancer or a pre-existing condition which would make them need to stay home for treatment for several months on end, it would make sense. Other than that, this is not something many people are for.

Council President Jeff Robinson states he will offer his thoughts here instead of at the Council meeting. He understands Bilbrey's point as well as some other people's points he has heard about restricting this even further. He asks that if the recommendation from this Committee would be restricting it even further, he recommends (if possible) that there be some sort of provision to allow the majority of Council to be able to make exceptions to those rules. An example includes at least two Council meetings a year that are set only about three weeks apart. Robinson actually believes the August meeting is about three weeks after the July 12th meeting. His concern is if a councilmember has a hypothetical scenario, where someone might have a relative in Colorado, maybe their mother slips, falls, and breaks their hip or leg or something along those lines occurs and the councilmember needs to travel to take care of them. This is obviously longer than a three or four week endeavor. If they can't attend virtually more than once then that person is just going to be absent and their vote won't count. He thinks it says a lot about that councilmember that under those conditions would still be available to show up to execute their civic duties. If they look to make this more restrictive, he recommends that, again, have some sort of provision where the majority of Council can allow for a member to join virtually if it is only one meeting. To say if six members (2/3 of the majority) said yes, that is okay, then their vote would still count. That is all he is asking.

Mark Kinman indicates pretty much everything has been said. He has been attending these meetings for twenty-something years and remembers back years ago when there was a person sitting on the Council that never came to the meeting unless there was a certain issue that come up with the Police Department or whatever. If an issue came up, they attended the meetings. After that, they never attended the meetings and there was never a way to get him off, as they would not vote him off. He was paid, never represented anybody and just represented himself. The Council gets elected to be here and for the public to come in and be able to voice their opinions, thoughts and issues. Like he said, he read the ordinance many times and understands there is going to be reasoning for absences but to him, if you're absent, you're absent. It's still enough people to vote and get business done that needs to be taken

care of. Referring to the example Robinson earlier provided, he understands if someone is in Colorado but still... They have to take care of what they need to take care of, they just won't be able to be in a meeting unless doing it over the internet. Kinman just does not see that. He is totally against it.

Grubbs states being that this will allow for more access of a councilmember to attend, is there possibly going to be a stipulation for how many are required to make a quorum for attendance. Chairman Polk indicates they will get into that and the statute says 50%.

Council Attorney Dan Gibson has a few points to make before further discussion to make sure they are all following the same page. This ordinance relates to councilmembers participation in a meeting electronically. There has always been the ability to do so if Council had passed a policy but this Council never passed a policy. Now, the state legislator has required this Council to pass a policy and actually provided a baseline simply saying this is what the statute is, these are the requirements but you can be more restrictive in your policy. There will still be a certain number of councilmembers that will have to be present at a meeting here in the auditorium and the public still has to have the ability to attend and participate. The electronic means has to allow that councilmember to communicate simultaneously with the rest of the councilmembers. He just wants that to be clear and again, it is only if a councilmember wants to participate electronically. If they want to be absent, certainly, they can be absent. The proposed policy and the statute also exempts certain votes meaning it doesn't matter what the policy says, they cannot vote electronically on certain items (one of those being a reduction of personnel or the adoption of a budget) which are major things they need to be here in person for. That is already outlined in the ordinance but Gibson just wanted to make sure it was clear before the get into discussion.

Chairman Polk refers to the questions the audience asked and explains at least 50% of the members must physically be present at a meeting (so there can't be seven people absent and only two people in attendance). It is required that five of the nine members be in person. As Attorney Gibson indicated, there are certain things they have to be here for which votes cannot be submitted electronically. That consists of adopting the budget, making a reduction of personnel, initiate a referendum, impose or increase a fee, impose or increase a penalty, exercise the Council's power of eminent domain or establish/impose/raise or renew a tax. Voting on those actions can't be handled by electronic means. Right now, the way the ordinance is written was the way the State did it. It stated a member can attend two consecutive meetings by electronic means so Polk thinks that what Mr. Robinson said about if someone is out of state, taking care of a sick relative or injured relative or get injured themselves, then they are still able to Zoom in for two meetings. After that, they would then have to consider attending the third meeting as they can only miss two consecutively. There are some exceptions to that for Sec. B(2) and Sec. B(3) which are exceptions of military service, illness of other medical condition, death of a relative or an emergency involving actual or threatened injury to persons or property. It also establishes that the minutes will say who is physically present at the meeting and who participated by electronic means in addition to who was absent. Polk continues and explains there is a provision that states they cannot attend

more than 50% of the meetings electronically and would make a recommendation that they drop that down. That is 6 meetings a year. To him, as many have said, they are elected to be here. Obviously, there are circumstances and recalls missing one meeting in 2019 because his daughter graduated from high school and he wasn't going to Zoom in from the graduation. If this were in place then, he wouldn't have participated and would still have been considered absent. There are times when something comes up with an illness or a family member but 20% is still 3 meetings and more than enough to him. Referring to Mr. Kinman about the member that never attended, Polk recalls that being the year before he was elected to Council. The gentleman was here in January and attended one more meeting that year but that was it. He mentions another, more recent councilmember that didn't have very good attendance and there were no repercussions on that. So, this, at least, give them somewhat of a baseline where they can make changes as they see fit. That is what they are here to do tonight, to make a recommendation to bring back to the full Council in July. In closing, Pol explains B(2) is saying that a member cannot attend more than 25% of the meetings by electronic means in a calendar year, again, unless it is due to one of the exceptions listed.

Attorney Gibson reminds everyone that this would also apply to Special Meetings. If they are increasing the number of meetings they have to attend, that may be one thing to consider when putting in a certain number of meetings other than a percentage.

Councilwoman Selvey truly believes they need to be here as much as they can. She understands there are sickness and issues that come up like family matters but they have enough provisions in that they can actually take off. However, she agrees, three out of twelve meetings a year but would rather go with a percentage, even for Special Meetings because those might be more important than the Regular Meeting (sometimes). She respects Attorney Gibson but disagrees with his input and thinks they should do a percentage. They need to think about what they do and their job as they are also employees of the City and this is a very important job. She wonders what an employer would think of her if she just showed up 75% of the time. With that, her suggestion would be three out of 75% of total meetings. When Polk mentioned that they can go back and change things, she indicates that scares her too. Polk clarifies they can tighten it. Selvey will go with a percentage of the total meetings, including the Special Meetings.

Councilman Garrett agrees too. It is their job to be here. It lets them know what they need to do if they are not doing what they need to do. He believes that 25% of the three meetings is more than enough. The way it is written lays everything out and gives exemptions so that if something does come up, they are covered under really whatever may come up.

Councilwoman Selvey questions the comment made earlier about the timer and if they are going to add that. Attorney Gibson indicates he must have been unclear on that. This is just for a councilmember participating virtually and not the public that is participating virtually. Grubbs asks for clarification because he was under the impression it mentioned the public. Gibson explains it does, it is open to them to participate in person but doesn't require them to open up a Zoom meeting for the public to be able to participate. This is only for councilmembers participating. Grubbs states this is not how he read it and comments it was

mentioned more in the state statute than in the ordinance being put up. Robinson believes he is referring to "Sec. A(3). Any member may participate in a meeting by any electronic means of communication that: (1) allows all participating members of the governing body to simultaneously communicate with each other and (2) other than a meeting that is an executive session, allows the public to simultaneously attend and observe the meeting." So, the public would still be heard. Gibson adds it does not mention to electronically attend. Grubbs suggests that they may want to clarify that because to him, it sounds like if this is an ordinance about establishing electronic means and states "allows the public to..." then that would imply that the public would have the means to electronically observe and attend. Gibson clarifies that it reads "allows any member may participate in a meeting by any electronic means" and later "the public to simultaneously attend." So, under the rules of statutory construction, the fact they used "electronically" before "member" but not before "member of the public" means that they were not intending for the members of the public to participate. Of course, they will still livestream and allow the public to observe simultaneously but not participate. He cannot imagine the nightmare that would ensure if they had to allow the length to be put out for people to participate via Zoom. The Public Access Counselor has said that Facebook Livestream is more than appropriate but does not require members of the public the ability to speak by virtual meetings. Grubbs mentions that defeats the whole point he was bringing up earlier that he appreciated that was going to be happening but guesses he misunderstood and suggests whoever is controlling the live video send the Zoom hearings out and mute everybody or certain parties until their time to speak.

Attorney Gibson wishes to make it clear that the recommendation would be a percentage adding more meetings to include the Special Meetings to where they could potentially miss three. Chairman Polk confirms and adds that they usually have two or three additional Special Meetings a year so it would be 25% total across the board. He too, does not know of anybody that works anywhere that their employers would allow them to miss half and their schedule and not be fired. Polk adds they can be thrown out of office. Basically, in dealing with the pandemic over the last year, the main reason this was really done like it was where someone had an illness they could still Zoom in and participate in the meeting. At least two members of this Council did that last year, Councilman Clark and Councilman Smith. Polk does not think anyone is going to take advantage of it, especially if they are going to be running for office again as it has happened before and that person did not get reelected. It is not a smart thing to do. The public does have the power to get rid of them as councilmembers and he thinks they are all well aware of that. To be clear, the Committee is going to recommend to change Sec. B(2) and amend it from 50% to 25% of the meetings. Polk asks if they would need to put a number on it because 50% would be 4 ½ councilmembers which there is not of. Gibson states they can for clarification. Grubbs mentions if they were to do that and there was a vacancy then they would need five of the eight members. Polk adds or they could just have a simple quorum.

Councilwoman Selvey clarifies that making that change, Sec. 3 reads "any member may attend two consecutive meetings by electronic communication and a member must attend in

person at least one meeting in between sets..." That is where it is going to state. Polk confirms. Selvey adds it can't be three meetings in a row. Polk understands that people live out of state and things may come up with relatives. They do have a job here to do but, of course, you can't replace family. That is fine, two meetings one can attend and if someone was to miss four, it is up to the Council to determine. That breaks that 25% rule. As far as consequences being written into the ordinance, Polk states there is not. He does not know if the State put anything into theirs either. Gibson would have to double check but he believes there is just a general right the Council has to remove a member so he does not know if that needs to be stated in the ordinance. Selvey adds if they are doing this, she thinks they should add the consequences right now. Polk states they already have consequences. Gibson explains by state statute, they have the right to remove another member of the Council. However, they can amend it to list that information if they so choose. Selvey states she would like it listed. Gibson will draw up another copy to include the amendments.

Hearing no further comments, Chairman Polk advises they will take these recommendations to the Council and asks Attorney Gibson to present those changes to him once done. Gibson suggests taking a vote on the official recommendation. Polk confirms taking a vote on the recommendations that were just listed with the addition of the consequences and tying all that together.

A motion is made by Garrett and seconded by Selvey to approve the above discussed recommendations. A roll call vote showed 3 yeas and 0 nays. MOTION CARRIED.

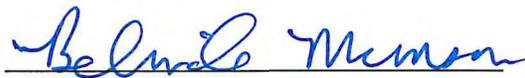
Chairman Polk brings up one thing that wasn't earlier mentioned. If only one person is participating by electronic means then every vote is a roll call vote. If saying "I" along with everyone else, you can't really tell if the person joining electronically is saying anything at all.

OTHER BUSINESS:

ADJOURNMENT: A motion was made by Selvey and seconded by Garrett to Adjourn. A vote by acclamation showed 3 yeas and 0 nays. ADJOURNED.



Brad Polk, Chairman of the Government
Administration Committee of
the Muncie Common Council



Belinda Munson, Muncie City Clerk
of the Muncie Common Council



Jeff Robinson, President of
the Muncie Common Council